













**HOUSE MESSAGE**

The House of Representatives, meeting in session on November 16, 2005, has voted to sustain the Governor's veto on the following entitled Bill(s): **HB 354**, relative to the review, approval, and adoption of agency rules.  
**Out of Recess.**

**LATE SESSION**

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

**STATE OF NEW HAMPSHIRE****CONVENING DAY**

*January 4, 2006*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good morning. Good morning, everybody. Happy New Year! We remember this day, those families in West Virginia who lost loved ones in the accident in the unfortunate way that it was reported, because of the change in the mood. And it's a good day to think about everybody who does work for us that costs them something, including you. So thank you for what you do. I would remind you that in your tool kit, as you begin phase II of this session, you have three important things that it is very important to use this time around, and I invite you to cultivate them in whatever way works for you. First of all, there are your convictions, which is the root system of your service. May your roots hold firmly, but may the top of your trees be able to bend in the wind so you don't break off. Convictions. Secondly, there is perception. The gift of understanding when you are right and when you are wrong, which comes through careful, patient, deep listening, especially to the voices that you don't agree with. And so I invite you to nourish the gift of perception because it is the seed bed of wisdom. And then lastly, there is the gift of respect. You can hate somebody's ideas, but if they think you hate them, you have lost the battle and don't deserve to be sitting here or anywhere else. And it is the challenge that all of us wrestle with. And so I invite you to take

your tool kit out and use your three tools this session of “conviction”, don’t give up; “perception”, don’t quit listening; and “dignity” and “respect”, don’t quit caring. Let us pray:

*Gracious God, You invite all of us to risk. Thank You for those who share their lives in ways that cost something, our soldiers, our servants, our coal miners and ourselves. And give us Your gifts and strength of conviction and perception and respect, that we will serve You in ways that make You smile.* Amen

Senator Gallus led the Pledge of Allegiance.

Senators Burling, D’Allesandro, Fuller Clark and Kenney are excused for the day.

**INTRODUCTION OF GUESTS**

**NEW STAFF FOR THE 2006 LEGISLATIVE SESSION**

Samantha Piatt	Chief of Staff
Erin Hass	Majority Policy Director
Kenneth Murphy	Legal Counsel
William G. Gardner “Chip”	Senate Clerk’s Office
Patrick Murphy	Legislative Aide
Deborah Chroniak	Secretary
Rachel Durazzani	Secretary
Barbara Harwood	Secretary
Jennifer Perry	Secretary
Angela Spradling	Correspondence Secretary

**SUSPENSION OF THE RULES**

Senator Clegg moved that the rules of the New Hampshire Senate be so far suspended as to allow introduction, and consideration at the present time of Senate Bill 392-FN-A, and by this motion, to allow a third reading motion in the early session.

**First and Second Reading**

06-3035

**SB 392-FN-A**, relative to the payment of Medicare Part D phased down state contribution, known as “clawback”. (Sen. Morse, Dist 22; Sen. Clegg, Dist 14; Sen. Larsen Dist 15; Rep. King, Coos 1; Rep. O’Neil, Rock 15; Rep. Craig, Hills 9)

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

**SB 392-FN-A**, relative to the payment of Medicare Part D phased down state contribution, known as “clawback”.

**Senator Morse moved ought to pass.**

SENATOR MORSE: Thank you, Mr. President. I move ought to pass on Senate Bill 392, relative to the payment of Medicare Part D phase down of state contribution, known as “clawback and wish to speak to my motion. Mr. President, as we presented yesterday, there was no appropriation made to the department on Medicare clawback, it was made to the “rainy day fund” of \$43 million. Since we’ve done that in the budget process, we’ve received documentation from the federal government, that that \$43 million is going to be due to the federal government in the ‘06 and ‘07 budget, which we were well aware of the fact that that might happen. I honestly don’t believe that the state of New Hampshire agrees with the fact that we’re going to be making these payments and that became clear yesterday, in the proceedings that we had over in the House.



And I think that will proceed along in the session, that will make it very clear to the federal government about our position on that. Having said that, it was very clear that these payments are going to be due. We're asking for your support so that we do make those payments on time and avoid any penalties at the federal level, and we need to pass this legislation here in the Senate body today. We're fast tracking it to the House right after this and then to the Governor, so that we can have it in place for the end of the month. Thank you very much for your support.

SENATOR LARSEN: Thank you, Mr. President. I rise to point out that this bill is being passed under duress. As we know, the penalties for not making this payment can be as much as 12 percent due in February and continuing on as an obligation of the state. But I think everyone here recognizes and in fact, we prepared a resolution, to point out the problems with this required payment of monies, kind of appropriately named "clawback". It has kind of that sense of clawing back money that in fact is rightfully kept in the state, money that should be used for covering those who are low income, elderly, frail, who have mental health needs, that in fact, under our having to send as much as \$43 million to the federal government, we will be less able to cover those in need. The resolution we prepared also pointed out what we heard yesterday, were problems with the so-called "clawback" legislation. Problems that cause us to require co-payments of long-term care Medicaid patients, in home and community based settings. New Hampshire's never had to make a co-payment, a required co-payment of these low income and frailer seniors, yet, now we're going to have to require what is a \$5 co-pay. As some of us know, \$5 to someone in long-term care is the difference between a hair cut or none, or a birthday card to their grandchildren. It means a lot, and we have not so recently increased the personal allotment to the folks, but now we're going to require co-pays of them because the federal government's requiring this. We also have issues with dual eligible clients, those who receive mental health services now have to make co-payments that they've never had to make before. And issues relating to medications that won't be covered, that the state will have to now cover through its own general funds. A further issue we heard yesterday in Joint Finance hearings that was pointed out by the commissioner of Health and Human Services here in this state, which relates to dual eligible individuals who will now have to...or who were advised to seek a ninety-day prescription filling. We will have to pay...we are in essence, sending some of our own state general funds in payback for this ninety-day prescription, because their ninety days extended into the year 2006. These are complicated issues obviously, and technical in nature, but the real issue is Medicaid and Medicare have in essence, been programs run by the federal government, and operated in cooperation with the state, and this is a first time that we are being under duress required to make a payment back to the federal government for a program that should be, in fact, covered through Medicaid and Medicare fully, and leave our general funds where they belong in serving those most in need. So I raise these issues. I know we will bring it forward as a resolution on the 18<sup>th</sup>, which is when we will bring that resolution as well as have more complete Senate attendance. But I did want to raise those issues because they may get lost in what will be a busy day on January 18<sup>th</sup>, but they are important issues which I believe this resolution will ask each of you to sign onto. It was in fact, drafted through the help of the Department of Health and Human Services and highlights the problems with our being required to make this kind of \$43 million payment at a time when

we know our Medicaid, Medicare costs in this state will be rising dramatically. So with that, I urge each member to pass this, but I personally would say that I'm doing it under the duress of penalties required from the federal government and not one which I think most of us would willingly do if it weren't with...coming with retribution if we didn't do it. So, thank you, Mr. President.

**Adopted.**

Senator Clegg moved that **SB 392-FN-A**, relative to the payment of Medicare Part D phased down state contribution, known as "clawback", be by this motion, read a third time, the title be the same as adopted and ordered to third reading in the early session and be passed at present time.

**Adopted.**

**Third Reading and Final Passage**

**SB 392-FN-A**, relative to the payment of Medicare Part D phased down state contribution, known as "clawback."

**RESOLUTION**

Senator Clegg moved that all bills laid on the table from session year 2005 shall be by this resolution made inexpedient to legislate.

SENATOR LARSEN: In doing this tabling motion, it was my understanding, and I'd like to have perhaps Senator Clegg reiterate, that it does not in fact indicate that future bills for the year 2006 will receive a killing motion because this...those laid on the table were killed. So my question to Senator Clegg is, if we lay these bills on the table and there is a similar or identical issue brought forward in 2006 legislation, can we be certain that it will receive a fair hearing and it will not be used as an argument that these bills were...these bills on the table were killed at that point?

SENATOR CLEGG: It's my belief that the next motion coming up will be one to allow all the bills in and, once the Senate has voted to allow the bills into first and second reading, there is no more discussion on whether or not something is or isn't in here properly. We all know what's up there, we all know what we're doing if we allow a bill in, it's there and it gets a hearing.

SENATOR LARSEN: Thank you.

**Adopted.**

**SB 29**, relative to processing absentee ballots.

**SB 34-FN**, relative to reimbursement rates for child care.

**SB 71**, relative to amending warrant articles in towns that have adopted the official ballot form of town meeting.

**SB 109-FN**, relative to catastrophic special education funding.

**SB 116**, relative to payment procedures for the utility property tax.

**SB 133-FN**, relative to mooring permits.

**SB 134**, relative to medical decision making for those adults without capacity to make health care decisions for themselves and establishing procedures for Do Not Resuscitate Orders.

**SB 162-FN-A**, increasing the appropriation to the firemen's relief fund.

**SB 197-FN**, relative to captive insurance companies and reciprocal insurers.

**HB 56**, relative to food safety in restaurants.

**HB 84**, relative to compensation of county convention members for county business.

**HB 126**, relative to a public employee right of free speech.

**HB 220**, establishing a committee to study the ability of homeless youth in New Hampshire to make a successful transition to adulthood.

**HB 294**, relative to annulment of arrest records.

**HB 301-L**, relative to parent advisory councils for pupils with educational disabilities.

**HB 339**, relative to electioneering at polling places.

**HB 371**, relative to mercury reduction.

**HB 443**, relative to the statute of limitations for fire code violations.

**HB 498**, establishing a study committee relative to the sale of fire-safe cigarettes.

**HB 561**, relative to reasonable accommodation by employers under the state law against discrimination.

**HB 574-FN**, requiring the reporting of burn injuries.

**HB 604-FN**, discontinuing the use of tokens.

**HB 611-FN**, relative to small group insurers.

**HB 702-FN**, relative to the screening and mediation of medical malpractice claims.

**HCR 8**, urging the Congress of the United States to place a moratorium on new free trade agreements, to investigate and review current free trade agreements and policies of the United States, to investigate and review participation of the United States with international trade organizations and to ensure that such agreements, policies, and participation are in the best interests of the citizens of the state of New Hampshire and the United States.

### AMENDMENT TO SENATE RULES

Senator Clegg moved to amend the New Hampshire Senate Rule 48 for the purpose of establishing legislative deadlines for session year 2006. It would delete sections (a) through (f) and amend (g) through (j) to read as (a) through (d) and amend by replacing all after (d) with (e) through (k):

48. Deadlines:

a) The filing period for legislation to be acted on in the second year session, beginning January 2006, will commence on Tuesday, September 6, 2005.

b) The Office of Legislative Services shall not draft a Senate Bill or resolution, unless a request by a member for drafting with complete information has been received not later than 3:00 p.m. on Friday, September 23, 2005. The last day to sign-off legislation for the above filing period shall be Friday, December 2, 2005 at 3:00 p.m.

c) The filing period for legislation recommended by a Study Committee or Commission created by a Senate Bill to be acted on in the second year session, beginning January 2006, will commence on Wednesday, November 2, 2005.

d) The Office of Legislative Services shall not draft a Senate Bill recommended by a Study Committee or Commission created by a Senate Bill,

unless a request by the Chairman for drafting with complete information has been received not later than 3:00 p.m. on Tuesday, December 6, 2005. The last day to sign-off legislation for the above filing period shall be Tuesday, January 17, 2006 at 3:00 p.m.

e) Thursday, March 9, 2006 deadline for Policy Committees to report on all Senate money bills.

f) Wednesday, March 22, 2006 deadline for Policy committees to report on Senate non-money bills. (Crossover)

g) Thursday, April 20, 2006 deadline for Policy Committees to report on all House money bills.

h) Thursday, May 4, 2006 deadline for Policy Committees to report on all House non-money bills.

i) Thursday, May 11, 2006 last day to form Committees of Conference.

j) Thursday, May 18, 2006 last day to sign Committee of Conference Reports.

k) Wednesday, May 24, 2006 last day to act on Committee of Conference Reports.

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

**Recess.**

**Out of recess.**

### **INTRODUCTION OF SENATE BILL(S)**

Senator Clegg offered the following Resolution:

Be it RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from **SB 229** to **SJR 4** shall be by this resolution read a first and second time by the therein listed title(s) and referred to the designated committee(s).

**Adopted.**

### **First and Second Reading and Referral**

06-2003

**SB 229**, relative to subsidizing malpractice premiums for certain specialties. (Burling, Dist 5; Fuller Clark, Dist 24: Internal Affairs)

06-2010

**SB 230**, relative to the scope of liability of a medical director responsible for utilization review under the managed care law. (Clegg, Dist 14; Green, Dist 6; Morse, Dist 22; Foster, Dist 13; Gottesman, Dist 12; Craig, Hills 9; DeJoie, Merr 11; Marshall Quandt, Rock 13; O'Neil, Rock 15; Newton, Straf 1: Judiciary)

06-2020

**SB 231**, relative to the residency requirement to qualify for the elderly property tax exemption. (Barnes, Dist 17; Charron, Rock 7: Public and Municipal Affairs)

06-2923

**SB 232-FN-A**, making a capital appropriation to the department of health and human services for a dental facility in the town of Tamworth. (Kenney, Dist 3: Capital Budget)

06-2023

**SB 233**, relative to motorcycle rider education. (Letourneau, Dist 19; Packard, Rock 3: Transportation and Interstate Cooperation)

06-2026

**SB 234**, including the International Residential Code 2000 in the definition of the state building code. (Clegg, Dist 14; Morse, Dist 22; Flanders, Dist 7; Infantine, Hills 13; Slocum, Hills 6; Marshall Quandt, Rock 13; O'Neil, Rock 15: Public and Municipal Affairs)

06-2027

**SB 235**, relative to food safety in restaurants. (D'Allesandro, Dist 20; Fuller Clark, Dist 24; Pilliod, Belk 5; P. Allen, Ches 6; Emerson, Ches 7: Executive Departments and Administration)

06-2117

**SB 236**, establishing an employment restriction on former board members of public corporations. (D'Allesandro, Dist 20: Internal Affairs)

06-2176

**SB 237**, relative to excessive overpricing of essential commodities during a declared state of emergency. (Larsen, Dist 15; Green, Dist 6; D'Allesandro, Dist 20; Gottesman, Dist 12; Osborne, Merr 12; Theberge, Coos 4; Lockwood, Merr 6; E. Blanchard, Merr 10: Energy and Economic Development)

06-2177

**SB 238**, relative to assistance to members of the general court provided by the legislative budget assistant. (Gatsas, Dist 16; Fuller Clark, Dist 24; Barnes, Dist 17; Larsen, Dist 15; Estabrook, Dist 21; Odell, Dist 8; Kenney, Dist 3; Roberge, Dist 9; Johnson, Dist 2; Letourneau, Dist 19; Clegg, Dist 14; Green, Dist 6; W. D. Scamman, Rock 13; O'Neil, Rock 15; M. Smith, Straf 7: Internal Affairs)

06-2281

**SB 239**, renaming the bridge located on Main Street in Enfield, New Hampshire and crossing the Mascoma River as the Women in Service to Enfield (WISE) Bridge. (Burling, Dist 5: Transportation and Interstate Cooperation)

06-2310

**SB 240**, relative to transmission poles or structures on public highways. (Kenney, Dist 3: Energy and Economic Development)

06-2312

**SB 241**, allowing municipalities to exclude certain retirement assets from consideration in qualifying for the elderly property tax exemption. (Kenney, Dist 3; Price, Hills 26; Powers, Rock 16; Dickinson, Carr 1: Public and Municipal Affairs)

06-2314

**SB 242**, prohibiting a person charged with unlawfully killing a decedent from taking from the decedent's estate. (Gottesman, Dist 12; D'Allesandro, Dist 20; Clegg, Dist 14; Foster, Dist 13; Dokmo, Hills 6; Harvey, Hills 21; Mooney, Hills 19; Knowles, Straf 6; Drisko, Hills 5: Judiciary)

06-2344

**SB 243**, establishing a commission to study rural transit in New Hampshire. (Kenney, Dist 3: Energy and Economic Development)

06-2384

**SB 244**, relative to alternative regulation of small incumbent local exchange carriers. (Boyce, Dist 4: Energy and Economic Development)

06-2400

**SB 245**, repealing laws relative to the municipal courts and the administrative committee of the district and municipal courts. (Foster, Dist 13; Dokmo, Hills 6: Judiciary)

06-2403

**SB 246**, relative to provisions for permissible contact between the agent of the defendant subject to a protective order and a plaintiff. (Foster, Dist 13; Clegg, Dist 14; Gottesman, Dist 12; Knowles, Straf 6; Lasky, Hills 26: Judiciary)

06-2464

**SB 247**, establishing a right to work act which provides for freedom of choice on whether to join a labor union. (Boyce, Dist 4: Banks and Insurance)

06-2499

**SB 248**, establishing a committee to study the issuance of dealer plates to bonded motor vehicle dealers. (Flanders, Dist 7: Transportation and Interstate Cooperation)

06-2500

**SB 249**, allowing a master electrician to have 2 apprentice electricians under his or her supervision. (Flanders, Dist 7; Infantine, Hills 13; Hirschmann, Hills 17: Executive Departments and Administration)

06-2549

**SB 250**, relative to lead paint poisoning prevention. (D'Allesandro, Dist 20; Martel, Dist 18; Fuller Clark, Dist 24; Craig, Hills 9; DeVries, Hills 15: Environment and Wildlife)

06-2560

**SB 251**, relative to the enforcement authority of the division of safety services. (Flanders, Dist 7: Environment and Wildlife)

06-2570

**SB 252**, relative to defining "speech-language assistant" for purposes of speech language pathology practice. (Hassan, Dist 23; Flanders, Dist 7; P. McMahon, Merr 3; Bergin, Hills 6; Dexter, Ches 6; C. Robertson, Rock 13: Executive Departments and Administration)

06-2571

**SB 253**, relative to enforcement of support orders for college and postsecondary educational expenses. (Hassan, Dist 23; Larsen, Dist 15: Education)

06-2628

**SB 254**, renaming a certain bridge in the town of Stratford the Janice Peaslee Bridge. (Gallus, Dist 1; Odell, Dist 8; Barnes, Dist 17; Roberge, Dist 9; Remick, Coos 2; H. Richardson, Coos 2; Merrick, Coos 2; Tholl, Coos 2; Stohl, Coos 1: Public and Municipal Affairs)

06-2639

**SB 255**, establishing a committee to study the funding necessary to operate the hazardous materials program in New Hampshire. (Eaton, Dist 10; Flanders, Dist 7; D'Allesandro, Dist 20; S. L'Heureux, Merr 9; Bridle, Rock 15; Goley, Hills 8; DeJoie, Merr 11: Environment and Wildlife)

06-2649

**SB 256**, relative to the definition of "harm" for purposes of the crime of improper influence. (Johnson, Dist 2; Flanders, Dist 7: Judiciary)

06-2681

**SB 257**, requiring the joint legislative committee on administrative rules to study procedures for agency responses to complaints from the public. (Fuller Clark, Dist 24; Patten, Carr 4: Executive Departments and Administration)

06-2682

**SB 258**, requiring the joint legislative committee on administrative rules to study methods for improving notice to the public of proposed administrative rules. (Fuller Clark, Dist 24; Patten, Carr 4: Executive Departments and Administration)

06-2687

**SB 259**, relative to the duty of care of occupants of land constructing or maintaining snowmobile trails. (Flanders, Dist 7: Environment and Wildlife)

06-2691

**SB 260**, relative to certification of a registered nurse responsible for emergency medical transportation. (Johnson, Dist 2; Burling, Dist 5: Health and Human Services)

06-2698

**SB 261**, establishing a committee to study a highway project between Pembroke and Bow. (Larsen, Dist 15; Field, Merr 7; Greco, Merr 7: Transportation and Interstate Cooperation)

06-2700

**SB 262**, establishing a strategic planning commission for gender-responsive management of female offenders in the criminal justice system. (Larsen, Dist 15; D'Allesandro, Dist 20; Hassan, Dist 23; Fuller Clark, Dist 24; Roberge, Dist 9; Price, Hills 26; Dowling, Rock 5; Houde-Quimby, Sull 1; E. Blanchard, Merr 10; Wall, Straf 7: Judiciary)

06-2702

**SB 263**, relative to inclusionary zoning and workforce housing. (Larsen, Dist 15; Fuller Clark, Dist 24; D'Allesandro, Dist 20; Craig, Hills 9: Executive Departments and Administration)

06-2706

**SB 264**, relative to the chief financial officer of the department of environmental services. (Clegg, Dist 14; Gallus, Dist 1; D'Allesandro, Dist 20; Whalley, Belk 5; Thomas, Belk 5: Executive Departments and Administration)

06-2731

**SB 265**, relative to workers' compensation requirements for out-of-state employers and employees. (Hassan, Dist 23; D'Allesandro, Dist 20; Flanders, Dist 7; Odell, Dist 8; Fuller Clark, Dist 24; Infantine, Hills 13; Mooney, Hills 19; Reardon, Merr 11: Banks and Insurance)

06-2734

**SB 266**, requiring candidates for employment at the department of education to submit to a criminal background check. (Barnes, Dist 17: Education)

06-2773

**SB 267**, relative to the definition of employee and clarifying the criteria for exempting workers from employee status. (Hassan, Dist 23: Banks and Insurance)

06-2801

**SB 268**, raising the age of required attendance of children in school. (Green, Dist 6; Estabrook, Dist 21; Gallus, Dist 1; D'Allesandro, Dist 20; Foster, Dist 13; Odell, Dist 8; Gottesman, Dist 12; Larsen, Dist 15; Hassan, Dist 23; Martel, Dist 18; Weyler, Rock 8; S. 'L'Heureux, Merr 9; Craig, Hills 9; Snyder, Straf 2: Education)

06-2810

**SB 269**, ratifying certain actions at the 1996 Seabrook annual town meeting. (Hassan, Dist 23; Fuller Clark, Dist 24; Weare, Rock 14: Public and Municipal Affairs)

06-2861

**SB 270**, relative to a certain motor vehicle plate. (Barnes, Dist 17: Transportation and Interstate Cooperation)

06-2872

**SB 271**, relative to the availability of voter checklist information. (Green, Dist 6; D'Allesandro, Dist 20: Internal Affairs)

06-2909

**SB 272**, establishing a committee to study laws relating to funerals and crematories, and their effectiveness. (Fuller Clark, Dist 24; Hassan, Dist 23; Harvey, Hills 21; Marshall Quandt, Rock 13; Langley, Rock 18; Jillette, Sull 2: Health and Human Services)

06-2958

**SB 273**, relative to reasonable accommodations for employees with disabilities. (Hassan, Dist 23; Fuller Clark, Dist 24; Foster, Dist 13; Larsen, Dist 15; P. McMahan, Merr 3; Bergin, Hills 6; Rogers Johnson, Rock 13; Ulery, Hills 27; D. Eaton, Ches 2: Banks and Insurance)

06-2961

**SB 274**, adding court security to the duties of the New Hampshire court accreditation commission. (Foster, Dist 13; Dokmo, Hills 6: Judiciary)

06-3003

**SB 275**, removing the requirement for criminal record checks for licensed nurses. (Martel, Dist 18: Judiciary)

06-3031

**SB 276**, authorizing the town of Seabrook to plow and remove snow from certain private driveways. (Hassan, Dist 23; Palazzo, Rock 14: Public and Municipal Affairs)

06-2006

**SB 277-LOCAL**, permitting seasonal camps to qualify as open space land for current use assessment. (Burling, Dist 5; Fuller Clark, Dist 24: Public and Municipal Affairs)

06-2007

**SB 278-FN**, exempting certain transfers from the real estate transfer tax. (Burling, Dist 5: Ways and Means)

06-2008

**SB 279-FN**, allowing employees of area agencies and mental health clinics to be treated as state employees for purposes of insurance. (Burling, Dist 5; Fuller Clark, Dist 24; Bleyler, Graf 9: Banks and Insurance)

06-2021

**SB 280-FN-A-LOCAL**, adding a surcharge to motor vehicle fines for use by municipalities. (Barnes, Dist 17: Finance)



06-2311

**SB 281-FN**, establishing an organ and tissue donor registry. (Kenney, Dist 3; Martel, Dist 18; Gottesman, Dist 12; MacKay, Merr 11; Dickinson, Carr 1: Transportation and Interstate Cooperation)

06-2326

**SB 282-FN-LOCAL**, relative to removal of abandoned vehicles on private property. (Kenney, Dist 3: Judiciary)

06-2340

**SB 283-FN**, relative to stop loss insurance. (Flanders, Dist 7; Hassan, Dist 23; Martel, Dist 18; S. Francoeur, Rock 15: Banks and Insurance)

06-2398

**SB 284-FN**, establishing a third full-time justice position in the Manchester, Nashua, and Concord District Courts and equalizing the annual salaries of all justices of the Manchester, Nashua, and Concord District Courts. (Foster, Dist 13; Gottesman, Dist 12; D'Allesandro, Dist 20; Martel, Dist 18; D. Cote, Hills 23; B. Francoeur, Hills 26; Lasky, Hills 26: Judiciary)

06-2401

**SB 285-FN**, equalizing the pay of administrative judges in the judicial branch. (Foster, Dist 13; Dokmo, Hills 6: Executive Departments and Administration)

06-2402

**SB 286-FN**, requiring first class mail notice to defendants in small claims actions. (Foster, Dist 13: Judiciary)

06-2463

**SB 287-FN**, making certain changes to the eminent domain statute. (Odell, Dist 8; Foster, Dist 13; Gottesman, Dist 12; Bragdon, Dist 11; Clegg, Dist 14; Green, Dist 6; Burling, Dist 5; Gatsas, Dist 16; Johnson, Dist 2; Roberge, Dist 9; Hassan, Dist 23; Flanders, Dist 7; Estabrook, Dist 21; Barnes, Dist 17; Boyce, Dist 4; D'Allesandro, Dist 20; Eaton, Dist 10; Fuller Clark, Dist 24; Gallus, Dist 1; Kenney, Dist 3; Larsen, Dist 15; Letourneau, Dist 19; Martel, Dist 18; Morse, Dist 22; Dokmo, Hills 6; Mooney, Hills 19; Soltani, Merr 8; Weyler, Rock 8: Public and Municipal Affairs)

06-2465

**SB 288-FN**, relative to street rods and custom vehicles. (Boyce, Dist 4: Transportation and Interstate Cooperation)

06-2466

**SB 289-FN**, relative to the brain and spinal cord advisory council. (Boyce, Dist 4; Boyce, Belk 5; Emerton, Hills 7; Weyler, Rock 8: Internal Affairs)

06-2501

**SB 290-FN-LOCAL**, relative to wellness programs in public schools. (Flanders, Dist 7: Education)

06-2505

**SB 291-FN**, relative to food service licensure for youth camps. (Martel, Dist 18; Barnes, Dist 17; Roberge, Dist 9: Executive Departments and Administration)

06-2541

**SB 292-FN**, relative to permits for combustion of certain waste. (Larsen, Dist 15; C. Hamm, Merr 4; Phinizy, Sull 5: Energy and Economic Development)

06-2544

**SB 293-FN-A**, repealing an exemption from the communications services tax. (D'Allesandro, Dist 20: Finance)

06-2546

**SB 294-FN-A**, authorizing 7 additional state troopers and making an appropriation therefor. (D'Allesandro, Dist 20; Clegg, Dist 14; Foster, Dist 13; Burling, Dist 5; Gottesman, Dist 12; Larsen, Dist 15; Estabrook, Dist 21; Hassan, Dist 23; Fuller Clark, Dist 24; Letourneau, Dist 19; Gallus, Dist 1; Johnson, Dist 2; Barnes, Dist 17; Martel, Dist 18; Kenney, Dist 3; Green, Dist 6; Craig, Hills 9; D. Eaton, Ches 2; Emerton, Hills 7; Packard, Rock 3; Hunter, Hills 7: Finance)

06-2559

**SB 295-FN**, relative to registration of business entities. (Flanders, Dist 7; S. Francoeur, Rock 15: Internal Affairs)

06-2583

**SB 296-FN**, relative to recovery of public assistance. (Clegg, Dist 14; Gottesman, Dist 12; Martel, Dist 18; Larsen, Dist 15; Green, Dist 6; Craig, Hills 9; Kurk, Hills 7; O'Neil, Rock 15: Health and Human Services)

06-2604

**SB 297-FN**, establishing a new position and relative to the realignment of functions in the department of corrections. (D'Allesandro, Dist 20; Fuller Clark, Dist 24: Executive Departments and Administration)

06-2669

**SB 298-FN**, relative to motor vehicle fines. (Morse, Dist 22; Clegg, Dist 14; Boyce, Dist 4; Barnes, Dist 17; Letourneau, Dist 19: Finance)

06-2680

**SB 299-FN**, relative to health insurance rate changes. (Fuller Clark, Dist 24; Marshall Quandt, Rock 13; DeJoie, Merr 11; Langley, Rock 18: Banks and Insurance)

06-2704

**SB 300-FN-A-LOCAL**, exempting certain transfers of real estate between charitable organizations from the real estate transfer tax. (Burling, Dist 5: Ways and Means)

06-2718

**SB 301-FN**, relative to pooled risk management programs for municipalities and public entities. (Clegg, Dist 14; Green, Dist 6; Currier, Merr 5; Hunt, Ches 7: Banks and Insurance)

06-2738

**SB 302-FN**, relative to real estate brokers. (Gallus, Dist 1: Executive Departments and Administration)

06-2751

**SB 303-FN**, relative to elective angioplasty. (Martel, Dist 18: Health and Human Services)

06-2781

**SB 304**, relative to negotiating provider payments by the commissioner of the department of health and human services. (Green, Dist 6: Ways and Means)

06-2790

**SB 305-FN**, relative to the regulation of recreational therapists. (Estabrook, Dist 21; Fuller Clark, Dist 24; Hassan, Dist 23; Flanders, Dist 7; Powers, Rock 16; Irwin, Hills 3; Houde-Quimby, Sull 1; Bergin, Hills 6: Executive Departments and Administration)

06-2794

**SB 306-FN-A**, establishing a quality early learning opportunity initiative and making an appropriation therefor. (Estabrook, Dist 21; Green, Dist 6; Odell, Dist 8; Foster, Dist 13; Gallus, Dist 1; Hassan, Dist 23; Martel, Dist 18; Fuller Clark, Dist 24; Pilliod, Belk 5; Gargas, Hills 5; Gile, Merr 10; Wallner, Merr 12: Education)

06-2795

**SB 307-FN**, relative to catastrophic special education funding. (Estabrook, Dist 21; Green, Dist 6; Foster, Dist 13; D'Allesandro, Dist 20; M. Smith, Straf 7; Rous, Straf 7; W. P. Campbell, Straf 3; Naro, Graf 7: Education)

06-2803

**SB 308-FN-A-LOCAL**, making an appropriation for school building aid. (Estabrook, Dist 21; Green, Dist 6; D'Allesandro, Dist 20; Foster, Dist 13; Fuller Clark, Dist 24; Naro, Graf 7; Rous, Straf 7; Snyder, Straf 2: Finance)

06-2809

**SB 309-FN-A**, granting retirement benefits to certain retired judges, and making an appropriation therefor. (Hassan, Dist 23: Executive Departments and Administration)

06-2860

**SB 310-FN**, establishing gold star number plates. (Barnes, Dist 17; Gallus, Dist 1; Kenney, Dist 3: Transportation and Interstate Cooperation)

06-2862

**SB 311-FN**, relative to disclosure of the results of clinical trials. (Barnes, Dist 17; Larsen, Dist 15; Fuller Clark, Dist 24: Health and Human Services)

06-2899

**SB 312-FN**, relative to notice of rulemaking by the real estate appraiser board. (Barnes, Dist 17; Charron, Rock 7: Executive Departments and Administration)

06-2902

**SB 313-FN**, relative to the exemptions for the practice of massage therapy. (Fuller Clark, Dist 24; Gallus, Dist 1; Larsen, Dist 15: Executive Departments and Administration)

06-2904

**SB 314-FN-LOCAL**, establishing minimum renewable standards for energy portfolios. (Fuller Clark, Dist 24; Bragdon, Dist 11; Green, Dist 6; Gallus, Dist 1; Harvey, Hills 21; Keans, Straf 1; Cataldo, Straf 3; Kaen, Straf 7; Ross, Hills 3: Energy and Economic Development)

06-2905

**SB 315-FN-A-LOCAL**, repealing the statewide enhanced education tax. (Fuller Clark, Dist 24; Burling, Dist 5; Langley, Rock 18: Finance)

06-2910

**SB 316-FN-LOCAL**, requiring interpretation services upon request for persons receiving medical treatment. (Fuller Clark, Dist 24; Velez, Hills 12; Harvey, Hills 21; Jeudy, Hills 10; Jillette, Sull 2: Health and Human Services)

06-2256

**SB 317-FN**, establishing an occupational and professional regulation screening and appeals board to review complaints to and decisions by occupational and professional regulatory boards. (Green, Dist 6; R. Wheeler, Hills 7: Public and Municipal Affairs)

06-2964

**SB 318-FN**, relative to the use of deadly force to protect oneself. (Bragdon, Dist 11; Letourneau, Dist 19; Stepanek, Hills 6; Hinkle, Hills 19; Mooney, Hills 19; Soltani, Merr 8: Judiciary)

06-2001

**SB 319**, establishing a statutory county government commission. (Burling, Dist 5; Fuller Clark, Dist 24; Clegg, Dist 14; Hassan, Dist 23; E. Blanchard, Merr 10; Phinizy, Sull 5: Public and Municipal Affairs)

06-2014

**SB 320**, relative to investigations of cruelty to horses. (Roberge, Dist 9; Barnes, Dist 17; Marshall Quandt, Rock 13; B. Richardson, Ches 5; Villeneuve, Hills 18; N. Johnson, Straf 3: Public and Municipal Affairs)

06-2015

**SB 321**, relative to delinquency proceedings for juveniles committing felony cruelty to animals. (Roberge, Dist 9; Marshall Quandt, Rock 13; B. Richardson, Ches 5; N. Johnson, Straf 3; Villeneuve, Hills 18: Judiciary)

06-2018

**SB 322**, establishing the business loan enhancement program. (Odell, Dist 8; Hassan, Dist 23; D'Allesandro, Dist 20; Flanders, Dist 7; Stepanek, Hills 6; Ingram, Rock 4: Finance)

06-2019

**SB 323**, establishing a legislative youth advisory council. (Odell, Dist 8; Eaton, Dist 10; Hassan, Dist 23; D'Allesandro, Dist 20; Naro, Graf 7; Velez, Hills 12: Public and Municipal Affairs)

06-2024

**SB 324**, requiring notification concerning certain offenders against children. (Letourneau, Dist 19; Foster, Dist 13; Roberge, Dist 9; Clegg, Dist 14; Barnes, Dist 17; Knowles, Straf 6; Packard, Rock 3; Welch, Rock 8; Tholl, Coos 2; Rausch, Rock 5: Judiciary)

06-2025

**SB 325**, making technical corrections to motor vehicle laws. (Letourneau, Dist 19; Morse, Dist 22; Clegg, Dist 14; Burling, Dist 5; Estabrook, Dist 21; Packard, Rock 3; Ferland, Sull 5: Transportation and Interstate Cooperation)

06-2028

**SB 326**, relative to a temporary moratorium on large groundwater permits and withdrawals. (Estabrook, Dist 21; Fuller Clark, Dist 24; Green, Dist 6; Barnes, Dist 17; Hassan, Dist 23; Cady, Rock 1; Spang, Straf 7; Cilley, Straf 3: Energy and Economic Development)

06-2264

**SB 327**, establishing the New Hampshire civil war cannon restoration fund. (Letourneau, Dist 19; Clegg, Dist 14; Martel, Dist 18; Barnes, Dist 17; Kenney, Dist 3; Packard, Rock 3; Welch, Rock 8; Coughlin, Hills 4; Heon, Straf 2: Public and Municipal Affairs)

06-2325

**SB 328**, relative to the regulation of snowmobiles and off highway recreational vehicles. (Flanders, Dist 7; Burling, Dist 5; Martel, Dist 18; D. Eaton, Ches 2; R. L'Heureux, Hills 19; Goyette, Hills 27: Environment and Wildlife)

06-2329

**SB 329**, prohibiting dogs from being left alone in cars. (Roberge, Dist 9; B. Richardson, Ches 5; N. Johnson, Straf 3; Villeneuve, Hills 18: Public and Municipal Affairs)

06-2343

**SB 330**, relative to outdoor advertising. (Letourneau, Dist 19; Gallus, Dist 1; Roberge, Dist 9; Green, Dist 6; Dowd, Rock 5; Matthew Quandt, Rock 13; Graham, Hills 18; S. Eaton, Graf 1: Energy and Economic Development)

06-2349

**SB 331**, relative to certain small loans. (Foster, Dist 13; D'Allesandro, Dist 20; Odell, Dist 8; Rosenwald, Hills 22; D. Cote, Hills 23: Banks and Insurance)

06-2396

**SB 332**, making technical corrections to the uniform trust code and related statutes. (Foster, Dist 13; Gottesman, Dist 12; Reardon, Merr 11; Hunt, Ches 7: Judiciary)

06-2397

**SB 333**, relative to inquiries of DWI defendants regarding establishments serving alcohol to the defendants. (Foster, Dist 13; Barnes, Dist 17; Roberge, Dist 9; Tholl, Coos 2; Mooney, Hills 19: Judiciary)

06-2430

**SB 334**, authorizing the use of a credit freeze as a means of deterring identity theft. (Gottesman, Dist 12; Roberge, Dist 9; Gallus, Dist 1; Clegg, Dist 14; D'Allesandro, Dist 20; Fuller Clark, Dist 24; Hogancamp, Ches 4; Maxfield, Merr 6; Wall, Straf 7; Ulery, Hills 27: Judiciary)

06-2537

**SB 335**, relative to funds of the department of resources and economic development used for snowmobile trail grooming equipment. (Gallus, Dist 1; Johnson, Dist 2; Russell, Belk 6; D. Eaton, Ches 2; Stohl, Coos 1; Parkhurst, Ches 4: Environment and Wildlife)

06-2538

**SB 336**, relative to security deposits in landlord tenant matters. (Gallus, Dist 1; Boyce, Dist 4; Green, Dist 6; Remick, Coos 2: Public and Municipal Affairs)

06-2539

**SB 337**, relative to the sale and repurchase of property acquired by tax deed. (Gallus, Dist 1; Hassan, Dist 23; Odell, Dist 8; Morneau, Coos 4: Public and Municipal Affairs)

06-2572

**SB 338**, relative to insurance coverage for children's early intervention therapy services. (Hassan, Dist 23; Estabrook, Dist 21; D'Allesandro, Dist 20; McLeod, Graf 2; Wallner, Merr 12: Banks and Insurance)

06-2668

**SB 339**, changing certain job titles and responsibilities in the department of transportation. (Morse, Dist 22: Executive Departments and Administration)

06-2683

**SB 340**, establishing a legislative health care advisory board. (Fuller Clark, Dist 24; Hassan, Dist 23; Langley, Rock 18: Health and Human Services)

06-2712

**SB 341**, extending by one year the advisory-only period for OBD II testing. (Morse, Dist 22; Clegg, Dist 14; Letourneau, Dist 19; Burling, Dist 5; Packard, Rock 3: Transportation and Interstate Cooperation)

06-2717

**SB 342**, relative to the treatment of glaucoma by optometrists, and eliminating the joint pharmaceutical formulary and credentialing committee. (Martel, Dist 18; Clegg, Dist 14; Letourneau, Dist 19; Gallus, Dist 1; Johnson, Dist 2; G. Katsakiores, Rock 5; P. Katsakiores, Rock 5; DeJoie, Merr 11; Dalrymple, Rock 4; R. Wheeler, Hills 7: Executive Departments and Administration)

06-2730

**SB 343**, relative to emergency contraception. (Letourneau, Dist 19; Barnes, Dist 17; Boyce, Dist 4; Kenney, Dist 3; Morse, Dist 22; Martel, Dist 18; Dowd, Rock 5; Easson, Straf 3: Health and Human Services)

06-2736

**SB 344**, establishing a committee to study state benefit programs for national guard members. (Barnes, Dist 17: Public and Municipal Affairs)

06-2791

**SB 345**, establishing a lobbying commission and relative to lobbyist registration and financial disclosure requirements. (Estabrook, Dist 21; Burling, Dist 5; Fuller Clark, Dist 24; D'Allesandro, Dist 20; Green, Dist 6; Hassan, Dist 23; Larsen, Dist 15; Odell, Dist 8; Roberge, Dist 9: Internal Affairs)

06-2903

**SB 346-FN**, codifying certain septic system rules. (Fuller Clark, Dist 24; Phinizy, Sull 5; Harvey, Hills 21; Keans, Straf 1; Powers, Rock 16: Public and Municipal Affairs)

06-2906

**SB 347**, establishing a committee to study the state employee health insurance plan. (Fuller Clark, Dist 24; Green, Dist 6; Weyler, Rock 8: Banks and Insurance)

06-2967

**SB 348**, prohibiting the taking of arms and ammunition in a declared state of emergency. (Bragdon, Dist 11; Stepanek, Hills 6; Hinkle, Hills 19; Mooney, Hills 19; Soltani, Merr 8: Public and Municipal Affairs)

06-3020

**SB 349**, relative to the HIV/AIDS service delivery system. (Estabrook, Dist 21; Barnes, Dist 17; Kenney, Dist 3; MacKay, Merr 11; Schulze, Hills 26: Health and Human Services)

06-2012

**SB 350-FN**, relative to boarding kennels and relative to dog grooming. (Roberge, Dist 9; Marshall Quandt, Rock 13; B. Richardson, Ches 5; N. Johnson, Straf 3; Villeneuve, Hills 18: Executive Departments and Administration)

06-2017

**SB 351-FN**, declaring drowning as cruelty to animals. (Roberge, Dist 9; Barnes, Dist 17; Estabrook, Dist 21; Marshall Quandt, Rock 13; B. Richardson, Ches 5; N. Johnson, Straf 3; Villeneuve, Hills 18: Environment and Wildlife)

06-2029

**SB 352-FN**, relative to the regulation of real estate appraisers. (Gallus, Dist 1; Green, Dist 6; Larsen, Dist 15; Martel, Dist 18; Clegg, Dist 14; Fuller Clark, Dist 24; Dickinson, Carr 1; Theberge, Coos 4: Executive Departments and Administration)

06-2030

**SB 353-FN**, relative to registration of criminal offenders convicted of homicide. (Gallus, Dist 1; Roberge, Dist 9; Morneau, Coos 4; Buzzell, Coos 4; Gionet, Graf 3: Judiciary)

06-2031

**SB 354-FN**, requiring security officers of the New Hampshire hospital security force to be fully certified as police officers and including such security officers in group II of the New Hampshire retirement system. (Clegg, Dist 14; D'Allesandro, Dist 20; Letourneau, Dist 19; Tholl, Coos 2; Welch, Rock 8; Craig, Hills 9; Clemons, Hills 24: Executive Departments and Administration)

06-2129

**SB 355-FN**, relative to unlawful possession of alcohol by a minor. (Roberge, Dist 9; Flanders, Dist 7; Tholl, Coos 2; Harding, Graf 11; Villeneuve, Hills 18: Judiciary)

06-2224

**SB 356-FN**, relative to undue hardship knowingly caused by persons aiding in the transfer of assets. (Clegg, Dist 14; Morse, Dist 22; Gallus, Dist 1; D'Allesandro, Dist 20; Kurk, Hills 7; Newton, Straf 1; Major, Rock 8; D. Eaton, Ches 2: Judiciary)

06-2303

**SB 357-FN**, relative to eligibility for motorcycle licenses. (Letourneau, Dist 19; Clegg, Dist 14; Packard, Rock 3: Transportation and Interstate Cooperation)

06-2388

**SB 358-FN**, relative to an advanced registered nurse practitioner's duty to warn of violent acts of patients. (Martel, Dist 18; Letourneau, Dist 19; Gallus, Dist 1; Clegg, Dist 14; G. Katsakiores, Rock 5; P. Katsakiores, Rock 5: Health and Human Services)

06-2416

**SB 359-FN**, relative to the regulation of plumbers and water treatment technicians by the plumbers' board. (Larsen, Dist 15; D'Allesandro, Dist 20; Clegg, Dist 14; Hassan, Dist 23; DeJoie, Merr 11; Craig, Hills 9; Wallner, Merr 12: Public and Municipal Affairs)

06-2548

**SB 360-FN-A**, establishing a surcharge on real estate transfers for deposit in the family stability fund and renaming the homeless prevention program the family stability program. (D'Allesandro, Dist 20; Foster, Dist 13; Hassan, Dist 23; Fuller Clark, Dist 24; DeVries, Hills 15: Public and Municipal Affairs)

06-2618

**SB 361-FN**, relative to the use of surplus funds by a school district. (Odell, Dist 8; Kidder, Merr 1: Education)

06-2629

**SB 362-FN**, relative to a tuition reduction for certain students taking courses at a regional community-technical college. (Gallus, Dist 1; D'Allesandro, Dist 20; Roberge, Dist 9; Remick, Coos 2; Merrick, Coos 2; Tholl, Coos 2: Education)

06-2630

**SB 363-FN-A-LOCAL**, requiring the department of revenue administration to cease collection of any Internet-related communications services tax and establishing a commission to study and determine the effect of ceasing the collection of Internet-related communications services tax. (Green, Dist 6: Ways and Means)

06-2637

**SB 364-FN-A**, relative to funding of the fish and game search and rescue fund and making an appropriation therefor. (D'Allesandro, Dist 20; Gallus, Dist 1; Johnson, Dist 2; Odell, Dist 8; Gottesman, Dist 12; Chandler, Carr 1: Finance)

06-2667

**SB 365-FN**, relative to the lottery commission. (Gallus, Dist 1; D'Allesandro, Dist 20; Green, Dist 6; Martel, Dist 18; Gionet, Graf 3; H. Richardson, Coos 2; Theberge, Coos 4: Executive Departments and Administration)

06-2670

**SB 366-FN**, relative to issues of conflicts of interest in the provision of long-term care services. (Martel, Dist 18; Roberge, Dist 9; Pilotte, Hills 16; Berube, Straf 2; Infantine, Hills 13: Health and Human Services)

06-2672

**SB 367-FN**, imposing a penalty on Medicaid providers who receive overpayments of state Medicaid funds. (Martel, Dist 18; Morse, Dist 22; Johnson, Dist 2; Clegg, Dist 14; Letourneau, Dist 19; Pilotte, Hills 16; G. Katsakiores, Rock 5; P. Katsakiores, Rock 5: Health and Human Services)

06-3025

**SB 368-FN**, relative to life settlements. (Flanders, Dist 7; Roberge, Dist 9; Headd, Rock 3; J. Martin, Carr 5; Kathleen Taylor, Straf 4: Banks and Insurance)

06-2740

**SB 369**, relative to portability, availability, and renewability of health coverage. (Hassan, Dist 23; Flanders, Dist 7; Gottesman, Dist 12; Green, Dist 6; Fuller Clark, Dist 24; McLeod, Graf 2; DeStefano, Merr 13: Banks and Insurance)

06-2752

**SB 370-FN**, relative to multidisciplinary child protection teams. (Gottesman, Dist 12; Foster, Dist 13; D'Allesandro, Dist 20; Clegg, Dist 14; Letourneau, Dist 19; Fuller Clark, Dist 24; Mooney, Hills 19; Knowles, Straf 6; Wall, Straf 7: Health and Human Services)

06-2768

**SB 371-FN**, relative to the continuation of certain wetlands fees. (Green, Dist 6; D'Allesandro, Dist 20; Gallus, Dist 1; Spang, Straf 7: Environment and Wildlife)

06-2811

**SB 372-FN**, allowing certain employees of private agencies to be treated as state employees for purposes of insurance. (Hassan, Dist 23; Estabrook, Dist 21; Burling, Dist 5: Banks and Insurance)

06-2814

**SB 373-FN-A**, relative to a public health response to arbovirus. (Hassan, Dist 23; Estabrook, Dist 21; Fuller Clark, Dist 24; MacKay, Merr 11: Environment and Wildlife)



06-2834

**SB 374-FN**, relative to the healthy kids corporation. (Green, Dist 6; Larsen, Dist 15; Odell, Dist 8; Martel, Dist 18; Barnes, Dist 17; Gallus, Dist 1; Fuller Clark, Dist 24; Hunt, Ches 7; Price, Hills 26; S. Francoeur, Rock 15: Finance)

06-2835

**SB 375-FN**, relative to the executive branch code of ethics and establishing an executive branch ethics committee. (Larsen, Dist 15; Fuller Clark, Dist 24: Internal Affairs)

06-2868

**SB 376-FN-A**, relative to revenues dedicated to the education trust fund. (D'Allesandro, Dist 20; Clegg, Dist 14; Eaton, Dist 10; Flanders, Dist 7; Gallus, Dist 1; Gottesman, Dist 12; Green, Dist 6; Hassan, Dist 23; Johnson, Dist 2; Kenney, Dist 3; Martel, Dist 18; Morse, Dist 22; Odell, Dist 8; King, Coos 1; Major, Rock 8: Ways and Means)

06-2907

**SB 377-FN**, relative to COBRA coverage for persons 55 years of age or older. (Fuller Clark, Dist 24; Estabrook, Dist 21; Larsen, Dist 15; Hassan, Dist 23; Hofemann, Straf 6; Marshall Quandt, Rock 13; C. Hamm, Merr 4: Banks and Insurance)

06-2908

**SB 378-FN**, relative to rates charged by health care providers. (Fuller Clark, Dist 24; Hassan, Dist 23; Marshall Quandt, Rock 13; Kathleen Taylor, Straf 4: Banks and Insurance)

06-2962

**SB 379-FN**, relative to harm or threats to public officials. (Foster, Dist 13; Clegg, Dist 14: Judiciary)

06-2837

**SB 380-FN-A**, establishing a research and development credit against the business profits tax. (Odell, Dist 8; Eaton, Dist 10; Stepanek, Hills 6: Finance)

06-2399

**SB 381-FN-A-LOCAL**, expanding business tax credits to enhance research and development. (Foster, Dist 13; Michon, Hills 25: Finance)

06-2965

**SB 382**, relative to the guardian ad litem board. (Foster, Dist 13: Judiciary)

06-2004

**SB 383**, limiting liability of community land trusts which own certain hazardous property. (Burling, Dist 5: Environment and Wildlife)

06-2852

**SB 384-FN-A-LOCAL**, establishing an exemption from the real estate transfer tax for certain transfers of family farm and forest land. (Johnson, Dist 2; Gallus, Dist 1; Burling, Dist 5: Finance)

06-2864

**SB 385-FN**, relative to the membership and administration of the board of trustees of the New Hampshire retirement system, and relative to supplemental allowances. (Green, Dist 6; R. Wheeler, Hills 7; O'Neil, Rock 15: Finance)

06-2767

**SB 386**, relative to large groundwater withdrawals. (Sen. Green, Dist 6; Sen. Burling, Dist 5; Sen. Barnes, Dist 17; Sen. Estabrook, Dist 21: Environment and Wildlife)

06-3028

**SB 387**, relative to energy efficiency loans and guarantees by the business finance authority. (Burling, Dist 5; Fuller Clark, Dist 24; Hassan, Dist 23: Finance)

06-3027

**SB 388**, relative to farm composting. (Odell, Dist 8; Babson, Carr 3: Environment and Wildlife)

06-3029

**SB 389**, establishing a committee to study energy efficiency programs funded by the system benefits charge. (Burling, Dist 5; Clegg, Dist 14; Green, Dist 6; Larsen, Dist 15: Internal Affairs)

06-3034

**SB 390**, relative to membership of the board of tax and land appeals. (Johnson, Dist 2; Gallus, Dist 1: Public and Municipal Affairs)

06-3026

**SB 391-FN**, relative to insurance third party administrators. (Flanders, Dist 7; D'Allesandro, Dist 20; McLeod, Graf 2: Banks and Insurance)

06-2792

**SCR 6**, urging Congress to take legislative action regarding embryonic stem cell research. (Estabrook, Dist 21; Hassan, Dist 23; Burling, Dist 5; Larsen, Dist 15; Fuller Clark, Dist 24; Hammond, Graf 11; Pilliod, Belk 5; Sokol, Graf 9; Buxton, Rock 10; Wall, Straf 7: Health and Human Services)

06-2804

**SCR 7**, urging Congress to amend the No Child Left Behind Act. (Estabrook, Dist 21; Fuller Clark, Dist 24; Kurk, Hills 7; Dickinson, Carr 1; Snyder, Straf 2; Gile, Merr 10: Education)

06-2022

**SJR 4**, urging Congress to require the Department of Defense to reinstate the terminology of "POW" or "Prisoner of War" into the classification of military personnel. (Barnes, Dist 17; Johnson, Dist 2; Letourneau, Dist 19; Kenney, Dist 3; Emerson, Ches 7: Public and Municipal Affairs)

### HOUSE MESSAGE

The House of Representatives, meeting in session on January 4, 2006, concurs with the Senate in the passage of the following entitled Bill sent down from the Senate:

**SB 392-FN-A**, relative to the payment of Medicare Part D phased down state contribution, known a "clawback."

### 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(s):

**SB 392-FN-A**, relative to the payment of Medicare Part D phased down state contribution, known a "clawback."

Senator Clegg moved adoption.

**Adopted.**

**RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time.

**Adopted.**

**LATE SESSION  
ANNOUNCEMENTS  
RESOLUTION**

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, referring bills to committee, and scheduling hearings, processing enrolled bill reports and amendments.

**Adopted.**

**In recess to the Call of the Chair.**

**HOUSE MESSAGE**

The House of Representatives, meeting in session on January 4, 2006, has referred for Interim Study the following entitled Bills sent down from the Senate:

**SB 157-FN**, relative to all terrain vehicles used for agricultural purposes.

**SB 172**, establishing a committee to study a medical fee schedule for workers' compensation.

**SB 209-FN**, relative to licensing of money transmitters and check cashers.

**HOUSE MESSAGE**

The House of Representatives, meeting in session on January 4, 2006, refuses to concur with the Senate in the passage of the following entitled Bills sent down from the Senate:

**SB 13**, relative to placement and removal of political advertising.

**SB 64**, establishing a committee to study small group health insurance plans.

**SB 89-FN**, relative to financing federally aided highway projects.

**SB 146-FN-A-L**, establishing a civil legal services fund consisting of court filing fee surcharges for the purpose of establishing and operating a New Hampshire Legal Assistance office in Nashua and to provide for additional staff in other New Hampshire Legal Assistance offices.

**SB 147-FN-L**, relative to eligibility for local assistance.

**SB 148**, relative to motorcycle inspections and relative to electronic inspection information.

**HOUSE MESSAGE**

The House of Representatives, meeting in session on January 4, 2006, has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 37-FN**, relative to health insurance coverage for full-time students on medical leaves of absence.

**HB 100-FN-A-L**, amending the formula for funding public education.

**HB 115**, allowing pharmacists to establish collaborative practice agreements with medical practitioners.

**HB 121**, relative to local land use approval for facilities requiring certain pollution control permits.

**HB 175**, relative to divestiture of PSNH generation assets, establishing an energy policy task force, and establishing a fund for the costs of the energy policy task force.

**HB 221**, relative to eligibility for absentee ballots.

**HB 234-FN**, relative to the development of a state and political subdivision information network.

**HB 312**, relative to the appointment of parenting coordinators.

**HB 325**, relative to proceedings under the Child Protection Act.

**HB 331**, relative to restraining dogs and relative to livestock working dogs.

**HB 334**, relative to the type of notice provided in court proceedings.

**HB 349**, relative to placement and removal of political advertising.

**HB 380**, relative to absentee voting.

**HB 385**, establishing a committee to study the adequacy of current substance abuse treatment available in the state prison system.

**HB 410**, relative to the confidentiality of documents submitted with an application for a property tax credit, exemption, or deferral.

**HB 413**, relative to the appointment of the chief justice of the superior court and the number of superior court associate justices.

**HB 489-FN**, relative to disclosing an ownership interest in certain health care facilities and businesses.

**HB 501**, relative to citizenship and domicile affidavits.

**HB 515**, relative to purchasing alliances.

**HB 529**, relative to the determination of parental rights and responsibilities.

**HB 538**, relative to deconstruction of structures.

**HB 544**, relative to the land and community heritage program.

**HB 578**, relative to the current use advisory board and relative to construction or development constituting a change in use for purposes of assessing the land use change tax.

**HB 581**, relative to approval and review of municipal charters.

**HB 587**, relative to child abuse and neglect investigations by the department of health and human services.

**HB 591**, relative to the inclusion of health insurance in the calculation of child support.

**HB 592**, relative to the child support guidelines.

**HB 649-FN-A-L**, establishing a commission to study the costs and funding of medicolegal investigations and autopsies.

**HB 689-FN**, relative to the jurisdiction of the New Hampshire commission for human rights over housing discrimination cases.

**HB 713-FN**, relative to a process for the request and disclosure of social security numbers.

**HB 718-FN-A**, relative to a state active duty death benefit for activated members of the New Hampshire national guard and making an appropriation therefor.

**HB 719-FN**, recodifying the Articles 1 and 7 of the Uniform Commercial Code.

**HJR 1**, recognizing that Seavey Island and the Piscataqua River are within the boundaries of the state of New Hampshire.

### INTRODUCTION OF HOUSE BILL(S)

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 37 to HJR 1, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 37-FN**, relative to health insurance coverage for full-time students on medical leaves of absence. (Banks and Insurance)

**HB 100-FN-A-L**, amending the formula for funding public education. (Finance)

**HB 115**, allowing pharmacists to establish collaborative practice agreements with medical practitioners. (Executive Departments and Administration)

**HB 121**, relative to local land use approval for facilities requiring certain pollution control permits. (Public and Municipal Affairs)

**HB 175**, relative to divestiture of PSNH generation assets, establishing an energy policy task force, and establishing a fund for the costs of the energy policy task force. (Energy and Economic Development)

**HB 221**, relative to eligibility for absentee ballots. (Internal Affairs)

**HB 234-FN**, relative to the development of a state and political subdivision information network. (Internal Affairs)

**HB 312**, relative to the appointment of parenting coordinators. (Health and Human Services)

**HB 325**, relative to proceedings under the Child Protection Act. (Health and Human Services)

**HB 331**, relative to restraining dogs and relative to livestock working dogs. (Environment and Wildlife)

**HB 334**, relative to the type of notice provided in court proceedings. (Judiciary)

**HB 349**, relative to placement and removal of political advertising. (Internal Affairs)

**HB 380**, relative to absentee voting. (Internal Affairs)

**HB 385**, establishing a committee to study the adequacy of current substance abuse treatment available in the state prison system. (Public and Municipal Affairs)

**HB 410**, relative to the confidentiality of documents submitted with an application for a property tax credit, exemption, or deferral. (Public and Municipal Affairs)

**HB 413**, relative to the appointment of the chief justice of the superior court and the number of superior court associate justices. (Judiciary)

**HB 489-FN**, relative to disclosing an ownership interest in certain health care facilities and businesses. (Executive Departments and Administration)

**HB 501**, relative to citizenship and domicile affidavits. (Internal Affairs)

**HB 515**, relative to purchasing alliances. (Banks and Insurance)

**HB 529**, relative to the determination of parental rights and responsibilities. (Judiciary)

**HB 538**, relative to deconstruction of structures. (Environment and Wildlife)

**HB 544**, relative to the land and community heritage program. (Environment and Wildlife)

**HB 578**, relative to the current use advisory board and relative to construction or development constituting a change in use for purposes of assessing the land use change tax. (Environment and Wildlife)

**HB 581**, relative to approval and review of municipal charters. (Public and Municipal Affairs)

**HB 587**, relative to child abuse and neglect investigations by the department of health and human services. (Judiciary)

**HB 591**, relative to the inclusion of health insurance in the calculation of child support. (Judiciary)

**HB 592**, relative to the child support guidelines. (Judiciary)

**HB 649-FN-A-L**, establishing a commission to study the costs and funding of medicolegal investigations and autopsies. (Finance)

**HB 689-FN**, relative to the jurisdiction of the New Hampshire commission for human rights over housing discrimination cases. (Public and Municipal Affairs)

**HB 713-FN**, relative to a process for the request and disclosure of social security numbers. (Internal Affairs)

**HB 718-FN-A**, relative to a state active duty death benefit for activated members of the New Hampshire national guard and making an appropriation therefor. (Executive Departments and Administration)

**HB 719-FN**, recodifying the Articles 1 and 7 of the Uniform Commercial Code. (Executive Departments and Administration)

**HJR 1**, recognizing that Seavey Island and the Piscataqua River are within the boundaries of the state of New Hampshire. (Energy and Economic Development)

#### INTRODUCTION OF SENATE BILL(S)

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from SB 394 to SCR 8 shall be by this resolution read a first and second time by the therein listed title(s) and referred to the designated committee(s).

**Adopted.**

### First and Second Reading and Referral

06-2032

**SB 394**, establishing the Trust Modernization and Competitiveness Act. (D'Allesandro, Dist 20; Clegg, Dist 14; Green, Dist 6; Odell, Dist 8; Sheila Francoeur, Rock 15; O'Neil, Rock 15; Moran, Hills 18; Hunt, Ches 7: Judiciary)

06-3019

**SB 395**, relative to the number of children in a licensed foster home. (Barnes, Dist 17; D'Allesandro, Dist 20; Martel, Dist 18: Health and Human Services)

06-3044

**SB 396**, repealing the rulemaking authority of the New Hampshire children's trust fund board. (Larsen, Dist 15; Burling, Dist 5; Estabrook, Dist 21; Fuller Clark, Dist 24; Nordgren, Graf 9; McRae, Hills 7; Patten, Carr 4; Price, Hills 26: Banks and Insurance)

06-3057

**SCR 8**, declaring the general court in opposition to the federal Real ID Act of 2005. (Estabrook, Dist 21; Letourneau, Dist 19; Kenney, Dist 3; Burling, Dist 5; Fuller Clark, Dist 24; Packard, Rock 3; Ferland, Sull 5; Jennifer Brown, Straf 5; P. Cote, Hills 25: Internal Affairs)

**Out of Recess.**

### LATE SESSION

Senator Clegg moved that we adjourn from the late session.

**Adopted.**

**Adjournment.**

*January 10, 2006*

The Senate met at 11:30 a.m.

A quorum was present.

Senator Johnson led the Pledge of Allegiance.

Senators D'Allesandro, Flanders and Kenney are excused for the day.

### SUSPENSION OF THE RULES

Senator Clegg moved that the rules of the New Hampshire Senate be so far suspended as to allow introduction, and consideration at the present time and if adopted, to permit third reading and final passage, in the early session of Senate Bill 393-FN-A.

### First and Second Reading

06-3056

**SB 393-FN-A**, relative to the temporary provision of assistance to persons eligible for both Medicaid and Medicare services and making an appropriation therefor. (Clegg, Dist 14; Larsen, Dist 15; O'Neil, Rock 15; Craig, Hills 9)

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

**SB 393-FN-A**, relative to the temporary provision of assistance to persons eligible for both Medicaid and Medicare services and making an appropriation therefor.

Senator Martel moved ought to pass.

SENATOR MARTEL: Thank you very much, Mr. President. I would like to speak to that motion right now, and I rise in support of Senate Bill 393-FN-A. For the third time in so many weeks, we have come together in a bipartisan manner to help the most vulnerable people in the Granite State. Essentially, this bill looks to provide supplemental pharmacy assistance up to \$500,000 to cover those persons who are dual eligible under the pharmacy benefit for Medicare and Medicaid Part D. And further, to the extent possible in the state of New Hampshire, Department of Health and Human Services will seek reimbursement to the federal government, and those funds will be deposited in the general fund. This is clearly an urgent matter and I applaud my colleagues in both chambers for acting quickly. It is my hope that this appropriation will insure that those who need prescription drug coverage get the help they need and deserve. I thank you, Mr. President.

SENATOR GOTTESMAN: Thank you, Mr. President. These are unusual times, but I will say that everyone in this Senate that I have spoken with and, for that matter, in the legislature, is concerned that our citizens be protected. This is a critical time of transition for people who have not had the ability to fully understand the ramifications of some of the work that the federal government has dealt us. The plan that the federal government has adopted has failed the citizens of the state of New Hampshire. It just hasn't worked for many of our citizens. Just last week I happened to be at a pharmacy where a pharmacist was confronting some very angry citizens who were trying to get their prescriptions filled, and that pharmacist did everything he possibly could to get their needs fulfilled. But it wasn't enough. This is happening all over the state and, for that matter, all over the country. Just yesterday I was confronted on the street by a pharmacist who told me, "When you go up there tomorrow, make sure that you get this fixed." We are trying to make a temporary fix at this point in time. Hopefully it will be limited to the amount of money that we're talking about today. We hope we won't even have to spend that amount of money that we're authorizing today. But if we do, we will do that for the purpose of protecting our citizens, and if necessary, we will have to do further to protect them in the future. I am speaking in favor of this proposal. We did not break this system, but we are the ones who are trying to fix it. Thank you, Mr. President.

SENATOR LARSEN: Thank you, Mr. President, I rise also to support Senate Bill 393 and to speak in fact to the effort on behalf of the Governor and Senate and House leadership who recognize the emergency that the implementation of Medicare Part D caused to those who are our most frail and fragile individuals, those who are low-income, elderly and disabled who fit into what they call the "dual eligible" category. It is a fix that we have to make. It's not one which I think any of us and all of us recognize that it's historic that we are here in fact in an emergency session trying to work on what is a need in this state. New Hampshire's had to step up to the plate because the federal government has decided to help the pharmaceutical industry instead of focusing on those most in need. I applaud our New Hampshire legislature and our ability as a small state to respond to the needs of our state, and recognize that in doing this we are also expecting full reimbursement from the federal government for these funds that we are extending to cover those in need. So I urge all of our members to support Senate Bill 393. I'm sure there will be that full support, and thank you for this time.



SENATOR CLEGG: Thank you, Mr. President, I rise in support of 393. I'd also like to congratulate yourself, the Speaker of the House, and the Governor, for the swiftness in which you acted on Friday to make sure that those who weren't getting their prescription drugs would get prescription drugs even over the weekend. There's been some discussion on whether or not we actually had to have an emergency session. So we looked at what we had as a legislature done to constrict the Department of Health and Human Services from being able to do it itself, and you know, we found that even in this year's operating budget, we reaffirmed, in 177:4 Laws of 2005, that under no circumstances could the Department of Health and Human Services change who could or who could not get benefits; and in essence, what we would have done had we not met today, is do exactly that. There was a question someone asked me about clawback. Why aren't we just taking the money out of the clawback payment that we just passed and use that? Well, because our own laws don't allow us to do that. It says that you can't take money from one PAU to pay another PAU not to mention the fact that we were one of the first states to decide we were going to put our money in a little savings account and let the government come find it. So they passed a rule that said if you did that we'll charge you 12 percent interest, and we'll also withhold the exact same amount of money. So it didn't make sense. And here we are. We have people who need the drugs. Some of it life-saving. So we're doing the right thing by appropriating additional funds. As far as who's responsible, we could point fingers all day long. Our delegation in Washington, some voted for the program, but they certainly did not vote for these problems. And some didn't vote for the program because they thought there would be too many problems. But I can tell you on Friday they had no problem with ringing our cell phones, our blackberries, our emails on a constant basis: Judd Gregg's office, Jeb Bradley's office. And they were knocking on the door of CMS saying, "The state of New Hampshire has a problem. You figure out how to reimburse them if they start paying for prescriptions." So we're not alone. We are in fact doing the right thing. None of us believe that we would get into this much of a problem when this program was adopted, although some of us suspected that it would have troubles. But none of our delegation in Washington ever expected that people would walk into a pharmacy and be told that your drugs are \$465 and have that person say, "But no, I have a \$3 co-pay." I can't find you in the system means you don't exist. We're doing the right thing. The Governor did the right thing, and I'm real proud today to be a member of the legislature where we can act so quickly that there have been no deaths. There have been no one that I know of, that ended up in the hospital because they couldn't get the medications they need to continue living. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

### **RESOLUTION**

Senator Clegg moved that Senate Bill 393-FN-A be, by this motion, read a third time, the title be the same as adopted and passed at the present time.

**Adopted.**

### **Third Reading and Final Passage**

**SB 393-FN-A**, relative to the temporary provision of assistance to persons eligible for both Medicaid and Medicare services and making an appropriation therefor.

**RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time.

**Adopted.**

**LATE SESSION  
ANNOUNCEMENTS  
RESOLUTION**

Senator Clegg moved that the Senate stand in recess for the sole purpose of receiving message, and the purpose of enrolling Senate Bill 393-FN-A, relative to the temporary provision of assistance to persons eligible for both Medicaid and Medicare services and making an appropriation therefor, at the completion of which, this emergency session of the Senate will stand adjourned.

**Adopted.**

**HOUSE MESSAGE**

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

**SB 393-FN-A**, relative to the temporary provision of assistance to persons eligible for both Medicaid and Medicare services and making an appropriation therefor.

**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(s):

**SB 393-FN-A**, relative to the temporary provision of assistance to persons eligible for both Medicaid and Medicare services and making an appropriation therefor.

Senator Clegg moved adoption.

**Adopted.**

**Adjourned.**

*January 18, 2006*

The Senate met at 9:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good morning! As you think about the state of the state, it is a good time to think about the state of your life. This morning just down the road looking that way at the Capitol Center for the Arts a gift is being given to, at this very hour, a gift is being given to a large group, a diverse group of people whose journeys to New Hampshire have come from all over the place around the world. This morning this wildly international group will each and all become citizens of the United States, and I'm willing to bet, because of the work they had to put into getting that privilege, they will never take their citizenship for granted nor will they ever view that gift as a mere right. The danger of taking things for granted is that we think we deserve them and that we are in constant danger of sort of getting off the rails, so if you are a Senator, I would remind you that your seat in this

historic chamber has been granted to you. You don't deserve it, I hate to tell you. If you are a member of the staff, your job has been granted to you. If you are a reporter or a lobbyist, that role has been granted to you, and I am very aware that this privilege that I have is a gift to me. What makes you and me deserve these gifts is not because of who we are but what we do about having received the gift. So as you do your work here, take nothing for granted that you have been granted. Let us pray:

*Humble, honest, patient and courageous – may each one of us here be that as we begin to deserve, in some small measure, some of the things you have granted to us.*

*Amen*

Senator Green led the Pledge of Allegiance.

Senator Kenney is excused for the day.

Senator Boyce is excused for the morning.

## INTRODUCTION OF GUESTS

### COMMITTEE REPORTS

**SB 24**, relative to disposition upon death of patient accounts in nursing homes. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Foster for the committee.

**Senate Judiciary**  
**December 12, 2005**  
**2005-0255s**  
**01/10**

#### Amendment to SB 24

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

1 Patient Accounts; Disposition of Accounts. Amend RSA 151-A:15 to read as follows:

I. If ~~30~~ **within 180** days after the date of a testate or intestate patient's death in any nursing home no petition for probate has ~~yet~~ been filed under any section of RSA 553 and the gross value of the personal property remaining at the nursing home belonging to the deceased, including any amount left in a patient account, is no more than \$2,500, the nursing home administrator ~~may~~ **shall** file in the probate court **in the county where the nursing home is located** an affidavit for the purpose of disposing of such deceased patient's estate. The form of the affidavit, and the rules governing proceedings under this section, shall be provided by the probate court pursuant to RSA 547:33 and RSA 548:8. The nursing home administrator shall not file a death certificate with the probate court, but shall attest to the death in the affidavit. If the nursing home patient died testate **and if the nursing home administrator has the will or a copy of the will**, the nursing home administrator shall file the ~~will~~ **same** in the probate court **in the county where the nursing home is located**. The probate court shall waive all filing fees.

II. Notwithstanding the provisions of RSA 561, if all ~~just~~ **known** debts of the deceased have been paid and a balance remains in the deceased's estate ~~60 days~~ after the filing required under paragraph I; ~~and the nursing home administrator is unable to ascertain any heir or legatee~~, the probate court shall order the administrator to pay the balance into the treasury of the county where the deceased was domiciled, where it shall be subject to the claims of persons entitled to it, through application to the county commissioners.

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

2006-0255s

## AMENDED ANALYSIS

This bill requires the nursing home administrator to file an affidavit for the purpose of disposing of a deceased person's estate within 180 days after the date of the patient's death.

This bill is the request of the administrative judge of the probate court.

SENATOR FOSTER: Thank you, Mr. President, I move SB 24 ought to pass with amendment. When a patient dies in a nursing home on Medicaid, the homes have not handled the remaining private funds the deceased may have had in a consistent way. The Judiciary Committee re-referred this bill so that the Probate Court officials could work with representatives of nursing homes in order to come up with a way to address this problem. The results of their conversations are included in the proposed committee amendment. The amendment makes certain that nursing homes will make filings in specific circumstances but also limits the burden placed upon the nursing home administrators. The Probate Court has also agreed to revise their forms so that they take up this procedure and make it consistent. The Judiciary Committee recommends that this legislation be adopted with amendment and asks for your support. Thank you, Mr. President.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 207-FN**, establishing the crime of assault against the elderly. Judiciary Committee. Ought to pass with amendment, Vote 6-0. Senator Foster for the committee.

**Senate Judiciary**  
**December 20, 2005**  
**2006-0268s**  
**04/09**

**Amendment to SB 207-FN**

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

**AN ACT** relative to enhanced penalties for certain crimes against the elderly and persons with a physical or mental disability.

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

1 Enhanced Penalties for Certain Crimes Against the Elderly or Persons With Disabilities. Amend RSA 651:6, I(j) and (k) to read as follows:

(j) Possesses a radio device with the intent to use that device in the commission of robbery, burglary, theft, gambling, stalking, or a violation of any provision of RSA 318-B. In this section, the term "radio device" means any device capable of receiving a wireless transmission on any frequency allocated for law enforcement use, or any device capable of transmitting and receiving a wireless transmission; ~~or~~

(k) Has committed or attempted to commit negligent homicide as defined in RSA 630:3, I against a person under 13 years of age who was in the care of, or under the supervision of, the defendant at the time of the offense[-]; **or**

*(l) Has committed or attempted to commit any of the crimes defined in RSA 637 or RSA 638 against a victim who is 65 years of age or older or who has a physical or mental disability and*

*that in perpetrating the crime, the defendant intended to take advantage of the victim's age or a physical or mental condition that impaired the victim's ability to manage his or her property or financial resources or to protect his or her rights or interests.*

2 Sentences; Extended Term of Imprisonment. Amend RSA 651:6, 1(d) to read as follows:

(d) Has committed [~~a felony~~] **an offense** involving the use of force against a person with the intention of taking advantage of the victim's age or physical disability;

3 Effective Date. This act shall take effect January 1, 2007.

**2006-0268s**

#### AMENDED ANALYSIS

This bill imposes enhanced penalties for certain crimes against the elderly and persons with a physical or mental disability.

SENATOR FOSTER: Thank you, Mr. President. I move SB 207-FN ought to pass with amendment. Last year the Judiciary Committee re-referred two bills which would have increased penalties for the physical or financial abuse of the elderly and people with disabilities. This is a problem that is very real in our state and the committee felt should be addressed. The committee also believed however, that it's important that enhanced penalties for these be assessed only where the perpetrator targeted the elderly or disabled community. The legislation as originally drafted, would have imposed penalties if the victim happened to be elderly or disabled even if the perpetrator had no idea or did not take that into consideration with the choice of the victim. The amendment also changes RSA 651:6 relative to enhanced penalties to provide that someone committing an offense involving use of force against a person with the intention of taking advantage of the victim's age or physical disability can also be subject to increased penalties. Before, to be subject to increased penalty, the perpetrator would have had to commit a felony. The Judiciary Committee recommends that this legislation be adopted as amended and asks for your support. Thank you, Mr. President.

SENATOR GOTTESMAN: Thank you, Mr. President. I worked on this amendment and tried, along with the Judiciary Committee to establish a procedure where we could protect the elderly and the disadvantaged of this state. According to the New Hampshire police departments, there have been reports increasing in elderly people, by elderly people being abused and beaten especially in the two largest cities of our state, Nashua and Manchester. People are resorting to beating elderly with baseball bats. They're attacked on the street. We just cannot tolerate this any longer. Additionally, people who are physically and mentally disabled or elderly are often an easy target for predators looking to get rich. These vulnerable people are in need of assistance and often fall victim to caregivers who use their position to exert influence over them physically or financially. This portion of the population is in need of explicit protection from predators willing to take advantage of a person's age and/or disability. The New Hampshire Senate has an opportunity now to protect these elderly and disabled constituents with Senate Bill 207. This bill does two very important things. It protects against physical violence by enhancing penalty provisions under the sentencing statutes, and even more importantly it protects against fraud by amending two statutes of current state law to say that knowingly stealing from someone based only on their age and their disability is illegal. I just want to share one small story about this. I spent a lot of time with an elderly woman who

was paralyzed for many years. She was at the mercy of her caregiver. Unfortunately, the caregiver in this particular case, which is not necessarily representative of all cases, exercised undue influence over this woman with an intention to take away all of her family and personal assets. Luckily we found out about it. The police were involved, and this was put to an end. But there was no specific provision in our law that allows for special enhanced penalties when this occurs. And I ask your support on the amendment and on the bill. Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. I just wanted to rise and support the committee's work on this bill. I know there was similar legislation in the House that I'd been involved in, and much of the work from the House has been incorporated into this. The intent has been fulfilled. It's very important that we address the issue of elder abuse and protect and act now to protect the lives and well-being of our elders. So I appreciate the Judiciary Committee's work. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I certainly appreciate the work of the Judiciary Committee as the prime sponsor of this piece of legislation. The genesis of this legislation was the number of crimes that had been committed against the elderly in the city of Manchester, and Manchester had created a special officer who dealt with these situations, Officer Biron, who since that time has retired. The elderly are being abused. They're being taken advantage of, and with the population moving in that direction, I mean when you think of the growth of the elderly population in the state of New Hampshire there's been an 8 percent growth in those age cohorts over the last ten years. We needed to do something to protect those individuals who have been so productive and so helpful in this society, many of whose work had benefited our lives, and it was an opportunity for us to defend them and to provide the kind of protection that these people deserve. And it's only through this legislative process that we could do that. So I commend the committee for making the adjustments in the bill that make it a better piece of legislation. I thank the chair of the Judiciary Committee, Senator Foster, Senator Gottesman, Senator Clegg for the work that they did on this legislation over the interim period. It's a good piece of legislation. It's a piece of legislation that has seen its time. So I thank the committee, and I support the decision of the committee to amend the piece of legislation and bring it forward. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 245**, repealing laws relative to the municipal courts and the administrative committee of the district and municipal courts. Judiciary Committee. Ought to pass, Vote 5-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move Senate Bill 245 ought to pass. This legislation repeals obsolete laws relative to the now non-existent municipal courts in the state of New Hampshire as well as district court statutes that no longer apply. The bill was requested by the Supreme Court. The Judiciary Committee recommends that this legislation be adopted and asks for your support. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 246**, relative to provisions for permissible contact between the agent of the defendant subject to a protective order and a plaintiff. Judiciary Committee. Ought to pass, Vote 5-0. Senator Foster for the committee.

**SENATOR FOSTER:** Thank you, Mr. President. I move SB 246 ought to pass. This legislation sets forth the conditions under which contact may occur between an agent, usually a lawyer of a defendant against whom a protective order was issued, and the plaintiff, often the individual's wife. The legislation is needed because the Supreme Court, because of a Supreme Court decision that held that, if an attorney contacted the individual protected by the order, his client is deemed to have violated the order and have put him into jeopardy. This ruling has impaired the ability of the defense party to investigate charges and impaired certain matters in the family law arena. The language in this bill is exactly the same as adopted by the Senate last year, but the bill died in Committee of Conference when agreement couldn't be reached. Some members of the House who opposed the adoption last year have reconsidered their position and are now willing to support the legislation. There's hope that the bill will be accepted by the House this time around. The committee recommends that this legislation be adopted and asks for your support. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 274**, adding court security to the duties of the New Hampshire court accreditation commission. Judiciary Committee. Ought to pass, Vote 5-0. Senator Foster for the committee.

**SENATOR FOSTER:** Thank you, Mr. President. I ought to pick a better week to have a cold I think. I move SB 274 ought to pass. This legislation adds court security to the duties of the New Hampshire Court Accreditation Commission. When this commission was created back in the 1970s, court security was not the important issue that unfortunately it is in today's world. Assigning court security to this commission would enable this group to consider it when accrediting courts and designing those courts. Testimony received at the public hearing indicated that the legislation would have no fiscal impact. The Judiciary Committee recommends that this legislation be adopted and asks your support. Thank you, Mr. President.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 372**, relative to notification of interested parties in medical parole cases. Judiciary Committee. Inexpedient to legislate, Vote 5-0. Senator Gottesman for the committee.

**SENATOR GOTTESMAN:** Thank you, Mr. President. I move House Bill 372 inexpedient to legislate. While the Judiciary Committee attempted on two occasions to have a public hearing on this bill, no one attended the hearings either in support or opposition. "Comments received in telephone conversations between our chair with the parole board representative indicated that the bill wouldn't do any harm." That's in quotes, but there was no real enthusiasm from anyone for passage of this bill. Owing to the overwhelming lack of support, the committee recommends that the bill be killed and asks for your support. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**HB 533-FN**, relative to penalties for aggravated felonious sexual assault. Judiciary Committee. Inexpedient to legislate, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move House Bill 533 inexpedient to legislate. The bill was originally filed in order to clarify some confusion which resulted from a New Hampshire Supreme Court ruling. The Attorney General's Office, which originally asked for the bill, has decided at this time to resolve the matters through other legislative means. There are also other bills in the legislature which will address the issue, so this bill is not necessary. The Judiciary Committee recommends that this legislation be voted ITL and asks for your support. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**HB 696-FN**, relative to enhanced penalties for certain crimes against the elderly and persons with disabilities. Judiciary Committee. Inexpedient to legislate, Vote 6-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move HB 696-FN inexpedient to legislate. As mentioned earlier, the Judiciary Committee referred two bills relating to elderly abuse. The Judiciary Committee elected to amend and proceed with the Senate bill which you passed earlier, and there was a lot of discussion here about that bill a few moments ago. Therefore, the Judiciary Committee recommends that this legislation be voted inexpedient to legislate and asks your support. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 95-L**, relative to noise from motor vehicles. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 5-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I move Senate Bill 95-L inexpedient to legislate. Senate Bill 95 was relative to noise from motor vehicles. Similar legislation was enacted by the House and Senate, and the committee is satisfied that the issue is sufficiently addressed. The sponsors are comfortable with the motion of ITL as well. Please join with the Transportation Committee in voting ITL. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 151-FN**, relative to issuance of dealer plates to bonded motor vehicle dealers. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 5-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I move Senate Bill 151 inexpedient to legislate. Senate Bill 151 allows bonded motor vehicle dealers to be issued a dealer plate upon the proof of insurance. The committee had many unanswered questions surrounding this bill and does not feel that passing this legislation is prudent at this time. Please join the Transportation Committee in voting ITL. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 155-FN**, prohibiting rafting of boats on lakes and ponds. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 5-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move Senate Bill 155 inexpedient to legislate. This legislation attempted to



provide additional requirements on rafting of boats on lakes and ponds. The committee felt, after extensive testimony, that the current legislation dealing with rafting of boats is sufficient and that any issues relative to enforcement ought to be dealt with in another manner. Thank you, Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**SB 178**, designating a certain highway the Gold Star Mothers Highway. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 5-0. Senator Flanders for the committee.

**Transportation and Interstate Cooperation**

**November 2, 2005**

**2006-0113s**

**06/04**

**Amendment to SB 178**

Amend the bill by replacing section 1 with the following:

1 Highway Named. Pursuant to RSA 4:43, the Hillsborough by-pass, from the junction of New Hampshire Route 9 and Henniker street in Hillsborough to the Antrim town line, is hereby named the Gold Star Mothers highway, in honor of those mothers whose sons and daughters served and died in the line of duty in the armed forces of the United States of America or its allies.

SENATOR FLANDERS: Thank you, Mr. President and members of the Senate. I move Senate Bill 178 ought to pass as amended. This bill designates the new Hillsborough bypass the Gold Star Mothers Highway. The amendment corrects the designated portion of the road that is actually being named. This bill went off track last year. We got it back on track. I have met personally with the selectmen, and I do have an email from the selectmen saying that they approve. I also, and Senator Estabrook was interviewed. There's an article in the paper, so everybody in Hillsborough is able to see the Route 9. And I had no calls from that. So the town and the selectmen do approve this and the amendment basically when they put the bypass in they changed the names of the roads. So the amendment just goes along with the new road and it will be from a portion to the Antrim town line. We ask that you support the Transportation Committee in ought to pass. Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. As the sponsor of the bill who sort of dropped the ball last year which is why it had to get re-referred, I just wanted to rise again and thank Senator Flanders for all of the work he did locally to make this happen, and also Senator Letourneau, as Chair of our committee, who didn't let this just go by the wayside. Who made sure that it went ahead because we all felt that it was important to honor our Gold Star Mothers in this way. So thank you to them and to the committee as a whole.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 221**, relative to identification requirements for obtaining a driver's license. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 5-0. Senator Burling for the committee.

## Transportation and Interstate Cooperation

December 6, 2005

2006-0247s

03/04

### Amendment to SB 221

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

AN ACT relative to obtaining a driver's license and creating a violation for failure to pay a highway toll.

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

1 New Section; Drivers' Licenses; Effect of License. Amend RSA 263 by inserting after section 1-b the following new section:

263:1-c Effect of License. A driver's license issued by the state of New Hampshire is a written declaration to the holder of permission to operate a motor vehicle.

2 New Sections; Issuance of Drivers' Licenses; Identification and Residence. Amend RSA 263 by inserting after section 5-c the following new sections:

263:5-d Identification. The department may require reasonable identification from any applicant for a driver's license. Any person applying for a driver's license may present proof of identity in a form satisfactory to the department, provided that any of the following shall satisfy an identification requirement established pursuant to this section:

I. A current United States passport.

II. An armed services identification, or other photo identification issued or authenticated by the United States government.

III. A photo identification issued by the state of New Hampshire.

263:5-e Residence. The department may require that an applicant for a driver's license provide reasonable proof of his or her place of residence. Any person applying for a driver's license may present proof of residence in a form satisfactory to the department, provided that one or more of the following may satisfy a proof of residence requirement established pursuant to this section if it is current and shows the name and address of the applicant:

I. A government check or a government document issued by an official in the municipality of residence.

II. A paycheck, payroll document, or employment contract.

III. A lease or deed.

IV. Other documents issued in the ordinary course of business that establish that it is more likely than not that the applicant resides at the place claimed.

3 New Section; Failure to Pay a Highway Toll. Amend RSA 236 by inserting after section 31 the following new section:

236:31-a Failure to Pay a Highway Toll. Notwithstanding the provisions of RSA 236:31, any person who fails, neglects, or refuses to pay the toll or charge for the use of any bridge, highway, or part thereof shall be guilty of a violation. This section shall not apply to any person driving a vehicle equipped with a transponder using a lane equipped with an electronic toll collection monitoring system; such person and vehicle shall be subject to the provisions of RSA 236:31.

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

2006-0247s

## AMENDED ANALYSIS

This bill authorizes the department of safety to require identification and proof of residence from a driver's license applicant and specifies certain documents that may satisfy such identification and proof of residence requirements. This bill also establishes a violation for failure to pay a highway toll.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move ought to pass with amendment on Senate Bill 221. Mr. President, I, too, would like to thank my colleagues in the Senate. The Transportation Committee really did work on this bill. For the first time in the history of the state, the Department of Motor Vehicles will actually have authority to demand identification from an applicant. We have set out the standards in New Hampshire terms of what identification will be provided, identification as to "person" and also "place of residence". I would also say that the bill as amended by the committee does include a little amendment having to do with a slip-up in terms of failure to pay tolls which we all thought might be appropriate at this time. So I ask my colleagues to join me in voting aye on the motion ought to pass with amendment on 221.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 233**, relative to motorcycle rider education. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 5-0. Senator Letourneau for the committee.

**Transportation and Interstate Cooperation**

**January 11, 2006**

**2006-0384s**

**03/09**

**Amendment to SB 233**

Amend the bill by replacing section 1 with the following:

1 Motorcycle Rider Education Program; Standards. Amend RSA 263:44-b, I to read as follows:

I. The director shall establish standards for and shall administer the motorcycle rider education program. The ~~program~~ **standards shall be based on the recommendations of the advisory committee established in RSA 263:34-f and** shall include, but ~~is~~ **not be** limited to, **standards for a nationally accepted and state-approved** rider training course~~, which is at least the equivalent to the Motorcycle Safety Foundation Course and instructor training~~. The director may expand the program to include public awareness, alcohol and drug effects, driver improvement for motorcyclists, licensing improvement, program promotion, or other motorcycle safety programs.

SENATOR LETOURNEAU: Thank you, Mr. President. I move Senate Bill 233 ought to pass with amendment. This bill requires the standard a Motorcycle Rider Education Program be based upon the recommendation of the Motorcycle Rider Education Program Advisory Committee. This bill would allow the state to choose its curriculum should another option become available. Additionally, we'd also be protecting the state

by allowing that choice. And I might add, Mr. President, that this is the first of three bills that you will be dealing with, with motorcycle education this year to try to deal with the amount of fatalities that we've seen on our highways. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 239**, renaming the bridge located on Main Street in Enfield, New Hampshire and crossing the Mascoma River as the Women in Service to Enfield (WISE) Bridge. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 6-0. Senator Burling for the committee.

**Transportation and Interstate Cooperation**

**January 11, 2006**

**2006-0374s**

**08/09**

**Amendment to SB 239**

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

**AN ACT** renaming the bridge located on Main Street in Enfield, New Hampshire and crossing the Mascoma River as the Women in Service to Enfield (WISE) Bridge and naming the bridge located on Main Street in Newmarket, New Hampshire and crossing the Lamprey River as the Newmarket Veterans Bridge.

Amend the bill by replacing all after section 2 with the following:

3 Newmarket Veterans Bridge. Pursuant to RSA 4:43, the bridge located on Main Street in Newmarket, New Hampshire and crossing the Lamprey River shall be named the Newmarket Veterans Bridge.

4 Signage. The cost of design, construction, maintenance, and installation of any signage, replacement signage, or other markers resulting from this act shall not be a charge to the state. However, the design, construction, and installation of any signage or other markers required under this act shall be approved by the department of transportation.

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

**2006-0374s**

**AMENDED ANALYSIS**

This bill renames the bridge located on Main Street in Enfield, New Hampshire and crossing the Mascoma River as the Women in Service to Enfield (WISE) Bridge.

This bill also names the bridge located on Main Street in Newmarket, New Hampshire and crossing the Lamprey River as the Newmarket Veterans Bridge.

**SENATOR BURLING:** Thank you, Mr. President. I move ought to pass with amendment on Senate Bill 239. This bill names two bridges - a bridge across the Mascoma, to be known as the "Women in Service to Enfield Bridge", and the bridge across the Lamprey River in Newmarket to be known henceforth as the "Newmarket Veterans Bridge". I ask you to join a majority of the committee, 6-0, in voting ought to pass with amendment.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 599-FN**, requiring disclosure to consumers of the presence of event data recording devices in new motor vehicles. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 5-0. Senator Burling for the committee.

**Transportation and Interstate Cooperation**

**November 15, 2005**

**2006-0173s**

**03/10**

**Amendment to HB 599-FN**

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

1 New Chapter; Event Data Recording Devices in Motor Vehicles. Amend RSA by inserting after chapter 357-F the following new chapter:

**CHAPTER 357-G**

**EVENT DATA RECORDING DEVICES IN MOTOR VEHICLES**

**357-G:1 Event Data Recorders.**

I. As used in this section, "owner" means a person having all the incidents of ownership, including legal title of a vehicle, whether or not such persons lends, rents, or creates a security interest in the vehicle; a person entitled to the possession of a vehicle as the purchaser under a security agreement; or the person entitled to possession of the vehicle as lessee pursuant to a written lease agreement, provided such agreement at its inception is for a period in excess of 3 months.

II. As used in the section, "event data recorder" means a device that is installed by the manufacturer of the vehicle and does one or more of the following, for the purposes of capturing data for retrieval after a crash:

- (a) Records vehicle speed or direction.
- (b) Records vehicle location data.
- (c) Records vehicle steering performance.
- (d) Records vehicle brake performance, including but not limited to, whether brakes were applied before a crash.
- (e) Records the driver's seatbelt status.

(f) Has the ability to transmit information concerning a crash in which the motor vehicle has been involved to a central communications system or other external device when a crash occurs.

III. A manufacturer of a new motor vehicle sold or leased in this state, which is equipped with one or more event data recorders, including "sensing and diagnostic modules," shall disclose that fact in the owner's manual for the vehicle.

IV. If a vehicle is registered in this state, any event data recorder in the vehicle and any data recorded on any event data recorder in the vehicle is the property of the owner of the vehicle. Data described in paragraph II that is recorded on any event data recorder may not be downloaded or otherwise retrieved by a person other than the owner of the motor vehicle at the time of the event, except under one of the following circumstances:

- (a) The owner of the motor vehicle consents to the retrieval of the information.
- (b) In response to an order of a court.

(c) The data is retrieved by a motor vehicle dealer, or by an automotive technician for the purpose of diagnosing, servicing, or repairing the motor vehicle.

(d) The data is retrieved for the purpose of determining the need for or facilitating emergency medical response in the event of a motor vehicle crash.

V(a). If a motor vehicle is equipped with an event data recorder device that is capable of recording or transmitting information as described in subparagraphs II(b) or II(f) and that capability is part of a subscription service, the fact that the information may be recorded or transmitted shall be disclosed in the terms and conditions of the subscription service agreement.

(b) Paragraph IV shall not apply to subscription services meeting the requirements of V(a).

VI. Violations of this section shall constitute an unfair or deceptive act or practice under RSA 358-A:2.

VII. This section applies to all motor vehicles manufactured on or after July 1, 2006.

2 Effective Date. This act shall take effect July 1, 2006.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move ought to pass with amendment on House Bill 599-FN. This was again, an extensive piece of work by the committee. It is an important issue. This bill makes it clear that there will be disclosure of the existence of an event data recorder. For those of us who are interested in the advance of technology, henceforth everyone of us should know that under the driver's seat is this little black box which is primarily designed to tell the airbags when to deploy. What is interesting and what has been the primary focus of the committee is the fact that these little black boxes are capable of recording a certain amount of information. What was critical to the membership of the committee was figuring out who gets that information and under what circumstance. It is a privacy issue. The amendment, which was printed on pages 19 and 20 of the calendar, reflects our hard work on this issue, and I call it to your attention because it's worthy of everybody's reading. We have in this bill, made it clear that there's an obligation to disclose the presence of one of these EDRs, but we've also done our very best to lay out the terms under which somebody can gain access to the information. Our primary thesis here is that the information on that event data recorder belongs to the owner of the vehicle. It is a matter of privacy and property rights, and there is only a limited number of circumstances in which somebody else can get that information. For all these reasons, Mr. President, I urge passage with amendment of 599.

SENATOR LETOURNEAU: Thank you, Mr. President. I just wanted to echo the comments of Senator Burling. The committee worked very hard on this bill. We worked on it all over the summer, last fall, this spring. This has been many meetings to hammer this out, and there was quite a bit of opposition from one industry in particular. And I'll agree with Senator Burling. This is a privacy issue. This bill goes a long way in protecting our citizens' privacy rights, and I thank you. And I hope everybody supports us on this.

SENATOR BARNES: Thank you, Mr. President. Of Senator Letourneau, the Chairman of the committee. On page 20 (e) records the driver's seat belt status. That just means that the seat belt is connected not necessarily around one's waist. Is that correct?

SENATOR LETOURNEAU: I believe that's correct. Where are you reading that, sir?

SENATOR BARNES: Page 20 (e).

SENATOR LETOURNEAU: Is this on the amendment?

SENATOR BARNES: Yes.

SENATOR LETOURNEAU: One of the issues is when there is a deployment of the airbag, this particular device begins to do a recording that doesn't get erased, and it records the data of whether or not the seatbelt has been attached and what occurred, whether you applied the brakes, all the things that happened in the vehicle like the last fifteen seconds before a particular crash, if the airbag deploys. So this is what that's all about. That's why it's in there. We worked with the people from the automobile industry on this. These are a complex electronic circuits in automobiles that are connected to computers. Now what we wanted to do was protect the rights of the people from the information that's stored in that device.

SENATOR BARNES: Thank you, Mr. President. I think, and I don't know what the date, but I think most new automobiles, that insane buzzer goes off if you don't have your seatbelt attached. So people like myself who don't use seatbelts, put it together. So if I have an accident, they're not going to be able to say, "Jack didn't have his seatbelt on," because I do have it clipped to keep that offensive noise down.

SENATOR LETOURNEAU: More the reason Senator, for having that information protected and private.

SENATOR BARNES: Thank you.

SENATOR BURLING: Thank you, Mr. President. I would just point out to my colleague, Senator Barnes, that while at any moment in time that may be true, the technology of these EDRs is advancing so quickly this year's model may register not only the click of the metal piece into the left hand side but also the extension on the reel side. So I wouldn't count on anything you do being private or unrecorded. Again, part of the reason why we were so careful to apply some controls over who got the info.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 153-FN**, relative to the collection of debts owed to the state. Banks and Insurance Committee. Ought to pass with amendment, Vote 5-1. Senator Gottesman for the committee.

**Banks and Insurance**

**December 20, 2005**

**2006-0267s**

**05/10**

**Amendment to HB 153-FN**

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

1 New Subdivision; The State and its Government; Treasurer and Accounts; Collection of Debts Due the State. Amend RSA 6 by inserting after section 43 the following new subdivision:

### Collection of Debts Due the State

#### 6:44 Collection of Public Debts by Collection Agencies or Law Firms.

I.(a) The department of administrative services shall manage and be responsible for overseeing the debt collection function for all state agencies by private collection agencies or law firms. All net proceeds, after legal fees and expenses of suit and collection, shall be credited to the agency account for which the claim was collected.

(b) The amount of the collection fee and the terms and conditions of retention shall be negotiated by the department of administrative services and the private collection agency or law firm, subject to governor and council approval, and the requirements of this subparagraph. If the debt allows for collection of legal fees and expenses, the amount of the collection fee as negotiated between the department of administrative services and the private collection agency or law firm shall be added to the bill of costs to be paid by the debtor.

II. No debt may be assigned to a collection agency or law firm unless:

(a) There have been at least 2 documented attempts, at least 10 days apart, to notify the debtor of the existence of the debt and of the fact that the debt may be assigned to a collection agency or law firm for collection if it is not paid; and

(b) At least 15 days have elapsed from the last notice attempt.

III. Collection agencies or law firms assigned debts under this section shall have those remedies and powers which would be available to them as assignees of the state. The collection agencies or law firms are likewise bound by applicable laws governing unfair collection practices.

IV. For purposes of this section, a private collection agency or law firm shall cease its efforts designed to collect the debt and inform the department of administrative services and the agency upon the occurrence of any of the following:

(a) Direction from the department of administrative services.

(b) Bankruptcy of the account debtor.

(c) Determination by the private collection agency or law firm, after diligent inquiry, that the debt is non-collectible.

(d) Upon order of a court having jurisdiction over the debtor in a criminal or civil matter.

(e) Direction from the department of justice, after consultation with the department of administrative services.

V. The commissioner of administrative services shall submit an annual report, on or before June 30, to the speaker of the house of representatives, the president of the senate, and the chairperson of the house standing committee on executive departments and administration, relative to collection activity under this section. The report shall include, for each account: the relevant agency; the amount to be collected; the amount collected and whether it was collected by a collection agency, law firm, or court action initiated by the department of administrative services; any expenses incurred; and any amount outstanding.

VI. For purposes of this section, the term "debt" shall include fines and other debts, including the fee required under subparagraph I(b) of this section.

2 Effective Date. This act shall take effect July 1, 2006.

**2006-0267s**

### AMENDED ANALYSIS

This bill authorizes the department of administrative services to oversee, on behalf of state agencies, debt collection conducted by collection agencies and law firms. Recovered funds, less collection costs, shall be



returned to the appropriate agency. The bill also requires the department of administrative services to submit an annual report on the collection activity to the legislature.

SENATOR GOTTESMAN: Thank you, Mr. President. I move House Bill 153 ought to pass with amendment. House Bill 153 allows the state of New Hampshire to collect debts owed to the state by hiring private collection agencies or law firms. After hearing testimony from the Attorney General's Office and the Department of Revenue, and after speaking with the commissioner of the Department of Revenue and the commissioner of Administrative Services, and after obtaining input from the Attorney General's Office, as to the language in the resulting bill, the majority of the committee decided to amend the original bill to grant oversight of the debt collection function to the Department of Administrative Services rather than to the Department of Justice. They felt that the Department of Administrative Services was better suited to make such contracts on behalf of the state. Recovered funds will be credited to the agency to which they were owed, minus collection costs or legal fees. This bill would allow the state to recover lost money that the agencies are not now collecting, and the testimony was that the Attorney General's Office is in the position to collect these, but is not collecting them, and otherwise they would be uncollectible assets of the state. The Banks and Insurance Committee asks your support of this bill as amended. Thank you, Mr. President.

SENATOR FOSTER: Thank you, Mr. President. I was the one who voted against the ought to pass motion. I actually think the amendment is probably better than the bill that came over to us from the House. My concern was and continues to be parts of the bill that would authorize these debts to be put out to collection agencies. My concern really is this. I think we ought to collect these debts, but I think we ought to have a limited number of people do it and probably law firms not collections. This is not because I practice collection law. I don't. What I'm concerned about is collection agencies don't have the same kind of restrictions on them that some law firms and lawyers do, and I fear that someday I'm going to wake up and have a headline in the *Union Leader* of some woman who gave over all of her food money or something over to the state to pay some fine that she may have received because of a heavy handed collection agency or worse that the state gets sued because they violated certain laws that protect these individuals. So I think the idea is good. And I assume it's going to go forward today. I hope that we proceed with caution so that we don't get heavy handed. The state is not Blockbuster Video trying to get its late fees for example. The state is the state, and I think we have to operate with a little more caution in this area. So hopefully that will happen. Thank you, Mr. President.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I concur with the amendment and share some of Senator Foster's concerns. But in looking through the budget process for the last three cycles, what I've found and some of my colleagues on Finance have found is that there are millions of dollars in uncollected debt to the state of New Hampshire. In one instance we found over \$6,000,000 in aging, unpaid debt, and one of the reasons for not collecting it is we didn't have the staff. Had to do other things. And as a result, let that debt age. Aging debt becomes non-collectible debt, as we all know. It becomes a write-off. Our auditors make us write it off. This situation provides an opportunity for the state to

collect that debt. Now granted we have to be careful about who we assign this debt to. There are debt collection agencies that are persona non grata that we shouldn't be dealing with, and I think the Department of Administrative Services has a mandate from the legislature to do a good job in terms of moving this debt out so that it can be collected properly and that the dollars that belong to this state can be brought to this state. One little project that Senator Clegg and I have put in place in the last biennium has already, and Senator Eaton will remember this, has already resulted in the collection of \$160,000 in bad debt. We've collected that, and we collected that because we put the pressure on to make sure that this outstanding debt was collected. That's \$160,000 that the people of the state of New Hampshire were owed, and it's only a minute portion of the aggregate debt. So it isn't perfect, but it's a start. It's movement in the right direction, and as that debt accrues as I say, it becomes impossible to collect unless you're on it and on it in an expeditious fashion, and that's why I support the amendment and support the policy. Thank you.

SENATOR GOTTESMAN: Thank you, Mr. President. I think Senator D'Allesandro has adequately covered my thoughts, and I would yield.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 22**, authorizing the Holden School of Nursing to confer degrees. Education Committee. Ought to pass with amendment, Vote 5-0. Senator Foster for the committee.

**Senate Education  
December 15, 2005**

**2006-0262s**

**04/09**

### **Amendment to SB 22**

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

AN ACT authorizing Holden College to confer degrees and exempting certain teachers from additional certification requirements imposed by the No Child Left Behind Act of 2001.

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

1 Holden College; Authority to Grant Degrees. Holden College, located in Nashua, New Hampshire, is hereby authorized to confer degrees upon its graduates, subject to the authority of the postsecondary education commission under RSA 188-D:8, IV. The degrees shall be specified by the postsecondary education commission as provided in RSA 292:8-h, III.

2 New Section; Teacher Certification; Exemption. Amend RSA 189 by inserting after section 14-g the following new section:

189:14-h Teacher Certification; Exemption. Any person who was certified as a teacher by the department of education prior to January 8, 2002 shall be exempt from compliance with the highly qualified teacher provisions and any other teacher certification requirements imposed by the No Child Left Behind Act of 2001.

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

2006-0262s

## AMENDED ANALYSIS

This bill authorizes Holden College to grant degrees.

The bill also provides an exemption from the highly qualified teacher and any other teacher certification requirements imposed by the No Child Left Behind Act of 2001 for any person certified as a teacher by the department of education prior to January 8, 2002.

SENATOR FOSTER: Senator Foster, I don't think has his remarks before him, but this is a bill that number one, allows the Holderness School of Nursing to confer degrees subject to approval by the Postsecondary Commission. There was also an amendment that I don't know whether Senator Green is going to speak to it or not, but if he is, I would yield to him. It's really his amendment that deals with No Child Left Behind. So I would ask everyone to support ought to pass with amendment.

SENATOR GREEN: Thank you, Mr. Chairman. The amendment that you'll find is on page 4 of the calendar. That amendment is an amendment that was offered because, at the time that we were discussing this bill, the issue was whether or not the current teachers who have been certified and teaching for many years were going to have to go through additional certification requirements by the federal statute No Child Left Behind. Both the House and the Senate have had a discussion about this. I offered the amendment basically because that, when we first did the No Child Left Behind statutes which we did over the last couple of years, it was my understanding, and many of the other people that I had spoken to at the time, that the teachers who were currently certified in the state of New Hampshire at the date prior to the No Child Left Behind legislation at the federal level, were going to be grandfathered, were not going to be required to do any additional recertification. For the record, I think that New Hampshire has one of the better recertification requirements in the whole country. Now I do know that the Commissioner of Education has been working hard in negotiating with the Department of Education at the federal level, and I do know that there is some dialogue going on about an agreement. As part of this whole dialogue, we asked for that those agreements in writing. Having dealt with the Department of Education at the federal level many times, what they say and what they do may be the opposite or just different. So I have a little bit of a skeptic eye as to what they say and what they actually put on the record in writing. We have not received anything that confirms in writing, what this position...current position of the federal government is on recertifying existing teachers in our system. Now the House is going at it a little differently. That's fine. I think that we ought to keep our amendment in here, and I support this amendment. And I ask you to support the bill as amended, so that if we end up in a situation with the House to dialogue about this and confer about it, that we have a position that we can confirm, the position of the federal government in relationship to this issue. So I ask your support of the amendment as well as passing the bill. Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. I thought it would be nice if I joined to Senator Green on an education bill today. I did that with this amendment. I had my name on this amendment because I share his grave concern about the federal requirements that are coming down on us through No Child Left Behind. And it's true that, as we were working on this amendment the commissioner was able to negotiate with the

feds and acknowledgment really that New Hampshire's certification process is so stringent that anyone who had gone through it and the recertification process on top of it, clearly was highly qualified. And we have that agreement with regard to our elementary school teachers. However, there are **TAPE CHANGE** who are still out there struggling with this highly qualified teacher requirement, our special education teachers for instance. I just got an email the other day from a special education teacher working with high school students at a basic literacy level, and yet she's being told she needs to have a degree in English in order to do that. In other words, she has to have training that would be the equivalent to teaching high school English even though she's working at a very basic literacy level. There are all kinds of quirks like that with this requirement that have caught our special ed teachers, our ESL teachers, and our middle school science teachers who are still left having to deal with the requirement. Now, our amendment says that these teachers and the ones that have already been agreed to by the feds are exempt from the requirement. I think that that language is very strong and, as Senator Green said, we chose it in the context of the developments that were occurring. I agree with him that we should let that language stand. We should send this over to the House where they too share our concern but, as he said have taken a somewhat different approach with regard to the language they're using. I think when we get together we'll all be on the same page. We're all working towards the same goal. We all want to acknowledge that New Hampshire's teachers are clearly highly qualified. This state had put a process in place many years ago to assure that. So we are in keeping with the spirit of No Child Left Behind and I think this amendment will help us in that direction. I ask for your support.

**SENATOR LARSEN:** Thank you, Mr. President. I, we applauded the Department of Education as they tried to find ways to qualify our teachers to which we already know are qualified, and this in fact may help to clarify their position. I only rise to support passage of the bill with the caveat that, if the Holden School of Nursing in fact falls prey to House and Senate disagreement, that we will work to revive the Holden School of Nursing through another process, an amendment, or whatever, because as we all know, we need the additional nurses that the Holden School of Nursing can provide to our state. So I just ask everyone to keep an eye on that and be ready to do what we can to also support the school. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 406**, revising certain provisions of the home education statutes. Education Committee. Ought to pass with amendment, Vote 4-1. Senator Estabrook for the committee.

**Senate Education**  
**December 15, 2005**  
**2006-0261s**  
**04/09**

**Amendment to HB 406**

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

**AN ACT** relative to procedural requirements for initiating and continuing home education programs.

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

1 Home Education; Procedural Requirements. Amend RSA 193-A:5, I-II to read as follows:

I. Any parent [~~commencing~~] **initiating or continuing** a home education program for a child, for a child who withdraws from a public school, or for a child who moves into a school district shall notify the commissioner of education, resident district superintendent, or principal of a nonpublic school of such [~~within~~] **no later than 30 days after the program start date and no later than 30 days after the start of any following school year in which the program continues. Notification shall include a list of the names, addresses, and birth dates of all children participating in the home education program.** Subject to the provisions of RSA 193-A:7, I, **and, if applicable, paragraph II of this section,** the commissioner of **the department of** education shall acknowledge in writing that the parent shall be permitted to initiate **or continue** a home education program for a child enrolled in a public or nonpublic school if the program meets the minimum definitional and educational requirements as provided in RSA 193-A:4, I and paragraph II of this section.

II. [~~Notification made by the parent pursuant to paragraph I shall include a list of the names, addresses, and birth dates of all children who are participating in the home education program and~~] **For any parent who has not previously received acknowledgement from the commissioner of the department of education that the parent is permitted to initiate a home education program for any child, such acknowledgement shall be contingent upon the program meeting the minimum definitional and educational requirements provided in RSA 193-A:4, I. To assist in this determination, notification under paragraph I shall include a list and description of the subjects to be taught each child in accordance with RSA 193-A:4, I. A description of such subjects shall also be provided which shall include:**

- (a) The name of an established correspondence school used, if any;
- (b) The name of an established commercial curriculum provider used, if any;
- (c) A table of contents or other material which outlines the scope of and instructional sequence for each subject, or both; and
- (d) A list of textbooks or other instructional materials used.

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

2005-0261s

#### AMENDED ANALYSIS

The bill requires a parent initiating a home education program to submit a list of subjects to be taught, and requires a parent initiating or continuing a home education program to provide notice annually.

SENATOR ESTABROOK: Thank you, Mr. President. I move House Bill 406 ought to pass with amendment. The bill makes changes to the statute, RSA 193-A:7, which is relevant to the initiation or continuation of a home education program. Members may remember this bill. Obviously it's one that's been re-referred, and what's happened with it is that it came out of committee last session with a recommendation that included a compromise. The bill was intended to remove all reporting requirements from home schoolers with regard to the curriculum they were pursuing. It came over to us from the House with all of those requirements removed. Current statute says that parents have to report

every year on the curriculum plan they have in place for each of their home schooled students, and parents were, rightfully so, feeling that this was overly burdensome. So the compromise that had been arrived at in Senate Education last session was to have parents create a curriculum plan only the first time and only with the first child. In other words, go through the exercise, show that they have an understanding of the breadth of curriculum and planning, and then they would be free to go about their own business. The bill went back to committee because when it came to the floor last session there was grave concern from the home schoolers. We took it back. We had a lengthy debate. We came out with the same conclusion. The best interests of the child would be served by having parents complete one curriculum plan at the outset of their home education. Now the argument was made that curriculum planning is so fluid, what's the point? Well that's like saying that our teachers in our public school classrooms shouldn't bother planning curriculums. It's fluid whether you're in a school classroom or whether you're at home, and any educator knows that. My concern, and I'm speaking in this fashion because my understanding is the members of the committee have decided not to support the committee amendment. My concern remains that, without this requirement, we will have no information on a home schooler's academic program until they're two years into it when they have to take the assessment test and we have something to measure against. I feel that it's part of the state's obligations to assure that every child, every child has an adequate education. After all that's why we have compulsory school attendance. And that if we allow home schooling to occur with simply a registration, which is what will happen when this bill is passed in the form it came from the House, parents will simply notify by letter or whatever that they're home schooling, and we won't hear anything more until the second year of testing. My concern is that that is just not living up to our responsibility to assure that every child is receiving an adequate education. I know that the vast, vast, vast majority of home schoolers are receiving an excellent education, an education that many of us would envy for our own children. However, laws are written to protect the small minority of children. This is an issue of protecting children and assuring that they have an adequate education. So I remain in favor of the committee's amendment that was a compromise. I feel the one time exercise in curriculum planning is not overly burdensome, and I would urge my colleagues to support the committee's report.

SENATOR FOSTER: Under the law as it stands now, if I have four children and are going to home school them from 1 through 12, I'd have to submit 48 curriculum plans. Under the proposed amendment I'd have to submit one the first time when my eldest child got to school. Is that correct?

SENATOR ESTABROOK: Yes, that is. That's why I said that I felt that the argument being put forth by the home school community that the current regulations are overly burdensome has merit, but I feel that completely removing all requirements other than notification is not in the best interests of New Hampshire's children.

SENATOR FOSTER: Follow-up. So, in a sense, do I have this right that the committee felt it was appropriate that the first time is sort of a test to the parent of its own ability to sort of put together a curriculum plan, one-time was appropriate?

SENATOR ESTABROOK: Certainly. I think that if you're going to be home schooling it's a constructive exercise that gives you a sense of what's involved in planning a curriculum and executing it.

SENATOR FOSTER: Follow-up, Mr. President? I was wondering whether...I've received a lot of postcards over the last couple of days about pass the bill as unamended, but I was wondering whether you had the experience that I had was that home schooled parents would call you and you explain to them what you were proposing which was a one-time curriculum submission, they said, "Boy, that's not so bad. That's reasonable. I didn't understand that." Did you have that experience?

SENATOR ESTABROOK: I think that's true. I think, as with many of these things, the details don't get communicated.

SENATOR FOSTER: Thank you.

SENATOR ESTABROOK: Thank you.

SENATOR HASSAN: Thank you, Mr. President. For Senator Estabrook. Senator Estabrook, have you had contact or are you aware of any situations in which a parent who was planning to home school their children decided not to because in trying to prepare the curriculum they determined that they were...that they thought it best for them not to try to teach at home?

SENATOR ESTABROOK: We did hear some testimony in that regard when we were debating the issue, yes.

SENATOR BRAGDON: Mr. President, I rise against the adoption of the amendment and urging the Senate to defeat that so we can pass the bill as it originally came to us from the House. I do applaud members for recognizing the burdensome paperwork requirements that we're putting on home schoolers. However, I think the way it stands now we're actually making it very difficult for those who are contemplating starting a home schooling program. Those of us who have taught understand the difficulties of preparing. Those who, when they teach for the very first time, understand the difficulties in putting together a curriculum for an entire year, let alone a short period of time, and the irony is that they have thirty days to submit this curriculum to the Department of Education or their local superintendent. In some cases, the local superintendent offices may do nothing with it. If it comes up to Concord maybe it stays in a drawer for awhile, so we're sixty days, ninety days into the year before someone actually says decides to take a look at this curriculum that's been presented at which time, especially the first time one home schools or teaches in any way, that curriculum changes. So we're asking the people who are busy enough trying to plan and work with their children to educate them, to submit a whole bunch of paperwork that really, by the time anyone takes a look at it, is irrelevant in the first place. So I would urge my fellow members to vote down the committee amendment, so I can offer an ought to pass amendment on the original House version.

SENATOR CLEGG: Senator Bragdon. Senator Bragdon, I heard that some people received calls from home schoolers, and I received calls from home schoolers, too. And they did seem to understand what this amendment was doing. Can I ask you, have you received any from home schoolers, and did they understand exactly what we're looking at?

SENATOR BRAGDON: Yes, I received a number of calls, and they all felt, as I described, that the first time it's even more burdensome. The

second time you teach or you teach another kid in the same grade you can submit all the stuff you did the last time. But the amount of work you put in to put a plan together that you know is going to change they felt was burdensome.

SENATOR CLEGG: Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in support of the amendment. Let me just say that, having served on a local school board and having been the Chair of the Curriculum Committee, I understand a little bit about curriculum and how curriculum changes, but it seems to me a) any person who's contemplating home schooling didn't do it within a THIRTY day period. They had thought about this for a considerable amount of time, and I think spent some time developing a curriculum. That's why they want to home school. So the burden isn't a burden. And you only have to do it one time. I think that's asking a very simplistic thing for people to do if they want to home school. Now, in the Manchester district, there were about I think three or four hundred home schooling when I was on the school board, and I did serve on our board for ten years. There weren't any problems. I didn't hear any problems. The only problem was they wanted to participate on our athletic teams. So they came to the school board and asked permission to participate in the extracurricular activities which maybe weren't part of the curriculum but obviously they wanted to participate in those. I think the amendment is a wonderful compromise. You're getting rid of all the minutia that goes on and on and on asking them to do it one time, and I think the state's entitled to that. We believe in education, and I think, as Senator Estabrook pointed out, an adequate education for everybody. Don't you think we're entitled to know at least one time what's going on? And the testing will take place as time goes on. So it's a good amendment. It's an amendment that was crafted with due deliberation and due discussion, and it seems to me we ought to move forward with the amendment. Thank you.

SENATOR CLEGG: Thank you, Mr. President. I rise in opposition to the amendment. I think we've heard from the home schoolers that they take their job seriously. In fact we test them I think it's every two years to make sure they're doing their job, so what we're asking to do in the amendment is to burden the local superintendent one more time with another stack of papers. This is my curriculum. Is the superintendent even going to look at it? Okay, let's send it to the Department of Education. Are they going to look at it? Is anybody going to look at what you're asking these people to put up? I heard from someone who's a teacher who said, "A plan works for about three weeks, and then you find out you need to take it in another direction." So, are we saying in here just give me anything so that everybody feels good, or are you then going to say, "And if you change that curriculum because you find you need to go in another direction, you have to do that too?" What we have works. Why do we keep burdening people with more government paperwork? Is it because we don't want them to survive by themselves? Do we feel such a need to make everybody dependent upon the government? File a piece of paper to teach your children. We're overstepping. The way it came from the House gives those people plenty of safeguards for their children, and what we need to find out to make sure that the children aren't being abused and they are getting an education, exists. I certainly don't think we need to continue to burden people on the outside with more paperwork. Look at how we feel with the piles we have. Thank you.



SENATOR HASSAN: Thank you, Mr. President. I rise in support of the amendment. As we have just heard, rather than increasing paperwork on home schooling families, this amendment does precisely the opposite, and we should all be very clear about that. Our job as legislators is not just to make life easier for the hundreds and thousands of home schoolers in this state who do a superb job, and many, many of them do, but there are going to be rare instances in which a parent who believes they want to home school is not qualified for one reason or another to do it. And this is an excellent mechanism for determining, in a self-discovery kind of process for the parent if nothing else, whether they are truly prepared to take on the task of teaching their children. We all know that we plan curriculums. We plan committee hearings. We plan vacations that are subject to change as we go along. That's the state of the human condition. But that doesn't keep us from planning. Because planning is such an important task and such an important task to make sure we are doing our job correctly. This amendment is a superb compromise. It only asks home schoolers to present a curriculum during their first attempt to do so. It will facilitate dialogue between the school system and the parent if the parent has questions, and moreover, there are numerous national organizations prepared to help home schoolers prepare their curriculum if they feel overwhelmed by the one-time only task that this amendment calls for. I urge us to make sure that we're looking after all the children in this state and reducing paperwork at the same time. Thank you.

#### PARLIAMENTARY INQUIRY

SENATOR BURLING: Parliamentary inquiry of you, Mr. Speaker, Mr. President, excuse me. I can hear across the hall that they're probably ready for us. Is there any way we could suspend this debate rather than rushing through it so that we might attend the functions?

SENATOR GATSAS: We will attend the function as soon as they're prepared for us. I think we're still in a holding pattern, so we have yourself and Senator Barnes as speakers. We will then recess and go next door.

SENATOR BURLING: I rise, Mr. President, just to say I'm going to vote for this amendment one, because it does exactly what we've been talking about, reduces the paper burden on the home schooling families of the state, but two, and perhaps more importantly, because it fulfills our promise to the children of this state. We talk about accountability in here all the time. Why should the children who are home schooled be denied accountability and forethought, when all the other children of this state are entitled to it? Thank you.

SENATOR BARNES: Thank you. I move the question.

**The question is on the adoption of the committee amendment.**

**A roll call was requested by Senator Bragdon.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**The following Senators voted No: Gallus, Johnson, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**Yeas: 8 - Nays: 14**

**Amendment failed.**

Senator Bragdon moved ought to pass.

SENATOR CLEGG: Thank you, Mr. President. I would just like to point out that Senator Kenney is not here. For the record, he is serving the country in Iraq.

SENATOR BRAGDON: Thank you, Mr. President. I move ought to pass on HB 406.

SENATOR LARSEN: I rise to oppose House Bill 406 without the amendment. I think what you are left with is a bill that does not in fact protect what is a state interest. There are certainly private interests of families to educate their children, but we as a state, have an interest in educating our children, and we as a state, have an interest in knowing that each child is receiving hopefully, an excellent education. Without the at least preliminary review of a home education plan, we do not have any way of ascertaining the study plans of those students who are not attending schools that have regular accreditation and curriculum planning requirements. What I understood from the discussion, and I think all of you heard, is that the assessment test is not going to take place for a couple of years. You've got two years of a student perhaps receiving an education that a parent may feel is adequate, but it doesn't cover the kinds of information that would prepare a student for being successful in this world. I think it makes sense for us to recognize that state interest, and I think we make a large mistake in passing House Bill 406 without the amendment. The amendment, as you heard, reduced paperwork for those home schoolers but allowed a certain oversight of the state's interest in educating its children. This, as passed, if I assume you pass it, will not allow for that oversight, and I think it's a large mistake. I urge all of you to consider this and vote no on passage of House Bill 406 unamended.

SENATOR BURLING: Thank you, Mr. President. I'm going to do this reluctantly. I'm going to vote for this because I can see the role of partisan politics coming into the hall. I don't like doing it, and here's why I don't like doing it. By doing this, we say to the children of New Hampshire, the only way we're ever going to find out if you're getting educated is by testing you every two years. I'm of the school that believes that overemphasis on testing is a bad idea. We're adults. We ought to be asking the teachers whether they're doing a good job. But politics is politics, and I know how this is going to play out. I'm sorry it came to this. I bet in two years time we're back here changing our minds.

**The question is on the motion of ought to pass.**

**A roll call was requested by Senator Bragdon.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse, Hassan.**

**The following Senators voted No: Foster, Larsen, D'Allesandro, Estabrook, Fuller Clark.**

**Yeas: 17 - Nays: 5**

**Adopted.**

**Ordered to third reading.**

Senator Boyce is excused.

### HOUSE MESSAGE

The House of Representatives, on this date, January 18, 2006, is ready to meet with the honorable Senate in Joint Convention for the purpose of hearing the State of the State address by His Excellency, Governor John H. Lynch.

**Recess.**

**Out of recess.**

**HB 582**, relative to the policy for records management. Energy and Economic Development Committee. Ought to pass with amendment, Vote 2-1. Senator Odell for the committee.

**Energy and Economic Development**

**December 15, 2005**

**2006-0265s**

**05/01**

#### Amendment to HB 582

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

AN ACT relative to management of electronic records by the department of state, and relative to departmental salaries.

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

2 Archives and Record Management; Definition of Record. Amend RSA 5:29, V-VII to read as follows:

V. "Record" means document, book, paper, manuscript, drawing, photograph, map, sound recording, *video recording, electronic record*, microform, or other material, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of official business. Library and museum material made or acquired and preserved solely for library use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications and of processed documents are "nonrecord materials" and are not included within this definition of records.

VI. "*Electronic record*" means information that is created or retained in a digital format.

VII. "Records center" means the depository of records and archives.

[~~VII.~~] VIII. "State record" means:

(a) A record of a department, office, commission, board, or other agency, however designated, of the state government;

(b) A record of the state legislature;

(c) A record of any court of record, whether of statewide or local jurisdiction; or

(d) Any other record designated or treated as a state record under state law.

3 Duties of Director; Reference to State Records. Amend RSA 5:30, I to read as follows:

I. Establish standards, procedures, and techniques for effective management of *state* records.

4 Archives and Records Management; Local Records. Amend RSA 5:35 and 5:36 to read as follow:

5:35 Local Records. The director shall accept for [permanent] storage in the state archives such local records as the municipal records board established under RSA 33-A:4-a may require. [~~Any material so stored may be withdrawn pursuant to rules adopted by the municipal records board.~~]

5:36 Assistance to Legislative and Judicial Branches. [~~Upon request~~] ***Under the same provisions specified in RSA 5:33***, the director shall assist and advise in the establishment of records management programs in the legislative and judicial branches of state government and shall, as required by them, provide program services similar to those available to the executive branch of state government pursuant to the provisions of this subdivision.

5 Archives and Records Management; Rules. Amend RSA 5:40 to read as follows:

5:40 Rules. The director, under the supervision of the secretary of state, shall establish a manual of uniform rules ***and procedures*** necessary and proper to effectuate the purpose of this subdivision. Such rules ***and procedures*** and any subsequent revisions, when approved by the governor and council, shall be binding upon all officers and employees of the state. [~~Any rules adopted pursuant to this section shall be adopted in accordance with RSA 541-A.~~]

6 Municipal Records; Reference to Electronic Records. Amend RSA 33-A:5-a to read as follows:

33-A:5-a Electronic Records. [~~Records created in electronic format~~] ***Electronic records as defined in RSA 5:29, VI*** and designated on the disposition schedule under RSA 33-A:3-a to be retained for more than 10 years shall be transferred to paper, microfilm, or both. [~~Electronically-created~~] ***Electronic*** records designated on the disposition schedule to be retained for less than 10 years may be retained solely electronically if so approved by the record committee of the municipality responsible for the records. The municipality is responsible for assuring the accessibility of the records for the mandated period.

7 Department of State; Salaries of Clerks and Assistants. Amend RSA 5:3 to read as follows:

5:3 Clerks and Assistants. Subject to the state personnel regulations, and within the limits of available appropriations and funds, the secretary of state may employ a chief clerk and such other clerks and assistants as may be necessary. ***If a subordinate classified employee's salary exceeds the maximum salary for an unclassified supervisor, the secretary of state is authorized to increase the unclassified supervisor's salary in the amount provided in RSA 94:1-a, III.***

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

2006-0265s

#### AMENDED ANALYSIS

This bill:

I. Provides that the state record management program is intended, in part, to promote integrity in the day-to-day record-keeping activities of state and local government.

II. Amends the definition of record to include video recordings and electronic records, and defines electronic record.

III. Clarifies a reference to state records.

IV. Removes a reference to the adoption of rules by the municipal records board relative to storage of local records.

V. Establishes parameters under which the state archivist shall assist the legislative and judicial branches in establishing records management programs.

VI. Removes the requirement that the state archivist adopt rules under RSA 541-A.

VII. Permits the secretary of state to increase the salary of an unclassified supervisor whose maximum salary is less than that of a subordinate, classified employee.

SENATOR ODELL: Thank you, Mr. President. On page 19 of your calendar today, you'll see that the amendment contains some changes in the statute that deals with electronic records and video recordings and other things dealing with the maintenance of records by the Secretary of State's Office. You'll also see on there under item seven that it also asks that the Secretary of State be empowered to adjust the salaries of his senior officials when a classified employee is near the same salary range as the supervisor. This was added in the committee, and the vote, as you saw, was 2-1. There was some concern that there had not been a public hearing on this last item and that we wanted to make sure that we did it right. So what we've asked, and the Senate Chairman of the Finance Committee has requested, that this bill, after we vote for it today, goes to the Finance Committee. So I ask you to join with the majority of the Energy and Economic Development Committee and support the ought to pass with amendment.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 103-FN-A-L**, relative to a shorefront maintenance fee. Environment and Wildlife Committee. Ought to pass with amendment, Vote 3-0. Senator Johnson for the committee.

**Environment and Wildlife**

**December 15, 2005**

**2006-0263s**

**09/10**

**Amendment to SB 103-FN-A-LOCAL**

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

**AN ACT** establishing a committee to study alternatives for funding the operation and maintenance of state-owned dams and making an appropriation to the state dam maintenance fund.

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

1 Committee Established. There is established a committee to study alternatives for funding the operation and maintenance of state-owned dams.

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) Four members of the house of representatives, appointed by the speaker of the house of representatives.

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

3 Duties. The committee shall study the need for the operation and maintenance of state-owned dams, the existing funding sources for the operation and maintenance of state-owned dams including the state's hydro-lease program, established under RSA 481:32, and the state dam

maintenance fund, established under RSA 482. The committee shall develop recommendations for the continued operation and maintenance of state-owned dams and options for funding the state dam maintenance fund.

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

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2006.

6 Appropriation. The sum of \$1,000,000 is hereby appropriated to the department of environmental services dam maintenance fund, established under RSA 482:55, for the fiscal year ending June 30, 2007. This sum is in addition to any other funds appropriated to the department of environmental services. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

7 Effective Date.

I. Section 6 of this act shall take effect July 1, 2006.

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

**2006-0263s**

#### AMENDED ANALYSIS

This bill establishes a committee to study alternatives for funding the operation and maintenance of state owned dams. This bill also makes an appropriation to the department of environmental services dam maintenance fund.

SENATOR JOHNSON: Thank you, Mr. President. I move Senate Bill 103-FN ought to pass with amendment. The original version of Senate Bill 103 proposed a shorefront maintenance fee as a way to create revenue for the Dam Maintenance Fund. A proposed committee amendment would have also allocated \$500,000 a year from the Energy Efficiency Program to the Dam Maintenance Fund. However, the committee found that this method of generating funds is not an appropriate solution at this time. The state is obligated to maintain its dams, and we must find a way to fund maintenance and repair. The committee amendment will establish a committee to further study alternatives for funding the operation and maintenance of state-owned dams and will also appropriate \$1,000,000 to the DES Dam Maintenance Fund for the fiscal year ending June 30, 2007. The committee asks that you pass Senate Bill 103 with the amendment and send it to Finance so they can take a further look at the funding for dam maintenance. Thank you, Mr. President.

**Amendment adopted.**

#### PARLIAMENTARY INQUIRY

SENATOR BURLING: Parliamentary inquiry of you, Mr. President?

SENATOR GATSAS (In the Chair): Senator Burling, parliamentary inquiry.

SENATOR BURLING: Sorry. I should have done this earlier. I feel the need to disclose what I'm going to vote. I do own a place on a lake. I think there may be others who are in the same situation. Do we have forms, or do we simply disclose on the record?

SENATOR GATSAS (In the Chair): You can disclose it here, and you can disclose on the record.

SENATOR BURLING: I will do it. Thank you.

The question is on the adoption of the bill as amended.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

Senators Burling, Gottesman and Johnson, (Rule #42) on SB 103-FN-A-L.

**SB 371-FN**, relative to the continuation of certain wetlands fees. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President, I move Senate Bill 371 ought to pass. This legislation will continue the existing fee for excavating and dredging permits granted through DES. In 2003, the legislature authorized this fee increase as a way to increase revenues, so the bureau could support full staffing levels. A full staff of nine is needed in order to insure that application decisions are made in a timely manner. The committee is satisfied that the department completes its application reviews within the statutory timeframes and that it will continue to do so in the future with full staffing levels. The committee unanimously asks your support on passing this piece of legislation.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 190-L**, relative to workforce housing opportunities. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 4-0. Senator Fuller Clark for the committee.

**Senate Executive Departments and Administration  
November 28, 2005**

**2006-0230s**

**06/01**

### **Amendment to SB 190-LOCAL**

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

AN ACT relative to workforce housing opportunities and establishing a committee to study including workforce housing in zoning ordinances.

Amend the section heading of RSA 674:56 as inserted by section 2 of the bill by replacing it with the following:

674:56 Definitions. In this subdivision:

Amend RSA 674:56, III as inserted by section 2 of the bill by replacing it with the following:

III. "Workforce housing" means housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. "Workforce housing" also means rental housing, which is affordable to a household with an income of no more than 80 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban development. Housing

developments that exclude minor children from more than 20 percent of the units or in which more than 50 percent of the dwelling units have fewer than 2 bedrooms shall not constitute workforce housing.

Amend RSA 674:58 as inserted by section 2 of the bill by deleting it.

Amend the bill by replacing all after section 2 with the following:

3 Committee Established.

I. There is established a committee to study including workforce housing in a zoning ordinance.

II. Membership and Compensation.

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

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

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

(b) Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

III. Duties. The committee shall study whether to enable a municipality that has adopted a master plan that includes a housing section pursuant to RSA 674:2, III(1) to adopt a mandatory inclusionary zoning provision that requires that workforce housing units, as defined in RSA 674:56, III, be included in any housing development that contains more than a specified number of total dwelling units provided, that such requirements shall not mandate that more than 15 percent of the units in any such development be workforce housing.

IV. 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.

V. Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2006.

4 Effective Date.

I. Section 3 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect January 1, 2007.

**2006-0230s**

AMENDED ANALYSIS

This bill requires municipalities with land use ordinances and regulations not to prohibit or discourage reasonable and realistic opportunities for the development of workforce housing. This bill also establishes a committee to study including workforce housing in a zoning ordinance.

SENATOR FULLER CLARK: Thank you very much, Mr. President. I move Senate Bill 190 ought to pass with amendment. In brief, the bill as amended is divided into two sections. Section one of the bill establishes a legislative definition for workforce housing in order to clarify in statute the responsibility communities have with regard to regulating housing development. This is recognized by all as an important first step towards educating communities, one that should be allowed to move forward. Section two of the bill will set up a study committee to look at including workforce housing in housing ordinances, an issue that needs to be explored further. Senate Bill 190, as amended, preserves the core



purpose of the original legislation which is to codify the obligations of municipalities as established in *Britton versus Chester*, and the committee recommends ought to pass with amendment on Senate Bill 190. Thank you, Mr. President.

SENATOR LARSEN: Thank you, Mr. President. I rise to support the committee amendment as well as the bill. In the year 2000 there was created a commission to study the creation of or to study reducing regulatory barriers to workforce housing in New Hampshire. In that year 2000, those commission members, and we're talking a commission not just a study committee, those commission members ranged from members of Rochester Planning and Development Department, to the Executive Director of the New Hampshire Municipal Association, Office of State Planning, the Realtors Association, the Manufactured Housing Association, the Property Owners Association, representatives from many walks of life in New Hampshire, to study what was then a problem, an acknowledged problem, which is the issue of housing that is available and affordable to not just those who you oftentimes might think of as having trouble getting into housing, but we are now in a position in New Hampshire where we are not creating enough housing to deal with the workforce of this state. That's the tellers, the police chiefs, the policemen, the firefighters, all of those people who help sustain our economy who are finding great, great difficulty, in being able to move out of apartments or move into something that is within their means to live in. I know I suspect everyone seated at these Senate desks has not faced this problem because it wasn't a problem when we were looking for housing, but it's a very real problem now. It was a problem in 2000, so we studied what are the barriers to our being able to create more housing in this state. Even now, the BIA has identified housing as their top issue. They came over to the State House just last week to discuss how are we going to help make this happen this session, and we talked through how that might happen. I had assured the BIA that Senate Bill 190 was passing with this amendment, but in passing it, I understood that the Senate was saying, "Yes, we do need to address workforce housing." And, one of the ways to do it is to codify what was a Supreme Court decision. The Supreme Court, there were two. The one I know better is the *Britton v Chester* Supreme Court decision, which in essence said that every community must recognize its own workforce housing needs and that of the region. That was a decision I believe in the late '80s and has been case law for many years now. But as we all know, case law is not on the books, it's not very visible to our town managers and selectmen. So what we're asking is for you to agree to codify *Britton versus Chester*. It's only a first step, but what the committee amendment did is make it clear to people what they had to do already by case law. By putting it into writing in the statutes, it makes it clearer to everyone. We're not taking a big step in this bill, but we are clarifying communities' responsibilities not just to their own borders, but to recognize the regional needs of housing in this state. Other states have gone far farther than New Hampshire is talking about doing in this, but we believe this is an important first step. My concern is that we are hearing that you are going to now not recommend that this pass with amendment and that you're not going to support your own Senate committee that studied this, and I find that very distressing because I thought we were taking a baby step forward towards addressing the housing needs of this state. Even in the 2002 report of the commission, it states it's imperative that the legislature take immediate steps to insure that zoning and planning procedures at the

local level as well as state policies and regulations that influence them, change to promote the development of workforce housing, not impede it. You're impeding it if you do not take this first step today. As I say, I urge you to consider when the Business and Industry Association of this state says, "We cannot grow our economy because we don't have housing." When you're only being asked to codify what is Supreme Court case law, you're not taking a dangerous first step, but in fact you're being proactive to helping the younger generation of this state be able to get into what is what was for all of us the opportunity for home ownership at a level that you could afford, and I urge you to please consider supporting your committee amendment, your committee's work, and stick with the original plan of ought to pass with amendment. Thank you.

SENATOR CLEGG: Thank you, Mr. President. I have a problem myself with the bill, and I have a problem with the wording you want me to accept. One of the situations as I see is that it says in the amendment, "With an income of no more than 80% of the median income for a three-person household for the metropolitan area." Well, I'm not sure but the last time I looked, we were considered in Nashua and Hudson as part of the Boston metropolitan area. So exactly what is that number now? I don't know what it is. I don't think I'm ready to adopt something I'm not quite sure what it means that I'm doing. I'll get the BIA out. The BIA, the Business Industry Association, is the same group that, when a number of us Senators stood in front of the cameras at a press conference and announced that we wanted to give a \$500 business enterprise tax credit to small business, BIA was the group that said, "That's \$18,000,000. That's better spent on some other government program." So I'm not interested in listening to someone or a group who doesn't think that we should be good to small businesses. And now I have to wonder what's really in it for the big boys for us to pass this. If they're so interested in us passing this, what is it, 'cause the BIA represents the richest corporations in the state of New Hampshire. And I have no problem with corporations doing well. I'm just saying, "Who benefits?" I sat in a room on this bill with some contractors, and I said, "Okay, if we do this," (and I used the example that you need a one acre building lot) and I said, "we now allow you to put three units on that one acre so that housing costs come down. What are you willing to give back to the community? If a lot is \$250,000 which some of the lots in my community are now, but that's for one house and you can put three, don't you think that the lot now goes up to \$500,000? So are you willing to make the state your partner, not the state but the local community? So the amount of dollars you put into that and the cost of local communities get shared." No. I know we're not dealing with that, but I'm looking at it from all angles, and the biggest thing I have a problem with is what metropolitan area are we considering? Doesn't say. A hundred percent of median income. So does that mean it's different in Salem than it is in Berlin? Is that correct? And do we really want to do that? I just don't think that we've gotten it right yet. With all due respect to those who've been working on it, I think there's more to do. I'd feel a lot more comfortable if the small business groups would come in and talk to us and not just the BIA. Thank you.

SENATOR FULLER CLARK: Yes. I would like to be able to respond to Senator Clegg and to let him know that I have a floor amendment that adjusts the 80 percent to 60 percent because that's what was agreed.

SENATOR GATSAS (In the Chair): Senator, are you wishing to speak or a question?

SENATOR FULLER CLARK: I guess I'm wishing to speak. Thank you very much. That would adjust the percentage down to 60% because that's what it was supposed to be, but it didn't make it into the regular amendment. And secondly, to let you know that the primary metropolitan statistical areas that are involved are Boston, Lawrence, Haverhill, Lowell, Manchester, Nashua, and the Portsmouth-Rochester area. That is the basis on which these numbers were arrived at both for a household and for a rental housing, and I'd be happy to share that information with you. This was provided to us by the New Hampshire Housing Authority. And again, I would just like to say that this seems to be a very reasonable approach, that the parameters have been well thought out, that we need to let this language be put into statute so that we provide some guidance to our local communities rather than having those communities constantly having to go to court because there is no...there is no common standard that's being used. And each case is being revisited. There was a second case that came out called the *Great Bridge Properties versus Ossipee*. In the last years that arrived at the same decision which said that local communities have a responsibility to provide housing for all of the citizens in this state. How they choose to meet that responsibility. These are providing them with some guidelines, but it's not mandated. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in support of the bill as amended. As the prime sponsor of this piece of legislation, I worked with the New Hampshire Housing Finance Authority which by no means is an unrealistic organization. An organization put in place by this legislature to do some positive things with regard to affordable housing. This legislation doesn't force anybody to do anything. When we talk about the standard metropolitan statistical area, it also talks about the county, so you have either/or to look at in terms of the income. That's something that should be considered. I live in the city of Manchester. The city of Manchester has done remarkable things to create affordable housing. We've done it over and over again. We've done our fair share. We've done this in order to create a good economic environment for New Hampshire. We know that people will not come here unless affordable housing is available, and affordable housing is diminishing. It's not available. We need people to remain here. We need people to come here in order to maintain the economic prosperity of this state. You can't do it without something like this legislation passing. We talked about the BIA. Let me talk about one of the large companies, one of the large employers that Senator Clegg **TAPE CHANGE** and they bring employees into our state. They embellish our state. They do positive things for us. They need affordable housing for their employees, and as a result, we have got to make it available. I think we have a habit in this legislature of studying things to death. This piece of legislation has not only been studied, it's been re-studied and re-studied, and it comes up every session. It seems to me it's about time we do something. Studies should produce fruition, a result, not a continuing study. You know, we talk about *Minkowski's space-time continuum*? It goes on forever. We shouldn't be studying things forever. Thank you, Mr. President.

SENATOR LETOURNEAU: I rise in opposition to the amendment, and I represent Derry and live in Derry. And Derry right now currently has 49.4 percent of our housing stock is multi-family, manufactured housing, and regional infrastructure. And the reason why it happens in Derry and Manchester is because we have water and sewer. This particular piece of legislation has no teeth in it to make any community do their

fair share. That's why I think it needs to be studied. There's no teeth in this bill to make anybody do anything. We're not against fair share housing, but we think that other people should pick up their fair share also. Now this particular piece of legislation and the workforce housing, on the last few lines, it takes out, it excludes housing developments. It excludes minor children or 20 percent of the units of which are 50 percent of the dwelling units have fewer than two bedrooms. Many of the condominiums, many of the apartments, are single bedroom apartments. That may take that 49 percent and change that number and cause this community to have to do more. The expansion of 93 is going to have a tremendous impact in the southern part of the state. We need to be able to control things. In the town of Derry they have come up with a growth management ordinance that allows for multi-family housing, allows for building in a reasonable way that it doesn't impact the town in a negative fashion. That's why I think we need to study this a little bit further, and I'm opposed to the bill and I'll be voting against the amendment. Thank you.

SENATOR CLEGG: Thank you. I just want to correct something that I think maybe I misconstrued or misspoke. But, under no circumstances do I believe that BAE is a bad company. I do believe that BIA does not represent that company properly because, under no circumstances would a company like BAE who pays lots of taxes ever say, "To hell with the little guy, don't give them the break in taxes." I think they'd say just the opposite. And I think Public Service who is also a good member would not say what BIA has said. Therefore I stand by my comment that there must be something in it for BIA the organization, and not for the little guy.

**The question is on adoption of the committee amendment.**

**A roll call was requested by Senator Fuller Clark.**

**Seconded by Senator Foster.**

**The following Senators voted Yes: Burling, Green, Flanders, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**The following Senators voted No: Gallus, Johnson, Boyce, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**Yeas: 10 - Nays: 13**

**Amendment failed.**

Senator Letourneau offered a floor amendment.

Sen. Letourneau, Dist. 19

Sen. Clegg, Dist. 14

Sen. Barnes, Dist. 17

Sen. Morse, Dist. 22

**January 18, 2006**

**2006-0476s**

**06/09**

### **Floor Amendment to SB 190-LOCAL**

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

**AN ACT** establishing a committee to study including workforce housing in zoning ordinances.

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

1 Committee Established.

I. There is established a committee to study including workforce housing in a zoning ordinance.

II. Membership and Compensation.

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

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

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

(b) Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

III. Duties. The committee shall study whether to enable a municipality that has adopted a master plan that includes a housing section pursuant to RSA 674:2, III(1) to adopt a mandatory inclusionary zoning provision that requires that workforce housing units be included in any housing development that contains more than a specified number of total dwelling units provided, that such requirements shall not mandate that more than 15 percent of the units in any such development be workforce housing.

IV. 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.

V. Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2006.

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

**2006-0476s**

### AMENDED ANALYSIS

This bill establishes a committee to study including workforce housing in a zoning ordinance.

SENATOR LETOURNEAU: Mr. President, I'd like to move amendment 0476, which includes the study portion of this bill.

SENATOR GATSAS (In the Chair): Speak to your amendment while it's being passed out.

SENATOR LETOURNEAU: As I said earlier, I'm not opposed to workforce housing. I don't think anybody is. I think it needs some more study. As I spoke to each of the communities that I represent, and I spoke to the town selectmen and I spoke to the boards, they were opposed to it as it was. They weren't opposed to it as a policy, but it felt as though that it needed some more study to have some more input. They weren't even aware that this was going through. So I'm hoping that we can send this over to the House as a study committee, and next year we can come back with something that's positive. Thank you.

SENATOR FOSTER: I rise in opposition to the amendment. This issue has been studied and studied and studied. Senator Larsen was reading, I believe, before from a study committee that I understood went on for two years. Sometimes we study things as a way of never really dealing with a problem. I'm not saying that that's Senator Letourneau's inten-

tion. I'm sure it's not his intention. I'm sure he has good motives with this study committee, but we'll study it again frankly over the summer-time when most of us are running for election, and I really wonder whether anything positive is going to come out of such a study committee. We heard a few...a couple hours ago now, from the Governor saying that one of the most important things for the economic development of this state is to put forward workforce housing, and I know Senator Larsen's been working on this for a great deal of time. Senator D'Allesandro and others of you have. I just don't see why we want to continue to study it. I know that Senator Clark has an amendment that perhaps would have corrected some of the things that Senator Clegg was concerned about before. I think we need to move on this issue, not continue seemingly forever to study it. And you know there was a lot of talk about the BIA and criticizing them. You know, I can recall a rather lengthy debate that Senator Hassan and I were involved in where they sort of single-handedly brought down a piece of legislation in the disability discrimination area where people felt that they had the thoughts of business at heart. Now I guess I hear today that maybe they really don't. But they're not the only ones that have spoken about this. Probably most of you have seen the New Hampshire workforce housing presentation that's been studied. This is a real problem for the economic development of our state. We've got to stop studying it. We've got to start doing something about it. Thank you, Mr. President.

SENATOR FULLER CLARK: Thank you very much. Again, I would like to say that there is the opportunity to move forward and look at other pieces. I hear from Senator Letourneau that he would like something that addresses the issue of fair share. That's a separate issue from what we're trying to get passed today, and I think it's really setting us backwards by not having passed this legislation and then moving forward with a study bill that was in the bill as we brought it to you today to look at those other issues. So we aren't making any progress, and we're just delaying addressing an issue that is critical to the economic vitality of this state if we're going to move forward. Thank you.

SENATOR MARTEL: Thank you, Mr. President. I still struggle with this laryngitis, but I'm going to make it very brief, and everybody will be happy about that I'm sure. This is a very important issue. I'm going to, I am supporting this floor amendment because I am a Senator who has a role in an urban setting. I have a town of Litchfield which is not in favor of this because it would put some really costly measures in the town which the town is not prepared to face because it is not done as much as I think it should have and also selectmen in the town agree with this that it's time for, when the new bridge comes across, that new businesses will come in, but they haven't arrived yet. This is not enough to prepare the town for that, so I urge that...support this study 'cause the city of Manchester has no issue with this really it does but it really does not. But I urge that we pass this floor amendment so that in this case, I can get satisfaction and see if we can bring this about that both rural and urban areas are able to flourish by this type of workforce housing coming in. Thank you, Mr. President. Manchester's been an excellent, excellent example of what we've done in the past and what we continue to do. And I thank you very much.

SENATOR D'ALLESANDRO: Thank you, Mr. President, I rise against the amendment. As I said, and I don't want to regurgitate and reiterate what others have said. But the process of study is something that we have been embracing for a number of years. But I think, when you

study something to death, you create a situation where positive things can't result. And we have studied this. Anyone who thinks that the time spent this summer going over this bill wasn't study, I mean we had ample opportunity to bring testimony forward, to have it heard by those who were on the study committee. I think the study committee did a very good job of listening and brought forth something that's very reasonable and very acceptable, and it doesn't create...this bill does not create state-wide zoning or a mechanism to override the local regulatory process. It doesn't do that. It would not establish a workforce or affordable housing goal or a fair share for any community or require that communities build or create any housing. It would not prohibit communities from enacting reasonable and responsible policies designed to guide or manage growth or to protect the natural resources and quality of life. It only requires that they consider the effect of such regulations may have on the private sector's ability to create much needed housing. I served as chairman of the housing committee on the Federal Home Loan Bank of Boston. The Federal Home Loan Banks were created in the 1930s to allow for the government to participate in the financing and building of affordable housing. A magnificent, magnificent gesture on the part of the federal government. Federal Home Loan Bank of Boston has invested in New Hampshire, invested in Portsmouth. Gave the city of Portsmouth a \$300,000 grant to work on the housing at the old Portsmouth Hospital. Spent money in the northern part of our state to create housing. These kinds of activities have been going on for a long period of time. That's all this legislation does is allows us to move forward, to come out of the study mode and to do something positive. Isn't it about time we do something positive? We can study and study and study. I wish studying embellished our, our opportunities, but sometimes studying is the death knell of legislation. I would encourage people to vote against this. We consider our vote on the previously defeated amendment and move forward with housing. Thank you, Mr. President.

SENATOR LARSEN: Thank you, Mr. President. Because there've been so many studies, I just wanted to point out for example Alisa Shapiro's study that showed in the time of a year which it will take for this study to occur, there is an estimate by an economist we all know that the tight housing workforce housing market will cost New Hampshire annually 1,300 to 2,800 fewer jobs, and that's not just in the bigger, bigger corporations that, that you are speaking of but in fact the whole state, perhaps as many as 2,800 fewer jobs. As much as \$121,000,000 less personal income; as much as \$253,000,000 reduction in the gross state product; and as much as \$33,000,000 less in local and state revenues. In essence, we are delaying what we know needs to be a decision made now. I suspect I know the outcome of this plan to just substitute a study, but I would encourage you to look this session at a bill that you can use to bring forward your concerns. Let's get it done this session. There's a bill. There are other housing bills in this...in the works in this state, and let's look at how we can come together to an agreement that works for our communities, because this is an issue that costs the state every year we don't address it, and personal lives.

**The question is on the adoption of the floor amendment.**

**A division vote was requested.**

**Yes: 13 - Nays: 10**

**Floor amendment adopted.**

**Recess.**

**Out of recess.**

**The question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Clegg.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

**The following Senator voted No: Boyce.**

**Yeas: 22 - Nays: 1**

**Adopted.**

**Ordered to third reading.**

**SB 264**, relative to the chief financial officer of the department of environmental services. Executive Departments and Administration Committee. Ought to pass, Vote 3-0. Senator Larsen for the committee.

SENATOR LARSEN: Thank you, Mr. President. I move Senate Bill 264 ought to pass. The committee heard that the vacant chief operating officer position in the department two years was used to meet a specific need for someone who had more financial CFO skills. The department, with the encouragement of the Governor and Council, is now seeking to change the title of the position to reflect the job being done. Senate Bill 264 would change the title of the position from Chief Operations Officer to Chief Financial Officer. There would be no change in salary or labor grade, and the committee recommends ought to pass on Senate Bill 264. Thank you.

**Adopted.**

**Ordered to third reading.**

**Recess.**

**Out of recess.**

**SB 131-FN**, establishing a school choice certificate program. Finance Committee. Ought to pass with amendment, Vote 5-1. Senator Green for the committee.

**Senate Finance  
January 11, 2006  
2006-0383s  
10/01**

#### **Amendment to SB 131-FN**

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

1 New Chapter; 21<sup>st</sup> Century Scholars Program. Amend RSA by inserting after chapter 193-H the following new chapter:

#### **CHAPTER 193-I**

##### **21<sup>ST</sup> CENTURY SCHOLARS PROGRAM**

193-I:1 Definitions. In this chapter:

- I. "Board" means the 21st century scholars fund board.
- II. "Department" means the department of revenue administration.



III. "Educational scholarships" means grants to pupils to cover all or part of the tuition and fees at a private qualified school or all or part of the tuition and fees at a public school outside the school district in which a pupil resides.

IV. "Eligible pupil" means any pupil who is legally allowed to attend a public school in grades 1-12 and whose family income does not exceed 250 percent of the federal poverty income level.

V. "Parent" includes a guardian, custodian, or other person with authority to act on behalf of the child.

VI. "Program" means the 21<sup>st</sup> century scholars program.

VII. "Qualified school" means a public or non-public school in our state that complies with all of the requirements of the program.

VIII. "21st century scholars fund" or "fund" means an entity that is determined by the Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code, as that section now exists or may hereafter be amended, established by the state to collect and administer funds that are to be used for the purpose of providing and managing the delivery of scholarships to eligible pupils.

193-I:2 Corporation Established. There is hereby established a body politic and corporate having a distinct legal existence separate from the state and not constituting a department of state government, to be known as the 21st century scholars fund corporation to carry out the provisions of this chapter. The corporation shall be a public instrumentality which shall perform public and essential governmental functions of the state as provided in this chapter. The corporation shall be a private nonprofit corporation and shall have all the powers necessary to carry out the purposes of this chapter, including, but not limited to, the power to receive and accept grants, loans, or advances of funds from any public or private agency and to receive and accept from any source, contributions of money, property, labor, or any other thing of value, to be held, used, and applied for the purposes of this chapter. Notwithstanding any other provision of law, any payments made by the corporation for educational scholarships under this chapter, either directly or indirectly, shall be exempt from the premium tax under RSA 400-A:32.

193-I:3 21st Century Scholars Fund Corporation; Board.

I. The powers of the corporation shall be vested in 12 members for 3-year terms of office as follows:

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

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

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

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

(e) Five public members, appointed by the governor, of which:

(1) Two shall represent the business community.

(2) Two shall represent the private school community.

(3) One shall be an at-large member.

(f) The commissioner of the department of education, or designee.

II. The initial terms of office shall be as follows: the member in subparagraph I(e)(3) shall serve for one year; the member in subparagraph I(e)(1) shall serve for 2 years; and the members in subparagraphs I(c), I(d) and I(e)(2) shall serve for 3 years. The members in subparagraphs I(a)-(b) shall serve terms which are coterminous with their terms in office.

III. The members shall elect annually from among their number a chairperson and such officers as they may determine. A member shall hold office until a successor has been appointed and qualified. Members shall receive no salary for the performance of their duties under this chapter, but each member shall be reimbursed for reasonable expenses incurred in carrying out duties under this chapter. Any such expenses by board members shall have prior approval by 6 members of the board of directors before reimbursement. Legislative members shall receive mileage at the legislative rate when attending to the duties of the board. A member of the board of directors may be removed for cause by the official who appointed that member.

IV. There shall be no liability on the part of, and no cause of action shall arise against, any member of the board, or its employees or agents, for any action taken in the performance of their powers and duties under this chapter.

V. The board shall have complete fiscal control over the corporation and shall be responsible for all corporate operations.

VI. Board meetings shall be held at the call of the chairperson or when 3 members so request. Six members of the board shall constitute a quorum and the affirmative vote of 6 members shall be necessary for any action taken by the authority. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the corporation.

193-I:4 21<sup>st</sup> Century Scholars Fund Corporation; Board; Powers and Duties.

I. The 21st century scholars fund corporation board shall:

(a) Notify the department of education of the board's intent to provide educational scholarships to pupils attending qualified schools, and which public school districts those pupils reside in.

(b) Provide a receipt for contributions to the organization by an individual taxpayer or corporate taxpayer for support of educational scholarships to the department of revenue administration and the taxpayer.

(c) Create and provide to the public a procedure for applying to the program.

(d) Consult appropriate professional organizations and establish standards providing educational scholarships.

(e) Develop and implement a plan to publicize the program and the procedures for enrollment in the program and to maintain public awareness of the corporation and the program.

(f) Secure staff necessary to properly administer the corporation. Staff costs shall be funded from state funds appropriated by the legislature and such other private or public funds as become available. The board shall determine the number of staff members necessary to administer the corporation.

(g) Ensure that at least 90 percent of its expenditures are for educational scholarships.

(h) Require applicants to provide a tax return, proof of current residence in New Hampshire, and proof that the pupil was continuously enrolled in a public school during the prior school year.

(i) Make every effort to make the program easily accessible and usable by the public.

(j) Inform parents of educational scholarship recipients of their acceptance into the program no later than 30 days after receiving the application.

(k) Ensure that first-time recipients of educational scholarships were continuously enrolled in a public school during the previous year.

(l) In the case of oversubscription to the program, conduct a random selection from scholarship applicants to determine who shall receive an educational scholarship.

(m) Provide scholarships for pupils in the following manner:

(1) \$3,500 for families that have household incomes of 200 percent or less of the federal poverty income level upon the initial application to the program.

(2) \$2,500 for families who have household incomes between 201 percent and 250 percent of the federal poverty income level upon initial application to the program.

(n) Ensure that once a pupil receives a scholarship, the pupil is offered a scholarship in any future years, until he or she reaches the age of 21 and provided that he or she meets other necessary requirements for eligible pupils.

(o) Ensure that educational scholarship payments are made out to the parents of the pupil and sent to the qualifying school of choice for endorsement by the parent to the school.

(p) Conduct criminal background checks on all employees, and shall exclude from employment any people that might reasonably pose a threat to the safety of children or a risk to the appropriate use of contributed funds.

(q) Ensure that pupils receiving an educational scholarship take either the state tests or nationally recognized norm-referenced tests in math and language arts, or both, and ensure that the pupils' scores are provided to their parents.

II. The program shall not provide educational scholarships for pupils to attend any school with paid staff or board members, or relatives thereof, in common with the staff members of the fund.

III. Provide an annual interim report, the first on or before January 1, 2007, to the governor, senate president, speaker of the house of representatives, and commissioner of the department of education on the development of the program. This report shall include information prepared by a certified public accountant regarding grants made in the previous calendar year and shall include:

(a) The total number and total dollar amount of contributions received during the previous calendar year; and

(b) The total number and total dollar amount of educational scholarships awarded during the previous calendar year, the total number and total dollar amount of educational scholarships awarded during the previous year to pupils who are in families that are in each subgroup of qualifying income for the federal poverty income level; and

(c) A detailed listing of administrative and marketing expenses.

#### 193-I:5 Responsibilities of the Parents.

I. Parents shall apply for scholarships for their eligible pupils by August 31, 2006. In subsequent years, parents shall apply for scholarships for their eligible pupils by July 31.

II. Parents shall provide a copy of their income tax return, along with any application materials required by the program.

#### 193-I:6 Responsibilities of the Department of Revenue Administration.

I. The department shall provide a standardized format for a receipt to be issued by the fund to a taxpayer to indicate the value of a contribution received. The department shall require a taxpayer to provide a copy of this receipt when claiming the tax credit for contributions to the fund.

II. The department shall have the authority to conduct either a financial review or audit of the fund if possessing evidence of fraud.

III. The department shall develop a process to make tax credits available for contributions on a first come, first serve basis.

IV. The department shall report to the state treasurer's office by June 30 of each year the amount of dollars raised from private sources and request that treasurer issue a check to the fund in the amount mandated by this chapter by August 1 of each year.

193-I:7 Responsibilities of Qualified Schools.

I. All qualified schools shall:

- (a) Operate in New Hampshire;
- (b) Comply with 42 U.S.C. section 2000d et seq.; and
- (c) Be approved by the state of New Hampshire.

II. All nonpublic schools shall have nonprofit status under the Internal Revenue Code in order to be qualified under this chapter.

III. Schools shall not refund or rebate any portion of the scholarship to the parent. Any refund for rebate for any portion of the scholarship shall be made to the fund.

IV. Pupils receiving an educational scholarship from the fund shall take either the statewide education improvement and assessment tests pursuant to RSA 193-C, or a nationally recognized norm-referenced test in math and language arts, or both. Pupils' scores in such tests shall be provided to their parents.

193-I:8 Tax Credits.

I. There shall be an interest and dividend tax credit, not to exceed \$100,000, for qualified individuals for contributions made to the fund during the taxable period.

II. There shall be a business enterprise tax credit applied against taxes due under RSA 77-E, not to exceed \$400,000, for qualified businesses for contributions made to the fund during the taxable period.

193-I:9 Appropriation.

I. The sum of \$1,000,000 for the fiscal year ending June 30, 2006 is hereby appropriated to the 21st century scholars fund established in this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

II. The sum of \$1,000,000 shall be appropriated to the 21st century scholars fund upon the request of the 21<sup>st</sup> century scholars fund corporation board, and certification received by the board from the treasurer of the state of New Hampshire, that private contributions to the 21st century scholars fund from individuals or businesses equals or exceeds \$500,000. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

2 New Section; Taxation of Income; Credit for Contributions to 21st Century Scholars Fund. Amend RSA 77 by inserting after section 4-f the following new section:

77:4-g Adjustments for Contributions to the 21st Century Scholars Fund. A taxpayer who pays the interest and dividend tax pursuant to RSA 77 and is not a dependent of another taxpayer may claim a credit for a contribution made to the 21<sup>st</sup> century scholars fund established in RSA 193-I:9, II. An individual, corporation, or non-profit entity who does not file a New Hampshire state tax return may claim a charitable deduction for a contribution made to the fund as may be permitted by law. The credit may be claimed against the interest and dividend tax by an individual taxpayer in an amount equal to the total contributions made to the fund during the taxable year for which the credit is claimed. The credit may be claimed by an individual taxpayer or a married couple filing jointly in an amount equal to the total contributions made to the

fund for educational scholarships during the taxable year for which the credit is claimed up to 100 percent of the taxpayer's tax liability. Individual or corporate donors may give an unlimited amount in contributions above the dollar amount to which they are entitled a credit, but shall only be entitled to the credit to the extent of available appropriations in any fiscal year.

3 New Section; Business Enterprise Tax; Adjustments. Amend RSA 77-E by inserting after section 3-a the following new section:

77-E:3-b 21<sup>st</sup> Century Scholars Fund Credit. Credit for contributions to the 21<sup>st</sup> century scholars fund as provided in RSA 193-I shall be allowed against tax due under this chapter. The credit may be claimed against the business enterprise tax by a corporate taxpayer in an amount equal to the total contributions made to the fund during the taxable year for which the credit is claimed up to 100 percent of the taxpayer's total liability. Individual or corporate donors may give an unlimited amount in contributions above the dollar amount to which they are entitled a credit, but shall only be entitled to the credit to the extent of available appropriations in any fiscal year.

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

**2006-0383s**

#### AMENDED ANALYSIS

This bill authorizes the state to establish and make appropriations to the 21<sup>st</sup> century scholars fund, a non-profit, public and private partnership that will provide educational scholarships to eligible New Hampshire school children in grades 1-12 to attend a qualified school.

SENATOR GREEN: Mr. President, I'm going to ask if we got a quorum. I just see people roaming around, and do you want me to go or do you want me to wait for those senators?

SENATOR GATSAS (In the Chair): You should just move it along.

SENATOR GREEN: Alright, I will do that. I don't know how they're going to feel about this, but I'll do it anyway. There we go. See I waited long enough, and I, you know procrastinated. Looking for a crowd, right. Thank you, Mr. President. I want to move Senate Bill 131-FN ought to pass with amendment. I will make a comment about the amendment after I give a description a little bit about the bill. This legislation creates the 21<sup>st</sup> Century Scholar's Fund, which is a non-profit public and private partnership that will provide educational scholarships to eligible New Hampshire school children to attend a qualified school. The board is constructed in a manner that is very similar to the current Healthy Kids Corporation. The amendment addresses funding for the program, appropriating \$2,000,000. One million of those funds will be appropriated once the private sector raises \$500,000 towards the 21<sup>st</sup> Century Scholarship Program. The Finance Committee asks your support on the motion ought to pass with amendment. What I would ask you to do is, the current amendment that is in your calendar which is on page seven, has some citing errors of statutes, and it was picked up after the amendment was addressed by the Finance Committee. That has been...the only thing you'll see in a new amendment is the corrections for the amendment, but the amendment basically does the same thing but cites the right statutes. So I will leave that up to you after you hopefully will, on behalf of the committee, defeat the current amendment that is before you, and a new amendment will be offered by Senator Johnson. Thank you, Mr. President.

SENATOR ESTABROOK: Thank you, Mr. President. I have no problem with redressing the amendment to make it technically correct, but I still rise in opposition to either amendment. I stood here last session to rail against this bill calling it disturbing. Well, it's good that only a few of you saw the steam coming from my ears and heard the words coming from my mouth when I read the latest Finance Committee amendment to this bill. Disturbing it still is, as well as audacious, misguided, and downright outrageous. The blatantly unconstitutional intent of this bill remains. A voucher of approximately \$3,000 is obviously not going to cover private school tuition nor need it since private academies have adequate scholarship resources for this income group. What it might cover though, is most of the cost of parochial school tuition. During last session's debate on this bill, you may recall the lobbyist for the church, when questioned about the no compelled support clause of the New Hampshire Constitution, replied he felt it would be good to send a test case on it to the court. Now the wording of the text in the Constitution is, "No money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination." No money ever granted or applied. What exactly needs to be clarified about that? A more straightforward approach to vouchers for parochial schools would be a companion constitutional amendment. I believe this constitutional position was good public policy when it was enacted, and it is good public policy today. It gives comfort to members of religious minorities such as myself, that they are not working to send funding to religious education programs that foster hatred against them. This is not an extreme application of this bill. It will happen should this become law. We will have 21<sup>st</sup> Century Religious Scholars funded with taxpayer money. Regardless of the religious intent, the use of taxpayer money for private school tuition, vouchers, dressed up in the manner set out in this bill, is an outrageous expenditure of taxpayer funds in light of other much more fundamental needs that have gone unfunded. I won't begin to choose one to highlight. We each have some we know are more worthy of taxpayer support than this. The bill not only appropriates \$2,000,000 taxpayer dollars, but also creates tax credits that will cost taxpayers big time. As one of the sponsors of earlier legislation to extend tax credits to employers providing employee health insurance coverage, which failed to gain majority support, my jaw drops to think that we would extend such tax credits for private school tuition, but not healthcare coverage. What a bizarre policy choice. And, most outrageously, this bill guarantees a student vouchered funding for his or her entire twelve years of education; actually until age twenty-one, from day one. It creates an entitlement to private education without regard to available funding. With other more pressing educational needs unmet and unstable, with local districts struggling to balance budgets with lessening state aid, this legislation is misguided. It is bad public policy in so many ways. It is not worthy of your support, and it will not have mine.

SENATOR FOSTER: Thank you, Mr. President. I, too, rise in opposition to the committee amendment and I suspect Senator Johnson's amendment if it's similar as what's been described to me. Not last session, but the previous session, I had spoke in opposition to a similar bill. This again is nothing more to me than a dressed up school voucher bill dressed up with nice language, 21<sup>st</sup> Century Scholars Program, public-private monies are going in, we're getting corporations involved in education, and you know that can look like a good thing at 30,000 feet. But, at the end of the day it's a school voucher bill, and it's not even really that,

because if we really wanted to send our underprivileged kids to private school we'd have a voucher amount a heck of a lot higher than this. They can't go to Derryfield. Can't go to Exeter. They can't go to St. Paul's. They can't go to Andover. I guess they couldn't go to Andover because it's not in New Hampshire, but pick your private school in New Hampshire. They can't afford it. Those tuitions are a heck of a lot higher. So what can these be used for? These can be used for religious schools. That's what you can do with this money because they cost, according to articles in the *Telegraph* which I'm going to get to later, you know \$4,000 or \$5,000. So these will get you into those schools. They'll pay your way into those schools. And, as Senator Estabrook said, the Constitution has pretty specific language. She said read from what provision. There's another provision that says, "No person shall ever be compelled to pay towards the support of the schools of any sect or denomination," and that's darn good public policy. We don't have religious hatred in this country. We don't have one religion blowing up or killing another like we do around the world, and you know ironically in Europe where there is support of religious schools, nobody goes to places of worship like they do here. You might ask yourself whether that's because government's got its tentacles into the church. We don't like government being involved in our private lives, but this is what this would do. But, for me it's really something deeper than that, and I'm going to get a bit personal here. But I want to tell you a story. We have some good friends of ours. They've now moved since moved down to North Carolina, but they were very involved in their religion. And we would talk because we had a different one than they did about our religion, their religion, and you know the kids would overhear this stuff. And I have kids who at that time were probably something like four, eight, and ten, and they had a nine-year old or an eight-year old. And they were talking about their...their religion, and their little girl turned to mine and said, "Well, you know you're going to go to hell of course." I shouldn't have to pay to train kids that are going to tell my kids that sort of thing. That is just simply wrong. I want to read the *Nashua Telegraph* this week has been having a series of articles on some religious schools in the area, and let me be clear. Some of the religious schools in my area are wonderful schools. They provide excellent education, excellent education. One of them does a pretty good job in the sports field as well as we all know. They're great schools. I don't oppose those schools. I oppose paying for the religious training that they get in some of those schools. Let me read from *The Telegraph*. "Visits to four area schools and interviews with officials, parents, and students find that all cite the same driving force, a desire to have their children educated in a way that's consistent with the family's religious beliefs, even at a cost that can approach \$5,000 per year". "We want to help the family in passing on their beliefs to provide a Christian world view. The majority of Americans are Christians, but the culture doesn't reflect that," said Christine Irvin, Principal of Nashua Christian Academy. "That's the main reason people come here." The common refrain from these schools is that they provide solid academics that is bible-centered and Christ centered. Even mathematics can dip into the Old Testament. Holmes, for example, has built a lesson around an apparently incorrect value of pi, the ratio of a circle's diameter and circumference that can be found in I King 7:23." I didn't look up the bible references, so I'm not sure how that helps one with pi, but apparently it does. Another quote from a paper with a letter. "We laugh when they talk about dinosaurs and say it was 50,000,000 years ago or whatever. It's a guess. It's a theory." My point

is this. We shouldn't be taking taxpayer dollars to promote religious beliefs. That's in effect the only thing this bill can do because of the tuitions that we're talking about. It's the only place people with this level of income will be able to attend. It's simply the wrong thing to do. It's going to take us down the wrong road ultimately. We haven't done this for a long time and, as I said, we've lived very peacefully and we are the most religious country in the western world. And again I think there's a reason for that because we don't mix government with religion. So I would ask you to oppose this piece of legislation. Thank you, Mr. President.

SENATOR GREEN: I wasn't going to speak for a second time, but people are trying to make this out as a religious bill. I read the definition of a qualified school. It says, "Means a public or non-public school in our state that complies with all the requirements of the program." Nowhere in here is the word parochial. Nowhere in here is the word religious. The scholarship is applied for by the parent, and if the parent gets the scholarship for their child who is eligible based on the financial guidelines, they have a choice. Choice means choice. Choice of another public school or a private school. So I am having a hard time with the way this is being spun by only relating to it as the only way this can work is if children go to religious schools. I don't believe that's true, and I believe it's up to the parent to decide the education of their children, not the legislature. And if they decide to home school them, that's fine. If they decide that they would like to apply for a scholarship they need the help financially to send them to a private school, that's fine. If they decide that they would like to transfer them and see them in another public school, that's fine. The bottom line is what's best for the child. And I happen to believe that the money should follow the child. In fact, our own commissioner of education, not about this bill, but he's very much into the philosophy of the money following the child. He wants to make sure the child gets the education that the parents think is appropriate for their children. So I take offense to thinking that this is just a religious bill. It is not a religious bill. Are there some parents that may choose that for their children? Probably. And I see nothing absolutely wrong with that. But the point is, this piece of legislation was not written for that particular objective. It was written to give certificates and scholarships to children who have no other choice because of financial problems or financial needs to go to a different school. That's what this bill's about. Now if you don't believe in school choice, then fine, vote against it. But if you think school choice is a good thing, it's the best thing for the parents and their children, then vote for it. But please don't just raise the issue of one thing that you think is going to happen. It just isn't there. Now this bill, as it's currently the original bill, which is going to be amended, which we've passed the amendment, is basically the same concept that this Senate really had the votes to pass last time, but we re-referred it. The only issue that was to be decided for the re-referral to the Finance Committee was how we were going to finance it, how we were going to fund it. Now we've got a solution to that, without affecting the trust fund. The debate over the policy is an old debate, and this Senate has voted on that in policy already. The question now is do we have a legitimate way to finance this so it doesn't affect the education trust fund? No one's taking any money from the public schools in this legislation. Some of you would like to probably get more money in the trust fund, and that's a reasonable thing to try to do. But don't suggest that you're taking money from the trust fund that's going to public schools. That's not what's happening. So I ask for your support of the bill as amended, and once again



ask you to defeat the amendment and move on to a corrected amendment which is basically the same with the corrections after we vote on the current amendment. Thank you, Mr. President.

SENATOR ODELL: Thank you, Mr. President. I take a little bit different tact this afternoon. In the past I've voted against voucher bills, but in the committee the other day I voted for this bill because it was my hope that this bill would come out and be part of a broader discussion about education for the young people of the state of New Hampshire, and it would tie into the increasing of the age before children can drop out of school to age eighteen. So I took the perspective that this would be something that we could incorporate into a broad public policy. And seeing that that's not going to be the case that this bill's going to go forward today that I will vote in opposition.

SENATOR LARSEN: Senator Green. Senator Green, you just mentioned that you found a way to pay for this, and in Finance we had a bit of that discussion. But I don't see in this bill nor did I hear in Finance that in fact we do have a way to pay for it. We have an appropriation that adds some...has some tax credits which then bring in some business, presumably some business contribution. But I still don't see a full way to pay for this. And I had understood in Finance that you have another idea coming down the pike that will in your mind pay for this. How do you intend to pay for it?

SENATOR GREEN: I will let Senator Clegg respond to that question if you don't mind. Senator Clegg.

SENATOR CLEGG: Thank you. Senator, there's a piece of legislation that's still getting the bugs worked out of it between all the legal beagles, that would bring another \$28 or \$30 million dollars into the state coffers from the tobacco industry. It's not an increase in the taxes; it's just a different method of collecting the taxes that actually allows the state a certain amount of money on a quicker basis. So, when that comes through, they'll be in it. I can tell you that as I'm drafting it. It has this as part of it, and also I've added, for discussion, parts of the Governor's alternate program for sixteen to eighteen-year olds, and I agree with Senator Odell. This is all part of that, an intricate part in my opinion of that, and I believe that with my discussions with the House, that when they take this bill over there, they'll be looking for passage of the funding mechanism or it dies in their Senate Finance Committee or their House Finance Committee.

SENATOR LARSEN: Further question. So my understanding is that there will be...in your...it is your intent to bring additional general funds through the taxation of tobacco, which will go into the general fund and then be used to pay for these scholarships which could in fact be going to religious schools.

SENATOR CLEGG: The quick answer is yes, and the full answer is I believe that all \$30,000,000 we believe will be coming in will be earmarked before it ever leaves the Senate.

SENATOR LARSEN: I guess the point I want clarified is that in fact these are general funds going into a 21<sup>st</sup> Scholars Program

SENATOR CLEGG: Definitely general funds.

SENATOR LARSEN: That will...that could be used for religious schools.

SENATOR CLEGG: The money will definitely be from general funds.

SENATOR LARSEN: Yes, thanks.

SENATOR BRAGDON: Thank you, Mr. President. I rise quickly just to address some of the concerns that were brought up regarding the constitutionality, and I agree though with Senator Green, that this is not a bill directed just towards any specific types of schools. It's open to all public and non-public schools. But the issue of constitutionality comes up every time this comes up I guess. And both at the federal level and the state level there have been numerous decisions that would allow for this type of approach. At the federal level, certainly leaving it in the hands of the parents to decide where that money goes has been a key provision, and even in the state level I can think of three examples. And I didn't have time to go read through my notes downstairs, but three significant court challenges in New Hampshire saying that certain spending by public dollars for non-public schools. For instance, public school buses are allowed to transport students to religious schools. The state in the past has provided financial assistance to students attending nursing programs run by religious schools. That went through the courts, and the court agreed that that was allowed. And also allowing religious schools to use resources from the public schools. So there've been numerous court cases in New Hampshire where the court has found that there is a legitimate use for this type of plan. Thank you.

SENATOR BOYCE: Yes. I just also want to take a little different tack on this whole process and what this is all about. I take a free market approach to this. What I believe is that, any time you have a monopoly, a monopoly is not...does not have an incentive to keep costs down because they know that the consumer of whatever that commodity is that they have a monopoly on will have to buy it. This happens with the oil from the cartel, the OPEC. They know that they have the oil. Nobody else has enough oil to affect that market. They can jack the price up, and we pay for it at the pump. The public schools are a monopoly. They know that they will get all of those students. They will come because that's the only place they can go. I believe that, if that monopoly did not exist, there would be a free market in the education, and that free market we already see a little of it because we have schools that are very expensive which are very fine schools. We also have schools which we've mentioned today that are inexpensive. Now most of those happen to be affiliated with some religious organization. But the fact is that those religious organizations, those schools, can operate at anywhere between \$4,000 and \$5,000 per student we've been told. They can provide an education at that price. Now, if that can be done by a religious organization, I believe it can also be done by a non-religious organization. I believe that if this bill passes there will be a market-driven response. There will be non-religious private schools that will be in this ballpark. There will be available a lower cost education for students. Now as far as the cost of this, I think it will actually be, the cost will be negative. It won't be a cost. It will be an income to the towns, the school districts, because if you take a student out of a school district that has an average cost per student, some of them approaching \$10,000 or more per student per year. You take a student out of that, and put them into a private school that's only costing \$4,000 or \$5,000 and we're only putting \$3,000 in it. Part of that is contributions from corporations, so the actual taxpayer's cost is considerably less than that \$10,000 that the taxpayer was paying to have that student in a public school. That public school then will have a lesser demand for services, or they can use that money to do more for the students they have. That will be the choice

of the local school district. Now if some school district sees a private school pop up in their area which is educating students, giving a good education, and doing it in an affordable manner, and getting money from this fund, that local school district is going to say, "Well, gee, maybe we don't have to build that new high school. Maybe we don't have to build that new elementary school. Maybe we can actually downsize what we have. Put the middle school and high school back together like they were thirty years ago." Put them all back together like Alton had just up until two or three years ago. They had their entire school was kindergarten through twelfth grade in one building instead of having to have two separate complexes. I think that's what would happen. The cost to the taxpayers will go down because of this bill. There's no real cost to the taxpayers in this bill. There is an appropriation to start it up, but I think the net effect will be that the taxpayers **TAPE CHANGE** education, and the students will get a better education because their parents will be able to pick and choose what school they want to put their kids into just like the rich people have now. This will allow less fortunate economically people, people with less income, lower incomes, to choose where they want their kids to go, just as the elite have always had where they can send their kids to the more expensive schools. So I think that this is a very beneficial bill on lots of levels and it certainly is not a net drain on the taxpayers. I think overall it is a net decrease to the taxpayers. Thank you.

SENATOR BURLING: Thank you, Mr. President. I ascribe nothing to anyone here today, but I do want to rise to ask some questions that I think ought to be worked out carefully before this particular boat is launched into the lake. Now you've heard me say before that I'm a proud trustee of a secondary boarding school here in New Hampshire. There are ten of them. They're a superb group of institutions. I guarantee you that one of the first things that the admissions officers of each one of those schools will do, should this become law, is make sure that every application filed by any student from a lower income family will apply for this money. It will be a giant vacuum generated on this public policy pool. Is that what you intend? Leave that as a sort of rhetorical question now because frankly if I came to you and said, "Why don't we pass a bill that makes sure that there's \$3,500 for every student who applies to a New Hampshire Boarding School?" Most of you would be throwing something at me. So that is a consequence which is clear and unequivocal. Is it what you intend? Question two, what are you going to do with the lawyers? I haven't practiced in years, but even I, rusty as I am, can see a lawyers' relief bill when one pops onto the table in front of me. There isn't going to be enough money for the available applicants. Okay, what criteria are you going to apply to decide who gets the bucks? Well, one group right off the bat, a lower income New Hampshire family qualified for these grants who has a child who must go to a school that can provide only special services, and they're out of New Hampshire. Did you really mean to discriminate against them? Because you did. Is that the public policy you want? I can even decide the lawsuit for you. You don't have to spend a lot of money on defense because you lost. What criteria will you give for this board of trustees to make the critical decisions about who gets the grant and who doesn't? I see none in here, which in a way supports Senator Green's argument, but leaves me baffled as to what policy are we pursuing. What's the point? And if it gets down to a question of a public school student, Mr. President, a public school student from a low-income family who doesn't want to go to a different school but would like to have \$2,500 so he can become part of the athletics pro-

gram not otherwise provided in his public school, are they allowed to have that money? Do they get a grant? Why not? And can I be around to watch when this board tells them no? Because I bet those parents are taxpayers, and I bet they're going to be a little miffed when they discovered that though they pay taxes they cannot access this fund to provide extra educational values to their child. I see the fervent, and I think beneficial goal, that is desired by the advocates of this bill. But, with all candor, I think it is so riddled with unanswered questions, the biggest of which is the total absence of a fiscal note, my advice can only be this. Vote no. Think harder. Work it through, and try to come back with a product that actually has answers to the great challenges that it raises. This bill has no answers. It has questions that will defy everybody and, in the end, it will set back the effort that you say you're pursuing for a dozen years. It just is not a worthy goal of our affirmative votes. Thank you, Mr. President.

SENATOR FOSTER: Of Senator Green. First let me say that I don't think anybody has bad intentions here either, and if I meant that it's something I feel deeply about. I have a question on the qualification of the schools, and I'm looking in the calendar on page ten at the top, and it says, "All qualified schools shall operate in New Hampshire." I know what that means, and then I look to see, "Comply with 42 section 2000-d," and near as I can tell that's just an anti-discrimination provision which I assume means that the schools would have to take all takers regardless of whether they're private or religious or otherwise. What does "be approved by the state of New Hampshire" mean, because as far as I know, I've been sitting on the Education Committee for awhile, there really is no accreditation per se of these schools, but maybe I'm wrong? Maybe you could.

SENATOR GREEN: There is an accreditation requirement of a private school in New Hampshire. That's in law.

SENATOR FOSTER: Do you know what...

SENATOR GREEN: I can't tell you exactly, but I do know that they have to be certified in order to be issued especially a high school diploma or whatever. There is a certification requirement. All through elementary schools because I know even the schools that are small private schools have to have approval **TAPE INAUDIBLE** in order to operate in order to **TAPE INAUDIBLE** programs that are offered.

SENATOR FOSTER: Follow-up? The reason I'm asking the question is I recall a bill being before us maybe it was either last year or perhaps it was last session, where a school was accredited, and what that really meant was that they looked at certain physical plants and so forth of the school but didn't get into what was being taught there or the quality of the teaching or even the quality of the teachers. Do you know whether the accreditation provision is more physical plant or content based?

SENATOR GREEN: Accreditation includes basically that they meet a set of standard criteria that's been designed by the statutes and give that power that's given to the State Board of Education and the Commissioner of Education.

SENATOR FOSTER: Follow-up? So then should this say "accredited by the state of New Hampshire" because many of these schools are not accredited?

SENATOR GREEN: No, I don't think so. I think the word we're using is the appropriate wording used in the statutes "approval is required."

SENATOR FOSTER: Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise to speak against the bill. The country was built on a basic premise and that basic premise was that we would have free educational opportunity for everyone. We thought so much of this free educational opportunity that, during a crisis, the most devastating crisis in the history of this country, the Civil War, we passed the Morrill Act, which created public universities across the nation so that people would have public access and that we would have a heterogeneous population, both at the primary, secondary, and postsecondary levels. Referring to my colleagues, Senator Estabrook and Senator Foster, with regard to discrimination, as a youngster when I walked to school, woman came up to me and says, "Why don't you Goddamn Guineas go to your own school?" because I was an Italian American, and others were not of the same ethnic persuasion. That does exist, and we have seen that schism growing across this country. In the city of Manchester we have seventy languages spoken at our public schools. It's a totally integrated process. The people of our city and the people of our state have made a commitment to these people to educate them. Educate them in a public venue where they can interact with every other citizen in our community. That's public education. We've also said that private schools can get not for profit status, 501:3c status and can raise money, raise lots of money, and it's tax-deductible and private schools have done that. We have got one of the richest private schools in the United States right here in Concord, New Hampshire. St. Paul's School is one of the wealthiest schools in the world. Paid their rector a half a million dollars. How many principals in a public school get a half a million dollars plus a \$300,000 expense account? Why is it cheaper to educate? I worked in a public school. I worked in a private, Catholic school. We had no health benefit. We had no retirement benefit. It was an apostolate for us. Alright, we gave, we worked there because we believed in it. We took less. We always talk about the crisis in public education, but we never want to commit to public education. We're always looking for ways to chip away at public education. Public education does an excellent job in this country. I've been to pretty much the schools all over the world, and I have seen how people revere the opportunity to become educated, how they would die for a public education system like ours. Alternate schools? Absolutely. Let people choose them. If people can afford them, let them go. They offer scholarships. They offer an opportunity. But anything that withdraws from the public institution, in my opinion, is a great travesty. We're teaching all people how to live together in an environment that takes the rich, the poor, and brings them to a point where they have to survive together. Anything that takes away from that I think causes us great, great consternation. I don't know why we try to do this year after year after year. It's not good legislation. It's not good public policy. When people founded this country they brought together what they believed of was opportunity for all, and that's an overstatement because we were biased, we believed in segregation. We had to go through a series of steps to change that situation. I always tell the story about segregation. When I was in the Marine Corps, my black drill instructor could not go to the same place I did, and that was awful. And I wrote a paper when I was in college about segregation being the threat to American democracy. Well we're going through this same

process over and over again. I hope we'll think very, very, very, carefully about what we do with state funds. We invest in public education because we expect a return on that investment, and that return on that investment is the quality students we produce, the taxes they pay, and the positive impact they make on this society. Thank you.

SENATOR BARNES: Mr. President, I'd like to move the question after you have your list of speakers taken care of.

SENATOR GATSAS (In the Chair): I have two more speakers, Senator.

SENATOR MORSE: Senator Clegg, I was just going to move the question on the amendment, so we could have Senator Johnson present the amendment we're actually debating.

SENATOR ESTABROOK: Thank you, Mr. President. I wanted to rise and clarify my position and my statements that I made earlier. I do not believe that the authors of this amendment meant it to be simply a mechanism to funnel money to religious schools, and I didn't intend to imply that. I think the intent is to provide vouchers to whatever other educational choices parents might choose, and I am not opposed to school choice either. I would hate for anyone to make that decision for me with regard to my children. That's my decision as the parent, and I respect every other parent's right to make that decision. But, I am unwilling to accept a bill that was written in a way that will allow some parents to choose a religious education on my taxpayer dollar, and that is where the objection to religious education comes from. In this whole discussion, I haven't heard anyone in support of this bill yet explain to us why we should spend taxpayer dollars on tax credits for private school vouchers and not for healthcare. We haven't talked about that at all. I haven't heard anyone explain to me why we should take general fund dollars, even if we've got new general fund dollars coming in. I thought we all were so concerned about the Rainy Day Fund, and keeping a rein in spending, and all these other issues that we've let go because we simply don't have the funding. We've got people with developmental disabilities being unserved and a hundred other needs in this state we're being sued for this, that, and the other thing. And nobody has explained to me why this should rise to the top and be funded from general fund dollars. And nobody has explained to us, as other speakers pointed out, what's going to happen when the entitlement in this bill doesn't have the funding to go behind it. Thank you.

**A roll call was requested.**

### **PARLIAMENTARY INQUIRY**

SENATOR GATSAS (In the Chair): Parliamentary question, Senator?

SENATOR MORSE: Parliamentary inquiry. If I was waiting to vote on Senator Johnson's amendment, would I now vote no on the amendment in front of us?

SENATOR GATSAS (In the Chair): If you're in favor of the amendment, you would vote yes. If you're opposed to the amendment, you would vote no.

SENATOR LARSEN: Mr. President, I would withdraw the roll call request and wait for the second amendment to come through.

SENATOR GATSAS (In the Chair): Has the second been withdrawn?

SENATOR ESTABROOK: Yes.

SENATOR GATSAS (In the Chair): Thank you.

**The roll call request was withdrawn.**

**Amendment failed.**

Senator Johnson offered a floor amendment.

Sen. Johnson, Dist. 2

Sen. Morse, Dist. 22

Sen. Clegg, Dist. 14

**January 17, 2006**

**2006-0468s**

**04/10**

### **Floor Amendment to SB 131-FN**

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

1 New Chapter; 21<sup>st</sup> Century Scholars Program. Amend RSA by inserting after chapter 193-H the following new chapter:

#### **CHAPTER 193-I**

##### **21<sup>ST</sup> CENTURY SCHOLARS PROGRAM**

193-I:1 Definitions. In this chapter:

I. "Board" means the 21st century scholars fund board.

II. "Department" means the department of revenue administration.

III. "Educational scholarships" means grants to pupils to cover all or part of the tuition and fees at a private qualified school or all or part of the tuition and fees at a public school outside the school district in which a pupil resides.

IV. "Eligible pupil" means any pupil who is legally allowed to attend a public school in grades 1-12 and whose family income does not exceed 250 percent of the federal poverty income level.

V. "Parent" includes a guardian, custodian, or other person with authority to act on behalf of the child.

VI. "Program" means the 21<sup>st</sup> century scholars program.

VII. "Qualified school" means a public or non-public school in our state that complies with all of the requirements of the program.

VIII. "21st century scholars fund" or "fund" means an entity that is determined by the Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code, as that section now exists or may hereafter be amended, established by the state to collect and administer funds that are to be used for the purpose of providing and managing the delivery of scholarships to eligible pupils.

193-I:2 Corporation Established. There is hereby established a body politic and corporate having a distinct legal existence separate from the state and not constituting a department of state government, to be known as the 21st century scholars fund corporation to carry out the provisions of this chapter. The corporation shall be a public instrumentality which shall perform public and essential governmental functions of the state as provided in this chapter. The corporation shall be a private nonprofit corporation and shall have all the powers necessary to carry out the purposes of this chapter, including, but not limited to, the power to receive and accept grants, loans, or advances of funds from any public or private agency and to receive and accept from any source, contributions of money, property, labor, or any other thing of value, to be held, used, and applied for the purposes of this chapter.

193-I:3 21st Century Scholars Fund Corporation; Board; Powers; Du-

ties.

I. The powers of the corporation shall be vested in 12 members for 3-year terms of office as follows:

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

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

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

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

(e) Five public members, appointed by the governor, of which:

(1) Two shall represent the business community.

(2) Two shall represent the private school community.

(3) One shall be an at-large member.

(f) The commissioner of the department of education, or designee.

II. The initial terms of office shall be as follows: the member in subparagraph I(e)(3) shall serve for one year; the member in subparagraph I(e)(1) shall serve for 2 years; and the members in subparagraphs I(c), I(d) and I(e)(2) shall serve for 3 years. The members in subparagraphs I(a)-(b) shall serve terms which are coterminous with their terms in office.

III. The members shall elect annually from among their number a chairperson and such officers as they may determine. A member shall hold office until a successor has been appointed and qualified. Members shall receive no salary for the performance of their duties under this chapter, but each member shall be reimbursed for reasonable expenses incurred in carrying out duties under this chapter. Any such expenses by board members shall have prior approval by 6 members of the board of directors before reimbursement. Legislative members shall receive mileage at the legislative rate when attending to the duties of the board. A member of the board of directors may be removed for cause by the official who appointed that member.

IV. There shall be no liability on the part of, and no cause of action shall arise against, any member of the board, or its employees or agents, for any action taken in the performance of their powers and duties under this chapter.

V. The board shall have complete fiscal control over the corporation and shall be responsible for all corporate operations.

VI. Board meetings shall be held at the call of the chairperson or when 3 members so request. Six members of the board shall constitute a quorum and the affirmative vote of 6 members shall be necessary for any action taken by the authority. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the corporation.

VII. The 21st century scholars fund corporation board shall:

(a) Notify the department of education of the board's intent to provide educational scholarships to pupils attending qualified schools, and which public school districts those pupils reside in.

(b) Provide a receipt for contributions to the organization by an individual taxpayer or corporate taxpayer for support of educational scholarships to the department of revenue administration and the taxpayer.

(c) Create and provide to the public a procedure for applying to the program.

(d) Consult appropriate professional organizations and establish standards providing educational scholarships.



(e) Develop and implement a plan to publicize the program and the procedures for enrollment in the program and to maintain public awareness of the corporation and the program.

(f) Secure staff necessary to properly administer the corporation. Staff costs shall be funded from state funds appropriated by the legislature and such other private or public funds as become available. The board shall determine the number of staff members necessary to administer the corporation.

(g) Ensure that at least 90 percent of its expenditures are for educational scholarships.

(h) Require applicants to provide a tax return, proof of current residence in New Hampshire, and proof that the pupil was continuously enrolled in a public school during the prior school year.

(i) Make every effort to make the program easily accessible and usable by the public.

(j) Inform parents of educational scholarship recipients of their acceptance into the program no later than 30 days after receiving the application.

(k) Ensure that first-time recipients of educational scholarships were continuously enrolled in a public school during the previous year.

(l) In the case of oversubscription to the program, conduct a random selection from scholarship applicants to determine who shall receive an educational scholarship.

(m) Provide scholarships for pupils in the following manner:

(1) \$3,500 for families that have household incomes of 200 percent or less of the federal poverty income level upon the initial application to the program.

(2) \$2,500 for families who have household incomes between 201 percent and 250 percent of the federal poverty income level upon initial application to the program.

(n) Ensure that once a pupil receives a scholarship, the pupil is offered a scholarship in any future years, until he or she reaches the age of 21 and provided that he or she meets other necessary requirements for eligible pupils.

(o) Ensure that educational scholarship payments are made out to the parents of the pupil and sent to the qualifying school of choice for endorsement by the parent to the school.

(p) Conduct criminal background checks on all employees, and shall exclude from employment any people that might reasonably pose a threat to the safety of children or a risk to the appropriate use of contributed funds.

(q) Ensure that pupils receiving an educational scholarship take either the state tests or nationally recognized norm-referenced tests in math and language arts, or both, and ensure that the pupils' scores are provided to their parents.

VIII. The program shall not provide educational scholarships for pupils to attend any school with paid staff or board members, or relatives thereof, in common with the staff members of the fund.

IX. Provide an annual report, the first on or before January 1, 2007, to the governor, senate president, speaker of the house of representatives, and commissioner of the department of education on the development of the program. This report shall include information prepared by a certified public accountant regarding grants made in the previous calendar year and shall include:

(a) The total number and total dollar amount of contributions received during the previous calendar year; and

(b) The total number and total dollar amount of educational scholarships awarded during the previous calendar year, the total number and total dollar amount of educational scholarships awarded during the previous year to pupils who are in families that are in each subgroup of qualifying income for the federal poverty income level; and

(c) A detailed listing of administrative and marketing expenses.

#### 193-I:4 Responsibilities of the Parents.

I. Parents shall apply for scholarships for their eligible pupils by August 31, 2006. In subsequent years, parents shall apply for scholarships for their eligible pupils by July 31.

II. Parents shall provide a copy of their income tax return, along with any application materials required by the program.

#### 193-I:5 Responsibilities of the Department of Revenue Administration.

I. The department shall provide a standardized format for a receipt to be issued by the fund to a taxpayer to indicate the value of a contribution received. The department shall require a taxpayer to provide a copy of this receipt when claiming the tax credit for contributions to the fund.

II. The department shall have the authority to conduct either a financial review or audit of the fund if possessing evidence of fraud.

III. The department shall develop a process to make tax credits available for contributions on a first come, first serve basis.

IV. The department shall report to the state treasurer's office by June 30 of each year the amount of dollars raised from private sources and request that treasurer issue a check to the fund in the amount mandated by this chapter by August 1 of each year.

#### 193-I:6 Responsibilities of Qualified Schools.

I. All qualified schools shall:

(a) Operate in New Hampshire;

(b) Comply with 42 U.S.C. section 2000d et seq.; and

(c) Be approved by the state of New Hampshire.

II. All nonpublic schools shall have nonprofit status under the Internal Revenue Code in order to be qualified under this chapter.

III. Schools shall not refund or rebate any portion of the scholarship to the parent. Any refund for rebate for any portion of the scholarship shall be made to the fund.

IV. Pupils receiving an educational scholarship from the fund shall take either the statewide education improvement and assessment tests pursuant to RSA 193-C, or a nationally recognized norm-referenced test in math and language arts, or both. Pupils' scores in such tests shall be provided to their parents.

#### 193-I:7 Tax Credits.

I. A credit applied against the interest and dividend tax due under RSA 77 shall be available on a first-come, first-served basis to qualified individuals in an amount equal to the amount of contributions made to the fund during the taxable period. The total amount of the credit for all qualified individuals in a taxable period shall not exceed \$100,000.

II. A credit applied against the business enterprise tax due under RSA 77-E shall be available on a first-come, first-served basis to qualified businesses in an amount equal to the amount of contributions made to the fund during the taxable period. The total amount of the credit for all qualified businesses in a taxable period shall not exceed \$400,000.

#### 2 Appropriation.

I. The sum of \$1,000,000 for the fiscal year ending June 30, 2006 is hereby appropriated to the 21st century scholars fund established in this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

II. The sum of \$1,000,000 shall be appropriated to the 21st century scholars fund upon the request of the 21<sup>st</sup> century scholars fund corporation board, and certification received by the board from the treasurer of the state of New Hampshire, that private contributions to the 21st century scholars fund from individuals or businesses equals or exceeds \$500,000. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

3 New Section; Taxation of Income; Credit for Contributions to 21st Century Scholars Fund. Amend RSA 77 by inserting after section 4-f the following new section:

77:4-g Adjustments for Contributions to the 21st Century Scholars Fund. A taxpayer who pays the interest and dividend tax pursuant to RSA 77 and is not a dependent of another taxpayer may claim a credit for a contribution made to the 21<sup>st</sup> century scholars fund established in RSA 193-I:8. An individual, corporation, or non-profit entity who does not file a New Hampshire state tax return may claim a charitable deduction for a contribution made to the fund as may be permitted by law. The credit may be claimed against the interest and dividend tax by an individual taxpayer in an amount equal to the total contributions made to the fund during the taxable year for which the credit is claimed. The credit may be claimed by an individual taxpayer or a married couple filing jointly in an amount equal to the total contributions made to the fund for educational scholarships during the taxable year for which the credit is claimed up to 100 percent of the taxpayer's tax liability. Individual or corporate donors may give an unlimited amount in contributions above the dollar amount to which they are entitled a credit, but shall only be entitled to the credit as provided in RSA 193-I:7.

4 New Section; Business Enterprise Tax; Adjustments. Amend RSA 77-E by inserting after section 3-a the following new section:

77-E:3-b 21<sup>st</sup> Century Scholars Fund Credit. Credit for contributions to the 21<sup>st</sup> century scholars fund as provided in RSA 193-I shall be allowed against tax due under this chapter. The credit may be claimed against the business enterprise tax by a taxpayer in an amount equal to the total contributions made to the fund during the taxable year for which the credit is claimed up to 100 percent of the taxpayer's total liability. Individual or corporate donors may give an unlimited amount in contributions above the dollar amount to which they are entitled a credit, but shall only be entitled to the credit as provided in RSA 193-I:7.

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

**2006-0468s**

#### AMENDED ANALYSIS

This bill authorizes the state to establish and make appropriations to the 21<sup>st</sup> century scholars fund, a non-profit, public and private partnership that will provide educational scholarships to eligible New Hampshire school children in grades 1-12 to attend a qualified school.

SENATOR JOHNSON: Thank you, Mr. President. I want to start off by thanking Senator Green for clarifying the language in the bill. Thank you very much, Senator Green. And, as the prime sponsor of Senate Bill 131, I rise to offer floor amendment 0468 which is being passed out to the body. This amendment is largely the same as the committee amendment, but addresses two items. First, as this program was modeled after the partnership in the Healthy Kids Corporation, this amendment deletes references to statute that specifically deals with the Healthy Kids.

Second, the amendment clarifies that the total tax credit received by businesses for contributing to the program is “per year” not “per donor”. This floor amendment achieves the goal of giving low income families greater educational opportunities for their children and is consistent with the intent of this bill as introduced. Over the past several months, I have received many ideas and concerns about the original bill, most notably the fact that it was funded through the Educational Trust Fund. I want to thank Senator Morse and Senator Clegg and all of the members of the Senate Finance Committee for their commitment to this issue and their help in crafting a financing mechanism that satisfied those concerns. As we all know, a family’s level of educational choice, and I stress that word “choice”, is determined by their financial means. Families with financial means have a choice. Unfortunately, families without financial means, do not. Senate Bill 131 is really a first step in addressing this disparity in our state, and I would ask my colleagues to support the amendment 0468. Thank you, Mr. President.

SENATOR CLEGG: Question of Senator Johnson if you’ll yield?

SENATOR JOHNSON: Yes, Senator Clegg.

SENATOR CLEGG: Senator Johnson, as I read this bill and I read your amendment, essentially the same children that would qualify for this assistance in education are the same children that are in the Healthy Kids Gold program. Am I correct?

SENATOR JOHNSON: That is correct.

SENATOR CLEGG: So we’re not only providing them healthcare now, we’re also looking to further their education opportunities with this bill?

SENATOR JOHNSON: It addresses that issue, yes.

SENATOR CLEGG: Thank you.

SENATOR BURLING: I’ll ask this question of any proponent who would care to answer it. If I were a generous donor and I wanted to send the children of a worthy Cornish family to my favorite school, is there anything in this bill that stops me granting \$10,000 let’s say to this fund subject to the specific regulation that it be used for the purpose of educating the children of John Smith?

SENATOR CLEGG: I believe that you would be looking to make a charitable donation and with stipulations such as here’s the money but you have to spend it on that. I’d challenge you personally on whether or not your donation was really a charitable donation, or you were trying to wash money through the hands of another. And I don’t mean that in a negative way. I just don’t think it would meet the criteria as a donation.

SENATOR LARSEN: I simply want to rise, after twelve years of having voucher discussions, to say this is in fact a voucher program. It’s perhaps cleverly designed to look like it’s not giving state money and public school money and public tax dollars to private and perhaps parochially based schools, but it is in fact precisely that. I would only add that there was a wonderful song called that had the words, “United we stand, divided we fall,” and I think Senator D’Allesandro’s very eloquent statement is that which we all ought to consider, which is that if you...if we as a nation do not sit down and our public schools together, we see ourselves dividing. We see a future where children don’t understand each other. Adults are raised to not understand the different cultures of the people who live in this great nation. It is through our public schools that

we learn to understand each other, and if we allow the decimation of our schools through sucking money out, and this in fact does that, we, our nation, becomes divided. Thank you.

SENATOR BARNES: Thank you, Mr. President. Senator Larsen.

SENATOR LARSEN: Is this a question? Sorry.

SENATOR BARNES: Do you believe that if we pass this piece of legislation today that public schools in New Hampshire are going to close next year?

SENATOR LARSEN: I believe you're asking schools to operate with less money in fact in the long run, and that you, in essence, begin to pull apart what is an integrating factor in our nation.

SENATOR BARNES: So the answer is, you feel if we pass this piece of legislation today, Senator Johnson's amendment, that the public schools in New Hampshire are going to go kaput pretty soon?

SENATOR LARSEN: No, but I also, I believe that you're in fact adding an additional educational obligation on the taxpayers of this state because they will have to continue to run the public schools, the costs of running the heat, the lights, the staffing in those public schools continues, and yet you're asking for additional monies to go out of what could be going to public schools to go out into a private system, some of which may be religious based, some of which may be any other agenda that might be created.

SENATOR BARNES: Thank you.

SENATOR HASSAN: Thank you, Mr. President, a question of Senator Johnson if you would so yield? Senator Johnson, I am looking at page six of the amendment concerning the business enterprise tax credit, and I just want to make sure my understanding is correct. It says, "Credit for contributions to the 21<sup>st</sup> Century Scholars Fund as provided in RSA 193:1 shall be allowed against tax due under this chapter. The credit may be claimed against the business enterprise tax by a taxpayer in an amount equal to the total contributions made to the fund." And then I'm skipping ahead a little bit. "Up to 100 percent of the taxpayer's total liability." So am I to understand that, if the business in this state would otherwise owe a half a million dollars to the state in the business enterprise tax, they could choose to take that money and divert it entirely into this fund? Is that correct?

SENATOR JOHNSON: Senator Hassan, I...to be sure I'd just like to defer that question to the Chairman of Finance, Senator Morse.

SENATOR MORSE: The answer to that question was yes, because you may find one business starting this program out. If that one business chooses to defer its payment to BET to this program, we wanted to encourage that.

SENATOR HASSAN: Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. For Senator Morse. Senator Morse, your answer to the previous question was that 100 percent of the tax liability would be absolved if you gave that money to this fund. Is that correct?

SENATOR MORSE: If you had a \$400,000 obligation in BET tax, yes.

SENATOR D'ALLESANDRO: One hundred percent of that would disappear. Up in the previous paragraph, I'd like an answer to this question.

“The credit may be claimed by an individual taxpayer or a married couple filing jointly in amount equal to the total contributions made to the fund for educational scholarships during the taxable year for which the credit is claimed up to 100 percent of the taxpayer’s liability”. Does that mean individuals will not pay any tax also?

SENATOR MORSE: Up to \$100,000.

SENATOR D’ALLESANDRO: So it says 100 percent in my...

SENATOR MORSE: One hundred percent, but if you go to page five line 19 “the total amount of the credit for all qualified individuals for the taxable period shall not exceed \$100,000”.

SENATOR D’ALLESANDRO: Further question? Then if you say “all qualified individuals”, any individual could get a tax credit up to \$100,000?

SENATOR MORSE: Yes, if there was someone that so desired to do this. Again, one person, one business, wanted to qualify for that whole half a million dollars, God bless them for doing it.

SENATOR D’ALLESANDRO: Further question? But the state would lose \$400,000 in taxes and, if it were an individual, the state could lose up to \$100,000 per individual in tax returns?

SENATOR MORSE: Senator D’Allesandro, thank you for that question because to say “they would lose” the state is making a half million dollar commitment. They’re not losing. They’re making a commitment, so today you’re choosing to spend \$2,500,000. You’re encouraging people on a half million dollars of that, but you’re not losing. You’re making a commitment, and I disagree with how you put that.

SENATOR D’ALLESANDRO: Further question? But the Department of Revenue Administration would not receive the \$400,000 that it would have been entitled to. That money would go someplace else, so the Revenue Administration would be \$400,000 less in terms of its collection. Is that correct?

SENATOR MORSE: You’re making a commitment of \$400,000 of BET to this program. Yes.

SENATOR D’ALLESANDRO: Thank you.

SENATOR BURLING: Thank you. Question of Senator Morse. Honoring your scrupulous and determined defense of our budget, how can you advocate for this with no fiscal note, no projection of cost, and no competent idea of what this is going to do to the state revenues?

SENATOR MORSE: I was going to speak in a minute, but I’ll accept Senator Larsen’s compliment of being clever. I went to the Senate President, and I went to Senator Clegg in November when there was a push in the state of New Hampshire to raise the age to eighteen to keep people in school because what happened was superintendents in my district happened to speak that week, four of them I believe, and one of the things they said is, “Yes, we think that’s a great idea, but we’re going to need money to keep them there.” So one of the things that I thought that we could accomplish was to go to this piece of legislation and give a sixteen-year-old an alternative. A superintendent can start working with a fifteen-year-old and give them an alternative. And the way I had to do it was find money. It’s the same way I approached Senator Green when he was the Finance Chair. I said I can’t support school choice without additional money. Well, you know what, we solved education funding last

year, so that debate went off the table. We already solved it. It was done, so I wasn't taking money away from education funding. We had already determined that, and I asked them because I knew they were working on a plan. Can we take \$2,500,000 of the state's money designing it to encourage business to get involved? They said yes, and that's how I drafted the program. I did not take from the current money that we're seeing in surplus that I hope to put in the Rainy Day Fund. I did not take from the money that we're having several debates on budget bills in the current year with the \$45,000,000 surplus. Didn't take from any of those. I took from money they told me that they were going to create, and I put it into this program.

SENATOR D'ALLESANDRO: Thank you, Mr. President. Of Senator Morse. Senator Morse, based on what you just said.

SENATOR MORSE: I would choose not to speak after this, but I'll answer the question.

SENATOR D'ALLESANDRO: Thank you for yielding, Senator Morse. Senator Morse, if we're not taking any money from what we currently have, are you saying that if we did projections for revenues in the future, we would reduce those revenues accordingly based on these tax credits that are out there?

SENATOR MORSE: I think that's semantics. I think, when Senator Clegg's legislation hits the floor, it will address the fact that I assumed his legislation was going to cover this. It's semantics whether BET is the credit or his money is the \$28,000,000 that he's talking about producing is the \$2,500,000. We wanted to do something to encourage an outside party to get involved with educating.

SENATOR D'ALLESANDRO: Just one further question. Thank you, but Senator Morse, again I just want to clarify, I project revenues. If I'm projecting revenues for the future and this is in place, and I recognize the fact that a qualified business can get a \$400,000 tax credit and an individual can get a \$100,000 tax credit, in figuring my anticipated revenues, would I then plug in the loss of these revenues from the taxes?

SENATOR MORSE: I think you could probably do that and then with his bill you could plug in \$28,000,000 more in income.

SENATOR D'ALLESANDRO: Just further question then? Would that \$28,000,000 be on an annual basis and where would it come from?

SENATOR MORSE: I believe Senator Clegg can explain that, but yes it is on an annual basis. And I shouldn't say it's \$28,000,000 'cause it could be more.

SENATOR D'ALLESANDRO: Thank you.

SENATOR BURLING: Thank you again, Mr. President. This is reaching a moment in which I begin to feel the frustration of a legislator discovering the world of Saturn when I thought I was looking for a dust mite. Senator Morse, are we talking about a projected annual expenditure of \$2,500,000, or are we today making a commitment that may run as high as \$28,000,000 per annum, and when was somebody going to tell us this? Because you know I have a few initiatives in my heart that we might pay for with some of that money. Isn't this what the legislative process is about? Can we be that far off track? I wonder if you could tell me in your mind Senator, and I do, I did not make any of those compliments in a half-handed way, I meant them seriously. I trust your judgment in these things, but I'd like to know is it your current personal

expectation, that we're looking at a program that will cost us in revenue and grants about \$2,500,000 a year, or are we making a commitment that may run as high as \$28,000,000 a year or more?

**SENATOR MORSE:** Senator, one of the things that I thought we did right in the state of New Hampshire, and that's why I went to Senator Johnson and asked him if he could look into it and asked some of the people that he'd been working with was Healthy Kids. We may agree or disagree on some of their decisions, but I thought the board structure was right. I believe you'll get the board structure in place and start this program, and that board will come back to us with its recommendations. Like I said five minutes ago, you have an issue of sixteen, seventeen, and eighteen-year-olds that are going to be in the school system. And superintendent, what do they do with them? They're saying that. I truly believe this group's going to create options. I truly believe that the Governor will have great influence. I looked at it, and said, "Senator Johnson, it's right to leave five people for the Governor to appoint to the committee." I think we've done what's right on school choice. I think what it comes down to at this point is, you support school choice or you don't support school choice. We can debate all afternoon here and try to whittle away at a vote to not vote for this, but the fact is this came to Finance to find a mechanism. I believe we found it. I think we've tweaked it the way that it should be for now to go out of this Senate, and I appreciate your support.

**The question is on adoption of the floor amendment.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Estabrook.**

**The following Senators voted Yes: Gallus, Johnson, Boyce, Green, Flanders, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**The following Senators voted No: Burling, Odell, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 14 - Nays: 9**

**Floor amendment adopted.**

**SENATOR FOSTER:** Of Senator Morse. If you could just explain one thing, I was listening to the tax credit language in here and so forth, and a tax credit as I always understand it, is a dollar for dollar credit against your tax liability. This is not a deduction like we have with charitable contributions to the federal government where I give a buck, and I get, depending on my tax rate, you know a decrease in my taxation. So if it's a credit rather than money, \$500,000 going to the general fund it will go to this fund instead. Is that right, and if so, why did you decide to do it because it just says if I'm a corporation I got \$400,000 in my wallet, should I give it to the state of New Hampshire or give it to the private corporation, *comme ci comme ca*. It's not really charitable. It's just directing it here as opposed to there. Why is a credit chosen as opposed to a deduction?

**SENATOR MORSE:** Because I think the actual concept will work for the state of New Hampshire. I don't honestly believe that you'll only have the first \$400,000 in businesses going to this. I think the first one that does it is going to create other companies wanting to look at it, and I don't think they're all going to be looking for the BET to be the answer. But you need to get this started and I think this is a good push to get it started.



SENATOR FOSTER: Follow-up. So you're suggesting that corporations will probably do it with no deduction at all or credit?

SENATOR MORSE: I honestly believe that will happen.

SENATOR FOSTER: Thank you.

SENATOR GOTTESMAN: I guess it would be Senator Morse, if you would. On this tax credits, I hadn't really focused on this, but are we to expect some sort of competition between those who would like to participate in this program based on this first come first serve language that's in the bill, both for individuals and for businesses? And, if so, is that unfair to some people who might want to participate in this, but who may not get the opportunity because they weren't first at the table?

SENATOR MORSE: I don't think it's unfair. I think it's an incentive for the first business to get behind this and say it's good for the state of New Hampshire. I think that's what we wanted to create in an incentive here. Get some businesses behind it or a big business. Let's go. Let's make it happen. And, along with that, I think you basically have this committee that's going to be out there selling this. I think it's important for that to happen, but we wanted to give incentive to some business to step up and say, "You can dream the dream here." You could be doing this from a technical point of view where you have car dealers that want to make an alternative to education for sixteen, seventeen, and eighteen-year-olds that were dropping out that were going to work in their shops. I mean, so there's all kinds of things that could happen. I just think that's the start, and it's the incentive to get someone to get behind this.

**The question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Foster.**

**The following Senators voted Yes: Gallus, Johnson, Boyce, Green, Flanders, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**The following Senators voted No: Burling, Odell, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 14 - Nays: 9**

**Adopted.**

**Ordered to third reading.**

**HB 460-FN**, relative to the reimbursement to certain providers by the bureau of emergency communications. Finance Committee. Ought to pass, Vote 6-0. Senator Odell for the committee.

SENATOR ODELL: Thank you, Mr. President. For the third time in a year, I rise to ask you to support the ought to pass motion of the Finance Committee on HB 460. This bill establishes a date to eliminate cell phone companies' cost recovery efforts for enhanced 911 services. Without this legislation, reimbursements from the Bureau of Emergency Communications will continue to be billed by the phone companies at a rate of \$170,000 per month. The phone companies and the Bureau of Emergency Communications were encouraged to settle this matter of reimbursement. The Department of Safety, at the request of some legislators, hired a consultant who went to work on the 6<sup>th</sup> of September, to analyze the reimbursement requests. A letter was sent out by the department on September 30<sup>th</sup> to which only one company responded. As written this

bill allows for reimbursement to continue until thirty days after passage of this bill. The Finance Committee asks your support of the motion of ought to pass. Thank you, Mr. President.

Senator Morse offered a floor amendment.

Sen. Gallus, Dist. 1  
 Sen. Johnson, Dist. 2  
 Sen. Green, Dist. 6  
 Sen. Flanders, Dist. 7  
 Sen. Odell, Dist. 8  
 Sen. Roberge, Dist. 9  
 Sen. Eaton, Dist. 10  
 Sen. Clegg, Dist. 14  
 Sen. Barnes, Dist. 17  
 Sen. Letourneau, Dist. 19  
 Sen. Morse, Dist. 22

**January 18, 2006**

**2006-0487s**

**03/04**

**Floor Amendment to HB 460-FN**

Amend the bill by replacing section 2 with the following:

2 Review of Claims. The enhanced 911 commission shall approve and the bureau, as defined in RSA 106-H:2, III, shall pay, in a timely fashion and with the prior approval of the fiscal committee of the general court, all reimbursement claims filed under RSA 106-H:8 by providers of commercial mobile radio service for reasonable expenses incurred prior to the effective date of RSA 106-H:8, II to which the providers are entitled.

SENATOR MORSE: Senator Clegg, I have an amendment. Mr. President.

SENATOR GATSAS (In the Chair): Senator Morse, are you going to speak to amendment 0487 while it's being passed out?

SENATOR MORSE: Yes. All this does, Mr. President, is it basically says that this...in the legislation right now it says, "In a timely fashion, the committee shall look the commission shall look at it," but this also adds fiscal committee approval on that particular piece of legislation.

**Floor amendment adopted.**

Senator Burling offered a floor amendment.

Sen. Burling, Dist. 5  
 Sen. Gottesman, Dist. 12

**January 18, 2006**

**2006-0484s**

**03/01**

**Floor Amendment to HB 460-FN**

Amend the bill by replacing section 2 with the following:

2 Disposition of Claims; Arbitration. The bureau, as defined in RSA 106-H:2, III, and claimants are hereby directed to submit to binding arbitration all issues relative to reimbursement claims filed under RSA 106-H:8 by providers of commercial mobile radio service for reasonable expenses incurred prior to the effective date of RSA 106-H:8, II. All arbitration requests shall be made by the bureau within 60 days of the effective date of this act. Arbitration shall be performed by the American Arbitration Association at the earliest available opportunity. The costs of the arbitration shall be borne equally by the parties, with each party responsible

for paying its own expenses. The bureau shall pay all amounts ordered by the arbitrator as soon as possible, but in no event later than 90 days after the issuance of the order by the arbitrator. The bureau shall pay interest on the amount ordered at the annual rate of 6 percent.

**2006-0484s**

#### AMENDED ANALYSIS

This bill limits the reimbursement to providers of commercial mobile radio service by the bureau of emergency communications to expenses incurred prior to the effective date of this bill. This bill also requires binding arbitration for all existing reimbursement claims.

SENATOR BURLING: Mr. President, 0484 if that's the number. I don't have it in front of me, but hopefully it will get out here real quick. This floor amendment, Mr. President, tries to come to grips with the other part of this, shall we say, controversy between the 911 commission and the providers of service under the initial RFPs. Each of us who has been a participant, willing or otherwise in this, has heard a different history, and I'm not here to tell you that the history I have heard over the last nine months is absolutely the correct one. I'm simply telling you it's the one I have heard, and I have reason to believe it is more or less correct. And it is a history of constant effort by some companies to comply with a request that they provide bills for their service under the original 911 commission request for RFP work in the preparation and creation of our 911 system. I am told that, on many occasions, various providers of service have attempted to give the 911 commission a complete statement of their services and bill for their services, and they have sought payment under promises made for the services which they provided. The one thing that's clear, stepping aside from the history and the he said she said game, is that to this point there is no resolution as to what the 911 commission owes the various companies for services they provided during the run up to 911, and neither is it clear that there is anything in place to require the payment of those bills. I suppose it's laughable that the former House Democratic leader would be standing here, as I was for eight years, defending the position of a powerful telephone company. I can't say they always thought I was their best friend, but I am standing here for principle, and the principle I'm standing for is, the state of New Hampshire, through one of its agencies, entered into a series of relationships relative to the promulgation and preparation of 911 service for this state. As part of that process, representations were made that certain costs, expenses, and fees would be reimbursed by the state, and those promises have not been met. **TAPE CHANGE** claims for services already provided. This proposed amendment, if adopted, would require the commission, the bureau, excuse me, as it's called, and various claimants to submit their claims to binding arbitration. All arbitration requests would be made within sixty days after the effective date of this statute. The arbitration would take place under the purview of the American Arbitration Association as quickly as is possible, and the costs would be borne by the parties, each party being responsible for their own preparation costs. And the bureau would simply pay, if this were adopted, the claims that were found to be sustainable by the arbitrator as soon as possible, but in no event later than ninety days after the issuance of the arbitrator's order. What am I trying to do? I'm simply trying to find a clear, unequivocal, and fair way of ending what is becoming *Jarndyce v Jarndyce*, this great claim back and forth which doesn't ever seem to go away. I have nothing but respect for my col-

league, Senator Odell's efforts to do exactly the same thing. I have simply a sense that this approach will provide us with a sense of finality. I think it's long past due. I think it's fair, and I hope you will look at this and think of it as an appropriate way to proceed, and I will ask for a roll call, Senator. Thank you very much.

SENATOR BARNES: Thank you, Mr. President. Question of Senator Burling.

SENATOR BURLING: Senator.

SENATOR BARNES: Senator Burling, you and I have been up here, would you believe, about the same amount of time trying to serve the people in this body and the body across the hall, and I've been scratching my head since I've seen this. Can you tell us when the last time we went to arbitration in the House or the Senate on a piece of legislation? Maybe you can refresh my memory, but I don't remember. I remember Bill Buckner and the ball going through and Johnny Pesky holding the ball, but I don't remember this.

SENATOR BURLING: In all candor, Senator, I have no recollection of us ever ordering an agency of state government to resolve a conflict through arbitration.

SENATOR BARNES: Thank you very much.

SENATOR BURLING: But, neither do I remember a situation like the present in which there has been such a steadfast effort to not pay a legitimate claim against the state, and unhappily, I suspect it has something to do with the fact that all the money that was paid into the 911 Bureau Fund has been spent for other purposes. Nonetheless, a promise was made, and in New Hampshire I always thought we kept our promises.

SENATOR ODELL: Thank you, Mr. President. There is some muddled history in terms of the relationship of these wireless unregulated telephone companies and the bureau. However, I would like to make a couple of corrections. One is that there's a million dollars in the fund, so the monies have not been used for any other purpose other than for the 911 fund. I also think that it's an abdication of our responsibilities to go to suggest binding arbitration. I think we're elected by our constituents to do the job that we're sent here to do, and I think it rests on our desks to solve this problem if there is the problem for us to solve. And I don't believe that the process that's ongoing right now between the companies and the bureau is an improper one. We heard testimony at length just last week on the frustration of the department in terms of trying to get the companies to come to the table. The companies had a similar opportunity to speak their piece at the same time, and you'll see here that the vote was 6-0 in the Finance Committee in support of this piece of legislation. I also want to address another issue, and that is the reasonableness factor in these bills. If I get a bill from a contractor and I look at it, just in broad strokes says what's it's for, and I want to know what they did and how much material and how many hours were put in there. That contractor owes that to me. If I don't want to do it, that's up to me. That's my money. We're talking about taxpayers' money. We're talking about the 42 cents a month from the people who pay for the telephone lines, land lines as well as the wireless phones. So I think this is fiduciary responsibility that rests with the department and that we ought to support them in this because they have gone to the extent of getting a consultant who also testified last week about the efforts that he's made to try

to collect...to try to ascertain the value of these bills, and so I think that it would be unfair and unfortunate if we injected ourselves into that process. Likewise, the amendment that you just approved, which does ask the fiscal committee to approve the process, and the amount, I think is a good addition, and the department has agreed that that's also a good addition to the process. Thank you, Mr. President.

SENATOR LARSEN: Thank you, Mr. President. In Finance, you will see there was a vote of 6-0 because, in my sitting there through the discussion, I looked at the bill, and the bill says, "For purposes of this chapter any provider of commercial mobile radio service shall be entitled to reimbursement from the bureau of the reasonable expenses incurred." And we set a date for cutting off the reasonable expenses. That made sense to me. We were in executive session. There was no opportunity for those besides the bureau to have a say in the language that we were looking at. In my mind, a law that says that "they shall be entitled to reimbursement from the bureau of reasonable expenses" means we're going to pay it. We're going to look at what's reasonable, and we heard that there's they've hired someone to look at those expenses. We're going to look at the expenses filed, determine if they're reasonable, and pay them. I think each and every one of us recognizes the importance of the state's paying its bills, and we had a law saying we would pay for the reasonable expenses incurred in the provision of enhanced 911 service. So I voted for this bill because I thought it was very clear. We're going to pay our bills. We're going to say there's a certain point where we don't want to incur any further bills, and we're cutting it off at that point. After that, after our vote, I later hear that there's the feeling on both sides that there is no cooperation, that the bureau says they're not submitting bills. The industry says they're not looking at the bills they submit. It seems to me the only way to resolve this is to get to some binding arbitration arrangement that settles this once and for all. It's been going on a long time. It may mean that some of those expenses are not reasonable, but the binding arbitrator will resolve that issue in the same way if they don't come to some agreement within a reasonable amount of time. If in fact the industry is dragging its feet, they will know that their time limit is up. So, in my mind, this floor amendment makes a great deal of sense and I applaud Senators Burling and Gottesman for coming up with a resolution that settles this. Because at some point the state has to keep its promises and we need to do it in a clear way. So I support the amendment and that's why you see a 6-0 Finance vote.

SENATOR GREEN: Thank you, Mr. Chairman. I, too, want to applaud Senator Burling and Senator Gottesman for at least proposing an idea and presenting a potential solution. However, as one Senator, I have a problem with the solution. It doesn't mean that I'm not in favor of getting this settled. I think that the reasonable expense issue is what's holding this up. I think what's holding this up is an agreement between the parties as to whether it's a legitimate expense. However, any time we take our responsibilities as legislators and turn it over to another party to solve the problem for us, I start to get nervous. I think we have a responsibility. I also want to tell you that philosophically, I'm very much opposed to binding arbitration on anything, because it takes it out of the hands of the taxpayers and gives it to some paid professional who in my experience in dealing with arbitration is a flip the baby. Nobody's happy, but that's fine. But the decision about how public dollars are spent lies on this issue with this body, and when it goes to the House it will lie on that body's responsibilities. We are elected to make these decisions, not

to hand them over to a non-elected official. That system may work well in the court system, but I think in this general court, that has not been the common practice and we should not be doing that. So even though I applaud your effort I do not agree with your solution. And I do believe that if we go now with the bill as passed, with the current amendment as passed, that we will at least move this thing along. I think that this is going to get to the point like all of these things when the point of decision has to be made. I think we're getting there, and I just do not believe that we need arbitration to accomplish it. Thank you.

SENATOR BARNES: Mr. President, I'm rising to ask to move the question. All of the speakers that you have listed up here have spoken.

SENATOR GATSAS (In the Chair): I have two more speakers, Senator.

SENATOR GOTTESMAN: Mr. President, I just want to point out that on the last floor amendment that was just passed on it was 0487s. What this was really directed to was the last six words in that amendment which were in the prior bill, and that is that the "reasonable expenses to which the providers are entitled" are the key words. We can pass this bill, and we can send it over and there can be an agreement on this bill, but no one will have determined to which the providers are entitled. This was an attempt to stop having to hear from both sides that this one is not holding up their end of the bargain, or that one isn't providing the bill. To get them in a room before some sort of an administrative person who is qualified to resolve this kind of dispute and end it once and for all. Figure out how much is really due, and end it. Now if the Senate intends to be a part of that, then I'll feel more comfortable. I mean are we going to be involved in that process in the actual weeding out of who owes what to whom? I don't think so. I don't think they are on the other side. I want to know who is going to figure that out, and until there is a solution where people are directed, if they have to sit in the same room, sit at the table, negotiate, get this thing behind us, we're never going to know who's going to pay what to whom. I think we all want the same thing. We all want whatever the bill is to be paid and move on to something that's within our control. Thank you, Mr. President.

SENATOR MORSE: Thank you, Mr. President. I would like to point out that most of the members of the phone companies were at our executive session and members did ask the department to speak. They did ask the House member that sponsored the legislation to speak, and it was open enough so that they could have had the phone companies speak because that's how we treated this. It comes down to being reasonable, have an amendment in here to bring it to Fiscal. It's going to require us to have the House either concur or go to Committee of Conference. My guess is they're going to want a Committee of Conference. That gives the phone companies plenty of time in the next two weeks to get together with us and talk about it. I just want you to remember. We left here in June. They never came to us. Earl Sweeney was the only one that responded to Senator Odell in this time period to tell us what he was doing and how he was getting non-response on the other end. So we have a couple weeks in between here if people expect the Senate to solve it which we're more than willing to do. But that's going to require money. So someone better get off their horse because we have a million bucks in that account. That's it, and even if you were to settle, you're talking a six to seven million dollar liability right now.

SENATOR BOYCE: Thank you. And I just rise to point out that...and somebody may have said this while I was over opening and closing a

hearing. But I just wanted to point out that in the existing statute there is an obligation by the bureau to reimburse the reasonable expenses incurred by these providers. That's already in statute. That's not a question of what we do here today. The question is will we stop the ongoing obligation which is what this bill intends to do, and the amendment that we passed while I was out, simply clarifies that it will go to the Fiscal Committee for a settlement as a method of trying to settle this. And I agree with that. I think that there's been some...there's question on both sides whether or not all of the procedures have been followed on. Did they submit the bills properly? Did they submit all the backup documentation, or did the bureau disregard some of that? I don't know that there's you know, hasn't been some failure on both sides to do this. However, what I do know is, that if we pass this bill, it will end the ongoing obligation, and there's some question as to whether we should have had that obligation, but we wrote it in statute. We need to change the statute to end it, so there's a time certain beyond which we won't have anymore ongoing expenses, and the settlement of what the past expenses are still needs to be done, and this allows for a method. The Fiscal Committee amendment allows for that method. I don't believe binding arbitration is the right way to go on these things. That would be, I think, a mistake on our part to go to binding arbitration with this. Thank you.

SENATOR LETOURNEAU: Could I ask Senator Odell a question? Senator Odell, could you tell us how many companies that are able to file under this particular piece of legislation. How many companies did, and what the spread of the costs were?

SENATOR ODELL: Thank you. I'll have to rely on memory. I believe there were about something like twenty companies that had 911 requirements that they did pay for, and I think when the opportunity to file the bills that there were about four companies. One company, a large company, has requested something in the range of \$300,000. We have another company, equal or smaller size, and they're asking for \$6,000,000. So you can see the challenge that the department faces.

SENATOR LETOURNEAU: It is the intent of the government or the agency to pay those smaller bills and arbitrate or change or debate the \$6,000,000 charge?

SENATOR ODELL: I think that they are. What I'm told and what they testified to is that they are prepared to move forward with, once they get the documentation, to pay the bills that come before that are reasonable.

SENATOR LETOURNEAU: Thank you.

SENATOR ODELL: There's a real goal of getting this thing done with, a) to stop it thirty days after passage of this bill, but also to get the past bills cleared up and out of their hair.

SENATOR BURLING: Question. Well, the last two answers I'm afraid raised this, and I have to bring it up. Senator Morse, if there's only a million dollars in the fund, is "reasonableness" going to be determined by the amount of money available in the fund or by the bill that was submitted by the company?

SENATOR MORSE: I'm not going to speak for all twenty-four of us, but if the fact is I said it would take legislation to appropriate more money.

SENATOR BURLING: Thank you.

**Floor amendment failed.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 26**, requiring identification to obtain a ballot. Internal Affairs Committee. Ought to pass with amendment, Vote 4-2. Senator Bragdon for the committee.

**Internal Affairs**  
**January 11, 2006**  
**2006-0395s**  
**03/05**

**Amendment to SB 26**

Amend the bill by replacing section 1 with the following:

1 Obtaining a Ballot; Identification Required. Amend RSA 659:13 to read as follows:

659:13 Obtaining a Ballot. A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the checklist. *The ballot clerk shall then require that the person desiring to vote either furnish a driver's license or other form of photographic identification verifying the person's identity and residence or have his or her identity and residence personally verified by an election official.* The voter, if still qualified to vote in the town or ward and unless challenged as provided for in RSA 659:27-33, *or unless failing to present the required identification*, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state.

**2006-0395s**

**AMENDED ANALYSIS**

This bill requires a voter to present photographic identification or have his or her identity verified by an election official to obtain a ballot.

**SENATOR BRAGDON:** Thank you, Mr. President. I move SB 26 ought to pass with amendment. The bill requires the voter to present a photographic identification in order to obtain a ballot. The committee amendment clarifies language and also provides that personal recognition could be used where a local official knows the person desiring to vote. We're all familiar with difficulties and tales of voting irregularities. This bill is a common sense approach to providing a measured balance between voter accessibility to the ballot and assurance of the integrity of the polls. The Internal Affairs Committee requests your support of this legislation as amended. Thank you.

**SENATOR HASSAN:** Thank you, Mr. President. I rise in opposition to the ought to pass and to the amendment which the committee did pass. On the surface, this bill looks like a good idea. The problem with it is that, in an attempt to address a very small problem, we are creating a



much larger one, and bear with me for a moment. The right to vote is perhaps our most precious right as Americans and as citizens of this state. We have all spoken passionately about that right on this Senate floor, and I think we all share our commitment to protecting the right to vote. What this bill would do is require that voters, even if they have previously registered to vote, on voting day must appear at their polling place with a photo identification, and they must present that photo identification in order to vote. The problem with that is approximately 25,000 New Hampshire citizens age eighteen or over do not have a driver's license, and one presumes that many of them do not have a photo identification. Now people have said to me, "Oh, for heaven's sake, in this day and age everybody has a legitimate photo identification," and the fact of the matter is that's simply not true. According to the Secretary of State, when we had a hearing on this bill, there has been only one documented case in the state of New Hampshire recently at least, but only one that he could think of, of voter fraud, when a seventeen-year-old young man so zealous to vote for George Bush pretended to be his father knowing that his father couldn't vote that day and voted. So, in an effort to address that particular problem, the only one the Secretary of State has documented and could talk to us about, we are now talking about the possibility of presenting significant barriers to some 25,000 people in this state discouraging them to vote. Now, do they have an option of going and getting a photo identification, a non-driver's photo identification? Yes, they do, assuming that they can find somebody to drive them to one of our Department of Motor Vehicle offices and get it. Provided that they can come up with the \$10-\$15 I think it costs to get a non-driver's photo identification. There are people in this state who opened banks at bank accounts thirty, forty, fifty years ago with no photo identification. There are people who have credit cards having never presented a photo identification or choose not to have a photo identification. There are eighteen and nineteen-year-olds living in their parents' home who have not yet opened a bank account and signed over their paychecks to their parents and get reimbursed by their parents. There are lots of people in this state who, for one reason or the other, maybe disability, maybe infirmity, do not have photo identifications, and we are placing a significant barrier by this bill. You don't have to have a bank account in the United States of America or the state of New Hampshire to vote. You don't have to be able to drive to vote. You don't have to be able to have a credit card to vote. Any New Hampshire citizen, any United States citizen, gets to vote, and we do not put in poll taxes in this country or in this state and we do not discourage people to vote. That is a policy that we have been unified about. This is a sounds good piece of legislation that will harm more people than it will help, and it is a vast over-reaction to a very small problem. Thank you.

SENATOR ESTABROOK: Yes, I'm not sure who to ask it of. In fact maybe we should have a quorum call, but anyone who would like to respond who's in favor of the bill and perhaps the sponsor, I don't know. But what I would like to know is what happens with people who want an absentee ballot? I mean, as I understand it, you write into your town clerk and you get the ballot and you do it at home, and nobody's going to be asking you for a photo ID. So if you really were intent on impersonating someone else and voting, even with this in place, you could still do it. I think, as Senator Hassan said, perhaps it's overkill, and maybe someone could respond to the issue of absentee balloting.

SENATOR BRAGDON: I don't believe it covers absentee ballots, but I'm not sure.

SENATOR ESTABROOK: Thank you.

SENATOR FOSTER: Question of Senator Hassan. Looking at the bill, it says this shall take effect sixty days after passage, and is that right? Is that still? The amendment doesn't change that, and if I were to project out to if the House were to adopt this and it became law, it would go into effect in July sometime thereabouts, so sixty days later. So it would actually be in place for the primary in September. Would that be so do you think?

SENATOR HASSAN: That's my understanding.

SENATOR FOSTER: Follow-up? Is there any money being dedicated so that cities, towns, the Secretary of State's Office, or some governmental official can advertise to the public that this new requirement for people who voted for years without photo ID is in place? Is there any money in the bill for that?

SENATOR HASSAN: There's no money allotted in this bill.

SENATOR FOSTER: Follow-up? So, at least the first time, we would expect a lot of people to be turned away because they wouldn't have any idea about this new requirement?

SENATOR HASSAN: That would be my expectation. Thank you.

SENATOR FOSTER: Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise to speak against the bill, and I know it's a long day and people have been very patient. But let me just cite you a couple of incidences that I think are very important as we discuss this. When I first ran for political office there was a town in my district where you could not register to vote unless you showed your passport. Only 30 percent of the people in the United States get a passport. That means 70 percent of the people in the United States don't have a passport, never get a passport. You had to show a passport in order to get on the checklist in this town in New Hampshire. And the second great feature of this community was the polls opened at 11:00 in the morning and closed at 6:00 at night. So most working people who went to work at 7:00 didn't have a chance to vote. So guess what? We had low voter turnouts. Didn't take Abraham Lincoln to figure that one out. You know, keep them bringing their passports, and keep the hours so that they can't go. And guess what you get? Low voter turnouts. Well we decided to deal with that in this state, twenty years later I might say. We studied it, and we decided, we decided that we would have uniform polling hours in the state of New Hampshire and we would change our voter registration. And guess what? Voter turnouts increased. The Secretary of State is opposed to this bill. Most town clerks are opposed to this bill because what it does is it hinders people from voting. It hinders people from exercising their constitutional right and a constitutional privilege. Why we would want to do something to hinder people from voting is beyond my imagination. We complain about low voter turnouts. Since 1960, we've had a gradual trend of low voter turnouts. New Hampshire has been the exception. We have high voter turnouts, and we don't have any fraud. We are credited all over the nation for having an excellent voter system whereby all ballots are counted, and they're counted correctly. And we have a good system for voter registration. Why mess with a good thing? I mean, we talked about the first in

the nation primary. We talk about you can't make it unless you've been to New Hampshire, and now we want to compress the ability to vote, the opportunity to vote. Doesn't make any sense to me. Just doesn't make any sense. We all want to exercise civic responsibility. Why put impediments in people's place? You know today we had...as I was driving up the Capitol Center of the Arts. Maybe some of you senators saw it. There was a line from the Capitol Center all the way around the block, people who wanted to become American citizens. They were sworn in today, 285 new American citizens. Why do they take the time to become American citizens? Because they wanted to exercise franchise. They wanted to be part of a free society, a free and open society. Now some of those people may not have a license. They may not have a photo ID. They may not have a credit card, but they want to be American citizens and they want to participate in the process. Why should we throw something in front of them that's a deterrent? Doesn't make any sense to me. Thank you.

SENATOR CLEGG: Thank you, Mr. President. I heard how we've only had one case of fraud that was prosecuted in the state of New Hampshire, and I want to say I agree. But I was a member of a study committee in 2000 that had eight written confessions. With the Attorney General sitting in front of us, we asked the question, "If this happened would prosecute that person?" and we did it until we went through all eight. And the answer was, "Yes we certainly would if that ever happened but it never does." And after they told us in those eight instances they would prosecute, we said, "Oh, by the way, here are the eight signed confessions. What are you going to do?" Six years later I still ask, "What did you do?" and the answer is still the same. We asked them to come down here, so we could ask them if that was really what they meant when they wrote it, and their lawyer told them not to. That's eight people who admitted and apologized to a clerk for voting not only there but also in their home community or for voting in the state of New Hampshire when they didn't live in the state of New Hampshire. But we don't prosecute. We know it happens. We don't prosecute. The only time we ever prosecuted was when it was a seventeen-year-old who said he was his father. Other than that in this state you can commit any fraud you want, and the AG's Office doesn't care. We're asking people to show a valid picture ID or to be verified by somebody sitting there. What is wrong with that? If people find citizenship in the state...in the United States so great, so wonderful, I'll bet they too, want to protect the right to vote, and make sure only those of us who are supposed to vote, vote. Show me one other country in this world where you could walk in and say I want to vote, and they just let you in. Anybody who wants to be an American citizen wants to make sure that this is protected. It's the right to govern ourselves. It doesn't mean that everyone else has the right to come in and influence it. This is our government, and showing a picture or having somebody verify who I am is not too big of a deal for me. For the privilege to vote, I'll gladly show you my picture. Thank you.

SENATOR FOSTER: Senator Clegg, I think Senator Hassan spoke about one example of voter fraud I guess based on somebody showing up and saying they're somebody else. The examples you talked about this bill wouldn't impact. It sounds like people are double registering or voting when they don't live in places and so forth. As long as they had a license, they'd still be able to do that. So we're really talking about other issues. What we're talking about here today is people showing up and saying they're somebody else.

SENATOR CLEGG: I don't think so because, if somebody showed an ID and said they were from Iowa, I'm sure the clerk would say, "Well, if you're from Iowa, why are you voting here?" But since they weren't asked they just went and registered and walked out the door. If you had to show an ID, it would have worked a lot better.

SENATOR FOSTER: Follow-up? If I have an ID from...that I attend the UCLA or something I have a picture ID and I'm home in my home place, I could show that as a picture. This is just a picture ID.

SENATOR CLEGG: Right.

SENATOR FOSTER: It doesn't deal with the issue you're talking about.

SENATOR CLEGG: But it's the first, it's the first movement towards identifying yourself. Otherwise, you can claim to be whoever you want. You can claim to live wherever you want. So long as you sign an affidavit that swears that's who you are, then you walk away. You don't ever show anybody a picture. You don't ever verify in any manner who you are under the current circumstances. This is the first step to making sure you are who you claim.

SENATOR FOSTER: Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. I share Senator Clegg's concern about fraudulent voting, and I think one thing I discovered in investigating some of my campaign practice bills was that part of the reason the AG's Office is hesitant to prosecute these cases, anything regarding election law, is that there's a provision in the New Hampshire Constitution that if you're found criminally guilty of violating an election law statute, you lose your right to vote for life. Now in some of these cases maybe that's an appropriate penalty, but I guess the AG's Office has chosen not to prosecute in some cases simply because the penalty is so harsh. So I think another route to get at the problem, might be to simply create some penalties that were enforceable. But I don't think that showing your photo ID takes care of those who are absentee balloting or does anything positive to improve the situation.

SENATOR FOSTER: Thank you.

SENATOR LARSEN: Thank you, Mr. President. I rise to oppose this bill. It is in fact taking away one of our most precious rights. It is in fact making voting harder for no good reason. It in fact...if you are a voter right now you have to show some form of ID when you register to vote. The cost of obtaining a photo ID amounts to a poll tax. It makes it harder for some people to vote and, in fact, it causes there to be almost an ability to pay test or an ability to get someplace where you can pay for a photo ID. There might be any number of reasons why people might not have a photo ID. They might have lost it, not yet replaced it. They might have forgotten it, a big one. A lot of people are going to go to the polls and not know or forget. It might be 6:35 and they live a half an hour away. They're going to be disenfranchised of their right to vote even though they were there on time because they didn't have time to retrieve their photo ID. There might be seniors. You might be taking in an elderly person with you who didn't know that they had to have some kind of ID. They might not have an ID in their purse. They might not have one in their home, non-drivers. You're going to require them to go in and have their photo taken, and the last check I had it was at least \$10 to get a government issued ID with a photograph. These might be people who have been on the voter registration list forever. We heard in the committee a discussion, "Oh well we'll fix that because we'll have the local election official

approve this person to vote.” That works in maybe a tiny town. Those of us who live in cities know that you don’t know everybody in a ward. No election official probably knows everybody in a community. So you’re going to have voter...voter approval of people that are recognizable. If they look a little different, if they look like they might not have lived in town forever, they’re going to be sent home because, “No, I don’t know who you are, so you can’t vote.” This is in fact making voting more difficult. The HAVA regulations already require that, if you’ve registered, and you did not show your ID the first time, you have to show it when you go to vote. We already have a system for...for registering at the poll on Election Day. We have a well-defined system. We have not heard of fraud. We are addressing a problem that does not exist, and we are causing a much greater one which is the disenfranchising of your right to vote, making voting far more difficult in this state for no good purpose. It’s very wrong that we consider passing this, and I urge you to reconsider and vote inexpedient to legislate on Senate Bill 26.

SENATOR MARTEL: Very briefly, Mr. President. Maybe our solution here in the state of New Hampshire and across the United States should be to put our thumb in dye and everybody who does that, like they just did in Iraq where 30 million people voted. had dye in their thumb which is indelible for up to I figured I guess twenty days. Maybe we should do that, and everybody would know who voted, when, and on what day. Thank you, Mr. President.

SENATOR HASSAN: Thank you, Mr. President. Many of the comments I was going to make have been said, so I won’t spend time on that. I just would urge my colleagues to think about the following. The issue for us as state Senators is not whether it would be hard for us to produce a photo ID or whether we are willing to go to DMV and get one. Our job today is to think about what it is like to be one of the most vulnerable citizens in this state who does not have access to a car or access to family to take them to the DMV or access to the additional \$10. We’re here to protect the voting rights of every one of our citizens, including our most vulnerable, the elderly and the disabled, so I urge you to vote no on the ought to pass so that we can move inexpedient to legislate. Thank you.

SENATOR BOYCE: Thank you, Mr. President. I rise, I hear a lot about the...the right to vote is a fundamental right, and it is. It’s one of our most cherished rights. Now we’ve also heard that maybe the Attorney General in the past has not prosecuted some of these people who might be otherwise prosecuted because the penalty is so great that you would forever lose the right to vote. Well, that’s...if that’s the case, I think we need to go back and impeach whatever Attorney Generals has done that, because our right to vote is very important. It is so important that we have in the Constitution the penalty. How many other penalties are there in the Constitution? Not very many. This one, this one crime, does have a penalty in the Constitution, and it’s a severe penalty. We say you can never vote again. You can’t hold office. You can’t run for this seat that I’m sitting in if you have committed voter fraud. That’s how important that the founders of this state thought it was. Voting is important. It’s also important that you know that your vote counts. If someone walks into a polling place and says, “I’m Jim Jones, and I’m voting today,” has no identification. He’s not Jim Jones. We’ve heard that happen in this last election. Somebody went in and voted that was not legally entitled to be there and vote, one person. Now whoever it was that he voted for, we don’t know that because secret ballots are cherished as well. Who-

ever he voted for, somebody else out there voted against. We had two candidates in that election maybe more, but somebody voted for this guy. This guy's vote cancelled it out. Somebody in this state had his vote cancelled. His vote was stolen by somebody committing voter fraud. The cases that Senator Clegg mentioned, I was on that committee as well. I read the letters. These people said, "I need to change my voting registration back to where I really live because I shouldn't have voted there." The Attorney General at the time did not prosecute those for whatever reason, but in every one of those cases, somebody who is a legitimate resident of this state, a citizen entitled to their vote counting, lost their vote. They stole that vote from somebody in this state. That's how important it is. That's why the penalty is in the Constitution. That's why we need to make sure that every person who shows up to vote is that person who has registered to vote and has that legal constitutional right to vote. There is no ifs, ands, or buts. We need to have a safe way of voting. We need to make sure that we vote. That our vote counts. Every vote that is legitimate counts. We want to make sure that there aren't any illegitimate votes. Rights also come with responsibilities. You want to exercise your right to vote? In this case it looks like you're going to have a responsibility to show up with something that proves that you are who you are. I'm sorry if that's difficult. I'm sorry if that's not absolutely perfect and easy and the easiest thing to do. But I guarantee you that if we don't do this, somebody else will have their vote stolen in the next election. That's what we can't have happen. Our votes are cherished, are precious. Our Constitution says so. We say so. This bill says so. Pass this bill. Thank you.

SENATOR BURLING: Thank you, Mr. President. I was going to stay in my seat, but really I've lost all belief that common sense is still present in this house. I've been a moderator for thirty-two years. Anybody else claim that? You know what goes on then, Senator Flanders. You're talking about passing a bill that is going to send some of our neighbors and friends back home cussing and furious because they forgot their damn license, they didn't get to vote. And, who are they going to blame but the election officials? Well there isn't an election official in this state who ought to bear the blame for an idea as lousy as this one. This will do nothing to help American democracy. This will do nothing to preserve the government of the state of New Hampshire. You had one kid, a seventeen-year-old Republican who wanted to vote for George Bush. We're going to wreck the election laws of the state of New Hampshire and give him a triumph? Boy I hope not. Mr. President, this is serious business. This is not a time to play partisan politic games with who gets the franchise in New Hampshire. Holy mackerel. What are you going to do when your child phones up and says dad, "I didn't get to vote 'cause the clerk told me I had to have my license. She didn't remember who I was. I didn't get to vote. Sorry I didn't vote for you." Well I know you guys, you're going to be ripped, and you're going to go take it out on the deputy clerk of these district **TAPE INAUDIBLE**, and it will be totally unfair. Every single complaint that you have raised about fraudulent voting is properly dealt with in a different manner. Enforcement, training, and sense, all of which has been said to us by the Secretary of State, and our own clerks and moderators. They've been calling us up. They've been telling us this is a bad idea. For once, we ought to listen to the people who actually have to do the work. This is a terrible thing you're proposing to do, disenfranchising American citizens. The last folks who tried to do that wound up losing the second World War. It is our duty to insure that Americans get to vote, not that we take away their rights. Thank you.

SENATOR BRAGDON: Thank you, Mr. President. I move the question.

SENATOR GATSAS (In the Chair): I have two more speakers on the list and we will move the question.

SENATOR LETOURNEAU: Thank you, Mr. President. I ask the indulgence of the chamber here. I live in Derry and, in the last Presidential election, we were inundated. We're a town of 34,000 people, 18,000 registered voters, one polling place, the largest single polling place in America. On Election Day, the Presidential election, we had 4,000 people come in that weren't registered to vote that wanted same day registration, 4,000. Now I was out there campaigning just like everybody else was, took a break, walked through the parking lot. Sixty percent of the cars out there had out-of-state tags on them. **TAPE CHANGE** the people are lined up along the school. I didn't recognize one person. I've lived in that town for forty years. I didn't recognize one single person, and I couldn't go in the polling area because I was a candidate. I asked one of my friends to go in and ask how they were doing with the registrations. They said they're inundated. They're not asking for any identification. They're just giving them the waiver, and they signed them. After the election, I asked what happened to those waivers. Oh, well we throw them away. Now we can stand here and say nobody committed fraud, and I don't know, and none of us know and never will know. But wouldn't it make it easier for those people who are doing we had to bring people in. They'd never done this before because we were inundated with 4,000 people. They didn't know these people. You sign the waiver. A little ID would have gone a long way to make sure those people really lived in Derry. Four thousand people, that's incredible, and I don't want to disenfranchise anybody. And I will tell you that the Republicans won every single election in Derry. So I'm not saying that it was fraud. I'm just saying that the ability to commit fraud was there. It was there, because there was that many people. Nobody knew who they were. Thank you.

SENATOR HASSAN: A question for Senator Letourneau. Do you have any understanding because I don't think it is in the bill that the photo ID has to prove residence?

SENATOR LETOURNEAU: Well, you have to be a resident to vote. So if you show an ID and it's a New Hampshire ID you live in New Hampshire, and it should have your address on it.

SENATOR HASSAN: Follow-up? But...but if I have just moved to New Hampshire two weeks ago from another state, the law says I'm permitted, and it is now my domicile, and I haven't gotten my new license yet. It proves who I am, but it doesn't prove that I'm a resident. My lease, my mortgage, something else will prove that. I just don't think that this bill is going towards what you're all trying to address.

SENATOR LETOURNEAU: Okay, yes, in the in the amendment it says "identity and residence" and "have his identity and residence personally verified by an election official". So if I've just moved in, I've got a receipt, a tax bill, or a phone bill. I've got some kind of a bill. I've got some kind of receipt from somebody from the town that I live there. Whether I moved in and I've got an apartment, I've got a receipt from the person who rented me the apartment. All we're trying to do is get some credibility here, and you may not see it in the smaller towns. But I can tell you Manchester, Nashua, Derry, probably Concord, Portsmouth, those are the areas that get inundated on elections, especially on tight elections, and it's, from my perspective, I had never seen anything like it. And I've

been voting all my well since I've been twenty-one. It was twenty-one when I started voting. We moved it down to eighteen. I voted for that too. That was a constitutional thing. But what I'm saying is, is that in my entire life I'd never seen anything like it. It was amazing. I was happy there were a lot of people showing up, but I didn't know anybody. And if this means doubts there, doesn't this do a good job of taking that doubt away?

SENATOR HASSAN: One last follow-up.

SENATOR LETOURNEAU: Maybe I shouldn't ask that question.

SENATOR HASSAN: Well, and it's...it's really a response of the question. I am left with the doubt that all the people who want to vote would be able to vote because of the number of people who don't have photo IDs because of infirmity or age.

SENATOR LETOURNEAU: I'm assuming, Senator, that they drove there. They have to have a license to drive a car, and you're required to have your license on you when you drive that automobile.

SENATOR HASSAN: I think we've all been at polling places where people have arrived in the cars of their family or friends to get there because they're too infirmed to drive themselves.

**Recess.**

**Out of recess.**

**The question is on adoption of the committee amendment.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**The following Senators voted No: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 15 - Nays: 8**

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Hassan.**

**The following Senators voted Yes: Gallus, Johnson, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**The following Senators voted No: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 15 - Nays: 8**

**Adopted.**

**Ordered to third reading.**

**HB 66**, regulating mandatory overtime for nurses and assistants. Internal Affairs Committee. Inexpedient to legislate, Vote 3-2. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that House Bill 66 be inexpedient to legislate. This bill starts to regulate mandatory overtime



for nurses and assistants and to provide civil penalties. The committee feels that this bill is unnecessary and redundant. As the Internal Affairs Committee learned, mandatory overtime very rarely occurs, and this bill would actually interfere with the prudent decisions by nurses and their employers in regard to provision of nursing care to New Hampshire residents. Please join the Internal Affairs Committee in voting inexpedient to legislate. Thank you.

SENATOR LARSEN: Thank you, Mr. President. I rise to oppose the inexpedient to legislate motion on House Bill 66. House Bill 66 would not prohibit voluntary overtime, and it has a number of protections and exceptions in it and emergencies that are dealt with. Nurses are currently not forced to do...nurses are presently forced to sometimes do mandatory overtime, often compromising safety and health and well-being of their patients and the nurses themselves. This bill is designed to begin a process of reducing medical malpractice insurance costs and medical errors that are most often caused by fatigue. Many of these errors are preventable, and we need to also protect nurses who can lose their licenses if they make an error or perhaps lose their jobs if they, through exhaustion, refuse to do the mandatory overtime. They can be reprimanded or fired if they refuse, and they could also have to work the overtime despite the fact that they know their fatigue might interfere with their judgment. This is in fact a reasonable and recommended, that we consider what overtime does in medical judgment in nursing judgment. The Board of Nursing has indicated that they field calls every week regarding this issue, and they know it's a problem. Not only are we losing nurses to burnout and to other states, but we're not getting as many new nurses as we need. And certainly the working conditions are an issue which cause nurses to either leave their job or choose not to go into a field where they have to work mandatory overtime. A Kaiser Foundation study found that nurses working over twelve hours are more likely to make mistakes and medical errors especially with prescriptions are three times higher when nurses have been working over twelve hours, which clearly presents a risk to patients. When voluntary overtime is used, nurses have time to plan for their additional work. This bill allows voluntary overtime. New Hampshire is currently losing these nurses who most often cite stress and burnout as a reason for leaving their job and, by controlling overtime as laid out in this legislation, it's one way to lower the stress of what is a difficult and important job. We have a number of nurses in this state who are over age forty, and the addition of overtime requirements causes this stress and causes at times, error. It's important that we recognize this, that we pass House Bill 66. There are some good amendments which were discussed in the Internal Affairs Committee which Senator Hassan will explain. If we can get past this inexpedient to legislate motion, I think you'll be able to hear Senator Hassan's proposals for improving the bill even further. Thank you, Mr. President.

SENATOR HASSAN: Thank you, Mr. President. As Senator Larsen indicated, this bill is a bill intended to address the issue of medical errors caused by nursing fatigue, and its genesis was actually out of a committee on the House side of our building that was looking at the cause of medical errors. Senator Larsen has spoken about the important protections in this bill. I just want to be clear that the bill does not prohibit nurses planning with their employers to work overtime beyond twelve hours or to volunteer for such overtime if they feel up to it. What it does prohibit is the use of mandatory overtime beyond twelve hours. So if a

nurse generally works an eight hour shift, she can be mandated to stay another three to four hours or four hours, but she cannot be mandated to stay beyond. There are some exceptions already in the bill that recognize that, when a nurse is on duty in an operating room or an ICU, it may be impossible for an employer to relieve her at the twelve hour mark, and the bill addresses that. I have prepared an amendment. When we heard testimony about this bill, healthcare employers came in to express some of their concerns. Most all of them said the bill just wasn't necessary because this wasn't a problem because they never assign this kind of mandatory overtime because there's a nursing shortage. But in fact, then we heard from the Board of Nursing that they do get calls of nurses who, in a few instances, are in fact subject to mandatory overtime beyond 12 twelve hours. We heard it from nurses. We heard a public research survey was done of registered nurses in the state who felt that it was a problem, and so this bill really goes to those small...the small group of employers who are using mandatory overtime beyond twelve hours, meaning they're really telling nurses that they must stay more than four hours past the end of their regularly scheduled shift. If we can overcome the ITL, and we can...and I have an opportunity to present a floor amendment, I believe the floor amendment addresses many of the concerns that the industry brought. It adds, for instance, a home care exception to the bill, and it allows the nurses and their employers to have written agreements that allow them to voluntarily work beyond twelve hours, and also indicates that if the nurse accepts a job where a regularly posted shift is a twelve hour shift, she can be mandated beyond twelve hours as well. So I think the floor amendment that I've prepared will address many of the concerns that industry brought forward. I hope you will vote no on the ITL so that we can get to the discussion of an amendment, and I request a roll call. Thank you.

SENATOR FULLER CLARK: Yes, sir. I have a question of Senator Hassan. If you could just clarify one more time the issue of "voluntary overtime" and whether or not that is adequately provided for in this legislation or do we need to pass the amendment to address that?

SENATOR HASSAN: Well, actually this legislation, it only prohibits mandatory overtime. So it allows a nurse to volunteer to work beyond twelve hours primarily because the studies shows that nurses who plan to work over twelve hours or volunteer because they feel well enough and they don't feel fatigued, are much less likely to make errors than those who are told they must when they've tried not to volunteer because of fatigue.

SENATOR FULLER CLARK: Thank you.

**The question is on the motion of inexpedient to legislate.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**The following Senators voted No: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 15 - Nays: 8**

**Committee report of inexpedient to legislate is adopted.**

**HB 270**, relative to procedures of the legislative ethics committee. Internal Affairs Committee. Ought to pass, Vote 6-0. Senator Hassan for the committee.

SENATOR HASSAN: I move to table.

### **MOTION TO TABLE**

**Senator Hassan moved to have HB 270 laid on the table.**

**Adopted.**

### **LAI D ON THE TABLE**

**HB 270**, relative to procedures of the legislative ethics committee.

**HB 365**, relative to recount fees. Internal Affairs Committee. Inexpedient to legislate, Vote 6-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move HB 365 inexpedient to legislate. The bill sought to change fee requirements for state general election recounts. Not only were there no instances where a payment had not occurred, the Secretary of State had withdrawn his initial support for the bill, and we feel there are other bills coming our way that we can deal with this later on this session.

**Committee report of inexpedient to legislate is adopted.**

**SB 200-FN**, establishing the uniform athlete agents act. Public and Municipal Affairs Committee. Ought to pass, Vote 3-1. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move SB 200-FN ought to pass. This bill establishes a uniform athlete agents act which governs permissible conduct and procedures to be followed by an athlete agent and a student athlete. It is important to enact this bill because the number of professional athletes in the state is increasing. The Public and Municipal Affairs Committee asks your support for ought to pass.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

### **SPECIAL ORDER**

Senator Clegg moved that **HB 177**, relative to home improvement contracts, be made a special order for February 2 at 10 a.m.

**Adopted.**

**HB 177**, relative to home improvement contracts.

**HB 505**, relative to recording mailing addresses on property deeds. Public and Municipal Affairs Committee. Ought to pass, Vote 4-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move House Bill 505 ought to pass. This bill would require that all property owners include their full address on the property deed. Many rural towns were finding that their property owners were not receiving their tax bill and were being charged interest because their complete and correct address was not on the deed. After reviewing the bill, the committee is now satisfied that it will not interfere with privacy issues. The Public and Municipal Affairs Committee asks your support for ought to pass.

**Adopted.**

**Ordered to third reading.**

Senator Larsen offered the following Resolution:

**SR 3**, noting objections to certain issues regarding “Clawback” and requesting that corrective measures be taken to limit its negative financial consequences. (Sen. Larsen, Dist 15; Sen. Gottesman, Dist 12; Sen. Foster, Dist 13; Sen. Hassan, Dist 23; Sen. Estabrook, Dist 21; Sen. Burling, Dist 5; Sen. D’Allesandro, Dist 20; Sen. Barnes, Dist 17; Sen. Letourneau, Dist 19; Sen. Johnson, Dist 2; Sen. Roberge, Dist 9; Sen. Martel, Dist 18; Sen. Green, Dist 6; Sen. Clegg, Dist 14; Sen. Gallus, Dist 1)

SENATOR LARSEN: Thank you, Mr. President. I move introduction and ought to pass on SR 3. SR 3 is a resolution which was offered and presented to all of you that notes objections that we have as a state regarding clawback, and requesting that the federal government take measures to limit the negative financial consequences that the payment of \$43,000,000 to the federal government causes to our state. I think, as we’re passing it out, I’ll just quickly say what we addressed in the resolution was what we heard in the both Senate and House joint finance hearings. I asked the department to write up what their concerns were with this, and highlighted amongst those are the that we had requested a waiver so that our Medicaid long term care patients did not have to pay co-payments where we as a state had never required that. There was a multiple number of issues that are here in the resolution, but it makes sense for us not to just rail against these problems amongst ourselves, but to in fact inform our Congressional delegation in a list presented by us so that we can hopefully get more attention to the issue than might be happening on a one by one phone call to Washington. So I appreciate all those who signed on to the resolution, and it’s offered in the hope that we in fact get some attention to New Hampshire’s concerns regarding this payment to the federal government. Thank you.

SENATOR FULLER CLARK: Thank you very much. I noticed that my name is missing from the sponsor list and I just want to make it clear that I do support this resolution and to be recorded on record. Thank you.

**Adopted.**

### HOUSE MESSAGE

The House of Representatives, meeting in session on January 4, 2006, 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 72**, relative to the licensing of public adjusters.

### SENATE CONCURS WITH HOUSE AMENDMENT

**SB 72**, relative to the licensing of public adjusters.

Senator Flanders moved to concur.

SENATOR LARSEN: Could we have a reading of the title by bill again because we understood it was a different bill?

**Adopted.**

### HOUSE MESSAGE

The House of Representatives, meeting in session on January 4, 2006, 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 175**, requiring insurance coverage for certified midwives.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 175**, requiring insurance coverage for certified midwives.

Senator Flanders moved to concur.

**SENATOR D'ALLESANDRO:** Thank you, Mr. President. Could we have a quick explanation on this one? We tried to research it, but couldn't find out what the story was.

**SENATOR FLANDERS:** Senator Foster and Senator Gottesman reviewed it in the...

**SENATOR D'ALLESANDRO:** It's okay?

**SENATOR FLANDERS:** Yes.

**SENATOR D'ALLESANDRO:** Okay.

**SENATOR FLANDERS:** We did that during the break.

**SENATOR D'ALLESANDRO:** Okay. Thank you. Thank you.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives, meeting in session on January 4, 2006, 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:

**SCR 3**, relative to the Boy Scouts of America.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SCR 3**, relative to the Boy Scouts of America.

Senator Roberge moved to concur.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives, meeting in session on January 4, 2006, 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 206-FN**, relative to the state code of ethics and establishing an executive ethics commission.

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

**SB 206-FN**, relative to the state code of ethics and establishing an executive ethics commission.

Senator Boyce 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:** Clegg, Boyce and Larsen

**RESOLUTION**

Senator Clegg 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 all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

### LATE SESSION

#### Third Reading and Final Passage

**SB 22**, authorizing Holden College to confer degrees and exempting certain teachers from additional certification requirements imposed by the No Child Left Behind Act of 2001.

**SB 24**, relative to disposition upon death of patient accounts in nursing homes.

**SB 26**, requiring identification to obtain a ballot.

**SB 131-FN**, establishing a school choice certificate program.

**SB 178**, designating a certain highway the Gold Star Mothers Highway.

**SB 190-L**, establishing a committee to study including workforce housing in zoning ordinances.

**SB 207-FN**, relative to enhanced penalties for certain crimes against the elderly and persons with a physical or mental disability.

**SB 221**, relative to obtaining a driver's license and creating a violation for failure to pay a highway toll.

**SB 233**, relative to motorcycle rider education.

**SB 239**, renaming the bridge located on Main Street in Enfield, New Hampshire and crossing the Mascoo River as the Women in Service to Enfield (WISE) Bridge and naming the bridge located on Main Street in Newmarket, New Hampshire and crossing the Lamprey River as the Newmarket Veterans Bridge.

**SB 245**, repealing laws relative to the municipal courts and the administrative committee of the district and municipal courts.

**SB 246**, relative to provisions for permissible contact between the agent of the defendant subject to a protective order and a plaintiff.

**SB 264**, relative to the chief financial officer of the department of environmental services.

**HB 406**, revising certain provisions of the home education statutes.

**HB 460-FN**, relative to the reimbursement to certain providers by the bureau of emergency communications.

**HB 505**, relative to recording mailing addresses on property deeds.

### ANNOUNCEMENTS

#### RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, processing enrolled bill reports and amendments.

**Adopted.**

**In recess to the Call of the Chair.**

#### 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(s):

**SB 175**, requiring insurance coverage for certified midwives.

**HB 505**, relative to recording mailing addresses on property deeds.

Senator D'Allesandro moved adoption.

**Adopted.**

### INTRODUCTION OF SENATE BILL(S)

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from SB 397- 398, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the designated committee(s).

**Adopted.**

### First and Second Reading and Referral

06-3030

**SB 397-FN-A**, establishing a temporary energy tax credit against the business enterprise tax. (Morse, Dist 22; Clegg, Dist 14; Letourneau, Dist 19; Barnes, Dist 17; Green, Dist 6: Finance)

06-3052

**SB 398-FN**, relative to political contributions and expenditures. (Barnes, Dist 17; Green, Dist 6; Clegg, Dist 14; Gallus, Dist 1; Roberge, Dist 9; Estabrook, Dist 21; Fuller Clark, Dist 24; Hassan, Dist 23; Johnson, Dist 2; Kenney, Dist 3; Letourneau, Dist 19; Martel, Dist 18: Public and Municipal Affairs)

### HOUSE MESSAGE

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

**HB 203-FN**, relative to the regulation of tracking devices and establishing a commission on the use of tracking devices.

**HB 397**, relative to authority to file an abuse or neglect petition under the Child Protection Act.

**HB 459**, relative to access to criminal records and enhanced 911 system records.

**HB 506**, including employees of charitable organizations under the protection of the state law against discrimination.

**HB 590**, excluding stepchildren from the definition of "child" in the context of support orders.

**HB 638-FN**, relative to county and state financing of nursing home services.

**HB 645-FN**, relative to fire-safer cigarettes.

**HB 653-FN-L**, relative to bonds for construction, development, improvement, and acquisition of broadband facilities.

**HB 1184**, relative to the majority vote required for the use of bond proceeds in certain school districts or municipalities.

**HB 1248-FN**, relative to the alteration of a portion of the town line between Milford and Amherst.

**HB 1262**, legalizing actions taken at town meeting relative to increasing the board of selectmen from 3 members to 5 members in the town of Pittsfield.

**HB 1402**, establishing the standard of care for certain individuals or nonprofit entities in constructing, maintaining, or improving trails for public recreational use, and establishing a committee to study the standard of care applicable to landowners, lessees, and occupants for the use of public recreational land.

### INTRODUCTION OF HOUSE BILL(S)

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 203 to HB 1402, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 203-FN**, relative to the regulation of tracking devices and establishing a commission on the use of tracking devices. (Public and Municipal Affairs)

**HB 397**, relative to authority to file an abuse or neglect petition under the Child Protection Act. (Judiciary)

**HB 459**, relative to access to criminal records and enhanced 911 system records. (Judiciary)

**HB 506**, including employees of charitable organizations under the protection of the state law against discrimination. (Internal Affairs)

**HB 590**, excluding stepchildren from the definition of "child" in the context of support orders. (Health and Human Services)

**HB 638-FN**, relative to county and state financing of nursing home services. (Finance)

**HB 645-FN**, relative to fire-safer cigarettes. (Public and Municipal Affairs)

**HB 653-FN-L**, relative to bonds for construction, development, improvement, and acquisition of broadband facilities. (Energy and Economic Development)

**HB 1184**, relative to the majority vote required for the use of bond proceeds in certain school districts or municipalities. (Public and Municipal Affairs)

**HB 1248-FN**, relative to the alteration of a portion of the town line between Milford and Amherst. (Public and Municipal Affairs)

**HB 1262**, legalizing actions taken at town meeting relative to increasing the board of selectmen from 3 members to 5 members in the town of Pittsfield. (Public and Municipal Affairs)

**HB 1402**, establishing the standard of care for certain individuals or nonprofit entities in constructing, maintaining, or improving trails for public recreational use, and establishing a committee to study the standard of care applicable to landowners, lessees, and occupants for the use of public recreational land. (Environment and Wildlife)

**Out of recess.**

### LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**



*February 2, 2006*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good morning, everybody. It is an ancient tradition in some churches on the fortieth day after Christmas, which is today, that the candles that are going to be used for the coming year in various church services would be blessed. And that's why sometimes today is called "Candlemas" in the liturgical calendar. Bet you didn't know that. There is an old German hymn rhyme about this day that goes like this. "For as the sun shines on Candlemas Day, so far will the snow swirl until May." And so, the legend goes, if a hibernating animal leaves its burrow on this day and the shining sun causes it to see its shadow...and you know the rest of that story. Because Candlemas is also Groundhog Day. By the way, if you are a gardener, the news from Punxsutawney this morning is not so hot. If you are a skier, you're in great shape. Predicting the future, whether it is meteorological, or economic, or political or personal, has always been something of a crapshoot, but something we keep trying to do anyway. Political parties have polls, the insurance companies have actuarial tables. Until the other day, Alan Greenspan gave us long-range economic forecasts. Because we all want to know about tomorrow so we can decide what we ought to do today. That's a lousy approach. It's a really rotten idea, because in reality, things work the other way around. Remember – the reason you can't figure out what is going to happen tomorrow is because you have not done whatever it is you're going to do today. Live, lobby and legislate in the present moment, drawing on the best and purest that is within you, and in six weeks, whether the trees are covered with snow or blossom laden, it's going to be okay. So let us pray:

*Gracious God of groundhogs, shine the brilliant light of Your care upon our hibernating spirits this day and let the forms and the shapes we cast upon the landscape around us bring hope, like a candle shining in a dark place.*

*Amen*

Senator Burling led the Pledge of Allegiance.

Senator Kenney is excused for the day.

## INTRODUCTION OF GUESTS COMMITTEE REPORTS

### SPECIAL ORDER

**HB 177**, relative to home improvement contracts. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 3-2. Senator Burling for the committee.

### Public and Municipal Affairs

**October 18, 2005**

**2006-0051s**

**05/10**

### Amendment to HB 177

Amend RSA 359-G:3 as inserted by section 1 of the bill by replacing it with the following:

359-G:3 Contract Requirements. No home improvement contractor shall perform a home improvement without a home improvement contract that meets the requirements of this chapter. The home improvement contrac-

tor and the consumer shall sign the home improvement contract prior to the commencement of any work under the contract. The contract shall contain, at a minimum, the following:

I. The consumer's name, telephone number, and the address of the residential property that is the subject of the home improvement.

II. The name and street address of the home improvement contractor and the number of any license or permit issued to the home improvement contractor by the electrician's board pursuant to RSA 319-C, the plumbers' licensing and regulation board pursuant to RSA 329-A, the water well board pursuant to RSA 482-B, or the department of environmental services pursuant to RSA 485-A, and any other applicable license or permit.

III. The name and telephone number of any agent to whom consumer problems and inquiries can be directed.

IV. The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract.

V. A reasonably detailed description of the proposed home improvements.

VI. The estimated date of commencement of work and the estimated date when the work will be substantially completed. The estimated date of commencement of work and the completion date may be changed if work cannot begin or end due to circumstances beyond the control of the contractor, including, but not limited to, the lack of readiness of the job site, the unavailability of building materials, or weather conditions.

VII. Any contingencies that would materially change the approximate completion date.

VIII. The home improvement contract price.

IX. The amount of the initial down payment, which shall be limited to no more than 1/3 of the total contract price.

X. The schedule of payments, which may stipulate additional deposits required to initiate the ordering of materials.

XI. A change order statement which reads: "Any alteration or deviation from the contractual specifications that results in a revision of the contract price or date of commencement or completion of the work will be executed only upon the parties entering into a written change order."

XII. A statement disclosing whether or not the home improvement contractor has liability insurance.

XIII. A statement specifying whether, and to what extent, any warranty applies to the work performed or a statement that no warranty is provided.

XIV. A statement specifying who shall be responsible for obtaining and paying for all applicable permits.

XV. Signature lines for the home improvement contractor or the contractor's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or a typed version of that person's name placed directly after or below the signature.

Amend RSA 359-G:8 as inserted by section 1 of the bill by replacing it with the following:

359-G:8 Violations.

I. A violation of this chapter shall constitute prima facie evidence of a violation of the consumer protection act under RSA 358-A:2. Except as otherwise provided in this section, any right or remedy available under RSA 358-A, including the civil penalties under RSA 358-A:4 and the criminal penalties under RSA 358-A:6, shall apply to this chapter. The state

shall have the sole authority to bring an action under RSA 358-A for violations of this chapter. No person may bring a private action under RSA 358-A:10 for a violation of this chapter.

II. If the home improvement contractor has committed more than one violation of this chapter within one year, factors the court may consider in assessing a civil penalty include, but are not limited to, the following:

(a) The volume of business which the home improvement contractor performs on an annual basis.

(b) The number of contracts in violation.

(c) The actual financial loss or exposure to financial loss suffered by any consumer as a result of the violations.

(d) Whether the home improvement contractor acted in good faith or knowingly with respect to such violations.

III. Except as otherwise provided in paragraph I, nothing in this section shall impair, limit, or reduce the statutory, common law, or contractual duties or liability of any home improvement contractor.

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

2 Effective Date. This act shall take effect January 1, 2007.

**2006-0051s**

#### AMENDED ANALYSIS

This bill establishes certain requirements for home improvement contracts, including that they be in writing and that they address the contract price, the work to be completed, and estimated completion date. The bill provides that a violation of the chapter regulating home improvement contracts is prima facie evidence of a violation of the consumer protection act.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move House Bill 177 ought to pass with amendment. And, if I may, Mr. President, I'd like to say that it is my understanding that our debate on this bill, which really focuses on the issues of how we regulate and require contracts for homebuilders and also how and whether we apply certain disciplinary pressures to both homeowners and contractors, raises some very important issues. I understand there are two floor amendments to be brought forward at this time, but I do move, on behalf of the committee, ought to pass with amendment.

**Amendment failed.**

Senator Clegg offered a floor amendment.

Sen. Clegg, Dist. 14

**January 17, 2006**

**2006-0463s**

**10/04**

#### Floor Amendment to HB 177

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

1 New Chapter; Home Improvement Contracts. Amend RSA by inserting after chapter 359-H the following new chapter:

#### CHAPTER 359-I

##### HOME IMPROVEMENT CONTRACTS

359-I:1 Definitions. In this chapter:

I. "Contract" means an oral or written agreement for the performance of home improvement construction, including all labor, goods, and services under such agreement.

II. "Contractor" means any person who owns or operates a business who, personally or through others, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid for home improvement construction.

III. "Home improvement construction" means the construction, reconstruction, alteration, renovation, repair, modernization, conversion, improvement, removal, or demolition of any residential improvement.

IV. "Knowingly" means knowingly as defined in RSA 626:2.

V. "Person" shall include natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

#### 359-I:2 Home Improvement Contracts.

I. A contractor shall not make, permit, or cause any practice that:

- (a) Fails to perform the services promised under a contract in a timely, competent, or workmanlike manner; or
- (b) Has the effect of creating or maintaining a fraud.

II. No contract covering property located in this state shall provide that:

- (a) The consumer is not a party to the contract;
- (b) The contractor has no liability to the consumer;
- (c) The consumer does not have the right to bring an action to enforce the terms of the contract or otherwise challenge the denial of a claim which the consumer believes is wrongful, subject to the provisions of any alternative dispute resolution procedure specified in the contract; or

(d) Any civil action or alternative dispute resolution procedure brought in connection with the contract shall be brought in the courts of a jurisdiction other than New Hampshire.

III. Any contract for home improvement construction which requires an initial down payment or advance of funds in excess of 10 percent of the contract price shall require a written agreement. The written agreement shall include the following minimum information:

- (a) Contact information for the contractor and consumer.
- (b) A reasonably detailed description of the home improvement construction.
- (c) Estimated dates of commencement and substantial completion of the home improvement construction.
- (d) The home improvement construction contract price, including the estimated or fixed price for performance of the contract, a schedule for payments, and the amount and terms of the initial down payment.
- (e) A statement describing any liability insurance maintained by the contractor.

(f) A statement describing any warranty extended by the contractor.

IV. No civil action, judicial action, or arbitration proceeding asserting a claim shall be maintained under this chapter unless the homeowner complies with RSA 359-G concerning residential construction defects.

V. Nothing in this chapter shall affect any right or action under RSA 447 concerning liens for labor and materials.

#### 359-I:3 Home Contractor Fraud.

I. A home contractor is guilty of fraud, if, such person knowingly and with intent to injure, defraud, or deceive any consumer, conceals or causes to be concealed from any other person a material statement, or presents or causes to be presented to any person, or prepares with knowledge or belief that it will be so presented, any written or oral statement including computer-generated documents, knowing that such statement contains false,

incomplete, or misleading information which is material to an application for the issuance of any building permit, or payments made in accordance with the terms of any home improvement construction contract.

II. A person is guilty as an accomplice to fraud, if, with a purpose to injure, defraud, or deceive, the person assists, abets, solicits, or conspires with another to commit fraud described in paragraph I:

(a) By a knowingly false statement or misrepresentation or by impersonation or other knowingly fraudulent act or device attempts to obtain or obtains funds to which he or she is not entitled.

(b) Knowingly aids or abets any person, by a knowingly false statement or misrepresentation or by impersonation or other knowingly fraudulent act or device, to attempt to obtain or obtain funds to which the person is not entitled.

III. A fraud in violation of this section shall be:

(a) A class B felony if the value of the fraudulent portion of the claim for payment is more than \$500.

(b) A misdemeanor in all other cases.

359-I:4 Consumer Fraud on Contractors. A person who is a consumer of home improvement contractor services is guilty of a misdemeanor if:

I. The person destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with a purpose to hinder enforcement of that interest; or

II. Knowing that proceedings have been or are about to be instituted for the appointment of a person entitled to administer property for the benefit of contractor, the person destroys, removes, conceals, encumbers, transfers, or otherwise deals with any property with a purpose to defeat or obstruct the claim of any contractor, or otherwise to obstruct the operation of any law relating to administration of property for the benefit of creditors.

359-I:5 False Claims Against Homeowner.

I. A contractor shall be guilty of a misdemeanor if such contractor:

(a) Knowingly presents, or causes to be presented, to a homeowner a false or fraudulent claim for payment or approval.

(b) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim.

(c) Conspires to defraud by getting a false or fraudulent claim allowed or paid.

(d) Has possession, custody, or control of property or money used, or to be used with the intent to defraud a homeowner and delivers, or causes to be delivered, less property than the amount for which a homeowner receives a certificate or receipt.

(e) Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the homeowner.

(f) Is a beneficiary of an inadvertent submission of a false claim for payment, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the homeowner within a reasonable time after discovery of the false claim.

II. A court may impose no civil penalty, if the court finds that a contractor who has violated paragraph I:

(a) Furnished officials of the state responsible for investigating violations with all information known to the contractor about the violation within 30 days after the date on which the contractor first obtained the information;

(b) Fully cooperated with any state investigation of such violation; and

(c) At the time the contractor furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this chapter with respect to such violation, and the contractor did not have actual knowledge of the existence of an investigation into such violation.

III. A person violating paragraph I shall also be liable for the costs and attorneys' fees arising from any civil action brought to recover the penalty or damages.

IV. Liability under this section shall be joint and several for any act committed by 2 or more contractors.

359-I:6 False Claims against Contractor.

I. A person shall be guilty of a misdemeanor if a person:

(a) Knowingly presents, or causes to be presented, to a contractor a false or fraudulent claim for payment or approval.

(b) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid.

(c) Conspires to defraud by getting a false or fraudulent claim allowed or paid.

(d) Has possession, custody, or control of property or money used, or to be used intending to defraud a contractor and delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt.

(e) Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the contractor.

(f) Is a beneficiary of an inadvertent submission of a false claim for payment, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the contractor within a reasonable time after discovery of the false claim.

II. Notwithstanding the damages provision of paragraph I, the court may reduce the penalty or impose no civil penalty, if the court finds that a person who has violated paragraph I:

(a) Furnished officials of the state responsible for investigating violations with all information known to the person about the violation within 30 days after the date on which the person first obtained the information;

(b) Fully cooperated with any state investigation of such violation; and

(c) At the time the person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this chapter with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.

III. A person violating paragraph I shall also be liable for the costs and attorneys' fees arising from any civil action brought to recover the penalty or damages.

IV. Liability under this section shall be joint and several for any act committed by 2 or more persons.

359-I:7 Enforcement; Additional Penalties. The provisions of this chapter shall be administered and enforced by the consumer protection and antitrust bureau, department of justice established by RSA 21-M:9. In addition to other appropriate penalties, any violation of the provisions of this chapter shall constitute an unfair or deceptive act or practice within the meaning of RSA 358-A. Any right, remedy or power set forth in RSA 358-A may be used to enforce the provisions of this chapter.

2 New Subparagraph; Enforcement. Amend RSA 21-M:9, II by inserting after subparagraph (u) the following new subparagraph:

(v) Administering and enforcing the provisions of RSA 358-I, relative to home improvement contracts.

3 Effective Date. This act shall take effect January 1, 2007.

**2006-0463s**

#### AMENDED ANALYSIS

This bill establishes requirements for home improvement contractors and consumers of home improvement contractor services, and establishes criminal and civil penalties for violations of a home improvement contract.

SENATOR CLEGG: Mr. President, I'd like to offer floor amendment 0463.

SENATOR GATSAS (In the Chair): You can speak to the amendment as it's being passed out.

SENATOR CLEGG: Thank you. Mr. President, while there's been much discussion for quite a while, last session we asked that this be moved forward. What I hold in my hands has been a document where we worked with the Home Builders Association, the Attorney General's Office and anyone who was interested in the issue. This is the document that everyone has said to me they agree with. I double checked last night. The Home Builders said to me that this is the document that they think will actually do something about unscrupulous contractors. So, as I said, having worked on this, I was part of a study committee last summer. I went to the committee. I've worked on the outside. I've worked at night. And I believe that, if we pass this bill or this amendment, that the Homebuilders Association, the Associated General Contractors, and the citizens themselves who deal with these people, will be protected and everyone is in agreement. Thank you.

SENATOR BURLING: Thank you, Mr. President. This is the toughest kind of debate because, what is incumbent upon all of us today is to try to discern two remarkably different views of how we should deal with home contractors. The two amendments that are coming today as floor amendments represent remarkably different concepts of how we should proceed. Both floor amendments contain initial provisions which talk about here are the things which ought to be included in a written home improvement contract. That is to the good. Whichever floor amendment we adopt, that language will be in. From that first provision on, the concepts included are entirely different. And my concern about the floor amendment we're now debating, Senator Clegg's offering, is that it sees the state of New Hampshire entering the field of home improvement contracts with a mighty club and a really horrifying set of criminal consequences for failure to agree and perform, not only pursuant to the contract, but pursuant to state law. The proposal that Senator Clegg brings to us as amendment 0463s doesn't just penalize home contractors who knowingly defraud their customers, it sets up a concept of homeowner fraud on contractors which will lead to one thing and only one thing right off the bat. And that is a situation in which a homeowner who thought they were entering into a deal to get their roof replaced, find themselves with shoddy work or no work at all, as we heard in committee, time after time after time. There are contractors or people who say they're contractors, who simply take the money and run. And those people will be threatened with criminal prosecution, civil damages and all kinds of negative consequences if they have the temerity to go forward and seek justice from a contractor or a person who holds himself out as a

contractor, but does not deliver. I don't think that's the kind of justice New Hampshire stands for and I don't think that's the consequence that this Senate would want to adopt. I'm not saying it'll happen in every case. Nothing ever does. What I am saying is that we know human behavior well enough that the provisions in this bill, in this floor amendment, which are directed at the homeowners who try to defend themselves, will result in terrible consequences. It's not something we need to do. The alternative amendment, which I will introduce in a little bit, gives a much simpler and more straightforward approach to the problem we heard about throughout last spring and this fall. I urge you to defeat this floor amendment and adopt the subsequent floor amendment when it comes forward. Thank you, Mr. President.

SENATOR LARSEN: Thank you, Mr. President. I spent some time yesterday evening working through this and looking at all the statutes that this bill refers to and found some problems with it which I would like to ask the sponsor of later on. But I guess I have to start out saying we sat through hours and hours in Public and Municipal Affairs of hearings on this bill. And we...at no point did we hear from contractors that they needed greater legal procedural actions that they could take against homeowners. What we heard were hours of homeowners coming to us saying that they had used all the best due diligence capable of...that they were capable of. And there were some very capable, smart people who came to this committee and said they had researched the contractor that they hired. They had asked neighbors. They had called the Better Business Bureau. They researched the person they were about to hire and felt they had done all the due diligence a normal human being could do. And they did not hear any problems with the contractor they were about to hire. They hired the contractor, perhaps put large down payments to have their roof fixed. Thousands and thousands of dollars, and they lost all their money oftentimes; it's not partial. They came to us asking for help. Instead, we see a floor amendment that in fact is going to club the homeowner. Put the threat of consumer fraud, not only on someone who is offering a business, but on the person who might in fact have sought some assistance. We are now saying that homeowners can be guilty of fraud. We have fraud statutes. We do not need this added club that threatens a homeowner who is seeking to do repairs. It's an unbelievable amendment to me, that when we've been asked by consumers to provide some assistance, we are now going to say "We'll give you assistance, but in return, you have to be willing to know that you can be put in a situation of a misdemeanor and perhaps even a fraud, a fraudulent Class B felony situation, which might lead you to be three to seven years in prison, misdemeanors with fines." It's for a group that's asking for a redress from this body, it is unbelievable to me that we are now going to have this kind of punishment hanging over each and every person's head who asks for some home improvement work to be done on their house. We have not heard of any...at least in our hearing, I do not recall any false claims against contractors such as you see on page four. If those kind of false claims occur, they are very, very infrequent. We did hear from the Attorney General's Office, Office of Consumer Protection, their requests for assistance and greater strength of our laws for home improvement contractors because, as everyone knows, the Office of Consumer Protection at the Attorney General's Office does not have adequate staffing. There are stacks and stacks of homeowner appeals for home contracts that have been not followed through on, and they do not have the capacity to bring about the kind of legal action that these people are



seeking. So I just urge you to think carefully about this and I urge you to vote no on the floor amendment. The subsequent floor amendment that Senator Burling has prepared in fact outlines contracts in a way that everyone would know what they are agreeing to and removes the kind of penalty on homeowners that this amendment proposes. Thank you. And I would like to ask a question to follow.

SENATOR GOTTESMAN: You want her to ask the question now or?

SENATOR GATSAS (In the Chair): Senator Larsen.

SENATOR LARSEN: I'd like to ask a question of Senator Clegg. Senator Clegg, one of our...I mean, this is a technical question, but on page five for example, the language says that there...it's new enforcement powers. And when you look up under what you're trying to improve...include enforcement powers, is the administrating and enforcing of provisions of RSA 358-I. When I look that up, it says that that relates to health club contracts.

SENATOR CLEGG: Senator, it wouldn't be the first time an enrolled bill amendment was necessary to fix a statute reference in a bill.

SENATOR LARSEN: You're not intending to work on health club contracts at the same time you're intending to work on home improvement?

SENATOR CLEGG: Senator, as I said, it's not the first time that we've done an enrolled bill amendment to repair the mistake made in drafting on the wrong reference.

SENATOR LARSEN: Thank you. Further question, Mr. President? On page two, there's a statute that it relates to a new statute, RSA 359-G, and that is a new statute which in fact goes into effect this year. It was an attempt from previous years to help create a new way for home contractors and homeowners to resolve their disputes. That is the kind of alternative dispute resolution statute that we created so that homeowners and contractors could in fact sit down and try to work through their issues. Is that not a good step and one which we haven't even seen work yet in terms of redressing people's issues? We created an alternative dispute resolution board not so long ago and it only takes effect in '06. And is that not a better way to resolve disputes through having the homeowner and contractor sit down together?

SENATOR CLEGG: Well, it's always preferable that two people can sit down and resolve their conflicts before anything else. Yeah.

SENATOR LARSEN: Okay.

SENATOR CLEGG: If that's what you're asking. But this bill doesn't stop two people...can you show me where this bill stops two people from getting together and complying with what you're asking, that they talk about it?

SENATOR LARSEN: No.

SENATOR CLEGG: No?

SENATOR LARSEN: No. Further question? And, on page three, the consumer fraud on contractors in Roman numeral II. It basically says that if...you as a consumer could be guilty of fraud on a contractor if for example, the contractor puts in a leaky roof and it's raining hard for three weeks and your roof is leaking...and you cannot...if you have objected to the...if you started proceedings to say that the contractor didn't do your roof properly, in Roman numeral II, on page three, lines five through nine,

it would appear to me that if you go ahead and try to fix this leaky roof so that your furniture is not all being ruined, you could in fact trigger a misdemeanor against yourself. Is that not the way you would read this?

SENATOR CLEGG: Senator, you have the wrong amendment because...I will read the section. It says you'd be guilty of a misdemeanor if "knowing that proceedings have been or are about to be instituted for the appointment of a person entitled to administer property for the benefit of the contractor, the person destroys, removes, conceals, encumbers, transfers, or otherwise deals with any property with a purpose to defeat or obstruct the claim of any contractor, or otherwise obstruct the operation of any law relating to the administration of property for the benefit of creditors." Nothing in here says that if you have a leaky roof you can't fix it. Your version, I don't know where you got it from.

SENATOR LARSEN: And further question? Does not the word "otherwise deals with property", mean that you are otherwise dealing with the repair of a leaky roof and you would be guilty of a misdemeanor?

SENATOR CLEGG: Again, mine says "or otherwise deals with any property with a purpose to defeat or obstruct the claim of any contractor." It doesn't say anything about a leaky roof. If the contractor has a claim against you...I mean, I suppose if he put the roof on and you're going to pick up your roof and take it away. I don't envision that ever happening if that is where you're going.

SENATOR LARSEN: I think it's worth debating that point. Thank you.

SENATOR CLEGG: Thank you.

SENATOR GOTTESMAN: I echo the sentiments of Senator Burling and Senator Larsen. And Senator Larsen and I spent quite a bit of time on this last night and she has conveyed most of this discussion. But, if you recall, there was a study commission that I had the privilege of serving on this summer. And Senator Clegg was there. And aside from the fact that we spent a lot of time talking to each other, there was no public testimony from consumers allowed at that public session. And I think most of that was because it had already been said before. The two sides had concerns. The home building industry wants to be sure that they are not required to do something more than setting forth a basic contract that contains normal business terms. The consumer complaints were simply that people came in, took their money and left town, or just did not perform. When that happens, that's a criminal act. The discussion was that we already have laws in place that deal with criminal acts. When we discussed this with the Attorney General, they weighed in on it, and I think it was the consensus of the committee that they were not enforcing the law to the extent that we would have like to have had it done. They didn't have the resources. You know, we had to talk about how many people it would take to actually enforce this kind of stuff. So what has been boiled down in the bill as amended in today's calendar, is pretty much a really culled down version of there's going to be a contract with some basic elements and everybody's going to follow it. The one thing that Senator Burling is going to amend that's in that bill, is that the only people who are going to enforce that law are the Attorney General's Office. It also says that there will be no private action under the Consumer Protection Act for the individual under 358...I think, A-10. That is the most important right that an individual can have under the law, to be able to go in and complain of a consumer defect. There are not many of these cases filed because they are expensive and they're

time consuming. But, the last thing that we want to do is take away that right. Speaking directly to Senator Clegg's reference to page three, number five, at line five, I tell you, I've read this over and over and, in all due respect, Senator, I have no idea what this means in the legal sense. I'll go back and just read the line. "Knowing a person who is a consumer" if you start at the top, "of home improvement contractor services". That's you and I who want to have somebody do something, "is guilty of a misdemeanor if" and you go to Roman numeral II for example, "knowing the proceedings have been or about to be instituted for the appointment of a person entitled to administer property." I don't even know what that is. I mean, is it in a bankruptcy sense? Is it...and they talk about a secured interest. Is it when someone has a mortgage, they get foreclosed and somebody's taking over the property? What Senator Larsen said is very true. If you get into the middle of one of these contests, and you've got something that is broken and you want to try to fix it, you're going to be precluded from fixing it under this law because you're going to be destroying evidence. Even if you don't fix it, you're going to be slowed down by the procedures that we passed last time, which is this 359-G, "a contractor is to be given sixty days notice before you're going to file suit." After that, he has thirty days to respond to that notice when there's going to be an inspection. People are going to be allowed to see this. The problem is, the consumer is sitting out there with a leaky roof or a wet basement or something that has to be done when there's a problem. The last thing we want to do is have the consumer or the contractor, which this bill also says to "exercise their rights be subjected to criminal offenses." It makes absolutely no sense to me. I appreciate that Senator Clegg and I were on the same commission together; we just disagree on this point. Thank you, Mr. President.

SENATOR BURLING: I'm sorry to rise and speak a second time, but I do want to be clear. If you actually sit in committee and listen to what people come tell you, you hear the most amazing things. The point that Senator Larsen was trying to make is derived precisely from testimony delivered before our committee about an actual event. A person in the upper valley tried to contract for the replacement of her roof. The person with whom she contracted defaulted. Did not show up. Didn't come do the work. Had a huge deposit, but didn't bother to do anything. Exhausted, worried about the oncoming winter and concerned for her property, she hired another roofer to put a roof on. Guess what? The guy who took the deposit showed up one day when she was at work and laid another roof on top of a roof that had just been done. In that circumstance, which happened, we didn't make it up, it happened, that woman, the homeowner, would be subject to criminal penalties when she tried to remove the shoddy job which was performed on her property after it had been done right by a legitimate and conscientious contractor. This will help no one and a yes vote on this amendment will hurt your constituents and it'll be a mistake you rue for the rest of your public life. Please don't do it.

SENATOR FOSTER: Senator Clegg, I wanted to try to understand some of these provisions of this amendment. Senator Gottesman raised questions about the first one, which is the area I play in which is the bankruptcy and receivership world. But I wanted to understand page four, line two. And it looks like what you tried to do is to make this amendment sort of balance, you know, give the contractors certain rights and the homeowners certain rights. Maybe this isn't what you're trying to do here, but in 359-1: 6, false claims against a contractor, it says, "A person shall be guilty of a misdemeanor if a person knowingly presents or

cause is presented to a contractor a false or fraudulent claim for payment or approval.” And I guess thinking about that, I can imagine that maybe that’s directed at subcontractors, but that isn’t what it seems to be. This is about, I think, the homeowners. So how would the homeowners do that and what are we trying to regulate when we’re making a crime here?

SENATOR CLEGG: Well, I guess it could be the subcontractor, and I guess it could be a whole lot of things. I guess it could be somebody presenting to a bank, to a contractor for false and fraudulent. And yes, we did try to balance this between the contractor and the homeowner.

SENATOR FOSTER: But in the homeowner’s case. How does a homeowner...usually the homeowner’s the one doing the paying. So it seems like I understand where the contractor puts in a false requisition and says “I did the work” and I didn’t...

SENATOR CLEGG: Not necessarily.

SENATOR FOSTER: But how would that homeowner...

SENATOR CLEGG: I can give you an example. I can give you an example that a homeowner says to the builder, “My brother works at the lumber yard, why don’t you let me buy the material and I’ll just have you pay.” Maybe that’s one of the situations. Everything is not cut and dried like it is in the legal business where somebody comes talks to you, you send them a bill. In the contracting world, there’s give and take and people actually have to work together.

SENATOR FOSTER: I wish it were that easy, Senator Clegg. Come and play in my world for a while.

SENATOR CLEGG: I think I do.

SENATOR FOSTER: You’re pretty good at it. And on line 31, it says “the provisions of this chapter shall be administered and enforced by the Consumer Protection and Anti-Trust Bureau Department of Justice established by RSA 21-M:9.” I guess two questions. Are we saying here that the Attorney General’s the only one that has the right to prosecute under this, under this section and the county attorneys can’t do it?

SENATOR CLEGG: No. We had a couple other bills this year that had the same type of a reference and the Attorney General’s Office said that the county attorneys could still prosecute because technically they work for the Attorney General. Now, whether the county attorneys believe that or not. So we have the provision in there based on the fact that the AG says the AG can let the county attorney prosecute on its behalf.

SENATOR FOSTER: And does the next sentence in that same section mean that they’re the only ones that can bring claims under 358-A the way Senator Gottesman was talking and not the consumer?

SENATOR CLEGG: No, I don’t believe it does eliminate the consumer from bringing in a claim.

SENATOR FOSTER: It doesn’t say that a consumer can bring the claim, so...

SENATOR CLEGG: It doesn’t say they can’t.

SENATOR FOSTER: I just want to be clear on what you’re saying is...the legislative intent here, that the consumer can bring a claim?

SENATOR CLEGG: I believe that, if doesn’t say the consumer can’t bring a claim, I would say that it he could bring a claim.

SENATOR FOSTER: Thank you.

SENATOR CLEGG: You're welcome.

SENATOR D'ALLESANDRO: Thank you, Mr. President. You know, I reluctantly rise to speak on this one because I introduced a bill, the licensing of contractors in the previous session, introduced it into last session and my purpose was to protect the consumer. That's all, to protect the consumer. Didn't want the consumer sued. Didn't want the contractor sued. Wanted to protect the consumer because what we have heard is that consumers are being ripped off by fraudulent contractors. Not good contractors, but fraudulent contractors. And the number of complaints being filed by the Attorney General's Office has been numerous. They haven't been able to deal with them. So we thought we were going to come up with a simple solution. Simple solutions are always the toughest to get done. We were going to say let's license contractors. And the contractors were happy about this. Let's license contractors. We have a driver's license. We license plumbers. We license electricians. We license everybody, but we don't license contractors. So from licensing of contractors, we have gone to litigation against the consumer. Well the consumer must think we're crazy. Here we had a licensing bill that now calls for the consumer to get sued. Aw man. You talk about injustice. Holy mackerel. What is this political process all about? I don't think we should do anything with this bill except send it home ITL because we aren't taking care of anybody, except maybe some lawyers who are going to have a lot of work to do, and we know unemployed lawyers, that's a tough group, we've got to take care of them. Alright, we've got to have sympathy for unemployed lawyers. But this is crazy. This is absolutely...it drives me bananas! That's all I want to do is protect the consumer. My neighbor gets the shaft because a contractor doesn't fulfill his responsibilities. What happens? He gets sued. He gets sued for getting screwed! What's it all about? Is this the American way? I mean, what the heck are we doing here? Again, it's mind boggling. I had a very elementary education. Very simplicity. I tried to go to the university to learn a little bit more. Got a graduate degree to learn a little bit more. And you know what? When I look at this stuff I say holy mackerel, what in God's world are we doing? We aren't helping anybody. And I am very disturbed by that, because our purpose is to help the people that we represent. So I can't support this amendment. I think the bill has changed entirely, the basic premise that I brought forward four years ago. And we're not doing anybody any favors and we ought to go back to ground zero. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. I'd like to ask Senator Clegg if he would please stand up and talk about what I just heard over here how Senator D'Allesandro's neighbor's going to get hooked. I didn't read that when I read this and I have a very simple education. I just graduated from the University of New Hampshire a few years ago, but I don't see in there where Mr. Senator D'Allesandro's neighbor is getting stiffed. Can you **TAPE CHANGE**.

SENATOR CLEGG: Senator, some of the questions that have been asked come from a bill that is not this floor amendment, so I have no idea, and I do believe I'm on the list of speakers to speak one more time.

SENATOR BARNES: Thank you.

SENATOR CLEGG: Thank you, Mr. President. Senator, I guess I should have just kept going.

SENATOR BARNES: Why not?

SENATOR CLEGG: Listen, if you don't think that contractor's a consumer, then I don't know who is. Go to the lumber yard and see who's buying the stuff in the lumber yard. Go to the nursery and see who's buying the stuff in the nursery. The contractors. They are consumers. And if you think it's okay for them to get, in Senator D'Allesandro's words, "screwed", then I don't think you have any in your district, because in my district, it doesn't make for good business. It puts some people out of business. And this bill says that the contractor can't go to the homeowner, take their money and not do anything. By the same token, when that little guy goes in there with his truck and he does the work, you can't steal what he did. He's a constituent, too. He has the right to justice. He has the right for equality, just like the homeowner does. And what I've heard today is the contractor's a bad person, and if he gets cheated, it's okay because it's a homeowner. Well I would never support such a concept ever, and that's what I hear. There's parts of this bill that say you have to sit down, you have to talk about it first. But be a contractor that goes in and puts in a brand new HVAC unit in somebody's house and have the person say "Chase me". And the sections that you're talking about in here says, "Listen, if I've been to court, you know I've been to court, I've got a judgment. You don't get to take that HVAC off your property and hide it someplace so I can't get it back." That's what it says. It's not about a leaky roof. It's about the people who cheat the contractor and know that the contractor is typically the little guy. He doesn't have a staff of attorneys and the guy cheating him usually has the money to hire an attorney and beat the hell out of him. And I'm going to protect him, just like I'm going to protect my grandmother from being cheated by an unscrupulous contractor who says I'm going to fix your roof, takes her money, probably takes ten times what the job was worth, and never shows up. And grandma probably baked him cookies on top of it. This bill does that. But the contractor is a constituent, the contractor is a resident of the state of New Hampshire and he deserves the same protection you're going give to someone who owns a home. Your neighbor gets screwed from a bad job, he can't get sued under this bill. There's nothing the contractor can do, unless the contractor wants to go to court, and say, "Give me my stuff back." And, if he did a bad job, you're probably willing to give him his stuff back, and you're probably still going to take him to court for any damage he's done to your premises. But I've said it before and I'll say it again. The contractor has just as much right for justice in this state as any homeowner, and to sit here and say it's okay for them to get screwed is wrong. Thank you, Mr. President.

SENATOR BOYCE: I actually have a two part question. The first is dealing with something that happened recently to my sister in another state. Her house was damaged by a windstorm, needed a new roof. Well, I guess it was siding. It needed new siding. The insurance company paid her, she found a contractor who, by the way, was licensed in that state, that they require licensing of contractors, and the contractor took half up front, half the money that the insurance company paid, and then never showed up, and under that state's laws, there was no, the penalty would be to have his license taken. However the licensing authority said, "No we can't take the license because he didn't do any work, so therefore he didn't do bad work." And the Attorney General said, "It's not theft because he may come back and do the job, he just hasn't done it yet". So, in that case, there was no action she could take, other than try to find

the guy and sue him, which is difficult. So does this amendment help out that situation? Would she have an action that she could take other than just going to court?

SENATOR CLEGG: Senator, under this bill, if the contractor took 10 percent or more of the contract price as a deposit, there would have to be a legal contract, and once you have a legal contract, you obviously have rights. You have the ability to go to court and enforce those rights. So we've taken care of the situation where at least she would have had something in writing which would've been able to chase them. I also believe that this bill would allow the Attorney General in the state of New Hampshire to chase them a little quicker.

SENATOR BOYCE: Follow up question? This is the other part of my question. My long since passed grandfather, at the age of about sixty-five, and I know he never did a contract in his life. I know a month before he died he was up re-shingling a woman's house for her, I'm sure it was on a handshake. And since he certainly was never licensed, and never signed a contract, and he never took any money up front either. In that situation, would this prevent him from doing that kind of work? In other words, he didn't have a license, and he didn't take a deposit. Would that prevent him from doing that work for that woman that needed her roof done?

SENATOR CLEGG: No, this bill still doesn't require licensing of contractors, other than electricians and plumbers still need to be. But if you don't take a deposit more than 10 percent, then no you would not have to do a contract.

SENATOR BOYCE: Thank you.

SENATOR FOSTER: You suggest that some of us don't care about contractors. I guess I take some offense to that. I look in here that, as you should have, your bill preserves all mechanics' lien rights that contractors have. Can you explain how that works, mechanics' liens and why there are such powerful remedies for contractors?

SENATOR CLEGG: Well they're not that powerful of a remedy, Senator, now that you ask, because the laws have been changed more to favor everyone but the contractor. But yes, a contractor can do something, have a mechanic's lien until you pay, but that doesn't preclude somebody from picking it up and taking it away. And there are no real remedies for the contractor other than try to find out where it's hidden.

SENATOR FOSTER: I actually got to disagree. The mechanics' liens, I thought, maybe you can correct me if I'm wrong, so I'll phrase this as a question, gives you a lien on the property where the individual did the work, not only on the brick, or the air conditioner unit, which is the example you gave before, but on the whole property. So, that homeowner has a lien on its property, sometimes, as you probably know, it comes ahead of a mortgage, sometimes it doesn't. But isn't that really the way that it works?

SENATOR CLEGG: Not in all cases, no it does not. If you've gone in and you've done just a piece of a job, you don't get the ability to lien the entire piece of property in some instances. It depends on the circumstances. Who owns the property. I can't lien your property if somebody was renting it and I did a job for them, without going through a whole rigmarole, and most contractors aren't sophisticated enough to notify you before they do the job that they'll lien your property if your tenant doesn't pay.

SENATOR FOSTER: Does the homeowner, under your bill, have mechanic's lien rights against the contractor, when the contractor absconds with their money?

SENATOR CLEGG: I believe they do. I believe they can go after the contractor, both civilly and criminal.

SENATOR FOSTER: But they don't have a statutory lien? Correct?

SENATOR CLEGG: Well I don't know, do they? Is there any other statute?

SENATOR FOSTER: No.

SENATOR CLEGG: Okay.

SENATOR FOSTER: Thank you.

SENATOR HASSAN: Thank you, Mr. President. I rise reluctantly because I wasn't planning to speak on this bill, but we've spent a great deal of time talking about a floor amendment that raises more questions than it answers, and attempts to address a problem that Senator Clegg has brought to our attention, which was not the problem that was the focus of the hearing at Public and Municipal Affairs, was not the problem that the study committee, apparently from the reports of the study committee, addressed this summer. The problem we were supposed to be addressing with this bill, as I understand it, was what happens to consumers who give money to a contractor, and the contractor either takes the money and runs or does a lousy job and won't come back and fix it. The bill Senator D'Allesandro originally introduced tried to deal with that. The bill that the study committee came up with, and the committee amendment that we defeated earlier came up with, tried to do that. None of us want to see small businessmen who are contractors hurt by malicious homeowners. The problem is none of us have heard any testimony as far as I can tell from small businessmen who are contractors who have been hurt by malicious homeowners. What we did hear was the inverse. My suggestion would be that we pass, we defeat this amendment, we pass the bill, we can pass Senator Burling's floor amendment, which deals with a couple of other issues in the bill, and then if we want to bring in to Rules, a bill that would address contractor abuse by malicious homeowners, we can do that, and we can have a study on that and we can take testimony on that, and then we will not be faced with an amendment, which if the intent of the amendment is, and I take Senator Clegg at his word, to prevent harm to the small, truly small general contractor who is pursued by malicious rich homeowners. If that's the intent of this, we need to refine it because right now, what this bill does, what this amendment does, is it casts its net so widely, that small homeowners who don't have a lot of money who have just turned over all their money or most of their savings, into a deposit to a contractor, and they get harmed, right now, if they say to the contractor, "You know what, it's been a year, you haven't fixed my roof. I have home damage because of it. I've been trying to get you back here," the contractor, especially a contractor that's a large business, with a lawyer on retainer, simply says, "Hey, you know what, if you're wrong about that, if you're wrong about the fact that I've violated an agreement, or that I've defrauded you in some way, I can charge you with a misdemeanor, and you can go to jail for a year." Now, if you are the consumer, with very little resources, whose roof's been leaking for a year, whose furniture's been



damaged, you think you're going to take the risk of going to jail for a year to go after the contractor? That's a huge risk. I understand that Senator Clegg and others are appropriately concerned about small businessmen who may have to deal with very difficult clients, but I think this amendment is too complicated, trying to do too much, and we really run a risk of unintended consequences if we pass this amendment. So, my suggestion would be, defeat this amendment, listen to Senator Burling present his amendment, pass that amendment, and then we can always bring in another bill to deal with contractor abuse and really study that issue. Thank you.

**Senator Bragdon moved to question.**

SENATOR GATSAS (In the Chair): I have two more speakers and we will move the question.

SENATOR GOTTESMAN: Thank you, Mr. President. I work in a different world than many of you, and it's a world of lawyers and judges and fighting and bickering and ugliness. I have had the privilege over the years to represent a lot of homebuilders, and I've also represented a lot of consumers. I just want you to picture for a moment that we turn the tide a little bit, because good lawyers should be able to represent both sides of every question. I want you to think about Senator D'Allesandro's aggressiveness in representing the homebuilding industry for a minute, and Senator Clegg's wisdom in representing the consumer for a minute, and how that fight will germinate into the same kind of discussion we're having right here and right now. There are no winners and no losers. But what we're doing is creating a system where everybody who is involved in the system now takes their contract problems and they become criminal problems. So, mom, and the kids, and the dog are going to be sitting at home, wondering whether they're going to be charged with a misdemeanor or a Class B felony, instead of whether or not they're going to have to pay for the money that they should have done for the roof. This is so far reaching, and so unnecessary under the circumstances, I ask that you deny this amendment. Thank you for letting me speak a second time.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I just speak briefly for a second time to say my father was a mechanical contractor, so he's been in this business for a long time, actually he was in this business all of his life, and I support the small businessman, and support the small businessman very strongly. But I think the consumer, particularly the consumer in New Hampshire, has had great difficulties. We sponsored a couple pieces of legislation to deal with these things. I don't think this is the remedy, and if we don't have the right remedy, then we shouldn't bring it forward. Thank you.

**Recess.**

**Out of recess.**

**The question is on adoption of the floor amendment.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**The following Senators voted No: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 15 - Nays: 8**

**Floor amendment adopted.**

**MOTION TO TABLE**

**Senator Bragdon moved to have HB 177 laid on the table.**

**A roll call was requested by Senator Foster.**

**Seconded by Senator Green.**

**The following Senators voted Yes: Gallus, Johnson, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**The following Senators voted No: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 15 - Nays: 8**

**Adopted.**

**LAIID ON THE TABLE**

**HB 177, relative to home improvement contracts.**

**WITHOUT OBJECTION MOTION TO TAKE  
BILLS OUT OF ORDER**

Senator Clegg moved that the following bills be taken out of order. House Bill 1402 Environment and Wildlife. House Bill 1184, House Bill 1248-FN, House Bill 1262 from Public and Municipal Affairs, and that we hear the following four House Bills at the present time.

SENATOR GATSAS (In the Chair): Without objection, we will take up House Bill 402 then House Bill 118...1402, I'm sorry, then House Bill 1184, House Bill 1248-FN and House Bill 1262.

**HB 1402**, establishing the standard of care for certain individuals or nonprofit entities in constructing, maintaining, or improving trails for public recreational use, and establishing a committee to study the standard of care applicable to landowners, lessees, and occupants for the use of public recreational land. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Hassan for the committee.

**Environment and Wildlife**

**January 25, 2006**

**2006-0581s**

**04/05**

**Amendment to HB 1402**

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

**AN ACT** establishing the standard of care for certain individuals or nonprofit entities in constructing, maintaining, or improving trails for public recreational use.

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

I. Limitation of Actions; Duty of Care. Amend RSA 508:14, II to read as follows:

**II. *Any individual, corporation, or other nonprofit legal entity, or any individual who performs services for a nonprofit entity, that constructs, maintains, or improves trails for public recre-***

*ational use shall not be liable for personal injury or property damage in the absence of gross negligence or willful or wanton misconduct.*

**III.** An owner of land who permits another person to gather the produce of the land under pick-your-own or cut-your-own arrangements, provided said person is not an employee of the landowner and notwithstanding that the person picking or cutting the produce may make remuneration for the produce to the landowner, shall not be liable for personal injury or property damage to any person in the absence of willful, wanton, or reckless conduct by such owner.

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

**2006-0581s**

#### AMENDED ANALYSIS

This bill provides that any individual, corporation, or other nonprofit legal entity, or any individual who performs services for a nonprofit entity, that constructs, maintains, or improves trails for public recreational use shall not be liable for personal injury or property damage in the absence of gross negligence or willful or wanton misconduct.

SENATOR HASSAN: Thank you, Mr. President. I move House Bill 1402 ought to pass with amendment. This legislation states that individuals who perform services on snowmobile trails for a non-profit entity are not liable for personal injury or property damage. The individual would only be liable if the accident was a result of gross negligence or intentional misconduct. The committee amendment deletes the formation of a study committee on the standard of care applicable to landowners, lessees and occupants for the use of public recreational land. The committee feels it is not necessary to study that issue at this time. This legislation is critical to the protection of the snowmobiling industry. The Environment and Wildlife committee asks for your support on the motion of ought to pass as amended. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 1184**, relative to the majority vote required for the use of bond proceeds in certain school districts or municipalities. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you very much, Mr. Chairman, Mr. President, excuse me. I move House Bill 1184 ought to pass. This legislation will correct the inconsistencies in a current law with regards to votes on bonds. Currently, when a municipality votes on a bond, 60 percent of the vote is needed for passage. However, if there is money left over in the bond, and the town wants to use it in another way, 66 percent of the vote is needed for passage. This bill will clear up this discrepancy. Sixty percent of the vote will be needed in both types of bond votes. A supermajority will still be needed to pass a bond and this proposal will not change the process. It was necessary to fast-track this legislation so it will become law before municipalities have bond votes in March. The Public and Municipal Affairs Committee asks for your support on the motion of ought to pass, and I thank you very much, Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 1248-FN**, relative to the alteration of a portion of the town line between Milford and Amherst. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Hassan for the committee.

**SENATOR HASSAN:** Thank you, Mr. President. I move House Bill 1248 ought to pass. The towns of Milford and Amherst recently became aware that their town lines were drawn incorrectly. People who thought that they lived in Milford found they were actually living in Amherst. This is due to the new GPS systems that we have now. This legislation will change the town lines to reflect that people thought they were originally. The Board of Selectmen in each town supports these changes. Once this bill passes the legislature, two-thirds of the voters in both towns will have to approve the boundary change at local elections in March. The Public and Municipal Affairs Committee asks for your support on the motion of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1262**, legalizing actions taken at town meeting relative to increasing the board of selectmen from 3 members to 5 members in the town of Pittsfield. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Barnes for the committee.

**SENATOR BARNES:** Thank you, Mr. President. I move House Bill 1262 ought to pass. This legislation will validate the results of a March 2005 vote in Pittsfield that would increase the number of members on the Board of Selectmen from three to five. The results of this vote were declared invalid by the town after it discovered there were not enough signatures on the petition to put the question on the ballot. The administrative assistant was new on the job and only read half of the RSA. The citizens of Pittsfield are outraged that their vote was declared null and void because of a town official's error. The residents of Pittsfield believe the voice of the people should be respected and that results of the vote should stand. The Public and Municipal Affairs Committee unanimously asks for your support on the motion of ought to pass and I thank all of you.

**Adopted.**

**Ordered to third reading.**

### **SUSPENSION OF THE RULES**

Senator Clegg moved that the rules of the Senate be so far suspended as to permit House Bill 1184, House Bill 1248-FN, House Bill 1262, and House Bill 1402 to be ordered to third reading in the early session.

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

### **PARLIAMENTARY INQUIRY**

**SENATOR BARNES:** Thank you. A parliamentary inquiry. What we just did, what happens, and I'm doing this for the sake of some folks that are up here to hear what happened with these bills. What happens now that we have sent these to the third reading? Where are these bills going, and what's the process?

**SENATOR GATSAS (In the Chair):** Senator Clegg will conclude, and once he concludes his next motion, Senator, these bills will then go on to the Governor for signature.

**SENATOR BARNES:** They go directly to the Governor, or do they make stops along the way?

SENATOR GATSAS (In the Chair): They go first to Enrolled Bills, so that Senator Gottesman can put his fine eye to it, and then from there they will go to the Governor.

SENATOR BARNES: Thank you very much, Mr. President.

### RESOLUTION

Senator Clegg moved that House Bill 1184, House Bill 1248-FN, House Bill 1262, and House Bill 1402 be ordered to third reading and final passage, be by this resolution, read a third time, all titles be the same as adopted and that they be passed at the present time.

**Adopted.**

#### Third Reading and Final Passage

**HB 1184**, relative to the majority vote required for the use of bond proceeds in certain school districts or municipalities.

**HB 1248-FN**, relative to the alteration of a portion of the town line between Milford and Amherst.

**HB 1262**, legalizing actions taken at town meeting relative to increasing the board of selectmen from 3 members to 5 members in the town of Pittsfield.

**HB 1402**, establishing the standard of care for certain individuals or nonprofit entities in constructing, maintaining, or improving trails for public recreational use, and establishing a committee to study the standard of care applicable to landowners, lessees, and occupants for the use of public recreational land.

### COMMITTEE REPORTS

**SB 283-FN**, relative to stop loss insurance. Banks and Insurance Committee. Ought to pass with amendment, Vote 6-0. Senator Flanders for the committee.

#### Banks and Insurance

January 17, 2006

2006-0459s

01/10

#### Amendment to SB 283-FN

Amend the introductory paragraph of RSA 415-H:3, I as inserted by section 1 of the bill by replacing it with the following:

I. An insurer shall not issue or renew a stop loss insurance policy or certificate that:

SENATOR FLANDERS: Thank you, Mr. President. May I take a minute to speak about the history of the last session? I'll only take a minute. Last year you recall that there was legislation that we debated on the floor about mobile park owners and the owners of the mobile home, and I stood in this exact place and said I promise I'll bring legislation back next year. I'm happy to report that I don't have to bring legislation back, because the people got together and they have agreed to have a board of arbitration, and it's in place, the boards are in place, they've had at least one hearing, and as far as I'm concerned, two hearings, and it is working, and I was advised by the people that I was representing last year that we didn't need legislation. Second, about two years ago, you'll all remember that I brought in a bill twice that said when you turned on your windshield wipers, you had to turn on your lights, and it lost

by one vote. I traded cars this summer, and I found by accident, that when I turn on my windshield wipers, the lights come on three seconds later. So, somebody at General Motors agreed with me. Thank you. Thank you, Mr. President. I move Senate Bill 283-FN ought to pass with amendment. This bill establishes a law governing stop loss insurance. The legislation was a request of the New Hampshire Insurance Department. Stop loss insurance is intended as a form of secondary coverage issued to small self-funding employees to protect them from claims that rise above and beyond expected levels. Stop loss insurance is not direct insurance; it is exempt from the small group rating laws. Some employers have purchased stop loss insurance as their primary form of coverage to circumvent the small group rating rules and regulations. This bill will prevent an inappropriate use of stop loss coverage. The committee adopted an amendment which simply changed the wording of the bill to apply to renewal of policies, as well new business. The Insurance Department determined that the bill may increase state revenues slightly. The Banks and Insurance Committee recommends that the legislation be adopted with the amendment and asks for your support. Thank you.

**Amendment adopted.**

Senator Flanders offered a floor amendment.

Sen. Flanders, Dist. 7

**January 31, 2006**

**2006-0703s**

**01/03**

**Floor Amendment to SB 283-FN**

Amend RSA 415-H:5 as inserted by section 1 of the bill by replacing it with the following:

415-H:5 Rulemaking. The commissioner shall adopt rules in accordance with RSA 541-A that carry out the requirements of this chapter and prescribe additional standards for stop loss insurance policies.

SENATOR FLANDERS: This is a very brief amendment that I spoke to. I'm sorry. You will note on the original bill that says that the Commissioner "may adopt rules" and I've amended it to say the Commissioner "shall adopt rules." I don't think we use the word "may" around here anymore, so let's take it out. This is the amendment. Thank you.

**Floor amendment adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 326**, relative to a temporary moratorium on large groundwater permits and withdrawals. Energy and Economic Development Committee. Inexpedient to legislate, Vote 4-1. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that Senate Bill 326 be inexpedient to legislate. This bill imposes a moratorium on large groundwater withdrawals and permits. In 2003, the state established a groundwater withdrawal commission to analyze groundwater issues in order to create a coherent water policy. The commission's interim report is due November 2006, while the final report is due November 2008. In the interim, the Department of Environmental Services has in place procedures for dealing with this issue. The Energy and Economic Development Committee recognizes the complexity of this issue, and that more time and analysis of data is required before the issue is brought to closure. Therefore, the Committee has voted to allow the commission to

continue its work and await the outcome of the report. The Energy and Economic Development Committee asks for your support in the motion of inexpedient to legislate.

SENATOR ESTABROOK: Thank you, Mr. President. As prime sponsor of SB 326, I rise to ask my colleagues to overturn the ITL recommendation and consider a floor amendment that Senator Green and I would like to bring forward. The Committee's decision to ITL the bill without amendment is understandable. It's no secret that the bill's Senate sponsors were all concerned with the particular original groundwater issue when we brought the bill forward. That we must set aside that particular concern and now consider the issue with regard to the state as the whole is something we acknowledge. The amendment would do that. The amendment would delete section two of the bill, which extended the proposed moratorium to projects that were already permitted, but not yet pumping. We agree that that section has to go. But the amendment that we would like to bring forward goes on to deal with four other issues that were raised in hearing, that narrowed the scope of the bill considerably, and that I think therefore merits your support. First, it exempts permits from municipal water systems, and it exempts those who have existing permits and want to renew them. Third, it exempts permits that are in progress. So, as some of you raise concern about commercial entities that had already invested in the permitting process, they can go ahead and go through that process and be granted a permit, even if this bill is passed. The fourth thing it does is it narrows the proposed moratorium to only projects where the water is being withdrawn to be used as a bottled water company, by a bottled water company. We've also ended the moratorium on a date certain, just in case the study committee that was referenced extends its study. So in summary, if we have the opportunity, the amendment we would like to offer narrows the moratorium to bottled water projects of the future. It's tied to the report of the Commission on Large Groundwater Withdrawals, which we established because we were concerned about this issue. They offered an interim report last November, and it identified six issues for serious study. Among them was the permitting process itself. The committee identified fourteen questions, only on the permitting process, and the fact that the project that brought this to our attention was first denied a permit for twenty-seven scientific reasons, and then seven months later granted a permit, I think speaks to the need to study the permitting process. The committee is also going to study a possible hierarchy for use of groundwater, additional ways to monitor the quality effects of the withdrawals and the need for groundwater management data. I think we should have all of this information before permitting any future withdrawals. The committee hearing report indicated that the committee felt there was no crisis. That's the point. Let's stop and take a look at this before there is a crisis. Maybe the sponsors of the bill feel there's a crisis more than the committee did because we've been getting used to the idea that every four and a half minutes, a semi full of our groundwater will be trucked out on Route 4. That's 112,000,000 gallons a year. From a bedrock aquifer that the U.S. Geological Survey states the science is not clear whether the aquifer will even replenish itself. The bill...the amendment we'd like to offer will do nothing to address the situation in our region at this point, but it would do something to prevent that type of situation from arising in your district before we have the science that we should have to inform our decision making. And I hope you'll consider overturning the ITL. Thank you, Mr. President.

SENATOR GREEN: Thank you, Mr. Chairman. I respect the view of the committee; however, I hate to say it, they're wrong. The committee's wrong. What they heard basically, was all the concerns of those who are making a profit off the state of New Hampshire water. My concern and your concern for your constituents should be what affect that has on their drinking water; what affect that has on our environment and on our wetlands. That's what we should be concerned about. I am not against people making a living. I'm not against businesses. But when I see businesses taking advantage of a situation, where they can sell a bottle of water, if they export it to the middle east, for \$15 - \$20 for a small bottle, and it's our water, our residents' water. I hear that it's not timely. Well, I disagree with that also. I served, as most of you know, on the Groundwater Commission with Senator Johnson. I also served with the In-Stream Flow Committee, and I had the privilege of serving as chairman of the Water Resources Committee to study the whole issue of how we're going to deal with our water in New Hampshire. Yes, it's a long process. It's a big issue. But let me tell you. I'm not willing, as an individual Senator who has had a chance to deal with this issue for some time, both at the local level and at the state level, to just say that we're just going to ignore the problem until we continue the study. The problem is here. It is in the state. It is hard for me to stand up here on the wettest year of the whole hundred years and tell you, you got water problems. Well, we're talking about one specific section that relates to water, and that's large groundwater. The 57,600 that you hear about is only the trigger point where you are required to get a permit. What we're talking about is millions of gallons taken out of the state. The trigger is just permits. The reality is what's happening. Water has become a very, very important and expensive commodity. In my day, if anyone ever told me that we were going to be selling bottled water, I'd of told you, you didn't know what you were talking about. Because we always considered, in my generation, that water would be there forever, in good quality and good quantity, and it would never cost us anything. But it does cost. And what I'm concerned about is the person whose well gets affected. What I'm concerned about is the impact on the environment which we don't even know what that total impact is going to be. I'm also very concerned about the fact that most of us in this room do not realize from what we see or hear, that this is a problem. There are probably right now in this legislature, I would say, somewhere in the vicinity of fifteen water bills. Have you ever seen such an issue that comes to the top of the pile? Why? Because they are hearing from their constituents. They're hearing about their concerns about the water availability and the quality of that water. Let me tell you, the northern part of the United States and Canada has the largest majority of all the potable water in the world. Here we are in little New Hampshire thinking that "Well, this is not a problem for us." This is a universal, global problem that we're all going to deal with. And those who are in the market of buying land and pumping water aren't doing that for their health. Even though this bill does not affect...and one of the reasons why I'm stand up, is because I believe that my constituents in the towns of Nottingham and Barrington, where all this disruption came about with USA Springs, are really, really the tip of the iceberg, and they are very, very concerned about the results of this project. Legally, we can't pass laws that are retroactive, because if I could, I would attempt to do it. I won't kid you about that. But I can do some-



thing about what's coming at us, at least on a temporary basis. This moratorium is temporary, but it sends the right signal. We, as the people who represent our constituents, should be on record as being concerned about the water quality and quantity of this state. Is this the right signal? I happen to believe it is. I respect my colleagues who have a different opinion. I probably would say to each of you, that we, as Senators, should be on record as being concerned about one of the most important things in this world. I think air and water are among them. In this case, we are talking about drinking water for our residents. I think we ought to vote in favor of the residents and not in favor of the profit making corporations. This is my view on this issue. I would ask for you to defeat the inexpedient and go to the ought to pass and let us offer this amendment. The amendment does not affect anybody retroactive. It does not hurt anybody who's currently got a permit or currently has an application in. It does not do those things. We tried to take care of everything of all the people who were concerned at the hearing in this amendment. I think we've accomplished that if you give it a chance to see the light of day. I would ask for you to defeat the committee report. Thank you.

SENATOR HASSAN: Thank you, Mr. President. A question for Senator Green or Senator Estabrook about the amendment. My question is whether the amendment would also limit the moratorium to those business doing large groundwater withdrawals for bottled water as opposed to other kinds?

SENATOR GREEN: Yes, just bottled water is the amendment.

SENATOR HASSAN: Thank you.

SENATOR GREEN: It does not affect any other industry in the state.

SENATOR HASSAN: Thank you.

SENATOR GREEN: Or business. Thank you.

SENATOR BARNES: Thank you, Mr. President. I rise in agreement with Senator Estabrook and Senator Green. Before Senator Green and Senator Estabrook got here into this Senate, this issue came up and it obviously was USA Springs, which affected one of the towns that I represent, the great town of Northwood. I went to many of these "Save our Groundwater" meetings. And when these two Senators arrived on the scene, they also got into the situation, into the mix. About four years ago, maybe three years ago, things were very dry. Senator Green alluded to the fact that we don't have to worry about a drought this year because I don't think that we will have one either. But three or four years ago, up in that neighborhood when water was being drawn out of that area, wells went dry. I have a constituent who is a well driller. He's been around for years. It's the man with the tin hat. If you travel Route 4, you'll see his signs as you go through Northwood. What does it say, "I go into the hole for business." Or whatever it is, or "My business is in the hole". That's old Elmer, and Elmer said, "Jack, I couldn't come to your house for probably ninety days I'm so busy trying to get people water." It was a problem and is going to be a problem three, five or whatever the amount of time is. Now this chamber, this chamber that we sit in, a number of years ago when Jeanne Shaheen was our Governor, passed a piece of legislation. It went over to the House and it got the strike. Governor Shaheen came to the Senate hearing. I thought she made a great presentation. I was

rooting her on. She went over to the House and her presentation was just as great, but apparently the folks that were listening weren't as smart **TAPE CHANGE** roughly if you go over to the Verizon Center or any other place where you have bottled water, any of the arenas, you go down to Boston Garden or wherever you might go to the ballpark, you're going to pay about \$20 for a gallon of water. This morning I paid \$2.32 for a gallon of gasoline. And were not yakking about you know...what were trying to do is going to lose, my guess is, we're not going to win the battle here. But what I want you to think of, what we're doing this for, is not for our people now, because it's too late for our people up where we've been fighting for, that's...it's there, it's going to be there. But we're thinking about Senator D'Allesandro's neighbor not having water and we're thinking about every other Senator in this room's neighbor. And when the phones start ringing, "I got no water", remember today's debate and God Bless you, it's on you. It won't be on us. Thank you very much, Mr. President. And your neighbors, too, but you live in Manchester. I'm concerned about yours, Mr. President.

**The question is on the committee report of inexpedient to legislate.**

**A division vote was requested.**

**Yeas: 13 – Nays: 10**

**Committee report of inexpedient to legislate is adopted.**

Senators Barnes, Estabrook and Green are in opposition to the committee report of inexpedient to legislate on SB 326.

**SB 330**, relative to outdoor advertising. Energy and Economic Development Committee. Ought to pass, Vote 5-0. Senator Letourneau for the committee.

#### **MOTION TO TABLE**

**Senator Letourneau moved to have SB 330 laid on the table.**

**Adopted.**

#### **LAIID ON THE TABLE**

**SB 330**, relative to outdoor advertising.

**SB 251**, relative to the enforcement authority of the division of safety services. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Hassan for the committee.

**SENATOR HASSAN:** Thank you, Mr. President. I move SB 251-FN ought to pass. This legislation will give marine patrol officers authority on dry land. When the legislature passed boating regulations some time ago, it failed to give marine patrol officers this authority. This bill will allow marine patrol officers to better do their jobs and reduce the workload of local police departments. The Environment and Wildlife Committee asks for your support on the motion of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 255**, establishing a committee to study the funding necessary to operate the hazardous materials program in New Hampshire. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Eaton for the committee.

**Environment and Wildlife****January 11, 2006****2006-0377s****09/05****Amendment to SB 255**

Amend paragraph I(a) of section 2 of the bill by replacing it with the following:

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

SENATOR EATON: Thank you. I move Senate Bill 255 ought to pass with amendment. This legislation was a request by the New Hampshire HAZMAT Collaborative with the support of the New Hampshire Fire Marshal, and it establishes a committee that will study the funding necessary to operate the hazardous material program in New Hampshire. As the importance of hazardous materials programs has grown over the past ten years, federal funds for the programs have decreased. Hazardous materials programs are expensive and time-consuming. Local communities have been left to absorb the rising costs as federal funds dry up and many simply can't afford to do so. The amendment changes the number of Senators on the study committee from three to two, which everybody should be pleased, and the committee asks for support on ought to pass.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 328**, relative to the regulation of snowmobiles and off highway recreational vehicles. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you, Mr. President. I move Senate Bill 328 ought to pass. This bill will make technical corrections to RSA 215-A, regulating OHRVs and RSA 215-C, regulating snowmobiles. Currently, a recreational vehicle must stop at a stop sign before proceeding through intersections with public ways. This legislation will require that operators stop at all stop signs, whether on the trail or across the public way. The Environment and Wildlife Committee asks for your support on the motion of ought to pass. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 335**, relative to funds of the department of resources and economic development used for snowmobile trail grooming equipment. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you very much, Mr. President. I move SB 335 ought to pass. This legislation will permit the Bureau of Trails to allocate additional funds collected through registration fees to be used for the purchase of trail grooming equipment. Currently, from each fee collected, only \$5 is used for the sole purchase of trail grooming equipment. The rest is used on trail maintenance and construction. It is nec-

essary to allow more funds to be spent on trail grooming equipment because of the escalating cost of the equipment. The Environment and Wildlife Committee asks for your support of the motion of ought to pass, and we thank you.

**Adopted.**

**Ordered to third reading.**

**SB 351-FN**, declaring drowning as cruelty to animals. Environment and Wildlife Committee. Ought to pass with amendment, Vote 4-1. Senator Barnes for the committee.

**Environment and Wildlife**

**January 17, 2006**

**2006-0470s**

**01/09**

**Amendment to SB 351-FN**

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 Applicability. This act shall not apply to trappers licensed under RSA 214.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 351 ought to pass. This legislation declares that drowning is cruelty to animals. There was some concern that this bill would make the trapping of beaver, otter and muskrat illegal. That is not the intent of the bill and the committee amendment addresses these concerns by making trappers licensed under RSA 214 exempt from that act. The Environment and Wildlife Committee asks for your support on the motion of ought to pass as amended. And I thank you, as does the Committee.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 388**, relative to farm composting. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

**Environment and Wildlife**

**January 25, 2006**

**2006-0577s**

**08/09**

**Amendment to SB 388**

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

AN ACT relative to farm composting and pesticides.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 Pesticides. Amend RSA 430:31 to read as follows:

(x) Development and administration of state management plans to protect groundwater from pesticide contamination, for pesticides that are classified as *general use*, restricted-use, or *both* under the federal Insecticide, Fungicide, and Rodenticide Act section 3(d)(1)(C)(ii) subject to restrictions under United States Environmental Protection Agency approved management plans funded through the fund established in RSA 430:34, V.

2006-0577s

## AMENDED ANALYSIS

This bill adds composting to the list of defined farm activities and designates compost as a farm product.

This bill also specifies pesticides for inclusion in state management plans to protect groundwater from pesticide contamination.

This bill was requested by the department of agriculture, markets, and food.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 388 ought to pass with amendment. This legislation will add composting to the list of defined farm activities and designates compost as a farm product. Part of the farm cycle is managing residuals of the farm. Farmers often compost as a way to get rid of their waste. Compost is a viable, useful soil product for both farms and residential areas. Composting is also known as organic recycling. The more composting is encouraged, the less waste will go into our landfills. The Committee amendment will add two words to the pesticide law. The Environmental Protection Agency requested the Department of Agriculture make this small change as soon as possible. Rather than file new legislation next year, it made sense to simply add it to Senate Bill 388. And the Environment and Wildlife Committee would like your support in passing this piece of legislation. It's good for recycling and, if it's good for recycling, it's good for our constituents.

SENATOR BURLING: Thank you, Mr. President. I have a question for the Senator. Senator, as you know, I've had horses for thirty-five years on my farm. Am I to understand that the thing at the end of the wheelbarrow track is now to be called the "residuals pile"?

SENATOR BARNES: It is something like janitors now being called "janitorial engineers".

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 249**, allowing a master electrician to have 2 apprentice electricians under his or her supervision. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 3-0. Senator Barnes for the committee.

**Senate Executive Departments and Administration**

**January 17, 2006**

**2006-0435s**

**10/03**

**Amendment to SB 249**

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

AN ACT allowing a master electrician to have 2 apprentice electricians under his or her supervision, and relative to examinations of electricians by the electricians' board.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 5:

2 Rulemaking; Examination. Amend RSA 319-C:6-a, III to read as follows:

III. How an applicant shall be examined, including the time and place of the examination, *and procedures for computerized examinations*;

3 Fees. Amend RSA 319-C:6-b to read as follows:

319-C:6-b Fees. The board shall establish *application* fees for examination of applicants, *fees* for licensure, for renewal, and for late renewal of licenses to practice under this chapter, and for transcribing and transferring records and other services. *The fee for computerized examination shall not include fees charged by and paid to a computerized examination company approved by the board.* The fees established by the board shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the board for the previous fiscal year.

4 Examinations. Amend RSA 319-C:8 to read as follows:

319-C:8 Examinations for License. Each applicant for licensure shall present to the board, on forms furnished by the board, a written application for examination and license, containing such information as the board may require, accompanied by the required *application* fee established by the board. Examinations shall be written[~~or~~], written and oral, *or computerized as approved by the board*, and shall be of a thorough and practical character. They shall include such provisions of the National Electrical Code as the board may deem appropriate. Any person failing to pass his or her first examination may be reexamined at any subsequent examination meeting of the board *or by computerized examination*, and thereafter may be examined as often as he or she may desire upon the payment of the required *application* fee as set forth in this chapter.

**2006-0435s**

#### AMENDED ANALYSIS

This bill allows a master electrician licensed by the electricians' board to have 2 apprentice electricians under his or her personal supervision.

This bill also allows for computerized testing for licensure of electricians by the electricians' board.

SENATOR BARNES: Thank you, Mr. President. The good news is I only have one more to go and there is a break in the action before I get up again. I move Senate Bill 249 ought to pass with amendment. Current law allows for a one-to-one ratio between a master electrician and apprentice. However, this ratio puts the apprentice out of work when the master electrician is not available. This can be the case if the master is sick, has an off-site appointment or is injured, for example. The change in Senate Bill 249 will enhance flexibility among electricians, particularly the small businesses while creating work opportunities for apprentices. The committee amended the bill to permit an applicant interested in obtaining an electrician's license to take the exam for licensure with the use of a computer by a testing company approved by the Electricians' Board. The committee recommends ought to pass with amendment on Senate Bill 249. Thank you, Mr. President and my colleagues.

SENATOR BURLING: Mr. President, I would like to speak after Senator Larsen, if I may?

SENATOR LARSEN: Thank you, Mr. President. I have recently moved to the Executive Departments and Administration Committee and came into that hearing room at a point when we were execing on a bill. This bill, I thought, was good in that it encouraged apprenticeship programs in the state. Later, after hearing more about the bill, I wanted to express my concerns in opposition to it. If Senate Bill 249 is adopted, it appears that this bill will in fact, make more difficult and less successful, the

education and training of those people who are looking to become licensed journeymen electricians. The problem with this bill is that it is going to replace that one-to-one, that important relationship of training to master, with the ability to have more than one apprentice. And that kind of relationship of on-site training, will not in fact occur, by my understanding. There are certainly economic advantages to those larger, perhaps companies...electrical companies and contractors who are hoping to add more helpers onto the job, but the apprenticeship program will suffer as a result. The problem...the result will be that there will be fewer skilled electricians and less opportunity for consumer protection in that you will have apprentices who are not one-on-one supervised, installing electrical equipment into job projects. One master cannot supervise two apprentices one-on-one directly. They will be logically placed in different work spaces around the project, and the difficulty will be that kind of oversight, that I'm understanding will not happen in an unsupervised situation. Larger construction projects will be...will have numerous apprentices as a result. And the fear is, in fact, that that will increase the liabilities to other people in the trade because you will have multiple apprentices working on projects, and the concern is that those in other trades will in fact encounter situations that are less safe as a result. So, I rise to oppose the Senate Bill 249 as amended and urge you to consider this carefully. Clearly, we want to encourage as many apprenticeships in this state as we can, but they do need to be people who are coming to their apprenticeships with skills that will lead them to be the kind of electricians in the state that we license and are happy to have work for us. Thank you.

SENATOR BURLING: Thank you, Mr. President. I rise to mirror some of the comments just made by Senator Larsen, but also to focus as much as we can on the nature of apprenticeship. This is a mechanism that humans have used for literally thousands of years to pass the skills from a trained professional to a new learning person who wants to acquire those skills in pursuit of the profession. Critical to that is the relationship between one master and one apprentice. It is a matter of actually having the master have the time and the capacity to give training to the apprentice. It is simply a case of believing that the apprenticeship relationship should be sustained and that's one of the reasons why I am going to vote against this bill. The other, I think critical issue is, every time we make changes in the employment relationship, there are unintended consequences. Passage of this bill will in fact impact journeymen wiremen. Not master electricians, but the people who assist them as paid employees. It will reduce the employment opportunities for that group, and I think that's a mistake. I don't think it was something that was considered in the adoption of the amendment or the adoption of the recommendation on this bill. Thank you, Mr. President.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I, too, rise in opposition to this piece of legislation. A tradesman, a master in the tradesman, can handle one apprentice and that one apprentice becomes involved in a great learning experience and that learning experience leads to the point when he moves from apprentice, to journeyman, to a master. The complexities of today's world require that that one-to-one relationship be maintained. We're in a very sophisticated world today. I grew up the son of a plumber. My father was a plumber. My father was in the heating and ventilation business. We would have people come to work for us on a one-to-one relationship where that person would learn the business. The business has become far more complex today than it was

then. You're talking about electricians doing massive wiring schemes. They are looking at schematics that present a challenge to the master. That's why the apprenticeship program has proved so successful. And I reference the apprenticeship program at the Portsmouth Naval Shipyard. One of the reasons that we retained the Portsmouth Naval Shipyard was the quality of the apprenticeship program, because we do the job better there than they do anyplace else in the world. So we saved 5,000 jobs by having a quality apprenticeship program. Five thousand people in New Hampshire and Maine will keep their jobs because of the fact that their skills are at a premium. We've got to maintain that, and the apprenticeship program, that one-to-one basis, does help to maintain that. And we've got to...we've got to secure that and make sure it happens, because all of us benefit in the long run. This isn't good legislation and I hope that you'll vote against it. Thank you, Mr. President.

**Amendment adopted.**

**Recess.**

**Out of recess.**

**The question is on the adoption of the bill as amended.**

**A division vote was requested.**

**Yeas: 14 - Nays: 9**

**Adopted.**

**Ordered to third reading.**

**SB 252**, relative to defining "speech-language assistant" for purposes of speech language pathology practice. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 3-0. Senator Flanders for the committee.

**Senate Executive Departments and Administration**

**January 18, 2006**

**2006-0477s**

**08/09**

**Amendment to SB 252**

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

AN ACT relative to certification of speech-language assistants for purposes of speech language pathology practice.

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

1 New Paragraph; Definitions. Amend RSA 326-F:1 by inserting after paragraph II the following new paragraph:

II-a. "Speech-language assistant" mean any person certified by the board and who meets minimum qualifications established by the board which are less than those established by this chapter as necessary for licensing as a speech-language pathologist, and who does not act independently but works under the direction and supervision of a speech-language pathologist licensed under this chapter.

2 Rulemaking; Speech Language Assistants. Amend RSA 326-F:5, V to read as follows:

V. The [use of assistive personnel] *minimum qualifications of, requirements for direction and supervision of, and scope of tasks that may be performed by speech-language assistants. Such qualifications shall include a minimum of a 2-year associate's degree granted by a state accredited speech language pathology program.*



***VI. The application and qualification for certification of speech-language assistants.***

3 New Subparagraph; Office of Allied Health Professionals; Board of Directors. Amend RSA 328-F:15 by inserting after subparagraph I(g) the following new subparagraph:

(h) Certification of speech-language assistants, as defined in RSA 326-F:1, II-a.

4 Exemption. Notwithstanding section 2 of this act, persons employed as speech-language assistants on the effective date of this act shall not be required to hold or acquire a 2-year associate's degree granted by a state accredited speech language pathology program.

5 Effective Date. This act shall take effect January 1, 2007.

**2006-0477s**

**AMENDED ANALYSIS**

This bill defines "speech-language assistant" for purposes of speech language pathology practice and requires speech-language assistants to be certified by the speech language pathology governing board. This bill also requires the office of allied health professionals to establish fees for certification of speech-language assistants.

SENATOR FLANDERS: Thank you, Mr. President. I move Senate Bill 252 ought to pass with the amendment. This bill clarifies the definition of "speech language assistant" for the purpose of speech language pathology practice. The committee heard that when various license positions were recodified a few years ago, speech-language assistants were taken out by mistake. While the bill would grandfather those people that are currently working as speech language assistants the definition of speech language assistant in Senate Bill 252 is meant to ensure that everyone doing this work going forward is properly certified. The committee amended the bill to make the language conform with language in current licensing legislation. We recommend ought to pass with the amendment. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 257**, requiring the joint legislative committee on administrative rules to study procedures for agency responses to complaints from the public. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 3-0. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you very much, Mr. President. I move Senate Bill 257 inexpedient to legislate. As prime sponsor, and with the support and recommendation of Representative Patten, we asked the Senate ED & A Committee to send the issue of citizen complaints made to state agencies to a study committee incorporated in House Bill 1351. Representative Patten is aware that the Senate ED & A Committee has ITL'd Senate Bill 257 and will see that the need to set up a process whereby the public receives timely responses to their complaints, is addressed through the study committee which is better suited to address this issue. For that reason, the committee recommends inexpedient to legislate on Senate Bill 257. Thank you, Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**SB 258**, requiring the joint legislative committee on administrative rules to study methods for improving notice to the public of proposed administrative rules. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 4-0. Senator Fuller Clark for the committee.

**SENATOR FULLER CLARK:** Thank you very much, Mr. President. I move Senate Bill 258 inexpedient to legislate. Like Senate Bill 257, this was a bill sponsored by myself and Representative Patten and one that we would also like to send to the study committee incorporated in House Bill 1351. Currently, as was verified by testimony during the public hearing, there is no effective procedure in place to notify the general public and the legislature about upcoming hearings on rules and proposed rules. While the committee recommends inexpedient to legislate on Senate Bill 258, the committee recognizes that this issue is important and believes House Bill 1351 is the best form to address the issue. Thank you, Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**Recess.**

**Out of recess.**

**SB 200-FN**, establishing the uniform athlete agents act. Finance Committee. Ought to pass, Vote 7-0. Senator D'Allesandro for the committee.

**SENATOR D'ALLESANDRO:** Thank you, Mr. President. I move Senate Bill 200-FN ought to pass. This bill establishes the uniform athlete agents act which governs permissible conduct and procedures to be followed by athletic agents and a student athlete. It is important to enact this bill now because a number of professional...the number of professional athletes in the state is growing and it's important that they have a proper methodology to follow. The Legislative Budget Office is unable to determine the fiscal impact because they can't predict how many agents will register. In the state...in the state of Maryland, only three have registered, but in the state of Alabama, a hundred and fifty-three have registered. So the state...the Secretary of State is unable to determine how much revenue this bill will bring in. But it's a timely bill. We're having a number of athletes in our state become professionals, particularly from our university system, and this uniform bill is applicable. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 322**, establishing the business loan enhancement program. Finance Committee. Ought to pass, Vote 7-0. Senator Odell for the committee.

### **SPECIAL ORDER**

Senator Odell moved that **SB 322**, establishing the business loan enhancement program, be made a special order for February 9, 2006.

**Adopted.**

**SB 371-FN**, relative to the continuation of certain wetlands fees. Finance Committee. Ought to pass with amendment, Vote 7-0. Senator Green for the committee.

**Senate Finance**  
**January 25, 2006**  
**2006-0612s**  
**09/01**

**Amendment to SB 371-FN**

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

1 Extension of Fee for Excavating and Dredging Permits. Amend 2003, 224:8, I to read as follows:

I. Section 3 of this act shall take effect July 1, [~~2006~~] **2010**.

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

**2006-0612s**

**AMENDED ANALYSIS**

This bill extends the current fee for an excavating and dredging permit until July 1, 2010.

SENATOR GREEN: Thank you, Mr. President. I move that Senate Bill 371-FN ought to pass with amendment. This legislation will continue the existing fee for excavating and dredging permits granted through DES. In 2003, the legislature authorized this fee increase as a way to increase the revenues so that the bureau could support full staffing levels. A full staff of nine is needed in order to ensure that the application decisions are made in a timely manner. The amendment to the bill continues the fee until 2010. The Finance Committee asks your support for the motion of ought to pass with amendment. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 387**, relative to energy efficiency loans and guarantees by the business finance authority. Finance Committee. Ought to pass, Vote 7-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 387 ought to pass. This bill authorizes the Business Finance Authority to guarantee and provide loans to small businesses and agricultural entities for energy efficiency improvements. This legislation will be a tool for the Business Finance Authority in their capacity to make loans to businesses. Energy prices have been record-setting, both nationwide and in New Hampshire and this program will enhance the capability of businesses to respond if and when energy prices escalate again. There is no fiscal impact. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 153-FN**, relative to the collection of debts owed to the state. Finance Committee. Ought to pass with amendment, Vote 4-1. Senator Morse for the committee.

**Senate Finance**  
**January 25, 2006**  
**2006-0613s**  
**05/10**

**Amendment to HB 153-FN**

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

AN ACT relative to the collection of debts owed to the state and relative to frivolous court actions involving state construction projects.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 New Section; Frivolous Actions Relative to State Construction Projects. Amend RSA 507 by inserting after section 15 the following new section: 507:15-a Frivolous Actions Relative to State Construction Projects.

I. If, upon the hearing of any action against the state pertaining to a state construction project, which has commenced after the necessary state and federal approvals for construction have been issued, it appears to the court that the action is frivolous or intended to otherwise harass or intimidate the prevailing party, then the court, upon motion of a prevailing party or on its own motion, may order summary judgment or other relief against the party who brought such action, and award the amount of costs and attorneys' fees incurred by the prevailing party. Costs shall include, but not be limited to, increased construction costs incurred by the state.

II. For purposes of this section, "state construction project" shall mean a capital budget project.

**2006-0613s**

#### AMENDED ANALYSIS

This bill:

I. Authorizes the department of administrative services to oversee, on behalf of state agencies, debt collection conducted by collection agencies and law firms. Recovered funds, less collection costs, shall be returned to the appropriate agency.

II. Requires the department of administrative services to submit an annual report on the collection activity to the legislature.

III. Permits the prevailing party in a case involving a state construction project to recover attorneys' fees and costs if the court finds the case was frivolous or otherwise intended to harass or intimidate the prevailing party.

SENATOR MORSE: Thank you, Mr. President. I move House Bill 153 ought to pass with amendment. This bill allows the state of New Hampshire to collect debts owed to the state by hiring private collection agencies or law firms. The bill will allow the state to recover lost money that the agencies otherwise would not have had the means to go after. The amendment to the bill addresses frivolous lawsuits relative to the state construction projects. If the lawsuit is found to be frivolous or intended to harass the other party, it allows attorneys' fees and costs to be recovered. The amendment is in response to action being taken by a private group in an attempt to delay the I-93 widening. This is a large scale project that is crucial for our state to address traffic concerns and also aid in economic growth. The Finance Committee asks for your support for the motion of ought to pass with amendment.

SENATOR FOSTER: Mr. President, point of order? This amendment, I was going to ask the chair to make a determination as to whether it's germane or not. I'd always thought that the Finance Committee dealt with Finance matters and the fiscal impact on bills. And this amendment, while I understand it is very important to some of the members of the Committee and some members of this body, appears to be not germane. And under the rule 23 it says that an amendment has to be germane whenever it's admitted. There hasn't been a hearing on this

amendment, at all, that I'm aware of. I think we've dealt with it, I guess, in past sessions, but we haven't dealt with it this session. So I wanted to ask the ruling of the chair as to whether the amendment is germane?

SENATOR GATSAS (In the Chair): The chair will rule that the amendment's germane. We're talking about debts. I think there's an amendment...I think the Senate brings forward many amendments that sometimes don't have public hearings. I'm sure that we will hear a few others that come forward.

SENATOR MORSE: I'd like to make it clear that I asked the Senate President if it was a germane amendment when I produced it and I was told yes.

SENATOR LARSEN: I rise to oppose the amendment. I think everyone needs to consider the chilling affect that this amendment will have on those who seek to protect the environmental concerns of this state. I have a copy of the letter, and I think many in this room have seen the letter, that people felt was some kind of threat and reacted defensively to what is perceived as a threat. But this letter that was written to Commissioner Murray, by the Conservation Law Foundation, in fact points out the deficiencies that they genuinely found regarding the development of the project for the widening of I-93 between Salem and Manchester. There are very real deficiencies seen within that filing. And they only suggested in the letter, that it was time, and there would be real value for the Department of Transportation to sit down with the Conservation Law Foundation to discuss prospects for settlement. They point out in the letter, as has been pointed out in other reports on this, that in fact, through the Keene bypass project, they did reach some settlement and a mutually beneficial result. So we, in passing an amendment such as you see in our calendar, would in fact all of a sudden be charging any...we already have a frivolous action statute that protects and requires legal fees if it is found that a group is...or any person is pursuing frivolous action in the courts. And you can be assessed legal fees is my understanding. This will increase that penalty to say that, if you are causing construction delays, you now will have to pay the cost of that delay. We are talking millions of dollars. Now I understand that there are oftentimes many projects that people want to see moved along. And I understand the concern for the I-93 widening, although my own community has it's own concerns about that as it gets up here finally. But, what you are doing is you are basically going to say that those groups which seek to bring some redress to bring forward issues like environmental issues and concerns that they have, they are now going to have to spend...be willing to pay millions of dollars if someone finds...some judge finds that they should not have brought this particular action. That will have an incredibly chilling affect and, in fact, is the wrong thing to do. I think already many groups are very small and continue to struggle to keep going to defend public rights and that is the balance in our society. So the last thing we want to do is make it so difficult that people cannot survive in that environment and there is no public discussion, and there is the ability to silence those voices that bring genuine public concerns to the forefront through the courts or through settlement requests such as this. This was truly just a request to settle. And I think it is the wrong thing to do to be passing this amendment onto House Bill 153 which I continue to question its germaness. But even more, I question the wisdom of doing something this drastic to silence those who you don't agree with.

SENATOR CLEGG: Of Senator Larsen. Senator Larsen, you mentioned in your speech that there was the same type of situation in Keene, and that what happened was that they settled...they had a settlement that was agreeable and beneficial to both. Can you tell me what that was?

SENATOR LARSEN: I did not participate in that settlement, but by a news account, "the settlement resulted in reduced impacts to wetlands around the proposed road."

SENATOR CLEGG: Would you believe that many of us agreed to pay what some would call extortion or the ransom that was demanded of them so that the project could go forward because it was so critical to that area? And that it was no beneficial or there was no real agreement other than to pay off the people that were threatening the lawsuit, and were actually suing so that we could move forward?

SENATOR LARSEN: If the payoff was the result...resulted in improved protection of wetlands, which we know protects our groundwater, then perhaps it was a payoff in terms of public benefit and not a payoff to anyone's pocket.

SENATOR CLEGG: Would you believe that those of us who were involved in that looked at it more as we needed critical infrastructure and that we paid off the ransom?

SENATOR LARSEN: I understand that was your viewpoint, but I also think that, from the other side's viewpoint, a bypass permitted improved traffic flow around Keene, and there was a way to do it while also protecting some wetland concerns, that protect environment, key environmental areas.

SENATOR BURLING: Thank you, Mr. President. I rise in opposition to the adoption of the bill with this amendment. I have a number of points I'd like to make. First, it's clear that the role of litigation, whether we like it or not, has become a critical part in transportation planning in this country in this century. Absolutely every highway project now pursued by the federal government or by states, is subject to the right of citizens to raise issues about compliance with law in the court of law. That point is proved by the most glaring example of what happens when you don't have that right. Every one of us knows it. It's called the "Big Dig". Fourteen billion dollars in cost overrun because people didn't step up to the bat early in the process and say "These people have no idea what they're doing." I have the letter that is the source of this, I think, perhaps ill-advised proposed amendment. I think it's important for the record that we just touch on some of the concerns that the parties who wrote this letter tried to raise. They were concerned about objectively and properly assessing rail as a part of the comprehensive solution for the I-95...I-93 travel corridor. Now there's a scandalous idea. I've been talking about it as a public servant for ten years. I think it's something we ought to be evaluating. The Conservation Law Foundation was concerned that that had not been addressed sufficiently in the process of planning for 93. They wanted to account for increased traffic demands on I-93 and secondary roads caused by induced growth and development as shown in the Department of Transportation's own post EIS traffic sensitivity analysis. There's a horrible thought. Some citizens actually read the documents prepared by the Department of Transportation and noted that, in those documents, there was reference to induced traffic increasing in the area surrounding the I-93 corridor. I'd kind of like to hope that somebody was actually thinking about that. They wanted to assess air and water impact south of the state line. Well I know we are

in a constant grumble with the Commonwealth of Massachusetts and have been since 1789, but it seems to me that's a fair concern. They wanted to take into account impacts from other future projects, including I-93 improvements in Massachusetts, and the new proposed exit 4A in New Hampshire. These are not the work of irresponsible people trying to delay or derail a project. These are ideas pursued by people who have concern for the future of our state and its people. I think to adopt a further slap suit proposal, when we already had one in law, in response to such a request for a consultation and discussion, is simply not worthy of this body. And I would like to point out that the meeting requested by this letter has already taken place. It happened on Monday. The Department of Transportation apparently thought that these ideas were worth discussing, so they sat down with folks from the Governor's office, DOT and the Conservation Law Foundation. I think we are trying to swat flies with a hand grenade, and I think that's a poor solution. The amendment, particularly in its provision that exposes plaintiff citizens, let's put it that way, to the increased construction costs incurred by the state, is not a worthwhile pursuit. And I guess I bring one final point, which is really important for us to remember. This amendment wouldn't work. You want to know why it wouldn't work? Anybody who's paying attention would bring their complaints in the federal district court in the district of New Hampshire. The Superior Court of the state of New Hampshire isn't going to have anything to do with this. And we have absolutely no way to bind the United States District Court. Judge DiClerico would give us a polite, but firm no. So this is nothing but a temper tantrum. We have law on the books which covers frivolous lawsuits. We should be confident in our ability to use that law when appropriate, and we should stay away from trying to derail a public communication between parties who have an interest in seeing us do the right thing. Thank you, Mr. President.

SENATOR CLEGG: Senator Burling, you mentioned that you brought the rail transportation up on numerous occasions. I am assuming that was here in the legislature? Both in the House and in the Senate?

SENATOR BURLING: Well, if I may answer that, I've brought it up on the campaign trail. I've talked to my constituents about it. I brought it up frequently in the House when I was a member of the House. I have and I continue to express concern for our abandonment of the rail system as a method of moving large numbers of people backwards and forward.

SENATOR CLEGG: Further question?

SENATOR BURLING: Yes.

SENATOR CLEGG: Senator Burling, do you think the proper place for that debate is in the courtroom or in the legislature?

SENATOR BURLING: Well, Senator, to respond with absolute accuracy, since federal law requires the state to consider these elements, including rail transportation as part of the overall transit plan between Manchester and Boston. Federal law requires that. If a group of citizens feel that the state had not done its duty by adequately considering those issues, they have but one remedy and that is to either ask for a meeting, which these folks did, or go to federal court, which is what may happen if we don't respond appropriately.

SENATOR CLEGG: I understand the ramifications, but I'm asking you if you believe that the proper place to discuss whether the state of New Hampshire should enhance its rail system or do away with it should be in the courtroom first or should it be in the legislature first?

SENATOR BURLING: I think it should be in any way that gives citizens a right to express themselves in protest. People can come here, people can go to the Department of Transportation. People can request meetings with the Governor's office or people can, because it is part of our federal **TAPE CHANGE** United States of America, go to the United States District Court to raise issues. All of those are appropriate ways for citizens to deal with their rights, these would be their government and the decisions it makes. All of those are appropriate. It turns out that this group of citizens, having described their legal rights clearly, in fact got what they wanted, which was a meeting in the Governors' office with a group of people who represent the administration. I don't think there is anything but good news in that.

SENATOR CLEGG: So, I just want to make sure I'm clear. So, you think it's okay for people to take an issue to the court rather than have the elected officials make decisions like we're supposed to? You think it's okay for a private organization to take the state's business to the courtroom and allow the judges to make the decision instead of the elected representatives make the decisions. I'm hearing you think that that's an okay thing to do if you don't get your own way the first time.

SENATOR BURLING: Well, if I may present an example of how I feel about that. Assume that the state of New Hampshire Department of Transportation decided to take my farm because they wanted to build a new highway between Claremont and West Lebanon. I can guarantee you, Senator, I'll be headed to any court that's open, as fast as I can to try and stop that, because I think it's not only an expression of my right as a citizen of this state and a citizen of the United States, it's also clearly a federal right guaranteed to me by the United States Constitution. I'll certainly come by here and see if you guys won't stop it, but in the off chance that you won't, I'm going to defend myself.

SENATOR CLEGG: You don't have to. You can just vote for our eminent domain bill.

SENATOR BURLING: You know, I'm a sponsor. I think I will.

SENATOR LETOURNEAU: Thank you, Mr. President. I-93 widening has been on the ten year highway plan since there's been a ten year highway plan. When I came to the legislature in 1997, that was one of my platforms, to speed up the process of this highway. I'm talking 1997. That was ten years ago. In 1999 I put a bill in, in the House, to make the widening of I-93 a state priority. Both bodies and the Governor, Governor Shaheen I might add, agreed with that, and passed that legislation. From that point on, we have been through process after process after process. We've had meetings at every one of the corridor towns. We've had open meetings in the districts. We've had public hearings after public hearings, and it's gone through a complete environmental impact study. Not the kind of impact study that you would do if you were just going to widen the road, but like an impact study if you were going to build a whole entire new road. So it's a much more lengthy process. Throughout this whole process, these folks have tried to put roadblocks, time after time after time again, and here are again with more roadblocks. They charged us with not enough mitigation, so we have seventy-five acres of wetlands and we gave them a thousand acres of mitigation for those seventy-five acres and it satisfied them. One thousand acres for seventy-five. They talked about the trains. In the impact study, there is a corridor cut out for the trains in between the barrels of I-93. It's part



of the process, but not at this time because there is no ridership there. The study showed that it wasn't there yet. But it's in there. Now here we are fast forward in 2006. We finally get a record of decision after all these years, and after all these hurdles, and now we are being threatened with a lawsuit. And it's going to be up to the judge to decide whether or not it is a frivolous lawsuit based upon the issues that they are going to raise at the time they raise them. But I think it's important to note that the reason why we want to widen this highway is because the horse is already out of the barn. In my district alone, the downtown traffic in the first time of the morning, the first early hours of the morning to the late hours in the evening, is backed up from the highway all the way almost to Chester. You want to talk about pollution, air pollution? You can't even stand on the sidewalk with all of the cars idling because they're all stuck in traffic. And accidents? I can't even tell you how many people have died on that stretch of highway. I went to school in Salem, New Hampshire. I graduated in 1961, and that was the highway that was built in 1960 and it's the same road today as when I grew up. It hasn't widened at all. But the rest of the highways have been widened, from Manchester north, and from Salem south. So this is a safety issue for my constituents. And I can tell you, during the process when we put in the bill to make this a state priority, the overwhelming number of calls was in support. We need to move forward with this. Thank you very much.

SENATOR GOTTESMAN: Thank you, Mr. President. I'd like to ask a question of Senator Clegg. Senator Clegg, as I read through the first sentence of your amendment, which says, "if, upon the hearing of any action against the state pertaining to a state construction project". Is that intended to exclude eminent domain proceedings that are brought by any individ...by the state and then answered by any individual to the state? Because if it is then, if there's a determination, we are jeopardizing the rights of an individual to get fair compensation from the state of New Hampshire and then, if they should happen to lose in that proceeding and get less than what they are seeking, then they will also have to pay for the costs of construction of this project as we go forward?

SENATOR CLEGG: No, Senator, I don't think that's what it does at all. I think, if you continue to read, it talks about and it says "it appears to the court that the action was frivolous or intended to otherwise harass or intimidating the prevailing party." I think what we are doing is going back three years ago when we heard this as a bill. We actually had Charles Niebling sit there in front of the committee and state, "Oh my God, don't pass this. The people I represent will have to pull at least three or four of their lawsuits." So that says to us that day, that yes, these people actually use this to intimidate and harass, extort money, extort land, or whatever. Nowhere in here do I believe we even intend, and I will state for the record, there is no intention of harming someone who has an argument over the value of their property under eminent domain.

SENATOR GOTTESMAN: Thank you for answering the question. Mr. President, may I speak, whether it's in order or?

SENATOR MARTEL: Excuse me. Thank you, Mr. President. Widening of I-93 to 293 is the gateway to the future of the state of New Hampshire for everything going north to the ski areas, to the lakes, to the Canadian border, to the Maritimes through Maine, also shooting, okay, in bringing us through to the airport in Manchester. The one vehicle in the state that provides more revenues, okay, in spin-off revenues than any-

thing else. Why is it so important? Well, if you look at that area, you just sat there sometime early morning or in the early evening, all the way through to the late evening, you find a boondoggle of traffic that is cutting in and out of itself in order to get ahead of other cars. Cars speeding in the breakdown lanes in order to get around other vehicles in a one lane, one and a half lane area. It's an extremely dangerous area. There are many deaths and many accidents in that area. I'm talking about now primarily from South Willow Street in Manchester to the second exit in Derry and then further south. The issue here is to continue a project that is very well designed for the future, even for rail service possibly, up and down the highway system, in the middle of the...in the center aisles. So this project is extremely, extremely important to everyone here. It has a tremendous impact on every single person in the state that is represented by you folks here, in the state of New Hampshire in the Senate. I know that there have been threats in the past, and there have been issues, okay, that have been addressed. It had to go to the courts because of the wetlands, okay, problem, the pig farm and the cow farm in the south end of Manchester, okay, as well as other areas along the highway system going down south, all the way down to Salem and into the Massachusetts border. But those things have been mitigated and have been resolved. Even those homes and the properties that have been taken, have also been mitigated and resolved. There are, I don't believe, any other cases that have been brought to court that have not been solved. Maybe there are, I'm not sure, but I don't believe so. This...I urge you to please pass this bill because for what it is. And when you have a key to further success and livelihood of this state, that is our highway system. I urge you to please do not step in the way of progress and let's move forward and make sure that we get this project done. Thank you very much, Mr. President.

SENATOR LETOURNEAU: Question of Senator Martel.

SENATOR MARTEL: Yes.

SENATOR LETOURNEAU: Senator Martel, have there been some road improvements made on 293 from the split over to Brown Ave?

SENATOR MARTEL: Oh, absolutely. It's been widened out between that split where it comes off of 293, all the way up to you reach...all the way up to where the highway divides actually, and heads north on 293, the Everett Turnpike into an eight-lane highway, four lanes on each side. And it's really been broaden, okay, to make it safer, with wider exits so that people can get in and out of the highway in a much easier way.

SENATOR LETOURNEAU: Follow up to that? What is the result of the traffic coming up 93 with the two lanes connecting with that now widened highway?

SENATOR MARTEL: The results are, like I said earlier, it's a big boondoggle because it's all backed up for several miles until you get to the four lanes on each side, especially when you're heading north.

SENATOR LETOURNEAU: Thank you.

SENATOR MARTEL: Okay, and that opens it up, and once that's opened up and once we can do it all the way with the finishing of the highway system, that's going to be a very beautiful, easy trip.

SENATOR LETOURNEAU: Thank you.

SENATOR MARTEL: Thank you.

SENATOR EATON: I would just like to address the comments that Senator Larsen made that it was a mutual benefit over in our area to settle the first section of the CLF lawsuit. It was not. That first section really has nothing to do with the major traffic flow. It had to do with the development of quite a commercial development that we had there. The intersections are running at failure. Had Conservation Law Foundation not delayed this, and that is their tactic, is delay, delay, delay, Senator Clegg was very right, we'd have that built by now. There was \$66 million going into this project and that project probably would never be built between two intersections. It is approximately half a mile. It can take twenty to thirty minutes to get through just that one intersection. That's not progress. There's a bypass that was put in for Troy, and a lot of property, just like in Keene, was purchased by the Transportation, which we now all own, the New Hampshire Department of Transportation, and CLF has sued that. That probably will never materialize, and that would have taken the traffic out of the little village of Troy and Troy overwhelmingly voted to have this bypass put in. So all this money, federal money that we're supposed to have, and state money for these projects, probably is all gone by now. It's CLF, it's either their way or no highway.

SENATOR FOSTER: Thank you, Mr. President. I hadn't intended on speak, but I am just going to say a few words. First, let me say, on the issue of I-93, I want to see that built. I haven't even read the Conservation Law Foundation letter because to me, that isn't the issue here today. In fact, it's sort of frightening that that's what we are talking about, because what we are looking at doing here is passing an amendment directed at a particular organization, to help a particular project. It's special legislation and it's a dangerous thing to do when you begin to think about every time we don't like something that's going on, we are going to pass a law to address a particular problem. Because of course, this amendment doesn't sunset once I-93 is built. It goes on into the future. So we'd better hope that we not only like it for I-93, but we like it for every other project that might be built in our communities when our constituents are unhappy with agency decisions and they want to go to court and assert their rights. The other thing I'd say is Senator Burling talked about going to federal court as a way to bypass this. I am not sure whether he's right or wrong, I haven't thought about it enough. I don't know if there is federal jurisdiction. Maybe there is, because I assume there's federal dollars involved and perhaps you can get there. But I'll tell you that, even if he's wrong, what will happen is you're encouraging this party to act. Because if they file suit before the law goes into effect, which they certainly can do, guess what? It doesn't apply to them. You're almost encouraging these folks to act as opposed to talking with one another, so I question the wisdom of that. And the final thing I'd say is the point...when I made a point of order to the chair, and I respect his decision. He's got the right to make that decision. This doesn't feel particularly germane to me and I...you know, look at the amended analysis, you can come to your own decision, but the one...but even if it's germane, the one thing we have here is this is on a re-referred bill. So this will pass here today, probably, it sounds like, go off, and if the House never has a Committee of Conference, guess what? It's law. There will never be a hearing on this, ever. I don't think that's the right way to pass legislation. Thank you, Mr. President.

SENATOR GOTTESMAN: Thank you, Mr. President. I just have a few points. First of all, right now, the state of New Hampshire law on who determines what is frivolous is solely in the hands of the court system

and the judge who's hearing the case. It rarely happens, because there is a legal basis normally for bringing every kind of action. If there isn't, then a judge will find that the case is frivolous and the judge will award costs and, in some cases, attorneys' fees. That is the law and that's the way it should be. What we've never anticipated is a loser pays law that includes the loser not only pays for the legal costs, they pay for all costs involved in the project. This is a very chilling piece of legislation and it's a step in a direction that I can't agree with. There are a couple of technical things in this particular bill, which I don't frankly understand, but I understand the reference to "if something is frivolous". There is nothing, as far as I know, in the law that allows legal fees, costs, or these kinds of damages, when action is determined to be intended to otherwise harass or intimidate the prevailing party. There is nothing that says that a person who files a lawsuit falls into that category right now. We are adopting a whole new set of values under this law. Additionally, on about the fourth line of this, after we've determined who the prevailing party is, then this goes on to say, "the court may, on its own motion, order summary judgment or other relief for the party." The summary judgment is not necessary under this proceeding because, even if we followed this law as set forth, judgment has already been rendered, so there is no need for summary judgment of anything. Summary judgment happens before the final judgment even occurs. It's based on a motion that everybody agrees what the facts are, and the law determines what the decision is supposed to be. I think it's...I think it's a shame that all the hard work we put into the underlying bill, and I want to remind you what that is all about. It was because the state of New Hampshire was terrible at collecting its own bills. If this thing runs into trouble, we are telling our constituents we don't care whether the state of New Hampshire collects their bills. That's what your decision is. If this goes off and it gets killed somewhere else, that whole discussion is useless. Thank you, Mr. President.

SENATOR FULLER CLARK: Yes, I'd like to ask a question of Senator Gottesman. That is, if you could clarify what would be the effect of passing this legislation with regard to future issues in the state vis-à-vis transportation projects and the impact that it could have on a citizen's ability to raise legitimate concerns?

SENATOR GOTTESMAN: My reaction to that is, whether you're rich or poor, you're entitled to have your day in court. The judges will determine whether you are right or wrong and they will assess sanctions as they're appropriate. I believe everybody is entitled to walk in the front door of the courthouse and be treated with dignity. If they are wrong, they are told they're wrong and they're shown the door.

SENATOR FULLER CLARK: Follow up question? Do you believe that this language as written, could serve as a deterrent for people being able to exercise that right?

SENATOR GOTTESMAN: The answer is, of course, yes. I think timing is everything with respect to this particular letter that I have not read fully. But that's what everyone is reacting to. If that letter had not been generated, and we had passed the underlying law, we would not be talking about this today, they would file suit if they believed that they had a proper action, and the state of New Hampshire would stand up and defend the action. Are we afraid of the CLF? Is the state of New Hampshire afraid to defend its position that it has taken? I hope not.

SENATOR LETOURNEAU: Senator Gottesman, thank you for taking my question and this is not frivolous. As an attorney and knowing...and understanding that, if a lawsuit is brought forward, and we are just going to use the I-93 as an example. If the lawsuit is brought forward, we are going to assume that any cost to that lawsuit is going to be incurred by the Department of Transportation and come directly out of the highway fund, which affects all of our road projects. Could you tell us what it would cost the state to defend that? A rough estimate?

SENATOR GOTTESMAN: I can't tell you...

SENATOR LETOURNEAU: It costs them millions and millions of dollars.

SENATOR GOTTESMAN: But I can try to respond with an answer that says that we have attorneys on staff in the state of New Hampshire, whose job is to defend the state of New Hampshire. When they don't have the ability to do it, they hire outside attorneys to do it, and yes, it does cost money. But I don't think that's any reason that we should cut off someone's ability to come into the courthouse. I am not in favor of holding up anything to do with your highway, our highway over there, and I know you folks over in that section of the state have worked very hard to bring this along. For me, this is a substantive issue of due process, and I think we are trying to keep people out of the courthouse who have every right to be there, whether they're right or wrong, but we should not react out of fear. We are the state of New Hampshire.

SENATOR LETOURNEAU: Thank you.

SENATOR HASSAN: Thank you very much, Mr. President, and first, I'd like to echo Senator Gottesman's comments just now. For many of this, this is not about the I-93 expansion because it's a much larger issue as big and as important as the I-93 expansion is. And it is. I represent a seacoast district and I have constituents on the seacoast who ask me on a regular basis, "When are we going to get 93 widened"? And they ask me for two reasons. One, they use 93 a great deal or they have friends who do, or they have business interests that require that they come over a lot, or two, they're worried that the I-93 process has been flawed and that the state is not adequately thinking about the long-term impact of the project. And since we have our own transportation issues on the seacoast, people are very concerned that when it comes to our turn to look at the issues of crowding and transportation, that we may get such pressure to move quickly that we won't think adequately about the long-term concerns - the environmental concerns, the health concerns, the growth concerns that always come when you expand a highway. My constituents are aware of this project. All of us have traveled I-93 enough to know that we have to do something about the transportation resources in that area of the state and the highway needs to be widened. But the bigger issue for many of us is what resonates a bit in this chamber today. Is the concern that we are somehow going to start denigrating the third branch of government, our legal process, whenever it is used to raise legitimate issues that happen to be inconvenient for the state to consider at this time. Doing things right is often very difficult. It often takes delays and it often is quite inconvenient. But for all of us who have regretted making decisions hastily, or not taking the time and care to do things to protect our children's interest in the future, we know that there are times that those citizens who find themselves pushed out of the legislative process because the legislature is in a hurry, or the legislature has pressure to build this fast, and we all do, and we all know

it's there, for those people who feel shut out because of the pressures we are feeling, and we're acting on, our Constitution says they have a right. They have a right to go to the third branch of government which is of equal weight to ours, and they have a right to ask that their concerns be heard in a court of law. And the lawyers in this case, who are licensed by the state of New Hampshire to bring forth citizens' concerns and complaints in our third branch of government, also have an ethical duty not to bring forward frivolous lawsuits. It's part of our canon of ethics. And we know we face ethical challenges as well as legal ones if we bring forth frivolous suits. Now, Senator Eaton said if the CLF hadn't brought forth its concerns on the Keene bypass, that that would be built by now and that would make things much better for many of the citizens of Keene, for all of the citizens of Keene, as they travel. And it may make it much better for the develop...it would have made it better for the development that had hoped to be there by now. But the CLF chose to bring forth concerns that are concerns that our federal government and our state government have expressed through law, that asks the state to look at the long-term issues raised by that bypass project. And the whole theory of litigation and settlement and compromise is a theory that says the three branches of government, working together, come out with resolutions that are not perfect, but to protect everybody as well as our founders could think to protect them. I urge that we defeat this amendment. It's another amendment that has come in on a piece of legislation that got a lot of care, that is aimed at doing something very different than the amendment is aimed at, and I think if we are going to have a debate about frivolous lawsuits, and legal entities coming forward to represent citizens of New Hampshire who have legitimate concerns, I think we should have that through a separate bill and a separate discussion. Thank you.

SENATOR BRAGDON: Mr. President, I'd like to move the question.

SENATOR GATSAS (In the Chair): I have two more speakers and we will move the question.

SENATOR ESTABROOK: Thank you, Mr. President. I hadn't planned to speak either. But first of all, I'd like to share Senator Foster's comments. I agree with him strongly. And I just want to say that I also have some empathy for the other side of this issue. About seven years ago, maybe eight years ago, we passed a bill that I had sponsored to lower the percent you needed to pass a school bond issue in SB 2 towns from two-thirds to three-fifths. And my high school in my district, I was a House member at the time, I only had one high school, was in bad need of repair and expansion. It was horribly overcrowded. And my children were stuck in that high school. And I was really thrilled when that bill passed and I thought, okay, we've got another shot at our bond vote. Well, guess what? A couple of citizens took us to court and decided they wanted to challenge the constitutionality of that law that we passed. We spent years in court waiting for that lawsuit to be resolved. Meanwhile, my kids graduated high school and others did, too. And five high school projects around the state were held up because of that lawsuit. I can't remember whether it took two, three or four years, but it was a long time, and I don't think there was a day that went by that I wasn't very upset that these people had the right to hold this up and cost our school district millions and millions of dollars, which they did. But, they had that right, and that's the way the system works, and I don't think we should change it.

SENATOR MORSE: Thank you, Mr. President. I'd like to clear a few things up. And one thing that Senator Letourneau reminded me of is, back in 1999 this project was \$120 million. It's \$480 million today. And I think we ought to keep that in mind because the debate I'm sure that's coming next year is there is not enough highway dollars. So I'll save that for another day, but something got lost in adding this amendment. And Senator Clegg was headed down the street of what particularly drove me to bring this amendment back which was thoroughly debated before. If you remember, it was passed through this body. It was the House that held up this amendment last time. But back in 2004, when we were going to file for our recorded decision, I remember going to the commissioner and specifically asking for this meeting. Saying, "I want to meet with CLF". Naive as I was, she said, "that doesn't happen. It doesn't happen. They are not the kind of organization that you meet with. There's a process, they'll go through it." In 2004 they spoke in Salem, setting up their lawsuit. They spoke at the meeting. But you know what? Everybody in this state had the opportunity to go to any of those public meetings back in 2004 and speak. And we did. And all of these issues were brought up. All of them. And if it wasn't for what happened last year, where I asked Senator Eaton to bring the federal government to the state of New Hampshire, and for three hours, we sat in this building and talked about the recorded decision for the state of New Hampshire, I don't believe we'd even have one. Now this letter, has a position paper behind it. And it suggests...and before I tell you what it suggests, let me tell you what Senator Clegg left on the table. Two things. One, a lawsuit. It was a lawsuit that specifically said "highway dollars cannot be used for rail." The second was a constitutional amendment that was put forward to this body that we voted down. So what he's alluding to is, we are circumventing the legislature by moving forward with these positions. "A commitment to rail on the Manchester to Lawrence Branch line must be built in and amended to the record of decision as a condition of proceeding with the highway widening. Must connect Manchester and Lawrence, construct now as a highway construction relief project and can and should be part of a solution to chlorides." Now I'll go down to a section that addresses that because this is another issue that the state of New Hampshire should be very concerned about. "Require a regional TMDL study as part of this highway." The last meeting that I attended that we discussed TMDL, was that that was going to be conducted within the Department of DES because, at that point in time, unless something's changed in the country, no state has been required, as part of a highway project, to do a salt study with the project. This letter suggests two impossible tasks. One, the salt study is part of the highway and not a thing happens, which we spent over a million dollars securing bridges in that district this past year from falling apart over the winter. And the other thing is rail. We have a tough enough time making a budget happen around here. Does anyone think we could come up with hundreds of millions of dollars to subsidize rail just in construction, never mind what else they're asking for? That's in the letter. I don't think I'm a crazy guy. I really don't think that I just tweak. I meet with DOT every other day on financials. Serious concerns about all of that. This came up in the middle of one of the meetings and they suggested that I read the letter. I read it. I read the back up to it. I think this is wrong. I think they're circumventing us, the legislature, because we've already determined that we can't use highway dollars and we've already determined that we don't want to have a constitutional amendment to

change that. So how should I have reacted? I think this amendment protects you in every district. We could talk about 93 forever, but it protects every district. You have by-passes going in Keene. You have one going in the north country. After you've issued the record of decision, which is not taken lightly here or at the federal level. We can all talk about thirteen to one mitigation, which Massachusetts never offered on the project going through the Big Dig or the other project out on Route 3. They were one to one and they couldn't even line up with our highway system when they came across. We had to close ours at night so that they could make an alignment to come into New Hampshire. It's not the same. She's done a hell of a job over in DOT putting this project forward. I give that Department credit and I am trying to give them some support right now because that's what they deserve in this; otherwise, we're going to have lengthy lawsuits when we've already done our homework. Thank you and I'd appreciate your support.

**The question is on the adoption of the committee amendment.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Burling.**

**The following Senators voted Yes: Gallus, Johnson, Boyce, Green, Flanders, Odell, Roberge, Eaton, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**The following Senators voted No: Burling, Bragdon, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 14 - Nays: 9**

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

SENATOR BURLING: Thank you, Mr. President. The question is, can this question be divided, and is it appropriate for me to request that of you, Mr. President, or to make it in the form of a motion?

SENATOR GATSAS (In the Chair): If you'd make a motion please?

SENATOR BURLING: I move that the question be divided.

SENATOR GATSAS (In the Chair): The motion is non-debatable. All in favor of dividing the question?

The voice vote of the body took place.

SENATOR GATSAS (In the Chair): The noes have it.

SENATOR ESTABROOK: Thank you, Mr. President. I don't remember ever voting on whether a question is divisible. I thought that was the ruling of the chair.

SENATOR GATSAS (In the Chair): Then the chair will rule that it is not divisible. Okay?

SENATOR BURLING: I rise to speak briefly on the ultimate motion. Like everybody in here, I believe in the completion of the I-93 project. But, like everybody in here, I'm a sponsor of the eminent domain bill. And if there is one group who will condemn us throughout history it is that group of people who, by passage of this document, lose their right to protest when the state takes their house for a highway project. That's what this does. I'm not kidding. If the state of New Hampshire, not 93, Senator, I know how passionately you believe in that and how you've worked for it. But Senator, if we have a hypothetical highway from hither



to you, and some future Transportation Department decides that it wants to take sixteen houses, this bill will stand in the way of full and fair enforcement of the rights of those people. They won't be able to get to court, because they will be threatened with the entire cost of delaying the highway. That's not fair. And everyone of us has worked in here for the last nine months to come up with a bill that protects the right of eminent domain condemnees. I've made my point, Mr. President. I thank you for listening. You've been so patient with all of us.

SENATOR GATSAS (In the Chair): The question is on the adoption of ought to pass as amended on HB 153-FN.

### PARLIAMENTARY INQUIRY

SENATOR D'ALLESANDRO: Thank you, Mr. President. Mr. President, mine is a parliamentary inquiry. The question posed to the chair was "is the question divisible?" You said, "yes, it is divisible." You made a ruling of the chair, then you retracted your ruling and said it wasn't divisible. On what basis did you make the ruling that it was divisible and then countered your ruling that it wasn't divisible. I mean...I don't...that's a parliamentary inquiry because I think the process of this body depends upon the consistency of the decision making process of the chief executive. And you made a decision and said the question was divisible. I respect that decision. Then made another decision, immediately afterward, and said it wasn't divisible. There's...there's...there's a contradiction there, and I'd like that contradiction explained.

SENATOR GATSAS (In the Chair): Certainly, Senator.

SENATOR D'ALLESANDRO: Thank you.

SENATOR GATSAS (In the Chair): I think the question...the motion came before us. Senator Burling made a new motion. I assumed that he was looking for the full body to participate in that motion and I allowed that to happen. I ruled that the noes had it and then he asked if the motion was divisible again and I said it was not, 'cause the noes had it. That's the parliamentary answer.

SENATOR D'ALLESANDRO: Further comment?

SENATOR GATSAS (In the Chair): Certainly.

SENATOR D'ALLESANDRO: Thank you, Mr. President. Then, Mr. President, any time you make a ruling, you're going to throw it to the body to either accept or reject that ruling? I mean, you're the presiding officer. You have the authority, as the President of this organ...of this Senate, to make those decisions; otherwise, everything should be thrown to this body in terms of the decision making process. If that's the way...if that's the way it's to be, I mean, that's the way it's to be, but I think that is contrary to the rules of order that we govern this Senate by. Thank you.

**Recess.**

**Out of recess.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 582**, relative to the policy for records management. Finance Committee. Ought to pass, Vote 7-0. Senator Larsen for the committee.

SENATOR LARSEN: Thank you, Mr. President. I move House Bill 582 ought to pass. This bill allows the Secretary of State's Office to upgrade to digital recordkeeping and updates the statutes pertaining to record-keeping. This bill was sent to Finance out of concerns that salaries were being increased within the Secretary of State's Office. However, this legislation does not give new money...appropriate new money, and it gives the Secretary of State the authority to increase an supervised...an unclassified supervisor's salary within their existing budget. The Finance Committee asks your support for this motion of ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 599-FN**, requiring disclosure to consumers of the presence of event data recording devices in new motor vehicles. Finance Committee. Ought to pass, Vote 7-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move recommit to Finance and I'd like to speak to my motion.

**Senator Morse moved to recommit.**

SENATOR MORSE: Mr. President, the chair of Transportation asked me to take this bill back so that we can make some technical changes. I've agreed to do that and we'll bring it back out after we have a hearing.

SENATOR EATON: Without objection, I'd like to ask that it go right to Ways and Means.

**Adopted.**

**HB 599-FN is recommitted.**

**Without objection the bill was referred to Ways and Means.**

**SB 107-FN**, relative to the sale of tobacco products. Ways and Means Committee. Ought to pass with amendment, Vote 4-0. Senator D'Allesandro for the committee.

**Senate Ways and Means**

**January 19, 2006**

**2006-0496s**

**09/01**

### **Amendment to SB 107-FN**

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

1 Definition; Wholesaler. Amend RSA 78:1, V to read as follows:

V. "Wholesaler" means any person doing business in this state, *whether located in this state or not*, who shall purchase all of his *or her* unstamped tobacco products directly from a licensed manufacturer, and who shall sell all of his *or her* products to licensed [~~wholesalers,~~] sub-jobbers, vending machine operators, retailers, and those persons exempted from the tobacco tax under RSA 78:7-b.

2 Definition; Retailer. Amend RSA 78:1, XI to read as follows:

XI. "Retailer" means any person, *whether located in this state or not*, who sells tobacco products to consumers *in New Hampshire*, and any vending machine in which tobacco products are sold.

3 Reference Correction. Amend RSA 78:2, 1-a to read as follows:

1-a. Notwithstanding RSA 21-J:14, information regarding licenses issued pursuant to this section and information regarding enforcement actions taken pursuant to this chapter and RSA [~~126-F~~] **126-K** shall be public records.

4 Reference Correction. Amend RSA 78:4 to read as follows:

78:4 Term of License; Renewals. Licenses issued under RSA 78:2 shall expire on June 30 in each even-numbered year, unless sooner revoked or unless the business in respect to which the license was issued should change ownership. Licenses may be renewed upon signed application as provided in RSA 78:2 and upon paying the prescribed fee, provided that a license shall not be renewed if there are unpaid fees, fines, or penalties resulting from violations of this chapter or RSA ~~[126-F]~~ **126-K** attributable to the license or the licensee.

5 Reference Correction. Amend RSA 78:6 to read as follows:

78:6 Suspension and Revocation of License by Commissioner. The commissioner may adopt rules pursuant to RSA 541-A relative to accomplishing the purpose of RSA 78. The commissioner may suspend or revoke any license issued under RSA 78:2 for failure to comply with the provisions of this chapter and with any rules which the commissioner may adopt. The commissioner shall suspend or revoke any license issued under RSA 78:2 if ordered to do so pursuant to RSA ~~[126-F]~~ **126-K**.

6 New Section; Taxation of Unstamped Tobacco Products. Amend RSA 78 by inserting after section 9-a the following new section:

78:9-b Taxation of Unstamped Tobacco Products; Receipt Issued in Lieu of Stamps.

I. Whoever purchases tobacco products for personal consumption without New Hampshire tax stamps shall pay the tax imposed under RSA 78:7 or RSA 78:7-c, as applicable.

II. The commissioner is authorized to issue tax notices to persons for tax due on unstamped tobacco products whenever the commissioner discovers such unstamped tobacco products. Lists of purchasers of mail-order tobacco products that are provided to the commissioner by mail-order retailers under 15 U.S.C. section 376, shall be a lawful method of discovery.

III. The tax shall be remitted to the department in such manner and accompanied by such form or forms as the commissioner shall determine. Upon satisfactory payment, the commissioner shall issue a receipt to the person with sufficient detail to record the specific transaction.

IV. Any person who fails to pay any amount due within 30 days of the date of the tax notice issued under paragraph II shall pay, in addition to the amount, interest as prescribed in RSA 21-J:28. Any person who fails to pay any amount due within 90 days of the date of the tax notice issued under paragraph II shall pay, in addition to the amount and interest, penalties as prescribed in RSA 21-J:33.

V. Nothing in this section shall be construed to allow possession of tobacco products that are otherwise unlawful under RSA 541-D.

VI. The commissioner shall adopt rules under RSA 541-A to implement this section.

7 Affixing Stamps. Amend RSA 78:12, II to read as follows:

II. The commissioner is authorized to exempt such tobacco products [~~other than cigarettes~~] from the requirement of affixing stamps to their packages under paragraph I, as to which he finds that the affixing of stamps is physically impractical due to the size or nature of the package or that the cost of affixing the stamps is unreasonably disproportionate to the tax revenue to be collected. In lieu of stamps, the commissioner may, by rules adopted under RSA 541-A, require the submission of periodic reports to the commissioner by wholesalers thereof exempted under this paragraph, setting forth the total amount of such unstamped tobacco products distributed and transmitting payment of the tax due under this chapter.

8 Unauthorized Sales. RSA 78:12-a is repealed and reenacted to read as follows:

78:12-a Authorized Sales.

I. Manufacturers shall not sell tobacco products to any person who does not possess a valid wholesaler license issued by the commissioner.

II. Wholesalers shall not sell tobacco products to any person who does not possess a valid retailer license, sub-jobber license, vending machine license, or a sampler license issued by the commissioner.

III. Sub-jobbers shall not sell tobacco products to any person who does not possess a valid retailer license, sub-jobber license, vending machine license, or a sampler license issued by the commissioner.

IV. Retail licensees, vending machine licensees, and sampler licensees shall sell or distribute tobacco products only to consumers.

V. A person may possess multiple licenses.

VI. Any person who violates the provisions of this section shall be subject to the penalty provisions of RSA 21-J:39.

9 Unstamped Tobacco Products; Exception. Amend RSA 78:14 to read as follows:

78:14 Unstamped Tobacco Products. No sub-jobber, vending machine operator or retailer, and no other person who is not licensed under the provisions of this chapter, shall sell, offer for sale, display for sale, ship, store, import, transport, carry or possess with or without intent to sell, any tobacco products not properly stamped under RSA 78:12 or 78:13, except as provided in **RSA 78:9-b or RSA 78:12, II**. This section shall not prevent any unlicensed person able to purchase unstamped tobacco products ~~by statute~~ **under RSA 78:9-b or RSA 78:12, II** from possessing such products for his **or her** own use or consumption. The provisions of this section shall not apply to common carriers transporting unstamped tobacco products. Any person who violates the provisions of this section shall be guilty of a felony.

10 Seizure, Forfeiture, and Destruction of Illegal Tobacco Products. RSA 78:16 is repealed and reenacted to read as follows:

78:16 Seizure, Forfeiture, and Destruction of Illegal Tobacco Products.

I. Tobacco products found at any place in this state without the necessary stamps affixed to them shall be seized and subject to destruction. The commissioner or designee shall have the power to immediately seize unstamped tobacco products.

II. Upon seizure, an administrative proceeding before the department shall be scheduled to afford the owner of the seized tobacco product a hearing regarding the seizure. If the seized tobacco product is determined to be contraband, then it shall be destroyed no sooner than 45 days after the expiration of any right of appeal.

III. Upon the determination that the unstamped tobacco product is contraband under paragraph II and if the contraband tobacco product bears identification of a particular manufacturer, the commissioner shall notify that manufacturer and that manufacturer shall be allowed to inspect such contraband tobacco within 30 days to determine the authenticity of such product. If the contraband is authentic, it shall be destroyed. If the contraband is determined to be counterfeit, then it shall be given to the manufacturer as evidence of infringement of their product.

IV. Paragraph I shall not apply to the possession of tobacco products:

(a) That are exempt under RSA 78:12, II;

(b) By anyone who has been issued a receipt under RSA 78:9-b, III;

(c) By a licensed manufacturer or wholesaler; or

(d) By a common carrier from a bonded warehouse and consigned to a licensed manufacturer, a licensed wholesaler, or anyone exempted by statute.

V. The commissioner shall adopt rules, under RSA 541-A, relative to the seizure, hearing, notice to manufacturers, and destruction of contraband tobacco products.

VI. Nothing in this section shall preclude the seizure of any unstamped tobacco product by law enforcement officers under RSA 617.

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

**2006-0496s**

### AMENDED ANALYSIS

This bill makes a variety of changes to the laws governing sale of tobacco products in this state.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move Senate Bill 107-FN ought to pass as amended. This bill clarifies that wholesalers and retailers physically located out of state and doing business in the state are subject to our laws. This bill allows the Department of Revenue to bill...to directly bill customers for taxes due on unstamped tobacco purchases through mail-order or the internet. It also gives DRA the authority to tax any tobacco product that, because of its packaging, is unsuitable for stamps. Currently, DRA can only do this with tobacco products other than cigarettes. This bill also clarifies to whom a license holder may sell tobacco products. It provides DRA with a streamlined method for seizure of unstamped or illegal tobacco products and retains the existing seizure process through which law enforcement...through its law enforcement agency's work. The Ways and Means Committee asks your support. When this bill originally came to Ways and Means, it had an enormous fiscal note. That fiscal note was in the vicinity of about \$200,000. The adjusted fiscal note says that the cost of this would be basically \$5,000 and that would give the Department of Revenue Administration all of the amenities that they need to collect these uncollected taxes. And they said that it will produce an increased revenue stream of around \$30,000.

SENATOR JOHNSON: Thank you, Mr. President. I'm the prime sponsor of Senate Bill 107 and, just for the record, I want you to know that we worked with DRA on this bill and basically it's their language, I think, was incorporated into the bill. But I understand there are a couple of concerns about the bill and I suggest table.

### MOTION TO TABLE

**Senator Johnson moved to have SB 107-FN laid on the table.**

**Adopted.**

### LAIID ON THE TABLE

**SB 107-FN**, relative to the sale of tobacco products.

**SB 225-FN-A**, establishing video lottery. Ways and Means Committee. Ought to pass with amendment, Vote 3-1. Senator D'Allesandro for the committee.

**Senate Ways and Means**

**January 19, 2006**

**2006-0494s**

**04/01**

### Amendment to SB 225-FN-A

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

AN ACT relative to horse and dog racing.

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

1 Horse and Dog Racing; Restriction on Gambling. Amend RSA 284:17-c to read as follows:

284:17-c Restriction on Gambling. Notwithstanding any other provision of law, except as provided in RSA 284:22-a and in the introductory paragraph of RSA 284:22, 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 lottery commission *or the pari-mutuel commission*.

2 Horse and Dog Racing; Pari-Mutuel Pools on Simulcast Racing. Amend RSA 284:22-a, II(a)(3) to read as follows:

(3) The licensee has scheduled at least [~~100~~] **50 calendar** 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 calendar** days of live racing in such calendar year, the licensee conducts live racing on the day on which the licensee simulcasts; and

3 Horse and Dog Racing; Pari-Mutuel Pools on Simulcast Racing. Amend RSA 284:22-a, IV to read as follows:

IV. A licensee which has scheduled less than [~~100~~] **50 calendar** 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 calendar** days of live racing shall be limited to no more than 10 such cancellations in a calendar year.

4 Repeal. RSA 284:22-a, II(b), relative to the aggregate number of days of simulcast and live racing, is repealed.

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

**2006-0494s**

#### AMENDED ANALYSIS

This bill revises certain provisions pertaining to horse and dog racing.

SENATOR D'ALLESANDRO: Thank you, Mr. President. The amendment changes the title of the bill to "an act relative to horse and dog racing." I move Senate Bill 225-FN ought to pass as amended. All of those who are leery of anything to do with expanded gaming can rest comfortably now that the bill has changed dramatically. It does nothing in that regard. So all your sighs can be taken care of. The amendment reduces the number of racing days from one hundred days to fifty calendar days. And I think that is a very important item. Calendar days. There were several reasons for this. First of all, there aren't enough horses to race one hundred calendar days. They are just not enough thoroughbred animals **TAPE CHANGE** This bill will ensure that Rockingham Park continues to function and, as a result, will continue to provide the state with a source of revenue as well as payment of their property taxes to the town of Salem. The Ways and Means Committee recommends that this legislation be adopted and asks your support of the amendment with ought to pass. Thank you.

SENATOR CLEGG: Mr. President, can you tell me if the amendment's germane to the bill? The original bill was about lottery machines, and the amendment talks about race horses. Are they germane because you use a lever to open the gates to let the horses go or?

SENATOR GATSAS (In the Chair): Senator, I think I ruled that with Senator Foster's question about the germaneness of another piece of legislation, that we, in the Senate, sometimes bring bills forward and amendments forward that are germane, and we have those discussions. So I will rule that the amendment is germane.

**Senator Johnson in the Chair.**

SENATOR GATSAS: Thank you, Mr. President. I rise in opposition to this piece of legislation. I think that there's a question on whether I should speak on it. There's a question of whether I have a conflict on it. But I look around this room and I probably consider myself the expert in the field. I know there are a lot of other people that would like to call themselves the experts of the field. I remind my colleagues if we are going to have a discussion about whether we are going to have off-track betting parlors, we should have that discussion. We should legitimately have the discussion. Because, why don't we reduce the racing days from a hundred, not to fifty, but let's reduce it to twenty? Right now, we have four race tracks; actually we have three that are licensed. I know that we all received a letter from one of them. My question was, has Senator Hassan heard from the track that's in her district? I asked if Senator Eaton heard from the track that's in his district, of whether they are in favor of this legislation. I think we need to understand if we're gonna have the debate, let's have the debate. The Commissioner sent us all a letter. Every one of us in here, whenever we stand up, we talk about the Department and what their feelings are. This piece of legislation was introduced to the commission the morning before that afternoon when the bill was introduced to the Ways and Means Committee. I think it's imperative, if we have the discussion, that we truly have the discussion. Because the racing industry is hurting in the state of New Hampshire. I don't disagree with that. But there are other tracks in this country that race one hundred days. This isn't about racing. Because every time somebody stands up on this Senate floor, it was about talking about saving the racing industry. Are we truly saving the racing industry right now? No. But what we'll hear is we don't have enough horses. Sure we do. There's enough horses. Suffolk Downs runs a hundred days. But we have one track that we authorized last year that carries two licenses. They have a thoroughbred license and they have a harness license. That's wrong. Nobody else can compete in this state. You've got to be within a radius. So if somebody tomorrow wants to come in and do a project like they just renovated Gulf Stream Park in Florida, they couldn't do it. Let's have the debate, and we should have a true sincere debate. We questioned why we didn't reduce. We voted down a bill just last session when somebody came forward and said that we were reducing racing days to fifty days. We voted that bill down. Why? Because there was a concern about what was happening at Belmont Park. But today, we have a company, and we all understand that are looking to buy Rockingham Park. Now we all thought that they were coming in to revitalize racing. But we want to pass legislation before that deal is consummated to reduce those days to fifty days. I ask the question, are the new developers in agreement with that? Are they truly coming to this state for thoroughbred racing as we understood, or is it for another reason? We had a great industry in this state. Senator Morse went to Saratoga. He saw what a great race track Saratoga is. And it's truly about racing. Rockingham Park was the stop before Saratoga. Every horse, every great trainer, stopped at Rockingham Park before they went to Saratoga. Why has that changed? Let's not forget what we talk about. We talk about an

industry. Let's truly, if we are here to protect the industry, or if we are here to talk about off-track betting, I'm the first one to enter into that discussion. If we say to people, "you know what, you don't need fifty days to race, put up \$500,000 and we'll give you an off-track betting license." Because we're only fifty days from that now. So why don't we reduce it? I'm surprised we don't have an amendment coming forward that says that we'd reduce it to ten days of live racing. So let's have the discussion. I understand that if this bill passes, we'll have the discussion. I'm going to vote against it, 'cause I voted against it last session. And it is going to go to Finance, is my understanding Senator Morse? Thank you.

SENATOR MARTEL: Thank you, Mr. President. A question of Senate President Gatsas. Mr. President, I know that you're an expert in this field. There's no doubt in my mind. But going back to the '60s... '50s, '60s and '70s when you were referring to not being right if a track has two licenses. A standard bred and for thoroughbreds. Didn't they have two licenses back then for the same racing, trotters?

SENATOR GATSAS: Absolutely, Senator. But that's when they ran both. Have you seen thoroughbred racing at Rockingham Park?

SENATOR MARTEL: No. I'll take that as a question? That was my follow up.

SENATOR GATSAS: I guess, would you believe?

SENATOR MARTEL: I was just going to ask that question. You're absolutely right. May I have a follow up to that, Mr. President? That's actually true. We have not treated the industry as well as we should have. In fact, we have destroyed the industry and we should all be ashamed of that. I've always supported racing in this state. Not the Senate, Senator. I'm talking about we citizens of the state, have really destroyed the industry. We should be ashamed of that. And so now let's try to bring it back a piece at a time, and I thank you, Mr. President.

SENATOR GATSAS: Was that a question?

SENATOR MARTEL: No, I wanted to know if you agreed?

SENATOR GATSAS: Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I think that the amendment sort of mirrors another amendment that we voted on today. The amendment is germane to the bill. It talks about exactly the same subject that we discussed when we discussed the original corpus of the bill. The corpus of the bill had to do with the salvation of racing in the state of New Hampshire. As chairman of Ways and Means, it seems to me that my job is to make sure that revenues that we have projected are fulfilled. That's my job. I do it and I try to do it to the best of my ability. When I find something that interferes with that, we try to make it right. Racing revenues are de minimus at this point in time. They have fallen off for years. We have had a hundred years of racing at Rockingham Park and we have known the ups and the downs. I was here when we created the Sire stakes Bill. That Sire stakes Bill was created in a special legislative session of 1974. Meldrim Thompson was the governor and that bill did help racing in New Hampshire. It didn't help thoroughbred racing; it helped standard bred racing. And at that time, Rockingham Park ran both thoroughbreds and standard bred. They had two licenses. That's the way...that's the way it was. In the 1970s, the state of New Hampshire made another decision. They made a decision to have greyhound racing come to the state of New Hampshire. That has proved to be a



productive revenue source over the years. I don't think, when we talk about a bill, we ought to talk about who's interested in buying something, what their interests are, and how they're going to do something along the way. We've got to think about what's going on right now and how to address that. This addresses a situation that's present, and I want to...I hope that you will support the Ways and Means Committee's ought to pass as amended. Thank you.

SENATOR BARNES: Yes, I do, Mr. President, of Senator Martel. I would like him to clear something up for me if he could.

SENATOR MARTEL: Sure.

SENATOR BARNES: Senator Martel, I just heard you say I should be embarrassed. Would you please clear that statement up, because I have nothing that I feel that I should be embarrassed about?

SENATOR MARTEL: Senator Barnes, I was not referring to you as a Senator or we as Senators. I was referring to us as citizens of the state. We've had many opportunities as citizens to address the issue of racing, going to the racetrack. I feel that the citizens didn't do their part in maintaining and that's what I was discussing.

SENATOR BARNES: May I have a follow up question please, Mr. President? Senator Martel, I appreciate that, but you said something else that disturbs me. As a citizen of the state, because I didn't go to the racetrack and bet my money, I should be ashamed that I didn't go there and bet my money? I am not ashamed of it. I'm damn happy I didn't.

SENATOR MARTEL: Senator Barnes, in retail...in response to your question, I never said that you, as an individual, should be ashamed. I never even made that comment.

SENATOR BARNES: You said the citizens.

SENATOR MARTEL: The citizens.

SENATOR BARNES: I'm a citizen. That's me.

SENATOR MARTEL: Thank you, Mr. President.

SENATOR BARNES: I'm not ashamed. I just want for the record that I am not ashamed that I didn't go there and gamble to keep the horses running.

SENATOR CLEGG: Question of Senator D'Allesandro.

SENATOR D'ALLESANDRO: The member yields to the question from the great Senator Clegg.

SENATOR CLEGG: Senator D'Allesandro...

SENATOR D'ALLESANDRO: With open arms.

SENATOR CLEGG: Would you believe that I agree with you that the amendment was germane, but having been questioned today about germaneness, I want it to be clear that it goes all the way through to Ways and Means, that we know what we are doing when we add amendments? Would you believe that?

SENATOR D'ALLESANDRO: Senator Clegg, how could I not believe something that you have articulated?

SENATOR CLEGG: Thank you, sir.

SENATOR D'ALLESANDRO: You're welcome.

SENATOR HASSAN: Thank you, Mr. President. Of Senator D'Allesandro, please.

SENATOR D'ALLESANDRO: I yield, Senator Hassan.

SENATOR HASSAN: And I'm so pleased, Senator D'Allesandro.

SENATOR D'ALLESANDRO: Great. I'm ready.

SENATOR HASSAN: Because my question refers to the language of the amendment and I just would appreciate a little clarity.

SENATOR D'ALLESANDRO: Sure.

SENATOR HASSAN: I believe...if I understand the amendment correctly, it is inserting a requirement for fifty calendar days, but prior to this, the one hundred day requirement was not a calendar day requirement. Is that correct?

SENATOR D'ALLESANDRO: That's correct, Senator Hassan.

SENATOR HASSAN: A follow up if I may? So currently, there are a hundred races run in less than a hundred calendar days at Rockingham. Is that correct?

SENATOR D'ALLESANDRO: That's correct.

SENATOR HASSAN: Thank you.

SENATOR BOYCE: Yes, I generally don't speak in favor of anything gambling, because I am against the expansion of gambling. And actually, Senator Gatsas has convinced me that to pass this bill as it's been amended in the Finance Committee, would in fact be another step down that slippery slope to expansion of gambling. Because I believe, as he iterated here, that if we reduce this requirement from one hundred days to fifty days, that that would be reducing the requirement of actually having live racing. We do have live racing today. We also have simulcast betting on races from other places, and the requirement to have that simulcast betting is that they have to actually have live racing in the state. And I think that that, as a minimum, is a requirement that we ought to keep. Now as to whether a hundred days is a hundred days, I've read this over and over and over, and when I read something that says that "the licensee has scheduled at least one hundred days", I think my common understanding of what a day is would have to apply, and I don't see how anybody else can contend that you can have two days in one day. I watch the sun come up and watch the sun go down. That's one day. To contend that you have two or more sets of racing days in one day, I think, is just ludicrous. I believe that a hundred days means a hundred days. And I believe that the statute should stay as it is, and therefore, I have been convinced to vote in favor of this...against this amendment, although I did vote for it in Finance to get it to the floor. Thank you.

SENATOR GATSAS: Senator D'Allesandro. Does he yield?

SENATOR D'ALLESANDRO: I yield, Senator Gatsas.

SENATOR GATSAS: With open arms?

SENATOR D'ALLESANDRO: With embraces.

SENATOR GATSAS: There you go. That's good. Senator, my understanding is that, if you take a look at the simulcasting revenues from the dog tracks and the racetrack, there was a racetrack that was doing almost the biggest percentage of simulcast racing at Belmont Park. They have closed. And since then, can you tell me what the disbursement of simulcasting revenues have been through the three other tracks?

SENATOR D'ALLESANDRO: Senator Gatsas, I don't get a report of each individual entity. What I get is an aggregate report and the simulcasting revenues from dog racing are down every month. That's...I can give you the aggregate. Now I can go to the Pari-Mutuel Commission and ask for a report of each entity and get that for you. I'd be more than happy to do that, but I don't have it before me, because I get it in aggregate, and I get it on a daily basis.

SENATOR GATSAS: Follow up? Would you believe Senator, that I've looked at those aggregates and I've looked at them singly, and I can tell you that the simulcast numbers at Hinsdale Dog Track are up incredibly. Now that's because of a loss of one industry at Belmont that did a big simulcast business. Would you believe that once that's closed, that Rockingham simulcasting is down, and so is Seabrook's? They've gone down, when one of the biggest vendors of simulcast racing has closed, yet Hinsdale's has gone up drastically?

SENATOR D'ALLESANDRO: I believe that changes take place. Those changes may be dependent on good marketing, other amenities and movement shifts. I understand that.

SENATOR GATSAS: One more follow up, please? Senator, can you tell me, does the state make more revenue on simulcast racing or on live racing?

SENATOR D'ALLESANDRO: Right now...

SENATOR GATSAS: Excuse me, let me rephrase the question. With all things equal, is there is a bigger take for the state on live racing, a live particular race, or a live simulcast race? Which one does the state make more revenue from?

SENATOR D'ALLESANDRO: I can only say that, without simulcasting, we wouldn't have any revenues.

SENATOR GATSAS: So the answer...

SENATOR D'ALLESANDRO: The answer is, without simulcasting at our race tracks, we would have de minimus revenues.

SENATOR GATSAS: Thank you for that large embrace, Senator.

SENATOR D'ALLESANDRO: I try my best, Senator Gatsas, as God intended.

SENATOR FULLER CLARK: Thank you very much. I have a question of Senator D'Allesandro. Thank you very much, Senator D'Allesandro. I'm wondering if you could share with us, one more time, how the Pari-Mutuel Commission counts days, 'cause I've heard Senator Boyce's remarks about a day is a day is a day, with the sun coming up every day. Is that the way the Pari-Mutuel Commission counts days with regard to racing?

SENATOR D'ALLESANDRO: They have been counting performances as days. So you could have performances on one calendar day, but have it count for three days of racing. That's how it's been done at the tracks throughout the state. That's been the interpretation by the Pari-Mutuel Commission.

SENATOR FULLER CLARK: Follow up, please? Senator D'Allesandro, does that mean then, that with your legislation, that you potentially are actually expanding the number of real days that are occurring for racing in this state?

SENATOR D'ALLESANDRO: Exactly. We will have calendar days. There will be races on fifty calendar days.

SENATOR BARNES: Thank you, Mr. President. Senator D'Allesandro.

SENATOR D'ALLESANDRO: Yes, Senator Barnes?

SENATOR BARNES: I thought I understood in conversation some place today, I thought I heard, maybe it was out in the sidewalk, but that a racetrack can run two different cards. I think the word for it is "cards". It could have a card in the a.m. and a card in the evening. Would that constitute two races, two things in one day, so you could break that fifty down to twenty-five actual days?

SENATOR D'ALLESANDRO: If you...the answer to your question is, if it said performances, I mean if it said a hundred days, yes. The answer to your question is yes. If you said calendar days, it would be no. The answer would be no.

SENATOR BARNES: So what does your **TAPE INAUDIBLE** on this?

SENATOR D'ALLESANDRO: My bill says that they must race fifty calendar days.

SENATOR BARNES: So it could be a hundred races?

SENATOR D'ALLESANDRO: It could be a thousand races, two thousand races.

SENATOR BARNES: Well, you could have two cards?

SENATOR D'ALLESANDRO: You could have as many...you could have as many races as you wanted on a calendar day. As Senator Boyce points out, you could go from sunrise to sunset.

SENATOR BARNES: If you have lights, you could go to midnight.

SENATOR D'ALLESANDRO: And many of them have lights.

SENATOR BARNES: Right.

SENATOR D'ALLESANDRO: And they do that.

SENATOR BARNES: Thank you very much.

SENATOR D'ALLESANDRO: You're welcome.

**Senator Bragdon moved the question.**

**The question is on the adoption of the committee amendment.**

### **PARLIAMENTARY INQUIRY**

SENATOR LARSEN: Parliamentary inquiry?

SENATOR JOHNSON (In the Chair): Yes. Parliamentary inquiry?

SENATOR LARSEN: If I believe this bill is going to Finance after this roll call, would I move it...would I vote yes to send it to Finance as well?

SENATOR JOHNSON (In the Chair): Thank you, Senator Larsen. That is correct. It would go to Finance.

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Green.**

**The following Senators voted Yes: Gallus, Johnson, Burling, Flanders, Odell, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

**The following Senators voted No: Boyce, Green, Roberge, Gatsas, Barnes.**

**Yeas: 18 - Nays: 5**

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**Senator Gatsas Rule #42 on SB 225-FN.**

**Senator Letourneau is in opposition to the title of “establishing video lottery” and in favor of the title of “relative to horse and dog racing” in SB 225-FN-A.**

**SB 376-FN-A**, relative to revenues dedicated to the education trust fund. Ways and Means Committee. Ought to pass, Vote 3-0. Senator D’Allesandro for the committee.

SENATOR D’ALLESANDRO: Thank you, Mr. President. Mr. President, I move Senate Bill 376-FN-A ought to pass. This bill simplifies the process currently in place by reallocating the estimated apportionments of various revenue sources to the general fund rather than to the Educational Trust Fund, because we know that the trust fund does not exist. These apportionments are based on estimates and are really nothing more than paper transfers. Since we made education an entitlement, we allocate the necessary amount of money from the general fund at the beginning of each year. This bill...this bill merely cuts out a lot of unnecessary and cumbersome paperwork. The Ways and Means Committee recommends that this legislation be adopted and asks for your support. And, in talking with the Commissioner of Revenue, the apportionments from certain taxes are only guesses. We, the legislature, have made education an entitlement. We allocate the amount of money that should be spent on education. Those monies are given out on an incremental basis. This allows Revenue Administration to do its job, the Treasurer to do its job, and the legislature to do its job, succinctly and without some adverse paperwork. Thank you, Mr. President.

SENATOR LARSEN: Thank you. I have had serious concerns about this bill over the years because, like some of you in this room, I went through the Claremont decisions and those decisions where we were told by the court, and then found on our own, ways that we needed to pay for education in this state. And, during that debate, and during that conference committee, we went to various businesses and concerns around the state. We went to the business interest who pay BPT, BET, and we said, “We need your help to pay for education. We think it will be good for the economy, and we want you to help us pay for education. Would you not fight us as we increase the BET, BPT to pay for education?” And we said, we’re putting it into an Education Trust Fund. They said fine. They said, “We understand the importance of this for education for the economy of our state. We know we need an educated workforce.” Then we went to the real estate interest and we said, “We’re going to bump up the real estate transfer tax. Would you allow us to do this? Would you be part of a state effort to pay for education?” They went along with an increase in the real estate transfer tax from \$2.50 to \$5.00 is what the historical information shows. Then we went to the auto rental industry and we said, “We’re going to put a new auto sales tax.” They said, “We don’t like it, but we can understand you need to do it.” It happened, and we put

that into the dedicated education trust fund. We went around to all the various interests, the utilities, all of those, explaining that we were doing this to pay for education. I feel like I made a promise because many of them, and many people in this state, believe that this legislature asks for taxes and then uses it to balance the budget and doesn't help them pay for education, doesn't help them reduce their local property tax. People outside of these halls think that we cannot be trusted with education fund, and I think they may be right, because if you look at the historical information since 1999, in the early years, the general fund put monies into the education trust fund, but I have since 2003, we have been reimbursing or, as they call it "eliminating current year surpluses", out of the education trust fund. Now, I understand the need to...I understand the accounting interest that this is you know...that we have an obligation to pay for education first out of our budget. But in my mind, no one will ever trust us on education funding if we are a state that asks for tax increases for education, asks people to ante up, and then we use it to balance the budget, the general fund. So, in my mind, we would be far better off to create a dedicated education trust fund, a non-lapsing fund that in fact, had these taxes in them, and people could trust that they are paying a little more because it's worth it for educating the children of this state. I think it would increase public trust. I believe it would be wise for all of us to do this as a next step. So rather than bring a floor amendment, which I suspect would not get...would not be successful, I would like to bring into Senate Rules, a request for a bill. I understand if this bill passes, we'll have to do some changes to the law. I hope that perhaps the House will go much slower on this and that we will have a chance to consider the issue of should the education trust fund be a non-lapsing, dedicated fund that people can trust that their increased taxes are going into paying for education and bringing down people's school property taxes around the state. So that is what I'm going to request of Senate Rules, and that way, I won't be taking your time today, because I know we've had a long day. But it is an issue which I think we need to discuss, and it is an issue which I think the public can better trust us to pay for education if there is a fund there that we can see. It may need general funds at times. May need general funds...will need general funds likely, but it will show that there is a base...a basic influx of cash into that fund because people said they were willing to support higher taxes a few years ago. Thank you, Mr. President.

SENATOR FULLER CLARK: Thank you, Mr. President. I, too, rise in opposition to Senate Bill 376 and would like to echo Senator Larsen's remarks. I do understand that the current accounting methodology for money for education is really a situation of smoke and mirrors. With everything ultimately coming under the umbrella of the general fund, despite the passage of the education funding bill in 1999, which I, as a member of the House, voted for. However, the passage of this bill in 1999 clearly specified tax increases which have been referred to in Senator Larsen's remarks and new taxes that were being raised to provide new dollars for education. Removing that language rather than taking those allocations and dedicating them to a nonlapsing trust fund for education is an action I cannot support. Having gone door-to-door in my district talking to my constituents, over and over again I have heard that they are willing to support dollars at the state level that they know will go for education. Now we can no longer guarantee them that potential as we are removing that language and not creating the dedicated fund that

is so needed and so necessary. Passage of Senate Bill 763 (sic) will only undermine the trust that businesses and individual citizens have in the way the legislature allocates and spends our revenues. Thank you.

SENATOR GATSAS: Question of Senator Larsen.

SENATOR LARSEN: Reluctantly.

SENATOR GATSAS: It's nice to be sitting beside you again. You have a chart in front of you that shows you revenues that go into the Education Trust Fund. On that sheet, I think you will look down and you will see that the BET tax portion that goes into the Education Trust Fund is about \$130 million.

SENATOR LARSEN: In 2005.

SENATOR GATSAS: Correct. And that reflects a .5 increase in the BET tax.

SENATOR LARSEN: We've increased the BET tax at the time of Claremont.

SENATOR GATSAS: And I know that Senator D'Allesandro takes his forecasting in Ways and Means along with that committee very seriously. If I were to tell you that if you looked at the balance sheet, the financial report for the state, and the state side, not the Education Trust Fund, but the general fund dollars, would you believe that the .25 that's generated shows you a larger number than the BET tax revenue for the general fund than on the state Education Trust Fund?

SENATOR LARSEN: That would make sense because, with a .5 increase going into the education trust fund, it's a smaller amount that's going into the trust fund than is going into the general fund.

SENATOR GATSAS: Follow question. Senator, if you remember the total BET tax is .75. The amount of .25 goes into the general fund. I would think that the amount of dollars that are going into the general fund should be less than \$130 million. I probably would look to Senator D'Allesandro to give me a clarification or maybe he can help me with the answer. But I would think that the general fund dollars should show less of a revenue than the BET tax than the educational trust fund, because the proportionate share should be less in that account than in the general fund, and that doesn't show, and I'm saying that his forecasting is very difficult when he looks at those numbers and doesn't understand why the number is greater in the education trust fund. I guess if you're looking for help from the Senator. If you want to yield to him for an answer or do you want to answer? I got myself confused on it actually.

SENATOR LARSEN: My point is, if there was a way to create a dedicated education trust fund into which certain taxes would go and we asked people to pay a heavier tax burden for education, they ought to be able to trust that we are in fact using money we asked for from them, for the purpose that we'd said we would use it. I understand there are accounting issues relating to the tax increases we did, particularly between BET and BPT. And I understand difficulties in forecasting, but I also understand that, at least from my review, since 2003, there are \$50 million that reportedly went into the education trust fund and were lapsed back into the general fund. If we had saved those, could we have paid for an early intervention program? Could we have done some of the things? I understand we used it to balance the budget, but I'm not sure if people want us to be doing that.

SENATOR GATSAS: Thank you.

SENATOR CLEGG: Thank you. I'd like to clear up some misconceptions. I was a member of House leadership when this happened, and I can tell you that nobody went to business and said "Do you mind if we did an increase in the business profits and the business enterprise tax?" Nobody did that. What did happen is when the bill was in the Senate, a certain organization came in and said, "We represent all the business and we're more than happy to give you some more money." And let me tell you, it was that fast. And by the time businesses found out what that organization had done, it was too late. Because they stood on the Senate floor and said, "We've got business behind us." But they forgot to ask business. You want to talk about a tobacco tax. Tobacco funds. They never came to those of us at that time that were contributing to that fund. That were paying that master settlement, and asked us if we minded if that money went to education. So there was never a promise to business. And by the way, I was in the real estate community, and you didn't come ask us if it was okay to raise it for education. You just did it. And, on the House side, we had no choice but to accept what the Senate did. It was done. It was over. And we hoped within five years it would be gone. And the reality is, is when we figured out the number, we figured that within five years at that rate, every community would be a donor town and they would suddenly understand that it was better to keep their own money than to send it up here for us to spend. But that didn't work either, because we kept lowering the rate and we kept looking for more money, and we're where we are now. As a business person who pays business profits tax, thank you for taking it out and letting something else be dedicated. It gives me one last chance that you won't raise it again when you want more money. As somebody in the real estate business, moving the real estate transfer tax out of there, thank you. One more opportunity I have that you won't raise it for education. You've got the dedication. Not only is it easier to figure out, but please leave business alone. We pay enough. We can't pay anymore. And moving us out of this and letting us fund the rest of the budget is a lot better than leaving us in a spot where every time someone has an inkling to add something to education, they look to business. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. A question of Senator Larsen if I may. When you bring your piece of legislation to Rules, is it going to have a breakdown of the communities, what they can expect to receive?

SENATOR LARSEN: The issue that I'm raising is not the distribution of these dedicated funds because that is decided during our budget process and during our education funding debates. What this would do...you, as a town, would see the balance in the education fund, and you would get a sense of what is already there and how much more general funds would be needed to fund your town. But it would mean that there's a body of money...of funds there, that you could trust would be used for education.

SENATOR BARNES: Follow up question, Mr. President? Well when you bring that back and it comes on the floor, Senator Barnes is going to be asking you for the breakdown of those twelve towns in district 17, what kind of money they would be getting out of this, out of the money that goes into the funding. I'm sure you'll have that.

SENATOR LARSEN: No, I won't because the dedicated trust fund would not be...the distribution pattern, it would not...it is not even beginning



to address how that money is distributed. It is only guaranteeing that there is a certain amount that, because we raised taxes is set aside for education, and it would in fact reduce the...it could reduce the need for additional general funds because it would identify that we already have saved this much for the education fund.

SENATOR BARNES: Ah, we'll talk about this later. Thank you.

SENATOR LARSEN: Um-hmm.

SENATOR FULLER CLARK: I have a question for Senator Larsen. Senator Larsen, do you believe that the bill that passed in 1999 if, in the language of that bill, it had said that those monies were being raised for the general fund, that it would have been as easy...it wasn't easy, I don't mean that, but it might have been even more difficult to pass the education funding bill in 1999 if it had called for those raises and increases in new taxes just to go to the general fund, whether it was in the House and the Senate?

SENATOR LARSEN: My recollection is that, in 1999 we were asked...we were looking at trying to find \$800 million out of a \$2 billion or \$1.9 billion budget. We knew that we could not find that kind of money without having to do some increases and so it would have been much more difficult if you were trying to find all these monies from the general fund. So obviously, if there is a set aside for education, education funding becomes a little bit easier because people see that there is already some progress being made to pay for that education.

SENATOR FULLER CLARK: Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 296-FN**, relative to recovery of public assistance. Health and Human Services Committee. Ought to pass, Vote 4-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I move ought to pass on Senate Bill 296, which would permit the Department of Health and Human Services to waive or reduce the state's right to reimburse the public assistance in certain cases, particularly when an individual is reimbursed through other means such as workmens' compensation. Senate Bill 296 is consistent with the current practices of the Department and would result in more lien recovery revenue for the state of New Hampshire. The committee unanimously recommends ought to pass on this bill, and I thank you very much, Mr. President.

Senator Gatsas in the Chair.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 311-FN**, relative to disclosure of the results of clinical trials. Health and Human Services Committee. Inexpedient to legislate, Vote 4-0. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you very much. Thank you, Mr. President. I move inexpedient to legislate on Senate Bill 311 which would require drug manufacturers to publicly disclose the results of clinical trials in New Hampshire and the New Hampshire Commissioner of the Department of Health and Human Services to adopt rules establishing standards for the approval of clinical trials within New

Hampshire. The committee heard how hundreds of trials are ongoing in New Hampshire at any one time, many of which are one piece of national or international studies involving business, nonprofits, educational institutions and government agencies around the country. By recognizing the importance of transparency in the pharmaceutical field, the subject matter of Senate Bill 311 is better suited in the context of national legislation and the committee therefore, recommends inexpedient to legislate. Thank you, Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**SB 349**, relative to the HIV/AIDS service delivery system. Health and Human Services Committee. Ought to pass, Vote 4-0. Senator Estabrook for the committee.

SENATOR ESTABROOK: Thank you, Mr. President. This bill requires the Health and Human Services **TAPE CHANGE** to monitor the recommendations that the study committee on HIV/AIDS service delivery. The study that took place over the summer and fall was a very active study and we produced a detailed report on HIV/AIDS issues that I really do recommend for your reading if you ever want to have a background on the issue in our state. The recommendation produced by the study are base line steps that insure a maintenance of effort as well as maintain the profile of the issue going forward. The issue is important because of the \$2 million total HIV/AIDS funding in the state, federal funding comprises all but \$180,000 and it is expected to be reduced significantly over the near term, to the point where all federal funding would almost disappear. This is of great concern at a time when the number of people living with HIV/AIDS in New Hampshire continues to increase, and the demographics of the disease have shifted to a population that is younger, more female, and more heterosexual than in the past. The study report recommended activities to increase public awareness and the availability of rapid testing, as the results of learning that a third of HIV/AIDS infected people are unaware of their status. It also urged collaboration in pro-active planning for future service delivery changes. These are reasonable minimum steps to protect the health and welfare of New Hampshire citizens. The committee unanimously recommends ought to pass on SB 349. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 358-FN**, relative to an advanced registered nurse practitioner's duty to warn of violent acts of patients. Health and Human Services Committee. Ought to pass, Vote 4-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I move ought to pass on Senate Bill 358. Last year, the Nurse Practice Act was amended and took the duty to warn away from the ARNPs and instead placed the duty to warn on all nurses. However, all nurses do not have the specific training to deal with this issue. ARNPs have specific training to identify when a threat meets the requirements of the law. Senate Bill 358 will return the duty to warn to where it belongs and where it worked well for many years. The committee recommends ought to pass on Senate Bill 358, and I thank you very much, Mr. President.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 370-FN**, relative to multidisciplinary child protection teams. Health and Human Services Committee. Ought to pass, Vote 4-0. Senator Fuller Clark for the committee.

**SENATOR FULLER CLARK:** Thank you very much, Mr. President. I move ought to pass on Senate Bill 370 which will allow DHHS to work in conjunction with the Attorney General's Office and the new Child Advocacy Center Network to establish one statewide written protocol to increase the efficiency and the handling of abuse cases and to minimize the trauma to the victims and their families. At present, a child might have to recount an incident of abuse or neglect on several occasions which places an tremendous amount of anxiety on a child. The child advocacy centers allow investigating agencies to come together and to minimize this potential trauma to the child. Senate Bill 370 will give these centers the tools to take this approach across the state and the committee recommends wholeheartedly, ought to pass on Senate Bill 370. Thank you, Mr. President.

**SENATOR GOTTESMAN:** Thank you, Mr. President. As prime sponsor of this piece of legislation, I just want the Senate to know that I have visited such a facility. I am extremely impressed by the job that they do, and if...and before these sorts of facilities were in effect, a child would have to undergo a multiple interviews by many different parties. This is a fabulous idea. This coordinates the efforts of all involved and makes them work together and protects the child. The importance of this bill is the safety of our children and the ability to lessen the amount of stress upon them. I thank you and I move ought to...ask that it be passed.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 238**, relative to assistance to members of the general court provided by the legislative budget assistant. Internal Affairs Committee. Ought to pass, Vote 6-0. Senator Larsen for the committee.

**SENATOR LARSEN:** Thank you, Mr. President. I move Senate Bill 238 ought to pass. This bill provides that members of the general court, that means us, may request technical assistance from the Budget Division of the Legislative Budget Assistant when doing so will not interfere with the Division's principal duties. This bill recognizes that the Legislative Budget Assistant is a valuable resource to the members of the general court, while respecting the LBA's current obligations. I think each of us knows the importance of this bill. I think everyone signed on to it. It is important that we have, as Senators, equal access to the services that each member of the Senate provides to us. It is for this reason that the Internal Affairs Committee suggests that you join us in voting ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 295-FN**, relative to registration of business entities. Internal Affairs Committee. Ought to pass, Vote 5-0. Senator Flanders for the committee.

**SENATOR FLANDERS:** Thank you, Mr. President. I move Senate Bill 295-FN ought to pass. This bill makes various...a variety of changes to the laws relating to registration of certain businesses and raises certain fees. The Secretary of State's Office has asked for this bill and supports the Internal Affairs Committee in its recommendation of ought to pass. The vote was 5 to 0. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 332**, making technical corrections to the uniform trust code and related statutes. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Gottesman for the committee.

**Senate Judiciary**  
**January 26, 2006**  
**2006-0635s**  
**08/01**

**Amendment to SB 332**

Amend RSA 547:3, I (c) as inserted by section 2 of the bill by replacing it with the following:

(c) The interpretation and construction of wills and the interpretation, construction, modification, and termination of *those* trusts [~~as that term is defined~~] *described* in RSA 564-A:1, I.

SENATOR GOTTESMAN: Thank you, Mr. President. This is the little trust bill. There is a big trust bill floating around; this is not it. I move Senate Bill 332 ought to pass with amendment. This bill makes technical corrections to the Uniform Trust Code to clear up confusion that has arisen over the term "express" as it relates to trusts. The bill deletes the reference to express to remove an ambiguity that has troubled practitioners in this field, and they are very troubled, I understand, whatever that means. The amendment merely corrects a drafting error. The Judiciary Committee recommends that this legislation be adopted with amendment and asks your support. Thank you, Mr. President.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 334**, relative to the type of notice provided in court proceedings. Judiciary Committee. Ought to pass with amendment, Vote 6-0. Senator Clegg for the committee.

**Senate Judiciary**  
**January 25, 2006**  
**2006-0590s**  
**06/09**

**Amendment to HB 334**

Amend RSA 514:14 as inserted by section 1 of the bill by replacing it with the following:

514:14 Notices. The court shall order notice to be given, in such manner as [~~they think fit~~] *due process of law requires*, of any petition, complaint, libel, application, or motion in writing filed therein, and no judgment [~~or~~], decree, *or ruling* shall be rendered thereon [~~without~~] *absent* compliance with such order.

**2006-0590s**

**AMENDED ANALYSIS**

This bill requires the court to give notice about certain proceedings in such manner as due process of law requires.

SENATOR CLEGG: Thank you, Mr. President. I move House Bill 334 ought to pass with amendment. The bill was retained in the House last year. The amendment modernizes language adopted by the legislature in the 1800s when Jack was here. It makes clear that notice in equity

actions must be given by the courts in a manner that due process of law requires. The Judiciary Committee recommends that this legislation be adopted with amendment and asks for your support. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 413**, relative to the appointment of the chief justice of the superior court and the number of superior court associate justices. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Roberge for the committee.

**Senate Judiciary**  
**January 25, 2006**  
**2006-0591s**  
**09/01**

**Amendment to HB 413**

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

1 Superior Court. Contingency Appointment of Chief Justice; Contingency. Amend 2004, 74:1-2 to read as follows:

74:1 Superior Court; Appointment of Chief Justice. Amend RSA 491:1 to read as follows:

491:1 Justices. The superior court shall consist of a chief justice, appointed by the governor and council to a 5-year term, and 28 associate justices. Said justices shall be appointed and commissioned as prescribed by the constitution and shall exercise the powers of the court unless otherwise provided. ***The chief justice shall be appointed from among the associate justices. In the event that the chief justice resigns as chief justice or is not reappointed at the expiration of the 5-year term, he or she may return to the position of associate justice, whether or not an associate justice vacancy then exists.***

74:2 Contingency. Section 1 of this act shall take effect upon the date the next vacancy occurs in the position of superior court chief justice, ***provided that 2004, 240:4 has not taken effect.***

2 Superior Court Justices; Applicability; Contingency. Amend 2004, 240:4-5 to read as follows:

240:4 Superior Court Justices. Amend RSA 491:1 to read as follows:

491:1 Justices. The superior court shall consist of a chief justice [~~appointed by the governor and council to a 5-year term;~~] and 21 associate justices. Said justices shall be appointed and commissioned as prescribed by the constitution and shall exercise the powers of the court unless otherwise provided.

240:5 Applicability; Contingency. Any superior court justice appointed prior to July 1, 2004 shall retain his or her position until resignation, retirement, or removal pursuant to the New Hampshire constitution. As vacancies occur in superior court justice positions, the vacancies shall remain unfilled until the number of superior court justices is reduced to 22. Section 4 of this act shall take effect on the date on which the number of superior court justices is reduced from 23 to 22, ***provided that 2004, 74:1 has not taken effect.***

3 Superior Court Justices. RSA 491:1 is repealed and reenacted to read as follows:

491:1 Justices. The superior court shall consist of a chief justice, appointed by the governor and council to a 5-year term, and 21 associate justices. Said justices shall be appointed and commissioned as prescribed by the constitution and shall exercise the powers of the court unless otherwise provided. The chief justice shall be appointed from among the associate justices. In the event that the chief justice resigns as chief justice or is not reappointed at the expiration of the 5-year term, he or she may return to the position of associate justice, whether or not an associate justice vacancy then exists.

4 Contingency. Section 3 of this act shall take effect upon the date the next vacancy occurs in the position of superior court chief justice or the date on which the number of superior court justices is reduced from 23 to 22, whichever occurs later.

#### 5 Effective Date.

I. Section 3 of this act shall take effect as provided in section 4 of this act.

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

**2006-0591s**

### AMENDED ANALYSIS

This bill establishes that the chief justice shall be appointed from among the associate justices of the superior court and may return to the position of associate justice upon resignation or the expiration of his or her term.

The bill also clarifies that the number of superior court associate justices is to be reduced to 21.

SENATOR ROBERGE: Thank you, Mr. President. I move House Bill 413 ought to pass as amended. Under current law, any future appointment to the position of Chief Judge to the Superior Court is a five-year term. However, all Superior Court Judges are appointed for life, or actually to the constitutional age of seventy. If, at the end of a Chief's five-year term a Governor appoints someone else, the bill makes it clear that the former Chief resumes service as an Associate Justice. Current law left that ambiguous. The committee amendment merely clarifies some contingency provisions within the bill. The bill would not take effect until the present Chief Justice retires. His term as Chief is not time limited. The Judiciary Committee recommends ought to pass as amended.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**Senator Burling Rule #42 on HB 413.**

**SB 269**, ratifying certain actions at the 1996 Seabrook annual town meeting. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Mr. President. I move Senate Bill 269 ought to pass. In 2005, the Town of Seabrook underwent a charter review. After the review, the town realized that there was an inconsistency in how it had adopted SB 2 which called into question all votes on the town budget and bonds issued since 1996. This legislation will ensure that the votes taken on bonds and budgets over the past ten years are valid. The Public and Municipal Affairs Committee asks for your support on the motion of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 277-L**, permitting seasonal camps to qualify as open space land for current use assessment. Public and Municipal Affairs Committee. Inexpedient to legislate, Vote 3-2. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move Senate Bill 377 (sic) inexpedient to legislate. Senate Bill 377 (sic) would allow land that contains a structure of less than 1,000 feet, has no electricity and is used less than three months a year to qualify as open space land for current use assessment. The committee feels that having any type of structure on land is contrary to the purpose of current use. Undeveloped land is the only type of land current use was intended for. The Public and Municipal Affairs Committee asks for your support in the motion of inexpedient to legislate. Thank you.

SENATOR FLANDERS: I believe that the report said Senate Bill 377. I believe it is 277.

SENATOR GATSAS (In the Chair): Correct.

**Committee report of inexpedient to legislate is adopted.**

**SB 319**, establishing a statutory county government commission. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Burling for the committee.

**Public and Municipal Affairs**

**January 12, 2006**

**2006-0405s**

**10/05**

**Amendment to SB 319**

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

AN ACT establishing a task force to study county government.

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

1 Task Force Established. There is established a task force to study county government.

2 Membership and Compensation.

I. The members of the task force shall be as follows:

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

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

(c) Two county commissioners, appointed by the New Hampshire Association of Counties.

(d) One mayor of a city and one selectmen of a town, appointed by the New Hampshire Municipal Association.

(e) One sheriff, appointed by the New Hampshire Sheriff's Association.

(f) The commissioner of the department of revenue administration, or designee.

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

(h) The commissioner of the department of corrections, or designee.

(i) Two public members, appointed by the governor.

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

3 Duties. The task force shall:

I. Undertake a broad study of the current functions of county government in New Hampshire, including but not limited to a determination of the total cost of operating county government functions, and shall also examine possible new functions of county government.

II. Investigate and determine whether any county government functions can be more efficiently accomplished by the state, or vice versa.

III. Analyze whether there is any duplication of services at the county and state levels that might be handled in a more efficient manner, and analyze whether there are efficiencies that might be accomplished through consolidation or restructuring of county and/or state functions.

IV. Propose changes to New Hampshire law concerning government functions performed at the county or state level.

V. Propose changes in the form of county government, including without limitation the constitution of county delegations, the method of selecting county delegates, the standardization of reporting the budgeting procedures, and other issues relating to uniformity in reporting county operations.

4 Scope of Study. It is the intention that this study authorizes the broadest possible review of county government functions, the ways in which those functions are paid for, and cost savings that might be recognized.

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

6 Report. The task force shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2007.

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

**2006-0405s**

#### AMENDED ANALYSIS

This bill establishes a task force to study county government.

SENATOR BURLING: Thank you, Mr. President. I move ought to pass with amendment on Senate Bill 319. 319 is legislation that will establish a task force to take a serious, substantive look at the operations and form of county government. This task force will undertake a broad study of the current functions of county government, possible new functions of county government. It will investigate and determine whether any governmental functions can be more efficiently accomplished by the state, or vice versa, and it will analyze whether there is any duplication of services at the county and state levels. The committee amendment removes the word "elimination" from the bill text and changes the membership of the task force to reflect some requests of county government officials. As the cost of county government continues to increase, it is extremely important to study ways in which it can be made more efficient. The task force will not be looking to eliminate county government; it will however, be looking hard at ways in which county government functions can be improved, streamlined, made more efficient, and other improvements that can be made. The Public and Municipal Affairs Committee asks for your support on the motion of ought to pass with amendment. Thank you, Mr. President.

**Amendment adopted.**



**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 348**, prohibiting the taking of arms and ammunition in a declared state of emergency. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Barnes for the committee.

**Public and Municipal Affairs**

**January 11, 2006**

**2006-0385s**

**09/04**

**Amendment to SB 348**

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

1 State of Emergency; Taking of Private Property. Amend RSA 4:46, I(c)(1) to read as follows:

(1) Any high explosives[~~, except small arms ammunition~~].

2 New Paragraph; State of Emergency; Taking of Firearms, Ammunition, and Ammunition Components Prohibited. Amend RSA 4:46 by inserting after paragraph I the following new paragraph:

I-a. Under no circumstances shall this section be construed to authorize the taking, confiscation, or seizure of firearms, ammunition, or ammunition components.

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

**2006-0385s**

**AMENDED ANALYSIS**

This bill clarifies that the state may not take possession of firearms, ammunition, and ammunition components in a declared state of emergency.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 348 ought to pass with amendment. This bill clarifies that the state may not take possession of arms, ammunition or ammunition components in a declared state of emergency. Guns are property singled out for special protection under the New Hampshire Constitution. The legislation will help eliminate situations similar to those that occurred in New Orleans in the aftermath of Hurricane Katrina when government officials confiscated people's guns. The committee amended...amendment simply clarifies the language in the bill. The Public and Municipal Affairs Committee asks your support on the motion of ought to pass with amendment. Thank you.

SENATOR BURLING: Mr. President, I promised former Senator Wheeler that I would make it clear that it is our intent to prohibit the seizure of firearms, ammunition, and ammunition components. This was one of the better days, I think, in our committee. We did the right thing, and I rise to support the motion.

SENATOR LARSEN: Question of Senator Barnes. Senator Barnes, were you present at this bill's hearing?

SENATOR BARNES: Yes, I was.

SENATOR LARSEN: And, did you hear that in our most recent state of emergency in the southwest corner of the state, that...was there any attempt by government to take people's guns or ammunition?

SENATOR BARNES: Senator, you have a great memory, because I'm the one who raised the question. That's obviously why you asked me that question, and I appreciate that. The answer to that was a big definite no. The problem down in Louisiana to continue on I think, answering, helping you answer your question, is that a lot of different folks came into Louisiana, they weren't Louisiana people necessarily. National Guard units from other states and other law enforcement people came in from around the country, and didn't understand, perhaps, the Louisiana laws.

SENATOR LARSEN: Further question? In Louisiana, was there not looting and some fear of people that their safety was endangered by looters or people who were acting without responsible gun behavior?

SENATOR BARNES: Senator, I didn't have the opportunity to be down there, but my son was one of the McDonald operators that did go down there to try to help in that situation, and he told me some tough stories about looters, and if I owned a business down there and if I was from Louisiana, I would have been in my McDonalds or whatever else, with my shotgun to keep the looters away from my business. I would hate to have had someone try to take it away from me.

SENATOR LARSEN: I've seen some bumper stickers to that affect.

SENATOR BARNES: I don't have one, if you find out...get one for me.

SENATOR BURLING: I just wanted to say that there was discussion of this issue in the committee, and it was the feeling of those committee members who were present, that our laws contain full and adequate measures to deal with people who are sniping at public safety officers. Actually, some of us felt that a full and firm response by the federal government to the Katrina crisis would have averted the need for anybody to take anything. Perhaps they should have been taking "in" assistance, rather than doing nothing.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 248**, establishing a committee to study the issuance of dealer plates to bonded motor vehicle dealers. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 5-1. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President. I move Senate Bill 248 ought to pass. This bill establishes a committee to study the issuance of dealer plates to bonded motor vehicle dealers. It's time to look at some of the situations on dealer plates as this has not been looked at for many years. Please join the Transportation Committee in voting ought to pass. Thank you. And, if I may, Mr. President, on a bill there was a question asked by Senator Boyce, how you got two days into one. I just want to tell him that this might be an example. In the last five years, I've sat in this chair, and I thought it was two days! Thank you.

#### **MOTION TO TABLE**

**Senator Letourneau moved to have SB 248 laid on the table.**

**Adopted.**

**LAID ON THE TABLE**

**SB 248**, establishing a committee to study the issuance of dealer plates to bonded motor vehicle dealers.

**SB 270**, relative to a certain motor vehicle plate. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 5-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I move Senate Bill 270 inexpedient to legislate. The sponsor of this bill assured the Transportation and Interstate Cooperation Committee that they are happy with how this issue has been dealt with elsewhere, and have asked the committee for this recommendation. Please join the Transportation Committee in voting inexpedient to legislate. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 357-FN**, relative to eligibility for motorcycle licenses. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 6-0. Senator Letourneau for the committee.

**Transportation and Interstate Cooperation**

**January 25, 2006**

**2006-0597s**

**03/01**

**Amendment to SB 357-FN**

Amend the bill by replacing section 3 with the following:

3 Effective Date.

I. Section 2 of this act shall take effect January 1, 2007.

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

SENATOR LETOURNEAU: Thank you, Mr. President. I move Senate Bill 357-FN ought to pass with amendment. This bill limits the number of times that an applicant may fail the motorcycle driver exam, requires the applicants for motorcycle endorsements to furnish proof of their fitness to drive, and requires applicants for motorcycle learner's permit to pass a written test. A lot of thought and work has gone into this bill that will make New Hampshire roads a safer place to drive and ride, and will help save lives of New Hampshire motorcyclists. The amendment only changes the effective date to allow the Department appropriate time to implement the program. Please join the Transportation Committee in voting ought to pass with amendment. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**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 1402**, establishing the standard of care for certain individuals or nonprofit entities in constructing, maintaining, or improving trails for public recreational use.

**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(s):

**HB 1248-FN**, relative to the alteration of a portion of the town line between Milford and Amherst.

**HB 1262**, legalizing actions taken at town meeting relative to increasing the board of selectmen from 3 members to 5 members in the town of Pittsfield.

**HB 1402**, establishing the standard of care for certain individuals or nonprofit entities in constructing, maintaining, or improving trails for public recreational use.

Senator D'Allesandro moved adoption.

**Adopted.**

### RESOLUTION

Senator Clegg 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 all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

### LATE SESSION

#### Third Reading and Final Passage

**SB 200-FN**, establishing the uniform athlete agents act.

**SB 238**, relative to assistance to members of the general court provided by the legislative budget assistant.

**SB 249**, allowing a master electrician to have 2 apprentice electricians under his or her supervision, and relative to examinations of electricians by the electricians' board.

**SB 251**, relative to the enforcement authority of the division of safety services.

**SB 252**, relative to certification of speech-language assistants for purposes of speech language pathology practice.

**SB 255**, establishing a committee to study the funding necessary to operate the hazardous materials program in New Hampshire.

**SB 269**, ratifying certain actions at the 1996 Seabrook annual town meeting.

**SB 295-FN**, relative to registration of business entities.

**SB 319**, establishing a task force to study county government.

**SB 328**, relative to the regulation of snowmobiles and off highway recreational vehicles.

**SB 332**, making technical corrections to the uniform trust code and related statutes.

**SB 335**, relative to funds of the department of resources and economic development used for snowmobile trail grooming equipment.

**SB 348**, prohibiting the taking of arms and ammunition in a declared state of emergency.

**SB 349**, relative to the HIV/AIDS service delivery system.

**SB 351-FN**, declaring drowning as cruelty to animals.

**SB 371-FN**, relative to the continuation of certain wetlands fees.

**SB 376-FN-A**, relative to revenues dedicated to the education trust fund.

**SB 387**, relative to energy efficiency loans and guarantees by the business finance authority.

**SB 388**, relative to farm composting and pesticides.

**HB 153-FN**, relative to the collection of debts owed to the state.

**HB 334**, relative to the type of notice provided in court proceedings.

**HB 413**, relative to the appointment of the chief justice of the superior court and the number of superior court associate justices.

**HB 582**, relative to the policy for records management.

### ANNOUNCEMENTS

SENATOR D'ALLESANDRO (RULE #44): Thank you, Mr. President. Point of personal privilege, if I might? Thank you, Mr. President. Just to inform all of my colleagues. The Commodity Supplemental Food Program begins to drop seniors off of that program. I've received calls from people in my district. Average age of a senior receiving assistance in New Hampshire is 74.5 years of age. Approximately seven hundred and eleven will be dropped off of the rolls beginning almost immediately. Senator Gatsas has put out a letter and a...it was a public notification that, if these people need assistance, and they're going to need assistance, the reference point is the Department of Health and Human Services, and they'll be eligible for food stamps. That's a pretty difficult situation for a seventy plus year old individual to be signing up for food stamps. But I think it's a very, very significant issue. It's a very important issue, and according to the federal regulations, seniors are the first that are dropped from the rolls. Children, women and children stay on the rolls, but seniors are dropped off the rolls. It's a very, very, very disheartening situation, and we're going to have to deal with it. From Hillsborough County, there are about three hundred members, three hundred seniors, who are part of the program. There are a hundred, almost two hundred in the greater Manchester area. Belknap, Merrimack has about two hundred people that will be dropping off the rolls. So I encourage all of you to take advantage of any information that is available and respond in a positive manner to the needs of these seniors who will be losing their supplemental food plans, beginning almost immediately. Thank you, Mr. President.

SENATOR GATSAS (In the Chair): Senator, I can tell you that I've made a call to the Senate President in Louisiana, and knowing what their situation is down there, that they may have a surplus. I have not had the ability to talk to him yet, but certainly I will ask him, if they do have a surplus, that if they could send it to New Hampshire, I'm sure we'll find some trucks to go down and pick it up and bring it back.

SENATOR CLEGG: Thank you, Mr. President. I understand that you sent the letter out that you had met with the Commissioner. Could we expect that maybe early next week we could have some report from the Commissioner on the success of signing up the seniors that have been dropped from the program?

SENATOR GATSAS (In the Chair): The Commissioner told me he'd get back to me the first part of next week to tell me what success they've had in the notification that they've had for seniors and how many of them have signed up for the food stamps.

SENATOR CLEGG: Thank you.

**RESOLUTION**

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, processing enrolled bill reports and amendments.

**Adopted.**

**In recess to the Call of the Chair.**

**INTRODUCTION OF SENATE BILL(S)**

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from SB 399-SB 402 to shall be by this resolution read a first and second time by the therein listed title(s) and referred to the designated committee(s).

**Adopted.**

**First and Second Reading and Referral**

06-3032

**SB 399-FN**, relative to the powers of state government in the event of a pandemic. (Clegg, Dist 14; Martel, Dist 18; Morse, Dist 22; Larsen, Dist 15; Chaplin, Straf 3; Batula, Hills 19; DeJoie, Merr 11; Craig, Hills 9; Clemons, Hills 24: Public and Municipal Affairs)

06-3045

**SB 400-FN**, relative to highway welcome signs. (Letourneau, Dist 19; Barnes, Dist 17; Boyce, Dist 4; Clegg, Dist 14; Fuller Clark, Dist 24; Gallus, Dist 1; Gatsas, Dist 16; Green, Dist 6; Hassan, Dist 23; Johnson, Dist 2; Kenney, Dist 3; Martel, Dist 18; Odell, Dist 8; Roberge, Dist 9: Transportation and Interstate Cooperation)

06-3063

**SB 401-FN**, relative to the Hanover-Lebanon District Court. (Burling, Dist 5; Benn, Graf 9; Nordgren, Graf 9; Almy, Graf 11: Judiciary)

06-3062

**SB 402-FN-A**, relative to payment of unreimbursed storm-related damages incurred by the town of Hanover and affected surrounding towns and making an appropriation therefor. (Burling, Dist 5; Benn, Graf 9; Nordgren, Graf 9: Finance)

**HOUSE MESSAGE**

The House of Representatives accedes to the request of the Senate for a Committee of Conference on the following entitled Bill:

**SB 206-FN**, relative to the state code of ethics and establishing an executive ethics commission.

and the Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Whalley, O'Brien, O'Neil and Craig.

**Out of Recess.**

**LATE SESSION**

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*February 9, 2006*

The Senate met at 10:00 a.m.

A quorum was present.

Senate Guest Chaplain, The Reverend Janet Lombardo, from Trinity Episcopal Church in Tilton, New Hampshire led the Senate in prayer.

Good morning! About five months ago I started working for the Concord Regional Visiting Nurses Association in their hospice program. As you may know, hospice provides care for those who are dying and their families. Hospice cares for the physical, emotional, and spiritual needs of the dying. I work on the spiritual end of things as you may have guessed. Most people find working with the dying and their families challenging. I find it amazing. It is such a privilege to enter into people's lives at this very critical point. One of the things I like most about it is that the small talk gets out of the way. When people are dying, they have things they need to do, and they want to do them. Often this involves a total shift in their priorities. They seem to see what is important in life with incredible clarity. It is an honor to be able to assist them on this journey, and there is also a lesson here for each of us. What are your priorities? And, if I told you, you had six months to live, would they be the same? Sometimes I think we get so caught up in the distractions of everyday life that we forget about the bigger picture. We lose sight of what is really important and what is not. The dying remind me of this everyday. Let us pray:

*Holy God, creator of us all, help us to remember individually and corporately what is really important in our lives. Help this body as legislators to remember what will have lasting impact on the citizens of New Hampshire and to make that their priority. Bless this body with wisdom and compassion, that they may listen carefully and know that they are listened to. Help them to be always thankful for the many gifts they have been given and to use them well.*

*Amen*

Senator Green led the Pledge of Allegiance.

Senator Kenney is excused for the day.

## INTRODUCTION OF GUESTS

### SPECIAL ORDER

**SB 322**, establishing the business loan enhancement program. Finance Committee. Ought to pass, Vote 7-0. Senator Odell for the committee.

SENATOR ODELL: Thank you, Mr. President. Move to table.

### MOTION TO TABLE

Senator Odell moved to have SB 322 laid on the table.

Adopted.

### LAI ON THE TABLE

**SB 322**, establishing the business loan enhancement program.

**SB 265**, relative to workers' compensation requirements for out-of-state employers and employees. Banks and Insurance Committee. Ought to pass, Vote 6-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move Senate Bill 265 ought to pass. This bill requires non-resident employers and employees to be subject to New Hampshire workers' compensation laws.

This will create a more level playing field for New Hampshire companies who are often underbid by out-of-state companies that do not have to factor in the costs of carrying workers' compensation insurance. This issue was studied over the summer, and the introduction of this bill was the recommendation of the committee. The New Hampshire Department of Labor supports this bill. The Banks and Insurance Committee recommends that this legislation be adopted and asks your support. Thank you and, Mr. President, may I speak just briefly on this?

SENATOR GATSAS (In the Chair): Certainly.

SENATOR GOTTESMAN: Thank you. I think we understand how competitive the market is for companies who can come into this state and just avoid having to meet the same criteria to bid on certain jobs. Senator Hassan and other members of the Senate and other members of the House, have come together and brought forth this legislation. I want to thank Senator Hassan for being the prime sponsor of this bill, which is going to make the playing field level for New Hampshire companies. The passage of this bill will help protect people working in New Hampshire and provide insurance in case of injury. Thank you, Mr. President.

SENATOR HASSAN: Thank you, Mr. President. No real discussion but I just wanted the record to note that Senator Bragdon was also on the study committee and to thank him for his work on this as well.

**Adopted.**

**Ordered to third reading.**

**HB 331**, relative to restraining dogs and relative to livestock working dogs. Environment and Wildlife Committee. Ought to pass, Vote 4-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 331 ought to pass. This legislation will exempt dogs that are guarding, working, or herding livestock from certain aspects of the dog control laws. Guard dogs are often needed on farms to protect herds of livestock from coyotes and other predators. This legislation will protect the ability of farmers to manage their livestock without being in violation of statute while using dogs for agricultural purposes. The Environment and Wildlife Committee unanimously asks you for your support on the motion of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 291-FN**, relative to food service licensure for youth camps. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 3-1. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you very much, Mr. President. On Senate Bill 291, the committee recommends inexpedient to legislate. The committee found that this bill was not necessary at this time and that the camps are adequately regulated by the Department of Environmental Services. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 312-FN**, relative to notice of rulemaking by the real estate appraiser board. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 4-0. Senator Barnes for the committee.



SENATOR BARNES: Thank you, Mr. President. I have the honor of being able to inexpediently legislate a bill that I brought forward for a constituent. I move Senate Bill 312 inexpedient to legislate. The bill would require the real estate appraiser board to send notice when the board adopts a new rule or amends an existing rule and is the latest in a series of bills that seek to improve public notification about state business. The study committee incorporated into House Bill 1351 has been designated as the best place to address these issues. The committee will make sure this happens. I recommend inexpedient to legislate on 312. Thank you, Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**SB 274**, adding court security to the duties of the New Hampshire court accreditation commission. Finance Committee. Ought to pass, Vote 8-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 274 ought to pass. This legislation adds court security to the duties of the New Hampshire court accreditation commission. When this commission was created back in the 1970s, court security was not an important issue as it is in today's world. Assigning court security to the commission would enable one group to have an overall look at the court security statewide with greater control. Testimony was received at the public hearing indicating that this legislation would have no financial impact. The Finance Committee asks for your support of ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 315-FN-A-L**, repealing the statewide enhanced education tax. Finance Committee. Inexpedient to legislate, Vote 6-2. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 315 inexpedient to legislate. This legislation repeals the statewide enhanced education tax. In doing so, there is a \$363 million loss in state revenue. The committee felt they could not support this legislation because an alternate means to replace the revenue was not in place. In addition to repealing the statewide enhanced education tax, the statewide enhanced education aid would also be repealed, which goes to the state's neediest communities. The Finance Committee asks for your support of inexpedient to legislate.

SENATOR FULLER CLARK: Thank you very much, Mr. President. I rise in opposition to the committee motion of ITL. Continuing the statewide property tax is wrong, dishonest and a fraud. That is why I introduced this bill. When the legislature passed the Education Funding Bill in 1999, it included a temporary statewide property tax which was supposed to sunset in 2003. At that time, the Republican leadership made a promise to work to replace this tax in the next biennium. Instead, they voted to make it permanent. By repealing the statewide property tax now, we will keep our original promise to the taxpayers and remove the threat of having donor/receiver communities that pit one community against another and is extraordinarily divisive, particularly because communities with high property values are not necessarily wealthy communities. The amendment to Senate Bill 315, which I offered to the Finance Committee, made it perfectly clear that with this repeal, no changes would occur to the current amounts the state provides to the local

communities for education. Nor would the bill affect the state's cause in the latest challenge to the education funding law pending before the Supreme Court. The only difference is that the money for education that is raised locally and spent locally for education, but included in state dollars under the state education enhancement tax, i.e. state property tax, will no longer be classified as state dollars. It must be evident to the voters that with the essential elimination of donor dollars last session, and now with the passage of House Bill 100, the state property tax or education enhancement tax is just a fig leaf and serves no legitimate function. Anyone can readily see that those dollars are state dollars in name only. Repealing the statewide property tax means that we will be able to remove permanently the threat of returning to an education funding system of donor/receiver communities. We will put an end to the charade regarding the state education funding and send an honest message to the taxpayers about how we fund public education. We all want honest and transparent government. Currently, passage of this bill is the fairest and most honorable thing to do. And in closing, I would like to remind all of us that the Governor proposed an education funding plan last year that also had no statewide property tax and was passed by thirteen Senators. We can continue to fund education at the state level without being dishonest about how we fund it and still make sure that the communities that need state assistance for education will receive it. That is, if we want to. Thank you, Mr. President.

SENATOR MARTEL: Thank you, Mr. President. I rise in support of the inexpedient to legislate motion on this bill. I, too, have always been very, very opposed to taxes. I also believe that the Governor, and I supported his position last year on this very issue. One thing that we have to remember is that, if we repeal this tax, what do we have to fill the hole? The hole which the taxpayers will see a huge sum of money that's going to have to be put in place to take them out. What are we going to do? Are we going to now bring in the income tax or some other tax? Some other fee? Are we going to change fees? I think this is the best, best way of addressing this issue at this time. It's to maintain this, as unpopular as it is, tax. Again, I oppose taxes. I want that to be very clear. But in this case here, when we find a solution that we can bring to the table, I'll be ready to discuss it, and be ready to vote on it at any point in time. But it's got to be the right solution. So, Mr. President, I ask that we follow the committee report of ITL on this bill, and I thank you very much for your time.

SENATOR LARSEN: Thank you, Mr. President. I rise to support the motion of...I'm sorry to oppose the motion of inexpedient to legislate. To say that we can't fund education without a statewide property tax is hogwash. In fact, Governor Lynch's education plan targeted aid based on need and eliminated donor towns, and the statewide property tax. Repealing the statewide property tax can be done. It was done well in the Governor's plan, and we had a majority of Senators supporting it last session. This Republican love affair with high property taxes has blinded some to the simple math. You don't need the statewide property tax to target aid to those communities who are in need. We can repeal the statewide property tax and fund education fairly without the addition of new taxes. We saw that last session. Let's get real with the property taxpayers of this state. This statewide property tax is a sham. It's a fig leaf. And it's a hoax.

SENATOR ODELL: Thank you, Mr. President. I remember very well that vote when thirteen Senators supported the Governor's plan and I was there as one of them. I was there in part, because it did do away with the statewide property tax. I was there because I felt it targeted aid more directly to the weaker communities, those with the least property values per student. But, year after year, we've sent very confusing messages to the school districts. I am all for doing away with the statewide property tax in a thoughtful process, but to do it abruptly like this, would to me be a terrible signal back to our communities that once again, we are going to be shaking up the formula. We're going to be shaking up the system. If we want to do this, let's get together and do it during the budget session, and let's do it right. Thank you, Mr. President.

SENATOR FULLER CLARK: Yes. I have a question of Senator Odell. Senator Odell, are you aware that as this legislation came before you, that it would not take effect during this current biennium, that it would take effect at the end of the next biennium? So it is not an abrupt proposal.

SENATOR ODELL: I read that it became effective July 1, 2007.

SENATOR FULLER CLARK: That is...that is correct. It does not take effect this year and would allow us the budgetary process next year to look at this alternative, which frankly, doesn't change any of the funding mechanisms whatsoever. The monies that are raised locally will stay locally. The monies that are raised at the statewide will stay at the statewide, and there is little or minimal, if no difference, between the amount of monies that communities are receiving today for education that they will receive in the future. Thank you.

SENATOR ODELL: Mr. President, was that a question?

SENATOR GATSAS (In the Chair): That's a good question.

SENATOR FULLER CLARK: I did ask him if he believed?

SENATOR GATSAS (In the Chair): Oh, alright.

SENATOR BURLING: Thank you, Mr. President. I rise just to make a couple of points. First to say thanks to my colleague, Senator Martha Fuller Clark, for using the operative words, "honesty and transparency." Our constituents expect us to tell them the truth. The truth is the statewide property tax is nothing but the local property tax renamed for our convenience. It does not do anything except obscure the fact that the state of New Hampshire is not contributing with state dollars to the cost of our children's education. The proof of that lies in the bill we're about to take up which, through a stroke of fate, is so magnificently following this bill and it is that bill which proves the lie of everything that is said today. There is no \$363 million loss if we repeal the hated statewide property tax. That's a sham. There is no loss because, as we are about to do in 100, we're going to prove that this tax doesn't transfer any money to anybody. It used to. But beginning two years ago, it stopped doing that. And we're about to make sure it doesn't do it anymore. Not a dime rolls across the borderline of any town to another town. "Honesty" and "transparency" should be the word of the day. I think it also should be clear to every one of us that the people of New Hampshire are sick of high property taxes. They're fed up with the property tax burden that is imposed upon them by state policy. It is time we were honest with them, Mr. President, and I think the best way we could show that honesty, is by reversing the ITL and passing this bill, which does, with all due respect to my good friend Bob Odell, begin the process of deliberation, thought, and collegial work, to accommodate the repeal of the statewide property tax. Thank you, Mr. President.

SENATOR CLEGG: Thank you, Mr. President. I rise in support of the committee recommendation. I'd like to speak about a comment that was made that Republican leadership stated back when we put this tax in, that we would repeal it and it was temporary. I was a member of the House Republican leadership. It's not what happened. In fact, we looked at it and said, at the rate we had set it, within five years, there would be absolutely no donor communities, because people would see that the tax was raising so much money that they might as well do it themselves. We never said we would repeal it. We said, "Let the people figure it out for themselves." What we did the next year was, instead of leaving it where it was so that we could grow the education fund, we kept reducing it. Were we honest? I was. I told everybody we're taxing you to do what you used to do on your own. And we still do that. The problem is now is, we brought in the tax, we made it a state tax. We separated it on the tax bills. And the education taxes rose up to replace the piece that we took out and called the "state tax." People expect that the state will tax the property for schools and that the community will tax the property for the schools. It's an expectation. You take it out now and somebody's going to stand up on the floor of town meeting and say, "I'm not letting you raise my taxes by \$2.84." So you can't suggest that we replace the tax on the local level by letting the locals increase the taxes, 'cause there is no guarantee. We talked about a bill that passed last year that did away with statewide property tax. It passed with thirteen votes. And as I remember it, within five minutes, there was another proposal brought forward, replaced that bill, and passed this Senate by a majority vote. So the law we're currently working under is the law that a majority of this body said was the proper law. Now I've lost a few bills in here, too, but I don't stand up and say, "because you did this, and you didn't take my bill, we're in this." This body operates as a group. As a unit. And the majority rules. And the majority ruled that this is where we need to be. Someone said that we don't currently contribute anywhere else but state taxes. What about the business enterprise, the business profits, the real estate tax? I think we even have some tobacco tax money that goes into the education trust fund. We have all kinds of state taxes that we use to fund statewide...the education funding. Statewide property tax is just one other method. And as I remember, the statewide property tax passed by a majority of the House and a majority of the Senate. And every year we move to reduce it. The problem is now, that we have a situation where someone comes in and says, with a bill, "Let's do away with \$420 million of funding". "Let's call it something else, but let's just not do this", with no alternate method of funding the education funding plan that this body approved last year. There may be other education funding plans out there. Nobody brought in a new education funding plan. They brought in a bill that makes it \$420 million short of funding the plan that we voted on and passed in a majority. And you can't just take \$420 million away and say, "Oh, we'll figure out next year exactly what we're going to do with that." What happens next year when we look at the revenues and see things dropping, like the revenue from real estate transfer tax today? The revenue from tobacco? What happens when we see that? Where are we going to come up with \$420 million? Nobody likes taxes any more than I...I hate taxes, and nobody hates them more than I do. But I'm going to tell you, I'm not going to leave the communities \$420 million short with a promise that we'll fix it next year when we don't even know if we're the ones that will be occupying these seats next year. So to say we'll fix it next year is less than

honest, because you may not be here to fix it. I recommend that we leave things the way we voted them. If you want change, bring in change, but bring it in and not just say, "This is a problem", but bring in a method to fix the problem. They go hand-in-hand. They're not separate. You want to remove the tax, come up with a method to replace it. Thank you, Mr. President.

SENATOR BURLING: Thank you, Mr. President. Senator, you and I were two members of House leadership in the room when the compromise on the school funding plan was reached. My question is this. Do you remember that at the time we got to midnight on that last day, the Speaker of the House, Donna Sytek, did not have enough votes to pass a school funding plan because the conservative Republicans wouldn't go with it, and she came to me and asked whether we could support a statewide property tax? And I said, "Only if it is promised to sunset", and that, as a result of that conversation, there was in the text of the original bill, a sunset provision which caused the statewide property tax to disappear in 2003. Do you remember that set of facts?

SENATOR CLEGG: I don't remember Speaker Sytek speaking to you at all. I do remember that when we had everybody in the room, we talked about the rate of \$5.94 within five years becoming so ridiculous that the communities would come forward and remove it on their own.

SENATOR BURLING: Follow up? Would you believe if I told you as your colleague that the conversation I just described took place and was the basis for the sunset provision in the school funding bill?

SENATOR CLEGG: Senator, I would never doubt that you wouldn't tell the truth.

SENATOR BURLING: Thank you.

SENATOR BARNES: Thank you, Mr. President. A question of Senator Clegg. I think I heard the word "income tax" perhaps being the reason why this is in front of us. Do you believe that that's a possibility for that income tax as an issue that might be what...might come up to fill that \$420 million hole?

SENATOR CLEGG: Senator, there aren't too many places to get \$420 million. If they take their hand out of your right hand pocket, they're going to stick it into your left hand pocket. One way or the other it's coming out of your pocket.

SENATOR BARNES: So, the answer to that is that that's a good, strong, possibility?

SENATOR CLEGG: That's an absolutely, positively correct statement. It's a good possibility.

SENATOR BARNES: Thank you, Senator Clegg.

SENATOR BOYCE: Senator Clegg, is it my understanding, and you can correct this if I'm a wrong. My understanding is that the way the education on the state part of the education funding...the way that works is, if there is not enough money in the education trust fund, it is a draw on the general fund. And so therefore, if we removed either three hundred and some million or \$420 million or just \$65 million from the funding package, no matter how you look at this bill, it takes some money out of the stream. And if we remove that from the education trust fund, would that not then be a simple assessment against the general fund, which we would have to find some other way to fund?

SENATOR CLEGG: Absolutely. The entire amount would become an assessment against the general fund and it doesn't exist.

SENATOR BOYCE: Follow up? Did you also hear something that I had never heard before. A Senator on this floor actually referring to the opposing party...one of the opposing parties by name, and describing to them, some rather onerous love affair? Did you hear that? I don't believe I've ever heard that before and I was just wondering if you had heard it and were as puzzled as I was by somebody actually saying that on this floor?

SENATOR CLEGG: I'm still puzzled.

SENATOR BOYCE: Thank you.

SENATOR GALLUS: Would like to speak. Thank you, Mr. President.

SENATOR GATSAS (In the Chair): Hold on. Senator Burling for a question. I'm sorry. I thought you had a question, Senator Gallus.

SENATOR BURLING: A brief question of Senator Barnes. I hate leaving my back to you, but I'm told I have to address the microphone. Would you agree with me Senator, that if we repeal the statewide property tax and stop treating the local property tax as if it had a state component, no income tax is necessary to simply be telling the people the truth about what their property taxes are?

SENATOR BARNES: My answer is no.

SENATOR LETOURNEAU: Senator Clegg, isn't it true that we have a vast amount of property owners that are from out-of-state that own a vast amount of properties in the state of New Hampshire that are contributing to the statewide property tax, and that if we do away with the statewide property tax and adopt a different type of tax, wouldn't it be an additional burden or not the residents of New Hampshire?

SENATOR CLEGG: Senator, I agree with you that all of those Massachusetts and New York state people who own those million and million and a half dollar homes on Lake Winnepesaukee, would...yes, they would reduce their tax burden to the state of New Hampshire and we would pick it up.

SENATOR LETOURNEAU: Thank you.

SENATOR GALLUS: Thank you, Mr. President and members of the Senate. We oftentimes kick around a lot of words in this room. "Honesty", "transparency", "smoke and mirrors", I hear a lot. I'd like to know what we're actually doing today, you know? We're standing here going to waste another two hours, I think, of the people's time. I, along with Senator Odell, did support the Governor's education plan. But I think that we arrived at a consensus to support the plan that was passed by this body. The Governor of the state of New Hampshire had a chance to veto that particular plan and did not. And I ask again, what are we really discussing here today? We're going to spend more time on this particular issue when I really don't think it's broke. And I say it's not broke. You know, people clamored for years about what was going on with education funding in the state of New Hampshire. We all realize, the guy on the street realizes that, whether we call it the "statewide property tax" or the "local property tax", it's coming out of his pocket. I think we all realize that. We're not fooling anybody. We haven't been for years. So the guy on the street really knows what's going on. I think what we have given him with the education funding bill that we have, is the ability to plan. Plan their futures. With legislation we're going to pass, we take away the three re-

maining or the small number of remaining donor towns in the state of New Hampshire. I think that's what people wanted. People wanted to get rid of the recipient/donor town mentality in the state of New Hampshire. I think this basically was the law passed by this body. The Governor had a chance to veto that law. I think at this particular time there's really no problem. There's no need to change this. Are we going to have changes? Of course we are along the way. I think that basically, this bill...you know, the current law is not perfect, but I think it allows our communities to plan. I hear from none of my communities, that I did hear in the first couple of years, that were complaining that we have a major problem here. So I ask again, what really are we doing here today? Thank you, Mr. President.

SENATOR LARSEN: A question of Senator Burling. Senator Burling, we just heard that we have a system that isn't broke, so what are we doing trying to fix it? Would you agree that a community like Concord that lost \$2 million was having...would have difficulty planning for that, and in fact, has seen dramatic property tax increases as a result? That's my first question.

SENATOR BURLING: I agree completely. I have several towns in the same situation in my district.

SENATOR LARSEN: And I know Nashua has similar problems. In your work, in the leadership during the Conference Committee on Claremont discussions and how we, as a state, meet up our responsibility to fund education, we had long discussions about the statewide property tax. Later you've seen and been in discussions with the Governor about funding education through another method that does not... Did that discussion not eliminate the statewide property tax? Did not the Governor's education funding plan, address equalizing education and funding education across the state without an income tax?

SENATOR BURLING: Absolutely, and if I may remind everybody of the historical record. In 1999, that's what happened. We cobbled together a solution which included a statewide property tax that was sunsetted by 2003, no income tax. I remember that vividly, Senator because, at the time it almost cost me my leadership as the House Democratic Leader. And of course last year, we saw the Governor bring in a plan which did actually fund an adequate education. There's a word we haven't used recently, Senator. The "adequate" word. And it did so without an income tax. So the whole notion of the word "income tax" as the "tar baby" that rises the opposition to fury is phony. It's just as phony as the notion that somehow the statewide property tax is a good solution to this problem. It's another property tax which is crushing the people of this state.

SENATOR FULLER CLARK: Thank you very much. First of all, I would like to respond to Senator Gallus by saying that, as long as there is the potential for donor/receiver communities to be created in this state, which is the case if we leave the statewide property tax or the education enhancement tax in place. my communities are at risk. And I believe that that is wrong and it is not necessary. And secondly, I would like to point out that when I came before the Finance Committee, I came before them with an amendment that merely substituted the tax capacity aid coefficient of the community for the statewide education enhancement tax. And it is not true that you were not provided with a responsible alternative at this time that could be implemented next year that did not change the amount of money that was going to any community in this state with regard to education funding. And so, when I hear that

I proposed a bill, called irresponsibly, it's not true, because I provided in the amendment the language that would address that situation and make it clear that there is no \$363 million gap. Thank you.

SENATOR GALLUS: A question of Senator Larsen. Senator, I'm just curious because your last statements to Senator Burling were the fact that...I'm assuming that the problem here is not necessarily the state-wide property tax, but the ability to raise money and increase taxes so we can raise more money for Concord and various other communities. Am I reading something into the lines here?

SENATOR LARSEN: The problem with Concord's formula is that, through the workings of the formula, a community like Concord and Nashua, lost in one short year, \$2 million and had to make it up through local property taxation. That is dramatically higher than they had anticipated. So there are people all across this city struggling with their property taxes and it was a "cliff" effect as we used to call it. It was a fall off the cliff and lose all your education funding problem.

SENATOR GALLUS: Semi-follow up? I just want to remind everybody that, with the last education funding bill, the communities in the north country, the poorest communities in this state, lost \$5 million. I think, at some point we have to live within our means. Thank you Senator.

SENATOR LARSEN: That was wrong as well. I believe that we saw a way to live within our means through the Governor's education funding plan that lived within our means and in fact, funded communities across the state reasonably. I assume, in our next budget debate next year, we will be back trying to find a fair program that funds both north country communities and communities of middle income that even our own Senate President realizes suffered under a formula that he wasn't sure why, but we got whacked.

SENATOR GALLUS: And I personally feel that that would be a more appropriate time for us to address this issue.

SENATOR LARSEN: I think we will be addressing this issue for many years to come.

SENATOR GALLUS: Absolutely.

SENATOR MORSE: Thank you, Mr. President. I'm glad we agree that there's a more appropriate time. But I would like to point out that, under your plan, communities dropped and then started growing. Under the Governor's plan, the golden triangle, many of them had to look at zeroing out any education funding, which that case is still going to court because they don't believe they've gotten enough out of this. So that's a whole separate issue that we haven't dealt with. And with this legislation that is before us, there's still a \$60 million gap or \$62 million gap in that legislation that we would be looking for funding for, and there was no proposal to fill that.

**The question is on the committee report of inexpedient to legislate.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**



**The following Senators voted No: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 15 - Nays: 8**

**Committee report of inexpedient to legislate is adopted.**

**HB 100-FN-A-L**, amending the formula for funding public education. Finance Committee. Ought to pass, Vote 8-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move House Bill 100 ought to pass. The legislation clarifies the legislative intent of the education funding law that was passed last year. The interpretation by the Department of Education of the law resulted in three donor towns, Hebron, Jackson, and New Castle. This legislation will eliminate the donor community and reflect the legislative intent. While the Department of Education interpreted the education funding law passed last year to be analyzed in a prospective manner, this bill is a legislative intent of last year which asks to analyze the bill in a retrospective manner. The Finance Committee asks for your support in the motion of ought to pass.

SENATOR FOSTER: Thank you, Mr. President. Wow! **TAPE CHANGE** We just voted a moment ago not to get rid of the statewide property tax, but now with this bill we're saying, "We got to get rid of every last donor town." What are we saying? Senator Burling talked about transparency and honesty. This statewide property tax issue is a fascinating debate to me. When the remarks were initially made on the previous bill, we talked about \$363 million in revenue that we'd be losing. The same individual a few moments ago talked about \$60 million that we'd have to make up if the bill passed. What is it? What is the real number? That's the problem with this issue. Statewide property tax is a fraud and a scam. It confuses the debate. If you ask the average person what the state funds locally for education, they have no idea. Why? Because a moment ago we said \$363 million or \$60 million or \$800 million. What is it? None of us know. And then we turn around now and we have to get rid of the last donor towns because we don't want any money being redistributed with this very important tax. Ironically, this bill is the bill that I had sponsored to put in to support the Governor's plan which did get rid of the statewide property tax, and one of the things that he talked about back on that campaign was honesty with this issue so people knew what the state's share was. And they don't know. And I guess we're going to continue to make that so. I'll be opposing this legislation. Thank you, Mr. President.

SENATOR HASSAN: Thank you, Mr. President. I have a proposed floor amendment to this bill, and is now the appropriate time to move that it be adopted?

SENATOR GATSAS (In the Chair): I think you can speak if you want to speak to it, but we're not going to present it until we move the committee report.

SENATOR HASSAN: Okay, I will speak to it now. It is an amendment that I am bringing in because one of the things about the bill we are voting on right now is that it does not in fact get rid of donor towns, and it does in fact zero out some communities. One of those communities is Seabrook, which is in district 23, which I represent. Seabrook will continue to be a donor town because of the statewide utility tax, and my amendment would address that. Thank you.

SENATOR FULLER CLARK: Thank you very much, Mr. President. I would like to speak in support of the corrections that House Bill 100 brings forward because it certainly does solve a problem for one of my communities. But, I would also like to say that I think this bill again points up to the fact how all these monies that are supposedly raised to be added to the state's share, are raised locally and kept locally, and the problem without this fix is that we would have had three communities that still would have been obligated to send their dollars to the state of New Hampshire, and I think it proves my point that, as long as the statewide property tax or the education enhancement tax stays on the books, there is always the risk that we'll return to a donor community system for a donor/receiver community system for raising education dollars. Thank you.

SENATOR JOHNSON: Thank you, Mr. President. I'm speaking today in support of House Bill 100. At this time, I want to recognize the Senate President, Senator Gatsas, for all of the time and effort that he afforded me personally in helping to bring this bill forward. I represent Senate district 2 which encompasses one of the inadvertent towns remaining a donor town. Last year's funding plan intended to eliminate donor towns, but due to the interpretation of the language, three towns remained donor towns, one being in my district, Hebron. One of the technical corrections in this bill deals with village districts. It recognizes that expenditures by a village district for the upkeep of a public school are legitimate educational expenses and with the technical corrections in this bill, Hebron will no longer be a donor town. Thank you, Mr. President.

SENATOR CLEGG: Thank you, Mr. President. House Bill 100 is meant to do what we all voted in the majority to do last year. It's what we stated we expected the legislation to be interpreted, and for some reason, once again, we had a disagreement with the Department of Education. We came in and fixed it. Now some people say they're confused about how much money different taxes raise. You know, maybe because we sit on Finance we talk too briefly. The \$63 million that was referred to by Senator Morse in a previous debate, is the \$63 million that comes from the enhanced education aid which is general fund dollars, and the previous bill removes that as well as the money raised by the statewide property tax. This bill, House Bill 100, does what we said we wanted to do. We wanted to continue to ensure that we raised enough money for education in every community, but we wanted to stop the idea that you should raise more and hand it to someone else because a majority of the people felt that that was unfair. My community is one of the communities that, under both of those bills last year, suffered horrendously. We still suffer today. But I stand here and say that the right thing to do isn't to just wipe out the whole system and make them suffer even more but to do things like we've done here in House Bill 100. Let's make sure the money's right. Let's make sure that the intent of this body is carried forward and not allow someone who works in an agency to tell us that it might have been what we thought we did, but they're not going to read the language that way. So if we have to do House bills or Senate bills to correct that so people fully understand this is what we need to do, then we have to do it. This was our intent last year, and this is once again a message to the Department of Education to follow what the legislature asks you to do. We vote. We represent the people. We state our intent consistently on the floor. Maybe if they read the minutes, this bill wouldn't even be here. Thank you, Mr. President.

SENATOR BOYCE: Question of Senator Clegg. Do you recall, as I do, during that debate last year that we actually understood that because

of the massive complexities of some of these bills that in that one in particular, that we actually wanted to look at the spreadsheet of what was supposed to be distributed, and that was what we were looking at and that was our intent was the spreadsheet was our intent? And that, if the letter of the statute we were passing didn't quite comply with that, we were more concerned that the intent was there and that the intent be followed. And is that not what this bill is intended to do is to follow through on that intent that we voted on last year?

SENATOR CLEGG: That is the intent. We send out spreadsheets so that people know how much money's collected by different taxes that are used for education, how much general fund money might be used for education, and I believe that we did enter that entire package into the record, so they would know what was raised locally, what was raised by the state, and who got what and that was our intent. Thank you.

**Recess.**

**Out of recess.**

Senator Hassan offered a floor amendment.

Sen. Hassan, Dist. 23

**February 8, 2006**

**2006-0857s**

**04/09**

**Floor Amendment to HB 100-FN-A-LOCAL**

Amend RSA 198:41, I(a) as inserted by section 1 of the bill by replacing it with the following:

(a) For the fiscal years beginning July 1, 2005 and July 1, 2007, add the amounts determined in RSA 198:40-a, RSA 198:40-b, [and] RSA 198:40-c, **and RSA 198:40-d** for each municipality. Such amount shall also be used to determine a municipality's grant in the second year of such bienniums.

Amend the bill by inserting after section 2 the following and renumbering the original sections 3-8 to read as 5-10, respectively:

3 New Section; School Money; Utility Property Education Aid. Amend RSA 198 by inserting after section 40-c the following new section:

198:40-d Utility Property Education Aid. Beginning July 1, 2006, and every fiscal year thereafter, the commissioner of the department of education shall calculate the utility property education aid as follows:

I. Divide the municipality's most recent available equalized valuation of property taxable under RSA 83-F by the municipality's most recent available equalized valuation, including property taxable under RSA 82 and RSA 83-F, as such valuations are calculated by the department of revenue administration.

II. For a municipality with a quotient under subparagraph (a) greater than .05, the commissioner of the department of revenue administration shall deduct 5 percent of the equalized valuation, including property taxable under RSA 82 and RSA 83-F, from the equalized valuation of property taxable under RSA 83-F. This amount shall be multiplied by the rate established in RSA 76:3 to yield the utility property education aid for such municipality.

4 School Money; Determination of Grants and Excess Tax; Version Effective July 1, 2009. Amend RSA 198:41, I(a) to read as follows:

(a) For the first year of the biennium add the amounts determined in RSA 198:40-a, RSA 198:40-b, [and] RSA 198:40-c, **and RSA 198:40-d**.

SENATOR HASSAN: Thank you, Mr. Senate President. I move that the Senate adopt floor amendment 0857, which will be passed out shortly.

SENATOR GATSAS (In the Chair): Will you speak to it as it is being passed out?

SENATOR HASSAN: I certainly will, and thank you. This amendment provides a mechanism by which a portion of the statewide utility tax, currently taxed by the state and used by the state, would be returned to towns that have a high proportion of statewide utility tax. As many of you will remember, the town of Seabrook decided to site a major utility in its town some years ago in part for property tax relief and in part to benefit its school system, and under this plan and under the way the state now taxes utilities, most of that revenue now goes to the state and is not used for education. Add that to the fact that under House Bill 100 Seabrook will be zeroed out for state aid to education in very short course. Seabrook asked me to bring forth this amendment so that it would at least get a portion of the statewide...of the property tax that it had planned to get when it sited this utility in its town, and that is what this amendment does. Thank you.

**Floor amendment failed.**

**The question is on the committee report of ought to pass.**

**A roll call was requested by Senator Johnson.**

**Seconded by Senator Gallus.**

**The following Senators voted Yes: Gallus, Johnson, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Fuller Clark.**

**The following Senators voted No: Foster, Hassan.**

**Yeas: 21 - Nays: 2**

**Adopted.**

**Ordered to third reading.**

**SB 260**, relative to certification of a registered nurse responsible for emergency medical transportation. Health and Human Services Committee. Ought to pass, Vote 4-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move ought to pass on Senate Bill 260. This bill permits a registered nurse certified in either emergency nursing or critical care nursing to be responsible for a patient during inter-facility transfer when the availability of licensed emergency services providers exceeds thirty minutes. This flexibility is especially important in our rural areas. The committee asks your support of ought to pass.

SENATOR BURLING: Thank you, Mr. President. It is with great disappointment I rise to say that, though a sponsor of this bill, I have come into knowledge over the course of the last month that leads me to think that at present we had it right when we amended this relationship between nurses and EMTs in rural areas last year, and that this additional amendment is inappropriate at this time. So I just rise to say I cannot support this, and I hope further discussion goes on so we can get back on the right track.

SENATOR JOHNSON: Thank you, Mr. President. I am the prime sponsor of Senate Bill 260 and I just want to let this body know that the

language which is included or critical care nursing is certainly something that the Department of Safety feels is appropriate and also the Nursing Association. So I ask you to pass Senate Bill 260.

**Adopted.**

**Ordered to third reading.**

**SB 366-FN**, relative to issues of conflicts of interest in the provision of long-term care services. Health and Human Services Committee. Inexpedient to legislate, Vote 3-1. Senator Bragdon for the committee.

**SENATOR BRAGDON:** Thank you, Mr. President. I move ITL on Senate Bill 366. This bill prohibits persons providing long-term care services from having substantial involvement in both a long-term care services agency and a home health care service or other long-term care service. The committee found, however, that the existing service agencies have adequate policies, procedures, and checks in place to identify potential conflicts of interest. The committee also felt the bill may significantly increase the costs to deliver this important service.

**SENATOR MARTEL:** Thank you very much, Mr. President. It's not very often that I rise... First of all let me thank Senator Bragdon for taking this bill out and presenting that case from the committee's point of view. I brought this bill in because I was asked to by certain home healthcare providers, case managers, who saw a cry out there in the wilderness of people who were contacting people to come to their own service. In other words, they would be let's say a physician. A physician would allow them to go to another physician who's affiliated or through an agency, okay, which provides healthcare services that's a clinic or healthcare provider. There are also, you know, a caretaker in this, and this would provide a conflict of interest. I'm in Human Services originally, had agreed with that position, but then they received some information and proved that there was really no conflict, but, at the very end I passed out to my committee an amendment that was acceptable to both the Department and to the people who brought the case forward, and acceptable to me. Now the amendment was never voted on. The amendment's in record still, with the committee, and we'll hold that amendment for future look into other bills that we may have in this area. But I want to thank my committee for working very hard. It was a disappointing defeat to see this not acted upon, but I do understand where they're coming from. And I understand where district officers were very, very upset about this as well. They all came and testified, and so I thank them all. And I look forward to working with them in the future and also to case managers in the future to make sure that we do the right thing. In fact, there may be some case managers up there. There's one right there. There's one right there...Mr. Curelop who works very, very hard in this area, and I will continue to work with him very closely to make sure that we are okay on this type of operation. Thank you very much, Mr. President. I thank you for your time.

**SENATOR FULLER CLARK:** Yes, I'd like to ask a question of Senator Martel. Is it not true that during the hearing that we heard considerable testimony that there were mechanisms already in place to address the interests, the question of conflict of interest that was raised by this legislation?

**SENATOR MARTEL:** Senator Fuller Clark, I did hear some of that brought forward by some of the people who worked in area agencies, district agencies.

**SENATOR FULLER CLARK:** Thank you.

SENATOR MARTEL: But there is other issues beyond that that were brought up by the commissioner's office. I never...I did hear that. Yes, thank you for your question.

SENATOR LETOURNEAU: Question of Senator Martel. Senator Martel, could you tell me if this conflict of interest would exist if an agency who was a provider owned a property in which the caretaker is occupying and residing, taking care of patients or folks that are disabled, and they owned that property, and the property needs some kind of repair work, but refuse to do it. Is that what we're talking about, that kind of conflict of interest?

SENATOR MARTEL: Well, partially, but the thing we're really talking about is that when let's say a hospital releases a patient who let's say a facility, home healthcare facility or to assisted living facility, which they have an interest in, and they don't offer any other choices to a patient who is going to be discharged. In other words, they just show them one choice and there it is. They must go there. Again they have an interest. And that's what we're talking about. It can be from a physician as well it could be from the facilities themselves that we're talking about. It could be from any one area even clinics. And even these home healthcare agencies. So, it could be at any point in time we have a conflict. And that's all this bill is trying to identify was, if we have those conflicts, let's just bring them up. Let's clean them up.

SENATOR LETOURNEAU: Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 271**, relative to the availability of voter checklist information. Internal Affairs Committee. Ought to pass, Vote 6-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that Senate Bill 271 ought to pass. This bill adds the mailing address contained on the checklist to the public information that is subject to RSA 91-A. There was some confusion in towns around the state about giving out this information as it is. The existing statute reads that the information to be released specifically shall include the physical address, the town, the party affiliation, but it left out mailing address. So there was some confusion as to whether or not the lists that were given out by the towns should include that. This clarifies that specifically the mailing address will be included as public information. This bill will not interfere with citizens who have domestic abuse orders and such that would be a legal reason for them to keep their information private. That's already provided for elsewhere in law, and this does not interfere with that. The Secretary of State's Office supports this bill. The Internal Affairs Committee asks you to join us in passing Senate Bill 271. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 289-FN**, relative to the brain and spinal cord advisory council. Internal Affairs Committee. Ought to pass with amendment, Vote 6-0. Senator Boyce for the committee.

**Internal Affairs**  
**February 1, 2006**  
**2006-0724s**  
**01/04**

**Amendment to SB 289-FN**

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

1 Advisory Council. RSA 137-K:2 is repealed and reenacted to read as follows:

137-K:2 Advisory Council.

I. There is established the New Hampshire brain and spinal cord injury advisory council in the department.

II.(a) The advisory council shall consist of the following voting members:

(1) Two members of the Spinal Cord Injury Association, appointed by such association.

(2) Two members of the Brain Injury Association of New Hampshire, appointed by such association.

(3) Two members of the professional community, one of whom shall be in a neurological specialty, appointed by the governor.

(4) Two brain and spinal cord injury survivors, appointed by the governor.

(5) Two family members of victims of brain and spinal cord injuries, appointed by the governor.

(6) One member involved in injury prevention, appointed by the commissioner of the department of health and human services.

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

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

(9) One vocational rehabilitation instructor, appointed by the commissioner of the department of education.

(10) One educator, appointed by the commissioner of the department of education.

(b) The following persons or their designees shall serve as ex-officio, non-voting members of the council:

(1) The commissioner of the department of health and human services and any division administrators of the department of health and human services designated by the commissioner.

(2) The chief of the special education bureau of the department of education.

(3) The administrator of the division of vocational rehabilitation services of the department of education.

(4) The president or executive director of the Brain Injury Association of New Hampshire.

(5) The president or executive director, New Hampshire chapter of the National Spinal Cord Injury Association.

(6) The administrator of brain injury services, division of developmental services, department of health and human services.

(7) The administrator of the HCBC/ECI waiver, division of elderly and adult services, department of health and human services.

(8) The president or executive director of Granite State Independent Living.

(9) The president or executive director of the New Hampshire Developmental Disabilities Council.

(10) Representatives of other related agencies or organizations as approved by the council.

III. Members should be appointed with consideration given to state-wide geographic representation.

IV. Advisory council appointments shall be for 3 years. Terms shall be staggered so that 1/3 of the positions are elected each year. Upon the completion of 2 consecutive 3-year terms, a council member shall be ineligible to serve on the council for one year. A vacancy shall be filled in the same manner as the original appointments. Such appointments shall complete the original member's term.

V. The advisory council shall have the authority to draft and adopt by-laws addressing concerns such as attendance, presentations, and notice of council meetings.

VI. The advisory council shall meet at least quarterly. At the last meeting of the state fiscal year, the regular meetings of the following state fiscal year shall be scheduled. Special meetings may be held if necessary at the call of the advisory council chair.

VII. The advisory council shall:

(a) Identify unmet needs which should be considered for support.

(b) Investigate the needs of citizens with brain and spinal cord injuries, identifying the gaps in services to these citizens, and issue an annual report to the governor, the speaker of the house, the senate president, and the commissioner of health and human services by November 1 of each year.

(c) Recommend to the commissioner priorities and criteria for disbursement of any moneys received under paragraph VIII.

(d) Hold at least 2 public hearings annually, in different regions of the state, to generate input from the public on unmet needs.

(e) Consider the feasibility of establishing a brain and spinal cord injury trust fund.

(f) Review the status of the brain injury program, established under 137-K:9, and recommend to the commissioner priorities and criteria for disbursement of appropriations available to the program.

VIII. The advisory council is authorized to solicit and receive any gifts, grants, or donations made for the purposes of this chapter, and the commissioner may disburse and administer the same for the purposes of this chapter.

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

**2006-0724s**

#### AMENDED ANALYSIS

This bill changes the membership of the brain and spinal cord advisory council.

SENATOR BOYCE: Thank you, Mr. President. I move that Senate Bill 289 be ought to pass as amended, and I've been advised not to use a certain colloquial expression implying that passage of this bill will take very little thought, so I won't. This bill changes the membership of the brain and spinal cord injury advisory council and expands the council's duties. Almost all of the bill's text comes from the council itself. The committee amendment provides that one position on the council be of a neurologic specialty, neurosurgeon, neuropsychologist, or such, and that was requested by members in the profession. And it takes out language that the council determined would be micromanaging of the council. Please join the Internal Affairs Committee in supporting the brain and spinal cord advisory council in the important work that they do, and vote ought to pass as amended. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 389**, establishing a committee to study energy efficiency programs funded by the system benefits charge. Internal Affairs Committee. Ought to pass, Vote 6-0. Senator Larsen for the committee.



SENATOR LARSEN: Thank you, Mr. President. I move Senate Bill 389 ought to pass. This bill establishes a committee to study energy efficiency programs funded by the system benefits charge. This legislation was promised upon the recent passage of the low income energy assistance legislation. Grants given out under this program encourage people to choose energy conservation options when they are constructing or rehabilitating a building. Our current state and national attention is, as you know, we are working to address our energy uses and the ways we find energy sources, and it would be a shame to miss this opportunity to help our constituents that are looking for responsible energy alternatives. I understand that there is House bill in committee that also talks to the effect of studying energy efficiency systems benefits charges, and I assume that between the House and the Senate we will work through the responsible legislation relating to system benefits charges. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 234**, including the International Residential Code 2000 in the definition of the state building code. Public and Municipal Affairs Committee. Ought to pass, Vote 4-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I rise in support of Senate Bill 234 as ought to pass. Senate Bill 234 would establish a statewide residential building code for the state of New Hampshire. New Hampshire currently has a statewide building code that includes codes for commercial construction, plumbing, and electrical work. This law has been in effect for three years, and by all accounts this system is working very well. Senate Bill 234 would simply add a residential building code to the existing statewide code. As written, the bill would not require towns that currently do not have building codes to implement a code, but it would establish a uniform minimum residential code for towns with existing codes. As the committee heard during testimony, there are as many as ten different building codes currently being used by towns in New Hampshire, and the use of multiple codes causes problems for builders attempting to follow codes for consumers in terms of safety issues and for code enforcement officials who are charged with enforcing the codes. Over the past summer, the legislative study committee looking at various building issues which included Senator Clegg, Senator Morse and Senator Gottesman, recommended enactment of the statewide residential building code, and the bill was received with the unanimous support of the builders and local code enforcement officials. The Public and Municipal Affairs Committee asks for your support of Senate Bill 234, and I thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 276**, authorizing the town of Seabrook to plow and remove snow from certain private driveways. Public and Municipal Affairs Committee. Inexpedient to legislate, Vote 4-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Mr. President. Mr. President, this bill was brought to seek the permission of the legislature for the town of Seabrook to do certain plowing for persons in need. It was the unanimous opinion of the committee that the permission is not required. Seabrook can do this on its own motion. With that, we move inexpedient to legislate and ask the Senate to support us.

SENATOR CLEGG: Of Senator Burling, if you'll yield.

SENATOR BURLING: Absolutely.

SENATOR CLEGG: Senator Burling, it's become more and more important that we make sure that our intent is clear on the floor, and if I understand what you just said, all communities in the state of New Hampshire have the authority to determine how they do plowing, whether they help the needy, and they don't need our permission to continue to do the things they're doing now. Is that correct?

SENATOR BURLING: I believe that's absolutely correct.

SENATOR CLEGG: Thank you, sir.

**Committee report of inexpedient to legislate is adopted.**

**SB 344**, establishing a committee to study state benefit programs for national guard members. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. The New Hampshire National Guard asked me to bring this piece of legislation forward. I move Senate Bill 344 ought to pass. What this bill does it establishes a committee. You know how I love committees, but this is an important committee, so I'm all in favor of it. To study state benefit programs for national guard members. And incidentally, Mr. President, during the debate, I said I'd be happy to be on it, and Senator Hassan spoke up and said that's one she would like to be on. Just in case you're looking for people to be on that, I just thought I'd throw that out to you. New Hampshire's National Guardsmen have been called to duty numerous times over the past twelve months. This highlighted disparities that need to be addressed and made many soldiers question their ability to continue to serve without disrupting both their employer and their family. After all of the sacrifices these national guardsmen have made, it is important the legislative study benefit and incentive programs so the state may better assist returning guard members. The Public and Municipal Affairs Committee unanimously asks for your support of ought to pass on this study committee. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in support of the bill, and I think a couple of factors should be known to everybody in this Senate. For the first time really in the history of our country, 40 percent of those involved in active combat were members of the National Guard or reserves. That's an enormous number, 40 percent of the active force. We should look at the benefits that those people receive because many of those people are receiving less than they would have been receiving on their job, and that's a very serious situation. Called up to defend the nation, and yet the benefits that they receive aren't equal to what they had been receiving on their job. So it's very important that we look at these things, examine these things, because one thing that we are very, very confident of is that the ready reserves, the National Guard, is a strong component of the military defense of the nation. So, we want to do things for this component that take care of them as we take care of our regular forces. It's a very important issue, and as I say, the Guard has been used in a very different manner in this particular conflict, and that's something we should look at. Thank you, Mr. President.

SENATOR MARTEL: Thank you, Mr. President. I stand in strong support of this bill. As a former soldier in the Army, U. S. forces, I wish to

give you my commitment today. If I was named to this committee, I'd be proud to serve on it. But it is true that when you look back in days when I was in...in the 60s, it seemed like we were always short of help. And who would be helping us from behind the scenes? At that point in time, it was the Army National Guard. It was also the reserves who were helping us at that time as well from different parts of the armed forces. Now we lost some very, very important people from the state of New Hampshire back in the Vietnam War from the Manchester National Guard terminal on the corner of Elm and Canal Street. This was quite an ordeal because I lost approximately six friends at that time who were killed in combat, including I lost a cousin one month before he was going to be discharged after a second tour. So he was in the Marine Corps. So I urge that we ought to pass this bill with vigor to help those troops who are overseas fighting for our country bravely, and wondering, you know, how they're going to support the family and how they're going to pay the bills from month to month. It's quite an ordeal. I've had several calls from constituents about what we can do to help, and so I'm going to try to help the best I can. I've told them that, and we've located some places for them to talk to people about their problems. So, Mr. President, once again, I urge that we ought to pass this bill, and I ask my fellow Senators to do the same. Thank you.

**SENATOR BARNES:** Thank you for a second time, Mr. President. Senator D'Allesandro is right. The Guard has been used in many different situations recently. But, I also want to state that something that wasn't mentioned and I failed to mention, and Senators Odell, Gatsas, and Eaton are well aware of the fact how the Guard was used this past October right here in the state of New Hampshire, not overseas but right here the National Guard in the state of New Hampshire, so I think the three Senators appreciated what they saw and how the Guard operated. But a little bit of history about the Guard seeing we're talking about the guard, in World War I, Senator D'Allesandro, it was mostly National Guard folks who were sent over there to France. The 26<sup>th</sup> Yankee Division was in the five major battles and that was a National Guard outfit. So the Guard has been around for a long time defending this country. It's something we can all be proud of, and in 1951, when I was put in as a replacement in the unit over in Korea, it was a National Guard outfit from Texas and Oklahoma that I was assigned to, to bring it up to battle strength. So I have a warm spot in my heart for the Guard and I think everybody in this room does. I don't think we need to go any further. I think we just have to vote yes and get on with our business.

**Adopted.**

**Ordered to third reading.**

**SB 360-FN-A**, establishing a surcharge on real estate transfers for deposit in the family stability fund and renaming the homeless prevention program the family stability program. Public and Municipal Affairs Committee. Inexpedient to legislate, Vote 3-2. Senator Martel for the committee.

**SENATOR MARTEL:** Thank you very much, Mr. President. I move to table this bill.

### **MOTION TO TABLE**

**Senator Martel moved to have SB 360-FN-A laid on the table.**

**Adopted.**

**LAI D ON THE TABLE**

**SB 360-FN-A**, establishing a surcharge on real estate transfers for deposit in the family stability fund and renaming the homeless prevention program the family stability program.

**SJR 4**, urging Congress to require the Department of Defense to reinstate the terminology of "POW" or "Prisoner of War" into the classification of military personnel. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I'm having some difficulty the last couple of days deciding how I was going to read this blurb. You can see I'm not picking it up. I am going to do my own blurb. I've been here for sixteen years and, last session, it was mentioned that I might have been here in the 1800s by a certain Senator friend of mine. I wanted to clear that up; it's only been sixteen years, but sometimes it feels like it might have been the 1800s that I was here. Senator Clegg is laughing; he must have been the one that made that comment. Joint Resolutions, what are they? Over the sixteen years, I've been part of a good number of them, as some of you have been also. A Joint Resolution gets signed. It feels good. Goes to Washington. Does somebody read it? I don't know. I've never sat in Washington. I do know that if my memory serves me correctly, that one time in my sixteen years that I...that this chamber of the House when I was over there, received a reply from all four of our congressional delegation saying thank you. Occasionally one or two will write back and say thank you, but it's very rare when the delegation jumps up and says, "Thanks a lot guys for sending this down to us to read." Think about it. You look upstairs and there aren't too many folks up there. The committee that had the hearing on this piece of legislation had two individuals. Actually, a third individual. The three people that showed up for the hearing. The hearing before that that day had about thirty people and it went on for about two hours to talk about horses. I'm talking about POW. Horses are very near and dear to a lot of people; that's why those thirty some odd people showed up to talk on it. This subject is very near and dear to my heart, and two people, three people showed up. The three people are Bob Jones. Bob Jones is a gentleman who is involved with POW affairs for many years. He has a vigil every Thursday, I believe it is, up in the town of Meredith. One of Carl Johnson's, Senator Johnson's constituents. There was another gentleman there with him. I don't remember his name, but he's been involved with this affair with Bob. He and Bob have worked together on this POW issue. The third member was Senator Letourneau who signed onto this legislation and was there representing our Veterans' Council. I didn't see any other Veteran's Council there; I guess they figured that Bob could carry the load for the whole group of them. Is that a slam at them? That's a little disgust I guess, not a slam. I'm also slamming my VFW Post. Nobody showed up from my VFW Post. Nobody showed up from my American Legion Post. There weren't any veterans there. There are no veterans up here today to say, "Gee, this is a big issue." So I understand that some of us have issues that are big to us, but they don't mean a heck of a lot to a lot of people. The reason I put this piece of legislation in was because we have a member of the staff of this legislature who is very big into veterans' affairs. He's a veteran himself and has done many great things for the veterans of the state of New Hampshire. It's Kenny Leidner. Kenny came to me and asked me to do this. I said, "what are you talking about Kenny?" "Jack, the POW has been pulled out of the vernacu-

lar of the defense department and they are not treating it the way it has been in the past." I got on the telephone and made a phone call. Senator Gregg's office was nice enough to send me a letter that Senator, I believe it's O'Connell or O'Donnell from Kentucky, Mitch O'Donnell, O'Connell, had written a letter to the Under Secretary of Defense asking for a clarification on it, just like I did. After reading the letter three times, I didn't understand it. It was a typical political letter. Yes, no, maybe, why, how, how come. I still don't know why it's out of there. As you approach this State House, you look up, I know some of you do, I know I do every time I come in the front door, there is a POW flag flying up there. That POW flag legislation was introduced in 1987 by a rookie Representative who didn't know where the LOB was and had never been in the State House before, but because of something that happened on the select board that he sat on, decided to come up here and get that POW flag flying. The Senate, in its smartness, and Senator Roberge was part of that Senate, but she doesn't remember the situation, but I sure do. And I am sure she wasn't part of the...what happened. But a certain Senator, decided it was only...should be flown four days. That was an amendment he put on. And me being a rookie, didn't know how to handle that, so I said, "well, a little bit is better than nothing." A few years later, Senator Johnson, my good friend Senator Johnson, came to me and said, "Gee, Jack, I've got a bill. I want to fly that flag 365 days a year". So it happened, that's why it's up there. Carl Johnson sponsored that bill and I was happy to co-sponsor it. The reason that I sponsor that bill? It's not for anyone in the state of New Hampshire, but for the POWs all over this country of ours. On a summer night in 1951, a warm summer night, we got a little bit of fun on a certain hill, somewhere in the hills of Korea. There were six of us on the observation post. The next morning, when the sun started to rise, there were two alive, two dead, and two missing. I went down the hill looking for those two missing people. I didn't find them. There was a river down at the end of the hill, at the bottom of the hill. I'm sure they were shot and thrown in the river. But they were never returned. When the reports came out in '53 when they had the swap, there was never stipulated that those folks were returned. So as far as I am concerned, they're still POWs or MIAs. A young man from Texas and a young man from Oklahoma. That was my reason for that flag. For those two guys. I'm asking something that I've never done on the floor of this Senate or over in the House when I was there. I'm looking at the press. And I'm asking the press for a favor, and I've never done it before, but I am going to do it today. I would like you guys to do something as far as an article or articles go into your newspapers, and ask people who are concerned about the POW being removed, and it hasn't been evident, fellows. You've heard me say there were three people at the hearing. There's nobody here today raising heck about the POW. But if the people of this state feel the way I do, and hopefully a lot of others do, please write letters to the congressional...our congressional delegation. If they don't know their addresses, maybe you guys can publish them or they can get them from their town or city halls. Very near and dear to me, but I understand that everything isn't near and dear to everybody in this body. So I will sit down and say please vote for this even though, to me, it means nothing when it gets to Washington. What it means is these guys out there, being able to get the word out to the citizens. And if they give a damn, maybe they will do something about it so the POWs of the world will not be forgotten. I think it's a disgrace. Thank you.

SENATOR BOYCE: Senator Barnes, if you would? I just want to ask if it's possible that because of your well known stature as a champion of such affairs, being the prime sponsor of this, backed up by Senator Johnson, Senator Letourneau and Senator Kenney, that possibly some of the people who might have come and testified, felt that it was...that you ably would carry the ball, and they thought maybe their own personal input wasn't needed, and possibly it's because you scared them off, you're so formidable, that they felt they weren't needed?

SENATOR BARNES: I am glad you asked that question, because, no, that's not the case at all. It's apathy, and really, not getting behind an issue. When I introduced that bill back in 1986, there wasn't a soul there from my VFW Post. Not a soul. And that night when I went in there, I'm glad there were no women, because we had some words for some of those members that were still sitting on the stools instead of being up here to do something about it. So no, I disagree with that. I think the veterans let this POW thing down, and I blame the veterans organizations in this state for not being here today. It's nothing to do with me or the sponsors. It's for them having apathy on this issue, and apparently most of them not giving a damn.

SENATOR BOYCE: Thank you. And I agree with you wholeheartedly.

SENATOR LETOURNEAU: Please. As a co-sponsor, I just wanted to read a statement into the record. Thank you, Mr. President for recognizing me. Thank you, Senator Barnes, for being such a leader in this issue. As a member of the State Veterans' Advisory Committee, I wish to go on the record stating that the committee's in full support of Senate Joint Resolution 4 in urging the reinstatement of the terminology of "Prisoner of War" into the classification of military personnel. I'm also a co-sponsor, as has been mentioned here, of this particular piece of legislation. Although the Department of Defense would argue that designating POWs not being replaced by another term such as "missing", "captured", or "isolated personnel", I would argue that it's being pushed to the background. The reasons are not a point of discussion at this time, but the point of discussion is, "should military personnel, captured during an armed conflict," regardless **TAPE CHANGE** military and certain other personnel captured during an armed conflict between two countries when they are falling into the power of the enemy by states which are parties to the conflict. And since the enemy we are now fighting does not represent a government of the country, then our personnel are not POWs." If this seems confusing to you, as it does to me, then you can understand why this bill is being brought forward. Just let me close by stating a hypothetical question to all of you. If our colleague, Lieutenant Colonel Joseph Kenney, or Senator Boyce's son were captured and by the enemy, would you not consider them a "prisoner of war"? I urge this body to pass this Senate Joint Resolution 4, and thank you for your time and consideration.

SENATOR CLEGG: Thank you, Mr. President. I rise in support of the recommendation, but I also rise in response to my colleagues' comments. It's rare, if ever, that veterans show up and ask for recognition. It's rare, if ever, they come in and say, "Do this for me". Unfortunately, those of us who aren't veterans don't realize sometimes our presence at those hearings is much more important than the words on the paper, or as important. I apologize for not going. But I can tell you that I looked at the sponsors. As Senator Boyce has said, and I said, "I dare anybody to

go and oppose that bill." So, my apathy was really my respect for the sponsors knowing that I get a chance to vote on that on this floor. And to Senator Barnes, I offer my apology. And I will never let it go again and just assume that people know that I am in favor. And I will come in and I will sign up and I will speak in favor. Thank you.

SENATOR BARNES: Yes, I guess it's a would you believe. No way, and if I did, I'm sure apologizing. Seeing that I might have been here in the 1800s, this might have been an 1800s slip, but I did not take a shot at any of the Senators, my fellow Senators for not being there. I didn't expect any of my fellow Senators to be there. The people I'm taking a shot at is those veterans' groups. And Bob Jones, the day before the hearing, Senator Clegg, had a letter to the editor in the *Union Leader*, if not other papers also, asking the veterans to come up here. So I don't take the veterans off the hook. And please, there was no way...I'm not looking at any of my fellow colleagues here for not being there. That's not the idea. My shot is at the veterans who... To me, it's important; if it isn't important to them they weren't here. And this group that Senator Letourneau mentioned, that they're in favor of it, well I think that's fantastic they're in favor of it. But many hearings up here, they've been up here as a group, and not one of them except this fellow that represents the Senate was here. That's where my anger is; it's not at the Senators. You guys and gals have got plenty of things to do, so that doesn't enter into it...so please don't...you don't have to apologize for not being there, Senator Clegg. That's not necessary. Those veterans' groups are the ones who need to apologize for not sticking up for their colleagues.

SENATOR CLEGG: Senator, there is no doubt in my mind that you didn't mean to point a finger at any one in here, but that doesn't mean that I can't feel bad that I didn't go and didn't support you.

SENATOR BARNES: Don't feel bad.

SENATOR CLEGG: And I also want you to know that I thought you were from the 1800s because of the wisdom you show us on the floor.

**The question is on the adoption of the committee report of ought to pass.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Hassan.**

**The following Senators voted Yes: Gallus, Johnson, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

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

**Yeas: 23 - Nays: 0**

**Adopted.**

SENATOR BARNES: Mr. President, point of order, if I could?

SENATOR GATSAS (In the Chair): Senator Barnes.

SENATOR BARNES: Notice that on that resolution that Senator Kenney's name is on there. I wanted to recognize that twenty-three to zero vote, and I guess it's illegal, but I sure as heck would like it twenty-four for our friend here who's going to be back next week because he is a co-sponsor of that bill, and I know he wanted to be part of this. I don't

know how we do that, if we can do it. I guess the clerk is shaking her head so I guess in the records, I want it, and in the newspaper I want, that Senator Kenney from Kuwait City is saying, "Aye".

### PARLIAMENTARY INQUIRY

SENATOR BOYCE: Parliamentary inquiry?

SENATOR GATSAS (In the Chair): Parliamentary Senator Boyce.

SENATOR BOYCE: Would it be possible that next session someone make a motion that we reconsider our action today on this vote, and then afford that opportunity to our missing colleague?

SENATOR GATSAS (In the Chair): Yes.

SENATOR CLEGG: Then would it be proper to table the bill? Too late? Okay.

SENATOR GATSAS (In the Chair): The bill will be held until Senator Kenney comes back. There will be a motion for reconsideration and re-take the vote.

### Ordered to third reading.

**SB 261**, establishing a committee to study a highway project between Pembroke and Bow. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 6-0. Senator Burling for the committee.

SENATOR BURLING: Mr. President, I move inexpedient to legislate on Senate Bill 261. Though this is an idea that has great merit, it's not on the ten year highway plan, the fourteen year highway plan, or the eight year whatever we have, and the committee felt that it was, not being on the plan, premature. So we move inexpedient to legislate on 261.

SENATOR LARSEN: Thank you, Mr. President. The issue of the widening of I-93 as it goes through Concord is an important one to our community and anybody else who supports tourism in this state or the free flow and passage of people on our highways. One alternative is in fact to look at the possibility of a bridge at the Bow Junction. There was a pre-existing bridge. It makes some sense. And this bill was in fact to encourage the Department of Transportation to do that study and to identify the costs and if there would be some possibility of reducing traffic through the bottleneck of Concord's Main Street and the Merrimack River by encouraging traffic attempting to go west to use an alternate route. In fact, the issue is part of the ten year highway plan in the sense that the Department of Transportation assured us that they are studying this possibility and that it is part of...they have hired a consultant and are looking at the possibility of this reducing traffic and reducing the need for highway widening through this sensitive and historic area. So the bill accomplishes an important step in highlighting to the Department of Transportation that this is of interest, and the Department of Transportation has assured those of us who are tracking this that they are studying it and that they will include the city of Concord participants in that study and welcome us at their meeting. So, while it is inexpedient to legislate, I believe it moves the concept a step further. And it also is of importance to those in Pembroke whose communities I represent, and our nearby twin city of Allenstown as they attempt to get to their homes and develop their own industrial parks as well. So it's an important concept and I think we've moved it a step forward. Thank you.



SENATOR BURLING: Senator, would you believe that I think you have much more substantively and accurately reflected the discussion that took place in committee?

SENATOR LARSEN: I believe that. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 278-FN**, exempting certain transfers from the real estate transfer tax. Ways and Means Committee. Inexpedient to legislate, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 278 inexpedient to legislate. The committee was concerned that this bill would create a loophole opening the door for individuals to hide their assets in a corporate transfer in order to avoid paying the real estate transfer tax. While the concept of exempting transfer of assets from a partnership or corporation into a limited liability company does have merit, there is another bill, Senate Bill 384, currently before the Finance Committee. Since they deal with the same issue, the committee feels it makes sense to work with one bill. The Ways and Means Committee recommends that Senate Bill 278 be found inexpedient to legislate and asks for your support. Thank you.

SENATOR BURLING: Thank you, Mr. President. Just briefly. This is an effort that I brought based primarily on my commitment to the notion that New Hampshire will be business friendly as a location in which business people can start businesses and choose the format in which they wish to do business without the risk of taxation. That was the principle when we adopted the LLC. I was a prime sponsor of that. No, I was a sponsor, not the prime, of that legislation almost twelve years ago. That was the concept. I'm happy there is a bill that we can work with. I just hope we can stay focused on the importance of being tax neutral in business format.

**Committee report of inexpedient to legislate is adopted.**

**MOTION TO REMOVE FROM THE TABLE**

**Senator Letourneau moved to have SB 330 removed from the table.**

SENATOR LETOURNEAU: Thank you, Mr. President. I'd like to move to take Senate Bill 330 off the floor at this time, off the table at this time. Yes. Thank you, Mr. President. As you know, last week we had this bill on the floor and you had asked to hold it for a week so you could confer with your local officials in Manchester to see if it affected you. And you have told us this morning that you're fine with it and it's time to move on.

**Adopted.**

**SB 330**, relative to outdoor advertising.

SENATOR LETOURNEAU: I'll speak to my motion. Thank you, Mr. President. I move Senate Bill 330 ought to pass. Upon approval of a municipality, this bill exempts banners posted upon utility poles or similar nature from the definition of advertisement purposes with the respect of posting certain outdoor advertising. It also limits the business sponsor name by covering no more than 25 percent of the area of the banner. This legislation will assist utility workers with less hin-

drance while climbing poles, and I will note that it also requires an agreement between the municipalities and the utilities who own the poles. Thank you very much.

**The question is on the motion of ought to pass.**

**Adopted.**

**Ordered to third reading.**

SENATOR GOTTESMAN: We finished voting on that?

SENATOR GATSAS (In the Chair): We're on the enrolled amendments.

SENATOR GOTTESMAN: You voted on the amendment. Did you vote on the bill as amended?

SENATOR GATSAS (In the Chair): I don't think it was amended.

SENATOR GOTTESMAN: Okay, thank you. Sorry. It's a heated debate really. I just wanted to, in anticipation of these three motions, I just want to tell you that the enrolled bills, Rules and Enrolled Bills Committee, has met and reviewed some of the language of proposed bills. All these changes are minor. They're typographical. You're welcome to visit me on them, or I'll give them to you one by each.

SENATOR GATSAS (In the Chair): Senator Gottesman, I believe everybody has them in their packets.

SENATOR GOTTESMAN: Okay, so here we go. I move adoption on the enrolled bill amendment to Senate Bill 72, relative to licensing of public adjusters.

**January 30, 2006**

**2006-0654-EBA**

**04/10**

**Enrolled Bill Amendment to SB 72**

The Committee on Enrolled Bills to which was referred SB 72

AN ACT relative to the licensing of public adjusters.

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 72**

This enrolled bill amendment makes technical changes.

**Enrolled Bill Amendment to SB 72**

Amend RSA 402-D:4, IV as inserted by section 1 of the bill by replacing line 3 with the following:

of state police or the department of justice, and the Federal Bureau of Investigation.

Amend RSA 402-D:10, I(d) as inserted by section 1 of the bill by replacing line 1 with the following:

(d) Improperly withholding, misappropriating, or converting any moneys or properties

Amend RSA 402-D:14, III as inserted by section 1 of the bill by replacing line 3 with the following:

appealed in accordance with RSA 541.

Senator Gottesman moved adoption.

**Adopted.**

SENATOR GOTTESMAN: I move adoption of the enrolled bill amendment to House Bill 406, revising certain provisions of the home education statute.

**January 26, 2006**  
**2006-0628-EBA**  
**08/09**

**Enrolled Bill Amendment to HB 406**

The Committee on Enrolled Bills to which was referred HB 406

AN ACT revising certain provisions of the home education statutes.

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 406**

This enrolled bill amendment inserts an RSA section heading and makes a technical correction.

**Enrolled Bill Amendment to HB 406**

Amend section 5 of the bill by replacing lines 1-3 with the following:

5 Home Education; Hearing; Notice and Procedure. RSA 193-A:7 is repealed and reenacted to read as follows:

193-A:7 Hearing, Notice, and Procedure.

I. A parent shall be entitled to a due process hearing

Senator Gottesman moved adoption.

**Adopted.**

SENATOR GOTTESMAN: I move adoption on the enrolled bill amendment to House Bill 1184, relative to the majority vote required for the use of bond proceeds, certain school districts, or municipalities.

**February 3, 2006**  
**2006-0761-EBA**  
**03/01**

**Enrolled Bill Amendment to HB 1184**

The Committee on Enrolled Bills to which was referred HB 1184

AN ACT relative to the majority vote required for the use of bond proceeds in certain school districts or municipalities.

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 1184**

This enrolled bill amendment inserts an omitted comma and an omitted conjunction.

**Enrolled Bill Amendment to HB 1184**

Amend RSA 33:3-a, II as inserted by section 1 of the bill by replacing lines 4-7 with the following:

city council or a town, school district, or village district by a vote of 2/3 of the voters present and voting at an annual meeting, [and] a county by a 2/3 vote of all the members of the county convention, *a political subdi-*

*vision which has adopted official ballot voting procedures pursuant to RSA 40:13 by a vote of 3/5 of those voting, and a municipality that has adopted an*

Senator Gottesman moved adoption.

**Adopted.**

SENATOR ODELL: Thank you, Mr. President. I move that we take Senate Bill 322 off the table.

### MOTION TO REMOVE FROM THE TABLE

Senator Odell moved to have SB 322 removed from the table.

**Adopted.**

**SB 322**, establishing the business loan enhancement program.

The question is on the committee report of ought to pass.

Senator Odell offered a floor amendment.

Sen. Odell, Dist 8

**February 8, 2006**

**2006-0843s**

**06/09**

### Floor Amendment to SB 322

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

AN ACT establishing the business loan enhancement program and relative to the capital asset backed guarantee program.

Amend RSA 162-A:13-b, III (b) as inserted by section 1 of the bill by replacing it with the following:

(b) The final maturity date of the loan shall not be later than the later of 10 years from the date the loan was made or 10 years from the date the project was placed in service.

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

2 Capital Asset Backed Guarantee Program; Loans; Final Maturity Date. Amend RSA 162-A:13, III(c) to read as follows:

(c) The final maturity date of the loan shall not be later than the later of [5] **10** years from the date the loan was made or [5] **10** years from the date the project was placed in service, provided that ~~the final maturity date of the loan may be as late as the later of 10 years from the date the loan was made or 10 years from the date the project was placed in service to the extent necessary for the loan to qualify as a third party loan for a project receiving financing from the certified development company (504) loan program of the United States Small Business Administration and provided further that~~ each loan may be renewed or refinanced for up to 2 additional [5-year] **10-year** periods.

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

**2006-0843s**

### AMENDED ANALYSIS

This bill establishes a business loan enhancement program that provides a state guarantee for certain business loans if the governor and council approve. The loan guarantee is limited to the lesser of \$250,000 or 22.23 percent of the maximum principal amount.

This bill clarifies the final maturity date of loans under the capital asset backed guarantee program.

SENATOR ODELL: Thank you, Mr. President. I move Senate Bill 322 ought to pass with a floor amendment that I will bring forward in a moment. This program expands the authority of the business finance authority and is an economic generator for the state. Under current regulatory rules, local banks are required to limit their maximum loan amount to 80 percent of the market value of collateral pledged to secure repayments of the loan. The restrictions apply even when a business has a very strong cash flow or a long-standing relationship with a bank that would indicate that a business can support more debt. The Business Loan Enhancement Program will cover the portion of the loan that exceeds the banks' lending guidelines. There is a need for this program both rural and inner city areas. The Finance Committee asks your support for the motion of ought to pass. And, I would also like to speak to floor amendment 0843. This is a simple correction and what it does is basically, if you read the legislation, it sounds as if a loan has to be for ten years or longer, and we want to have the loan for up to ten years. And so that is corrected in this. The second section of the floor amendment brings into compliance and into parallel the 504 small business loan program for the small business administration with our state law in this section. So those are the two changes that are in the amendment. Thank you, Mr. President.

SENATOR LARSEN: Of Senator Odell. When you're modifying some of the 504 loan program, is that with the concurrence of entities that do 504 loans? For example, the Concord Regional Development Corporation uses that process for low interest loans, and I wondered if they were aware of these changes and supported them. I mean, is the 504 community aware of these changes?

SENATOR ODELL: The 504 community is aware, although this section only applies to the business finance authority. This is only dealing with the business finance authority loan program, and it puts us in using the same language, the ten years versus the five years that is in the rules of the 501 statute for the small business administration.

SENATOR LARSEN: Okay, thanks.

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

### RESOLUTION

Senator Clegg 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 all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

### LATE SESSION

#### Third Reading and Final Passage

**SB 234**, including the International Residential Code 2000 in the definition of the state building code.

**SB 260**, relative to certification of a registered nurse responsible for emergency medical transportation.

**SB 265**, relative to workers' compensation requirements for out-of-state employers and employees.

**SB 271**, relative to the availability of voter checklist information.

**SB 274**, adding court security to the duties of the New Hampshire court accreditation commission.

**SB 289-FN**, relative to the brain and spinal cord advisory council.

**SB 322**, establishing the business loan enhancement program and relative to the capital asset backed guarantee program.

**SB 330**, relative to outdoor advertising.

**SB 344**, establishing a committee to study state benefit programs for national guard members.

**SB 389**, establishing a committee to study energy efficiency programs funded by the systems benefits charge.

**SJR 4**, urging Congress to require the Department of Defense to reinstate the terminology of "POW" or "Prisoner of War" into the classification of military personnel.

**HB 100-FN-A-L**, amending the formula for funding public education.

**HB 331**, relative to restraining dogs and relative to livestock working dogs.

## ANNOUNCEMENTS

### RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, processing enrolled bill reports and amendments.

**Adopted.**

**In recess to the Call of the Chair.**

### HOUSE MESSAGE

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

**HB 76**, relative to distribution of state aid to charter schools.

**HB 162**, relative to general rules for vessels operating on water.

**HB 278**, relative to the alternative budget procedure in school administrative units.

**HB 345**, requiring photo identification to obtain a ballot.

**HB 347**, relative to indicating citizenship on drivers' licenses and non-drivers' identification cards.

**HB 391**, relative to election affidavits.

**HB 588**, relative to suspension of drivers' licenses after a motor vehicle accident.

**HB 621-FN**, requiring disclosure of gifts and campaign contributions by lobbyists.

**HB 626-FN-L**, relative to the right-to-know law.

**HB 657-FN-L**, relative to promoting community revitalization.

**HB 669-FN**, establishing a committee to study state laboratory water tests and fees for such tests collected by the department of environmental services.

**HB 688-FN**, relative to the regulation of mental health practitioners and the procedures of the board of mental health.

**HB 716-FN**, relative to securities regulation.

**HB 1115**, relative to the definition of resident for purposes of fish and game laws.

**HB 1118**, requiring paper ballots at all elections.

**HB 1119**, relative to naming the Richard Monahan Bridge in the town of Carroll.

**HB 1121-L**, establishing a committee to study rulemaking and licensure issues relative to assisted living and residential care.

**HB 1122**, relative to special elections.

**HB 1135**, making a technical correction to the Uniform Interstate Family Support Act.

**HB 1147**, relative to the conduct of recounts.

**HB 1166**, relative to electronic ballot counting machines.

**HB 1179**, repealing a requirement that the department of transportation spend a certain amount for litter removal that is determined based on fees paid to the liquor commission.

**HB 1185**, relative to Volunteer NH.

**HB 1198**, establishing a committee to study highway rest areas.

**HB 1204**, relative to human immunodeficiency virus education, prevention and control.

**HB 1214**, establishing a study committee to identify and assess community-based, educational and social/human services programs that serve families with children 8 years old and younger.

**HB 1220**, establishing a committee to study a statewide review of all unanticipated fatalities and serious injury involving incapacitated adults and individuals 60 years or older.

**HB 1226-FN**, relative to the New Hampshire Humanities Council.

**HB 1228-FN**, relative to the sale or lease of state-owned real estate.

**HB 1279**, establishing a commission to study state medicaid reimbursement.

**HB 1283**, relative to sheep and goat identification requirements.

**HB 1285**, making certain technical corrections to the adoption statute.

**HB 1296**, relative to the voluntary scrapie flock certification program.

**HB 1332**, establishing a commission to study health care in New Hampshire correctional facilities.

**HB 1362**, relative to permitting audio and video recording on school buses.

**HB 1461**, establishing a task force to study Temporary Assistance to Needy Families (TANF) benefits.

**HB 1468-FN-L**, relative to Reservoir Road in the town of Deering and Lyme Road in the town of Hanover.

**HB 1471-FN**, repealing the statutes relative to regional highway conferences.

**HB 1489**, relative to school emergency response plans.

**HB 1498**, establishing a risk management unit within the department of administrative services and relative to the rulemaking authority of the department of administrative services.

**HB 1503**, relative to financial programs administered by the postsecondary education commission.

**HB 1539**, establishing a committee to study the shortage in speech language services and the criteria for certification as a speech language specialist.

**HB 1579**, relative to membership of the air resources council.

**HB 1605-FN**, relative to transfers from the prepaid fish and game license fund.

**HB 1657**, establishing a wildlife legacy initiative for gifts and donations for fish and wildlife conservation programs.

**HB 1658**, relative to authorizing agreements by the fish and game department with nonprofit partners for the purpose of accepting gifts, grants, bequests, or donations to further department goals.

**HB 1659**, relative to the use of certain small caliber firearms in taking wildlife.

**HB 1688**, prohibiting the use of gasoline-powered watercraft on Head's Pond in Hooksett.

**HJR 22**, a resolution in recognition and support of New Hampshire's participation in the Experimental Program to Stimulate Competitive Research.

### INTRODUCTION OF HOUSE BILL(S)

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 76 to HJR 22, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 76**, relative to distribution of state aid to charter schools. (Finance)

**HB 162**, relative to general rules for vessels operating on water. (Transportation and Interstate Cooperation)

**HB 278**, relative to the alternative budget procedure in school administrative units. (Education)

**HB 345**, requiring photo identification to obtain a ballot. (Internal Affairs)

**HB 347**, relative to indicating citizenship on drivers' licenses and non-drivers' identification cards. (Transportation and Interstate Cooperation)

**HB 391**, relative to election affidavits. (Internal Affairs)

**HB 588**, relative to suspension of drivers' licenses after a motor vehicle accident. (Judiciary)

**HB 621-FN**, requiring disclosure of gifts and campaign contributions by lobbyists. (Public and Municipal Affairs)



- HB 626-FN-L**, relative to the right-to-know law. (Public and Municipal Affairs)
- HB 657-FN-L**, relative to promoting community revitalization. (Public and Municipal Affairs)
- HB 669-FN**, establishing a committee to study state laboratory water tests and fees for such tests collected by the department of environmental services. (Energy and Economic Development)
- HB 688-FN**, relative to the regulation of mental health practitioners and the procedures of the board of mental health. (Health and Human Services)
- HB 716-FN**, relative to securities regulation. (Banks and Insurance)
- HB 1115**, relative to the definition of resident for purposes of fish and game laws. (Environment and Wildlife)
- HB 1118**, requiring paper ballots at all elections. (Internal Affairs)
- HB 1119**, relative to naming the Richard Monahan Bridge in the town of Carroll. (Transportation and Interstate Cooperation)
- HB 1121-L**, establishing a committee to study rulemaking and licensure issues relative to assisted living and residential care. (Health and Human Services)
- HB 1122**, relative to special elections. (Internal Affairs)
- HB 1135**, making a technical correction to the Uniform Interstate Family Support Act. (Judiciary)
- HB 1147**, relative to the conduct of recounts. (Internal Affairs)
- HB 1166**, relative to electronic ballot counting machines. (Internal Affairs)
- HB 1179**, repealing a requirement that the department of transportation spend a certain amount for litter removal that is determined based on fees paid to the liquor commission. (Finance)
- HB 1185**, relative to Volunteer NH. (Executive Departments and Administration)
- HB 1198**, establishing a committee to study highway rest areas. (Transportation and Interstate Cooperation)
- HB 1204**, relative to human immunodeficiency virus education, prevention and control. (Health and Human Services)
- HB 1214**, establishing a study committee to identify and assess community-based, educational and social/human services programs that serve families with children 8 years old and younger. (Education)
- HB 1220**, establishing a committee to study a statewide review of all unanticipated fatalities and serious injury involving incapacitated adults and individuals 60 years or older. (Executive Departments and Administration)
- HB 1226-FN**, relative to the New Hampshire Humanities Council. (Finance)
- HB 1228-FN**, relative to the sale or lease of state-owned real estate. (Finance)
- HB 1279**, establishing a commission to study state medicaid reimbursement. (Ways and Means)
- HB 1283**, relative to sheep and goat identification requirements. (Environment and Wildlife)

**HB 1285**, making certain technical corrections to the adoption statute. (Judiciary)

**HB 1296**, relative to the voluntary scrapie flock certification program. (Environment and Wildlife)

**HB 1332**, establishing a commission to study health care in New Hampshire correctional facilities. (Judiciary)

**HB 1362**, relative to permitting audio and video recording on school buses. (Education)

**HB 1461**, establishing a task force to study Temporary Assistance to Needy Families (TANF) benefits. (Health and Human Services)

**HB 1468-FN-L**, relative to Reservoir Road in the town of Deering and Lyme Road in the town of Hanover. (Transportation and Interstate Cooperation)

**HB 1471-FN**, repealing the statutes relative to regional highway conferences. (Energy and Economic Development)

**HB 1489**, relative to school emergency response plans. (Education)

**HB 1498**, establishing a risk management unit within the department of administrative services and relative to the rulemaking authority of the department of administrative services. (Executive Departments and Administration)

**HB 1503**, relative to financial programs administered by the postsecondary education commission. (Education)

**HB 1539**, establishing a committee to study the shortage in speech language services and the criteria for certification as a speech language specialist. (Education)

**HB 1579**, relative to membership of the air resources council. (Executive Departments and Administration)

**HB 1605-FN**, relative to transfers from the prepaid fish and game license fund. (Ways and Means)

**HB 1657**, establishing a wildlife legacy initiative for gifts and donations for fish and wildlife conservation programs. (Environment and Wildlife)

**HB 1658**, relative to authorizing agreements by the fish and game department with nonprofit partners for the purpose of accepting gifts, grants, bequests, or donations to further department goals. (Ways and Means)

**HB 1659**, relative to the use of certain small caliber firearms in taking wildlife. (Environment and Wildlife)

**HB 1688**, prohibiting the use of gasoline-powered watercraft on Head's Pond in Hooksett. (Environment and Wildlife)

**HJR 22**, a resolution in recognition and support of New Hampshire's participation in the Experimental Program to Stimulate Competitive Research. (Public and Municipal Affairs)

**Out of Recess.**

### LATE SESSION

Senator Clegg moved that we adjourn from the late session.

**Adopted.**

**Adjournment.**

*February 16, 2006*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer. Morning. Sometimes even this group forgets that it is one body and not two or more unequally and uncomfortably yoked parts. Sometimes in fact, many times the structures and the traditions and the habits of this Senate or any group within our nation and even the nation itself, cause us to highlight and dwell and focus on our disagreements instead of the things that matter. In fact, the disagreements sometimes blind us from the number of things we have in common. And when what divides rules any room, respect for one another and the willingness to learn and grow are usually the first victims. But thankfully, every now and again something comes along that lets us see clearly the oneness we actually have. We need that view in order to keep our varying opinions and differences in their proper subservient place. The something that comes along today, back in the midst of this one body, is Lieutenant Colonel Joseph Kenney. Welcome home, Senator. Whether R or D we honor you, for you have honored us because you are one of us. St. Paul once wrote this, "When one member of the body is honored, every member is honored, So thank you, Joe, and thanks for all those in uniform that you represent for reminding us that the number one is much bigger than any other number. Let us pray:

*Prince of peace, we commend to Your gracious care and keeping all the men and women of armed forces at home and abroad. Defend them day by day with your protection. Strengthen them in their trials and temptations, give them courage to face the perils which beset them and grant them a constant sense of Your abiding presence wherever they may be. Amen.*

SENATOR GATSAS (In the Chair): Today, I look at the seat that represents Senate District 3 and I see our colleague and our friend, Senator Joe Kenney. Senator Kenney, thank you for your service to our country. You are our hero. Senators and staff, and guests, please join me in welcoming back to the New Hampshire State Senate, the honorable Senator from District 3, Senator Joe Kenney.

The Senate would also like to acknowledge the family of Senator Kenney, who could not join us here today. His wife Asha, Christian his son, and Caroline his daughter, the New Hampshire State Senate thanks you and honors you.

This next part of our Senate program has some very special significance. There will be a presentation of the Color Guard, and the National Anthem will be sung to welcome back Lieutenant Colonel Joe Kenney, who has so honorably served our country. We are humbled by your service and by your courage. In the Senate Chamber today, we proudly wear red, white and blue ribbons to welcome you home. The Senate will be attentive to the posting of the colors by the Manchester West Naval Junior ROTC. Please rise for the posting of the colors. Please post the colors.

Senator Kenney led the Pledge of Allegiance.

SENATOR GATSAS (In the Chair): The Senate will be attentive to the National Anthem sung by the Manchester West Choir.

I recognize Senator Barnes for a proclamation for Senator Kenney.

SENATOR BARNES: Thank you, Mr. President. I would like to have the good colonel come up with me, and I would also like any members of this body who are veterans of our armed services. All of you please join us up here. This is a state Senate, and it's a resolution honoring Joseph D. Kenney. Whereas, Joseph Kenney has been active in the U.S. Marine Corps since 1980; and Whereas, Joseph Kenney is currently a Lieutenant Colonel; and Whereas, Joseph Kenney, who was called to serve his country on the war on terror; and Whereas, Senator Joseph Kenney was helping to develop the Iraqi ground forces; and Whereas, Joseph Kenney has been serving in Iraq for the past five months; and Whereas, Joseph Kenney will resume his district three senatorial duties serving the great state of New Hampshire. Now therefore, pursuant to a motion of Senator Theodore Gatsas, be it resolved by the New Hampshire Senate, that this legislative body hereby congratulates and honors Joseph D. Kenney, and further that the Senate extends its best wishes for continued success. And it is signed by everyone, all the members of this body. And I thank you all for being part of it. Colonel.

SENATOR KENNEY (Rule #44): Thank you, Mr. President. Before these fine young men and women leave the auditorium here or chamber, I'd like to thank you for coming out and doing what you, to the West High School students. I was a Marine Reservist for six years across from your high school from 1980 to 1986 and I've always admired the activities that go on at West High School, and I just want to thank you for coming out here today, because part of the reasons why I serve in uniform is because of your generation and because you're going to hold the burden of freedom for tomorrow. And it's because of your enthusiasm and activity is why I serve in uniform. So I want to thank you for coming out today.

### INTRODUCTION OF GUESTS

SENATOR KENNEY (Rule #44): Thank you, Mr. President. First of all, thank you for welcoming me back. This the first Resolution that I've ever received in the state of New Hampshire and it will always be treasured. "Shukran" means "thank you" in Arabic, and "Inshallah" means "God willing", and it's God willing that I'm here today. But I have a lot of thanks. I just want to point out to a few folks. My family, who gave me a great support. A young family. My wife, who is a pure trooper to hold down the household. They deserve the most credit. I'd like to really thank the State House Activities and Recreational Committee and the work that they do. Unbeknownst to some of us, they ship a lot of packages overseas and this year I was able to get a Christmas tree. In 1991, I didn't have a Christmas tree when I spent Christmas in Saudi Arabia. This year I was able to have a Christmas tree, and with their love and support and cards and little gifts, it made this Christmas all that much more memorable. So I would really like to thank you all for everything that you do, not just for me, but all for the men and women that are in uniform. It's a great tribute that you do the work that you do. I'd also like to say that I want to thank my colleagues in the Senate. And if my colleague...my secretary could pass out a gift that I would like to give to you that I had specially made. This is a coin that just...that is traditionally given out in the military to other servicemen who are leaving end of tour duty. And it just simply says "Live Free or Die" with the state emblem, "Lieutenant Colonel Joe Kenney", "SEMPER FIDELIS". It has some various coat of arms from my service, Multi-National Forces Iraq, and Multi-National Corps Iraq, and "OPERATIONAL IRAQI FREEDOM". This is just a token of appreciation of all the love and support that you gave to me while I was in Iraq. At some point, I'd like to talk about my experiences in Iraq. There's

a lot of activity going on over there. It's a very complex environment. It's a fascinating country with a lot of different problem sets, but we're making steady progress. We're doing the right thing. And it's been my honor to serve with the young generation of men and women in uniform who are spectacular, who are bright, intelligent and more diverse than any time in our history, who go over there as volunteers, to serve our country. To me, that has been the most honor and privilege just to serve side by side with those young men and women. So it makes it all worthwhile. That's really all I wanted to say today. And I just...Mr. President, I'll leave on this note, that...thank you for your support. This Christmas, for my family was very much a nice Christmas for them because one of our Senators had a connection to Santa Claus and was able to bring Santa Claus to our household and provide the gifts and Senator Letourneau provided the pictures, and I got those pictures while I was in Iraq this holiday season. That's the toughest time for any serviceman or woman is during the holiday seasons. And through your love and appreciation, Mr. President, and your staff, and the colleagues here, it's been a most enjoyable experience while I was away, knowing that my family was taken care of. Thank you so much.

### **MOTION OF RECONSIDERATION**

Senator Clegg: Mr. President, I move reconsideration on SJR 4, and I urge my colleagues to please vote in support of the reconsideration. The reason, as you remember last week was, we were absent one member, and we would like to give him an opportunity to be on record. Thank you.

**Adopted.**

**SJR 4**, urging Congress to require the Department of Defense to reinstate the terminology of "POW" or "Prisoner of War" into the classification of military personnel.

SENATOR CLEGG: I urge a motion of ought to pass, and I urge my colleagues to support, as we did yesterday, the concept on the resolution.

**The question is on the committee report of ought to pass.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

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

**Yeas: 24 - Nays: 0**

**Adopted.**

**Ordered to third reading.**

### **COMMITTEE REPORTS**

**SB 237**, relative to excessive overpricing of essential commodities during a declared state of emergency. Energy and Economic Development Committee. Inexpedient to legislate, Vote 3-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that Senate Bill 237 be inexpedient to legislate. This bill was presented for the purpose of prohibiting excessive overpricing of essential commodities during a declared

state of emergency. After considering the issue, the committee found that the free market did a suitable job of keeping commodities at a fair price and that there was no price gouging in the state of New Hampshire. Please join the Energy and Economic Development Committee in voting inexpedient to legislate. Thank you.

**SENATOR LARSEN:** Thank you, Mr. President. I rise to speak to the inexpedient to legislate motion, and trust that this group will address the issue of price gouging or issues of the state being at risk in the declaration of an emergency, and what happens to the potentially essential commodities during a time of a state emergency. Senate Bill 237 was supposed to make sure that New Hampshire citizens were not overcharged for those necessities in the state of an emergency, and it was an attempt to address and protect citizens from what we would consider to be price gouging, particularly of those essential needs of water, medicine, food, fuel, to keep going. There is a bill coming over from the House which addresses, as I understand it, only issue of fuel price gouging. But I hope, when it comes time, we will look at all of the needs and the essential needs of citizens in the time of an emergency, and consider once again whether there needs to be protection for essential commodities. In the hearing we heard, for example, that there was an attempt to overcharge for vaccines. Someone came in from out-of-state and attempted to overcharge for vaccines when there was a vaccine shortage for flu. Those kinds of situations could emerge once again, and I hope there'll be a good discussion if we are in fact going to vote Senate Bill 237 inexpedient to legislate. I hope we will once again consider all of the options, and not just the issue of fuel overpricing in the time of a state emergency. So, as I say, I encourage you to use the next House Bill to address those issues.

**Committee report of inexpedient to legislate is adopted.**

**HB 175**, relative to divestiture of PSNH generation assets, establishing an energy policy task force, and establishing a fund for the costs of the energy policy task force. Energy and Economic Development Committee. Ought to pass with amendment, Vote 4-0. Senator Odell for the committee.

**Energy and Economic Development**

**February 8, 2006**

**2006-0814s**

**03/04**

**Amendment to HB 175**

Amend paragraph VI of section 2 of the bill by replacing it with the following:

VI. The task force shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2006.

**2006-0814s**

**AMENDED ANALYSIS**

This bill extends the prohibition on the divestiture of PSNH generation assets to June 30, 2008 and establishes an energy policy task force. This bill also establishes a fund for the costs of the energy policy task force.

**MOTION TO TABLE**

**Senator Odell moved to have HB 175 laid on the table.**

SENATOR ODELL: Thank you, Mr. President. I move to table.

**Adopted.**

**LAID ON THE TABLE**

**HB 175**, relative to divestiture of PSNH generation assets, establishing an energy policy task force, and establishing a fund for the costs of the energy policy task force.

**HJR 1**, recognizing that Seavey Island and the Piscataqua River are within the boundaries of the state of New Hampshire. Energy and Economic Development Committee. Ought to pass, Vote 3-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I move HJR 1 ought to pass. This resolution recognizes that Seavey Island and Piscataqua River are within the boundaries of the state of New Hampshire. In fact, it was proven to the committee through extensive historical evidence presented by the sponsors of this bill. This resolution represents another step in the continuing controversy on whether this property lies in the state of New Hampshire or the state of Maine. Please join with the Energy and Economic Development Committee in voting ought to pass. Thank you.

SENATOR BARNES: Question of Senator Letourneau. Senator, isn't it true that, if the Portsmouth Shipyard were in Maine it would called the Kittery Shipyard instead of the Portsmouth Shipyard?

SENATOR LETOURNEAU: I believe that is true, sir.

SENATOR BARNES: Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 383**, limiting liability of community land trusts which own certain hazardous property. Environment and Wildlife Committee. Inexpedient to legislate, Vote 3-0. Senator Eaton for the committee.

SENATOR EATON: Thank you. I move Senate Bill 383 inexpedient to legislate. This legislation would have created a land-owning situation in which a municipality could transfer ownership of land that contains natural hazards such as rock faces or swimming holes and is used for recreational purposes to a community land trust. The protections enjoyed by municipalities, such as limited liability, would have been given to the community land trust as well. And, at this time, the committee feels this legislation is unnecessary, generally landowners do not have liability for an injury on land unless they have been negligent. There are not substantial number of claims regarding land hazards in this state and, in addition under RSA 508:17 Section 2, land trusts would be given limited liability because of their non-profit status. The committee asks your support on the motion of inexpedient to legislate.

SENATOR BURLING: Thank you, Mr. President. I brought this bill because I perceive there is a growing problem of the ownership of hazardous, inherently hazardous, pieces of land. The former speaker correctly pointed out that I had repeatedly mentioned the notion of climbing rock faces and swimming holes. I understand that this bill is to go down, but

the issue doesn't go away. And it will begin to plague our institutions, our schools, and some of our neighbors on an ever-increasing basis if we don't, at some point, come to grips with it and ways we might find a solution. I don't pretend that I brought the best solution in, but I do beg you to consider the long-term consequences of the more hazardous pieces of property and the liability threat that they pose for our community. Thank you, Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**SB 302-FN**, relative to real estate brokers. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 2-0. Senator Fuller Clark for the committee.

**Senate Executive Departments and Administration**

**February 8, 2006**

**2006-0820s**

**08/09**

**Amendment to SB 302-FN**

Amend RSA 331-A:23 as inserted by section 3 of the bill by replacing it with the following:

331-A:23 Denial of Reciprocity. No ~~[nonresident]~~ **broker or salesperson applicant** whose license as a broker or salesperson is under revocation or suspension in another state shall be granted a license as a broker or salesperson in this state; and, if already granted a ~~[nonresident]~~ license, it may be revoked or suspended as provided under this chapter upon proof of the other state's action.

Amend the bill by inserting after section 5 the following and renumbering the original section 5 to read as 6:

5 Donation of Commissions to Charitable Organizations. Amend RSA 331-A:26, XXIV to read as follows:

XXIV. Paying or offering to pay valuable consideration, as defined by the commission, to any person not licensed under this chapter, except that valuable consideration may be shared with a licensed broker of another jurisdiction who is doing business regularly and legally within that broker's own jurisdiction. No licensee shall knowingly pay a commission or other valuable consideration to a licensed person knowing that the licensee will in turn pay a portion or all of that which is received to a person who does not hold a valid real estate license. A licensee who has allowed his or her license to expire or who has changed to inactive status or who has transferred to another responsible broker may receive compensation from the previous responsible broker for transactions in which the person participated during the time that the licensee was under the supervision of that responsible broker. ***Nothing shall prohibit a licensee from offering or contributing a portion of compensation directly to an exempt organization, as defined in section 501(c)(3) of the Internal Revenue Code of 1986, with the written consent of the parties to the transaction.***

SENATOR FULLER CLARK: Thank you, Mr. President. I move Senate Bill 302 ought to pass with amendment. The bill makes technical changes to the licensing requirements for real estate brokers including changing the word "registration" to "application", the word "non-resident" to "broker or sales person applicant", and the period during which a broker must notify the commission of a change of location from ten days to a more reasonable five days. The committee amended the bill to allow a



licensee to contribute a portion of compensation directly to a third party non-profit organization with the written consent of all parties, and recommends ought to pass with amendment. Thank you, Mr. President.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 305-FN**, relative to the regulation of recreational therapists. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 4-0. Senator Fuller Clark for the committee.

**Senate Executive Departments and Administration**

**February 6, 2006**

**2006-0779s**

**10/05**

**Amendment to SB 305-FN**

Amend RSA 326-J:3, II as inserted by section 1 of the bill by replacing it with the following:

II. Licensed recreational therapists may use the letters "TR," "TRS," and "CTRS/L" in connection with their name or place of business.

Amend RSA 326-J:3 as inserted by section 1 of the bill by inserting after paragraph II the following new paragraph:

III. A person or business entity, its employees, agents, or representatives shall not use in conjunction with that person's name or the activity of the business the words therapeutic recreation specialist, therapeutic recreation, recreational therapy, recreational therapist, recreation therapy, recreation therapist, the letters "CTRS," "TRS," or "TR", or any other words, abbreviations, or insignia indicating or implying directly or indirectly that recreational therapy is provided or supplied, including the billing of services labeled as recreational therapy, unless such services are provided under the direction of a recreational therapy specialist licensed pursuant to this chapter. A person or entity that violates this paragraph is guilty of a violation for the first offense and guilty of a misdemeanor for any subsequent offense.

Amend RSA 326-J:5, I(e) as inserted by section 1 of the bill by replacing it with the following:

(e) Successfully complete the entry-level certification examination for recreational therapists approved by the board such as the examination administered by the NCTRC or other board approved organizations.

Amend RSA 326-J:5 as inserted by section 1 of the bill by deleting paragraph II and renumbering the original paragraph III to read as II.

Amend RSA 328-F:4, IX as inserted by section 5 of the bill by replacing it with the following:

IX. The recreational therapy governing board shall consist of 3 licensed recreational therapists, who have actively engaged in the practice of recreational therapy in this state for at least 3 years, and 2 public members.

SENATOR FULLER CLARK: Thank you, Mr. President. I move Senate Bill 305 ought to pass with amendment. The bill adds recreational therapists to the professions licensed under the New Hampshire Board of Allied Health Professionals. Licensure of recreational therapists will ensure standards of care, provide recourse for malpractice and enable

ID Medicaid reimbursements to schools. The committee adopted a house-keeping amendment that includes corrections to the acronyms used in the bill and membership on the governing board. The committee recommends ought to pass with amendment. Thank you, Mr. President.

**Amendment adopted.**

Senator Estabrook offered a floor amendment.

Sen. Estabrook, Dist. 21

**February 8, 2006**  
**2006-0827s**  
**10/04**

**Floor Amendment to SB 305-FN**

Amend RSA 326-J:1, III(b)(6) and (7) as inserted by section 1 of the bill by replacing them with the following:

(6) Identifying, designing, fabricating, applying, or training in the use of, adaptive recreational equipment.

(7) Identifying, applying, and evaluating the use of non-invasive and non-pharmacological approaches to reduce or alleviate pain or manage pain to minimize its impact upon participation.

Amend RSA 326-J:3, I as inserted by section 1 of the bill by replacing it with the following:

I. No person shall practice or hold oneself out as being able to practice recreational therapy or provide recreational therapy services in this state unless the person is licensed under this chapter and RSA 328-F. Nothing in this paragraph shall be construed to prohibit students enrolled in board-approved schools or courses in recreational therapy from performing recreational therapy that is incidental to their respective courses of study or supervised work. The board shall adopt rules under RSA 541-A relative to schools or courses allowing students to practice under this paragraph.

Amend RSA 326-J:5, I(e) as inserted by section 1 of the bill by replacing it with the following:

(e) Successfully complete the entry-level certification examination for recreational therapists such as the examination administered by the NCTRC or other board approved organizations.

Amend the bill by replacing section 5 with the following:

5 New Paragraph; Governing Board Membership. Amend RSA 328-F:4 by inserting after paragraph VIII the following new paragraph:

IX. The recreational therapy governing board shall consist of 3 licensed recreational therapists, who have actively engaged in the practice of recreational therapy in this state for at least 3 years, and 2 public members. Notwithstanding the requirements for licensure of professional members under this section, initial appointment of professional members by the governor and council shall be qualified persons practicing recreational therapy in this state. All subsequent appointments or reappointments shall require licensure.

SENATOR ESTABROOK: Thank you, Mr. President. I'd like to bring forward floor amendment 0827, and I'll speak to it as it's being distributed. First, I'd like to thank the committee for its support. The hearing we had on this bill was quite an education, as well as the trip that Senator Hassan and I took to the University to see the equipment that this program has...the equipment that these recreational therapists work with with their clients. The program out of the University called "North-

east Passage” has been there for awhile providing these services and, as Senator Fuller Clark said in introducing this bill, there are several good reasons why we should now license these folks. Among those are that their services are less expensive than other types of therapies and quite effective, they work in all kinds of settings. You probably don’t know **TAPE CHANGE** New Hampshire schools and our nursing facilities among other places. The floor amendment, I’m afraid is necessary because, near the end of the hearing, we discovered that there were a few technical problems with the bill, and I’ll try and show you in the amendment what those were. So we had discussed near the end of the hearing the need for a floor amendment. My apologies if it got hidden somewhere and didn’t arrive on your desk until this morning, but it is really just a housekeeping amendment. It adds a comma on line four of the amendment; it gives rule making authority on lines 12 to 17 to allow the Allied Health Board to adopt rules on what type of training will be acceptable; and it adds down at the bottom and onto the back, new language that makes it clear that, for the initial appointments to the board, we don’t need to have licensed recreational therapists because we won’t have any at that point. We’ll have properly trained people for the first appointments, and then they will be replaced by licensed people. So, very much housekeeping issues. I hope that you can support that and the entire program. The work these people do and the results they achieve with their clients is really remarkable. Thank you very much.

**SENATOR HASSAN:** Thank you, Mr. President. I rise to support the floor amendment and to just briefly say, for those who are listening who may not understand what recreational therapists do, they are people fully trained in biomechanics, physical and occupational therapy skills who go out into the communities and help people with disabilities or are in need of rehabilitation from medical events such as strokes, integrate back into the community, doing the things they love to do, whether it be cycling, mountain climbing, or kayaking. For those of us who have family members with disabilities, recreational therapists become a lifeline because they really help people with disabilities and their families enjoy everyday life in a way they wouldn’t otherwise. It fights isolation and it fights depression and the services are remarkable. Thank you.

**SENATOR JOHNSON:** Just for clarification, Mr. President. Thank you. In the floor amendment, it talks about recreational therapy, but in the amendment in the calendar, it talks about therapeutic recreation specialist. And I wonder if someone can clarify that for me.

**SENATOR ESTABROOK:** It hadn’t been raised before. I’m not sure that I can...Where in the calendar?

**SENATOR JOHNSON:** It’s the amendment in the calendar, III, on the second line, it says the words “person’s name or the activity or the business”, the word “therapeutic recreation therapist.” In the floor amendment, I don’t think I see that.

**SENATOR ESTABROOK:** I can explain that, thank you, now that I understand what context it’s in. What this is saying is that any of these titles, and you can see there’s quite a long list of them, and some of them are abbreviations that stand for certain training, the idea is that none of these titles can be used by someone unless they’re licensed. So the idea is, even though when we are licensing them, we’re going to call them “recreational therapists”, we don’t want someone walking around saying that they’re a “therapeutic recreation specialist”, and making it sound like they’re a “licensed recreational therapist. Sort of to prevent fraud.

SENATOR JOHNSON: Thank you, Senator Estabrook.

SENATOR LETOURNEAU: Thank you, and either Senator Estabrook or Senator Hassan. This is just a question to ask, in some of our hotels have these work out rooms and recreational work out rooms, and they have people that are supervising those things and make sure that people don't get hurt. Would this affect them at all?

SENATOR ESTABROOK: Thank you for the question. No, it wouldn't at all. This is a very specialized type of training, and work that's done. It's more medically connected than what you're describing. Those people wouldn't be involved at all.

SENATOR LETOURNEAU: Thank you.

SENATOR LARSEN: Just a quick statement. I rise to support the floor amendment. It is one which our caucus did not see 'til this morning. It was presented as a technical clarification and we very much believe that it is, and I urge you to support the floor amendment. Thank you.

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 350-FN**, relative to boarding kennels and relative to dog grooming. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 3-0. Senator Barnes for the committee.

**Senate Executive Departments and Administration**

**February 8, 2006**

**2006-0856s**

**01/04**

### **Amendment to SB 350-FN**

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

AN ACT relative to boarding kennels.

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

1 New Chapter; Animal Boarding Facilities. Amend RSA by inserting after chapter 437-A the following new chapter:

#### **CHAPTER 437-B**

##### **ANIMAL BOARDING FACILITIES**

437-B:1 License Required. No person, firm, corporation, or other entity shall engage in the business of boarding domestic animals unless the premises on which they are housed or harbored, are duly licensed and inspected by the department of agriculture, markets, and food.

437-B:2 Definitions. In this chapter:

I. "Commercial animal boarding facility" means a facility, including the building and the immediate surrounding area, which is used to house or contain animals which are owned by the members of the general public, for a fee.

II. "Commissioner" means the commissioner of the department of agriculture, markets, and food.

III. "Department" means the department of agriculture, markets, and food.

IV. "Domestic animals" means dogs, cats, exotic birds, and other common household pets.

#### 437-B:3 Licenses; Fees.

I. An application accompanied by a fee of \$200 shall be filed annually on forms furnished by the department. A license shall be issued for a commercial animal boarding facility if, upon inspection, the department finds that the premises, cages, equipment, and facilities meet the required standards for safety, health, and sanitation and that their use will not subject the domestic animals to inhumane treatment. Licenses shall be conspicuously displayed on the licensed premises by the licensee.

II. Licenses shall expire annually on June 30 and shall be renewed upon application to the department if accompanied by the renewal fee of \$200.

III. After notice and hearing, licenses may be suspended or revoked by the department if it determines that the conditions under which the license was issued are not being maintained. The department shall investigate complaints within a reasonable time after receiving written notification of a violation of this chapter.

IV. All license fees shall be paid to the state treasurer for deposit into the general fund.

437-B:4 Rulemaking. The department shall adopt rules, pursuant to RSA 541-A, relative to:

I. Application and renewal procedures.

II. General health and sanitation standards for licensees.

III. Form and content of all forms required by this chapter.

IV. Procedures for the suspension or revocation of a license.

437-B:5 Licensees to Furnish Information. Licensees shall furnish the department with information relating to their boarding of domestic animals and the maintenance of their premises for those purposes, as required by the department.

437-B:6 Inspections. Inspections of all commercial animal boarding facilities shall be made at reasonable times and at least once every 6 months. An employee or designee of the department shall conduct the investigations.

437-B:7 Hearings; Notice. No license shall be suspended or revoked until a hearing is held before the commissioner or a designee. A licensee shall receive written notice of the hearing at least 10 days before the hearing. The notice shall be sent by registered mail and shall set forth all the charges against the licensee and the date, time, and place of the hearing. Decisions of the commissioner shall be subject to rehearings and appeals pursuant to RSA 541.

437-B:8 Medical Treatment; Drugs. No vaccines, sedatives, or tranquilizers shall be administered without the domestic animal's veterinarian's supervision or direction and without the owner's written consent.

#### 437-B:9 Exemptions.

I. This chapter shall not apply to veterinary hospitals or clinics.

II. This chapter shall not apply to persons who board 10 or fewer domestic animals at any given time.

437-B:10 Prohibition. No licensee shall treat inhumanely any domestic animal in the licensee's care, possession, or control.

#### 437-B:11 Penalty.

I. Any person who violates any provision of this chapter shall be guilty of a misdemeanor.

II. In addition, any person or owner who violates any of the provisions of this chapter or rule adopted under it may be subject to an administrative fine levied by the commissioner not to exceed \$1,000 for each violation.

III. Once a license has been suspended or revoked, the department may require that all domestic animals located on the premises for which such license was suspended or revoked shall be removed by the licensee from said premises within 3 working days after said suspension or revocation and be relocated to a safe and sanitary place.

2 Effective Date. This act shall take effect January 1, 2007.

**2006-0856s**

#### AMENDED ANALYSIS

This bill establishes licensure for animal boarding establishments by the department of agriculture, markets, and food. This bill establishes license fees and renewal fees which shall be deposited into the general fund. The bill further provides for inspections of such facilities. The bill grants rulemaking authority to the commissioner of the department of agriculture, markets, and food for the purposes of the bill.

SENATOR BARNES: Thank you very much, Mr. President. I move Senate Bill 350 ought to pass with amendment. The committee adopted an amendment that replaces the whole bill. Senate Bill 350 as amended, establishes licensure for animal boarding establishments by the Department of Agriculture, Markets and Food. The bill also establishes license fees, renewal fees and allows for inspections. The amendment eliminates "grooming facilities" from the legislation, and those facilities that board ten or fewer domestic animals. The language addressing medical treatment was narrowed, and "horses" were taken out of the legislation as well. Veterinarian involvement relative to medications is important because it means facilities will have to work with veterinarians. Pet shops and shelters already work with veterinarians in a similar fashion, and the committee recommends ought to pass with amendment. Thank you, Mr. President, and thanks for your support.

SENATOR BOYCE: Senator Barnes, I was looking at the original bill, and also at the final bill, and I noticed that the fee went from \$50 to \$200, and I'm curious if somehow that fee is in line with any other types of fees. I'm just thinking what kind of a license fee do we have for a pet shop? You say they deal with animals and deal with veterinarians. Do we license pet shops and charge them a \$200 annual fee, or do we license other... Who else in the state has to pay a \$200 a year fee in order to be in a business?

SENATOR BARNES: Senator Boyce, that's a great question, and I don't have the answer for it. Maybe there is someone else here in the room that has it. Senator Roberge perhaps, she is the sponsor of this legislation, so perhaps she can.

SENATOR ROBERGE: Our state veterinarian, Dr. Steve Crawford, estimated the cost between \$190 and \$210 to do this project. And that's why we, and he established the \$200 rate. It comes from our state veterinarian and that's why that amount is there.

SENATOR BOYCE: Mr. President, I see all sorts of licensing and registration bills come before us at times during the session, and I see that there's very little need for all this regulation and licensure. It's a heavy burden for business to carry in many times, and particularly where you're talking about a business that's going to have to pay a \$200 per year fee simply to be in business, and I think that's unreasonable. I think that the whole concept of this is unnecessary. I understand that some people think that some pets are somehow being mistreated in some cases, but

I think most of the cases where we see mistreatment of pets and animals is where someone is the owner of those pets or animals and they have 150 cats in their litter filled house. I'm not aware of their need...of a need for such overreaching regulation, and I for one, am going to vote against this because I don't believe we need more regulation. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 280-FN-A-L**, adding a surcharge to motor vehicle fines for use by municipalities. Finance Committee. Inexpedient to legislate, Vote 7-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 280 inexpedient to legislate. The legislation added a surcharge to motor vehicle fines, which would go to the municipality where the offense occurred. The committee received testimony that this bill, while well-intentioned, could breed contempt between local selectmen and police chiefs. There are concerns about public perception that the local police will receive pressure to help relieve budgetary constraints by issuing more tickets and generating additional revenue. Many steps have been taken over the years to improve the community relations between the police and the community. This would be a step backwards. The Municipal Association and the local police chiefs provided great assistance during the hearing and we appreciate their efforts. The Finance Committee asks your support for the motion of inexpedient to legislate. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 283-FN**, relative to stop loss insurance. Finance Committee. Ought to pass, Vote 7-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move Senate Bill 283 ought to pass. This bill establishes a law governing stop loss insurance. Stop loss insurance is intended as a form of secondary coverage issued to small, self-funding employers to protect them from claims that rise above and beyond expected levels. This bill will prevent the inappropriate use of subterfuge stop loss coverage. The Insurance Department determined that this may slightly increase state revenues. The Finance Committee is pleased to recommend that this bill ought to pass and we ask for your support. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 293-FN-A**, repealing an exemption from the communications services tax. Finance Committee. Inexpedient to legislate, Vote 7-0. Senator Green for the committee.

SENATOR GREEN: Thank you, Mr. President. I move that Senate Bill 293 be inexpedient to legislate. This bill repeals the \$12 exemption on the residential customer's phone line. The committee ITLd this bill with the agreement that this issue be included in Senate Bill 363, which establishes a commission to study and determine the effect of ceasing the collection of Internet-related communications services tax. This will allow the issue to be studied and discussed in totality. The Finance Committee asks for your support for the motion of inexpedient to legislate.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I was the prime sponsor of this bill and I support the inexpedient to legislate motion. As Senator Green pointed out, we have a situation here where the communications tax needs a committee to study it as significant things are going to happen as a result of federal legislation. I think it's very appropriate that all of this be looked at in its totality, and this is one of the items that should be considered. As we know, this \$12 exemption is only applied to land lines and not to wireless lines, and as we are migrating from land lines to wireless lines, obviously this has to be consideration. So I support the decision of the committee and recognize that we need to have study on this as quickly as possible because, as we move into the next biennium, we're looking at a \$125 million source of revenue that's going to change quite dramatically. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 294-FN-A**, authorizing 7 additional state troopers and making an appropriation therefor. Finance Committee. Ought to pass, Vote 5-2. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move Senate Bill 294 ought to pass. This legislation authorizes and appropriates funds for seven additional state troopers. State troopers have a greatly expanded role and are the only enforcement officers to respond on-call, twenty-four hours a day, seven days a week. Currently, the nearest trooper may be as far as twenty minutes away at a particular time, given a particular instance. While authorized positions were consistently increased until 1998, they have decreased since that time. State troopers are the first line of defense in the event of any terrorist activities in New Hampshire and are quickly mobilized. Additional troopers result in less criminal actions, resulting in fewer deaths. The Department of Safety has done a tremendous job of streamlining the recruitment process and vacancies are quickly being filled. I think Colonel Booth deserves a great deal of credit for instituting a new recruitment situation, where recruits are looked at more quickly and are able to be brought into the pipeline, and as a result, vacancies are held for a shorter period of time. The addition of seven troopers, however, will be a tremendous asset. New Hampshire has always taken great pride in their troopers, and they've done a good job of protecting our citizens. The additional troopers will only enhance that situation. The Finance Committee asks your support for the motion of ought to pass. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. Senator D'Allesandro, did Commissioner Flynn ask for those seven troopers?

SENATOR D'ALLESANDRO: Did Commissioner Flynn ask for them?

SENATOR BARNES: Yes.

SENATOR D'ALLESANDRO: The Governor...the Governor in his original budget last time, asked for the troopers. I believe...I spoke with the commissioner and the commissioner supports this.

SENATOR BARNES: The commissioner supports the seven troopers. Thank you very much.

SENATOR D'ALLESANDRO: You're very welcome.

SENATOR JOHNSON: Mr. President. This is a personal observation and I haven't shared it with anyone else, but I've always had a concern for some time for the minimal enforcement that we have in the north country in the later hours and the early morning hours. So if that will alleviate some of that problem, I'd certainly be supporting this bill. Thank you.



SENATOR MORSE: Thank you, Mr. President. It's tough today when you're from Salem and the Nashua Senators pointed out that you've lost, and then it's also even tougher when you pick up a piece of legislation and there is sixteen Senate sponsors on it. You know you've lost. Having said that, what's changed? I did speak with Commissioner Flynn. He did not ask me for the seven troopers. Now he may have asked someone else, but he didn't ask me. What's changed in the highway funds? Have they increased that dramatically? You know the one thing about all these pieces of legislation is the new report comes across all the time. Well, the cost to collect that came out of the Department of Safety, went from \$25 million to \$29 million. You know why we were told it went up? And we wouldn't have seen that if it wasn't for this piece of legislation. We were told it went up because of all these issues to deal with retirement, and what we passed last year, which was my point exactly why we need to be careful here in the state. We balanced the budget looking at vacancies. There was no doubt about it. We looked at them and tried not to hurt a department. In this case, there were twelve vacancies in this department. We didn't even take them to balance the budget, because they were asking for fourteen new troopers at the time. We said, take the twelve troopers that you currently don't have and use them. When they came in and testified, they said there were five vacancies. That's not true. There's seven. I checked the day before and I checked the day after. There's still seven vacancies over in that department. We met a month ago about COLAs. We couldn't give them...we gave one percent. And what was the biggest part of the discussion about that? It was the retirement system. We've got a piece of legislation in Finance right now where everyone is concerned about it, and on the other end of this, we're talking about a \$400 million to \$2 billion problem with retirees with health insurance. And we want to hire seven more people. We didn't hear anything different about the staffing level that we didn't hear during the budget. We talked about Maine. We talked about Vermont. We talked about their staffing levels and then we said, but, we have the Department of Motor Vehicles. All very logical stuff. All very calmly talked out, but fair across the whole state, in all the departments. Everything was fair. It was done to balance the budget. I was not asked. And I do not support this. Thank you.

SENATOR EATON: It's always tough, as Senator Morse just spoke, to speak against a very popular subject. And I see the names that are on there and that this will pass. I want to stand here and support the Finance chair because last year, as he said, we talked to Safety and said, "You fill these positions, and once you have those filled, you come back two years from now and we will be certainly ready to entertain more troopers." I have been very, very supportive of the troopers in my term here in the Senate. I sponsored bills for minimum night manning and pay parity. But I think, until we have those positions filled, I think we passed a budget, we had a Senate position on the budget, and I believe that that's something we should look at in the next budget round.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I rise in support of the comments that my colleague from Division Two, excuse me, from Senate...thank you. That word got away from me for a minute. We talk about this as though it were a budgetary problem. It isn't. It is a problem about our constituents. Our neighbors have to go out and drive around in the ice and in the snow, when we get it, and they demand services. For some of us in the outlying parts of this state, there is simply not enough protection. We need to remember that our job here is to

respond to the real needs of our constituents, and that's what this bill does. It's time we do it, and frankly, the other point I would make to the comments of the prior two speakers, the only way, we, as legislators have, of responding to policy failures, a failure to fill positions, is to continue to push as we do, in this vote, for response by the appropriate department. We need these troopers, and we need them now. Thank you, Mr. President.

SENATOR BOYCE: Thank you, Mr. President. I rise in opposition to this bill, and for a lot of the same reasons that Senator Morse brought up. We have a situation where we looked at this in the last budget, and we said, "You have positions that have been open and funded, for years and you have not filled them. You keep carrying them on the budget. The money is there to pay them. You use the money for other things, but you don't fill the positions." They said, "Oh, we have a new plan. We're going to fill all the positions." Well, they're now asking for, I guess they're asking, somebody put in this bill, somebody's asking for seven new troopers when they still have seven troopers they have not hired. They have funding in the budget for these seven troopers today. We do not have to pass this bill for them to hire seven new troopers. This will allow them to hire fourteen new troopers. Now, as to whether the roads are not manned properly, that's a command decision that lies with the patrol. They need to decide whether or not they need to have people sitting over on Hazen Drive, over in their headquarters all day with the patrol car in the lot, or do they need them out on the highways. I think that there are some decisions that need to be made as to where the troopers need to be, and what they need to be doing, but I don't think that we need to put on more troopers, and we certainly don't need to fund more positions that may not be filled. As Senator Morse said, they have positions that already exist that can be filled, and I think, I for one, think that they should fill those positions before they come ask us for another position. It's just irresponsible to keep funding positions that don't get filled and then complain because there's no troopers on the roads. We should let them do their job the way they're supposed to do it, and that's to man their...to command their staff the way it should be done. If there's no trooper on the highway on 93 north of Concord at midnight, that's not because we don't have enough troopers on staff; it's because they didn't put one there. They could take one of the ones that they have three or four roaming 93 south of Concord. They could take one of those and assign them north. I don't think people want to be assigned north because it's further to drive. They have to drive their car up from wherever they live. You know, gee, I'm sorry, but they took the job. I think that the staffing is adequate. We have more than enough troopers to do the job. But I think that the troopers are not being sent where they need to be, and that's the problem we have, not that we need to spend more money in the hiring...in the non-hiring of more troopers. We don't need to put more money in there, especially if they don't fill the positions. Let them fill the positions, then come back and ask for more positions.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I respect the views of my colleagues, have great respect for Senator Morse and his comments. I appreciate them very much. Senator Eaton and his comments. I think Senator Boyce's comments were a little off the wall. Safety and security are a couple of things that are in the public domain. And, if you believe that the state police are being mismanaged, then that's something you ought to bring to the attention of the appropriate authorities. I don't believe the state police are being mismanaged. I think the

roads aren't patrolled because we don't have enough troopers. We have had a decline in troopers since 1998. Vermont has more troopers than we do. Maine has more troopers than we do. We're about the same size as Maine. We have a population that's twice the size of Vermont. So to say that we are not administering our state police properly is an insult to the state police and an insult to the Commissioner of Safety! I will not accept that! The Colonel of State Police has organized a methodology for recruiting troopers. That methodology has helped us fill vacancies. It is not easy to fill the vacancies. We require a very high standard because we want quality on our state police. We have always demanded that. We will continue to demand that. What we have is a good system at this time and that system is working. We've cut down on vacancies. We need additional troopers. They're doing extended work. Homeland security has become a new issue in our lives. Border security, a new issue in our lives. Protection of this state house, a new issue. All of these manned by our state police, in conjunction with our local law enforcement. It's a cooperative arrangement. Any municipality under 3,000, and we have a number of those in New Hampshire, state police manage those in times of crisis. Any time there's a serious event in Manchester, we called upon the state police to help us with an Operation Street Sweep, to get drug dealers and criminals off the streets of Manchester. A very significant issue. Safety and security of the people in our city is something that we take very seriously. This piece of legislation is warranted. I brought the piece of legislation forward with a number of my colleagues. We discussed troopers in the budget process. I worked to try to get troopers in, in the budget process. It didn't fail. I said I'd come back with it. I'm back with it here today. The most important issue is the safety and security of New Hampshire's citizens on the highways and in other instances. Thank you, Mr. President.

SENATOR BRAGDON: I call the question, Mr. President.

SENATOR GATSAS (In the Chair): I have three more speakers.

SENATOR GOTTESMAN: Thank you, Mr. President. I also would echo the sentiments of Senator Johnson. There was a time when I was getting an email a day at least from my constituents, who were complaining about the fact that the speed on the highway that goes right through the city of Nashua was extraordinary. Seventy-five, eighty-five miles an hour right through the city. So I followed this and I called the police department to try to find out what was going on. They said, "We are getting no help because the troopers do not have the ability to spread themselves that thin." So they are taking that responsibility on a local level, unfortunately, which is costing the city of Nashua a lot more money. I think the need is there. That's what I signed onto this legislation, and I ask you to approve it. Thank you.

SENATOR LARSEN: I rise to support the motion of ought to pass. We heard from the Assistant Commissioner of Safety that it's dangerous. The troopers are out there. They're under staffed. They say they have the capability to staff thirty-eight patrols, but our own Assistant Commissioner of Safety said that they are unable to cover the entire state. We have troopers out there working to protect us from narcotics, working in our prisons, working to fight aggressive driving, but there aren't enough to patrol the highways, to work on what everyone who's been on our highways knows is a serious problem of people going far beyond the posted sign and speed limit. We heard from the hearing that there were vacancies as a result of troopers retiring, but that they were working to

fill those. We also heard that there is money coming in from troopers and that, in one single case, troopers brought in \$300,000. I think it's time that we replace and fill these spots, that seven additional state troopers will make our highways safer, make us able to cover our state. I urge your support for this bill as ought to pass.

SENATOR CLEGG: Thank you, Mr. President. I rise in favor of the bill before you. I'd like to point out it's not fourteen new positions, it's seven. And we're always going to have some vacancies due to retirement. And you're always going to have some troopers transfer to the Division of Motor Vehicle, because, as you get older, that 24/7 schedule that a trooper has to keep, isn't as much fun as that 9:00 to 5:00 that the DMV gets to keep. And I'm not saying that DMV doesn't do its job, it does, but that's the difference in hours. So we're working hard to fill those, but we don't have enough. You talk about just sending somebody up to the north country. Well he doesn't want to drive his car? It doesn't matter to him. As soon as he steps into his car, it happens to be a trooper car and we start paying him from that moment. So he doesn't have to do it for nothing. He doesn't have to use his vehicle; he uses ours. The problem is, we don't have anybody. And how would you like to be the guy in the north country who runs into a car full of guys, they happen to be drug runners, you've got a problem and you call for help? Well there aren't full time departments in every north country city. And guess what? At 120 miles an hour, your nearest help could be twenty minutes. Ever been in a fight? How long is a three minute round? Pretty long. Imagine waiting twenty minutes? The other thing that I would like to point out is COLAs. Retirement. With all due respect to those who have retired, it's time we took a look at the guys who are still working. I'm not going to cheat a guy who's still working, out of the health he needs today, because the retirement system didn't earn enough money to cover the expenses for what we promised everybody. And, for the last three or four years, all I hear about is the retirement system, retirement system, retirement system, and I haven't heard anybody talk about the guy who is still working. The guy who is still working today as a state trooper deserves some assistance. He deserves a full compliment so that when he has a problem, there's somebody to help him. And as far as the retirement system goes, let's fix it, but let's not fix it at a cost to those who are sitting here working today trying to serve New Hampshire. Thank you, Mr. President.

SENATOR MORSE: Thank you, Mr. President. This debate didn't happen in Finance that we're having today, and probably should have. But the fact was, you have sixteen sponsors, it was an easy bill to get out of Finance. We didn't have it. I would hardly say that anyone in this room does not support the troopers. You can bang your fist on this table all you want. That's not the truth. What we were faced with in the budget was adding fourteen people. We voted that down last year when we voted for the budget. I was not asked to put seven people in this budget and that's what it comes down to. And the retirement system, no matter what way you want to look at it, it's a state obligation. I support a trooper today that's working for this state. We're financing the troopers that work for the state today. It's in the budget. We're paying for it. But you know what? There's a reality out there. You have the same reality at home. You bring in "X" amount of dollars and you got a problem you have to solve. Are you going to add to that reality, more of a problem? I mean we're talking about \$700,000 here. I mean, when you put a man on and you put a car on, you're talking about \$100,000. That's an expense that we have to look at. It's only logical. It's not that anyone in this room

doesn't support safety, so I would not want anyone out there to think that's what this debate is about, because we never had it. We never had it. This was Finance. This wasn't a policy committee. Finance had a financial debate. That's what we had. It's the same debate we should be having on the bill today. And having said that, I don't think we should be supporting this.

**The question is on the committee report of ought to pass.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Estabrook.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Burling, Green, Odell, Roberge, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**The following Senators voted No: Boyce, Flanders, Eaton, Morse.**

**Yeas: 20 - Nays: 4**

**Adopted.**

**Ordered to third reading.**

**SB 357-FN**, relative to eligibility for motorcycle licenses. Finance Committee. Ought to pass, Vote 7-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 357 ought to pass. This bill limits the number of times that an applicant may fail the motorcycle driver examination, requires applications for motorcycle endorsements to furnish proof of their fitness to drive, and requires applicants for motorcycle learners' permits to pass a written test. There is no cost to developing the soft...there is a cost to developing the software to track how many times a person takes a test and a new test will have to be created. However, this does not require additional funds and the costs will come from the department's existing budget. The Finance Committee recommends ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 358-FN**, relative to an advanced registered nurse practitioner's duty to warn of violent acts of patients. Finance Committee. Ought to pass, Vote 7-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 358 ought to pass. No fiscal note was available for this legislation; however, the bill simply returns the duty to warn others of violent patients to the ARNPs, where it has worked well for many years. The Finance Committee did not see any significant costs related to this action. The Finance Committee asks your support on ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 370-FN**, relative to multidisciplinary child protection teams. Finance Committee. Ought to pass, Vote 7-0. Senator Larsen for the committee.

SENATOR LARSEN: Thank you. I move Senate Bill 370 ought to pass. This bill will allow the Health and Human Services Department to work in conjunction with the Attorney General's Office and the new Child Advocacy Center Network to establish one statewide written protocol to increase the efficiency, teamwork and humane treatment in the handling

of child abuse cases and to minimize that trauma to the victims and their families. The fiscal review by the Health and Human Services and our Finance Committee did not find any substantial costs in participating in multidisciplinary child protection teams. While there will be additional staff time needed to establish written protocols for the teams, these costs will come from within the department's budget. The Finance Committee asks for your support for the motion of ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 599-FN**, requiring disclosure to consumers of the presence of event data recording devices in new motor vehicles. Finance Committee. Ought to pass with amendment, Vote 7-0. Senator Boyce for the committee.

**Senate Finance**  
**February 9, 2006**  
**2006-0889s**  
**03/04**

**Amendment to HB 599-FN**

Amend RSA 357-G:1, IV(a) as inserted by section 1 of the bill by replacing it with the following:

(a) The owner of the motor vehicle or the owner's agent or legal representative consents to the retrieval of the information.

Amend the bill by replacing section 2 with the following:

2 Effective Date.

I. RSA 357-G:1, III as inserted by section 1 of this act shall take effect January 1, 2007.

II. The remainder of this act shall take effect July 1, 2006.

SENATOR BOYCE: Thank you, Mr. President. I move that House Bill 599 ought to pass with amendment. The amendment is not specifically a fiscal amendment, but we felt that it was necessary to clarify a possible oversight in the bill. The amendment provides the ability of an agent or legal representative of the owner of the motor vehicle to consent to the retrieval of information contained within the event data recorder. For example, if someone were to be in a coma, the spouse or attorney acting on their behalf could allow that information to be released. The amendment did not change the fiscal impact of the bill. The Finance Committee asks for your support on ought to pass.

**Amendment adopted.**

SENATOR LARSEN: I just rise to kind of call attention to all of us of the rise of what could be seen as a 1984 scenario where big brother is watching us. And, in fact, how many people know when they buy a car with OnStar in it and they sign off on their contract to purchase this, that they're in fact also signing off on the insertion and the oversight of this box which in fact record events that happen while you're driving. Now that may be a benefit to a family that's lost on a dark highway some night and needs to be located, but it also can be used against you in a court of law and that event recording data is something which I think all of us need to be aware of and concerned about. We have fine tuned this in Finance to allow for the useful addition of information in the event of an accident, and say someone is disabled in such a way that they cannot authorize their own release of information that would help them. But there are times when this accident report will be used against you as well. So I just rise to point out that we need to be very vigilant as we see these...this technology continue to be able to monitor our every move. Thank you.

SENATOR LETOURNEAU: Thank you, Mr. President, and I agree with the good Senator from Concord, and this is the reason why this bill was brought forward. I would remind everybody that the event data recorder is a continuing recorder that goes on in your automobile continuously. What it does is, in the event that the airbags are deployed, and at the time of an accident, that recording freezes, and that information is stored into that data recorder. That's the information we're speaking about. So, if you are an OnStar or similar type of agreement with a vehicle where they have that information, and you sign that paper, you release that information, and what they use it for is to send an ambulance and they can be able to tell by the data that's in that recorder what is needed to be sent. And that's the purpose of it.

SENATOR BARNES: Thank you, Mr. President, Senator Letourneau, I don't happen to have OnStar, but does my car have one of those boxes that's going to tell somebody what I'm doing?

SENATOR LETOURNEAU: I think it does, Senator. I'm sure it does. It's a late model vehicle.

SENATOR BARNES: And my dealer didn't tell me. That's ok?

SENATOR LETOURNEAU: Well, your late model vehicle, you don't have OnStar, this bill protects you, and allows you to keep that information yourself. You can release it if you want to.

SENATOR BARNES: Thank you very much.

SENATOR MARTEL: Thank you, Mr. President. I've got the noisiest chair I think in this chamber. Thank you. My voice was scratchy for awhile and now my chair is. I rise in support of this bill, Mr. President. When we heard testimony on this, and had reservations in regard to the ability to keep our personal records in position where a person who had a vehicle had OnStar, would get the details and all the information first, and not allow it to be someone else, like an insurance company or a person who's going to fix your car, who can make a report on the events that OnStar has, therefore increasing costs for your insurance premiums or your cancellation of policies with certain companies. As we were speaking through this, as more and more was explained, it started becoming clear that this was an the amendment...that it was only going to be that portion of the bill that would not allow anyone to get, anyone to receive that information other than if the driver authorizes it to be transferred. So after we heard all of that, and once again decided that this would be a good program, that could possibly, instead of increasing, could end up decreasing premiums in the long run, because it would take a look at events that took place **TAPE CHANGE**

SENATOR FLANDERS: **TAPE CHANGE** ...I'm going to ask my committee members to verify what I'm saying, in answer to you, Senator. Most of us didn't know it was in there, but we heard testimony that, if you read the manual, it tells you in the manual that that box is there. So I know that the dealer's not telling you that, but you don't read your manual any better than I do, so neither one of us knew we had it. Thank you.

Senator Bragdon moved the question.

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 272**, establishing a committee to study laws relating to funerals and crematories, and their effectiveness. Health and Human Services Committee. Inexpedient to legislate, Vote 3-2. Senator Bragdon for the committee.

**SENATOR BRAGDON:** Thank you, Mr. President. I do not call the question just yet. Mr. President, I move that we ITL Senate Bill 272. This bill seeks to establish a committee to study laws relating to funerals and crematories, partially as a result of last year's discovery of an unapproved crematory in Seabrook. The committee found, however, that a bill currently working its way through the House, HB 1696, developed by the Governor's Crematory Task Group, addresses issues relative to crematories. Further, the committee found that New Hampshire has some of the clearest and most effective laws governing funeral homes and professionals. For these reasons, the committee recommends that Senate Bill 272 be found inexpedient to legislate.

**SENATOR FULLER CLARK:** Thank you very much, Mr. President. I would just like to speak for a moment on Senate Bill 272, as the prime sponsor to say that I hope that you have all had a chance to see the Governor's report from his task force on crematoriums and on crematories, and to realize, as Senator Bragdon stated, that there is a very comprehensive bill that will be coming over from the House that will address many of those issues. I would, however, also like to point out that we have not, as legislators, reviewed our funerary statutes for many, many years, and that while it's not perhaps appropriate to be doing that at this time, we may want to reconsider that issue in the future just to make sure that everything is in place so that we don't encounter similar problems with regard to the need to handle bodies with respect and dignity. So thank you very much.

**SENATOR MARTEL:** Thank you, Mr. President. I rise in support of the inexpedient to legislate motion that's just been made. When this came through our committee, we had a few people who were there representing crematories and funeral homes, funeral directors, such as Mr. Pollard, President of the association, who's up in the balcony today, testified, very, very...testified in reality to what actually is happening in our state with crematoriums and funeral homes. There was a situation that we're all aware of on the seacoast, okay, of a person who ran a crematorium and was not cremating the bodies and respecting the bodies, and they were caught. Mr. Pollard, I believe, is the one who made it clear that this person who owned that crematorium and provided services did not have any New Hampshire bodies at the location. They were all out-of-state. And evidently, he was making his money through catalogs, phone calls and people who would ship bodies here around the United States and bring them here. Now I have a problem with that, because this is a market, and I understand the marketplace, but we must respect the dead. The dead are dead, but they surely stay in our memories. Mr. Pollard also informed us that the issue of funeral directors and funeral homes were very well inspected and were also licensed, and were being reviewed almost on a constant basis, and that there were, if any, very few isolated incidents of something that could have gone awry, with well, handling a body, or providing services for the family of that body. So, Mr. President, based on that, I urge people to please vote yes on the ITL on this bill, and let's move forward. We are in good hands, I believe, with the funeral directors and I thank you very much.



SEANTOR EATON: Thank you, I just want to, in response to Senator Fuller Clark, making sure that the deceased are treated with respect. I have not been in the funeral service for six years, but I want to assure all of you that through my thirty-four years as a funeral director, all the funeral directors that I came into contact in New Hampshire treated everyone with the most dignity and respect.

**Committee report of inexpedient to legislate is adopted.**

**SB 316-FN-L**, requiring interpretation services upon request for persons receiving medical treatment. Health and Human Services Committee. Ought to pass with amendment, Vote 3-1. Senator Fuller Clark for the committee.

**Health and Human Services**

**February 9, 2006**

**2006-0897s**

**08/10**

**Amendment to SB 316-FN-LOCAL**

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

1 New Paragraphs; Patients' Bill of Rights; Definitions. Amend RSA 151:19 by inserting after paragraph VII the following new paragraphs:

VIII. "Language line" or "language bank" means an organization that provides in-state health centers with qualified medical interpreters via telephone where an in-person qualified medical interpreter is unavailable.

IX. "Qualified medical interpreter" means:

(a) An interpreter who can render orally into one language a message spoken in a different language and who is an adult, who is a fluent speaker of both languages in question, who is not a relative of the patient, and who has received professional training as an interpreter according to the National Standards of Practice for Interpreters in Health Care for the National Council on Interpreting in Health Care; or

(b) A qualified medical interpreter who is accessible through a language line or language bank.

2 New Paragraph; Patients' Bill of Rights; Right to Interpreter. Amend RSA 151:21 by inserting after paragraph XX the following new paragraph:

XXI.(a) The patient shall have the right to request to speak, in a timely manner, with an appropriate bilingual clinician if one is available. If a bilingual clinician is not available, the patient shall have access in a timely manner to a qualified medical interpreter, either in person, or via a telephonic or televiewing interpreter service. The receipt by any non-English speaker of interpreter services shall not be deemed the receipt of a "public benefit" under any provision of law restricting benefits or assistance on the basis of immigrant status.

(b) Subparagraph (a) shall apply to all health care providers and institutions identified in 42 U.S.C. sections 2000d-2000d-7.

3 Effective Date. This act shall take effect January 1, 2007.

**2006-0897s**

**AMENDED ANALYSIS**

This bill requires hospitals to provide qualified medical interpreters to persons not proficient in English upon request.

SENATOR FULLER CLARK: Thank you, Mr. President. I move Senate Bill 316 ought to pass with amendment. Senate Bill 316 would require hospitals to provide interpretive services to persons not proficient in

English, upon request by the patient. Hospitals are free to use a telephone service, called the language line, if someone cannot be present in person. Senate Bill 316 recognizes that as many as 30,000 residents in New Hampshire speak English less than very well, and that repeat visits to hospitals are common among this population because most of the time they do not understand what they are told on previous visits, or because additional issues arise due to translation problems. For example, the word stomach in French does not refer to stomach; it refers to the chest area. Family members or hospital employees without medical or interpretive training are often asked to serve as interpreters which can create real problems, such as for the young girl who has to tell her father that he has cancer, a situation that happened in New Hampshire recently, or for a spouse that cannot understand medical terms and has to communicate a medical diagnosis to his wife or children. Senate Bill 316 will increase efficiency in health care delivery, reduce unnecessary hospital visits, prevent medical errors, and protect hospitals from litigation costs by assuring compliance with federal law. The committee adopted an amendment to broaden the pool of potential interpreters and recommends ought to pass with amendment on Senate Bill 316. We were also assured that there is an ever-growing pool of interpreters throughout the state that will be able to provide those trained individuals to hospitals in a timely manner. Thank you, Mr. President.

#### **MOTION TO TABLE**

**Senator Clegg moved to have SB 316-FN-L laid on the table.**

**Adopted.**

#### **LAID ON THE TABLE**

**SB 316-FN-L**, requiring interpretation services upon request for persons receiving medical treatment.

**HB 380**, relative to absentee voting. Internal Affairs Committee. Ought to pass, Vote 5-0. Senator Hassan for the committee.

**SENATOR HASSAN:** Thank you, Mr. President. I move House Bill 380 ought to pass. This bill establishes special absentee voting procedures for emergency service workers who are unable to vote in person because they have been deployed to a disaster. The events of this past hurricane season in the southern United States, as well as our own flooding in New Hampshire this past October, have demonstrated the importance of this legislation. When our emergency service workers are sent out to protect us, the least we can do is protect their ability to participate in the voting process. Please join the Internal Affairs Committee in voting ought to pass. Thank you.

**SENATOR MARTEL:** Thank you very much, Mr. President. Question of Senator Hassan. Senator Hassan, isn't it true that we have a system in the state of New Hampshire that people are not able to vote on election day, that they will request absentee ballots through their local clerks or have a family member do it for them?

**SENATOR HASSAN:** That is correct. What this bill does is address the situation in which somebody might be deployed just a few days before election day for a disaster. So, for instance, being deployed on a Thursday or Friday before the Tuesday of election day, they would not have planned to have gotten an absentee ballot because they had planned to be in the jurisdiction to vote and suddenly they're out. So this is a spe-

cial procedure to allow our Attorney General's Office to work with municipalities to deliver absentee ballots before deployment or even at the place of deployment and have them returned to the municipality on election day.

SENATOR MARTEL: That's a very good point that, so I have a follow up, Mr. President. I just asked...I just went down to Fort Hood, Texas to visit my son this past weekend. And believe it or not they're sitting out on the back of a Bradley armored vehicle with his captain, his company commander. I did ask him, not specifically this one, but how people who are overseas, how they would handle elections? He notified me that there are certain forms that soldiers or other people who are going overseas would file and fill out before they leave. He said they have it in plenty of time, whether it's five days, some cases the ballots are returned in enough time to do it. Would you believe that?

SENATOR HASSAN: I certainly would believe that, Senator Martel.

SENATOR MARTEL: Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 242**, prohibiting a person charged with unlawfully killing a decedent from taking from the decedent's estate. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Gottesman for the committee.

**Senate Judiciary**

**February 8, 2006**

**2006-0836s**

**09/05**

### **Amendment to SB 242**

Amend RSA 561:1, IV as inserted by section 1 of the bill by replacing it with the following:

IV. Notwithstanding the provisions of paragraphs I and II, the probate court shall prohibit any person convicted of the unlawful killing of the decedent from taking from the decedent's estate through its distribution and disposition, including property held between the person charged and the decedent in joint tenancy or by tenancy in the entirety. The court shall consider any person convicted of the unlawful killing of the decedent as predeceasing the decedent for the purpose of distribution and disposition of the decedent's estate, including property held between the person charged and the decedent in joint tenancy or by tenancy in the entirety. This presumption shall also bar the heirs and devisees of the person convicted of the unlawful killing of the decedent from participating in any distribution of the convicted person's share of the decedent's assets, unless such persons are the children or issue of the decedent. The bar to succession shall apply only to murder in the first degree, murder in the second degree, or manslaughter; it shall not include negligent homicide in the death of the decedent. No probate court shall allow or approve the distribution of any accused person's share of the decedent's assets until a final verdict or final finding has been rendered in the court hearing the criminal case, including the final results of all appeals and retrials, if any. If the court hearing the criminal case determines the accused is not guilty of the unlawful killing of the decedent, the accused may take by descent or distribution from the decedent's estate under law. The provisions of this paragraph and any order of a court entered pursuant to this paragraph, shall have no effect on title to real property except against the person charged with an offense to which this section

applies, or that person's heirs and devisees. Notwithstanding the provisions of this paragraph, persons other than the person charged with the unlawful killing of the decedent may receive the shares of the estate to which they are entitled prior to a final verdict or final finding of guilt in the case of the person charged with unlawful killing of the decedent.

**SENATOR GOTTESMAN:** Thank you, Mr. President. I move Senate Bill 242 ought to pass with amendment. This legislation prohibits a person with a first or second degree murder or a manslaughter conviction from taking from the decedent's estate. This prohibition would not occur in the case of negligent homicide, which would be an accident situation. Neither would it apply if a person is charged but not convicted of these crimes. The person would have to be found guilty and all appeals run their course. It is totally offensive to our sensibilities that someone involved in the willful death of an individual could financially benefit from the proceeds of the estate. Therefore, the proper policy for this body to embrace is that this individual should absolutely not be entitled to receive the estate benefits. The Judiciary Committee recommends that this legislation be adopted with amendment, and asks for your support. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 256**, relative to the definition of "harm" for purposes of the crime of improper influence. Judiciary Committee. Ought to pass, Vote 4-0. Senator Foster for the committee.

**SENATOR FOSTER:** Thank you, Mr. President. I move SB 256 ought to pass. This bill clarifies the definition of "harm" in the statute dealing with the crime of improper influence. It was suggested to avoid issues raised in connection with the dismissal of a case where the Attorney General's family was threatened. The clarification in this language would close the gap that caused the case to be dismissed. Here, threats which involve constitutionally protected speech are still protected. However, threats of harm to the person or property of a public official with the purpose of influencing his or her decisions are unlawful if they're not constitutionally protected. The Judiciary Committee recommends that this legislation be adopted and asks for your support. Thank you

**Adopted.**

**Ordered to third reading.**

**SB 275**, removing the requirement for criminal record checks for licensed nurses. Judiciary Committee. Inexpedient to legislate, Vote 4-0. Senator Roberge for the committee.

**SENATOR ROBERGE:** Thank you, Mr. President. I move Senate Bill 275 inexpedient to legislate. This bill sought to remove the criminal background check for nurses that was enacted just two years ago. Because of the vulnerability of many of those cared for by our nursing professionals, the committee felt that this small cost and minor inconvenience was well worth the security afforded to patients, nursing homes and home health care agencies. While other health care professionals are not at this time required to have criminal background checks, it appears that this loophole will soon be closed. The Judiciary Committee recommends that this legislation be defeated. Thank for your support.

**Committee report of inexpedient to legislate is adopted.**

**SB 284-FN**, establishing a third full-time justice position in the Manchester, Nashua, and Concord District Courts and equalizing the annual salaries of all justices of the Manchester, Nashua, and Concord District Courts. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Foster for the committee.

**Senate Judiciary****February 8, 2006****2006-0834s****09/05****Amendment to SB 284-FN**

Amend the bill by replacing section 3 with the following:

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

SENATOR FOSTER: Thank you, Mr. President. I move SB 284-FN ought to pass with amendment. This legislation establishes a third full-time judge in Manchester and Nashua District Courts and equalizes the salaries for the two associate judges. While the Concord District Court is named in the bill, this court already has a full-time Family Division judge who also sits in the district court. Under the weighted case-load system, the Manchester and Nashua Courts would have...should have an equivalent of 3.3 and 3.4 full-time judges. During the past year, Manchester District Court had twenty-one different judges sitting on cases, while Nashua had twenty-seven different judges. This legislation would put into place two full-time judges leaving the .3 and .4 positions to be filled by visiting judges. Having regular judges hearing cases is in the best interests of our citizens and the persons our courts serve because it provides for uniformity of justice. The Judiciary Committee recommends that this legislation be adopted with amendment and asks your support. Funding for these new positions is created from savings which will be achieved if a bill dealing with changes in service in the small claims courts are passed. Thank you very much, Mr. President.

**Amendment adopted.****The question is on the adoption of the bill as amended.****Adopted.****Referred to the Finance Committee (Rule #26).**

**SB 286-FN**, requiring first class mail notice to defendants in small claims actions. Judiciary Committee. Ought to pass with amendment, Vote 6-0. Senator Foster for the committee.

**Senate Judiciary****February 9, 2006****2006-0893s****09/03****Amendment to SB 286-FN**

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

AN ACT relative to notice to defendants in small claims actions.

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

1 Small Claims Actions; Notice to Defendant. Amend RSA 503:6 to read as follows:

503:6 Notice to Defendant. The [justice] *plaintiff, at his or her own expense*, shall cause notice of the claim and the substance thereof to be

given to the defendant, whether or not he *or she* is a resident of this state, by sending a written statement to the defendant by postpaid certified mail, return receipt requested, addressed to the defendant at his *or her* last known post office address and directing the defendant to appear at the time and place of hearing, *to be determined by the court* which shall not be less than 14 days from the date said notice is mailed to the defendant. Any day of the month is a return day, exclusive of Saturday and Sunday. Return receipt showing that defendant has received the statement shall constitute an essential part of the service. If service cannot be effected by certified mail as aforesaid, then the court may direct that service on the defendant be completed as in all other actions at law.

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

**2006-0893s**

#### AMENDED ANALYSIS

This bill requires certified mail notice by plaintiffs to defendants in small claims actions. Currently, such notice is sent by the justice by certified mail, return receipt requested.

SENATOR FOSTER: Thank you, Mr. President. I move SB 286 ought to pass with amendment. The bill removes the requirement for the District Court to send out notices by certified mail, return receipt requested, and places this requirement on the plaintiff, the same as required in all other court cases. This is not an undue burden and attorneys are already familiar with the process. Pro se litigants will be provided with the information when they file small claims cases in District Courts and, if they are successful in their litigation, they will be able to recover the cost of the first class certified mail as court cost. This change will result in savings for the courts of approximately \$100,000 annually. This legislation provides the necessary funding in this budget cycle for the two full-time judges from SB 284 which we just passed. The committee amendment makes the bill effective in sixty days in order to provide the court enough time to establish procedures and to let the public, court clerks and judges know of this policy change. The Judiciary Committee recommends that this legislation be adopted with amendment and asks your support. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 379-FN**, relative to harm or threats to public officials. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Clegg for the committee.

**Senate Judiciary**

**February 8, 2006**

**2006-0831s**

**04/05**

#### **Amendment to SB 379-FN**

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

AN ACT relative to harm or threats to certain government officials.

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

1 New Section; Harm or Threats to Certain Government Officials. Amend RSA 631 by inserting after section 4 the following new section: 631:4-a Harm or Threats to Certain Government Officials.

I. A person is guilty of a Class A felony if he or she causes bodily injury to, or commits any other crime against, a sitting member of the general court, an executive councilor, a past or present governor, member of the judiciary, marital master, or member of their immediate family, for the purpose of influencing such official's action or in retaliation for action taken as a part of an official's government duties.

II. A person is guilty of a Class B felony if he or she threatens bodily injury or threatens to commit any other crime against a sitting member of the general court, an executive councilor, a past or present governor, member of the judiciary, marital master, or member of their immediate family, for the purpose of influencing such official's action or in retaliation for action taken as a part of an official's government duties.

III. Violations of this statute shall be prosecuted by the office of the attorney general.

2 Effective Date. This act shall take effect January 1, 2007.

**2006-0831s**

#### AMENDED ANALYSIS

This bill establishes a felony offense for causing or threatening harm to certain government officials or a member of their immediate family.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 379 ought to pass with amendment. This bill is the second that was filed in response to threats made to our Attorney General's family. It provides added security to judges and other public officials and was requested by the Court Security Committee. While Senate Bill 256 and this bill both relate to the same general topic, they amend different statutes and are both needed in order to be able to prosecute anyone who unlawfully threatens to harm public officials. This bill primarily addresses threats of or actual physical harm committed against certain officials or their families. Significant penalties can be imposed on those who violate the law. The Judiciary Committee recommends that this legislation be adopted and asks for your support. Thank you.

SENATOR BARNES: Thank you, Mr. President. Senator Clegg, does this include local officials such as selectmen and school board members?

SENATOR CLEGG: No, it does not. It only includes the judicial branch, the executive branch, the legislative branch.

SENATOR BARNES: Thank you very much.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

SENATOR BOYCE: Yes. Mr. President, I rise in opposition to this bill, not on this individual bill, but I have also risen in the past on other bills that created either special victims or special criminals. I don't believe there are special victims or special criminals. I think a crime against a person is a crime against a person. A criminal committing it is a criminal, the person being...with the crime committed against them is the victim. Because somebody is elected or serves in a high office, I don't believe, makes them a special victim. I think that they are a victim as if it was the guy walking across the street. So therefore, I am against this bill, as I am other bills creating special victims and special criminals. Thank you.

SENATOR CLEGG: Thank you. With all due respect to my colleagues, what this bill is intended to do is stop people from physically threatening your family or yourself in exchange for a vote on a certain particular issue. Now, it is a special crime, because we're up here to do work that some people don't particularly care for. And if your family is threatened so that you might decide to vote a different way, then I think that person ought to be prosecuted a little differently because what he's doing is he's actually taking my freedom to govern myself away from me. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 287-FN**, making certain changes to the eminent domain statute. Public and Municipal Affairs Committee. Ought to pass, Vote 4-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 287 ought to pass. The decision of Kelo versus New London made it clear that our state legislature had to do something to strengthen private property rights. New Hampshire cities and towns should not force landowners to sell their land below market value with threats of eminent domain. The authority for eminent domain must be used carefully and with public input. The resulting action must achieve a public good that benefits the whole community. This legislation will specifically define the term "public use" and protect New Hampshire citizens' rights to property. The Public and Municipal Affairs Committee asks for your support on the motion, and before I finish off and sit down, I want to thank the two Senators that came in to testify, bipartisan of Senator Gottesman and Senator Odell, who sat on the committee that worked on this issue this summer, brought it forward to us, and did a great job of presenting it to the committee. So our committee, Municipal and Country Government, would love your support on this and I think it would be great to have a roll call so we can get all twenty-four of us on board. Thank you.

SENATOR GOTTESMAN: Thank you for those compliments, Senator Barnes. I also would like to thank the members of the Senate President's special committee formed by then Senate President Eaton. We worked very hard addressing this issue, and we worked together, and we went through a lot of materials, and we came to what we thought was the best result. It's a result that the people in New Hampshire are calling for, and that is they don't want their property taken away when it shouldn't be taken away. The trend that we were trying to address was that public use was slipping away into public purpose. So the fact that it might be a good economic decision that might generate jobs, might generate taxes, may create new taxes for a town, that really has to be balanced with the fact that ma and pa, whether they own a store or they own a home, don't want to lose their properties. So we all looked at that, and we feel that we came up with the best language that we could come up with that addressed that situation. No bill is perfect, but we think this is a really good effort that we can send over to the House, and hopefully address the concerns that the people of New Hampshire are telling us they have. We don't want cities and town making an unreasonable taking of our constituents' properties. If you look at this bill, all twenty-four of us have signed it. We all care about our constituents, and we all care about property ownership in the state of New Hampshire. It is one of the most important rights we have and we want to protect it. Thank you, Mr. President. I would specifically like to thank Senator Odell, who has been a terrific ally in this, and again all the members of the committee, and those who have listened to our position with respect to this legislation. Thank you.



SENATOR MARTEL: Thank you very much, Mr. President. I, too, support the ought to pass motion on this bill. It's ironic that, when we brought this form to fill out to all become co-sponsors on the bill, I was proud to do it because in my years of serving the public with the Department of Health and Human Service and local health agencies and hospitals as well as nursing homes and assisted living homes and many other types of locations where people might go, it has become very evident, as Senator Gottesman just said, that people do not want to lose their homes or their property. Now, as indirect as this may seem, it is germane, and I'd like to just briefly say it. Some people go into nursing homes because they are told that they have no alternative, or assisted living homes. The point is that these people may have very little wealth except for having their home and their property. And, as they spend down, pretty soon the home and the property goes. What happens after that, especially if this person, say she's a widow? Her only connection to life was that property that she and her husband bought, that her children were brought up in. She is now alone. And it's a very difficult situation to be in. So I ask, I thank you, Mr. President, for the time to explain that, and also I urge you all to vote ought to pass on this bill.

SENATOR EATON: When the Kelo decision came down last year, I formed the study committee, and I want to again thank Senator Odell for chairing that and all the members that were on the committee. We had emails from all over the country. Word got out that we were doing a study on this and we had information from all over the country sending their opinions in and very, very, proud that we were doing something of that. But I want to commend all the members of the committee, the hard work that was put in, because the balance you have to go between public and private sectors and restoring or keeping people's rights for keeping their homes. So thank you.

**The question is on the committee report of ought to pass.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Gottesman.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

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

**Yeas: 24 - Nays: 0**

**Adopted.**

**Ordered to third reading.**

**SB 329, prohibiting dogs from being left alone in cars. Public and Municipal Affairs Committee. Inexpedient to legislate, Vote 4-0. Senator Roberge for the committee.**

SENATOR ROBERGE: Thank you, Mr. President. I move Senate Bill 329 inexpedient to legislate. This bill would have prohibited dogs from being left alone in cars. The committee felt that, because the proper wording could not be found, it would be very difficult for officials to enforce this type of law. The Public and Municipal Affairs Committee asks for your support in the motion of inexpedient to legislate.

**Committee report of inexpedient to legislate is adopted.**

**SB 336**, relative to security deposits in landlord tenant matters. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Hassan for the committee.

**Public and Municipal Affairs**  
**February 1, 2006**  
**2006-0723s**  
**05/10**

**Amendment to SB 336**

Amend the bill by deleting section 3 and renumbering the original section 4 to read as 3.

**2006-0723s**

**AMENDED ANALYSIS**

This bill removes the requirement that a landlord provide a receipt for a security deposit paid by check. The bill also permits a landlord to deduct lawful charges due under the lease which remain unpaid from the security deposit.

SENATOR HASSAN: Thank you, Mr. President. I move Senate Bill 336 ought to pass with amendment. This legislation will remove the requirement that a landlord provide a receipt for a security deposit that is paid by check. Currently, a landlord can only deduct physical damage, unpaid rent and the tenant’s share of real estate taxes from a security deposit even if the tenant owes the landlord other money. This legislation will also allow a landlord to deduct other lawful charges due under the terms of the lease from the security deposit. Landlords who violate the prohibited practices statutes are charged with separate violations for each day a violation continues under the current law. The committee amendment deletes section three of this bill. Section three would have limited the number of days charged as separate violations to those days in which the violation continued after the service of a court order or receipt of written notice. However, the committee found that this would allow landlords to commit one free “bad act.” For instance, on a Friday afternoon, if a landlord unlawfully locked out a tenant, the tenant would not be able to go to court until Monday and would be dislocated for at least three days, and the landlord would not have to pay any fines for those violations. The Public and Municipal Affairs Committee asks for your support for the motion of ought to pass with amendment. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 398-FN**, relative to political contributions and expenditures. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Barnes for the committee.

**Public and Municipal Affairs**  
**February 10, 2006**  
**2006-0911s**  
**03/04**

**Amendment to SB 398-FN**

Amend RSA 664:2, II(f) as inserted by section 1 of the bill by replacing it with the following:

*(f) Who has spent or committed to spend more than \$1,000 in aggregate, received as contributions, for the purpose of exploring a potential candidacy.*

Amend the bill by replacing section 6 with the following:

6 New Paragraph; Registration of Political Committees; Campaign Account. Amend RSA 664:3 by inserting after paragraph IV the following new paragraph:

V.(a) A candidate for governor, executive council, or state senate or a political committee, except a political committee or exploratory committee of a candidate for an officer other than governor, executive council, or state senate, shall, within 21 days of becoming a candidate or registering the committee, establish an exclusive campaign account or accounts, in a bank or equivalent institution. If the committee is located in New Hampshire, the account shall be with a financial institution which ordinarily conducts business within the state. The account shall be in a name that includes the full name of the political committee or candidate as registered or as will be filed with the secretary of state. A candidate for governor, executive council, or state senate shall be exempt from this requirement if he or she files a statement with the secretary of state that he or she intends to spend less than the amount established in RSA 664:5-b as the voluntary expenditure limit for that office, provided the candidate agrees to open a bank account if he or she expends more than that amount.

(b) The chairperson and treasurer shall report to the secretary of state the name of the bank or institution where the committee's account is established and the names of all persons authorized to sign checks or make electronic transfers issued from the account within 7 days of establishing the account.

(c) All cash and contributions on hand on the date the committee establishes the bank account shall be deposited into the account.

(d) Except as provided in subparagraph (f), expenses paid on behalf of a political committee which has a bank account shall be drawn from the account and issued on a check, electronic transfer, or wire transfer signed or authorized by the treasurer or a person authorized by the committee, approved in writing by the treasurer, and reported to the secretary of state.

(e) The account shall be used exclusively for the purposes of receiving contributions and making expenditures for the candidate or committee. No other funds shall be deposited in the account. No disbursement shall be made from the account that does not qualify as an expenditure or a qualified use of surplus funds. No personal funds, corporate funds, or contributions to or expenditures by another candidate or political committee shall be deposited to or disbursed from the account. Political committees which also exist as federal political action committees or as municipal committees shall not commingle contributions to the federal committee or the municipal committee in the account.

(f) A political committee required to establish an account under this paragraph may maintain a petty cash fund out of which it may make expenditures not in excess of \$100 to any person in connection with a single purchase or transaction. Funds shall be deposited to the petty cash fund only from the committee's established bank account and a record of each cash disbursement shall be kept with sufficient detail to satisfy the reporting requirements of this chapter.

(g)(1) A committee or candidate may:

(A) Change the bank or financial institution where the account is maintained;

(B) Change the persons who are authorized to make disbursements from the account; or

(C) Change its treasurer and, if a candidate, his or her fiscal agent.

(2) Changes under subparagraph (g)(1) shall be accomplished by written notice to the secretary of state within 7 days of the change. The written notice shall include the signature of the chairperson or candidate and the signature of the treasurer or evidence that such person has resigned, is deceased, or is no longer eligible to serve by law.

(h) The account required by this paragraph shall be closed before a final report by the committee reporting the committee's fund balance as zero is filed with the secretary of state, unless the remaining fund balance is transferred to a political committee with the identical name or to a political committee of the same candidate that registers for the purpose of the next election cycle simultaneously with filing the final report of the committee that is terminating its existence.

(i) This section shall not be construed to require a candidate making expenditures with only his or her own personal funds to open a bank account.

Amend RSA 664:6, V as inserted by section 7 of the bill by replacing it with the following:

V. ~~[Any]~~ ***In addition to any other reports required by this chapter, a political committee that has reached the level of contributions or expenditures requiring it to report under this section shall file reports on or before May 15 of each year and on or before November 15 in each non-election year in the form prescribed by the secretary of state and containing, at a minimum, the information required by paragraph I. A political committee which has any outstanding debt, obligation, or surplus following the election for which it was formed shall file reports [at least once every 6 months thereafter in the same form as in paragraph I] on these dates in the form prescribed by the secretary of state and containing, at a minimum, the information required by paragraph I until the obligation or indebtedness is entirely satisfied or surplus deleted, at which time a final report shall be filed. A political committee which remains in existence after the election for which it was formed and which has a surplus shall not accept contributions after the election day for which it was formed. A political committee which remains in existence after the election for which it was formed and which has a debt shall not make expenditures after the end of the month in which the election for which it was formed was held.***

Amend the bill by replacing all after section 8 with the following:

9 Applicability. No candidate or committee shall have less than 14 days from the effective date of this act to satisfy any requirements established by this act.

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

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 398 ought to pass with amendment. This legislation will clear up any gray areas with respect to campaign reporting, filing expenditures and contributions. This bill could easily be called New Hampshire's version of the McCain-Feingold bipartisan campaign finance reform. If you'll notice, we have both parties as sponsors of this bill. Senate Bill 398 explicitly defines "candidate." Candidates and political committees that have received more than \$1,000 in private donations will need to report the

money and create a separate bank account for it. Candidates that spend their own money will not be required to report it or set up a separate bank account. The committee amendment adds some clarifying language to the legislation. It also changes the number of days a candidate or political committee has to set up a separate bank account once they have reached the \$1,000 threshold from ten to twenty-one days. A twenty-one day timetable is more reasonable and manageable. Members of the House of Representatives will not be required to form a separate bank account. The committee felt it was best to allow the House to address this issue themselves. Additionally, in a non-election year, candidates and political committees will have to file reports two times a year rather than four. This legislation is crucial because it creates a list of standards to follow. This will ensure that, if questions about campaign funds are raised, there will be a paper trail to follow. The effective date of this act is May 31, 2006 so the law will be in place before the next campaign cycle begins in earnest. The Public and Municipal Affairs Committee unanimously asks for your support on the motion of ought to pass with amendment, and I thank you.

SENATOR BOYCE: Thank you, Mr. President. I rise mostly wondering what it is that we're trying to repair with this. I'll forget the reference to McCain-Feingold as to whether or not that's a good bill. But I look at this and it's adding a whole 'nother level of complexity to this process. I'm asking myself, is this not going to mean that we're going to have to raise more money to run for office in order to hire somebody to understand what it is that we're supposed to be doing with this bill? It talks about we have to...we will now have to get a special checking account. We have to determine, particularly the part about the in-kind contributions. If...I'm curious...you know, "political committee", which is defined as being part of the party as well...I'm thinking a town or county committee of the party getting an offer of maybe an insurance company's office for an evening to do phone banking. That's an in-kind contribution. Now, do they now have to figure out how much it would have cost them to rent that office for the four hours, to string phone lines in there, what the costs of those phones is? I mean, there's some value to it. It's being donated to the committee, but they have to estimate what that cost is and report it as an in-kind contribution. Also, if some out-of-state entity decides to do a mailing on somebody's behalf, then it becomes an obligation of the committee or the candidate to figure out how much that mailing was worth. Did they get a special break on the postage because they're a non-profit organization? Well I don't know how much that costs to mail that, but if I was doing it on my own campaigns account, yes, I would probably have to pay the 38 cents a piece or whatever for mailing. How much did it cost them to get it printed? If they don't tell you what that is, this says you have to estimate it and you have to include it as a cost in your campaign. I'm thinking that...you know, if we were all professional politicians, meaning that we actually got paid for what we do here, maybe it would make sense. But even the executive council doesn't really qualify as professional politicians because their salaries not high enough to pay for all of this. The only one that I can see here who really qualifies is the Governor, and even in comparison to other Governors' salaries, our Governor doesn't get that much. In fact, I think the previous Governor donated it back it was so little. But, at any point, I think that this is over-complicating of a system that has worked very well. I don't...I mean...there have been very few even complaints that something may have gone wrong. And you know, the situation where you

might have to actually hire somebody to do the bookkeeping for you. That brings in the whole question of if you hire a guy that is a crook and he steals the money and goes to Tijuana. You know? Gosh. I think that's just...it's getting way too complicated. I realize that there are half of the members of this chamber have signed on as sponsor to this bill, so it's probably going to at least come to an impasse if not passed. But I think we have gone too far with this. I think we need to sit down and think about it for a while. I don't think we need to do this. We've got federal elections that are so corrupt with money, even after McCain-Feingold, there's so much money being pumped into all those campaigns and the candidates don't necessarily have anything to do with that now. I think that this may bring up a similar situation where we will have outside things going on more than the actual campaign committees doing things, and I don't think that's where we want to go. So I think this is complicating the situation, trying to find a solution to a problem that I don't believe exists. So I'm just asking why.

SENATOR LARSEN: I rise to support our work on this as I believe that it does in fact...is a good attempt to shine more light on campaign financing and to allow for the kind of reporting that sunshine casts on this important activity as we present ourselves as public servants and up for election. It's my understanding that this bill, while we have some further discussions we need to have about it, will go to Finance Committee and, at that point, there will be the opportunity for additional discussion. So, I urge the group to support the passage of this bill, understanding that it is going to Finance, and there will be further discussions to fine tune it. Thank you.

SENATOR BURLING: Thank you, Mr. President. I want to rise and just say that this is one of the indicia that the pressure around here of time is perhaps affecting all of us. The committee had this for a remarkably small period of time and did a remarkably intense and good job, I think, in trying to improve the bill. The bill that is before you today is very much better, but I am profoundly aware that many of you haven't had a chance to read it yet, and would like to. It is only because this bill will go to Finance that I feel comfortable in voting for it and standing here in support of the motion. We will have a chance to read this. We will have a chance to deliberate further. And I encourage everybody to do that. It's an important piece of legislation, but it's a much better piece of legislation than what came into the committee.

### PARLIAMENTARY INQUIRY

SENATOR GREEN: Parliamentary question, Mr. President.

SENATOR GATSAS (In the Chair): Parliamentary inquiry?

SENATOR GREEN: My question, Mr. President is, did we deal with the amendment on this bill? What are we voting on, I guess is my question.

SENATOR GATSAS (In the Chair): The adoption of the committee amendment.

SENATOR GREEN: We are right now? That's what we are voting on?

SENATOR GATSAS (In the Chair): That's correct.

SENATOR GREEN: Thank you.

SENATOR GATSAS (In the Chair): No, the question is on the adoption of the committee amendment.

**The question is on adoption of the committee amendment.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Boyce.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

**The following Senator voted No: Boyce.**

**Yeas: 23- Nays: 1**

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 288-FN**, relative to street rods and custom vehicles. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 4-0. Senator Letourneau for the committee.

**Transportation and Interstate Cooperation**

**February 8, 2006**

**2006-0848s**

**03/04**

**Amendment to SB 288-FN**

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

AN ACT relative to street rods.

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

1 Motor Vehicles; Words and Phrases Defined; Street Rod. RSA 259:106-a is repealed and reenacted to read as follows:

259:106-a Street Rod.

I. "Street rod" shall mean a motor vehicle that:

(a) Is at least 25 years old, or that was manufactured to resemble a vehicle 25 or more years old; and

(b) Has been altered from the manufacturer's original design, or has a body constructed from non-original materials.

II. The model year that is listed on the certificate of title of a street rod vehicle shall be the model year that the body of such vehicle resembles.

2 Equipment Required of Street Rods. RSA 266:113 is repealed and reenacted to read as follows:

266:113 Equipment Required of Street Rods.

I. Unless the presence of the equipment was specifically required by a statute of this state as a condition of sale in the year listed as the year of manufacture on the certificate of title, the presence of any specific equipment is not required for the operation of a vehicle registered as a street rod.

II. A street rod may use blue dot tail lights for stop lamps, rear turning indicator lamps, rear hazard lamps, and rear reflectors. "Blue dot tail light" means a red lamp installed in the rear of a motor vehicle containing a blue or purple insert that is not more than one inch in diameter.

3 Effective Date. This act shall take effect January 1, 2007.

2006-0848s

## AMENDED ANALYSIS

This bill modifies the definition of street rod and changes the equipment requirements for street rods.

SENATOR LETOURNEAU: Thank you, Mr. President. I move Senate Bill 288-FN ought to pass with amendment. A committee amendment defining "street rod" as a motor vehicle that is at least twenty-five years old or it was manufactured to resemble a vehicle twenty-five years or more old. Due to the limited use of street rods, only equipment that was required by statute as a condition of sale in the year listed as the year manufactured on a certificate or title will be required for these vehicles. Normal registration fees and semi-annual inspections are still required under this amendment. Please join with the Transportation Committee and vote ought to pass as amended. Thank you.

SENATOR MARTEL: Thank you very much, Mr. President. I have a question of Senator Letourneau. Senator, when we heard this in committee, it was very clear about what this was to accomplish. But I do have one question I forgot to ask back then, we're not too far away in our offices in the state house, but it slipped my mind. What kind of security do we have for those people who get kits from around the world to rebuild cars? You know from scratch, where they can buy the parts. How are we going to address that?

SENATOR LETOURNEAU: Well, that's what this bill is intended to address, Senator Martel, and thank you for the question. The security we have is the fact that they're going to be inspected, and they have to pass a safety inspection, which is what the committee actually requested. The original bill didn't require an inspection; this does.

SENATOR MARTEL: Thank you I understand, I'll talk to you...that's fine, Mr. President. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 310-FN**, establishing gold star number plates. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 6-0. Senator Letourneau for the committee.

**Transportation and Interstate Cooperation**

**February 9, 2006**

**2006-0887s**

**03/04**

**Amendment to SB 310-FN**

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

AN ACT establishing gold star number plates and relative to special number plates for veterans.

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

1 New Section; Gold Star Number Plates. Amend RSA 261 by inserting after section 87-b the following new section:

261:87-c Gold Star Number Plates.



I. The department shall furnish one set of special number plates, designed by the director with the approval of the commissioner, for one motor vehicle owned by a mother of a person killed while on duty in the United States armed forces. These gold star number plates shall be issued upon payment of the regular registration and number plate fees.

II. For purposes of this section, a motor vehicle is owned by a mother of a person killed while on duty in the United States armed forces if the mother of a person killed while on duty in the United States armed forces is the motor vehicle's owner under RSA 259:72, I, or if the legal ownership of the motor vehicle is held by a trust established by the mother of a person killed while on duty in the United States armed forces and the mother of a person killed while on duty in the United States armed forces has use of the motor vehicle or the motor vehicle is used for the transportation of the mother of a person killed while on duty in the United States armed forces. The director shall establish the documentation required for a motor vehicle held in trust to be eligible for plates under this section. The director shall not issue more than one set of plates under this section to any trust. A trustee of the trust or the administrator of the estate may be fined up to \$500 for failing to return within 60 days of the death of the mother of a person killed while on duty in the United States armed forces any plates issued under this section for a motor vehicle held in trust.

2 Special Number Plates for Veterans; Eligibility. Amend RSA 261:87-b to read as follows:

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 *to veterans as defined in RSA 21:50, I(a)* upon application, proof of ~~[honorable discharge from the armed services as deemed appropriate by the director]~~ *veteran status in a form authorized by RSA 21:50, I(b)*, and 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 plate fees otherwise required. The director shall also issue such plates to any person providing proof of honorable discharge from the armed services of any nation allied with the United States during World War II and proof of such person's service during World War II. 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.

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

2006-0887s

#### AMENDED ANALYSIS

This bill establishes gold star number plates. This bill also clarifies the eligibility requirements for special number plates for veterans.

SENATOR LETOURNEAU: Thank you, Mr. President. I move Senate Bill 310-FN ought to pass with an amendment. This bill establishes a gold star number plates. This bill would allow mothers of a person killed while on duty in the United States armed forces to receive one set of special number motor vehicle license plates. The gold star number plates would be issued upon the payment of the regular registration and number plate

fees. The committee amendment clarifies the eligibility for requirements for special number plates for veterans. And I might add, that sadly enough, as I spoke to you this morning, that we now have another new gold star mother in the state. And I'd ask you all to join the Transportation Committee and vote ought to pass as amended. Thank you.

**SENATOR BARNES:** Thank you, Mr. President. This piece of legislation, I think it's something to look at very seriously because this Senate bill that is in front of you now, allows that license plate to be issued to the gold star mother, the authorized gold star mother of the individual who has been killed in service. Little bit of confusion going around the State House on this because there was a bill over in the House that allowed family members to have that plate. I want to go on record as saying, if that bill makes it here to this floor, I am going to vote against that. The bill that I am proud to sponsor is strictly for the mothers. When the mother passes, the plate passes; it does not continue in the family. It's for gold star mothers, not family members. Thank you.

**SENATOR LETOURNEAU:** Thank you, and just to comment on Senator Barnes' comments, and he's entirely correct. We did the research, the committee was very seriously looking into this issue. We got the information that the gold star mothers were incorporated or franchised by the United States Congress way back in 1927. They don't do that anymore, but they are a corporation, a non-profit corporation, and as a specific title and a specific declaration of what a gold star mother is, it is a natural mother, a stepmother or an adopted mother. It's just mothers. So, we just want the Senate to be comfortable that it is a gold star mother plate. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

### **RESOLUTION**

Senator Clegg 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 all bills and resolutions ordered to a third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

### **LATE SESSION**

#### **Third Reading and Final Passage**

**SB 242**, prohibiting a person charged with unlawfully killing a decedent from taking from the decedent's estate.

**SB 256**, relative to the definition of "harm" for purposes of the crime of improper influence.

**SB 283-FN**, relative to stop loss insurance.

**SB 286-FN**, relative to notice to defendants in small claims actions.

**SB 287-FN**, making certain changes to the eminent domain statute.

**SB 288-FN**, relative to street rods.

**SB 294-FN-A**, authorizing 7 additional state troopers and making an appropriation therefor.

**SB 310-FN**, establishing gold star number plates and relative to special number plates for veterans.

**SB 336**, relative to security deposits in landlord tenant matters.

**SB 357-FN**, relative to eligibility for motorcycle licenses.

**SB 358-FN**, relative to an advanced registered nurse practitioner's duty to warn of violent acts of patients.

**SB 370-FN**, relative to multidisciplinary child protection teams.

**SB 379-FN**, relative to harm or threats to certain government officials.

**SJR 4**, urging Congress to require the Department of Defense to reinstate the terminology of "POW" or "Prisoner of War" into the classification of military personnel.

**HB 599-FN**, requiring disclosure to consumers of the presence of event data recording devices in new motor vehicles.

**HJR 1**, recognizing that Seavey Island and the Piscataqua River are within the boundaries of the state of New Hampshire.

## ANNOUNCEMENTS

### RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the purpose of introducing legislation, sending and receiving messages, processing enrolled bill reports and amendments.

**Adopted.**

**In recess to the Call of the Chair.**

### HOUSE MESSAGE

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

**HB 254-FN**, establishing lifetime licenses for bow and arrow, muzzle loading firearm, and crossbow licenses.

**HB 656-FN**, relative to medical decision making for those adults without capacity to make health care decisions for themselves and establishing procedures for Do Not Resuscitate Orders.

**HB 1108**, relative to the transfer of funds among PAUs within a department.

**HB 1114**, relative to regulation by the board of licensure of interpreters for the deaf and hard of hearing.

**HB 1125**, relative to the filing period for candidates at the presidential primary.

**HB 1128-FN**, relative to definition of teacher in the New Hampshire retirement system, and relative to approval of supplemental allowances.

**HB 1132**, relative to qualifications for the Global War on Terrorism operations service bonus payment.

**HB 1134**, relative to membership of the state building code review board.

**HB 1152**, naming a certain bridge over the Merrimack River.

**HB 1153**, establishing a commission to study the laws and rules relating to subpoenas, summonses and complaints.

**HB 1154-FN**, relative to eligibility for special number plates for veterans.

**HB 1156**, changing the notification for public hearings on ski area passenger tramway rules from registered mail to first class mail.

**HB 1162**, relative to village districts.

**HB 1173**, relative to designating the clerk in cities the chief elections officer for the city.

**HB 1176**, establishing a committee to study statutes relating to railroads.

**HB 1191**, making technical corrections to the chapter governing vital records.

**HB 1221-FN**, relative to recovery of medical assistance.

**HB 1222-FN**, relative to unlawful voting.

**HB 1225-FN-A**, relative to the judicial branch family division for the Henniker and Hillsborough District Courts.

**HB 1231-FN**, relative to the penalty for assaulting a firefighter, licensed emergency medical care provider, or law enforcement officer.

**HB 1264**, establishing an advisory committee to study the information practices act and establishing a temporary moratorium on reports filed under the information practices act.

**HB 1294**, relative to antique snowmobiles.

**HB 1305-L**, authorizing cities to adopt certain bylaws and ordinances relative to businesses obtaining city permits.

**HB 1334**, establishing a committee to study the effect on the unemployment compensation trust fund of employers with negative balance separate accounts.

**HB 1361**, relative to the penalty for shoplifting.

**HB 1370**, transferring certain surplus moneys to the revenue stabilization reserve account.

**HB 1376**, relative to the duties of the legislative oversight committee on electric utility restructuring.

**HB 1409-FN**, relative to organ and tissue donation.

**HB 1410-FN-L**, relative to the cost to counties of convicted inmates awaiting sentencing in a county correctional facility.

**HB 1419-FN**, relative to mediation in divorce proceedings.

**HB 1424**, relative to persons permitted to attend child abuse and neglect hearings.

**HB 1427**, relative to guiding principles for developmentally disabled services.

**HB 1436-L**, authorizing municipal and county biennial budgets for a 24-month period.

**HB 1437**, establishing a committee to study the effects of current state and federal laws on illegal drugs and the possession and use of such drugs.

**HB 1458-FN**, relative to the regulation of landscape architects.

**HB 1477**, implementing the federal Law Enforcement Officers Safety Act of 2004.

**HB 1497-L**, relative to certification by a superintendent regarding statistical reports.

**HB 1501**, making various changes to the lottery commission.

- HB 1516**, relative to the modification and enforcement of child support orders.
- HB 1521**, relative to the membership of the juvenile parole board.
- HB 1563**, establishing a committee to study immigration.
- HB 1570**, relative to health insurance coverage for part-time college students.
- HB 1578**, to provide enhanced awareness of and education on methamphetamine to the citizens of New Hampshire.
- HB 1581**, relative to drivers' licenses issued to persons under the age of 21.
- HB 1583**, relative to grounds for modification of parental rights and responsibilities.
- HB 1585**, relative to enforcement of orders regarding parenting plans.
- HB 1588**, relative to unemployment compensation requirements for governmental and non-profit employers.
- HB 1589**, establishing a committee to study the feasibility of using certain state-owned buildings as transition housing for 17-year-olds and 18-year-olds who are ready to leave foster care or the youth development center.
- HB 1634-FN**, making technical changes to the law governing the New Hampshire retirement system.
- HB 1648-FN**, relative to legal residency and financial liability for children in certain residential placements.
- HB 1654-FN**, relative to the probate court mediation fund and fee.
- HB 1662-FN**, establishing the crime of peonage.
- HB 1663-FN-L**, relative to the licensing fee for motor vehicle recycling yards.
- HB 1671-FN**, relative to the regulation of dentists and dental hygienists by the board of dental examiners.
- HB 1679-FN-L**, relative to the property tax exemption for university system property.
- HB 1690**, relative to renewable energy.
- HB 1713-FN**, restricting the over-the-counter sale of pseudoephedrine base and ephedrine base drugs and establishing commission to study the feasibility of an electronic tracking system for sales of pseudoephedrine base and ephedrine base drugs.
- HB 1720-FN**, relative to notice of parent liability in CHINS proceedings.
- HB 1724-FN**, relative to compensation and benefits for reserve and national guard members who are state employees.
- HB 1725-FN**, extending the pilot project relative to abuse and neglect hearings and relative to confidentiality in pilot project abuse and neglect cases.
- HB 1727-FN-L**, relative to transfer or discharge of patients or residents in licensed facilities.
- HB 1733-FN**, establishing a reporting system for court decisions relative to residential responsibility under parenting plans.
- HJR 24**, supporting efforts for commuter rail in the state of New Hampshire.

**INTRODUCTION OF HOUSE BILL(S)**

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 254-FN to HJR 24** shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

**Adopted.**

**First and Second Reading and Referral**

**HB 254-FN**, establishing lifetime licenses for bow and arrow, muzzle loading firearm, and crossbow licenses. (Environment and Wildlife)

**HB 656-FN**, relative to medical decision making for those adults without capacity to make health care decisions for themselves and establishing procedures for Do Not Resuscitate Orders. (Judiciary)

**HB 1108**, relative to the transfer of funds among PAUs within a department. (Finance)

**HB 1114**, relative to regulation by the board of licensure of interpreters for the deaf and hard of hearing. (Executive Departments and Administration)

**HB 1125**, relative to the filing period for candidates at the presidential primary. (Internal Affairs)

**HB 1128-FN**, relative to definition of teacher in the New Hampshire retirement system, and relative to approval of supplemental allowances. (Banks and Insurance)

**HB 1132**, relative to qualifications for the Global War on Terrorism operations service bonus payment. (Public and Municipal Affairs)

**HB 1134**, relative to membership of the state building code review board. (Public and Municipal Affairs)

**HB 1152**, naming a certain bridge over the Merrimack River. (Transportation and Interstate Cooperation)

**HB 1153**, establishing a commission to study the laws and rules relating to subpoenas, summonses and complaints. (Judiciary)

**HB 1154-FN**, relative to eligibility for special number plates for veterans. (Transportation and Interstate Cooperation)

**HB 1156**, changing the notification for public hearings on ski area passenger tramway rules from registered mail to first class mail. (Energy and Economic Development)

**HB 1162**, relative to village districts. (Public and Municipal Affairs)

**HB 1173**, relative to designating the clerk in cities the chief elections officer for the city. (Public and Municipal Affairs)

**HB 1176**, establishing a committee to study statutes relating to railroads. (Transportation and Interstate Cooperation)

**HB 1191**, making technical corrections to the chapter governing vital records. (Public and Municipal Affairs)

**HB 1221-FN**, relative to recovery of medical assistance. (Judiciary)

**HB 1222-FN**, relative to unlawful voting. (Internal Affairs)

- HB 1225-FN-A**, relative to the judicial branch family division for the Henniker and Hillsborough District Courts. (Judiciary)
- HB 1231-FN**, relative to the penalty for assaulting a firefighter, licensed emergency medical care provider, or law enforcement officer. (Public and Municipal Affairs)
- HB 1264**, establishing an advisory committee to study the information practices act and establishing a temporary moratorium on reports filed under the information practices act. (Executive Departments and Administration)
- HB 1294**, relative to antique snowmobiles. (Environment and Wildlife)
- HB 1305-L**, authorizing cities to adopt certain bylaws and ordinances relative to businesses obtaining city permits. (Public and Municipal Affairs)
- HB 1334**, establishing a committee to study the effect on the unemployment compensation trust fund of employers with negative balance separate accounts. (Banks and Insurance)
- HB 1361**, relative to the penalty for shoplifting. (Judiciary)
- HB 1370**, transferring certain surplus moneys to the revenue stabilization reserve account. (Finance)
- HB 1376**, relative to the duties of the legislative oversight committee on electric utility restructuring. (Energy and Economic Development)
- HB 1409-FN**, relative to organ and tissue donation. (Health and Human Services)
- HB 1410-FN-L**, relative to the cost to counties of convicted inmates awaiting sentencing in a county correctional facility. (Finance)
- HB 1419-FN**, relative to mediation in divorce proceedings. (Judiciary)
- HB 1424**, relative to persons permitted to attend child abuse and neglect hearings. (Judiciary)
- HB 1427**, relative to guiding principles for developmentally disabled services. (Health and Human Services)
- HB 1436-L**, authorizing municipal and county biennial budgets for a 24-month period. (Public and Municipal Affairs)
- HB 1437**, establishing a committee to study the effects of current state and federal laws on illegal drugs and the possession and use of such drugs. (Health and Human Services)
- HB 1458-FN**, relative to the regulation of landscape architects. (Finance)
- HB 1477**, implementing the federal Law Enforcement Officers Safety Act of 2004. (Executive Departments and Administration)
- HB 1497-L**, relative to certification by a superintendent regarding statistical reports. (Education)
- HB 1501**, making various changes to the lottery commission. (Ways and Means)
- HB 1516**, relative to the modification and enforcement of child support orders. (Judiciary)
- HB 1521**, relative to the membership of the juvenile parole board. (Executive Departments and Administration)

- HB 1563**, establishing a committee to study immigration. (Health and Human Services)
- HB 1570**, relative to health insurance coverage for part-time college students. (Banks and Insurance)
- HB 1578**, to provide enhanced awareness of and education on methamphetamine to the citizens of New Hampshire. (Education)
- HB 1581**, relative to drivers' licenses issued to persons under the age of 21. (Transportation and Interstate Cooperation)
- HB 1583**, relative to grounds for modification of parental rights and responsibilities. (Judiciary)
- HB 1585**, relative to enforcement of orders regarding parenting plans. (Judiciary)
- HB 1588**, relative to unemployment compensation requirements for governmental and non-profit employers. (Banks and Insurance)
- HB 1589**, establishing a committee to study the feasibility of using certain state-owned buildings as transition housing for 17-year-olds and 18-year-olds who are ready to leave foster care or the youth development center. (Executive Departments and Administration)
- HB 1634-FN**, making technical changes to the law governing the New Hampshire retirement system. (Banks and Insurance)
- HB 1648-FN**, relative to legal residency and financial liability for children in certain residential placements. (Judiciary)
- HB 1654-FN**, relative to the probate court mediation fund and fee. (Judiciary)
- HB 1662-FN**, establishing the crime of peonage. (Internal Affairs)
- HB 1663-FN-L**, relative to the licensing fee for motor vehicle recycling yards. (Energy and Economic Development)
- HB 1671-FN**, relative to the regulation of dentists and dental hygienists by the board of dental examiners. (Executive Departments and Administration)
- HB 1679-FN-L**, relative to the property tax exemption for university system property. (Finance)
- HB 1690**, relative to renewable energy. (Energy and Economic Development)
- HB 1713-FN**, restricting the over-the-counter sale of pseudoephedrine base and ephedrine base drugs and establishing commission to study the feasibility of an electronic tracking system for sales of pseudoephedrine base and ephedrine base drugs. (Health and Human Services)
- HB 1720-FN**, relative to notice of parent liability in CHINS proceedings. (Judiciary)
- HB 1724-FN**, relative to compensation and benefits for reserve and national guard members who are state employees. (Finance)
- HB 1725-FN**, extending the pilot project relative to abuse and neglect hearings and relative to confidentiality in pilot project abuse and neglect cases. (Judiciary)
- HB 1727-FN-L**, relative to transfer or discharge of patients or residents in licensed facilities. (Health and Human Services)



**HB 1733-FN**, establishing a reporting system for court decisions relative to residential responsibility under parenting plans. (Judiciary)

**HJR 24**, supporting efforts for commuter rail in the state of New Hampshire. (Transportation and Interstate Cooperation)

### INTRODUCTION OF SENATE BILL(S)

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from **SB 403** to **405** shall be by this resolution read a first and second time by the therein listed title(s) and referred to the designated committee(s).

**Adopted.**

### First and Second Reading and Referral

06-3036

**SB 403**, relative to verification of identity when a person registers or attempts to vote. (Green, Dist 6; Barnes, Dist 17; Bragdon, Dist 11; Clegg, Dist 14; Gallus, Dist 1; Gatsas, Dist 16; Johnson, Dist 2; Letourneau, Dist 19; Martel, Dist 18; Odell, Dist 8; Roberge, Dist 9: Public and Municipal Affairs)

06-3053

**SB 404**, relative to retirement benefits, optional benefits, and the collection of overpayments by the Manchester employees' contributory retirement system. (Martel, Dist 18; D'Allesandro, Dist 20; Odell, Dist 8; Roberge, Dist 9; Pilotte Hills 16; Vaillancourt, Hills 15; Infantine, Hills 13; Gonzalez, Hills 17; F. Sullivan, Hills 12: Public and Municipal Affairs)

06-3055

**SB 405**, relative to the acceptance of certain tax-sheltered funds by the Manchester employees' contributory retirement system. (Martel, Dist 18; D'Allesandro, Dist 20; Odell, Dist 8; Roberge, Dist 9; Pilotte Hills 16; Vaillancourt, Hills 15; Infantine, Hills 13; Gonzalez, Hills 17; F. Sullivan, Hills 12: Public and Municipal Affairs)

### 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(s):

**HB 100**, amending the formula for funding public education.

**HB 331**, relative to restraining dogs and relative to livestock working dogs.

**SB 72**, relative to the licensing of public adjusters.

**HJR 1**, recognizing that Seavey Island and the Piscataqua River are within the boundaries of the state of New Hampshire.

Senator D'Allesandro moved adoption.

**Adopted.**

**Out of Recess.**

### LATE SESSION

Senator Clegg moved that we adjourn from the late session.

**Adopted.**

**Adjournment.**

*February 23, 2006*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good morning. It was 551 years ago today that Johannes Gutenberg's new press produced the very first printed text on a series of sheets of paper, and you and I are now victims of that invention. But it was the work of a machine for the first time and not of human hands, and from that point on everything was going to be different. But what made this innovation so important was not the artistic quality of the product, because as you remember, countless earlier handwritten manuscripts were infinitely more beautiful and delicate and moving. Nor was this day's historic importance due to the content of the text, the Bible, my favorite book. But the invention of the printing press was revolutionary because of its ability to reproduce quickly multiple copies of the text, making information directly available to an ever-expanding number of people. The educated leaders suddenly lost their monopoly, and as a result, what followed in succeeding decades and centuries was religious reformation and oppression, expanded literacy and censorship, an education revolution, and new moral ignorance, fresh political energy and suppression, growth of individual freedom and responsibility, and self-centered malignant individualism, can go either way. For better or for worse, a single day's work can have an impact that reverberates down the canyons of time for generations to come. You may not be inventing the printing press here today, but don't be too sure. Let us pray.

*O God, creative and innovative are You. May Your hand with beauty imprint us. May Your marks of indelible clarity brighten us. And may the new technology of Your inspiration release through us quietly thundering waves of revolutionary transformation.* Amen

Good luck.

Senator Flanders led the Pledge of Allegiance.

Senator Johnson is excused for the day.

## INTRODUCTION OF GUESTS

### SPECIAL ORDER

SENATOR CLEGG: Mr. President, I move that Senate Concurrent Resolution 7, Senate Bill 301, Senate Bill 318, and Senate Bill 367 be special ordered for Thursday, March 9, 2006.

**Adopted.**

## COMMITTEE REPORTS

**SB 279-FN**, allowing employees of area agencies and mental health clinics to be treated as state employees for purposes of insurance. Banks and Insurance Committee. Inexpedient to legislate, Vote 3-1. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. Senate Bill 279 I move as inexpedient to legislate. This bill dates back to Committee of Conference on the budget from the previous session when the former commissioner of the Department of Corrections agreed to the legislation in this bill. We now have a new commissioner

who came and testified to us that his plan doesn't look anything like the previous commissioner's plan. He does not want or need this legislation. Therefore, we ask you to ITL. Thank you.

SENATOR BURLING: I'm sorry, Mr. President. I thought we were doing 279. Well, Mr. President, as the sponsor of 279, if I remember it correctly, it was a slightly different issue which I'm happy to discuss.

SENATOR FLANDERS: **TAPE INAUDIBLE** functions at the Department of Corrections.

SENATOR BURLING: Oh, allowing employees of area agencies

SENATOR FLANDERS: I'm sorry.

SENATOR BURLING: Why don't I sit down again?

SENATOR FLANDERS: I'm sorry. I got them. The dog got me all **TAPE INAUDIBLE**. I'm so afraid mine's going to find out. Let me try one more time. Thank you, Mr. President. I move Senate Bill 279 inexpedient to legislate. The committee was concerned about the legality of adding individuals who are not state employees into our self-insurance systems. There are also unanswered questions as to exactly how many employees of the area agencies and the community mental health centers would take advantage of this opportunity. We heard from Commissioner Hill, who testified that he had no idea how many people he would have to add. We heard testimony that he would have to keep it separate because they're not state employees, and we really had a question as to whether it's legal to bring non-state employees into our self-insured program. So we ask that...for your support ITL this legislation. Thank you. I'm sorry, Senator.

SENATOR BURLING: Thank you, Mr. President, I am the sponsor of this legislation, and I oppose the motion of inexpedient to legislate. I do so for a couple of reasons. Let me take you back once again to Laconia. Everybody remember Laconia, not the place, the lawsuit? We lost that lawsuit. We have an obligation to provide services to those of our community who are disabled. We can no longer just lock them away. We accepted that obligation with something approaching good grace back in the '80s when we actually allowed people who had degrees in providing services and we paid them relatively well. The last twenty years have been a shameless, not to say disgraceful, performance on the part of the state as we have steadfastly lowered the amount of money that we provide for compensation to the people who do our duty with regard to the disabilities community. The same is true for those who suffer from mental health issues. My point is not to rail about that issue; my point is just to be a pragmatist. Each of us, as a Senator, swears on oath that we will uphold the Constitution and look after the best interests of the state. If we continue to reduce the compensation which we afford to the people who work doing our job with regard to the disabilities community, we will find ourselves ultimately with another lawsuit. This bill was intended to avert that result by allowing people who have a tough time now getting health insurance benefits, because we have whittled back the compensation package for the area agency employees and the mental health employees, and it was a very obvious kind of thing to do. Since they're performing what is in essence a state function, why not allow them access as if they were state employees, to the insurance program that many of us benefit from? We can do that. We ought to do it. We may not choose to do it because it would be more expensive in the short run, but the fact of the matter is, in the long run, unless we have a care to the people who

work for the area agencies and the mental health clinics and provide the caring service that their constituents require, we will find ourselves up against another Laconia lawsuit, and the price tag on that one will boggle the mind of everyone in here. We should act in a responsible and sensible way. If we're not prepared to do this, then let's find other ways to see that the compensation reimbursement is there to make sure these people can afford to do their jobs. At present, we're not doing that. In fact, we're hearing that the very budget that we passed last year was not entirely expended by the commissioner. How can it be that we want people to continue to provide these services, and yet we're not willing to give them the basic necessities of life? We have people with advanced degrees earning \$20,000 a year in some cases, with no health benefit, no retirement benefit, and we think they're going to keep doing that. This was a simple effort to provide some modest increase in our effort to support the community that does our duty to the disabilities community. I'm sorry I feel so passionately about this, but I think inexpedient is the wrong motion. We ought to pass this and send it to Finance, and I hope that we will overturn the inexpedient to legislate and do just that.

SENATOR MORSE: Thank you, Mr. President. I agree with Senator Burling's passion, but the long and the short of an AP story that's in the paper today is that New Hampshire is rated number one or considered number one in the category of taking care of people in DD. I just, I guess I disagree that we don't put a lot of effort here because one of the biggest advocates is in my district, and she lets me know if we make a mistake, I can tell you that much. But there is a story today in the paper. Thank you.

SENATOR HASSAN: Thank you, Mr. President, and I also heard the story on the radio this morning that New Hampshire's Medicaid Program had been noted as first in the nation in terms of its efficiency and funding for people with disabilities, and that is something we should be very proud of. I also though know that a recent study of our own system, comprehensive system for how we deal with people with developmental disabilities and provide services many of which aren't covered by Medicaid, has slipped from tenth in the nation to 35<sup>th</sup>. As a member of the disability community with a child who receives services at home, I can just add to the chorus, and I also know the advocate in Senator Morse's district well. And I think families of those with disabilities and those with disabilities themselves would join in thanking the Senate and the legislators for their efforts, but would also join very much with their concern that it is increasingly difficult to find people to staff the myriad of services that we need to staff, and it is work we still have to do. Thank you.

SENATOR BURLING: I'd like to speak a second time. Thank you. You know, we have a problem on the floor of this Senate. We listen to stuff that comes across the airwaves or gets printed in the national newspapers or in some other newspaper, and we take it as truth. It isn't. If you want to know what's happening, go out in your community and talk to the people whose lives are affected. This body forced my area agency out of existence. The people who provided services for twenty-six years to the disabilities community in the Upper Valley have, to some extent been absorbed by the new agency, and Senator Odell and I both know what a triumph it is that they've managed to do that. But I have constituency who have been providing services for twenty years who don't have a job. They don't have any retirement. They don't have any place to go, and their successors, the ones who are lucky enough to keep on working,

don't have salaries that you'd pay to the kid who sweeps out my barn. It's not real. It's time we stop kidding ourselves about what we're doing because sooner or later they're going to get smart enough to rebel. They'll walk off the job, and then we're going to be wondering how the heck that happened? Come on, this is about providing a decent health insurance program for people who do work that we have to have done. Thank you, Mr. President.

**Committee report of inexpedient to legislate is adopted.**

Senators Gottesman and Martel are in opposition to the motion of inexpedient to legislate on SB 279-FN.

**SB 299-FN**, relative to health insurance rate changes. Banks and Insurance Committee. Inexpedient to legislate, Vote 2-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 299 inexpedient to legislate. The Deputy Insurance Commissioner testified before the committee that there are a number of provisions already in place which cover the issues this bill sought to regulate. Limitations already exist with regard to when rate increases can be implemented, and it is not necessary to have a public hearing for every proposed rate change. The Banks and Insurance Committee asks your support for the motion of inexpedient to legislate, and I thank all of you.

**Committee report of inexpedient to legislate is adopted.**

**SB 347**, establishing a committee to study the state employee health insurance plan. Banks and Insurance Committee. Inexpedient to legislate, Vote 6-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move SB 347 inexpedient to legislate. The committee heard testimony that the self-insurance system deserves to be carefully reviewed to see if we can find a more cost-effective plan for the state's employees. However, it was brought to the attention of the committee that another bill exists, HB 1735, which deals with the same issue. Since there is no need for two bills calling for the same study committee, the Banks and Insurance Committee recommends that this legislation be found inexpedient to legislate and asks for your support. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 372-FN**, allowing certain employees of private agencies to be treated as state employees for purposes of insurance. Banks and Insurance Committee. Inexpedient to legislate, Vote 6-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move Senate Bill 372-FN inexpedient to legislate. This bill would have allowed employees of private agencies who provide state services to participate in the state group insurance coverage. The committee heard testimony from Commissioner Don Hill that the state does not have the appropriation to pay for that part of the premium for these individuals as this legislation calls for. A separate account for these non-state employees would also have to be created to handle the administration of such coverage. As with Senate Bill 279, there were concerns about adding non-state employees to our self-insurance system. The Banks and Insurance Committee feels that this issue has not been given sufficient study and asks for your support in the motion of inexpedient to legislate.

SENATOR HASSAN: Thank you, Mr. President. As prime sponsor of the bill, I just wanted to rise in opposition to the inexpedient to legislate. This bill goes along the same lines as 279 did. There are a number of private agencies in this state whose employees do the state's business. They provide nurses for our Medicaid recipients. They provide daycare workers for people who are getting daycare services through state subsidies. And increasingly it is difficult for employees in these roles to find health insurance or to afford it. I will note that the State Employees' Union came in, in support of this bill because they would welcome such employees into the self-insured program of the state. They understand the need for insurance. I will also say, as Senator Burling noted, if you go and talk to people in the communities who get these services or who need these services, it is increasingly difficult, even if the state is providing funding for the service, to find people to actually provide it. So a nurse who is taking care of a disabled child at home goes on vacation for one or two weeks, and there is no one to fill her place and that child's health becomes more at risk during that time. So that's the purpose of the bill. I hope we will continue to look at these issues and see with further study if there's a way we can make more health insurance available to the people who are doing the state's work. Thank you.

SENATOR ESTABROOK: Thank you, Mr. President, **TAPE INAUDIBLE** I know I am a sponsor of this also, and I joined on because of my interest in early education. As Senator Hassan pointed out, childcare providers are among the providers that would have been covered by this bill. These people who take care of our children and provide the early learning environments that I'll talk about later that are so important, are paid less than sanitation workers, have no benefits, and as Senator Burling said, have no way of planning for their retirement. The conditions and compensation they receive is not at all commensurate with their qualifications and the important tasks that we have them performing for us. So, as Senator Hassan said, I certainly hope this is an issue that we'll look into further in the future.

SENATOR MARTEL: Thank you, Mr. President. I just want to make one simple comment about the fact of those people who, let's say for instance, who need services provided to them for their children that because they go on vacation does not mean that they will not receive the services they need. I've yet to see an institution that has to go running that does not go running after someone to replace the very people who are taking care of certain individuals who need that care. If there are institutions like that, I wish that somebody would tell me. I'm using your point of view Senator D'Allesandro today, who would tell me so that we could identify who they are, and if they need to be run out of business, they should be. They should never ever not allow a child or anyone to not get services because of vacations or whatever other purposes. Yes, we have a nursing shortage in this state; we have a nursing shortage throughout the country. But these institutions are doing the very best they can, and I have not yet heard of one institution who does not provide those services whenever they need to be provided. Thank you, Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**SB 377-FN**, relative to COBRA coverage for persons 55 years of age or older. Banks and Insurance Committee. Inexpedient to legislate, Vote 3-1. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 377 inexpedient to legislate. The committee was made aware of another bill

currently before the House that deals with this same issue. The Banks and Insurance Committee asks your support for the motion of inexpedient to legislate, and I thank you.

SENATOR FULLER CLARK: Yes. Thank you, Mr. President. As prime sponsor of this bill, I would like to take a few minutes to talk to the intent of this legislation. We know that one of the critical areas in this state for individuals who lack health insurance, is for people between the ages of fifty-five and sixty-five. People who are most vulnerable to life threatening diseases if they are not able to access their insurance and cannot get the screening tests that they need for such things as breast cancer, prostate cancer, cervical cancer, and other screening tests. The intent of this legislation is to find a methodology to make it possible to create an opportunity to offer insurance to this particular group of individuals because, without insurance, they are going to raise the health care costs for all of us, and I just believe that we have an obligation as legislators to find a solution to this problem, and I am pleased to hear that it is going to be looked at through the House bill. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 378-FN**, relative to rates charged by health care providers. Banks and Insurance Committee. Inexpedient to legislate, Vote 6-0. Senator Odell for the committee.

SENATOR ODELL: Thank you, Mr. President. I move Senate Bill 378-FN inexpedient to legislate. The committee heard testimony that this bill is not necessary because most hospitals in New Hampshire are already working to provide discounts and relief to those who are uninsured. The bill as written would also have harmful effects on nursing homes. The Banks and Insurance Committee asks your support for the motion of inexpedient to legislate. Thank you, Mr. President.

SENATOR LARSEN: Thank you, Mr. President. I rise to just point out that we've now gone through, and are about to put to bed and kill, six bills that are addressing the affordability, the availability of health care here in this state. As all evidence shows, both in this state and in the nation, there are a growing number of people who have no health insurance. Some of these people, as are addressed in this string of six bills, actually work for the state because they are doing a job for the state. They are doing what we would have to hire state employees to do. We contract these jobs out. We are asking them to do these jobs at low pay, and oftentimes with minimal or no benefits. You heard childcare workers for years have had no benefits, and the turnover rate in our childcare agencies is huge because people need some healthcare protection. These attempts, these six attempts, were, in fact, creative ways, some of which actually cost no money from the state. Others had a fiscal impact, but they are truly having an impact on our state when we cannot find a way to help those who are uninsured. There is a bill in the House which the Senate thankfully passed which would be a prescription drug discount for those who are uninsured and 300% of poverty or below. That, I think, is one way of addressing uninsured people in this state and getting them at least the medications they need to stay healthy enough not to impoverish themselves into needing Medicaid. But, I think everyone in this room recognizes as you go out, there are many people in our community, a growing number of people, in the range of 300% of poverty, there are over 150,000 New Hampshireites who have no health insurance. That's just the low income. There are people across this state who put their

lives at risk, put their family's well-being at risk because one illness could impoverish them, bankrupt them. We've seen it. We know it. It's happening across the nation. We need to work on this issue, and I wanted to just point out the six bills were an attempt to begin to address this, and I hope we continue to focus on this issue and recognize the need across our state for health insurance.

SENATOR MARTEL: Thank you, Mr. President. I want to commend Senator Larsen for her comments regarding the amount of people who don't have health insurance in the state of New Hampshire. I think that we have to focus in on two other areas that this bill deals with, those who are employed who do the least of the tasks that anybody else would not want to do, toilet bowl cleaners, people who wash the floors, people who do all the messy other jobs that no one wants to do. I know some places they pay these people two times the amount of the minimum wage to do that, and also they provide for some sort of basic healthcare. And, if they don't provide healthcare, they have to go through a period where like a sixty day period I believe or a ninety day period where they see if they retain their employment and, at that time, they would be offered some kind of insurance plan. Difficult as it is to understand why people don't have insurance, in many cases we know that people in the state, across the country as well, don't want to be insured. Those people, no matter how we try to sell the product to them unless we give it to them and we give them a million dollars, do not want to take the policy. So I agree that we have to work on this issue. It's extremely important to work on and try to resolve this the best we can as quickly as we can, and I am committed to doing that in my position as Chairman of Health and Human Services. And I have already began talking to the Insurance Department and also with the Department of Health and Human Services with regard to these very issues. So I thank you, Mr. President, and I urge that we vote this bill inexpedient to legislate. Thank you.

SENATOR CLEGG: Thank you, Mr. President. I rise to support the committee's recommendation, but I also rise to answer the previous speaker. While all of these bills might be well intended, we have to look at what it is we really want to do. If we want to force every business in the state of New Hampshire to carry health insurance, then we ought to put in a bill that says that. If we want to have a single payer system in the state of New Hampshire and have the state of New Hampshire be that single payer, then put in a bill that says that. If you want New Hampshire as a state, to be the main insurer of everyone, say it. Put in a bill. Let's argue it. If you want every single service provided in the state of New Hampshire to be by government, then put in a bill that states that. Let's debate the real issue. Every childcare provider should be a state employee. Every nurse that goes into someone's home should be a state employee. Every everything should be a state employee is what I'm hearing, and that's not what we want to do. We want to allow competition, including competition for private industry against government, and we want to allow them to hire people based on how they want to hire. I may be a businessman. I may offer health insurance and a little less on an hourly wage. My competitor might offer more on an hourly wage and no health insurance. You know something? The worker ought to make up his mind which one he wants. Typically, the younger worker thinks they're invincible, we were all young once, and they don't need insurance. But, as you approach the better years, that's anything over forty, you realize suddenly that insurance is a necessity. You can't afford to gamble anymore because certain things happen to your bones and the



rest of your body that you didn't think was possible. So I disagree with the previous speaker and I agree with the committee. And I state again, if what we really want is for the state to provide insurance for everyone, and for the state to be the employer of everyone, then let's put in a bill that says that, so we can debate the real issue that everyone seems to bring up every time we have a bill we don't like. Thank you, Mr. President.

SENATOR BURLING: Mr. President, I cannot stay in my seat without responding to the previous speaker comment. It should be obvious to anybody who has listened to the Democrats for the last twenty years, that we are in fact the ones who believe in the notion of the public/private partnership under which state obligations are now met by semi-private, charitable, and sometimes private organizations that do the work that the state doesn't want to do through government. I believe in that. I stood up on the first bill because I just wanted to make the point that that system will not persevere. It will not survive unless we do our obligation to see to it that their employees are treated like human beings, not like cattle in the field. We have a duty to see that the people of New Hampshire are served appropriately, constitutionally, and well. We choose to do it because we are the Granite State, through these public/private partnerships in which agencies we created in the late '70s and early '80s provide services that used to be provided by the state government. That will not continue to work if we fail to see to it that the employees in those systems are not treated appropriately. That's the point. Perseverance on the current course in which we don't provide adequate compensation, we don't provide benefits, and we don't take care of health insurance is a guaranteed course to the re-assumption of duty by the state. We will get stuck with doing all this stuff again, and the price will quintuple.

SENATOR FULLER CLARK: Yes. Thank you very much, Mr. President. I'd just like to offer a rebuttal to the comments that I've heard here today about the fact that it's people who don't...who can afford to buy health insurance but who don't want to that make up the bulk of our uninsured. It is my understanding, through a comprehensive study that was done in 1999 that when that study was finished, we found that the people in this state who did not have health insurance were not people who could afford it and didn't choose to have it, but young families with children between the ages adults between the ages of twenty-five and thirty-five and at the other end of the spectrum, adults between the ages of fifty-five and sixty-five. And again, I point to the fact that these are people who would like to have insurance. They're not choosing out of having insurance because they can afford it. They're choosing out of not taking health insurance because they can't afford it, and as we see the number of uninsured go up in this state, that those costs are cost shifted to the rest of us and force our health insurance costs to go up. Thank you.

SENATOR BARNES: Thank you, Mr. President. Always a gentleman. I just want to say that we do have a program in this state that was supported by many of us in this chamber called Healthy Kids. So we are not the devils out there. We are taking care of a good segment of our population, and I resent conversations that some of us perhaps from a certain party do not care about people. Because Healthy Kids in my book has taken care of a very vital situation in this state of New Hampshire and I am proud to have supported it and will continue to as will many of my colleagues on both sides of the aisle. Thank you, Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**SB 391-FN**, relative to insurance third party administrators. Banks and Insurance Committee. Ought to pass with amendment, Vote 4-1. Senator Flanders for the committee.

## **Banks and Insurance**

**February 16, 2006**

**2006-1074s**

**01/04**

### **Amendment to SB 391-FN**

Amend RSA 402-H:1, VII as inserted by section 1 of the bill by replacing it with the following:

VII. "Insurer" means, for the purposes of this chapter only and except as provided in RSA 402-H:6, a person undertaking to provide life, annuity, or health coverage or workers' compensation insurance or self-funded coverage under a governmental plan, multiple employer welfare arrangement, or a church plan in this state. For the purposes of this chapter, "insurer" may include an employer, a licensed insurance company, a prepaid hospital or medical care plan, or a health maintenance organization.

Amend RSA 402-H:6 as inserted by section 5 of the bill by replacing it with the following:

#### **402-H:6 Responsibilities of the Insurer.**

I. If an insurer utilizes the services of an administrator, the insurer shall be responsible for determining the benefits, premium rates, underwriting criteria, and claims payment procedures applicable to ~~such~~ **the** coverage and for securing reinsurance, if any. The rules pertaining to these matters shall be provided, in writing, by the insurer to the administrator. The responsibilities of the administrator as to any of these matters shall be set forth in the written agreement between the administrator and the insurer.

II. It is the sole responsibility of the insurer to provide for competent administration of its programs.

III. In cases in which an administrator administers benefits for more than 100 certificate holders on behalf of an insurer, the insurer shall, **at least semi-annually**, conduct ~~[, at least semiannually,]~~ a review of the operations of the administrator. At least one such review shall be an on-site audit of the operations of the administrator.

**IV. For purposes of this section, "insurer" means a licensed insurance company, prepaid hospital or medical care plan, or a health maintenance organization.**

Amend RSA 402-H:11, VIII as inserted by section 8 of the bill by replacing it with the following:

**VIII. An administrator licensed or applying for a certificate of authority that administers or will administer multiple employer welfare arrangements or church self-insured plans shall maintain a surety bond for the use and benefit of the commissioner that covers individuals and persons who have remitted premiums or insurance charges or other moneys to the administrator in the course of the administrator's business in the greater of \$100,000 or 10 percent of the administrator's average daily client account balance during the preceding calendar year. However, in no event shall the bond be more than \$1,000,000. If an administrator cannot obtain a bond, then another security, including, but not limited to, cash or negotiable securities in an amount equal to the amount of the required surety bond shall be set aside in one or**

*more trustee bank accounts in the state of New Hampshire under trust terms that require the commissioner's signature for any account activity, except the accumulation of interest or other funds into the account, and that allows the commissioner, by order, to disburse the trust funds for the satisfaction of policyholder or customer claims.*

Amend RSA 402-H:11-b as inserted by section 9 of the bill by replacing it with the following:

402-H:11-b Exemption. A pooled risk management program operated pursuant to RSA 5-B shall not be required to obtain a certificate of authority or to meet the other requirements of this chapter for services provided in connection with the administration of its pooled risk management plans, but shall be required to register with the commissioner pursuant to RSA 402-H:11-a. Pooled risk management program registration may be accomplished by providing the commissioner a copy of the informational filing required to be filed with the department of state pursuant to RSA 5-B:4.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. I move Senate Bill 391 ought to pass with amendment. The amendment addresses the concerns held by the committee from the pooled risk management programs. These programs will be exempt from the requirements of this chapter, but they will now register and report to the Commissioner of Insurance. This legislation was initially requested by the Insurance Department to respond to a charge by the auditors that New Hampshire was breaking the law by having Cigna administer our health insurance without being a registered third party administrator. There are many of us who disagree with that, but there was a lot of discussion between the Insurance Commissioner and the auditors and they insist that Cigna, which is an insurance company, has to be a third party administrator. This bill takes care of that. This bill is based upon the most recent developed by the National Association of Insurance Commissioners. This bill does not impose any regulations on the state itself, only those entities that are administered to health insurance for the state. The Banks and Insurance Committee recommends ought to pass. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

Senator Gottesman is in opposition to SB 391-FN.

Senator Foster (Rule #42) on SB 391-FN.

**SB 396**, repealing the rulemaking authority of the New Hampshire children's trust fund board. Banks and Insurance Committee. Ought to pass, Vote 5-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move SB 396 ought to pass. When the New Hampshire Children's Trust Fund was first established back in 1987, rules were never adopted in accordance with RSA 541-A through an oversight. This legislation is put in to allow them not to adopt those rules. Their mission is to raise private dollars which they give out in the form of grants to community based organizations throughout the state. They received a one time endowment of \$500,000 from the state, but they have matched and exceeded that amount through their

private fundraising and have never received any additional state funds. The board carefully reviews each application that comes their way before selecting who will receive a grant. They monitor the programs that receive grants in order to insure that the funds are properly used and make a difference. They have asked to have this rulemaking provision which was overlooked back in 1987 repealed so as not to drain time and money away from their charitable purpose by having to hire staff to create and work through those rules. Since they already monitor everything that rules would have called for, this is really just at technicality at this point. The Banks and Insurance Committee recommends that this legislation be adopted and asks for your support. Thank you.

**SENATOR CLEGG:** Question of Senator Foster. Senator, does this mean that New Hampshire Children's Trust will not be coming to the state of New Hampshire again and requesting any more public funds?

**SENATOR FOSTER:** I can't answer that question, but I can say that they indicated that no indication to do so during the hearings.

**SENATOR CLEGG:** Thank you.

**SENATOR LARSEN:** I serve on the New Hampshire Children's Trust Fund and was a sponsor of this bill. As the question came up, "Would the trust fund be seeking additional state funds?" I have never heard any indication of interest to do that. What I think is interesting, I would like to point out using this as a vehicle, is that in fact the New Hampshire Children's Trust Fund has raised and given away over a million six in grants to community operations that work to avoid and prevent children's abuse, and so child abuse this is a central organizing board that seeks to give grants to those who help to prevent child abuse, and it is primarily and entirely at this point, private funds that we raise to do that. It had an initial startup **TAPE CHANGE** but has more than expended that over the course of the years. We have a diligent chairman, Lynn Bartlett Merrill, who identified, in reading through the statutes that back in '87 the board should have adopted rules. I wasn't there watching the rules properly, so in 1987 we missed that. But it is a good group which serves in a hugely important organizing force against child abuse in New Hampshire. I urge your support for this bill.

**Adopted.**

**Ordered to third reading.**

**SENATOR GOTTESMAN:** Just a point of order please. On Senate Bill 391, was that sent to Finance?

**SENATOR GATSAS (In the Chair): TAPE INAUDIBLE**

**SENATOR GOTTESMAN:** I'm sorry. I missed that. Thank you.

**HB 515**, relative to purchasing alliances. Banks and Insurance Committee. Inexpedient to legislate, Vote 4-0. Senator Barnes for the committee.

**SENATOR BARNES:** Thank you, Mr. President. I move House Bill 515 inexpedient to legislate. The committee recognizes that a lot of work has gone into this issue. However, there were too many concerns raised at the hearing to pass this bill. Some of the concerns included the impact of that passage of the bill would have on the marketplace, possible segmentation, the reintroduction of geographic ratings, and the potential elimination of the brokers who service small businesses. It was felt that Senate Bill 125 has not been given sufficient time to determine its overall effect on the marketplace and that passage of this bill could cause

additional disruption. Having seen no record of successful purchasing alliances in other states, the Banks and Insurance Committee asks your support for the motion of inexpedient to legislate, and we thank you very much.

**Committee report of inexpedient to legislate is adopted.**

Senator Foster (Rule #42) on HB 515.

**SB 253**, relative to enforcement of support orders for college and post-secondary educational expenses. Education Committee. Ought to pass with amendment, Vote 4-0. Senator Bragdon for the committee.

**Senate Education**

**February 14, 2006**

**2006-0962s**

**05/10**

**Amendment to SB 253**

Amend RSA 461-A:14, V as inserted by section 1 of the bill by replacing it with the following:

V. No child support order shall require a parent to contribute to an adult child's college expenses or other *postsecondary* educational expenses [~~beyond the completion of high school~~]. *However, any provision of a support order requiring a parent to contribute to an adult child's college expenses or other postsecondary educational expenses that was issued prior to February 2, 2004, shall be valid and enforceable. Any order issued prior to February 2, 2004 that permitted a parent to petition the court to seek a greater contribution toward the cost of college education or postsecondary educational expenses shall be valid and binding, and the court shall retain jurisdiction over it regardless of the date on which the petition for modification is brought. Nothing in this paragraph shall prohibit the parties from entering into a valid and enforceable private contract, stipulation, or permanent stipulation entered as a court order, for payment of an adult child's college or other postsecondary educational expenses. Failure of either party to attempt to enforce the terms of such private contract, stipulation, or permanent stipulation entered as a court order shall not render the contract, stipulation, or order unenforceable. In this paragraph, the term college expenses, postsecondary educational expenses, or educational expenses includes tuition, room, board, books, travel, and related expenses.*

**2006-0962s**

**AMENDED ANALYSIS**

This bill permits the court to enforce support orders for college and postsecondary educational expenses issued prior to February 2, 2004. Private contracts, stipulations, and prior orders for future modification of the amount of support for college expenses are also enforceable.

SENATOR BRAGDON: Thank you, Mr. President. I move Senate Bill 253 ought to pass as amended. Senate Bill 253 establishes that, if a divorce decree has already addressed the provisions of college education payments, then the decree should be honored and not negated by the enactment of HB 299 in 2003 which removed judicial discretion to order divorced parents to contribute to adult child's college expenses. The committee was concerned with the constitutionality of applying prohibitions of HB 299 retroactively. The amendment, minor amendment,

changes the date to February 2, 2004 in order for the bill to correspond with the dates in HB 299. Please join me in voting this bill ought to pass with amendment. Thank you.

**SENATOR BOYCE: TAPE INAUDIBLE** I just have a question. I know that we did, I guess, make a mistake when we changed things a couple years ago and didn't allow for the fact that there were pre-existing arrangements or orders, and I know that some of the courts have acted based on that law in the meantime. Now, as I read this, it says that, if that happened, if a court had interpreted that law and determined that somebody was not responsible to pay for college expenses in the time between that bill and now, this appears to say that they only have sixty days from the time this becomes effective until they have to pay back what they would have paid in those two or three years plus interest, and I'm just curious if that's really what we want to do to these people that we told in the last, because of our mistake, we told in the last couple years they didn't have to pay anything. Now we're telling them that yes, you got to pay it, and you got sixty days, and you got to pay interest. I'm wondering if this is completely fair at this point. I mean I'm admitting we made a mistake, but I'm just wondering if we're making another mistake here by only allowing sixty days for it to be corrected.

**SENATOR BRAGDON:** And Senator, this surprisingly came to the Education Committee, and a lot of those issues you raised I'm not terribly familiar with. I see Senator Hassan anxiously wishing to speak, and I think she can probably address that question a little better than I could.

**SENATOR HASSAN:** Thank you, Mr. President, and yes I did indicate I wish to speak in response to Senator Boyce's question. So, if I may proceed to answer it.

**SENATOR BOYCE:** I'll sit down, and you can speak.

**SENATOR HASSAN:** Okay. The New Hampshire Supreme Court ruled last April that the single HB 299 could not be applied retroactively. So, from that ruling, people who had received other court rulings, and I know of only one lower court ruling that said it shouldn't be applied retroactively. So I know of one party that was told by a lower court that it shouldn't apply retroactively. But since last April, divorced parents have known that the New Hampshire Supreme Court would not apply this retroactively. The bill is still necessary because it makes clear the divorce decrees in place prior to February '04 that allowed for modification by either party. So the paying party who becomes unemployed, it makes clear that the modifications may still be sought in accordance with that pre-existing order. I think under the circumstances the sixty days is fair. The other piece of it is that children and other parents who were relying on that money being paid have gone two or three years without it being paid in the event that people have simply stopped paying because they thought that the bill did apply retroactively. So I think it strikes a good balance.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

Senator Foster (Rule #42) on SB 253.

**SB 266**, requiring candidates for employment at the department of education to submit to a criminal background check. Education Committee. Inexpedient to legislate, Vote 4-1. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move SB 266 inexpedient to legislate. It would require all candidates for employment at the Department of Education to submit to a criminal background check. Currently, although some of the numerous employees of the Department do have contact with children, and some may even have unsupervised contact, this certainly does not apply to all department employees. The committee was concerned that if this legislation were to pass it may set a precedent for other state departments to require unnecessary criminal background checks of all their candidates as well. Please join the Education Committee in voting this bill inexpedient to legislate. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 290-FN-L**, relative to wellness programs in public schools. Education Committee. Inexpedient to legislate, Vote 4-1. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move Senate Bill 290 inexpedient to legislate. The bill would allow school districts to create wellness plans and require the Department of Education to develop resources for them. However, the committee found that almost every school district is already doing this as a result of participation in the federal school lunch program. The committee also had concerns about the department's capacity to do all the things required of them through this bill. As a result, we recommend inexpedient to legislate.

**Committee report of inexpedient to legislate is adopted.**

**SB 306-FN-A**, establishing a quality early learning opportunity initiative and making an appropriation therefor. Education Committee. Ought to pass, Vote 3-2. Senator Estabrook for the committee.

SENATOR ESTABROOK: Thank you, Mr. President. I stand to report the Education Committee recommends ought to pass on SB 306, establishing an early learning opportunity initiative. I also stand to express my strongest possible support for SB 306. In fact, I believe more deeply in the policy behind this bill than any other I've ever spoken to. SB 306 seeks to provide opportunity for New Hampshire's most vulnerable young children to move into licensed childcare. It does so by giving family whose income exceeds the current eligibility ceiling of 190% of poverty, but is below 250% of poverty, a cost differential between unlicensed and licensed care, giving them the purchasing power they need to choose licensed care. Why do I and many others believe we should do this? There are two ways to explain that. One is informally. I couldn't have picked a better day to have this bill come before the Senate floor. This morning we met readers. We met fourth grade competent readers. The two students I spent time with from Epping I thought were incredibly strong readers for their grade level, and I asked them, "How long have you been reading?" "Oh, since way before kindergarten." "Oh, did you go to a preschool program?" "Yes, an excellent preschool program." I don't think that's a coincidence. The other way to explain why I believe we should do this is to take a look at the science, the science says we should. The Legislative Caucus for Young Children recently hosted speakers under the auspices of the National Conference of State Legislature on early childhood development. The presentations included one on the neuroscience of early brain development. It is a scientific fact that neuro connections that enable future learning are made or forever not made,

during the first few years of life. Representative Stella Scamman wrote a community commentary following that event expressing her concern that we act on this science. We also believe we should do this because many New Hampshire families cannot act on this science without help. Without help, they are forced to choose the least costly care they can find. They never get past the cost to consider quality. As many of you know, I spent over ten years running a program at UNH where I spoke daily with parents seeking care. The one ultimate reality that I came away with is the knowledge that families just above the eligibility ceiling were the most, as my colleague would say, "screwed". For a family of four with \$40,000 income, licensed care would consume over 25 percent of their income. Licensed care is simply beyond their reach, and there are few programs with scholarships or sliding scales. So their children spend their days in an early learning environment, and I call it that only because any place a child spends their day is their early learning environment, where precious little learning takes place. Where one adult and a television takes care of far too many children. Not too many neuro connections are being made in such an environment. Actual parents took time to come to the hearing to confirm these awful choices they've had to make, and we believe we should because quality matters. NCSL has produced a lengthy bulletin explaining why quality matters and why licensing promotes quality. The beauty of SB 306 is not only that it moves children from unlicensed to licensed care, but it also provides a powerful incentive for currently unlicensed providers to become licensed. Licensing brings a host of health and safety standards such as CPR training for providers. It connects the childcare provider to training opportunities, opportunities to learn why it matters if there are blocks, books, and paint, why it does matter whether and how they are used. Quality early learning environments promote healthy child development and prevent future more costly special education interventions. A quality early childhood environment has even been documented to be inversely related to high school dropout rates and to have a positive effect on future success in school and in life. And we believe we should because poor quality early learning environments not only do not promote healthy growth, they have negative effects on growth, they harm children. In recognition of the importance of quality early learning, the Department of Health and Human Services and the Department of Education have collaborated on the development of early learning guidelines. Each piece has a prominent section, foundations for elementary education. The Department of Education, the Department of Health and Human Services, Early Learning New Hampshire, the Legislative Caucus for Young Children, the Children's Alliance, Child and Family Services, and the illustrious set of bipartisan cosponsors support this bill's policy. You should, too. I most strongly urge you to join us in recognizing the importance of quality early learning. Vote yes in honor of Dr. Seuss's birthday.

SENATOR FLANDERS: Thank you, Mr. President. The title of this bill says, "Early learning and appropriation." I see nothing of what the cost of this is and where the money's going to come from. I'd like to know that.

SENATOR ESTABROOK: Sure. The bill as drafted called for a million dollar appropriation from the TANF bonus funds. During the bill's hearing in the Education Committee, there was some concern from the Department of Health and Human Services that, although they support the



policy, they were concerned that that money might be useful in other good ways. The committee shared that concern, and when it goes on to Finance, we'll be talking about the funding mechanism. The idea is to run a one-year pilot program with a cap of one million dollars appropriation.

SENATOR FLANDERS: Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 307-FN**, relative to catastrophic special education funding. Education Committee. Ought to pass with amendment, Vote 4-1. Senator Estabrook for the committee.

**Senate Education**

**February 14, 2006**

**2006-0955s**

**04/10**

### **Amendment to SB 307-FN**

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

2 New Subparagraph; Special Education; State Aid. Amend RSA 186-C:18, III by inserting after subparagraph (c) the following new subparagraph:

(d) In any fiscal year, if the total amount of catastrophic aid requested by school districts exceeds the amount appropriated to the department for catastrophic aid, the governor is authorized to draw a warrant for such sum as is necessary to satisfy the excess amount of the state's obligation under this section. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

3 Effective Date. This act shall take effect July 1, 2007.

**2006-0955s**

### **AMENDED ANALYSIS**

This bill removes the provision requiring proration of catastrophic aid funds in years where the appropriation is insufficient and requires the state to appropriate additional funds sufficient to meet the amount of catastrophic aid needed by school districts.

SENATOR ESTABROOK: Thank you, Mr. President. I promise to be briefer. I rise to report the recommendation of the Education Committee ought to pass on SB 307 and ask your support. Members may recall last session's SB 109 which was laid on the table. This bill is identical. The budget process did, as the Senate had promised when tabling 109, fully fund CAT aid. However, in '04 and '05 local school districts received less than the costs they incurred. In other words, in '05 districts were reimbursed about 70 cents for every dollar they spent over \$32,000 on a student. The purpose of SB 307 is to remove the statutory language that calls for CAT aid to be pro-rated based on budgeted funds. The bill calls for full funding of the state's obligation for catastrophic special education aid as state policy, the policy issue which remains even after the budget process. It would be difficult, I'm sure, to find members here who have not called repeatedly for the federal government to live up to its obligations for special education funding. We decry the feds for passing these costs down. It seems the consistent position for each of us would be to have the state live up to its obligation for special education fund-

ing, not pass these costs down to the local level. Though the state may be in difficult financial situations at times, the state's failure to pay its full statutory obligation is simply passed to the local level, where the costs have already been incurred, and the only path left is higher property taxes. The whole purpose of the statutory ceiling for locals is to adopt a policy of spreading financial risks for the most expensive students statewide. I say we should live up to that policy. Removing the statutory pro-rated language would force us to really fund costs in excess of three and a half times the average per pupil expenditure. Let's support the Education Committee, adopt SB 307, and prevent CAT aid from being yet another obligation we turn away from. Thank you.

**SENATOR BOYCE:** If I understand what this bill does is, it says that the state will pay the entire cost of the catastrophic aid regardless of what was in the budget. And then it goes on to say that, in addition to that, \$250,000 a year will be made available to take care of special costs. For instance, a new student shows up that the school wasn't aware of, that sort of situation, so it goes on to that. But then it goes on further. And I think my question is whether the last sentence still makes any sense. It says that "if any funds designated for emergency assistance under this paragraph are not used for such emergency assistance, the funds will be used to assist school districts in meeting catastrophic aid costs in their programs". Well, in the first part of the bill we're saying we're taking care of all of the costs. The end of it says that this \$250,000, if there's any left, will be used to take care of more of the all of the costs that we've already taken care of. So I'm just wondering if that last sentence is now redundant?

**SENATOR ESTABROOK:** Yes, I see what you mean, and we did not pay a whole lot of attention to that last sentence. But it does say, "The funds shall be used to assist school districts in meeting catastrophic cost increases," not catastrophic aid. So, perhaps it can be used in a situation before catastrophic aid kicks in. I don't know, but you're right. We should take a look at that last sentence. And the thing I failed to mention also in introducing the bill, is that the committee did adopt an amendment which gave the Governor the authority to draw a warrant for anything that was not budgeted.

**SENATOR BOYCE:** Follow-up? Just noting this will probably go to Finance I assume.

**SENATOR ESTABROOK:** Yes, definitely.

**SENATOR BOYCE:** You won't have any objection

**SENATOR ESTABROOK:** No, take a look at it please.

**SENATOR BOYCE:** If we take a look at and amend that last sentence?

**SENATOR ESTABROOK:** Sure. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 361-FN**, relative to the use of surplus funds by a school district. Education Committee. Ought to pass with amendment, Vote 5-0. Senator Green for the committee.

**Senate Education**  
**February 14, 2006**  
**2006-0953s**  
**04/10**

**Amendment to SB 361-FN**

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

AN ACT relative to school district contingency funds.

Amend the bill by replacing section 1 with the following:

1 School Money; Contingency Fund. Amend RSA 198:4-b to read as follows:

198:4-b Contingency Fund. Every school district annually by an article in the warrant, and the governing body of a city upon recommendation of the school board, when the operation of the schools is by a department of the city, may establish a contingency fund *of up to 2 percent of the prior year's annual budget expenses* to meet the cost of *general operating or* unanticipated expenses that may arise during the year. *At no time shall the balance of the fund exceed 4 percent of the prior year's annual budget expenses. Moneys in this fund shall be nonlapsing and may be expended in any fiscal year.* A detailed report of all expenditures from the contingency fund shall be made annually by the school board and published with their report.

**2006-0953s**

**AMENDED ANALYSIS**

This bill allows a school district to establish a nonlapsing fund of up to 2 percent of the prior year's annual budget expenses to meet general operating or unanticipated expenses.

SENATOR GREEN: Thank you, Mr. President. Senate Bill 361 allows for the establishment of a non-lapsing contingency fund for school districts. This legislation would allow the district to have an emergency fund of 2 percent of their annual budget expenses or a maximum of 4 percent in the budget line if it includes lapses. Current law does not allow non-lapsing emergency counts for school districts. This bill would enable them to better plan for emergency repairs and unexpected expenses. Please join the Education Committee in voting this bill ought to pass with amendment, which you'll find on page 23. My understanding is it will be sent to Finance Committee so that we can take another closer look at the amendment. I ask you for your support. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 362-FN**, relative to a tuition reduction for certain students taking courses at a regional community-technical college. Education Committee. Inexpedient to legislate, Vote 5-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move SB 362 inexpedient to legislate. The bill permits students in good standing at any high school in the state, including students participating in home education programs at the high school level, to be eligible to enroll in a course at any regional community technical college campus at half the existing tuition rate. The committee supports the goals of this bill but feels

they are being met through existing programs such as the running start program. Please join the Education Committee and vote inexpedient to legislate. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 259**, relative to the duty of care of occupants of land constructing or maintaining snowmobile trails. Environment and Wildlife Committee. Inexpedient to legislate, Vote 4-0. Senator Eaton for the committee.

SENATOR EATON: Thank you. I move Senate Bill 259 inexpedient to legislate. This legislation is nearly identical to House Bill 1402, which has been passed by the legislature and was recently signed into law by the Governor.

**Committee report of inexpedient to legislate is adopted.**

**SB 373-FN-A**, relative to a public health response to arbovirus. Environment and Wildlife Committee. Ought to pass with amendment, Vote 3-2. Senator Hassan for the committee.

**Environment and Wildlife**

**February 14, 2006**

**2006-0974s**

**09/10**

**Amendment to SB 373-FN-A**

Amend RSA 105:3-b as inserted by section 2 of the bill by replacing it with the following:

105:3-b Removal of Standing Water Hazards. A local health or law enforcement officer may order removal or covering of standing water hazards on property. If the owner of the property, after notice has been delivered by certified mail or by hand delivery at the property owner's last known address fails to comply within a 72-hour period, such owner may be found guilty of a violation. If an arbovirus public health threat has been declared, local health or law enforcement officers may remove the hazard after one week and the property owner shall bear the expense of the removal of the hazard. In this section, "standing water hazard" means any container left open to rain or snow in a manner that allows water to collect and remain in the container in such a manner as to provide a breeding ground for, or to attract, insects. Containers treated with an adequate prophylactic pesticide treatment to prevent mosquito growth are exempt. "Standing water hazard" shall not include above ground or in ground swimming pools or feed or drinking equipment to include buckets and troughs used for livestock. Agricultural operations found to be in compliance with best management practices with regard to mosquito control by the department of agriculture, markets, and food shall be in compliance with this section.

Amend RSA 141-C:25 as inserted by section 3 of the bill by replacing it with the following:

**141-C:25 Mosquito Control Fund.**

I. There is hereby established a mosquito control fund to assist cities, towns, mosquito control districts, and non-profit organizations by providing funding for the purpose of offsetting the cost of mosquito control activities including, but not limited to, the purchase and application of chemical pesticides. For the purposes of this section, "non-profit organization" means an organization which has tax-exempt status under section 501(c)(3) of the Internal Revenue Code and which represents members who own or which owns itself, property actively used for ag-

ricultural or recreational use. The purpose of the fund is to provide financial assistance, when needed, to cities, towns, mosquito control districts, and non-profit organizations engaging in mosquito control and abatement activities in response to a declared threat to the public health.

II. In order to be eligible to receive funding, a city, town, mosquito control district, or non-profit organization shall have in place a comprehensive mosquito control plan approved by the commissioner. This plan shall include at a minimum:

(a) A list of the pesticides (active ingredient) and methods by which these pesticides will be applied to ensure that the application is done in a safe and proper manner.

(b) Safeguards that will be taken to protect the health of the public, wildlife and resources within the state including provisions for the measuring and monitoring of residual pesticides in the water and soil.

(c) A comprehensive public awareness campaign geared toward prevention and designed to educate the public about the health risks associated with mosquitoes.

III.(a) The commissioner, in consultation with the Centers for Disease Control and Prevention, may determine that a threat to the public health exists that warrants expedited mosquito control and abatement activities within a city, town, mosquito control district, or non-profit organization. Such determination of an arbovirus public health threat shall be based on local factors which may include:

(1) Historical and current climatic conditions.

(2) Historical and current mosquito population indices.

(3) Historical and current mosquito, veterinary, and human arboviral disease surveillance.

(4) The commissioner must declare in writing to the governor and the commissioner of the department of agriculture that such a threat to the public health exists.

(b) An expedited approval process shall be established for the implementation of mosquito control and abatement activities, as described in this paragraph, including the application of pesticides. The commissioner of the department of agriculture, markets, and food may authorize expedited mosquito control and abatement activities pursuant to this paragraph.

IV. A city, town, mosquito control district, or non-profit organization shall be eligible to receive funds if the commissioner determines that:

(a) The city, town, mosquito control district, or non-profit organization has a comprehensive mosquito control plan approved by the commissioner in accordance with paragraph II;

(b) The city, town, mosquito control district, or non-profit organization has engaged or plans to engage in mosquito control and abatement activities pursuant to paragraph III;

(c) The commissioner, after consultation with the Centers for Disease Control and Prevention, has determined that mosquito control and abatement activities are appropriate to mitigate the public health threat; and

(d) The commissioner has filed written notice of a threat to public health with the governor and the commissioner of agriculture, markets, and food.

V. A city, town's, mosquito control district's, or non-profit organization's receipt of funds, as well as the amount of funding, shall be at the discretion of the commissioner subject to the following criteria:

(a) The nature and degree of the declared threat to the public health.

(b) The nature and degree of the city, town's, mosquito control district's or non-profit organization's mosquito control and abatement activities in response to the declared threat to the public health.

(c) The degree to which the non-profit organization's mosquito control and abatement activities will benefit the general public.

(d) The city, town, mosquito control district, or non-profit organization showing that the funding assistance from the mosquito control fund is necessary.

(e) The city, town, mosquito control district's, or non-profit organization's showing that the requested funding assistance is no more than 50 percent of the entity's mosquito control and abatement activities pursuant to the declared threat to the public health.

(f) Funding is available.

Amend paragraph I of section 8 of the bill by replacing it with the following:

I. The members of the task force shall be as follows:

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

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

(c) The state epidemiologist.

(d) The state veterinarian.

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

(f) The commissioner of the department of agriculture, markets, and food, or designee.

(g) The commissioner of the department of resources and economic development, or designee.

(h) The executive director of the fish and game department, or designee.

(i) The commissioner of the department of environmental services, or designee.

(j) A representative from county government, appointed by the governor.

(k) An entomologist from the university of New Hampshire, appointed by the governor.

(l) Three locally-elected officials from towns or cities where arbovirus has been detected in animals or humans, at least one of whom shall be a public health officer, appointed by the governor.

(m) Two private citizens, each a landowner, officer, one of whom shall be nominated by the New Hampshire Farm Bureau Federation, appointed by the governor.

(n) Two members at-large, appointed by the commissioner of the department of health and human services.

Amend paragraph VII of section 9 of the bill by replacing it with the following:

VII. Establish a mechanism to work with landowners for determining when a pond, marsh land, or wetland on private property is found to be creating a standing water hazard and a method to permit local communities to receive assistance from the fish and game department and the department of environmental services to determine if the standing water hazard can be removed.

Amend section 9 of the bill by inserting after paragraph VIII the following:

IX. Establish a mechanism to protect certified organic farms from being treated with products that would void their certification.

**2006-0974s****AMENDED ANALYSIS**

This bill:

I. Clarifies that a state of emergency includes an arbovirus public health threat.

II. Establishes a mosquito control fund in the department of health and human services to assist cities, towns, mosquito control districts, and non-profit organizations by providing funding to offset mosquito control activities. The commissioner of the department of health and human services is granted rulemaking authority for the purposes of the bill. The bill also makes an appropriation to the department for the purposes of funding the mosquito control fund.

III. Allows local health or local law enforcement officers to order removal of standing water hazards.

IV. Establishes a 2-year task force for the purpose of facilitating a coordinated local, regional, and state response to arboviruses in New Hampshire.

SENATOR HASSAN: Thank you, Mr. President. I move Senate Bill 373 ought to pass as amended. The amended version of this legislation establishes a comprehensive mechanism to deal with arboviruses such as Eastern equine encephalitis, otherwise known as triple E. This legislation became necessary when local communities realized last summer that they did not have the resources or knowledge to deal with the problem of triple E. There were seven cases of triple E in New Hampshire in 2005, and two residents died of the virus. The legislation will allow health or law enforcement officials to order the removal of standing water, a breeding ground for mosquitoes. It also establishes a mosquito control fund to provide financial assistance to communities using mosquito control techniques in response to a declared threat to public health. Communities can also voluntarily enter into mosquito control districts for the purpose of applying for money from the mosquito control fund. It is important that communities be proactive rather than reactive in regards to triple E. Statistics show that once triple E develops in a certain area, it tends to come back even stronger the next year. The bill has the support of the Department of Health and Human Services and the Department of Agriculture. The committee asks for your support on the motion of ought to pass as amended. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 538**, relative to deconstruction of structures. Environment and Wildlife Committee. Inexpedient to legislate, Vote 3-2. Senator Gallus for the committee.

SENATOR GALLUS: Thank you, Mr. President. I move House Bill 538 inexpedient to legislate. This legislation would have extended the 40 percent solid waste reduction goal date from 2000 to 2008. It also would have added deconstruction into the solid waste hierarchy established in RSA 149-M:3. The committee feels this legislation is unnecessary. The state has missed the date, the target date, of 2000, by nearly six years already, and it is unlikely the state will reach it by 2008. The 40 percent

reduction goal will be met sometime in the future, but it is not necessary to put it into statute at this time. The committee asks for your support on the motion of inexpedient to legislate. We thank you.

**Committee report of inexpedient to legislate is adopted.**

**HB 544**, relative to the land and community heritage program. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Gallus for the committee.

**Environment and Wildlife**

**February 15, 2006**

**2006-1003s**

**08/09**

**Amendment to HB 544**

Amend the bill by replacing section 2 with the following:

2 Public Access to Lands Purchased by The Land And Community Heritage Investment Program. Amend the introductory paragraph and paragraph I of RSA 227-M:15 to read as follows:

227-M:15 Public Access; Liability. Lands and interests in lands purchased with funds from this program by any eligible applicant shall be open in perpetuity for passive recreational purposes *except as provided in paragraph I*. Language to be used in easement interests secured through the program shall approximate the intent of the following:

I. There is hereby conveyed pedestrian access to, on, and across the property for hunting, fishing, and transitory passive recreational purposes, but not camping, by members of the public. A grantor may reserve the right to post against vehicles, motorized or otherwise and against ~~[hunting on]~~ *access to* active livestock fields, against access to agricultural cropland during planting and growing season, and against access to forest land during harvesting or establishment of plantations. *Such term easements as described in RSA 227-M:2, IV will be granted where participation in such program fosters farm viability entered into by the authority or the department of agriculture, markets, and food.*

SENATOR GALLUS: Thank you, Mr. President. I move House Bill 544 ought to pass as amended. This legislation will address the problems farmers have with public access to their fields during growing season. A farmer whose land is under easement will be allowed to restrict access to it during planting and growing seasons and against access to forest land during harvesting or establishment of plantations. In addition, easements acquired by the Land and Community Heritage Investment Authority or the Department of Agriculture, Markets and Food, shall foster farm viability. The committee amendment will correct a technical error that occurred during drafting. The committee asks for your support on the motion of ought to pass as amended. Thank you, Mr. President.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 578**, relative to the current use advisory board and relative to construction or development constituting a change in use for purposes of assessing the land use change tax. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Eaton for the committee.



**Environment and Wildlife**  
**February 14, 2006**  
**2006-0976s**  
**10/04**

**Amendment to HB 578**

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

AN ACT relative to the chair of the current use advisory board.

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

1 Current Use Advisory Board; Vice Chair. Amend RSA 79-A:3, IV to read as follows:

IV. The board shall annually elect ~~[one of its members as chairman]~~ *from its members a chair and a vice-chair who shall serve in the chair's absence with all associated responsibilities, including rulemaking.*

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

**2006-0976s**

**AMENDED ANALYSIS**

The bill permits the vice-chair of the current use board to act in the chair's absence.

**MOTION TO TABLE**

**Senator Eaton moved to have HB 578 laid on the table.**

**Adopted.**

**LAIID ON THE TABLE**

**HB 578**, relative to the current use advisory board and relative to construction or development constituting a change in use for purposes of assessing the land use change tax.

**SB 297-FN**, establishing a new position and relative to the realignment of functions in the department of corrections. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 4-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. Exactly what I said the first time. Yes, ditto. Basically, this is...the commissioner has changed in Corrections, and the new commissioner has no interest in doing some of the plans that were laid in place by the former commissioner and he's going to do his own study and come back with legislation next year. We ask you to go with our recommendation of inexpedient to legislate. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 309-FN-A**, granting retirement benefits to certain retired judges, and making an appropriation therefor. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 3-0. Senator Flanders for the committee.

**Senate Executive Departments and Administration**  
**February 16, 2006**  
**2006-1063s**  
**04/03**

**Amendment to SB 309-FN-A**

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

AN ACT establishing a commission to study inclusion of service as a part-time district court judge in the calculation of retirement benefits.

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

1 Commission Established. There is established a commission to study the inclusion of service as a part-time district court judge in the calculation of a person's retirement benefits.

2 Membership and Compensation.

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

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

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

(c) The executive director of the New Hampshire retirement system, or designee.

(d) One member of the New Hampshire retirement system board of trustees, selected by the chairman of the board of trustees.

(e) The administrator of the New Hampshire judicial retirement plan, or designee.

(f) One member of the New Hampshire judicial retirement plan board of trustees, selected by the chairman of the board of trustees.

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

3 Duties. The commission shall study issues related to the inclusion of service as a part-time district court judge in the calculation of the person's retirement benefits.

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

5 Report. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2006.

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

**2006-1063s**

#### AMENDED ANALYSIS

This bill establishes a commission to study inclusion of service as a part-time district court judge in the calculation of retirement benefits.

SENATOR FLANDERS: Mr. President, members of the Senate, this was an interesting hearing. Approximately nine part-time judges in the testimony we heard fell quote unquote "fell through the cracks", and what has happened is there's one judge who's in a nursing home in Florida and having very difficult time because of little or no retirement. The reason we didn't go any further in this is because the situation, these judges were able to also practice, and we felt that there was a difference between a judge who's practicing law as well as being a judge. What we did, we agreed to study this situation. There's a lot that has to be put into it, and we do think it's something that deserves to be studied and

find out really what happened and what should be done. It was noted that, and I don't remember who said it, but I do have the dates of birth of all of these nine judges, and, if we stall long enough, the problem will solve itself. Thank you.

SENATOR BARNES: Might I remind the Senator that a couple of those fellows were seventy years old.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

Senator Burling (Rule #42) on SB 309-FN-A.

**SB 313-FN**, relative to the exemptions for the practice of massage therapy. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 3-2. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. This was another very interesting hearing. The first sign-up sheet came to me and had four people to speak, and I thought we were going to breeze right through this. Next thing I knew, the door opened, and a bus drove in, and there was eighteen people all wanting to speak. This is a situation where these two people, these two groups, just could not agree. We tried. We sent them out. We asked them to go to the hall. So what we've done is that they have said that they will sit down during the next year and try to come up with some sort of an agreement. We didn't think that we should do what they wanted by doing regulations and so forth. There were all kinds of you know hands-on massage and so forth. It became very, very, confusing. They say that they will come back with something that they can agree upon next year, and so we ask that you...our recommendation is inexpedient to legislate. Thank you.

SENATOR FULLER CLARK: Yes. Thank you very much, Mr. President. Just to clarify for the Senate that the issue here is that there are a number of individuals who practice soft tissue work in New Hampshire who are currently not able to practice in those modalities where they have received rigorous and specialized training if they do not train as massage therapists as well. The Massage Therapy Advisory Board agreed that this was a problem that they did not want to prevent these other modalities from being practiced in New Hampshire. Many of these people practice in Maine and Massachusetts and other states, and that they will sit down over the next six months to address this issue so that we can make sure that adequate regulation is in place for these other modalities but that they will have the opportunity to practice their specialties in New Hampshire. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 354-FN**, requiring security officers of the New Hampshire hospital security force to be fully certified as police officers and including such security officers in group II of the New Hampshire retirement system. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 3-0. Senator Kenney for the committee.

**Senate Executive Departments and Administration**  
**February 16, 2006**  
**2006-1042s**  
**09/10**

**Amendment to SB 354-FN**

Amend RSA 100-A:1, VII(g)(1) as inserted by section 3 of the bill by replacing it with the following:

(1) Has the responsibilities granted by the commissioner of safety under RSA 21-P:4, XI;

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

5 Transitional Provisions. Any persons employed as security officers of the New Hampshire hospital security force on the date this act takes effect and who have not completed the training required by the police standards and training council for certification as full-time police officers shall be scheduled for training at the police academy at the earliest practical time without undue interruption to the security operations at the hospital. No person shall be entitled to continue in such position for more than 2 years following the effective date of this act nor to join group II of the retirement system without successfully completing all the training and other requirements necessary to be fully certified. All officers hired on or after July 1, 2006, if not already full-time certified, shall successfully complete the police academy within the time specified in RSA 188-F and the rules of the police standards and training council.

6 Effective Date. This act shall take effect July 1, 2006.

SENATOR KENNEY: Thank you, Mr. President. I move Senate Bill 354 ought to pass with amendment. The bill represents the last step in the transfer of New Hampshire Hospital officers from DHHS to Safety. The officers in question perform the same duties as full-time police officers and deal with many of the same people. However, it is difficult to retain people in this position because, once hired and trained, officers naturally want to go to work with a police department where they can be a member of the retirement system. The committee adopted a language that would allow up to two years for these officers to become certified as full-time police officers and recommends ought to pass with amendment on Senate Bill 354. Thank you, Mr. President.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 365-FN**, relative to the lottery commission. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 3-2. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 365 inexpedient to legislate. The bill would eliminate certain incentive caps and payout restrictions on prizes and grant the Lottery Commission greater authority to operate and advertise. The caps and restrictions in current law are important safeguards, and the committee believes that the current authority of the Lottery Commission, relative to operations and advertising, should be preserved. The committee recommends inexpedient to legislate on 365, and the committee thanks you.

SENATOR FLANDERS: Thank you, Mr. President. If I may, I'd like to explain a situation that's happened here that this was recommended to

our committee, and I thought it should go to Ways and Means. But, I did hold the hearing and I learned after that that once you've held a hearing you could not refer this. Some of the testimony we heard from the commission was that they've been asked to put another hundred million dollars, if they can, into education funding, and so they've been asked to do this, and then I think I wanted Ways and Means...I recommended that we ought to pass this bill, send it to Finance since many of those Ways and Means people are on Finance, and look at this thing from a financial point of view. Obviously I lost, but I'm going to ask to consider reversing the ITL and pass this bill, send it to Finance. Let them look at this because there's some interesting testimony that came in about how much money more will be raised. You know my position on gambling. But we have this. This is here. It's not new. We're asking these commissioners to give us more money for education, and then I think we're tying their hands behind their back and not allowing them to do it. So this is what I thought should happen. I thought I'd share it with you. If you'd like to overturn the ITL, send it to Finance, I would like to see that done. Thank you.

SENATOR BARNES: Thank you, Mr. President. Senator Flanders?

SENATOR FLANDERS: Yes.

SENATOR BARNES: Isn't it true that part of this bill is for making a \$30 ticket?

SENATOR FLANDERS: Yes, that's the main part of the bill.

SENATOR BARNES: That's what I thought, but that hasn't been discussed. So I think that's why the three votes are against it. We have a \$20 one that we approved last year. Now they're looking for 30, and some of us thought if people really wanted that they could buy two 20s and get a 40. Thank you.

SENATOR FLANDERS: Again, I thought that Ways and Means should look at it from a financial point of view. Thank you.

SENATOR GALLUS: Thank you, Mr. President. I also would urge you to overturn the ITL and pass this particular piece of legislation. I was asked on behalf of the Lottery Commission to introduce the bill. We basically charge them with raising more money for education. The \$20 ticket has been a great success in the state of New Hampshire. It's raised an awful lot of additional money. The states around us have gone to a little bit higher tickets, and the Lottery Commission, being charged by the legislature to raise more money, asked our permission with this bill, to basically go to a \$30 ticket. And I think that, if we're going to micromanage the Commission, then maybe some of us should sit on it. I would also recommend that we overturn the ITL and send this on to Finance. Thank you, Mr. President.

SENATOR MARTEL: Thank you very much, Mr. President. I also ask members of this hallowed chamber to please overturn the inexpedient to legislate motion on this bill so we can vote on an ought to pass motion. It's no secret where I stand on gaming and bringing more money into the state through that gaming process. There are different methods of doing it, and I'm not saying that one is better than the other. I'm just saying that we have an opportunity here that we can get other income. If the Lottery Department wants to sell \$40 tickets, I mean \$30 tickets, excuse me, \$30 tickets, let them do it. It's up to them. They probably already have a contract in place to begin selling them if we can give them the right to do it. But it's up to them to decide and we to vote and see if it's feasible. They

feel very comfortable that they can raise a lot of money with this new \$30 ticket. I know for a fact that the \$20 ticket that's at the 711 store near my home has been selling extremely well, and people just can't keep enough tickets in the store. So maybe this is a move in the right direction to increase and bring more funds to the state so we can apply it to the right places. And I thank you very much, Mr. President.

SENATOR BARNES: Thank you, Mr. President. I move to table 'til the next session.

### MOTION TO TABLE

**Senator Barnes moved to have HB 365-FN laid on the table.**

**Motion failed.**

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise against the motion of inexpedient and hope that we'll overturn the committee. We, the state of New Hampshire, became the first state in the United States to organize a lottery. We did this in 1963 with John King as our Governor. We were the first state in the United States to reconstitute lotteries. The lotteries were around in the 17 and 1800s but then were disbanded. We gave a lottery the charge to raise as much money as possible, and we would then relegate that money to education. We then passed a constitutional amendment which said that all of the money raised by the lottery would be spent on education. In the budget we have a plugged number of \$70 million. That \$70 million is the money that the lottery raises for education purposes. Over the course of time, thirty-four other states in the United States have decided that New Hampshire had a pretty good idea, so they've instituted lotteries. And that creates a very competitive situation and that competitive situation says that there is a demand to do more creative things in terms of promoting your product. We appointed Governor **TAPE CHANGE** that in order to fulfill the responsibilities that this legislature gave them, they need certain amenities in place. Those amenities allow them to do what we've asked them to do. Now this piece of legislation covers some of those amenities. As has been pointed out, one of the amenities that we passed last year, has allowed the lottery to raise the money that it was supposed to, the plug number that we put in the budget. We all know that we participate in Powerball. Powerball happens to be a very attractive situation. Those tickets are a dollar, and there was a \$352 million prize last week won by eight people in Lincoln, Nebraska who really needed the money. So it's awful good that they won. So, by passing this piece of legislation and sending it to Finance, what we do is give those members of the Commission an opportunity to tell us why they need this. Why they need this in order to accomplish what we have by statute told them to do, and by Constitution, allocated the dollars. So it kind of makes sense. You know it's like dollars make cents. So that's why it's here. And we want to teach our dollars more sense. And that's why this is being brought forward. Thank you, Mr. President.

SENATOR FLANDERS: Thank you, Mr. President. I just looking at the report. No one appeared in opposition to this bill. There was no testimony in opposition to it. Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. I rise in favor of the committee report, but I just wanted to share a thought that occurred to me as we're sitting here having this debate is that it's wonderful that the money that we raise in the lottery goes to education, but if we raise more money through the lottery it doesn't mean that more money will go to education. We have a set amount that we spend on adequacy, and

what the lottery does is it enables us to use that as a portion of the means to accomplish that end. But it doesn't mean that if we were to raise a \$100 million through the lottery, we'd have \$30 million more to spend on education. At least that's not my understanding. If someone else would correct me. Thank you.

SENATOR BRAGDON: Thank you, Mr. President. I move the question.

SENATOR BARNES: Mr. President, I had my hand up for about three minutes before the call to move the question. Thank you, Mr. President. Senator D'Allesandro reminded me of something a couple of minutes ago, and I wanted to bring it to everybody else's attention. We had a three-term Governor by the name of King whose name was mentioned by Senator D'Allesandro, and in the obituary column today, his lovely wife, ninety-one years old, passed away yesterday. So I thought the Senate should have that included in the record for today.

**Recess.**

**Out of recess.**

**The question is on the committee report of inexpedient to legislate.**

**A division vote was requested.**

**Yeas: 9 - Nays: 14**

**Motion failed.**

SENATOR EATON: I move ought to pass to send to Finance.

Senator Eaton moved ought to pass.

### **PARLIAMENTARY INQUIRY**

SENATOR BURLING: Parliamentary inquiry?

SENATOR GATSAS (In the Chair): Certainly.

SENATOR BURLING: If this passes at this time, is it clear that this will go to Finance?

SENATOR GATSAS (In the Chair): It's clear it's going to Finance, Senator.

SENATOR BURLING: Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 296-FN**, relative to recovery of public assistance. Finance Committee. Ought to pass, Vote 8-0. Senator Green for the committee.

SENATOR GREEN: Thank you, Mr. President. I move that Senate Bill 296-FN ought to pass. This bill would permit the Department of Health and Human Services to waive or reduce the state's right to reimbursement for public assistance in certain cases, particularly when the individual is reimbursed through other means such as workmens' compensation. No new money is appropriated for this legislation, although less money may be recovered. This bill came to us from...approved by the committee...by the Senate as a result of a recommendation from the Health and Human Services Committee. The Finance Committee asks your support for the motion of ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 303-FN**, relative to elective angioplasty. Health and Human Services Committee. Inexpedient to legislate, Vote 3-2, Senator Fuller Clark for the committee.

**SENATOR FULLER CLARK:** Thank you, Mr. President. I move Senate Bill 303 inexpedient to legislate. The bill would prevent an acute care facility from providing certain elective heart procedures unless the facility also provides adult open heart surgery services, i.e., on-site backup. The committee heard that outcomes are no different at hospitals with off-site backup than at hospitals with on-site backup. Further, it would be damaging to the patient to move them to one of only four New Hampshire cardiac Surgery hospitals for these services and to an environment with which the patient is unfamiliar. Hospitals that do provide these elective services without on-site back-up do so only after being fully vetted by the New Hampshire Service Planning and Review Board. This issue was also carefully considered by the C. O. N. Board several years ago, and this legislation would undo its recommendation that elective angioplasty continue to be performed at hospitals with off-site backup, particularly because elective angioplasty prepares the teams of those hospitals for emergency angioplasty which they are allowed to do. For all of the above reasons, the committee recommends inexpedient to legislate on Senate Bill 303. Thank you, Mr. President.

**SENATOR MARTEL:** Thank you, Mr. President. I'm not going to try to overturn this vote from out of my committee, but I certainly want to make sure I correct a couple of facts that were stated by the previous speaker. There are differences between the outcomes in hospitals that have open heart surgery programs and those who do not. That's a stated fact in national records and a lot of medical records, okay, being held here in the state. Now, as minimal as that may be, at four tenths of one percent, add up the amount of heart surgeries that we've had in the state, and that percentage will increase. How would you like to be that statistic because you did not go into a hospital to have an elective angioplasty, and you went to one that did not have the full **TAPE INAUDIBLE** cardio thoracic services available to save your life? The second thing is, is that there are differences in the training of people. We've been lucky so far in this state, very lucky. Maybe there have been some statistics that we're not aware of. I would hope not. I think our record keeping is very accurate in this state. But if it hasn't happened yet, I'm afraid to say that it may happen in the future. I hope it doesn't happen to any one of us, or any one else in this state, because then this law will show that it was a good piece of legislation. It was brought in to help make sure that we take care of the patients that we have...that we represent. That's all I'm going to say, Mr. President. I'm now allowing members of the chamber to do what they wish, and I just wanted to correct those two facts. Thank you very much, Mr. President.

**SENATOR FULLER CLARK:** Senator Martel, is it not true that we heard in the committee hearing that the head of the C. O. N. Board said that elective angioplasty without on-site backup is not a major problem in New Hampshire? And furthermore, did we not hear from Exeter Hospital that, in fifteen years that they have performed 1,600 procedures and that their outcomes are no different than at hospitals with on-site backup?

**SENATOR MARTEL:** Thank you. I'm glad you finally asked me those questions. First, the person who's the President of the Certificate of Need Board is affiliated with a hospital right in this town, okay, who has certain agendas. She's leaving that position. There are reasons for that.



Secondly, she didn't state...she did not state they weren't minimal outcomes, okay, she stated that they did have some problems with the Certificate of Need Board did not come out and allow it to happen. Second question was about the Exeter Hospital. The Exeter Hospital has not been performing, on a regular basis, elective angioplasty for fifteen years. They've been caring for angioplasty patients, and there's a major difference between angioplasty at the lower levels and elective angioplasty which happens just before you have an open heart surgery case. And hopefully, you can catch it in time so that you can prevent that open heart surgery. But if you have a stent that goes into somebody's artery and bores the side of the artery, that's an emergency, a serious emergency that may cost a life. If you have a blood clot that forms, another crisis that you may need to have emergency services for by a department that you need to have in-house. If you don't have it, what's your excuse? What's your excuse to the patient or their family if something critical happens and they don't make it through? That's all I have to say about that. Thank you.

**SENATOR FULLER CLARK:** Is it not true that all of these other hospitals have an agreement with backup from an additional hospital so that there is an opportunity if they need to seek out additional expertise that they can do that?

**SENATOR MARTEL:** Thank you for asking the question, Senator. The hospitals that have, for the most part these agreements, are hospitals that are affiliated with hospitals that have open heart surgery programs. Their cardiologists that perform the services at those hospitals are affiliated directly with the cardiology and cardiothoracic department at the hospitals that have cardiothoracic surgery. That's how they're connected. Like the North Country, there's a program where five of the hospitals up north or six of the hospitals up north are affiliated with Catholic Medical Center for instance, and I'm not saying this for Catholic Medical Center by any means because some people may think that. And that's not the reason why. Secondly, you have people who are affiliated through other hospitals who go to Concord Hospital to have open heart surgery performed. It's affiliations like that that work, not just arbitrary cardiology departments that just decide they're going to go and they're going to expand the services in a way where it helps them provide other services they're not trained for. Now they have a very good cardiologist. He's a wonderful man, Dr. Wharton, and we're very fortunate that we have had him at Exeter Hospital to perform these surgeries because he is rated as outstanding. It's not an attack on him. It's an attack on the fact that they still don't have a higher level program in that hospital to protect the public.

**Committee report of inexpedient to legislate is adopted.**

**Recess.**

**Out of recess.**

**SB 340**, establishing a legislative health care advisory board. Health and Human Services Committee. Inexpedient to legislate, Vote 3-2. Senator Gallus for the committee.

**SENATOR GALLUS:** Thank you very much, Mr. President. It's a pleasure to be here right after that fine lunch you fed us. I move SB 340 inexpedient to legislate. While SB 340 seeks to address issues including healthcare insurance needs, the committee was concerned about the prospects of an unfunded, all volunteer group of people working over the

summer as we already have access to these groups. In light of these concerns, the committee recommends inexpedient to legislate on SB 340, and we thank you, Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**SB 345**, establishing a lobbying commission and relative to lobbyist registration and financial disclosure requirements. Internal Affairs Committee. Interim Study, Vote 5-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that Senate Bill 345 be laid upon the table.

**MOTION TO TABLE**

**Senator Boyce moved to have SB 345 laid on the table.**

**Adopted.**

**LAID ON THE TABLE**

**SB 345**, establishing a lobbying commission and relative to lobbyist registration and financial disclosure requirements.

**SB 375-FN**, relative to the executive branch code of ethics and establishing an executive branch ethics committee. Internal Affairs Committee. Interim Study, Vote 5-0. Senator Larsen for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that Senate Bill 375 be laid upon the table.

**MOTION TO TABLE**

**Senator Boyce moved to have SB 375-FN laid on the table.**

**Adopted.**

**LAID ON THE TABLE**

**SB 375-FN**, relative to the executive branch code of ethics and establishing an executive branch ethics committee.

**HB 234-FN**, relative to the development of a state and political subdivision information network. Internal Affairs Committee. Ought to pass, Vote 2-1. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that House Bill 234 be ought to pass. This bill deals with the multiple information technology network systems in this state. Currently there are multiple different and sometimes parallel network systems that join things such as the Secretary of State's Office, the town clerks' offices, the registries of deeds, the county offices, the police departments. There are multiple networking situations in this state, and many of them overlap and run in parallel in many places. This bill gives an opportunity for the Office of Information Technology to develop a plan that would join some or all of these networks into one overall lapping or overall network. The House Finance Committee liked this bill, and we believe it will save the state money in the long run. So please join the Internal Affairs Committee and vote ought to pass. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 282-FN-L**, relative to removal of abandoned vehicles on private property. Judiciary Committee. Ought to pass with amendment, Vote 6-0. Senator Gottesman for the committee.

**Senate Judiciary**  
**February 16, 2006**  
**2006-1069s**  
**03/04**

**Amendment to SB 282-FN-LOCAL**

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

AN ACT relative to removal of abandoned vehicles.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 Abandoned Vehicles; Charges Against Vehicles Abandoned on Private Property. Amend RSA 262:40-a, II to read as follows:

**II. *The costs of removing a vehicle under this section, including towing costs, shall, consistent with RSA 262:35-a, be the responsibility of the last registered owner according to department records.*** If a vehicle is towed from a parking lot or parking garage, charges for removal and storage shall not be assessed against the vehicle owner unless there is posted in the parking lot or parking garage conspicuous notice that illegally parked vehicles are subject to towing at the owner's expense.

**2006-1069s**

**AMENDED ANALYSIS**

This bill makes discretionary the removal by a peace officer of abandoned vehicles on private property. This bill also clarifies liability for costs of removing abandoned vehicles from private property.

SENATOR GOTTESMAN: I move Senate Bill 282 ought to pass. That is a bill that deals with the removal of vehicles that have been abandoned. This legislation deals with a current requirement regarding the removal of abandoned vehicles and makes it discretionary. The Department of Transportation testified at the public hearing that there has been an issue regarding the removal of abandoned vehicles at DOT's park and ride lots. However, subsequent investigation indicates that the current statutes allow them to remove these vehicles. The committee amendment allows the cost of removing a vehicle to be the responsibility of the last registered owner of the vehicle. The Judiciary Committee recommends that this legislation be adopted with amendment and asks your support.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 334**, authorizing the use of a credit freeze as a means of deterring identity theft. Judiciary Committee. Ought to pass with amendment, Vote 6-0. Senator Clegg for the committee.

**Senate Judiciary**  
**February 16, 2006**  
**2006-1066s**  
**09/10**

**Amendment to SB 334**

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

1 New Subdivision; Consumer Credit Reporting; Security Freeze. Amend RSA 359-B by inserting after section 21 the following new subdivision:

Security Freeze

359-B:22 Definitions. In this subdivision:

I. "Identity theft" means the unauthorized taking or use of an individual's personal information to obtain credit, goods, services, money, or property, with the intent to commit fraud. In this paragraph, personal information includes, but is not limited to, an individual's first name or initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(1) Social security number.

(2) Driver's license number.

(3) Account number, credit card number, or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

II. "Proper identification" means that information generally considered sufficient to identify a person.

III. "Security freeze" or "freeze" means a notice placed in a consumer report at the request of the consumer pursuant to RSA 359-B:24 that prohibits a consumer reporting agency from releasing the consumer report or credit score.

359-B:23 Notice to Consumers.

I. Any time a consumer reporting agency is required to make a written disclosure to consumers pursuant to 15 U.S.C. section 1681g, it shall disclose, in at least 12-point type, and in bold type as indicated, the following notice:

**NOTICE TO NEW HAMPSHIRE CONSUMERS**

**Right to Security Freeze on Consumer Credit Report**

You have the right to place a "security freeze" on your credit report pursuant to RSA 359-B:24. Under New Hampshire law, what is commonly known as a credit report is referred to as a "consumer report." A security freeze will prohibit a consumer reporting agency from releasing any information in your consumer report without your express authorization. The security freeze must be requested in writing, by certified mail.

You may obtain a security freeze on your consumer report at no charge if you are a victim of identity theft and you submit a copy of the police report, investigative report, or complaint that you filed with a law enforcement agency about unlawful use of your personal information by another person.

The consumer reporting agency may charge you a fee for the security freeze if you are not a victim of identity theft.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gains access to the personal and financial information in your consumer report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding new loans, credit, mortgage, insurance, government services or payments, rental housing, employment, investment, license, cellular phone, utilities, digital signature, internet credit card transaction, or other services, including an extension of credit at point of sale.

When you place a security freeze on your consumer report, within 10 business days you will be provided a personal identification number or

password to use if you choose to remove the freeze on your consumer report or authorize the release of your consumer report for a specific party or period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

- (1) The unique personal identification number or password provided by the consumer reporting agency.
- (2) Proper identification to verify your identity.
- (3) The proper information regarding the third party who will receive the credit report or the period of time for which the report shall be available to users of the credit report.
- (4) Payment of the applicable fee, if any.

A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze on a consumer report must comply with the request no later than 3 business days after receiving the request.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity with which you have an existing account that requests information in your consumer report for the purposes of reviewing or collecting the accounts, provided the use of your credit report is for a permissible purpose as provided by the federal Fair Credit Reporting Act. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

You have the right to bring a civil action against anyone who violates your rights under the credit reporting laws.

359-B:24 Security Freeze by Consumer Reporting Agency; Time in Effect.

I. A consumer may place a security freeze on his or her consumer report as follows:

(a) A consumer who has been the victim of identity theft may place a security freeze on his or her consumer report by making a request in writing, by certified mail to a consumer reporting agency with a valid copy of the police report, investigative report, or complaint the consumer has filed with a law enforcement agency about unlawful use of personal information by another person. In the case of a victim of identity theft, a consumer reporting agency shall not charge a fee for placing, removing, or temporarily lifting for a specific party or period of time a security freeze on a consumer report.

(b) A consumer who has not been the victim of identity theft may place a security freeze on his or her consumer report by making a request in writing, by certified mail to a consumer reporting agency. A consumer reporting agency may charge a fee of no more than \$10 to a consumer for each freeze, removal of a freeze, or temporary lift of a freeze for a period of time or specific party or for reissuing the same or a new personal identification number if the consumer fails to retain the original personal identification number provided by the agency.

II. Subject to the exceptions in paragraph XIII, when a security freeze has been placed on a consumer report, the consumer reporting agency shall not release the consumer report or any information from it without the express authorization of the consumer. This subparagraph shall not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer report.

III. A consumer reporting agency shall place a security freeze on a consumer report no later than 5 business days after receiving a written request from the consumer.

IV. The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within 10 business days after placing the security freeze and shall provide the consumer with a personal identification number or password, other than the consumer's social security number, to be used by the consumer when providing authorization for the release of a consumer report to a specific party or for a period of time.

V. If the consumer wishes to allow access to the consumer report by a specific party or for a certain period of time while a freeze is in place, the consumer may contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide each of the following:

(a) Proper identification.

(b) The personal identification number or password provided by the consumer reporting agency pursuant to paragraph IV.

(c) The proper information regarding the specific party granted access or the time period for which the report is to be available to users.

(d) Payment of the applicable fee, if any, pursuant to subparagraph I(b).

VI. A consumer reporting agency may develop procedures involving use of phone, fax, internet, or other electronic media to receive and process requests.

VII. A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a consumer report pursuant to paragraph V shall comply with the request no later than 3 business days after receiving the request.

VIII. A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer report only:

(a) Upon consumer request, pursuant to paragraph V or XI; or

(b) If the consumer report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer report pursuant to this subparagraph, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer report.

IX. If a third party requests access to a consumer report on which a security freeze is in effect and this request is in connection with an application for credit or any other use and the consumer does not allow access to the consumer report for that specific party or period of time, the third party may treat the application as incomplete.

X. If a consumer requests a security freeze pursuant to this section, the consumer reporting agency shall disclose to the consumer the processes of placing and temporarily lifting a security freeze and the process for allowing access to information from the consumer report for a specific party or period of time while the security freeze is in place.

XI. A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within 3 business days of receiving a request for removal from a consumer who provides:

(a) Proper identification.

(b) The personal identification number or password provided by the consumer reporting agency pursuant to paragraph IV.

(c) Payment of the applicable fee, if any, pursuant to subparagraph I(b).

XII. A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

XIII. This section, including the security freeze, shall not apply to the use of a consumer report by the following:

(a) A person or person's subsidiary, affiliate, agent, or assignee with which the consumer has or, prior to assignment, had an account, contract, or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or debt or extending credit to a consumer with a prior or existing account, contract, or debtor-creditor relationship, subject to the requirements of RSA 359-B:4. For purposes of this subparagraph, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(b) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under paragraph V for the purpose of facilitating the extension of credit or another permissible use.

(c) A person acting pursuant to a court order, warrant, or subpoena.

(d) Child support enforcement officials when investigating a child support case pursuant to Title IV-D of the Social Security Act.

(e) The department of health and human services, the department of justice, or any of their agents or assignees, acting to investigate Medicaid fraud.

(f) The department of revenue administration, municipal taxing authorities, the secretary of state, the division of motor vehicles in the department of safety, or any of their agents or assignees, acting to investigate or collect delinquent taxes or assessments, including interest and penalties and unpaid court orders, or to fulfill any of their other statutory or charter responsibilities.

(g) A person's use of credit information for prescreening as provided by the federal Fair Credit Reporting Act.

(h) A person for the sole purpose of providing a credit file monitoring subscription service to which the consumer has subscribed.

(i) Any person or entity, including but not limited to a consumer reporting agency, for the purpose of providing a consumer with a copy of his or her consumer report or credit score upon the consumer's request.

(j) Any person or entity for use in setting or adjusting an insurance rate or claim or underwriting for insurance purposes.

359-B:25 Duties of Consumer Reporting Agency if Security Freeze Is In Effect. If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a consumer report without sending written confirmation of the change to the consumer within 30 days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, and transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to the new address and the former address.

359-B:26 Persons Not Required to Place Security Freeze. The following persons are not required to place a security freeze on a consumer report pursuant to RSA 359-B:24, except that any person that is not required to place a security freeze on a consumer report under paragraph III is subject to a security freeze placed on a consumer report by another consumer reporting agency from which it obtains information:

I. A check services or fraud prevention services company that reports on incidents of fraud or issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payment.

II. A deposit account information service company that issues reports regarding account closures due to fraud, overdrafts, automated teller

machine abuse, or similar negative information regarding a consumer to inquiring financial institutions for use only in reviewing that consumer's request for a deposit account at the inquiring financial institution.

III. A consumer reporting agency that:

(a) Acts only to resell credit information by assembling and merging information contained in a database of one or more consumer reporting agencies; and

(b) Does not maintain a permanent database of credit information from which new consumer reports are produced.

359-B:27 Victim of Identity Theft; Access to Consumer Report. Every consumer credit reporting agency shall, upon the receipt from a victim of identity theft of a police report, investigative report, or complaint the consumer has filed with a law enforcement agency about unlawful use of personal information by another person, provide the victim, free of charge and upon request, a copy of his or her consumer report and such additional copies of the consumer report as he or she may be entitled to under the Fair Credit Reporting Act, 15 U.S.C. section 1681 et seq.

359-B:28 Consumer Report Files of Deceased Persons.

I. An executor, administrator, or other person authorized to act on behalf of an estate of a deceased person may request that a consumer reporting agency indicate on the deceased person's consumer report that the person is deceased. The consumer reporting agency shall indicate on the deceased person's consumer report that the person is deceased within 5 business days of receipt of the following documentation from the executor, administrator, or other person authorized to act on behalf of the estate of the deceased person:

(a) A certificate of death, a certificate of appointment, letters testamentary, or other order from the probate court authorizing the executor, administrator, or other person to act on behalf of the estate of the deceased person; and

(b) A request to indicate on the deceased person's consumer report that the person is deceased.

II. The consumer reporting agency may remove the indication placed on the person's consumer report pursuant to paragraph I if the consumer reporting agency finds that the indication was placed on the person's consumer report through material misrepresentation of fact. If the consumer reporting agency intends to remove the indication pursuant to this section, the consumer reporting agency shall notify the person or the executor, administrator, or other person authorized to act on behalf of the estate in writing prior to removing the indication.

2 Consumer Credit Reporting; Civil Liability for Willful Noncompliance. Amend RSA 359-B:16, I to read as follows:

I. Any actual damages sustained by the consumer as a result of the failure **or \$1,000, whichever is greater;**

3 Consumer Credit Reporting; Civil Liability for Negligent Noncompliance. Amend RSA 359-B:17, I to read as follows:

I. Any actual damages sustained by the consumer as a result of the failure **or \$1,000, whichever is greater;**

4 Effective Date. This act shall take effect January 1, 2007.

**2006-1066s**

#### AMENDED ANALYSIS

This bill:

I. Permits consumers to establish a "credit freeze" on their consumer reports and requires consumer reporting agencies to provide notice of this right.



II. Permits victims of identity theft to request copies of their consumer reports.

III. Establishes a procedure to notify consumer reporting agencies when a person is deceased.

IV. Establishes a minimum penalty for negligent or willful violations of the consumer credit reporting law.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 334 ought to pass with amendment. Senate Bill 334 permits consumers to put a security freeze on their credit reports when they are victims of identity theft. The bill's sponsor, Senator Gottesman, worked diligently with other parties in order to address their issues and still protect consumer rights. The committee amendment reflects the negotiations, and the Judiciary Committee recommends that this legislation be adopted with amendment and asks for your support. Thank you.

SENATOR GOTTESMAN: Thank you, Mr. President. The committee amendment is a re-write of the proposed legislation as introduced, in light of certain discussions I've had with all people who are stakeholders in this particular bill. So, we have tried to address everything in a way so that it will go through in a fashion that the consumer can live with it and so that the banks and the credit agencies can live with it as well. This bill is an effort to address the problem of identity theft of an individual's credit files. Through a strange set of circumstances in 1999, I became very interested in this area as a result of the death of a young woman in Nashua, New Hampshire, and I have tried to be an advocate for identity theft issues since then. This security freeze is an opportunity for people to have a freeze put on all credit reports in their name when they learn that they are victims of identity theft. If a person is not a victim of identity theft and wants to have a freeze put on their credit reports anyway, they can do that for a nominal fee of \$10. When a person wants to have the freeze lifted, they can do that by notifying the credit reporting agencies with a proper pin number and identification. The purpose of this legislation is to stop the continuing theft of a person's identity. Many I've met have urged me to file this legislation, and I have done so knowing that at the very heart of identity theft are things such as Social Security numbers, birth dates, drivers' license, credit cards that get out into the public. When we put a freeze on this kind of information through the credit reports, where all of this information shows up, we do gain an edge on those who would be identity thieves. We have worked very hard to bring this to a point where this legislation is acceptable to all stakeholders. I want to thank the members of the Senate, particularly Senator Roberge, who unselfishly allowed me to become the prime sponsor of this bill and worked with me in terms of crafting this language. And also in the House, the lead person over there was Deb Hogancamp who has done a terrific job of following through on this. So I thank all of you for supporting this. And I believe Representative Hogancamp is here with us today and I thank you for coming to continue to marshal this through. I thank all of you who, in advance, who I hope will vote for this. In order to send a message, although we're not taking roll calls today, I would ask, Mr. President, if we could have a division vote on this particular issue. It's that important to me. Thank you, Mr. President.

#### **Amendment adopted.**

SENATOR LARSEN: I simply rise to applaud the bill's sponsor and Representative Hogancamp and those who worked on this bill. As someone who just recently been informed that I was likely my credit numbers are

out with the Boston Globe release, and then as someone who has been at the liquor store in the past six months, these kinds of issues (it was Christmas) these kinds of issues are ones which are of concern to every consumer in this state, and so it is wonderful, and obviously very careful bit of work that's been done on this, and I applaud all those who worked on it. Thank you.

**The question is on the adoption of the bill as amended.**

**A division vote was requested.**

**Yeas: 22 - Nays: 0**

**Adopted.**

**Ordered to third reading.**

**SB 353-FN**, relative to registration of criminal offenders convicted of homicide. Judiciary Committee. Ought to pass with amendment, Vote 6-0. Senator Gottesman for the committee.

**Senate Judiciary**

**February 8, 2006**

**2006-0839s**

**04/10**

**Amendment to SB 353-FN**

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

1 Short Title. This act shall be known as the Diane Lemire Victims Rights Act.

2 New Section; Homicide; Notification of Release of Offenders into Community. Amend RSA 630 by inserting after section 3 the following new section:

630:3-a Notification of Release of Offenders into Community.

I. The official in charge of the release on probation, parole, conditional or unconditional release, completion of sentence, release from secure psychiatric care, or for any other reason, of any person convicted of second degree murder under RSA 630:1-b or manslaughter under RSA 630:2, shall obtain the address at which the offender expects to reside upon release and any subsequent change of address and shall, for as long as the offender is in the legal custody of the adult parole board, report such addresses to the adult parole board established in RSA 651-A:4. The adult parole board shall maintain a list of all offenders and shall, on a quarterly basis, inform the victim's immediate family, in the order of priority set forth in paragraph II, of the address of the offender. Interested members of the public may obtain a copy of the list by request made to a local law enforcement agency.

II. The victim's immediate family shall provide change of address information to the adult parole board. If no change of address information is submitted, the adult parole board shall forward the offender's address information to the last known address of the victim's immediate family. In this subparagraph, "immediate family" shall mean the victim's spouse, child, sibling, or parent.

3 Parole of Prisoners; Adult Parole Board Duties. Amend RSA 651-A:4, III to read as follows:

**III. *In accordance with RSA 630:3-a, maintain a list of addresses of offenders released into the community, a list of change of address information for victims' immediate family members, and provide notice to a victim's immediate family; and***

**IV.** Adopt rules, pursuant to RSA 541-A, relative to:

- (a) The parole process, including the conduct of parole hearings;
- (b) Criteria used to evaluate prospective parolees;
- (c) Conditions for the conduct of parolees; and
- (d) Procedures for revocation of parole.
- (e) Procedures for medical parole.

4 Effective Date. This act shall take effect January 1, 2007.

**2006-0839s**

**AMENDED ANALYSIS**

This bill requires the adult parole board to maintain a list of addresses of offenders convicted of second degree murder and manslaughter and released into the community, and to notify a victim's immediate family of an offender's address. The bill also requires the victim's immediate family to provide change of address information to the adult parole board.

SENATOR GOTTESMAN: Thank you, Mr. President. I move Senate Bill 353-FN ought to pass with amendment. This legislation was filed because of the tragic murder of Diane Lemire, a constituent of Senator Gallus. The provisions of Senate Bill 353 as amended by the Judiciary Committee allow for notification to a victim's next of kin when someone is being released from prison following conviction for first or second degree murder or manslaughter. The Judiciary Committee recommends that this legislation be adopted as amended and asks your support. Thank you.

**Amendment adopted.**

SENATOR MARTEL: Brief question for Senator Gottesman. Senator, I noticed in the report, hearing report, that Assistant Commissioner Earl Sweeney, Department of Safety, and Jeff Keller from the command of the State Police Criminal Records Unit, both opposed this bill. Could you tell do you have any idea why they were opposed to this bill?

SENATOR GOTTESMAN: Yes, they were opposed to the original bill because the original bill as introduced, set up a registry similar to a sexual predator registry, and they felt that it was something that was not acceptable to them. I think they had some concerns about tracking some of these folks, as I recall it. And what we did was we tried to focus on the fact that we wanted to notify the immediate families of the people who were affected by this. And I think we did it in a way so that it would allow the people who would be most affected by this to know rather than broadening it so that the whole world had to know which was what the request was by Miss Lemire, by Miss Lemire's sister I must say.

SENATOR MARTEL: I want to thank you very much because I thought it was that they were opposed to the new bill. That's what I was concerned about.

SENATOR GOTTESMAN: I don't think that's the case.

SENATOR MARTEL: Okay, thank you.

SENATOR BOYCE: I'm just reading the analysis of the bill, and it says this applies to second degree murder and manslaughter. Is there something in first degree murder already, or did I miss something?

SENATOR GOTTESMAN: As I recall, first degree murder under these statutes they don't get out. It's life in prison.

SENATOR BOYCE: Okay.

SENATOR GOTTESMAN: So anyone who is convicted and is going to be released is going to have that immediate family who was affected by the release notified.

SENATOR BOYCE: So if we ever change truth in sentencing, we have to change this as well?

SENATOR GOTTESMAN: I would think so.

SENATOR BOYCE: Just wanted to make sure.

SENATOR GOTTESMAN: Thank you.

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 317-FN**, establishing an occupational and professional regulation screening and appeals board to review complaints to and decisions by occupational and professional regulatory boards. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Burling for the committee.

**Public and Municipal Affairs**

**February 15, 2006**

**2006-1014s**

**09/04**

**Amendment to SB 317-FN**

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

**AN ACT** establishing a screening panel to review complaints to occupational and professional regulatory boards and establishing an appeals board to review decisions by occupational and professional regulatory boards.

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

1 New Sections; Occupational and Professional Regulation Screening Panel and Appeals Board. Amend RSA 541 by inserting after section 5 the following new sections:

541:5-a Occupational and Professional Regulation Screening Panel.

I. There is established an occupational and professional regulation screening panel to review complaints to occupational and professional regulatory boards and commissions.

II. Any person who is the subject of a complaint filed with an occupational or professional regulatory board or commission may submit the complaint to the professional association for his or her occupation or profession to be reviewed by a screening panel for a determination of the merit of the complaint.

III. Each screening panel shall be comprised of 3 persons, who shall be members of the profession regulated by the board or commission with which the complaint was filed and shall be appointed by the professional association for that occupation or profession. No member of a screening panel shall be a member of any occupational or professional regulatory board or commission. Such professional association shall name the chairperson of the screening panel, who shall establish the time and place and provide notice to the panel members and parties of a hearing on the merits of the complaint.

IV. The screening panel shall have 60 days to review the complaint and determine whether the complaint has merit, by examining the

grounds for dismissal of a complaint under the law applicable to the particular occupational or professional regulatory board or commission. During this 60-day period, the occupational or professional regulatory board or commission shall suspend its disciplinary proceedings regarding the complaint. The screening panel shall issue a written determination to the occupational or professional regulatory board or commission as to whether the complaint has merit. If the screening panel concludes that the complaint has no merit, the occupational or professional regulatory board or commission shall dismiss the complaint. If the screening panel concludes that the complaint has merit, the occupational or professional regulatory board or commission shall resume its disciplinary proceedings regarding the complaint.

V. Members of a screening panel may receive reimbursement for mileage and other expenses related to their duties as screening panel members.

VI. No civil action shall be maintained against any screening panel appointed under this section or any member of the screening panel or its agents or employees, against any organization or association or its members, or against any other person for, or by reason of any statement, report, communication, or testimony to the screening panel or any determination, action, statement, report, communication, disclosure or testimony by the screening panel in relation to any proceeding or communication under this chapter.

VII. The appeals board established under RSA 541:5-b shall establish a schedule of fees for reviews under this section and appeals under RSA 541:5-b, which shall be sufficient to pay for the costs of reviews and appeals.

541:5-b Occupational and Professional Regulation Appeals Board.

I. There is established an occupational and professional regulation appeals board to hear appeals from decisions of occupational and professional regulatory boards.

II.(a) The appeals board shall consist of the following members:

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

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

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

(b) No member of the appeals board shall be a member of any occupational or professional regulatory board or commission.

(c) The members appointed under subparagraph (a) shall serve 2-year terms and may be reappointed by their appointing authorities. The governor shall name a chairperson of the appeals board from the public members.

(d) The appeals board shall meet as necessary at the call of the chairperson to carry out its duties under paragraph III of this section.

III. As an alternative to rehearing by the occupational or professional regulatory board or commission under RSA 541:2 through RSA 541:5 and as an alternative to appeal to the supreme court under this chapter, a decision by an occupational or professional regulatory board or commission may be appealed to the appeals board within 30 days after the decision is issued. The provisions of RSA 541:7 - RSA 541:11, relative to petitions, parties, notice, and fees for copies in appeals to the supreme court, shall also apply to appeals to the appeals board. The appeals board shall conduct a de novo review of the complaint under the same disciplinary and evidentiary standards and procedures applicable under the law to the occupational or professional regulatory board or commission. The appeals

board shall issue its decision on the appeal in a written order within 30 days of hearing the appeal. Decisions of the appeals board may be appealed to the supreme court under RSA 541:6.

IV. Appeals board members may receive reimbursement for mileage and other expenses related to their duties as appeals board members.

V. No civil action shall be maintained against the appeals board or any member of the appeals board or its agents or employees, against any organization or association or its members, or against any other person for, or by reason of any statement, report, communication, or testimony to the appeals board or any determination, action, statement, report, communication, disclosure or testimony by the appeals board in relation to any proceeding or communication under this chapter.

VI. The appeals board shall establish a schedule of fees for screening panel reviews under RSA 541:5-a and appeals under this section, which shall be sufficient to pay for the costs of reviews and appeals.

2 Appeal to Supreme Court. RSA 541:6 is repealed and reenacted to read as follows:

541:6 Appeal to Supreme Court. Within 30 days after a decision on an application for rehearing or after a decision on such rehearing under RSA 541:5, or within 30 days after a decision on an appeal by the occupational and professional regulation appeals board under RSA 541:5-b, the decision may be appealed to the supreme court.

3 Effective Date. This act shall take effect January 1, 2007.

## 2006-1014s

### AMENDED ANALYSIS

This bill establishes a process for screening complaints to occupational and professional regulatory boards and commissions. Screening panels shall consist of 3 members of the profession which is regulated by the board or commission with which the complaint is filed, who are appointed by the professional association for that profession. The screening panel shall have the authority to review the complaint to determine whether the complaint has merit. If a complaint is found not to have merit by the screening and appeals board, the complaint will be dismissed by the regulatory board and commission.

This bill also establishes an occupational and professional regulation appeals board to review decisions by occupational and professional regulatory boards and commissions. A party may appeal to the appeals board as an alternative to a rehearing by the occupational or professional regulatory board or commission or directly appeal to the supreme court under RSA 541, and may appeal a decision of the appeals board to the supreme court under RSA 541.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move Senate Bill 317 ought to pass with amendment. The amended version of this legislation will establish a screening panel to review complaints to occupational and professional regulatory boards. This panel will be made up of three persons who are members of the profession regulated by the board with which the complaint was filed. The panel will decide whether or not complaints brought forward are valid and have merit. Currently an individual can only appeal a board's decision to the Supreme Court. This can be an overwhelming and expensive process. The legislation as amended, will also establish an appeals board to review decisions made by the occupational and professional regulatory boards. The appeals board will be an alternative to the Supreme Court and offer a neutral and unbiased opinion. An individual will still have the abil-

ity to appeal questions of law direct to the Supreme Court, and a question after a decision is made by the appeals board, or can bypass the appeals board altogether and go straight to the Supreme Court. The Public and Municipal Affairs Committee feels it is important that occupational and professional regulatory boards have a uniform system of oversight, and asks for your support on the motion of ought to pass with amendment. Thank you, Mr. President.

SENATOR GREEN: Thank you, Mr. President. The committee amendment is on page 11 of your calendar. The original bill, as the prime sponsor of this legislation, was basically to set up an appeals board that would do the function of both appeals of people who were whatever way they felt they were not treated fairly by the board originally, and also was the board that would consider the original complaint, whether or not it had validity or not. In this process that people are being put through, through these boards at which there are twenty-seven of them, which cover all kinds of professions that are licensed in this state, there is a tremendous amount of uneasiness, concern. Don't forget now, you are challenging the ability of a person to earn a living. That's a very important issue. Now, are there valid complaints? Absolutely. But the problem is that people can complain about anything. And this board, under its rules, must accept the complaint. And when they accept this complaint, the process starts. Then an investigation is done, and if you go back and look at a lot of the recent complaints, it takes months to even consider the complaint, in terms of its validity. An investigation is done, and then they determine whether or not the complaint has validity. They can also, of course, if they think the complaint is serious enough, they can suspend their license immediately, and then have their hearing. The problem we have here is that these boards started out as citizens boards, that dealt mainly with common sense and whether or not somebody had a valid complaint that rose to the level of whether or not a person's license or right to earn a living should be challenged. It has degraded to the point that now any kind of complaint is considered. Now I have a number of people who have come to me about this bill, and I have listened to them carefully, and I have not brought this bill forward without a lot of consideration. The original bill allowed people to have an appeal on the actual complaint before the complaint could go forward, and then it allowed the board to consider, after the actions of the board, an appeal process. The current system allows an appeal process but back to the same board, and we go round and round again some more with the same board who has already made a decision. And when you get all through that, if you're still not happy, you can now appeal to the Supreme Court. Now let me tell you what the problem with this is along with the complexity of the process. It's the cost and the expense of the process. People who are put through this ringer and are vindicated have spent large sums of money to maintain their integrity and their reputation, and it doesn't matter which board you talk about. Some are worse than others. Now all I'm saying is in this bill as amended. Now I will talk about the amendment. We're saying, "Look, these boards have no oversight at all. None. They are a power unto themselves. They control your destiny if you are licensed in this state." And I'm saying that's not right. And it shouldn't be just an appeal to the Supreme Court to determine whether or not your rights have been denied. Because the Supreme Court is not a question of facts about the actual complaint; it's about a question of whether your rights were violated. It's a question of law. It is time that the legislature, like we do with most things around here when we think things get out of hand, we put some oversight onto it, and this is an oversight. This

is a protection of the rights of the people that we have licensed. Now, I want you to know that this bill is not intended to protect people who do things that they shouldn't be doing and aren't valid. That's why this bill is put this way. As the bill was heard in committee, with the one board doing both the screening of the complaints and the appeal process, if you were not happy with the decision of the board of the commission. It was brought to my attention that in order to determine whether or not the complaint had validity or not that there should be people who are in that profession, who understand the profession, making that determination as to whether or not the complaint is valid. I listened to that. I said that makes sense to me. So we split the process of screening the validity of the complaint and the actual appeal of a decision of the board of commission. I felt it was a legitimate thing to do. We allow the actual profession, through their association, to name three people to look at the complaint. That was the medical board, three doctors would look at that. One of those doctors would be identified as the chairman by the association. The only thing they're considering, the only thing that three panel group is considering, is whether or not the complaint as filed to the board or the commission, has validity or not. Let me tell you about a case we've got going now. We have a complaint of a doctor in this state which is the complaint is that he called a lady fat. That's what he did. In counseling the lady, he basically said she was fat, and she had to do something about it. She was obese. Okay, her feelings got hurt. His bedside manner may not be the best bedside manner in the world, but should he be spending thousands and thousands of dollars being given the run around by the Board of Medicine that he did something wrong? I don't think so. Common sense would tell you that that complaint has no validity. The rules of that profession are clearly articulated and spelled out in the law. So we're going to spend thousands of dollars as an individual. But not only that, he's going to be against the board because they're going to make his life miserable. The AG's Office is going to defend the board at no cost to the board. So we got the AG's Office spending hours and hours on a complaint like that. And round and round we go. All I'm saying is people from the profession of the board will know whether the complaint has some reality to it and some legitimacy to it. If that screening panel says, "No, we do not believe that complaint is valid," the process stops. Stops the foolishness. If they, as professionals, based on the complaints, feel there is validity to that complaint and it should be heard before the board or the commission, it goes forward. There'll be no great cost to that. According to this bill, the people are only entitled to their expenses, and those expenses will be picked up by the fees charged by the panel. We authorize them to create fees to cover their costs. It's a citizen panel made up of people who are in the profession. That's that piece. Second piece, if in fact the hearing is held, the board goes through its process like it always does, comes up with its determination. If the person who was charged is not satisfied with their determination, they have a right now to appeal to the Supreme Court or they can appeal back to the board who issued the decision. What we're saying is we will create a...we would actually create an appeals board, and the appeals board is spelled out in the legislation in the amendment. Three members, but they're all citizens, and none of them can be serving on any of the boards. So they have no connection with any of the boards or the person who is making the appeal. The seven member board, made up of three citizens appointed by the Governor, confirmed by the Governor's Council, two board members appointed public members. They're all public members appointed by the President of the Senate, and two public members appointed by the Speaker of the House. Now,



at that point the person has a shot to determine whether the board that gave them whatever penalties they gave them is valid. They may be upheld. The board may be upheld or the commission, or they may be overturned. It's the same adjudicatory process that you would have in Superior Court basically. Again, they are a group of citizens who will look at this thing and say, "What's going on?" I think it's going to help the board in the commission process because I think they're going to be a lot more careful about what they're doing knowing that there is a citizens' board who's watching them and has some jurisdiction over their actions. And I just think that we owe it to our citizens to do this. I would remind all of you that when we did this before as a state, it was citizens making these decisions, and I think we ought to get citizens back in the process of looking at what our boards are doing in a regulatory way. It's a way to oversee the Executive Branch process of what's happening in our system of licensing and overseeing our licensed people in this state. And I ask you all to support this because I feel very strongly about it and I think it is something that we need to do. And I would ask for you to support the committee report. Thank you.

SENATOR MARTEL: Thank you very much, Mr. President. Question of Senator Green. Senator, you made a statement before that the people who were being charged by this board of having violated some ethics or some violation of the law would have an appeals process to the Supreme Court. Now isn't it true that the Supreme Court... people can only appeal to the Supreme Court if the Supreme Court decides it wants to hear the case?

SENATOR GREEN: That's correct.

SENATOR MARTEL: It's not a direct ability to get there.

SENATOR GREEN: The way it is now even the law is, they "may" appeal to the Supreme Court. There is no guarantee the Supreme Court will take the case.

SENATOR MARTEL: So that stays the same?

SENATOR GREEN: Yes. It does not change.

SENATOR MARTEL: Thank you. That's all.

SENATOR BARNES: Thank you, Mr. President. Question of Senator Green. Senator Green, these members I'm on page 11.

SENATOR GREEN: Okay.

SENATOR BARNES: Down at the bottom.

SENATOR GREEN: Yes.

SENATOR BARNES: "The appeals board shall consist of the following members".

SENATOR GREEN: Yes.

SENATOR BARNES: The two public members appointed by the President of the Senate and the ones by the Speaker of the House, do they also have to go in front of Governor and Council? Or is it just the ones the Governor appoints?

SENATOR GREEN: No, just the Governor and Council ones. As I read this, it would be straight appointments by the bodies. They're appointed. The Governor's wouldn't even go before the Governor and Council. They'd be appointed.

SENATOR BARNES: Right. You mentioned that it went in front of Governor and Council

SENATOR GREEN: I did. I made a mistake. They all get appointed.

SENATOR BARNES: Without going to Governor and Council?

SENATOR GREEN: That's correct.

SENATOR BARNES: Thank you very much.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in opposition to the bill. My dear friend and colleague, Senator Green, who I have much admiration for got his basic education at UNH in my class, so we have something that's in common. I guess I come at this from a very unique perspective having served on the Council and having voted for these appointments over a six-year period when I was a member of that body. We have about thirty-eight regulatory boards in the state, between thirty and forty. They're in Title 30 of our RSAs, and they run from Chapter 309 right to Chapter 332. Each statute has its own requirements. The members selected to that board or to those boards, are given scrutiny by the Governor and Council. Members appointed as nominated by the Governor, and they represent the occupation and there are public members. They're scrutinized by the Council, interviewed by the Council, and then approved. They're public servants who want to serve the public, who want to do a good job for the public **TAPE CHANGE** They've done a pretty good job over the years of managing this situation. The amendment sets up a screening panel appointed by the professional associations to review complaints and appeals board within the legislature, as Senator Green pointed out, two from the House, two from the Senate, two by the Governor. Well, as I say, we already have a methodology by which people are examined and that's through the Governor and Executive Council. The professional associations exist to promote the professions. The boards exist to protect public health, safety, and welfare. It's a conflict of interest to allow organizations that promote the professions to participate in potential disciplinary actions against their members. There are multiple societies for many of these regulated professions. For the professional engineers, there are at least ten professional associations that pertain to different disciplines of engineering. Who decides which professional association would have the screening panel? Would an electrical engineer review the complaints against a structural engineer? Would all ten associations have separate screening panels? Who oversees the screening panel to ensure that they're correctly interpreting the statutes and rules including providing due process to the regulated individuals? Senate Bill 317 would set up multiple quasi-judicial panels with the potential for hundreds of participants that would require oversight. These screening panels could become political within the professional societies. What's the fiscal impact of multiple screening panels and appeals boards? Would all the licensees have to pay a fee to support these panels? Who would defend the screening panels if they were sued by the licensee? Who would pay for the legal advice to the screening panels and appeals board? This bill creates a whole new level of government that would have to be funded. The screening panels and appeals boards are a duplication of effort as the boards are experts in the rules and statutes that they've been trained, provided due process to individuals that appear before them. We have a unique system in New Hampshire. We ask citizens to participate. We ask those citizens to give their time and effort at relatively little re-numeration. We don't pay them.

Sometimes they get travel. They do a good job. They do a very good job. I don't think we need to overhaul the system. The system works. The system's in place. It's been in place. The system works. Thank you, Mr. President.

SENATOR FOSTER: I rise in opposition to the amendment as well. I served, I think it was last summer, and time blends together, it might have been the previous session, on a study committee that dealt with these sorts of issues particularly focused on the appeal rights and there was talk of maybe having administrative law judge process to handle appeals and there was genuine concern from some people who came before us where individuals would have adverse rulings by boards. And you'd have to seek reconsideration in front of the same board and there'd be delay in cost and time. So I think the part of this amendment that deals with appeals may well be well taken, section two of the amendment. What I'm focusing on and what I have concerns about is really section one and the idea of a screening panel and my concern is this. We have, I think Senator D'Allesandro said thirty or forty some odd boards. And this morning, I took a look at the composition of those boards. And each and every one of them have one or more public members who aren't part of the profession, every single one that I could find. Maybe there's an exception to that. I don't know, but that's what I found. And these boards go back many, many years. Some of them are newer than others. They've been tinkered with over the years, but for years and years this legislature has decided that public members ought to be on the board. And, in fact, in my own profession which isn't dealt with by the RSA's but by Supreme Court rule, we didn't, in the legal profession, have public members on, and with some screaming from the public, that was changed by the Supreme Court. And now there are public members as well on the Professional Conduct Committee that looks at complaints against lawyers. What this amendment does is it takes those public members out of the process because, to be on a screening panel, you got to be in the profession. So the fox is guarding the hen house. If you had a lemon-law problem, would you want Chrysler, Ford, and General Motors deciding whether or not there's really a problem with your car? Probably not. The idea, I assume, of having public members on the board is to have that public input, that public oversight, and to make sure that the profession that's promoting the profession isn't doing so a little too much and a little too hard, and isn't really looking at issues with that profession. That public input is important. This takes that out at the most important part of the process, the beginning. The profession's going to decide whether there's any merit. I suppose if you wanted to have a screening panel and there were public members on it, public individuals, I might feel differently about it, but instead we're having the profession deciding itself whether complaints by the public have merit or not, and I don't think that's the right way to go. And I would oppose the amendment, at least section one. Perhaps the amendment's divisible and I might ask the Chair as to whether it would be a divisible amendment, section one and section two. Thank you, Mr. President.

SENATOR GREEN: Thank you, Mr. Chairman. I guess there's not as much disagreement as I thought there was going to be. Just for the record, if you go back to the original bill without amendment, I think Senator Foster's concerns may be alleviated. I do not believe that I can alleviate Senator D'Allesandro's concerns because his is more to the point that he thinks that they're doing a good job, and I basically disagree with you adamantly that they're not doing a good job. They've gotten out of con-

trol. They're putting people in very difficult positions. And I think that the question here is whether or not they need oversight. That's the question. We in this legislature, when we get the sense that things are not going right, we do one of two things. We repeal the law or we provide oversight. And I think that we're at a point where we've got to take a serious look at oversight in this particular situation. The original bill was amended mainly because of individuals on the committee who had the hearings were concerned about the fact that if the appeal...I'm sorry...if the complaint was going to be determined valid or not, that somebody with some basic understanding of the profession, had some ability to give input to the process of whether the complaint was valid or not. It's not a whole hearing on the whole issue. It's a hearing on whether the complaint has validity. I don't have a problem, however you want to do the screening. I'm not...I came up with this in consultation with members of the committee thinking it was a way to divide the question of who is deciding on the complaint and who is deciding in the appeal process. I leave that to the greater wisdom of this group. At some point we will probably work that out. My understanding, if this passes today, the amendment and the bill, that it's going to go to Finance Committee, and we're going to talk about that particular issue, and that's fine with me. But the original bill did not break out into two groups. It was one board to consider both the question of validity of the complaint and the appeal process. That particular group is made up of all citizens. Now that group, I'm sure, if they were ever faced with an appeal, would have to bring to the table consultants who were really knowledgeable of that particular profession. No question in my mind about that. So I would hope that we would at least go forward with this, approve the amendment at this point, send it to Finance, and see if we can work on the details to make it work for everybody. Thank you, Mr. President.

SENATOR FOSTER: Senator Green.

SENATROR GREEN: Yes.

SENATOR FOSTER: First, I just want to state I do not have the feeling that you do about these boards that they're not working, but I am sympathetic to at least something I think that you said about them where you said that, when they receive a complaint, they don't have the ability to dismiss it sort of out of hand on its face. As you know, the Legislative Ethics Committee has that. Apparently the Professional Conduct Committee of the bar has it, although I'll say that the screening that they do for the nine members are the public members, and they screen them to see if they have any merit to reach a certain level. If they do, they then go to the next level. Is it your concern the boards don't have that ability in their own rules or by statute, or is it deeper than that?

SENATOR GREEN: I think they have that ability if they want it, but by practice, you don't see it happening. So what my point is, when you see a complaint like the one I brought up as an example, what are we doing spending all this time and all this money and all this energy on a complaint that deals with somebody's feelings is hurt? It just doesn't make sense to me. It has nothing to do with the practice of medicine. It has to do with their inability to say, "No, it doesn't make sense, and we aren't going to go forward with it." But here we are, I think, over a year with this thing, and still going, and still spending money. It would appear to me that that board has another motive other than regulating doctors in that particular case.

SENATOR FOSTER: Follow-up? Isn't that board made up of physicians who practice in the area and then some public members?

SENATOR GREEN: Partly. Partly. Partly. It's made up of a large group of people from a number of professions including medical professions. The problem is that, like I say, my only response to it is when you deal with these things in this way, somebody has got another motive other than just regulating whether a doctor is doing their job.

SENATOR FOSTER: Just one more follow-up if I may, Mr. President. Why would we assume that a screening panel of three physicians picked randomly would not have an ulterior motive or some other agenda in mind? I'm trying to understand why you assume that three people picked randomly **TAPE INAUDIBLE**

SENATOR GREEN: I'm not assuming anything in terms of what they do. I'm just saying that, if there's an oversight process, I'm trying to make the case that the board and the commissions, okay, will be a lot more careful in terms of just carrying on with a complaint or making a decision if they know that there is an oversight group that can question their decision.

SENATOR FOSTER: Thank you.

SENATOR GREEN: You're welcome.

SENATOR HASSAN: Thank you, Mr. President. I rise as a member of the committee that heard this bill, and I want to first thank the prime sponsor because, as he heard our concerns about the original bill, he was extraordinarily responsive, and I know he and Senator Burling in particular, worked very hard to address those concerns. My concern that I expressed at the time of the original bill about having the screening and appellate function in the same board was that it doesn't make sense to have an appeal heard by a board that's already looked at the facts of the case the first time, that we always separate out the appeal function from the fact finding function when we make judgments like this, and so I thought it was very important that screening and appeal be separated. I still feel that way, which is why I wouldn't support the bill in an unamended form. I think members of the committee and the prime sponsor heard very well during the hearing that there was support generally for the notion perhaps of screening. The notion that made the most sense to me during the hearing was something that someone from the Attorney General's Office told us about, which is that some of the professional boards have an investigator who investigates and screens and makes a recommendation as to a threshold merit, and that's what I think I was hoping we might be able to get to in this bill. I am not sure that the amendment does that in just the way we were thinking about it. I think Senator Foster's suggestion that we might look at whether we could divide the amendment is an excellent one because I think the issue of screening is important. But I'm not sure we've addressed it in either the original bill or the amendment in quite the right way. Thank you.

SENATOR GOTTESMAN: Thank you, Mr. President. I just don't want Senator Green to feel that my silence up to this point means that I agree with him, because I don't. I'll skip to the short version which is we had a discussion about screening panels not too long ago, and I made my position clear. And that whole situation hasn't advanced beyond where we passed it. If you want to add to the bureaucracy of administrative appeals, then vote for this bill. This is going to be expensive, this is going to be very political, and it's going to be inefficient. If this bill is being

suggested because of the example that Senator Green has suggested that because a doctor called a person fat and therefore the medical board hasn't acted properly in this case, then I have concerns that go beyond the scope of this. We should not be taking one anecdotal situation and crafting a bill out of it. It makes no sense at all to me that the Medical Board would not have the ability to figure this one out. I look at the hearing report, and much to my surprise Palmer Jones of the New Hampshire Medical Society did not take a position on this bill. Why? I don't know, but I have more confidence in places like the Medical Board making decisions that are appropriate for their constituency than having it come under this other bill. Thank you.

**SENATOR GATSAS (In the Chair):** Senator Foster. You had a motion to divide the question?

**SENATOR FOSTER:** I'll withdraw that request.

**SENATOR BURLING:** I rise against my own better judgment, but I'm doing it because I'm feeling defensive and not a little concerned here. The committee tried very hard over a period of four weeks to deal with an extraordinarily complex and difficult set of issues. All of the debate today has made it clear to me that there is a clear and easy solution to the complaint, at least part of the complaint that's been raised. I don't think I've done a very good job helping to craft the screening part. I should have demanded that it was clear that the screening panel be comprised of three persons, at least one of whom, not all, at least one of whom was a member of the profession regulated. I should have required that there be a standard of review for the screening very similar to the motion to dismiss that those of us in the legal profession ordinarily use, taking the evidence most favorable to the complaining party. Can the screening panel find that there is a basis for complaint which deserves an overall review by the board? If this bill were to move forward, of course I just noticed that Senator Morse has left, have we sent him too many things already? It's possible. He jumped out the window. If we sent this to Finance, the time would be available to offer a further amendment which might repair much of what is complained about and I think properly complained about. With regard to the earlier complaints about the existing boards, one of the things that motivated me to work on this at all was the evidence which I think went uncontested that we have upwards of thirty boards, all of whom are using sui generis procedures. It's like King John and the Barons in 1252. I mean, any board you go to has got a different process, and we were trying to find a standardized process that would apply across the system. To the extent that we have failed, I'm sorry my colleagues, but I do think the effort is worth it. And, given the chance to make further amendment, I think we can get it right. Thank you, Mr. President.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**A division vote was requested.**

**Yeas: 12 – Nays: 10**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 320**, relative to investigations of cruelty to horses. Public and Municipal Affairs Committee. Inexpedient to legislate, Vote 4-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move Senate Bill 320 inexpedient to legislate. This legislation would require horses to have access to shelter at all times. In addition, a law enforcement officer or animal control officer who completed an equine investigation course would have had the ability to seize the horse in clear and imminent danger when all efforts to find a licensed veterinarian failed. The committee found it would be difficult for horse owners to comply with this legislation. Providing shelters required in this legislation would place a severe economic burden on horse owners. Most horses prefer the outside at all types of weather and often do not use shelters when provided for them. Additionally, there was a concern over whether taking one equine investigative course adequately qualifies someone to make a decision to seize a horse. The Public and Municipal Affairs Committee asks your support in inexpedient to legislate.

### PARLIAMENTARY INQUIRY

SENATOR BRAGDON: Parliamentary inquiry, Mr. President. I apologize for being a little unclear. Since this bill deals with horses, if I were to disagree with the motion, would I vote no or vote "nay"?

SENATOR GATSAS (In the Chair): If you had your hat on, I'd give you an answer.

### Committee report of inexpedient to legislate is adopted.

**SB 346-FN**, codifying certain septic system rules. Public and Municipal Affairs Committee. Inexpedient to legislate, Vote 5-1. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. Although the committee recommendation is inexpedient to legislate, I would ask that the body overturn this motion in order to allow Senator Martha Fuller Clark to introduce a floor amendment. When the committee voted on the legislation last week, the members had not had time to review the proposed amendment or speak with their constituents concerning this issue. The members have since spoken with their constituents and DES and are satisfied that Senator Martha Fuller Clark's amendment addresses their concerns. The Public and Municipal Affairs Committee asks for your support in overturning the motion of inexpedient to legislate. The committee thanks you in advance.

### Motion failed.

Senator Burling moved ought to pass.

### Adopted.

Senator Fuller Clark offered a floor amendment.

Sen. Fuller Clark, Dist. 24

Sen. Roberge, Dist. 9

Sen. Barnes, Dist. 17

Sen. Kenney, Dist. 3

Sen. Martel, Dist. 18

Sen. Burling, Dist. 5

Sen. Hassan, Dist. 23

**February 22, 2006**

**2006-1192s**

**06/09**

### Floor Amendment to SB 346-FN

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

AN ACT relative to septage management activities.

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

1 New Paragraph; Definitions; Land Application Added. Amend RSA 485-A:2 by inserting after paragraph VI the following new paragraph:

VI-a. "Land application" means the placement of septage, biosolids, short paper fiber, or exceptional quality solids or filtrate on the ground surface at agronomic rates for beneficial use.

2 New Paragraphs; Definitions; Class A Biosolids Added. Amend RSA 485-A:2 by inserting after paragraph XXIII the following new paragraphs:

XXIV. "Class A biosolids" means any sludge derived from a sewage wastewater treatment facility which is Class A with respect to pathogens and meets one of the vector attraction reduction requirements of 40 C.F.R. part 503 and the standards for beneficial reuse specified by the department.

XXV. "Exceptional quality" means a designation of solids or filtrate derived from septage which indicates the solids or filtrate is Class A with respect to one of the pathogen reduction requirements and one of the vector attraction reduction requirements of 40 C.F.R. part 503 and meets the standards for beneficial reuse specified by the department.

3 Septage or Biosolids Spreading. RSA 485-A:5-c is repealed and re-enacted to read as follows:

485-A:5-c Notice of Septage or Sludge Spreading.

I. No person shall spread or apply to the land septage or biosolids, as defined in RSA 485-A:2, before the permittee has had published a boxed notice in a newspaper of local circulation of the proposed activity to be conducted. At a minimum the notice shall include the type of activity to be conducted, the intended date of the first spreading of septage or biosolids, and the proposed location. Each year such notice shall be published at least twice within 30 days prior to the intended date of the first spreading.

II. The notice shall include the names, addresses, and telephone numbers of the following:

(a) The applicant, if applicable.

(b) The generator of the septage or biosolids, if applicable.

(c) The person responsible for managing the activities on-site, if different from the applicant under subparagraph (a).

(d) The landowner, if not given under subparagraph (a) or (c).

III. A copy of such notice shall be posted continually on the entrances to the site beginning 3 days prior to the application and ending 3 days after the application.

IV. Site permits for land application of septage shall be issued for 10 years.

V. The provisions of this section shall not apply to Class A biosolids, exceptional quality solids, or filtrate.

4 New Subdivision; Septage Management. Amend RSA 485-A by inserting after section 57 the following new subdivision:

#### Septage Management

485-A:58 Permit Applications for Septage Facilities and Innovative/Alternative Septage Treatment Systems; Hearing Required.

I. Before the department may issue any permit to operate a septage facility or for septage management activities using innovative/alternative technology for the processing, treatment, removal, or disposal of septage or land application of septage, it shall hold a public hearing on the permit application at least 30 days before it may issue the permit. All abutters and the municipality where the proposed activity is to occur shall be notified by letter by the permittee of the proposed activity



to be conducted. At a minimum, the letter shall include the location, time, and date of the hearing, the type of activity to be conducted, and the proposed location of the site or facility for which the permit is sought. The hearing shall be held in the municipality in which the activity is proposed to occur.

II. The department shall publish notice of the hearing in a newspaper of local circulation and a newspaper of statewide circulation, no less than 30 days prior to the hearing date. At a minimum, the notice shall include the location, time, and date of the hearing, the type of activity to be conducted and the proposed location of the site or facility for which the permit is sought.

III. A facility permit issued by the department shall expire 10 years from the date on which it was issued.

IV. The provisions of this section shall not apply to the issuance of any septic hauler permits.

V. The provisions of this section shall not apply to Class A biosolids, exceptional quality solids, or filtrate.

#### 485-A:59 Requests for Waivers.

I. Any person may request a waiver for septage facilities from the provisions and standards established in rules adopted under RSA 541-A.

(a) A request for a waiver for septage facilities shall be submitted in writing to the department of environmental services, and a copy of the waiver request shall be sent to the abutters of the facility and the municipality in which the facility is located.

(b) A request for a waiver shall include:

(1) The name, mailing address, and daytime telephone number of the person requesting the waiver;

(2) The location of the property to which the waiver request relates, and its site or facility permit number, if applicable;

(3) A specific reference to the provisions in this section for which the waiver is being sought and an explanation why the waiver is necessary;

(4) An explanation of the alternatives that will be implemented if a waiver is granted, if any, with supporting data; and

(5) A full explanation of how granting the waiver would provide an equivalent level of protection of public health and safety and the environment.

II. The department shall approve a request for a waiver if it determines that:

(a) The alternatives proposed are at least equivalent to the provisions and standards in rules adopted under RSA 541-A; and

(b) Granting the waiver will not endanger public health and safety or the environment.

485-A:60 Permit; Proof of Financial Responsibility. The department shall not issue a permit for a septage facility, an innovative/alternative septage treatment system or facility, or a research and development septage treatment project, unless the facility or project meets the terms and conditions required in rules adopted by the commissioner. These terms and conditions include, but are not limited to, monitoring, contingency plans, closure, and an approved financial assurance plan to guarantee cost of facility closure.

485-A:61 Training Required; Innovative/Alternative Applications. The department shall not issue a permit to operate an innovative or alternative application facility or site until the applicant has provided proof that he or she has completed training that meets industry standards for operating the type of innovative or alternative facility or site for which the applicant is seeking a permit.

485-A:62 Applicability. All facilities that process, treat, or dispose of septage and sites on which septage is land applied including those that were in operation prior to October 1, 2005 shall comply with this subdivision and any rules adopted pursuant to this subdivision. "Facilities" include, but are not limited to, lagoons, septage treatment facilities, innovative or alternative waste treatment, and research and development facilities.

5 Penalty. Amend RSA 485-A:22, I-III to read as follows:

I. Any person who willfully or negligently violates any provision of this subdivision [or], RSA 485-A:4-6, **RSA 485-A:58-62**; or any rule of the department adopted pursuant to this subdivision [or], RSA 485-A:4-6, **RSA 485-A:58-62**, or any condition or limitation in a permit issued under this subdivision [or], RSA 485-A:4-6, **or RSA 485-A:58-62**; or who knowingly makes any material false statement, representation, or certification in any application, record, report, plan, or other document required to be filed or maintained pursuant to this subdivision [or], RSA 485-A:4-6, **RSA 485-A:58-62**, or pursuant to a rule adopted by the department under this subdivision [or], RSA 485-A:4-6, **or RSA 485-A:58-62**, or who knowingly makes any such statement, representation, or certification in connection with any permit issued under this subdivision [or], RSA 485-A:4-6, **or RSA 485-A:58-62**; or who knowingly renders inaccurate, falsifies, or tampers with any monitoring device or method required under this subdivision [or], RSA 485-A:4-6, **RSA 485-A:58-62**, or rule of the department adopted under this subdivision [or], RSA 485-A:4-6, **RSA 485-A:58-62**, or required in connection with any permit issued under this subdivision [or], RSA 485-A:4-6, **or RSA 485-A:58-62**; or who knowingly fails, neglects, or refuses to obey any lawful order of the department, shall, notwithstanding the provisions of RSA title LXII, be punished by a fine of not more than \$25,000 for each day of such violation or imprisoned for not more than 6 months or both.

II. Any person who shall violate any provisions of this subdivision [or], RSA 485-A:4-6, **RSA 485-A:58-62**, or any lawful regulation of the department issued pursuant to this subdivision [or], RSA 485-A:4-6, **RSA 485-A:58-62**, or any condition or limitation in a permit issued under this subdivision [or], RSA 485-A:4-6, **or RSA 485-A:58-62**, or who shall fail, neglect, or refuse to obey any order lawfully issued pursuant to this subdivision [or], RSA 485-A:4-6, **or RSA 485-A:58-62** shall be subject to a civil penalty not to exceed \$10,000 per day of such violation.

III. The department shall issue a written cease and desist order against any discharge or act in violation of this subdivision [or], RSA 485-A:4-6, **RSA 485-A:58-62**, or lawful regulation of the department made under them or any condition of any permit lawfully issued by the department, and any such discharge or act may be enjoined by the superior court upon application of the attorney general, whether the court is in term time or vacation. Municipalities shall comply with such orders pursuant to RSA 38:25.

6 Penalty; Administrative Fine. Amend RSA 485-A:22, V to read as follows:

V. The commissioner of environmental services, after notice and hearing pursuant to RSA 541-A, may impose an administrative fine not to exceed \$2,000 for each offense upon any person who violates any provision of this subdivision [or], RSA 485-A:4-6, **or RSA 485-A:58-62**, any rule adopted under this subdivision [or], RSA 485-A:4-6, **or RSA 485-A:58-62**, or any permit issued under the authority of this subdivision [or], RSA 485-A:4-6 **or RSA 485-A:58-62**. Rehearings and appeals from a decision of the commissioner under this paragraph shall be in accordance with RSA 541.

Any administrative fine imposed under this section shall not preclude the imposition of further penalties under this chapter. The proceeds of administrative fines levied pursuant to this paragraph shall be deposited by the department in the general fund. The commissioner shall adopt rules, under RSA 541-A, relative to:

(a) A schedule of administrative fines which may be imposed under this paragraph for violations of this chapter, rules adopted under this chapter, and permits issued under this chapter, as provided above.

(b) Procedures for notice and hearing prior to the imposition of an administrative fine.

7 State Guarantee; Innovative or Alternative Septage Facilities and Sites Added. Amend RSA 485-A:7 to read as follows:

485-A:7 State Guarantee. In view of the general public benefits resulting from the elimination of pollution from the public waters of the state, the governor and council are authorized in the name of the state of New Hampshire to guarantee unconditionally, but at no time in excess of the total aggregate sum for the entire state of \$175,000,000, the payment of all or any portion, as they may find to be in the public interest, of the principal of and interest on any bonds or notes issued by any municipality, town, city, county or district for construction of sewerage systems, sewage treatment and disposal plants, *innovative/alternative septage treatment facilities*, or other facilities necessary, required or desirable for pollution control, and the full faith and credit of the state are pledged for any such guarantee. The outstanding amount of principal and interest on such bonds and notes, the payment of which has been guaranteed by the state under the provisions of this section, shall at no time exceed the amount of \$175,000,000. The state's guarantee shall be endorsed on such bonds or notes by the state treasurer; and all notes or bonds issued with state guarantee shall be sold at public sealed bidding to the highest bidder. Any and all such bids may be rejected and a sale may be negotiated with the highest bidder. In the event of default in payment of any such notes or bonds, the state may recover any losses suffered by it by action against the municipality, town, city, county or district as provided in RSA 530. Provided, further, that in accordance with RSA 35-A:29, the foregoing requirement for public sealed bidding shall not be applicable to any bonds or notes or both so guaranteed which are sold to the New Hampshire municipal bond bank, and any bonds or notes or both so guaranteed may be sold to the New Hampshire municipal bond bank at private sale in accordance with the provisions of RSA 35-A.

8 New Paragraph; Fee Waiver. Amend RSA 485-A:4, XVI-a to read as follows:

XVI-a. To regulate the removal, transportation, and disposal of septage through administration of a permit system. As a condition of any permit issued under this chapter, the department may require payment of a reasonable fee, established by rules adopted under RSA 485-A:6, X-a. Funds collected under this paragraph shall be deposited with the treasurer as unrestricted revenue. *For each municipality under agreement in compliance with RSA 485-A:5-b, the department shall waive 20 percent of any septage facility permit application fee up to a total of 100 percent of the septage facility permit fee for 5 or more municipalities under agreement in compliance with RSA 485-A:5-b.*

9 Effective Date. This act shall take effect July 1, 2006.

**2006-1192s****AMENDED ANALYSIS**

This bill establishes:

I. New procedures for and exceptions to the permit process for land application of biosolids.

II. New standards and procedures for permits for septage management facilities, including innovative/alternative septage treatment systems.

III. Certain setback requirements.

IV. A waiver of certain septage facility permit fees for complying municipalities.

SENATOR FULLER CLARK: Thank you very much, Mr. President. I rise to present floor amendment 2006-1192, which I'm pleased to say not only has my name on the amendment, but has all the members of the committee on the amendment as well, and I would like to thank them for their hard work in making it possible to bring forth what I think are some definite legislative improvements to statutes currently on the books that deal with septage spreading and septic management. But let me just briefly explain to you what's in this bill. I'm not going to take a lot of time. The bill adds definitions that have to do with the spreading of septage and with pipes of septage. Secondly, it strengthens the notice provisions for septic spreading and for waivers. Third, it requires that there will be a public hearing for new septic facilities and innovative and alternative facilities. In addition, requires for those facilities that there will be training, that there will be proof of financial responsibility, and provides for state guarantee for those state facilities. And finally, it provides for a waiver which would allow for a certain percentage of a municipality's fee for septage facility permits under certain conditions. What I would particularly like to speak to is that the intent of this legislation was to make sure that we had adequate protections and adequate notification in place. I would like to assure you that with the changes that have occurred through this amendment, that we now do have, we have accommodated many of the objections and removed language that septic haulers and others objected to and, at the same time, we have improved public notification for abutters, for municipalities, and for property owners. So with that, I would urge ought to pass on this amendment. Thank you.

SENATOR FOSTER: In response to Senator Barnes's comments, some of us haven't had a chance to check with our municipality and our community as to whether or not this amendment does what it needs to do. So, I was wondering whether this is going to Finance, Mr. President, so we'll have that opportunity?

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 359-FN**, relative to the regulation of plumbers and water treatment technicians by the plumbers' board. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 2-0. Senator Burling for the committee.

**Public and Municipal Affairs**  
**February 15, 2006**  
**2006-1013s**  
**10/04**

**Amendment to SB 359-FN**

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

1 Definition; Master Plumber. Amend RSA 329-A:2, I to read as follows:

I. "Master plumber" means any person, firm ~~(or)~~, corporation, **or limited liability company** that, as a business, hires or employs a person or persons to do plumbing work, or, without hiring any person, does that work as a principal business or as auxiliary to a principal business for his or its own account.

2 Definition; Apprentice. Amend RSA 329-A:2, III to read as follows:

III. "Apprentice" means any person who is engaged in learning and assisting in the installation of plumbing and drainage under an apprenticeship program ~~[acceptable to the board]~~ **that meets the requirements of the state apprenticeship council established in RSA 278.**

3 New Paragraphs; Definitions Added. Amend RSA 329-A:2 by inserting after paragraph VIII the following new paragraphs:

IX. "Agent" means a person who is designated as an agent in writing by the property owner of record and who does plumbing for that property owner of record without compensation.

X. "State plumbing code" means the state plumbing code described in RSA 329-A:15.

4 Plumbers' Board. Amend RSA 329-A:3, I to read as follows:

I. There shall be a state board for the licensing and regulation of plumbers consisting of 5 members: ~~[2 master]~~ **3 licensed** plumbers, one **of whom may be a** journeyman plumber, and 2 public members, each to be appointed by the governor, with the approval of the council, to a term of 5 years. No member of the board shall be appointed to more than 2 consecutive terms. A member of the board shall serve as the board secretary.

5 Quorum. Amend RSA 329-A:5 to read as follows:

329-A:5 Organization and Meetings. The board shall hold at least 4 regular meetings each year, and special meetings may be held at such times as the business of the board may require. Notice of all meetings shall be given in such manner as the rules of the board may provide. The board shall annually elect a chairman and a vice-chairman from among its members. A quorum of the board shall consist of not less than 3 members ~~[-, at least one of whom shall be a public member].~~

6 Fees. Amend RSA 329-A:5-a to read as follows:

329-A:5-a Fees. The board shall establish fees for ~~[examination of applicants, for]~~ licensure ~~[and for]~~, renewal of licensure, **and late renewal of licensure** to practice under this chapter, for certification ~~[and]~~, renewal of certification, **and late renewal of certification** under this chapter, **for initial apprentice identification cards and renewal of apprentice identification cards, for inspections done pursuant to RSA 329-A:17, for copies of the state plumbing code, for letters of verification requested by other jurisdictions relating to licensure and certification, for any courses, workshops, and seminars offered by the board,** and for transcribing and transferring records and other services. The fees established by the board shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the board for the previous fiscal year. The fee for the annual renewal

of certification issued to persons certified as water treatment technicians shall not be more than the fee for the annual renewal of licenses issued to journeyman plumbers.

7 Examinations. Amend RSA 329-A:7 to read as follows:

329-A:7 Examinations; Licenses and Certificates. ~~[The board shall have authority to examine and license master plumbers and journeyman plumbers, and to certify water treatment technicians. When issued, such license shall be valid throughout the state, and the licensee shall be entitled to perform the work of a master or journeyman plumber, as the case may be, anywhere within the state without any payment or additional fee. Each applicant for a license shall present to the secretary of the board on a blank furnished by the board a written application for license, containing such information as the board may require, accompanied by the required fee. Such examinations shall be held at such times and places as the board shall determine.]~~ ***The board shall establish through rulemaking, pursuant to RSA 541-A, the nature of the examinations required for issuance of master plumber licenses, journeyman plumber licenses, and certifications as a water treatment technician, respectively.*** The scope of such examinations and the methods of procedure shall be prescribed by the board, provided that the scope of examination of water treatment technicians shall be limited to the configuration and installation of water treatment systems and the provisions of this chapter and the rules adopted by the board that relate to water treatment systems.

8 Reexamination; Fee Removed. Amend RSA 329-A:8 to read as follows:

329-A:8 Licenses; Master Plumbers. Any person who, having held a journeyman plumber's license for at least 6 months, shall, upon the payment of ~~[a fee]~~ ***the fees*** established by the board, be entitled to an examination and, if found qualified by a majority of the board members, be licensed as a master plumber. A license issued under this section shall be publicly displayed at the licensee's principal place of business for as long as such business continues. Any person refused a license may be reexamined as often as such person may desire ~~[upon payment of a fee established by the board]~~.

9 Reexamination; Fee Removed. Amend RSA 329-A:9 to read as follows:

329-A:9 Licenses; Journeyman Plumbers. Any person who, having successfully completed his or her apprenticeship in plumbing, has received an official completion certificate from the organization conducting the program shall, upon payment of ~~[a fee]~~ ***the fees*** established by the board, be entitled to examination and, if found qualified by a majority of the board members, be licensed as a journeyman plumber. A license issued under this section shall be carried on the person licensed and displayed at any time upon request. Any journeyman plumber refused a license may be reexamined as often as he or she may desire ~~[upon payment of a fee established by the board]~~.

10 Water Treatment Technicians. Amend RSA 329-A:9-a to read as follows:

329-A:9-a Certification of Water Treatment Technicians; Examinations.

I. Any person who has acted as a water treatment trainee for a period of not less than one year shall, upon payment of ~~[a fee]~~ ***the fees*** established by the board, be entitled to examination and, upon achieving the passing score on the examination, be certified as a water treatment technician. A certificate issued under this section shall be carried on the person and displayed at any time upon request. Any person failing to achieve the passing score on the examination may be examined

as often as he or she may desire [~~upon payment of a fee established by the board. The scope of such examination and the methods of procedure shall be prescribed by the board, provided, however, that the scope of the examination of water treatment technicians shall be limited to the configuration and installation of water treatment systems and the provisions of this chapter and the rules adopted by the board that relate to water treatment systems].~~

II. The title "certified water treatment technician" shall be used only by persons **and business entities** certified under this chapter. No person shall continue to represent himself or herself **and no business entity shall continue to represent itself** as a certified water treatment technician after certification has been revoked or nonrenewed under this chapter.

III. The board may issue, **upon payment of the required fees**, certification without examination to a corporation, partnership, limited liability company, or other business entity that installs, maintains or repairs water treatment systems, provided the entity designates one employee certified under this chapter who is responsible for the entity's compliance with this chapter and the rules adopted by the board. Within 30 days after termination of employment of such employee by such entity, he or she shall give notice thereof to the board and, if no other employee certified under this chapter, the entity shall not represent itself as employing certified water treatment technicians until some other employee has obtained certification. Notwithstanding any other provision of this chapter, the board shall not require an additional fee for an entity that installs, maintains, or repairs water treatment systems where the person certified under this chapter is the sole owner of the entity.

**IV. The board may issue certification without examination to those water treatment technicians who provide adequate documentation of having operated in the capacity of a water treatment technician for a period of at least one year prior to January 1, 2004 and who pay the required fees.**

11 New Section; Apprentice Plumbers. Amend RSA 329-A by inserting after section 9-a the following new section:

329-A:9-b Apprentice Plumbers. Apprentice plumbers shall obtain an identification card from the board and be subject to fees for such identification card and for renewed identification cards as adopted by the board pursuant to RSA 541-A. Apprentice identification cards shall expire each year on the last day of the month of the apprentice's birth. The board shall renew the identification cards of apprentice plumbers if they continue to be engaged in the learning and assisting in the installation of plumbing and drainage under an apprenticeship program that meets the requirements of the state apprenticeship council.

12 Licenses Without Examination. RSA 329-A:10 is repealed and reenacted to read as follows:

329-A:10 Licenses Without Examination. The board may issue, upon payment of the required fee, appropriate licenses without examination to a corporation, partnership, or limited liability company engaged in the business of plumbing, provided one or more officers of the corporation, one or more members of the partnership, or one or more managing members of the limited liability company, holds a master plumber's license under this chapter. Within 30 days after the death or withdrawal of the licensed person as a corporate officer or member of the partnership, he, she, or it shall give notice thereof to the board and, if no other officer or partner is a licensed master plumber, the corporation or partnership shall not act

as a master plumber until some other officer or member has obtained a license. Notwithstanding any other provision, the board shall not require a fee for a corporation engaged in plumbing where a licensed master plumber is the sole shareholder of the corporation.

13 Expiration and Renewal. RSA 329-A:11 is repealed and reenacted to read as follows:

329-A:11 Expiration and Renewal.

I. Licenses and certificates issued by the board shall expire each year on the last day of the month of the holder's birth.

II. Licenses issued to corporations, partnerships, and limited liability companies shall expire on the last day of January of each year.

III. The board shall renew the licenses and certificates of eligible applicants upon the payment of the required fee and documentation of having met continuing education requirements and any other eligibility requirements established by the board pursuant to RSA 541-A.

IV. The board is authorized to offer continuing education courses, workshops, and seminars.

14 Disciplinary Action; Criminal Offenses. Amend RSA 329-A:12, II(b) to read as follows:

(b) Conviction of ~~[a felony or any offense involving moral turpitude]~~ ***any criminal offense involving injury to a victim or the risk of such injury or any criminal offense involving dishonesty;***

15 Disciplinary Action; Another Jurisdiction. Amend RSA 329-A:12, II(h) to read as follows:

(h) Suspension or revocation of a license ***or certification***, similar to one issued under this chapter, in another jurisdiction and not reinstated.

16 Exceptions. Amend RSA 329-A:13 to read as follows:

329-A:13 Exceptions. The provisions of this chapter shall not apply to the following persons while performing plumbing work under the circumstances specifically described hereinafter; provided, however, that plumbing installed or maintained by such persons under such circumstances shall conform to the ~~[rules and regulations promulgated by the authority of RSA 330:12]~~ ***state plumbing code***.

I. ~~[To a person who has been actively engaged in the business of a master plumber or journeyman plumber on July 1, 1977, and who has been a resident of this state for at least one year immediately preceding the date of his application. Such person shall not be required to submit to an examination if he applies for a license before July 1, 1980, but shall be issued a license upon filing an application and paying the initial fee.~~

~~II.]~~ To regular employees of public utilities, as defined in RSA 362:2, when working as such.

~~III.]~~ ***II.*** To a person, ***firm, corporation, or limited liability company*** who regularly employs a ~~[maintenance man]~~ ***person*** whose duties include installation and maintenance of plumbing on the property of that person, ***firm, corporation, or limited liability company***, when such employee is actually so engaged.

~~IV.]~~ ***III.*** To ~~[an]~~ ***a property*** owner or ~~[his]~~ ***the property owner's*** agent who installs, repairs, or replaces plumbing in ~~[his]~~ ***the property owner's*** own ***single-family detached or townhouse*** residence or any ***property*** owner or ~~[his]~~ ***property owner's*** agent who makes minor installations, repairs, or replacements to ***the owner's*** property ~~[owned by him]~~.

~~V.]~~ ***IV.*** To persons engaged in the installation of any heating, cooling, air conditioning or domestic water heating systems, whether solar, oil, gas, or electric, and persons engaged in the installation and servicing of water treatment systems or swimming pools.



[VI.] V. To any plumbing installations in residential buildings performed by students enrolled in a high school vocational plumbing program approved by the department of education, provided such work is performed under the supervision of either a teacher holding a plumber's license or by a licensed plumber who is a supervisor of students in cooperative education placements from such programs; and in those cases where the installation is in a new building being constructed as a part of the vocational program, that the installation will be inspected and approved by an individual or group of individuals chosen by the local school districts from persons nominated by the state board for the licensing and regulation of plumbers. Any person nominated by the state board shall hold a master's license issued by the board.

[VII.] VI. To employees of public drinking water systems and public water system operators certified by the department of environmental services for drinking water treatment.

17 Rulemaking. RSA 329-A:14 is repealed and reenacted to read as follows:

329-A:14 Rulemaking Authority. The board shall adopt rules, pursuant to RSA 541-A, relative to:

I. The design and content of all forms and applications required under this chapter.

II. The application procedure and any eligibility requirements in addition to those in this chapter for a license to practice plumbing under this chapter and for license renewal and license reinstatement.

III. The application procedure and any eligibility requirements in addition to those in this chapter for certification as a certified water treatment technician and for renewal of certification and reinstatement of certification.

IV. The establishment of all fees required under this chapter.

V. Ethical and professional standards required to be met by each holder of a license or certification to practice under this chapter and how disciplinary actions by the board shall be implemented for violations of these standards.

VI. How plumbing apprentices are to apply for and receive their initial and renewal identification cards.

VII. Standards for continuing education.

VIII. Matters related to the proper administration of this chapter.

IX. Procedures for the conduct of hearings consistent with the requirements of due process.

18 State Plumbing Code. RSA 329-A:15 is repealed and reenacted to read as follows:

329-A:15 State Plumbing Code. The state plumbing code shall be that portion of the New Hampshire state building code, as defined in RSA 155-A, that pertains to plumbing.

19 Enforcement. Amend RSA 329-A:16 to read as follows:

329-A:16 Enforcement.

*I. The ~~rules adopted pursuant to RSA 329-A:15, I,~~ state plumbing code shall be enforced by the building inspection department or by any officer designated by the administrative authority of the city or town; provided, however, that a city or town may adopt and enforce rules more stringent than the ~~rules adopted under RSA 329-A:15, I~~ state plumbing code. In the absence of a building inspection department or officer designated to enforce the state plumbing code, the board shall have the authority to enforce the state plumbing code.*

*II. The board shall refer all allegations of violations specified in RSA 329-A:18 to the New Hampshire attorney general and to*

*the county attorney in the appropriate county. The county attorney shall investigate such allegations and take appropriate action if the attorney general does not do so.*

20 Gender Neutral. Amend RSA 329-A:17, IV to read as follows:

IV. Whenever an inspector orders the removal or correction of a violation under paragraph III, he *or she* shall immediately notify the local building inspection department or administrative authority of the town where the violation is located, and further order that all the work in violation be corrected prior to continuance. The local building authority shall approve the continuation of work on the installation upon being satisfied that violations have been corrected and shall notify the inspector of such approval.

21 Penalties. RSA 329-A:18 is repealed and reenacted to read as follows:

329-A:18 Penalties.

I. Any business entity or person who procures a plumbing license or water treatment certificate wrongfully or by fraud is guilty of a misdemeanor.

II. Any business entity which performs plumbing without a currently valid plumbing license, and any person who is not an apprentice and performs plumbing without a currently valid license, is guilty of a misdemeanor, unless the business entity or person has a license which has been expired for no more than 12 months, in which case such business entity or person is guilty of a violation.

III. Any business entity or person employing a person to perform plumbing when the employed person is not an apprentice and does not have a currently valid plumbing license is guilty of a misdemeanor, unless the employed person has a license which has been expired for no more than 12 months, in which case the employing business entity or person is guilty of a violation.

IV. Any business entity not certified as a water treatment technician which represents itself as so certified, and any person not certified as a water treatment technician who represents himself or herself as so certified, is guilty of a misdemeanor.

22 Effective Date. This act shall take effect July 1, 2006.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move Senate Bill 329 ought to pass with amendment. The amended version of this bill...

SENATOR GATSAS (In the Chair): Sorry, 359.

SENATOR BURLING: 329, sorry.

SENATOR GATSAS (In the Chair): 359.

SENATOR BURLING: Well at least I'm reading correctly if it wasn't **TAPE INAUDIBLE** I move ought to pass with amendment on Senate Bill 359. The amended version of this bill reflects the efforts of plumbers, master plumbers, and the New Hampshire Board for Licensing and Regulation of Plumbers to resolve their differences concerning existing law. At the public hearing on this legislation, it became very clear quickly, that there was (a) a failure to communicate clearly and (b) extraordinary difference between and among the various groups. The committee members present asked the parties to work out a compromise on the final language of the bill. The committee is very pleased to announce that they did exactly that and came back to us after two weeks of effort with a compromised version which is before us. The vote on the bill is 2-0 because four committee members had to go to other hearings and

other matters and felt they really didn't feel comfortable voting on the legislation. But I can safely say that the overall sense of the committee is pleased to support the ought to pass with amendment, and thank you, Mr. President.

### **Amendment adopted.**

Senator Boyce offered a floor amendment.

Sen. Boyce, Dist. 4

**February 23, 2006**

**2006-1227s**

**10/05**

### **Floor Amendment to SB 359-FN**

Amend RSA 329-A:13, III as inserted by section 16 of the bill by replacing it with the following:

[~~IV.~~] **III.** To [~~an~~] **a property owner** or [~~his~~] **the property owner's** agent who installs, repairs, or replaces plumbing in [~~his~~] **the property owner's own single-family detached or townhouse residence, including new construction,** or any **property owner** or [~~his~~] **property owner's** agent who makes minor installations, repairs, or replacements to **the owner's** property [~~owned by him~~].

SENATOR BOYCE: Thank you, Mr. President. I move amendment 1227.

SENATOR GATSAS (In the Chair): If you would speak to the amendment as it's being passed out.

SENATOR BOYCE: I will speak to the amendment. This amendment is to clarify, as clearly as I hope we can ever do, that someone building their own home can do their own plumbing. Now the current statute, which I went back and researched, goes back to about the mid-'70s, and I read the remarks on this Senate floor of a Senator from I believe he was from Wolfeboro. And he was the author of this language that currently is in statute that says that there's an exemption to an owner or his agent who installs, repairs, or replaces plumbing in his residence. That section has been interpreted by some to say that, because a new under construction house is not yet a residence, that someone building their own home cannot do their own plumbing. Now this flies in the face of most other states and most other crafts. For instance, you can specifically do your own electrical wiring. You can hook up the furnace to the gas pipes. You can run the propane pipe in from the tank. You can do all that, but even though all of those could burn down or blow up the house, that's authorized. But you can't hook up the pipe that goes to the septic tank if you're the owners, is the interpretation. So I wanted to make sure once and for all, that home owner builders are protected as they are for the other crafts. So this simply includes three new words. After the word residence, it includes "including new construction". I want to make sure that my intent here is clear, and I believe it was clear back in the '70s when this was written the first time. To paraphrase what was said then was that this is to create a broad exemption for the home owner that he can do it all. He can hire his neighbor. They can install the entire plumbing system. So I want to make sure that, when the house is not yet standing, the owner can put the pipe from the ground to the roof vent. Now it has to go to code just as everything else does, the electrical. Everything else has to be inspected by a building inspector. The same is true here. This simply says that you don't have to, if you're building your own house, go find a plumber who's willing to help you do this. So this is

simply to protect the owner builders and let them build their own house. Somebody who has that ability should not be prevented from doing so simply because they don't have a license for plumbing, and I thank you. And I hope you will pass this amendment.

SENATOR LARSEN: Of Senator Boyce. Senator Boyce, is it your intent in this floor amendment to permit a spec...speculation construction, a "spec builder" as it's called, to permit a spec builder to be able to put in their own plumbing, because my reading of this is that it would not just be your...the way you've described it, but in fact, if a spec builder owned the properties, which most of them do if they're called spec builders, they would be enabled to encourage to do this plumbing without the regulation of a normal construction process?

SENATOR BOYCE: That's not my intention. My intention is somebody who's building a home for themselves or themselves and their family to live in, would be allowed to do this, and if somebody you know wants to...if we pass this and send it over to the House, and somebody wants to insert some clarifying language that would make it clear that this is not for spec builders. But I believe the original intent of the original author of this language was that an owner be able to do his own house. And, as the statute is written now, it's clear that, if it was a house that had four walls and a roof, and you gutted everything inside of it, all the way down to the ground, that the owner of that property, under the existing statute, could clearly take the pipe from the sewer, put it all the way through to the toilets, the vent, and all the way out the roof and do all of the plumbing in that house under the current statute. The only confusion in the current statute is whether or not you can do that before it is officially a residence. So, if the thing had ever been a residence before, it's clear that you can do that now. The only difference is that this says that, if it's not yet currently a house, you still get to do that. That's my intent.

SENATOR LARSEN: Follow-up question, Mr. President? Follow-up question. Is it also did I hear you say that the property owner who did this installation of their own plumbing, including a new construction, that they would be subject to a review by the building safety code enforcement

SENATOR BOYCE: Absolutely.

SENATOR LARSEN: Before it was an improved structure?

SENATOR BOYCE: Absolutely, just as it is with the electrical. It has to be inspected by an inspector now even with the plumber. The inspector has to look at it and sign off on it that he's inspected the plumbing even though it is a licensed plumber doing it. Whether it's a licensed electrician or whoever, whoever builds the house through all the processes, there are several inspections, and one of them is the plumbing. And whether or not this passes or not, that's still in effect. This doesn't change that at all. You still have to comply with the code, and the inspector has to look to that code and determine if you've done it properly.

SENATOR LARSEN: Thanks.

SENATOR ESTABROOK: Thank you, Mr. President. I do think perhaps you forgot the word residence in this amendment, but I have another question. You mentioned when you were introducing it, that you could hire your neighbor, and I'm not sure if that's what the property owner's agent means. But what would be the difference between hiring your neighbor and hiring an unlicensed plumber?

SENATOR BOYCE: Those were the words of the author of the original language back in '76. I read it in the journal, and I was just paraphrasing what he had said on the floor at that time that. And there was a question from one of the other Senators. So he could hire his neighbor John Smith. Or they gave some name. And asked you know...he could do it himself and he could hire his neighbor to help him. And the answer was yes. So I was just paraphrasing what the original intent of the original author of this language was.

SENATOR ESTABROOK: Follow-up? That's very different from saying that any property owner has the right to hire their neighbor which would mean anybody they wanted. So, in essence, you're doing away with the need for a plumber to be licensed, aren't you?

SENATOR BOYCE: I'm saying that if somebody's building their own house, and they want to pay the guy next door to come over and help them while they're doing the plumbing. Sometimes you need two people to hold the pipes straight. They can do that. There's no prohibition of that. That's the intent.

SENATOR ESTABROOK: I understand that's your intent, as your intent with the owner's residence, but neither of those things are here in the amendment. And so I would ask if you would consider tabling this and coming back with a proper amendment?

SENATOR BOYCE: Well, I would point out that those things are in the existing statute. It was the existing intent from the original author of that, the existing language in the statute, and that the effect is still the same. And, without this amendment, again if the house was gutted to the ground, nothing inside it, rip out all the plumbing. Under the existing statute, all the interpretations are that the owner can do it, and he can hire whoever he wants to help him. So that's the existing statute. That's the statute without this amendment, and that's the situation. The only thing this does is it says that if there has not been an occupancy permit issued, this still would apply. So, it currently applies to that situation. I'm just saying I want to make sure it applies to...and my belief is the intent of the original sponsor of this legislation back in the '70s, was that the owner of the builder of the house building his own house could do it. I believe that, whether or not we pass this, the situation remains the same. I'm just trying to clarify that the intent is that we allow people to build their own houses without having to pay for a plumber to do it, because as I say it has to be inspected by the code enforcement in the town that it's in. It has to comply with the code just as if the plumber did it.

SENATOR ESTABROOK: Well, thank you.

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 399-FN**, relative to the powers of state government in the event of a pandemic. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 4-2. Senator Roberge for the committee.

**Public and Municipal Affairs**  
**February 15, 2006**  
**2006-1018s**  
**01/10**

**Amendment to SB 399-FN**

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

1 Communicable Disease; Closure and Decontamination. Amend RSA 141-C:16-a to read as follows:

141-C:16-a **Closure; Decontamination.** The commissioner, *with the approval of the governor*, may close, direct, and compel the evacuation [of or decontamination of any facility where there is reasonable cause to believe that there is a danger to the public health. The commissioner may also decontaminate, or cause to be decontaminated, or destroy any material of which there is reasonable cause to believe may present imminent danger to the public health] *and decontamination of any building located within the state that is accessible to the public, such as businesses, primary and secondary schools, and universities, regardless of whether publicly or privately owned, when there is reasonable cause to believe the building may present an imminent danger to the public health, or as is deemed necessary to prevent the spread of disease. The commissioner may also cause any material located within or on the grounds of such building to be decontaminated or destroyed when there is reasonable cause to believe that the material may present imminent danger to the public health.* Destruction of any material under this chapter shall be considered a taking of private property and shall be subject to the compensation provisions of RSA 4:46.

2 New Section; Communicable Disease; Cancellation of Events. Amend RSA 141-C by inserting after section 16-a the following new section:

141-C:16-b Cancellation of Events. The commissioner, with the approval of the governor, may order the cancellation of public gatherings and events within the state, or in specific geographic areas of the state, as is deemed necessary to prevent the spread of disease, after consultation with the ethics committee established under RSA 141-C:24; provided, that under no circumstances shall the constitutional rights of assembly be abrogated in any emergency situation.

3 New Section; Communicable Disease; Custody; Rationing. Amend RSA 141-C by inserting after section 17-a the following new section:

141-C:17-b Custody; Rationing. If there is a statewide or regional shortage or threatened shortage of any anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents, the commissioner, with the approval of the governor, may control, restrict, and ration the use, sale, dispensing, distribution, or transportation of such agents as necessary to best protect the health, safety, and welfare of the people of this state. In making rationing or other supply and distribution decisions, the commissioner may determine the preference and priority for distribution of such agents, such as giving preference to health care providers and emergency response personnel. The commissioner shall have the discretion to take custody of all supplies of specific anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents existing within the state to ensure that such agents are distributed and utilized appropriately.

4 New Sections; Communicable Disease; Ethics Committee Established. Amend RSA 141-C by inserting after section 23 the following new sections:

**141-C:24 Ethics Committee.**

I. There is hereby established an ethics committee to assist the commissioner in addressing ethical issues in the preparedness and response to public health instances such as the outbreak or potential outbreak of communicable disease.

II. The committee shall consider the ethical implications of any of the powers that may be exercised by the commissioner under the provisions of this chapter including, but not limited to, the closure and evacuation of buildings; the cancellation of public events; the confiscation, distribution, and rationing of anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents; the issuance and enforcement of orders of isolation, quarantine, medical examination, and medical treatment; and issues relative to information sharing and confidentiality.

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

- (a) The governor, or designee.
- (b) One member of the senate, appointed by the senate president.
- (c) One member of the house, appointed by the speaker of the house of representatives.
- (d) The director of the division of public health services.
- (e) The state epidemiologist.
- (f) The attorney general, or designee.
- (g) A representative of a municipal department of public health, appointed by the commissioner.
- (h) A representative from a college or university public health program, appointed by the commissioner.
- (i) A chief of police of a local police department, appointed by the New Hampshire Association of Chiefs of Police.
- (j) A chief of a local fire department, appointed by the New Hampshire Association of Fire Chiefs, Inc.
- (k) A physician, licensed under RSA 329, appointed by the New Hampshire Medical Society.
- (l) The commissioner of the department of safety, or designee.
- (m) A member of a fire department, appointed by The New Hampshire Professional Firefighters Association.

IV. The commissioner shall appoint a member of the committee to act as chairperson. The committee shall meet as regularly as the chairperson shall direct.

V. The commissioner may at any time direct questions to the committee or request guidance on ethical issues.

VI. The committee shall be solely advisory in nature and any guidance or guidelines issued by the committee shall not be binding on the commissioner.

**141:25 No Conflict With Emergency Management Powers.** Nothing in this chapter shall be construed to limit or restrict the exercise of the governor's emergency management powers under RSA 4:45 – RSA 4:47.

5 Effective Date. This act shall take effect January 1, 2007.

**2006-1018s**

**AMENDED ANALYSIS**

This bill authorizes the commissioner of the department of health and human services, with the approval of the governor, to ration and prioritize certain pharmaceutical agents in the event of a shortage during a pandemic. Under this bill, the commissioner, with the approval of the

governor, has the power to close public places during a pandemic. This bill also establishes a committee to assist the commissioner in addressing ethical issues under RSA 141-C.

SENATOR ROBERGE: Thank you, Mr. President. I move Senate Bill 399 ought to pass as amended. This legislation is the result of a drill held on the state response to a potential outbreak of the Avian Flu. The drill revealed a large gap between the Governor's state of emergency powers under RSA 4:45 and the authorities given to the Commissioner under RSA 1:41-3, the communicable diseases statute. The amended version of this legislation will give the commissioner of DHHS, with the approval of the Governor, the authority to control, restrict, and ration the use and distribution of vaccines and anti-toxins. The commissioner may also close a building, a public building, that is considered a health threat and cancel public gatherings, ask to stop the spread of the disease. This provision will not be used to take away people's constitutional right to assemble in any circumstance. When there are isolated outbreaks of a disease around the state, it is not always necessary to declare a state of emergency. However, DHHS should have the power, with the approval of the Governor, to deal with any public health incident quickly. The Municipal and Public Affairs Committee asks for your support of motion ought to pass as amended. Thank you.

SENATOR BARNES: Thank you, Mr. President. A question of Senator Clegg, the prime sponsor of the piece of legislation.

SENATOR CLEGG: I'll yield, Mr. President. Yes.

SENATOR BARNES: Thank you, Senator. I want to congratulate you on the work you did on this piece of legislation. I think 90 percent of it is terrific. You and I have talked about it. My understanding I guess is, would you believe, is it's going to be going to Finance. You and I talked about my concern, and is it true that you're going to address my concern when it comes to Finance? My concern is the state government coming in and taking product out of a private business without proper payment.

SENATOR CLEGG: Senator, this bill is going to Finance. And, not only have I taken your concern seriously, I've also stated so to the news media. And I firmly believe that you're correct that there should be something added in Finance that says that people's products should be reimbursed appropriately. As you and I spoke, appropriately would be if it's \$20 a day before the emergency, it ought to be \$20 a day after the emergency.

SENATOR BARNES: And that satisfies both of our concerns about gouging?

SENATOR CLEGG: Yes, sir.

SENATOR BARNES: Thank you very much, Senator. I appreciate that, and now I will be able to vote for your piece of legislation.

SENATOR CLEGG: Thank you, Senator.

SENATOR MARTEL: Thank you, Mr. President. I also want to congratulate the sponsor of this amendment, Senator Clegg, and all the others who happen to be lucky enough to be a cosponsor on this bill as well. I would like to just clear up one thing about the fact of inventories of medicines that would be needed in the pandemic, and just picture ourselves now in a world in 1600s when the bubonic plague, the black fever had struck Europe. The pandemic that we could have on this with this disease could be equal to that if we do not handle it correctly. I don't know



how many of you noticed yesterday in France there was a report of the first five cases of the pandemic flu in that country and in Europe. Two weeks ago, it had gone to Africa from Indonesia in the Far East. It is coming, ladies and gentlemen, and when it comes to the point where it comes hopefully in a very isolated part of North America or South America or Central America, but if it comes here, does it really matter, when it comes down to price, where the medicine goes or who has the medicine as long as it gets to where it is needed? If someone needs it in the southern tier, there's some in the northern tier. There's not going to be an issue of price because the government is going to pay for this, the amount of money for the dollar value of that medicine. So, no one locally is going to gouge the people or the citizens of New Hampshire for a higher level cost of that medicine. I hope that we were able to get that issue clarified because the government will be paying and reimbursing the state for all of these expenses. Now we have to make sure that we provide that in the upcoming amendments in the Finance Committee, and I will work with the Chairman of the Finance to make sure that this comes out right, and I'm sure it will. So, I just wanted to make sure I clarified that one point, Mr. Chairman, Mr. President, I mean. And I thank you very much for your time.

SENATOR LARSEN: I simply rise to support the amendment and to say that this is an issue in...the issue of a pandemic where all parties in this state would have to work together. The amendment makes that happen, and we all hope and pray that none of these rationing reviews of cancellation of an event and decontamination issues come to our state. But it is wise of all of us to continue to monitor our preparedness and that this is a good step towards doing that. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 281-FN**, establishing an organ and tissue donor registry. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 3-0. Senator Martel for the committee.

**Transportation and Interstate Cooperation**

**February 15, 2006**

**2006-1000s**

**01/03**

**Amendment to SB 281-FN**

Amend RSA 263:41, I as inserted by section 4 of the bill by replacing it with the following:

I. The director shall provide to federally-designated organ procurement organizations serving the state access to names, dates of birth, and dates of registration of licensed drivers and individuals who obtain a nondriver's picture identification card who have registered with the division of motor vehicles as organ and tissue donors for the purpose of identifying those individuals as organ and tissue donors. Such access shall be provided only with the prior written consent of the donor and shall be provided in a manner and form to be determined by the director following consultation with such organizations, and shall include electronic transmission of initial information and periodic updating of information.

Amend RSA 263:41 as inserted by section 4 of the bill by inserting after paragraph II the following new paragraph:

III. An anatomical gift shall not be executed by a minor unless written consent of the minor's parent or guardian is provided to the division of motor vehicles.

SENATOR MARTEL: Thank you, Mr. President. I move Senate Bill 281-FN ought to pass with amendment. This bill establishes a donor registry for anatomical gifts allowing people to indicate their wishes to the Division of Motor Vehicles. The bill allows organ procurement organizations to access to such information. This bill will help people who wish to become an organ or tissue donor, and the right people will be given access to the information they need to learn about the donor's wishes. To be removed from the registry, you simply need to send in a signed letter stating your wishes. Please join the Transportation Committee and vote ought to pass as amended, and I thank you very much, Mr. President.

**Amendment adopted.**

Senator Letourneau offered a floor amendment.

Sen. Letourneau, Dist. 19

**February 23, 2006**

**2006-1225s**

**01/09**

**Floor Amendment to SB 281-FN**

Amend the bill by inserting after section 8 the following and renumbering the original sections 9-10 to read as 10-11:

9 Applicability. The donor registry created pursuant to this act shall be established at no cost to the state.

SENATOR LETOURNEAU: Yes. Thank you, Mr. President. I would like to offer an amendment. I'm sure the amendment's up there, and I'd like to speak to additional floor amendment.

SENATOR GATSAS (In the Chair): If you'd speak to your amendment as it's being passed out.

SENATOR LETOURNEAU: Thank you. Thank you, Mr. President. As indicated in the committee report, the New England Organ Bank has said that this would be at no cost to the state and that they would pay for all the expenses that would be incurred. It was noted that it wasn't in the actual legislation. This **TAPE CHANGE**

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 325**, making technical corrections to motor vehicle laws. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 6-0. Senator Letourneau for the committee.

**Transportation and Interstate Cooperation**

**February 15, 2006**

**2006-0998s**

**03/10**

**Amendment to SB 325**

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

AN ACT making technical corrections and other changes to motor vehicle laws.

Amend the bill by inserting after section 7 the following and renumbering the original section 8 to read as 11:

8 New Section; General Registration; Vehicle Sold to a Massachusetts Resident. Amend RSA 261 by inserting after section 56 the following new section:

261:56-a Vehicle Sold to a Massachusetts Resident. A retail vehicle dealer selling a vehicle to a resident of Massachusetts shall complete a form designed by the director that provides notification of the sale to the department. The retail vehicle dealer shall provide a copy to the customer, retain a copy, and return the original to the director.

9 New Paragraph; Walking Disability Plates; Motorcycles. Amend RSA 261:88 by inserting after paragraph II the following new paragraph:

II-a. A person with a walking disability may receive separate special number plates for each motorcycle owned by the person.

10 New Section; Equipment of Vehicles; Width; Snowplows. Amend RSA 266 by inserting after section 13 the following new section:

266:13-a Snowplows; Exception. A truck used for snow plowing may be driven on the ways of this state with a plow not exceeding 108 inches in width.

**2006-0998s**

#### AMENDED ANALYSIS

This bill corrects various obsolete or incorrect references in the motor vehicle laws. This bill also requires retail vehicle dealers to notify the department of safety of vehicle sales to Massachusetts residents, permits a person to receive multiple walking disability motorcycle plates, and establishes an exception to vehicle width limitations for snowplows.

SENATOR LETOURNEAU: Thank you, Mr. President. I move Senate Bill 325 ought to pass with amendment. This is a technical corrections bill from the Legislative Services and the Department of Safety. This bill corrects various obsolete and incorrect references in the motor vehicle laws. Please join the Transportation Committee and vote ought to pass as amended. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 400-FN**, relative to highway welcome signs. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 3-2. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I think it's appropriate. Today is the anniversary of Patrick Henry's famous speech, "Give me liberty or give me death." Today I'd like to move Senate Bill 400-FN ought to pass. This bill requires that the highway welcome signs include the state motto, "Live Free or Die". General John Stark first wrote the phrase, "Live Free or Die" in 1809 as a toast for the 32<sup>nd</sup> anniversary reunion of the veterans of the 1777 Battle of Bennington. In 1945, "Live Free or Die" was adopted as the state motto. Our state motto is nationally recognized and should be proudly displayed on our welcome signs. Please join the Transportation Committee, and vote ought to pass. Thank you.

Senator Burling offered a floor amendment.

Sen. Burling, Dist. 5

**February 22, 2006**

**2006-1176s**

**05/01**

### **Floor Amendment to SB 400-FN**

Amend RSA 228:46-b as inserted by section 1 of the bill by replacing it with the following:

228:46-b Welcome Signs. Any highway welcome sign erected at the state border by the department of transportation after July 1, 2006 shall prominently display the state motto: "Live Free or Die." Nothing in this section shall require the department to replace existing highway welcome signs that do not include the state motto.

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect July 1, 2006.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move floor amendment number...

SENATOR GATSAS (In the Chair): 1176.

SENATOR BURLING: Thank you.

SENATOR GATSAS (In the Chair): Will you speak to your amendment?

SENATOR BURLING: I will, Mr. President, if I may while it's being handed out. This floor amendment simply adds the phrase, "Nothing in this section shall require the department to replace existing highway welcome signs that do not include the state motto." My concern is money. There are forty-eight of these signs. I've talked with the commissioner of transportation and her office. I'm told it will cost more than \$100,000 to take down the existing signs and replace them with new ones. A fix could be made for a lot less money either by using stick-on banners, paint and brush or appropriate metal plaques. As enthusiastic as I am for the state motto, and I might just point out that the great General, not John Stark, I'm talking about Cornish's Jonathan Chase, had a big part in all this event. We shouldn't spend more than \$100,000 just to change some signs that went up less than twelve months ago. I make this motion in the interest of frugality, and in the fond hope that you'll vote with me, and we all get where we want to go.

SENATOR BARNES: Yes. Thank you, Mr. President. Of Senator Save the Money, oh excuse me, Senator Burling. Does this mean that you are...I really think your frugality is fantastic. I love it. But the numbers I heard was \$10,000. I didn't hear \$100,000. It's the first time I'm hearing \$100,000, and, as much as you and I agree on so many things especially today, I have to disagree with you on this, and I'm going to go along with Senator Letourneau "Live Free or Die" and it's not going to cost, I don't think \$100,000, because I did not hear that or see that, and maybe there's some other member of this terrific body that's seen that. Maybe Senator Letourneau has seen it, but I haven't seen \$100,000 mentioned except here today. But I do give you a lot of credit for trying to save us \$90,000 in the deal. Ten thousand from a hundred thousand is ninety thousand. That's very good of you to do that.

SENATOR BURLING: Mr. President, I'm sure I heard a question in there someplace...

SENATOR BARNES: Would you believe?

SENATOR BURLING: ...which I propose to answer in any case. It is because I called the Department of Transportation and spoke with Mr. Ed

Smith, I learned that the \$10,000 figure talks about what it would cost to apply metal sub-signs to the existing forty-eight big signs. That's the \$10,000. If you want to pass a statute that requires the replacement of all forty-eight big signs, you're going to have to add some zeroes to that line, and I don't think that's a worthy cause. And, oh by the way, whatever happens, this ought to go to Finance.

SENATOR GATSAS (In the Chair): Senator Morse says no.

SENATOR BARNES: Senator Letourneau. I'd appreciate if Senator Letourneau could get up and get involved with this conversation about the \$100,000 and the \$90,000.

SENATOR FOSTER: Senator Letourneau or Senator Burling, and this really is truly a question and not a statement. How long do these signs last? The one that looks like it's sitting on the border between Massachusetts and Nashua looks like it will last a heck of a long time, and if we're not replacing it now, I'm wondering if I'd ever see it replaced if that's the intent of the legislation. So maybe somebody could tell me how long at least those big ones last, maybe there's small ones around the state.

SENATOR LETOURNEAU: Senator Foster, thank you for the question. I think this amendment is basically a filibuster. I think that if this amendment was adopted, none of those signs would be replaced. I think what brought this bill about was the fact that the signs were changed, and citizens called up and said, "Where's the state motto?" Those signs are brand new. We can certainly add the motto to the existing signs. I don't see where it's going to cost \$100,000. I disagree with that figure, and I can certainly believe we could do it for a lot less. So thank you.

SENATOR FOSTER: So possibility with this legislation also is to add the state motto to the existing signs and not bring them down?

SENATOR LETOURNEAU: Basically, yes, and I don't know that there's forty-eight of them. I didn't get that answer.

SENATOR FOSTER: Thank you.

SENATOR LETOURNEAU: Thank you.

SENATOR CLEGG: Thank you, Mr. President. I rise in opposition to the floor amendment. I believe that the sign would end up being there forever as it is, and I don't think personally that adding something that has our motto on that ugly sign is going to do us any good. Now I don't pretend to think that the sign entering into the state of New Hampshire makes anybody any more likely to come forward or not. But, as a resident of New Hampshire, I would at least like to be able to be proud of the sign that sits on the border, and right now every time I go by those signs I'm embarrassed. You're going to love it here? What are you going to love? If you come in on 93, are you going to love the traffic jam? If you come in on 3, you get the same thing. Do you love the Hampton toll booth? Or maybe it's the Bedford toll booth you love. I don't know. Live Free or Die is much nicer, and I don't pronounce it right because I'm not French, but I used to like that, how do I say it Senator Martel?

SENATOR MARTEL: Bienvenue.

SENATOR CLEGG: Bienvenue. We have a great French heritage here as well as Greek and Italians, but let's go back to what worked. Let's go back to when people got to that border, and they looked at that sign, they knew they were in New Hampshire, and it makes a difference. Thank you.

SENATOR MARTEL: Thank you. This will take about ten seconds. Senator Clegg hit it right on the nose, as long as the signs say, "Bienvenue", and I'll have French classes from now on, on Tuesday and Wednesday mornings whatever your choice is, and we'll get the pronunciations right. Thank you very much. You tried very hard though. I have to give you credit.

SENATOR LETOURNEAU: Just one last statement. Thank you for making that offer, but just remember Transportation meets on Wednesday mornings.

SENATOR MARTEL: That's why I said it.

SENATOR LETOURNEAU: One other issue that I need to bring forward and agree with Senator Clegg is that many of our constituents have told me that they're very proud to see our state motto on the signs. But additionally, added to that is that everybody I've ever spoken to when I've left this state and asked me where I was from. I said I'm from New Hampshire. They'd say, "Oh, you're from the Live Free or Die state." It is nationally recognized everywhere, and we should be very proud of that. People come here. They see that sign. They're very happy to see it. Thank you very much.

**Floor amendment failed.**

**The question is on the committee report of ought to pass.**

SENATOR BURLING: Thank you. I'll do it very quickly. If you've stricken this amendment, you need to send this to Finance because I guarantee you, you don't know what it's going to cost. And, for every one of you who blocks a bill that concerns the payment of insurance or the welfare of our people because we don't know what it's going to cost, more than \$100,000, you ought to find out what it's going to cost. There is a way to do this for next to nothing, but forcing the replacement of all these signs, that's a big deal.

SENATOR MORSE: Thank you, Mr. President. I just want to point out there is no appropriation in this bill, so they're going to have to find out how they're doing it on the cheap. I had no intention of taking it to Finance. It's a policy statement, and we're not approving any money on the bill.

**Adopted.**

**Ordered to third reading.**

**SB 300-FN-A-L**, exempting certain transfers of real estate between charitable organizations from the real estate transfer tax. Ways and Means Committee. Ought to pass with amendment, Vote 4-0. Senator Gallus for the committee.

**Senate Ways and Means**

**February 15, 2006**

**2006-1028s**

**09/04**

**Amendment to SB 300-FN-A-LOCAL**

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

1 Tax on Transfer of Real Property; Exceptions. Amend RSA 78-B:2 by inserting after paragraph XVIII the following new paragraph:

XIX. To a transfer of title pursuant to a merger, consolidation, or reorganization of 2 or more organizations, each of which is exempt from

federal income taxation under section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, where all such organizations have certified in advance of the transaction to the satisfaction of the commissioner of the department of revenue administration that, over the 3 fiscal years preceding the transfer, on average, a majority of their collective program service revenues have been received from federal, state, and/or local governmental sources.

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

**2006-1028s**

#### AMENDED ANALYSIS

This bill exempts certain transfers of real estate between charitable organizations pursuant to a merger, consolidation, or reorganization of 2 or more organizations.

SENATOR GALLUS: Thank you, Mr. President. I move SB 300 ought to pass with amendment. This bill will exempt the transfer of real estate between two charitable organizations from the real estate transfer tax. The amendment simply provides the Department of Revenue Administration with oversight authority to ensure that organizations meet the requirements of section 501-C:3. All such exemptions will have to be approved by the Commissioner of the Department of Revenue prior to the transfer. The Ways and Means Committee recommends that this legislation be adopted and asks your support. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

#### RESOLUTION

Senator Clegg 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 all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

#### LATE SESSION

##### Third Reading and Final Passage

**SB 253**, relative to enforcement of support orders for college and post-secondary educational expenses.

**SB 281-FN**, establishing an organ and tissue donor registry.

**SB 282-FN-L**, relative to removal of abandoned vehicles.

**SB 296-FN**, relative to recovery of public assistance.

**SB 300-FN-A-L**, exempting certain transfers of real estate between charitable organizations from the real estate transfer tax.

**SB 325**, making technical corrections and other changes to motor vehicle laws.

**SB 334**, authorizing the use of a credit freeze as a means of deterring identity theft.

**SB 359-FN**, relative to the regulation of plumbers and water treatment technicians by the plumbers' board.

**SB 396**, repealing the rulemaking authority of the New Hampshire children's trust fund board.

**SB 400-FN**, relative to highway welcome signs.

**HB 544**, relative to the land and community heritage program.

### ANNOUNCEMENTS RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, processing enrolled bill reports and amendments.

**Adopted.**

**In recess to the Call of the Chair.**

### 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(s):

**HB 406**, revising certain provisions of the home education statutes.

**HB 1184**, relative to the majority vote required for the use of bond proceeds in certain school districts or municipalities.

Senator D'Allesandro moved adoption.

**Adopted.**

### INTRODUCTION OF SENATE BILL(S)

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from **SB 406-FN-A** to **407-FN-A** shall be by this resolution read a first and second time by the therein listed title(s) and referred to the designated committee(s).

**Adopted.**

### First and Second Reading and Referral

06-3060

**SB 406-FN-A**, establishing a manufacturer's tax on cigarettes sold in New Hampshire. (Sen. Clegg, Dist 14; Sen. Gatsas, Dist 16: Finance)

06-3033

**SB 407-FN-A**, relative to enforcement of labor statutes under current federal immigration laws. (Sen. Green, Dist 6; Sen. Barnes, Dist 17; Sen. Bragdon, Dist 11; Sen. Clegg, Dist 14; Sen. Flanders, Dist 7; Sen. Gallus, Dist 1; Sen. Gatsas, Dist 16; Sen. Johnson, Dist 2; Sen. Letourneau, Dist 19; Sen. Martel, Dist 18; Sen. Roberge, Dist 9: Finance)

### HOUSE MESSAGE

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

**HB 690-FN**, relative to aid to the needy blind and relative to undue hardship for public assistance.

**HB 1140**, establishing a committee to study the establishment and enforcement of protection zones for nesting loons.

**HB 1146**, establishing a committee to study renewable portfolio standards.



**HB 1157**, relative to the definition of a sending district.

**HB 1182-FN**, relative to the limited commercial lobster license fees.

**HB 1201**, relative to child passenger restraints.

**HB 1269**, relative to the taking of red deer or elk.

**HB 1273**, relative to the disposition and retention of municipal records and legalizing the September 13, 2005 special meeting of the town of Brookline

**HB 1307**, relative to application requirements for motor vehicle recycling yard licenses.

**HB 1313**, naming a bridge between the towns of Newfields and Stratham the United States Submarine Veterans of World War II Memorial Bridge.

**HB 1346**, requiring certain persons to keep the contents of prescriptions confidential.

**HB 1417-FN**, establishing gold star number plates.

**HB 1418-FN**, relative to road toll refunds.

**HB 1435**, relative to the emergency plan for service animals.

**HB 1444-FN**, relative to definitions under the real estate transfer tax.

**HB 1465-FN**, relative to food stamp overpayments.

**HB 1484**, relative to including motorcycle and tractor-trailer safety in driver education courses.

**HB 1509**, relative to campaign expenditure and contribution limitations.

**HB 1512**, establishing a committee to study volunteer activity related to transportation.

**HB 1580**, relative to the child support formula.

**HB 1584**, relative to cemetery setbacks and septic systems.

**HB 1597-FN-L**, relative to municipal obligations for indigent medical expenses.

**HB 1636-FN**, relative to appeals from class A misdemeanor sentences imposed by the district courts.

**HB 1646-FN**, relative to the use of a leashed tracking dog in the recovery of a wounded deer, moose, or bear.

**HB 1656-FN-A**, establishing an electronic toll collection transponder inventory fund.

**HB 1681-FN**, establishing the unused prescription drug program.

**HB 1709-FN**, establishing an autism registry in the department of health and human services.

**HB 1722-FN**, relative to the New Hampshire council on developmental disabilities.

**HB 1747-FN**, establishing a New Hampshire healthy tidal waters and shellfish protection program and making an appropriation therefor.

**HB 1754**, relative to canteen privileges at veterans' clubs licensed by the liquor commission.

**HB 1763**, extending a committee and adding certain duties relative to pharmacy reimbursement.

**HB 1764**, relative to the committee to study medicaid reimbursement rates for pharmacy providers.

**HB 1765-FN-A-L**, relative to funding for disaster relief efforts in response to the October 2005 floods and making an appropriation therefor.

**HCR 22**, relative to the right to pursue a livelihood in natural resources industries.

**HJR 23**, a resolution designating a Purple Heart Trail spur to the New Hampshire state veterans cemetery and providing additional signs for the Purple Heart Trail.

### INTRODUCTION OF HOUSE BILL(S)

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 690-FN to HJR 23** shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 690-FN**, relative to aid to the needy blind and relative to undue hardship for public assistance. (Finance)

**HB 1140**, establishing a committee to study the establishment and enforcement of protection zones for nesting loons. (Environment and Wildlife)

**HB 1146**, establishing a committee to study renewable portfolio standards. (Energy and Economic Development)

**HB 1157**, relative to the definition of a sending district. (Education)

**HB 1182-FN**, relative to the limited commercial lobster license fees. (Environment and Wildlife)

**HB 1201**, relative to child passenger restraints. (Transportation and Interstate Cooperation Committee.)

**HB 1269**, relative to the taking of red deer or elk. (Environment and Wildlife)

**HB 1273**, relative to the disposition and retention of municipal records and legalizing the September 13, 2005 special meeting of the town of Brookline. (Executive Departments and Administration)

**HB 1307**, relative to application requirements for motor vehicle recycling yard licenses. (Transportation and Interstate Cooperation Committee.)

**HB 1313**, naming a bridge between the towns of Newfields and Stratham the United States Submarine Veterans of World War II Memorial Bridge. (Public and Municipal Affairs)

**HB 1346**, requiring certain persons to keep the contents of prescriptions confidential. (Executive Departments and Administration)

**HB 1417-FN**, establishing gold star number plates. (Transportation and Interstate Cooperation Committee.)

**HB 1418-FN**, relative to road toll refunds. (Ways and Means)

**HB 1435**, relative to the emergency plan for service animals. (Public and Municipal Affairs)

**HB 1444-FN**, relative to definitions under the real estate transfer tax. (Ways and Means)

**HB 1465-FN**, relative to food stamp overpayments. (Finance)

**HB 1484**, relative to including motorcycle and tractor-trailer safety in driver education courses. (Transportation and Interstate Cooperation Committee.)

**HB 1509**, relative to campaign expenditure and contribution limitations. (Internal Affairs)

**HB 1512**, establishing a committee to study volunteer activity related to transportation. (Transportation and Interstate Cooperation Committee.)

**HB 1580**, relative to the child support formula. (Ways and Means)

**HB 1584**, relative to cemetery setbacks and septic systems. (Public and Municipal Affairs)

**HB 1597-FN-L**, relative to municipal obligations for indigent medical expenses. (Internal Affairs)

**HB 1636-FN**, relative to appeals from class A misdemeanor sentences imposed by the district courts. (Judiciary)

**HB 1646-FN**, relative to the use of a leashed tracking dog in the recovery of a wounded deer, moose, or bear. (Environment and Wildlife)

**HB 1656-FN-A**, establishing an electronic toll collection transponder inventory fund. (Finance)

**HB 1681-FN**, establishing the unused prescription drug program. (Banks and Insurance)

**HB 1709-FN**, establishing an autism registry in the department of health and human services. (Health and Human Services)

**HB 1722-FN**, relative to the New Hampshire council on developmental disabilities. (Executive Departments and Administration)

**HB 1747-FN**, establishing a New Hampshire healthy tidal waters and shellfish protection program and making an appropriation therefor. (Environment and Wildlife)

**HB 1754**, relative to canteen privileges at veterans' clubs licensed by the liquor commission. (Public and Municipal Affairs)

**HB 1763**, extending a committee and adding certain duties relative to pharmacy reimbursement. (Health and Human Services)

**HB 1764**, relative to the committee to study medicaid reimbursement rates for pharmacy providers. (Health and Human Services)

**HB 1765-FN-A-L**, relative to funding for disaster relief efforts in response to the October 2005 floods and making an appropriation therefor. (Finance)

**HCR 22**, relative to the right to pursue a livelihood in natural resources industries. (Internal Affairs)

**HJR 23**, a resolution designating a Purple Heart Trail spur to the New Hampshire state veterans cemetery and providing additional signs for the Purple Heart Trail. (Transportation and Interstate Cooperation Committee.)

**Out of Recess.**

**LATE SESSION**

Senator Foster moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*March 9, 2006*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good morning! It looks like a week in Aruba did real well. This goes for legislators, lobbyists, guests and members of the media. As you try your very best to serve us, it's always good to remember the instructions given by flight attendants on every airplane, in the unlikely event of sudden loss of cabin pressure, which is, "put your own mask on first before attempting to help others". Think about it. It is only out of a healthy spirit that wise leadership can emerge, so work hard on your inner health if you want to be a good servant. Let us pray:

*Wise and gentle one, You inscribe upon each one of us the indelible markings of Your signature of authorship. Give us eyes to see Your very own "John Hancock" written boldly at the core of each person we encounter this day, that all the decisions made in this venerable chamber may reveal that very same autograph. Amen*

Senator Odell led the Pledge of Allegiance.

Senator Johnson is excused for the day.

**INTRODUCTION OF GUESTS  
COMMITTEE OF CONFERENCE REPORT**

**February 22, 2006  
2006-1212-CofC  
05/04**

Committee of Conference Report on SB 206-FN, an act relative to the state code of ethics and establishing an executive ethics commission.

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 RSA 21-G:21, II-a as inserted by section 1 of the bill by replacing it with the following:

II-a. "Executive branch official" means every elected official as defined by RSA 15-B:2, III, who holds an executive branch office, every public official as defined by RSA 15-B:2, X, every constitutional official as defined by RSA 15-B:2, II, and every public employee as defined by RSA 15-B:2, IX.

Amend RSA 21-G:25 as inserted by section 2 of the bill by replacing it with the following:

21-G:25 ~~Acceptance and Giving of Gifts. Any public employee, public official, and any public employee's or public official's spouse or dependent~~

who gives, solicits, accepts, or agrees to accept a gift from a person who is subject to or likely to become subject to or interested in any matter or action pending before or contemplated by the public employee or official or by the governmental body with which that employee or official is affiliated shall disclose the gift in the statement of financial disclosure filed under RSA 21-G:28. Nothing in this section shall be construed to prohibit gifts made to the state of New Hampshire and accepted in accordance with the law.] *Restrictions on Simultaneous Employment and Public Service. Volunteer service shall not be used, directly or indirectly, for personal financial gain, or to facilitate non-public communications with executive branch officials for the purpose of promoting or advancing any matter on behalf of a third party, or to influence executive branch officials in the performance of their duties. In furtherance of this prohibition:*

*I. No person shall serve as a public employee, as defined by RSA 15-B:2, IX, or serve as an appointee or volunteer for any multi-branch commission, committee, board, or similar governmental entity, and simultaneously be a person who has a duty to register as a lobbyist pursuant to RSA 15, or is employed by, or maintains an ownership interest in, any entity which employs a registered lobbyist.*

*II. No person shall serve as a public employee in a position that establishes policy or adjudicates matters before any agency while maintaining any ownership interest in, or being employed by, any entity, engaged in promoting or opposing, directly or indirectly, any legislation pending or proposed before the general court, or promoting or opposing any action or inaction on any matter, contract, license, permit, or administrative rule, proposed or pending, before the executive branch.*

*III. Unless otherwise prohibited by law, the prohibitions of RSA 21-G:25, I and II, shall not apply to:*

*(a) Appearances before the courts or any adjudicative proceedings, or non-adjudicative processes, as defined by RSA 541-A;*

*(b) Service in a position subject to appointment by the governor and council;*

*(c) Testimony or participation in any public meeting, or service on any commission, committee, board, panel, or other similar governmental entity that is subject to the public meeting and notice requirements of RSA 91-A, or the public right of access mandated by part 1, article 8 of the New Hampshire constitution.*

*(d) Volunteer public service related entirely to a ceremonial, celebratory, historical, or recreational program or event; public health or safety incident or drill, or consumer protection assistance;*

*(e) Ownership of publicly-traded stock; or*

*(f) A public employee, appointee, or volunteer's personal application for any license, permit, or ruling from a state agency.*

Amend RSA 21-G:29, III as inserted by section 3 of the bill by replacing it with the following:

III. The committee shall consist of 7 members, nominated in the following manner:

(a) Three members, nominated by the governor, one of whom shall be a member of the democratic party, one of whom shall be a member of the republican party, and one of whom shall have no political party affiliation.

(b) Two members, nominated by the secretary of state, one of whom shall be a member of the democratic party and one of whom shall be a member of the republican party.

(c) Two members, nominated by the treasurer, one of whom shall be a member of the democratic party and one of whom shall be a member of the republican party.

Amend RSA 21-G:29, VI as inserted by section 3 of the bill by replacing it with the following:

VI. Committee members shall serve terms of 3 years and until their successors are appointed and qualified. However, initially, the governor shall nominate one member for a one-year term, one member for a 2-year term and one member for a 3-year term; the secretary of state shall nominate one member for a 2-year term, and one member for a 3-year term; the treasurer shall nominate one member for a one-year term and one member for a 2-year term. Initial nominations to the committee shall be made no later than 90 days after the effective date of this section. The initial appointments shall begin on July 1, 2006 and end on June 30 of the appropriate year. Vacancies shall be filled for the remainder of any unexpired term. During their term of appointment, members may not hold or campaign for elective office, serve as an officer of any political party or political committee, permit their names to be used in support of or in opposition to any candidate or proposition, participate in any way in any election campaign, make a contribution as defined in RSA 664:2 to any candidate for office or political committee, or act as or assist a lobbyist required to be registered under RSA 15:1.

Amend RSA 14-B:2, III as inserted by section 5 of the bill by replacing it with the following:

III. Appointments to the committee shall be made by December 31 prior to the first legislative session of the biennium. A committee meeting shall be called no later than February 1 in the first legislative session of the biennium. ~~[The members shall elect]~~ ***Prior to the first committee meeting, the speaker of the house of representatives and the senate president shall jointly select from the members of the committee*** a chairperson and vice-chairperson ~~[at this meeting]~~. The members shall serve for the biennium and shall not be removed from the committee for any reason except for good cause by unanimous vote of the remaining committee members. Members shall receive no compensation, except that legislative members shall receive mileage at the legislative rate and public members shall receive mileage at the state employee rate. ***The committee shall provide the executive branch ethics committee with copies of all publicly issued guidelines, procedures, decisions, and opinions.***

Amend RSA 15:1, II(b) as inserted by section 7 of the bill by replacing it with the following:

(b) To promote or oppose, directly or indirectly, any action by the governor, governor and council, or any state agency, as defined in RSA 15-A:2, where such action concerns legislation or contracts pending or proposed before the general court, any pending or proposed administrative rule, or the procurement of goods or services that are being or may be purchased by the state, subject to the exclusions in paragraph III.

Amend RSA 15-B:2, IX as inserted by section 9 of the bill by replacing it with the following:

IX. "Public employee" means any person, including but not limited to a classified or non-classified employee or volunteer, who conducts state business on behalf of the governor, any executive branch official, agency, or the general court.

The signatures below attest to the authenticity of this Report on SB 206-FN, an act relative to the state code of ethics and establishing an executive ethics commission

*Conferees on the Part  
of the Senate*

Sen. Clegg, Dist. 14  
Sen. Boyce, Dist. 4  
Sen. Larsen, Dist. 15

*Conferees on the Part  
of the House*

Rep. Whalley, Belk. 5  
Rep. O'Brien, Hills. 4  
Rep. O'Neil, Rock. 15  
Rep. Craig, Hills. 9

SENATOR CLEGG: Thank you, Mr. President. I believe that we all worked very hard on getting this bill out. It was a pleasure working in a bipartisan manner, and it was a pleasure working with the executive branch. But there's one thing that bothers me. Inside this bill we've treated the lobbyists the same as we treat ourselves. Take money, be clear, tell us where you got it from. And I'm highly insulted when a lobbyist takes a copy of a fundraiser and attaches it to the bill, and says "When you treat the lobbyists as your treat yourself, then you will get the contributions." Let me state for the record, whoever did this that's a lobbyist, I don't want your money. And please don't bother to talk to me either if that's the way you feel. This bill is an ethics bill because the public has a right to know whose money is influencing policy in this state, whether it's money in a Senator's fundraiser, or money in the lobbyist's pocket. If you're so ashamed of how much money you get to wear that orange badge, take it off, and go someplace else. The rest of the bill, Mr. President, I think is a great bipartisan effort to straighten out things in the state of New Hampshire. Thank you.

SENATOR BARNES: Thank you, Mr. President. Senator Clegg, did this individual that did this, sign it?

SENATOR CLEGG: Of course not.

SENATOR BARNES: Are you serious?

SENATOR CLEGG: Well, obviously he's so embarrassed about where his money comes from...

SENATOR BARNES: Maybe it's a she.

SENATOR CLEGG: Oh, maybe it's a she. Whoever it is, sir, is so embarrassed about where they get their money, that they can only submit threats that they wouldn't dare sign their name.

SENATOR BARNES: All the more reason for passing this, is that correct?

SENATOR CLEGG: I would say so, sir.

SENATOR BARNES: Could we have Senator Clegg's comments in the permanent journal please? Thank you.

SENATOR LARSEN: Thank you, Mr. President. Senate Bill 206 started last year, and the Senate was wise in sending it to the House. The House actually took a long year of studying it. But, in the end, I believe that Senate Bill 206 is in fact an improvement on the state code of ethics as it regulates those in the executive offices, and it brings in new language on lobbyists' acceptance of gifts, and the regulation of volunteer service

by those who might be seeking personal financial gain. So we have worked very hard together, I believe in a very good bipartisan way, to pass a significant new executive ethics commission that will advise those in the executive office on the, in the same way the Legislative Ethics Committee advises us when we have questions of appropriateness and appropriate behavior. I think it begins to shed some sunshine on an area that had not been previously well lit, and I believe that we have done a good job in working together on this. In this, to clarify one issue, which is in RSA 21-G:25, II, there was some discussion and question as to what the language meant, and I'd like to say that, in RSA 21-G:25, II, it applies in part to public employees who serve in a role that determines policy. By that language, the legislative intent of this provision is to describe those public employees who have final decision making power on matters of policy. That was the intent of our work together, and I wanted to clarify for the record, that that is our legislative intent. I support the recommended edits based on this legislative intent, and hope that you will all join us in supporting the Committee of Conference report. Thank you.

**The question is on the adoption of the Committee of Conference Report.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Gallus, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

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

**Yeas: 23 - Nays: 0**

**Adopted.**

### **SPECIAL ORDER**

**SB 301-FN**, relative to pooled risk management programs for municipalities and public entities. Banks and Insurance Committee. Ought to pass with amendment, Vote 4-1. Senator Odell for the committee.

**Banks and Insurance**

**February 16, 2006**

**2006-1075s**

**01/04**

#### **Amendment to SB 301-FN**

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

1 Pooled Risk Management Programs; Purpose. Amend RSA 5-B:1 to read as follows:

5-B:1 Purpose. The purpose of this chapter is to provide for the establishment of pooled risk management programs and to affirm the status of such programs established for the benefit of political subdivisions of the state. The legislature finds and determines that insurance and risk management is essential to the proper functioning of political subdivisions; that risk management can be achieved through purchase of traditional insurance or by participation in pooled risk management programs established for the benefit of political subdivisions; that pooled risk management is an essential governmental function by providing focused public sector loss prevention programs, accrual of interest and



dividend earnings which may be returned to the public benefit and establishment of costs predicated solely on the actual experience of political subdivisions within the state; that the resources of political subdivisions are presently burdened by the securing of insurance protection through standard carriers; **that pooled risk management programs are not insurance companies or public entities**, and that pooled risk management programs which meet the standards established by this chapter should ~~[not] be subject to [insurance regulation and]~~ **only limited insurance regulation and should not be subject to** taxation by the state.

2 Pooled Risk Management Programs; Definitions. RSA 5-B:2 is repealed and reenacted to read as follows:

5-B:2 Definitions. In this chapter:

I. "Commissioner" means the insurance commissioner.

II. "Department" means the insurance department.

III. "Holding company system" means 2 or more affiliated persons, one or more of which is an association that maintains a pooled risk management program, where "person" has the same meaning as in RSA 401-B:1, VI and "affiliated" has the same meaning as in RSA 401-B:1, I.

IV. "Political subdivision" means any city, town, county, school district, charter school, village district, school administrative unit, or any district or entity created for a special purpose administered or funded by any of the above-named governmental units.

V. "Public access filing" means an annual filing with the department made for the purpose of providing public access to certain information concerning the nature and organization of pooled risk management programs. Such informational filing shall be limited to the following:

(a) The name and legal address of each pooled risk management program;

(b) A list of current officers, their titles and addresses;

(c) A brief description of the coverage provided;

(d) The annual audit required under RSA 5-B:5, I(d);

(e) A written plan of operation or bylaws; and

(f) The annual actuarial evaluation required under RSA 5-B:5, I(f).

VI. "Risk management" means the defense of claims and indemnification for losses arising out of the ownership, maintenance, and operation of real or personal property and the acts or omissions of officials, employees, and agents; the provision of loss prevention services including, but not limited to, inspections of property and the training of personnel; and the investigation, evaluation, and settlement of claims by and against political subdivisions.

3 Pooled Risk Management Programs; Filing. Amend RSA 5-B:4 to read as follows:

5-B:4 ~~[Informational]~~ **Public Access** Filing Required~~[, Fee]~~. Pooled risk management programs established for the benefit of political subdivisions shall make ~~[an informational only]~~ **a public access** filing as defined in RSA 5-B:2, ~~[H]~~ **V**, with the department ~~[and shall pay an annual filing fee of \$150]~~. Nothing contained in this chapter shall be construed as enabling the department to exercise any rulemaking, regulatory or enforcement authority over any pooled risk management program formed or affirmed in accordance with this chapter, **except as specifically provided in this chapter**. Pooled workers' compensation and unemployment compensation programs which are regulated by and which report to the department of labor and the department of employment security, under RSA 281-A and RSA 282-A, respectively, shall be exempt from the requirements of this section as long as their operations and reports conform to the laws and rules adopted by those departments.

4 New Section; Registration Requirement. Amend RSA 5-B by inserting after section 4 the following new section:

5-B:4-a Registration Requirement.

I. No association shall develop or administer a pooled risk management program in this state unless it registers with the commissioner and pays a registration fee of \$150.

II. An association's registration shall include the following:

(a) The information contained in the public access filing as defined in RSA 5-B:2, V.

(b) If the association is organized as a holding company system, then the registration shall also include a holding company system registration statement in the same manner as provided in RSA 401-B:4, II-XII for insurance holding company systems.

(c) Such other information as required by the commissioner.

III. Every registration made pursuant to this section shall expire on the next June 14 unless renewed prior to that date. Renewal shall be made by paying an annual renewal fee of \$150 and supplementing and updating the original registration materials as necessary to reflect material changes in the program and to include the most recent audited financial statement, actuarial evaluation, or holding company system registration statement, as applicable.

5 Pooled Risk Management Programs. Amend RSA 5-B:5, I(d) to read as follows:

(d) Provide for an annual audit of financial transactions by an independent certified public accountant. ***In addition to the annual audit, if the association is organized as a holding company system, then the independent certified public accountant shall also annually provide information sufficient to assess compliance with the standards in RSA 401-B:5, I(a) for transactions within a holding company system.*** The audit shall be filed with the department and distributed to participants of each pooled risk management program.

6 Pooled Risk Management Programs. Amend RSA 5-B:6 to read as follows:

5-B:6 Declaration of Status; ***Regulatory Standards***; Tax Exemption; Liability.

I. Any pooled risk management program meeting the standards required under this chapter is not an insurance company, reciprocal insurer, or insurer under the laws of this state, and administration of any activities of the plan shall not constitute doing an insurance business for purposes of regulation or taxation ***and shall be exempt from regulation by the commissioner, except as specifically provided in this chapter. In addition to the registration and reporting requirements set out in RSA 5-B:4 and RSA 5-B:4-a, the commissioner shall have the discretionary authority to review the books and records and examine the affairs of every pooled risk management program in the same manner as provided in RSA 400-A:37 for examination of insurers. The expenses of examinations shall be borne by the pooled risk management program being examined.***

II. Any [such] ***pooled risk management*** program operating under this chapter, whether or not a body corporate, may sue or be sued; make contracts; hold and dispose of real property; and borrow money, contract debts, and pledge assets in its name.

III. ***Pooled risk management programs shall be exempt from the insurance premium tax.***

IV. Participation by a political subdivision in a pooled risk management program formed and affirmed under this chapter shall not subject

any such political subdivision to any liability to any third party for the acts or omissions of the pooled risk management program or any other political subdivision participating in the program.

7 Pooled Risk Management Programs; Confidentiality. RSA 5-B:7 is repealed and reenacted to read as follows:

I. RSA 91-A shall not apply to any pooled risk management program formed or affirmed under this chapter and any entity maintaining a pooled risk management program shall only be required to disclose claims information submitted to the department in connection with the comprehensive health care information system, under RSA 420-G:11-a, as required under RSA 420-G:11.

II. The commissioner shall give confidential treatment to, shall keep confidential, and shall not publicly disclose under RSA 91-A, any information disclosed pursuant to this section. The information shall not be subject to subpoena.

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

**2006-1075s**

#### AMENDED ANALYSIS

This bill clarifies the procedures required to form a pooled risk management program.

SENATOR ODELL: Thank you, Mr. President. I move Senate Bill 301 ought to pass with amendment. The purpose of this legislation is to protect pooled risk management programs from having to make certain rate setting and other information available to private sector insurance companies. This bill was introduced as a result of the New Hampshire Supreme Court ruling which would effectively eliminate the ability of pooled risk management programs to compete and continue to offer municipalities the lower rates they currently provide. The committee amendment simply clarifies exactly what information is confidential and what is not. The Banks and Insurance Committee recommends that this legislation be adopted with amendment and asks for your support. Thank you, Mr. President.

SENATOR ESTABROOK: Thank you, Mr. President. I just wanted to rise to clarify my position. I think that the court's ruling around this bill, that prompted this bill, leads me to conclude that these entities are quasi-public, and accordingly, I think that SB 301, as it's presented to us, is a little overly broad, broader than what most people are saying we need to allow the proprietary information that needs to be proprietary to be so. So if it does go on to Finance, I'd like to see some more work done on that language, which might narrow its scope. Thank you very much.

SENATOR HASSAN: Thank you, Mr. President. I rise to echo Senator Estabrook's comments, and to note that, after the Supreme Court made its ruling, the Supreme Court had remanded the case back to the Superior Court so the Superior Court could determine what information the entity could keep confidential under the Supreme Court order. And when you look at what information the Superior Court did keep confidential, it did protect all of the entities of proprietary and confidential information. And I would look to support a bill that would perhaps codify what the Superior Court did, but I think 301, even with the amendment, is too broad an exemption for what I think is clear from the Supreme Court's ruling is a quasi-public entity. Thank you.

SENATOR GREEN: Thank you, Mr. Chairman. Please excuse my voice, I'm having a hard time. But these kinds of bills are very important to the communities that we all serve. As I read the court decision, I agree with some of the explanation. However, the court decision also says that they were having a hard time with some of the intent of the law and that they had no problem with the legislature deciding differently what that intent was. The question in this bill is a lot different than what we had on the books that was tried in court. It's not the same language. We have the Insurance Department more involved in the process, seeing what's going on internally with these pools. Let me explain to you. I have first hand information and knowledge about these pools because I've had the privilege of being in a situation as the mayor of my community in the early 1980s when we couldn't get insurance. I'm talking property and liability. And our health insurance costs at that time, on those days' dollars, were going out of sight, and workmens' comp was costing us an arm and a leg. The legislature, in all those cases, came back and made adjustments in the laws to make it easier for us to collectively come together as cities and towns and school districts to establish pools, for two reasons. One, to prevent a situation from occurring where we can't get insurance. In my community, we actually self-insured for awhile, because we couldn't get it. And when we could get it, it was so high and so costly, we were a captive audience. We are not the primary interest of insurance companies. We are high risk. We have high risk people doing high risk jobs. When you talk about fire, police, public works, those are high risk categories, whether they be workmens' comp, or they be health insurance, or they be property and liability. We had no choice, as far as I was concerned, if we were going to be able to insure our activities as a community, to create these pools. Now, I don't disagree that some things can go wrong. I think that what went wrong, what created that court case has been addressed in this particular piece of legislation. But this is nowhere near as broad as the law was before. The law before basically was the Insurance Department didn't want to get involved in it. Well we've got them involved. We think that there are things in the confidential category, shall we say, important to the trade of the insurance industry. If we don't do something, and I mean this seriously, if we don't do something, the private insurance companies are already asking for this information under the right-to-know of the court decision. And those who are out there lobbying against this legislation are shooting themselves in the foot. They have an ego problem. They want a court case, and they're not willing to give up on it. That's fine, that's their right, but while they're doing that, they're putting all of us at risk, including themselves. Because, if insurance rates go up in our community, and they will if the private sector gets heavily back involved, and they'll stay only involved as long as the risk allows them to stay involved. We will find ourselves in a situation where we're going to spend a lot more money and we're talking about the voters and the taxpayers that everyone in this room represents. And your local fiscal budgets, on your school budgets, you will see tremendous increases in your insurance cost. Now that money either has to come as an increase to property taxes, or it has to come at the expense of something else you'd rather spend the money on. And those who are fighting it, they're shooting themselves in the foot, because it's going to be less money for them if the community has to spend more money in areas of insurance. I don't understand why we in this chamber take the position that we don't do what's in the best interest of our communities, not a segment of our community. We represent

all the people in our communities. And I want to be a primary indicator of affording, getting insurance at the most reasonable rate, and making sure we have insurance to cover the risks that we have in our communities. And I think we're making a major mistake here if we try and do anything other than pass this piece of legislation. It's out of committee ought to pass. I know it's a 3 to 2 vote. I know it's been heavily lobbied. But I think some of you have jumped too quick. Now I would suggest that there are some issues in this bill that cause you concern about it being too broad. I don't happen to share those, but I think that we always try to work those things out. I say ought to pass, we'll send it to Finance and let's work it out. We've done this all along. We've got a problem, let's solve it. I don't happen to agree there's a problem. I think we've done a good job on this. We worked extensively with the pools to make sure they understand that there has to be exposure, there has to be some right to know. Not an issue. But you're going to shoot yourselves in the foot people, I hate to say that, but that's what you're going to do. We are hurting our communities' ability to have reliable insurance at a reasonable rate. All for what, so somebody can brag that they won a court case? I don't think so. Not for me anyway. Court case is fine. We all win some, we all lose some. I'm sorry, ought pass 4 to 1. Thank you, Senator. I was reading the wrong thing. We have a committee report of 4 to 1. Report of the committee ought to pass. I can't believe there's enough people in this chamber who would vote against their own communities. I just can't believe it. If you do, you do, and the communities will decide in their own way what they think about your vote. Thank you.

SENATOR BRAGDON: Thank you, Mr. President. I rise not to call the question, but to respond to some comments just made because I will not be supporting the committee recommendation, and it's not because I don't stand up for my community. I try my best to stand up for my community, but I also need to stand up for the public at large, and the public's right-to-know. These are quasi-public groups, using public money, and making decisions, and I think some of those decisions need to be made in the light that all of us have to offer it under. And I take some exception to the comments that this is not beneficial to my community. This is beneficial to the public's right-to-know, which I think trumps any local interests. Thank you.

SENATOR GREEN: Senator Bragdon. My comments are on the effect that this bill has on our communities. Is there not a right-to-know for specific information in this bill?

SENATOR BRAGDON: Yes sir, there is.

SENATOR GREEN: Alright, so in other words, and this is not saying it's not going to allow sunshine or light to come onto an issue at all. This does have right-to-know provisions in it, does it not?

SENATOR BRAGDON: It has some right-to-know provisions, yes.

SENATOR GREEN: Thank you.

**The question is on adoption of the committee amendment.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Green.**

**The following Senators voted Yes: Gallus, Kenney, Green, Flanders, Odell, Roberge, Clegg, Gatsas, Barnes, Martel.**

**The following Senators voted No: Boyce, Burling, Eaton, Bragdon, Gottesman, Larsen, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

**Yeas: 10 - Nays: 12**

**Amendment failed.**

**The question is on the motion of ought to pass.**

**Motion failed.**

Senator Bragdon moved inexpedient to legislate.

**The motion of inexpedient to legislate is adopted.**

Senator Foster (Rule #42) on SB 301-FN.

**SCR 7**, a resolution urging Congress to amend the No Child Left Behind Act. Education Committee. Ought to pass with amendment, Vote 5-0. Senator Estabrook for the committee.

**Senate Education  
February 14, 2006  
2006-0957s  
01/10**

#### **Amendment to SCR 7**

Amend the resolution by replacing the first paragraph after the resolving clause with the following:

That the New Hampshire general court urges the Congress of the United States to amend the No Child Left Behind Act in accordance with the recommendations of the National Conference of State Legislatures' task force on the No Child Left Behind Act, and in a manner that allows states, such as New Hampshire, to continue to work toward the goal of closing the achievement gap in a way that will be most effective for every New Hampshire child; and

SENATOR ESTABROOK: Thank you, Mr. President. The Education Committee recommended ought to pass unanimously on SCR 7 with amendment, a resolution urging Congress to amend the No Child Left Behind Act in accordance with the recommendations of the National Council of State Legislatures Task Force. The Task Force charge was to find out what needed to be done to make the law work, and to **TAPE INAUDIBLE** improvement. Well, the No Child Left Behind Act has been federal law for about four years now, and we have benefited from the extra focus on education and the beginnings of action in raising student achievement. But many of the law's longer term provisions are beginning to kick in now, or loom on the near horizon. These provisions have serious consequences for New Hampshire school districts and their ability to best serve their students, and for the state Department of Education. For instance, one of the provisions is the requirement to provide supplemental services. When this is triggered by repeated in need of improvement status, not only will our districts be hard pressed to comply, but the state will be required to assume responsibility for oversight of providers of supplemental services. Were you aware that what this means is that will be the state's responsibility to provide annual notices to parents, promote provider participation for those alternate services, evaluate the providers of those alternate services, monitor the providers of those alternate services, close those service providers if the students fail to make progress there, and maintain an information database on supplemental service providers by school district? That's quite a responsibility that the federal government has im-

posed on the state of New Hampshire. Other requirements in the areas of accountability: teacher credentialing, and evaluation, to cite just a few, are equally problematic. As state education policymakers, it is our responsibility to speak out about the need for changes in the federal law and the committee recognized and assumed that responsibility. The NCSL task force has shown us that we can, and how to reshape NCLB to better assist students, schools and districts most truly in need of improvement. The task force recommendations that I provided to you a little while ago, I hope you had a chance to look at them, focus on the need to give states more flexibility in meeting the goals of NCLB, to create more of a state-federal partnership. No matter our political position with regard to this federal legislation, it clearly needs fixing, and it is our responsibility to call for it to be fixed. This resolution calls for that reform, and I hope you will join the entire committee in supporting it, and I request a roll call.

SENATOR FOSTER: Senator Estabrook, does this resolution call for the No Child Left Behind Act to be rescinded and taken out of existence?

SENATOR ESTABROOK: Not at all, Senator. All it does is try to suggest improvements that will make it more effective.

SENATOR FOSTER: Follow up? As I understand it, the NCLB is a bipartisan organization with legislators from both parties that this was founded on.

SENATOR ESTABROOK: NCLB was created on a bipartisan basis and the task force report was also created on a bipartisan basis. In fact, our own Representative Neil Kurk was a member of the National Council of State Legislatures Task Force, and he supports this resolution.

SENATOR FOSTER: Neil Kurk?

SENATOR ESTABROOK: Yes, sir.

SENATOR FOSTER: Follow up? So in effect what it's calling for is flexibility to be put in a law so we can educate our kids here in New Hampshire in a way that works best, because we're not New York City, we're not a city, we're a little bit different. So we have to do things differently?

SENATOR ESTABROOK: Exactly, Senator. We spent many years crafting our own accountability system. Those who've been here for a while will recall how long it took us to do that. And I think it's important that we ask to be able to build on what we've already created here. We know it works.

SENATOR FOSTER: Thank you.

SENATOR CLEGG: Thank you. I rise in opposition to the adoption of Senate Concurrent Resolution, and I do so because I think, if we send it down, we're going to get back a Federal Senate Resolution that says "Hey, New Hampshire, if you pulled the \$34 million that's been sitting in your account since 2004, which by the way is going to dry up and go away and give it to somebody else if we don't take it by September, maybe you wouldn't have all these problems you think you could resolve with this resolution." So until the state of New Hampshire can tell us, (1) what they do with the money, and (2) why they don't take all the money, sending anything down to Washington to complain is ludicrous. We need to look in our own backyard, look at our own Department of Education, and find out what we're doing with the money, and why aren't we taking all of the money that the government is trying to give us under No Child Left Behind. I will vote inexpedient to legislate on this. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise to speak in favor of the Resolution and the ought to pass motion. We talk about home rule and we talk about decisions made at home. I've heard the great Senator from Hudson say on occasion, "I'm not afraid of anybody. I don't fear anybody. Do the right thing! And if we think it's the right thing, we ought to do it, and not be afraid of the fact that someone's going to have retribution against us." I heard that yesterday in the committee hearing. So I ask the great Senator, why not in this case? Why should we deviate? Why should we take it in one sense one way, and in other sense another way? We know we have problems with our DOE, we've said that repeatedly, and we've spent time and effort trying to correct those problems. Each one of us has had input, we've called DOE, they are improving. They're improving. We have a new commissioner. That commissioner has been very responsive. The kind of material that he sent to us has been very good, so we're working on that. But why should we restrain ourselves from saying what we believe is the right thing? Why should we restrain ourselves from saying to someone we think it could be better, this is why we think it could be better, and New Hampshire its own say? Thank you, Mr. President.

SENATOR ESTABROOK: Thank you. Question of Senator D'Allesandro. Senator, were you aware that the Legislative Audit Oversight Committee had requested the Legislative Budget Assistants Audit Division to do some preliminary research into the No Child Left Behind Act? And they have issued this report last month, part of which gives us a detailed accounting of what money has come in and how it has been spent. And, in addition, the Department of Education had testified at the hearing that, with the amendment we have put on this bill which speaks to the need to serve each child individually, they felt that the resolution's tone complimented their work with the federal department and would not be problematic.

SENATOR D'ALLESANDRO: I do. Thank you.

SENATOR ESTABROOK: Thank you.

SENATOR D'ALLESANDRO: Yes.

SENATOR CLEGG: Since my dear friend from Manchester made the statement, why would I be afraid? I'm not afraid of the federal government, never have been. I believe we're a sovereign state. But I'm not afraid to make a fool of myself from time to time, but I try to avoid it. And this is an example of trying to avoid making myself look like a fool. I'm going to send something to Washington that says, "You guys have No Child Left Behind all messed up." And it's because I didn't take the \$34 million to spend to make it work. And I don't know how many...that's just what's left in 2004, I don't know what's still there 2005. So how can I tell them that they're doing something wrong and we need to make a change when I'm not even taking the money they're giving me to educate the kids? And I believe that the amendment that the Department of Ed talked about was not the amendment that is in the calendar. But the Department of Ed, from time to time, has liked to push the blame on somebody else. The \$34 million is still sitting there. The Department of Education hasn't pulled it, and somebody else gets it in September if we don't take it. So I'm not in favor of sending something down to Congress saying, "Boy you guys got this messed up," until we've got it straight in our own house.

**Amendment failed.**



**The question is on the motion of ought to pass.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**The following Senators voted No: Gallus, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**Yeas: 8 - Nays: 15**

**Motion failed.**

Senator Clegg moved inexpedient to legislate.

The motion of inexpedient to legislate is adopted.

**SB 367-FN**, imposing a penalty on Medicaid providers who receive overpayments of state Medicaid funds. Health and Human Services Committee. Inexpedient to legislate, Vote 3-2. Senator Fuller Clark for the committee.

**SENATOR FULLER CLARK:** Thank you, Mr. President. I move Senate Bill 367 inexpedient to legislate. As written, the bill is overly broad and vague, and would allow the department to collect monies on technicalities, such as when services are provided between the expiration date and the filing of a new application for services, even when those services are deemed Medicaid eligible and the client meets all criteria. Senate Bill 367 also establishes new recordkeeping requirements on providers, and allows the department to impose a penalty of up to 20 percent when records are missing. Currently, Medicaid providers comply with very detailed requirements set by the department and Medicaid as well as by contract and memoranda. The committee also noted that House Bill 2 from 2005 charged DHHS with studying its reporting and paperwork mandates on Medicaid providers and the commissioner is scheduled to report on the results of this study by December 31, 2006. In light of this study, and the previous concerns, the committee recommends ITL. Thank you, Mr. President.

**SENATOR ESTABROOK:** Thank you, Mr. President. As a member of the committee, I rise in support of the committee's ITL recommendation on SB 367. It may sound reasonable on the surface to allow a lesser penalty to be imposed, but this bill isn't that simple. SB 367 will result in 20 percent penalty against Medicaid providers. That's 20 percent of the cost of a service that's already been provided, not just for failure to rectify overpayments. The penalty will also be imposed for the providers' "failure to provide records required." A provider's recordkeeping error could cost them big time. Our Medicaid providers are already underfunded in relation to their costs. We need to expand the provider network, not squeeze them some more. The voluminous overlapping record requirements that exist mean that recordkeeping errors are hardwired into the system. As the representative of the New Hampshire Healthcare Association stated at the hearing, "Nursing homes have more requirements than nuclear power plants." Record requirements are mandated by Medicaid, contract, memorandum, letter, and these requirements must be met, not just by nursing homes, mental health centers and doctors, all of whom oppose the bill, but by all Medicaid providers, which include services such as wheelchair vans, ambulances, suppliers of medi-

cal equipment, crisis intervention, occupational therapy, and over fifty other types of Medicaid service providers. Additionally, as Senator Fuller Clark said, the bill comes forward before the results of the paperwork study. We recognized, when we put that footnote in HB 2, that the paperwork requirements imposed on Medicaid providers are onerous. The bill also doesn't even have a fiscal note to inform us of the financial consequences for providers. We shouldn't be penalizing our Medicaid providers in this way, when they are simply out of compliance without criminal intent or activity. I hope **TAPE CHANGE** that with each bill so far today, we will support the committee's recommendation of ITL.

SENATOR FULLER CLARK: Yes. Senator Estabrook, is it not true in this legislation that there is no language that addresses the issue of proof of intent, and therefore, these penalties could be applied for the smallest clerical errors?

SENATOR ESTABROOK: Oh, definitely. In fact, the providers need to prove that the services were medically necessary and actually delivered, and even if they can document that, and that the person was eligible. They have to meet those three requirements, but even, you know, if that's all documented but there's a piece of paperwork out of order, 20 percent of the cost of the service I already provided you will be eaten by my service provider organization that's already financially stressed. Doesn't sound like very smart policy to me.

SENATOR MARTEL: Thank you very much, Mr. President. On this unbelievable morning so far. I rise in opposition to, I'm trying to overturn the committee report of inexpedient to legislate on this bill and I wish to speak to that, Mr. President. This bill was a request of the Department of Health and Human Services to help providers in cases where it has been an issue where the provider has not complied with federal or state rules, but has not risen to the criminal level, such as fraud. An example of this could be a case where a physician works in an office and other providers, who are certified Medicaid providers, and believes that they are certified as well, but they are not. In this case, the procedures were performed in good faith, but the provider was not a licensed Medicaid provider. Currently, when these compliance violations occur, the Department expends much staff time reviewing records and semi-staffs the site to ensure the noncompliance was not intentional and ensure that the services were in fact provided. After this has been determined, the Department currently has the ability under federal law to recover 100 percent of the cost they gave the provider to perform the same service. The Department of Health and Human Services feels this approach is not fair to providers whose noncompliance was unintentional. This legislation would give the Department another option by allowing them to impose only up to 20 percent penalty on the provider to recoup what the Department spent reviewing the situation. I want to emphasize that this penalty would only be used in situations where the Department currently has the authority to recover 100 percent of the cost, and in no case would the 20 percent penalty be in addition to the 100 percent recovery. Presently, the Department does not have the authority to impose a fine on providers or a lesser penalty. It is an all or nothing situation for the Department now. Either the Department can recover the claim paid to a provider who is out of compliance, or do nothing. This penalty would not be used if, upon investigation, it were clear that the provider had not fully notified...was not fully notified of all the appropriate rules with the New Hampshire Medicaid Program. The provider would be educated and on the rules, a follow up re-

view would occur to ensure compliance, and if noncompliance were still an issue, then up to 20 percent penalty may be appropriate. The SURS unit, "SURS", at the Department of Health and Human Services is already performing these reviews. This legislation would not require any new staff. At the public hearing, we heard from the Attorney General's Office that they do have the ability to negotiate for a penalty less than 100 percent. But this process is much more cumbersome, and requires the case be taken to a new and more adversarial level. In addition, if it gets to that level, it is more costly and will require lawyers and more action. The process is then more difficult and it brings it to a new level, and is not easy to do. Senate Bill 367 would allow the Department to recoup the cost of having to send staff out to review records to insure that noncompliance was not intentional and that the services were provided. When we first received this bill, the language was extremely complex. The amendment before you clarifies the intent of the Department. This rule would allow the Department to maintain program integrity within New Hampshire Medicaid Program without alienating providers by conducting 100 percent recoveries for services they were provided, but were noncompliant with all the rules. Mr. President, this clarifies any and all confusions there may have been at the time of the hearing, and after the hearing when questions were asked, and then when the committee was in executive session, and you know, those confusions just continued. And the more we tried to clarify them, it seemed that the confusion still remained. Let me be clear. At no time will this recovery be on top of the 100 percent recovery the Department is now allowed under federal rules; it is only 20 percent for noncompliance, as a situation where there's an agreement between both parties. Phillip Bradley at the Attorney General's Office is in support of this legislation, so is Judy Reardon, oh excuse me she opposes the legislation, but Sherry Bozoian supports the legislation as well from the Department of Health and Human Services. So, Mr. President, I now move that, you know, well wait to vote on overturning this position of the committee, and I ask then that we make another motion to move on. Thank you, Mr. President.

SENATOR HASSAN: Thank you, Mr. President. I rise to in support of the committee recommendation of ITL and I rise to remind folks that it is not just the Medicaid providers who we impact with this vote; it is Medicaid recipients. The fewer providers there are out there, and there may be, if we enact this legislation, because they're now looking at providing medical services for less than cost, our reimbursement is generally less than cost, of the actual service and, on top of that, if they make a clerical error in an extraordinarily complicated regulatory environment, they now risk a further 20 percent reduction. This is going to push some small providers that many Medicaid recipients rely on, out of the Medicaid business, and you know, it will limit access to medical care for more and more of our most vulnerable citizens. So I would ask the Senate to support the committee recommendation. Thank you.

SENATOR BOYCE: Thank you, Mr. President. I rise in opposition to the committee report, and I cite the fiscal note as part of the reason for that, and I understand there is an amendment to make this even more clear. But the fiscal note states that this bill allows the SURS unit, the what does it actually stand for, the "Surveillance and Utilization Review Service", to generate incremental revenue through the collection of partial recoveries, 20 percent, from cases that currently would not generate any revenue. In other words, if there's a case where the Department believes there was an overpayment, and there are no records to back up what

that service was, currently, they can try and take the provider to court and recover the entire 100 percent, probably at a cost to the Attorney General's Office of more than the value of that claim, and therefore we get nothing. We don't go after those cases because they're not worth the time and effort to go after them. This gives them the option, and it is an option, it says "may," they "may" impose a penalty of up to 20 percent. They can negotiate with the provider, and say we believe you got money you shouldn't have gotten. We believe we can go to court and get all 100 percent of what you got. We also believe that would cost us more than it's worth. We believe that maybe, if you give us back 20 percent of it, we'll say okay, don't do it again. That's what this is about. This is about allowing the Department to go after people who are taking state money and not showing that they were entitled to it. They're not going to go after somebody because they've left out a comma in the documents. They're going to go after somebody who lost the whole document, and therefore, there's no substantiation to go after them on. There's no record to go after. If they lose the records conveniently, how do we go after them? This is simply saying that we allow them to go after a partial recovery instead of having to go to court and try to get the whole 100 percent. It's going to cost us \$20,000 to recover 10. That doesn't make any sense. But if we can sit down with the provider and say, "Look, you owe us \$10,000. We're going to take 2,000 and we're going to watch you closer next time. We'll let you go." That makes a lot of sense to me. And that's why I'm in opposition to the committee report, and I would like to see the amendment that's been talked about.

SENATOR LETOURNEAU: Thank you, Mr. President. Senator Martel had answered several of the, addressed several of the issues that I was going to bring up. But I wonder if I might ask him a question? Senator Gatsas?

SENATOR GATSAS (In the Chair): I'm sorry.

SENATOR LETOURNEAU: I'd like to turn it into asking Senator Martel a question.

SENATOR GATSAS (In the Chair): Question, Senator Letourneau.

SENATOR LETOURNEAU: Thank you, Mr. President. You already addressed most of what I wanted to present here, but I want to ask you the question that if, does this working in some other states? Do we have an example of how this thing works?

SENATOR MARTEL: The Department has records that show that this is very effective in other states in the country. I can't give you a list of names today, okay, but I'm sure that we could get those records and bring them to you, but it is effective in collecting in other states. That's the reason why this is being used like an example, okay, of how to collect these non-compliance payments of Medicaid that comes from the other doctors' offices or hospitals, institutions yet. And they're very fair and agreeable to both parties' work. So it's a win, win situation for both parties. Thank you.

SENATOR BRAGDON: Move the question.

SENATOR GATSAS (In the Chair): I have one more speaker. Senator Estabrook?

SENATOR ESTABROOK: Thank you, Mr. President. I wanted to rise to clarify a few points that have been made. This is very much about money. What's happening is that the Department is required by federal requirement to go out and investigate these service providers. That costs us

money to maintain the staff to do that. They're not finding enough fraud out there to bring in the money to cover those investigations, so they want to find a new source of revenue. So they propose that we institute a 20 percent penalty on providers, not for overpayment receipts, not for any fraudulent activity, but yes, simply because their paperwork is out of compliance. The Department's own paperwork is out of compliance half the time. So we're going to take what we need to do our job out of the hides of our Medicaid providers who are already under financial stress. The consequences will be exactly as Senator Hassan has identified. We will have less and less services available to our constituents. Try thinking about it that way.

**The question is on the committee report of inexpedient to legislate.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Burling, Green, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**The following Senators voted No: Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**Yeas: 10 - Nays: 13**

**Motion failed.**

**Senator Martel moved ought to pass.**

SENATOR BURLING: Thank you, Mr. President. Mr. President, I was intrigued to listen to the discussion in here. I thought it was very valuable, and it brought to mind a concept that I think we ought to contemplate. I don't believe there is any elected member of this Senate who does not believe at their very core in the principle of fundamental fairness. What this proposal does is put an obligation on one party to an ongoing and crucial contractual relationship which governs the affairs of people in this state who desperately need state services and who rely upon the state to see that they get those services. Unfortunately, the proposal before us now only affects one part of the bargain. Only those people on the providers' side of the contract who make mistakes in their paperwork are going to get hit with a 20 percent discretionary, whose discretion, that's a footnote, whose discretion, administrative penalty. Well since I know that every Senator in here believes in fundamental fairness, I think we ought to amend this bill, because apparently it's going to get passed. And I think we ought to say that what's sauce for the goose is sauce for the gander. I think we ought to say that, if the state, excuse the law French, screws up its paperwork, they should pay. That's a term we use occasionally in Cornish.

SENATOR GATSAS (In the Chair): Well, we don't use it anymore in the Senate Chamber.

SENATOR BURLING: To the extent that the state makes a mistake in its paperwork and withholds proper payment to a provider, that they should be subject to an administrative penalty. We're talking about non-volitional mistakes. We're talking about events that occur because people under pressure don't get their paperwork right. We're talking about fundamental fairness and the insurance that a system works well. And,

to that extent, Mr. President, I move that we special order this bill so that I may have time to prepare an amendment, as appropriate, and that we take up the matter of the proposed amendment later in the day.

SENATOR GATSAS (In the Chair): Senator, it's going to Finance. So, if you would like to prepare an amendment if this passes, and it goes on to Finance, you can prepare your amendment when it goes to Finance.

SENATOR BURLING: Mr. President, I respectfully request the chance to have that amendment considered as part of this debate because it is here that we're dealing with the issue of fundamental...

### PARLIAMENTARY INQUIRY

SENATOR MORSE: Parliamentary inquiry?

SENATOR GATSAS (In the Chair): Parliamentary inquiry.

SENATOR MORSE: The Senator was recognized to speak, he spoke, and at that point he cannot make a motion. There's a motion of ought to pass on the floor right now.

SENATOR BURLING: I'm sorry, Mr. President. I thought a motion to special order took precedence. I may be wrong in that and, in which case, I apologize humbly to the members of the Senate.

SENATOR GATSAS (In the Chair): You can't make that special motion?

SENATOR BURLING: Cannot. My apologies then, Mr. President. I apologize to all my colleagues.

SENATOR MARTEL: Very briefly, Mr. President. I just wanted to make it clear that the motion is ought to pass, not ought to pass as amended. I thought there was an amendment that was up in front of us, but there was not. The Department didn't send it, so there was no need for it. Thank you, Mr. President.

**Senator D'Allesandro moved that we Special Order SB 367-FN to the end of the day.**

SENATOR D'ALLESANDRO: Thank you, Mr. President. Mr. President, I rise to make a motion that we set aside this bill till the end of the day to give Senator Burling an opportunity to develop his amendment. We would take this bill up at the end of the day, thus giving him an opportunity to have that amendment drafted and we could have discussion on the floor.

**A division vote was requested.**

**Yeas: 9 – Nays: 13**

**Motion failed.**

**The question is on the motion of ought to pass.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 318-FN**, relative to the use of deadly force to protect oneself. Judiciary Committee. Inexpedient to legislate, Vote 4-2. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. Maybe we'll go four and o, but maybe not, on committee reports. I move SB 318 inexpedient to legislate. The bill seeks to extend the statutes permitting the use of deadly force to a level which would be unsafe for our communities and our

fellow citizens. Today, deadly force can only be used in a number of scenarios which have been thoughtfully and carefully laid out by our legislature over a number of years. You can use deadly force in a number of situations today. If somebody is about to use unlawful deadly force against you or a third person, if somebody's going to use it against you while committing or attempting to commit a burglary, somebody's about to kidnap you or commit a forcible sex offense against you or a third person, or somebody's likely to use unlawful force in the commission of a felony within the actor's home or curtilage. It's where our legislature has thought about this over the years and said that's a good place to do it. What does this bill do? This bill allows you to use deadly force if you are permitted to be in a place where you are, and somebody's going to use unlawful force against you. I think that is the wrong way to go with this piece of legislation, because I think it creates an unsafe situation that doesn't make things any safer than they are today. For example, or as an example, somebody came up and attempted to create a situation where they were going to take a piece of personal property from you, all they'd have to do is grab your arm and you could use deadly force the way this bill is written. You don't have to be in fear of really anything. No guns need to be brandished, no weapons need to be brandished, you don't need to fear for your life. If your property is being taken, you can respond with deadly force. Now who is opposed to this? The Chiefs of Police, and our own Attorney General's Office. Usually, we take their thoughts into consideration on pieces of legislation like this. The alleged need for the bill is grounded in our current statutory language which requires an individual to retreat, but the statute's clear when somebody might have to retreat. They only have to retreat if they can do so with "complete safety." Not a little bit of safety or some safety, with "complete safety", has to be clear, in their minds that there's no risk. The concern, I guess, and I'll probably hear this, is that it could be second guessed by somebody. So we spoke with our Attorney General's Office about this, and they explained that any time someone claims that they've acted in some kind of self defense, a presumption is made that their action was justified. The state must then prove, beyond a reasonable doubt, that their action wasn't justified. Let me say it again. It must be proven beyond a reasonable doubt that their action was not justified, assuming a charge was actually brought in that situation, which I think is highly unlikely, and by the way we heard of not a single situation, at least in the committee hearings, where something like this had really even come into effect. The state must prove, in effect, to a jury of our peers, that retreat with complete safety was possible, and they have to prove that beyond a reasonable doubt. This piece of legislation that exists here today is very, very well thought out, and it's worked in our state. This bill seeks to throw all that out and allow individuals to use deadly force whether it's necessary or not. I don't see how that's going to make our citizens more safe; I think it will make them less safe. Now the people who came to testify on this bill were few in favor. I think there were three, maybe four, other than the sponsors of the legislation. There was Mr. Alan Rice, who came to speak. Some of you know him; he's involved in gun matters and speaks on legislation on a frequent basis, and is very responsible, generally speaking, and we asked him, "What was the source of this legislation? Where did it come from?" And he said in the testimony that he got the idea from a law passed in the state of Florida. New Hampshire is not Florida and I don't want it to be Florida. We rank as one of the safest states in the nation. I think a couple days ago we got the award of the best place to live in the nation, and I have information that says

we're just about the safest in terms of violent crimes that are committed in our state, or crime at all. We're not Florida. We've all read about South Florida and the problems in crime in South Florida. I don't want to become Florida. Our laws are working now. They're carefully drafted, and they should remain as it is as a majority of the Judiciary Committee believed in a bipartisan vote. Please support ITL. Thank you.

SENATOR LETOURNEAU: Thank you, Mr. President. I rise in opposition to the ITL motion, and I'd like to speak to that motion. The right to self defense is a natural right. It's a right given to you by the Almighty, not some government. And it's recognized going all the way back to the Magna Carta, 1628, "no person shall be deprived of life or liberty or property without due process." It goes on to be recognized again by John Locke, in 1689, with the same principles, and further, that the right of the colonists of this country in 1772, or the rights of the colonists among the natural rights of the colonists are these first, "the right to life", secondly "to liberty", and the third to "property." And then in our own Declaration of Independence, "We hold these truths to be self evident, that all men are created equal and they are endowed by the creator with certain unalienable rights. Among these are life, liberty and the pursuit of happiness." Now I have the highest respect for our law enforcement, but they can't always be with us in times of trouble. And I hate to bring this up as an example, but a few years ago up in Colebrook, New Hampshire, Carl Drega shot and killed two of our troopers, men who were trained to defend themselves, who were armed. Then he went on to shoot a judge, Vickie Bunnell, who's reputed to have kept a gun in her pocketbook to protect herself against the same individual. But she decided to run out the back door instead, and he shot and killed her, shot her in the back. Had Vickie Bunnell used her right to self defense, she'd probably still be here today. Now I agree with Senator Foster on some of his points, but I've got to tell you, those of us who are able to carry, or the right to carry a pistol, concealed in this state, are already identified by the chiefs of police in this state as persons who are able to carry a weapon and are of good knowledge to them and of good character. There's not going to be death in the streets, but we have a primary right to defend ourselves. We don't need to run out the backdoor, or run from our car in the middle of the night. Mr. President, I would urge this body to turn down this ITL motion, and give us back our natural rights. Thank you.

SENATOR BRAGDON: Thank you, Mr. President. As the prime sponsor of Senate Bill 318, I rise obviously in opposition to the ITL recommendation. Simply put, this bill allows law abiding citizens, when confronted with deadly force, to be able to defend themselves from the attack without them having to worry about being charged with a crime themselves. Though current law allows self defense in one's home, it does not allow for self-defense, for example, in one's business or in one's vehicle. If a mother is toting her kids around in her car, and is confronted by an armed carjacker, current law requires her to surrender her car to the felon with the children still strapped in their car seats, even if she's a martial arts expert, or has anything that can be used as a weapon at her disposal. The bill simply provides protection from criminal prosecution and civil litigation for those who choose to protect themselves and their families from criminal attack. By passing SB 318, we send a clear message to the corrupt elements of our society that New Hampshire places a high value on the right of our citizens to protect themselves from attack. Thank you.



SENATOR FOSTER: Senator Bragdon, one of the reasons I read the statute that exists on our books today, is because I wanted to make the point that our legislatures thought about it. And one of the examples you gave was carjacking with kids in the car. Isn't carjacking with kids in the car kidnapping, and therefore, wouldn't our statutes today already allow the individual who was fortunate enough to be armed in that situation to use force? And deadly force?

SENATOR BRAGDON: Not knowing the details, I'm not sure it would be kidnapping. But let's say the kids weren't in the car, you still have to surrender your vehicle to somebody.

SENATOR FOSTER: So the point you're making is that we should be able to use deadly force if our property is being taken?

SENATOR BRAGDON: We should be able to defend ourselves when deadly force is used against us, even if it's not in our homes.

SENATOR FOSTER: Follow up? Does the bill that we're debating today say that deadly force has to be used against us or just unlawful force? Because I think the legislation says unlawful force, not deadly force.

SENATOR BRAGDON: Depending on the specific paragraph, sometimes it's deadly force, sometimes it's unlawful force in the commission of a crime, commission of a felony, excuse me.

SENATOR FOSTER: But I think what I am talking about is the amendment. The law clearly allows us already to use deadly force if we're in threat of deadly force ourselves. What this new bill does, what this new law does, it says that "in the commission of a felony of unlawful force". If any unlawful force is used, we can respond with deadly force. Isn't that what we're talking about today? Because that's how I read the legislation, and I believe that when I asked questions in the committee about that people said yes, you have a right, that's what the law says.

SENATOR BRAGDON: My understanding is that unlawful force in the commission of a felony.

SENATOR FOSTER: Thank you.

SENATOR CLEGG: Thank you, Mr. President. I rise in opposition to the ITL. The previous speaker made mention of, except for the sponsors, how many people spoke in support of the bill. It was three. Well, if you take out the legislators on both who supports the bill and who opposes the bill, only one person came to oppose the bill. Take out law enforcement and nobody came in opposition to the bill. So let's be real. Three people came from outside to testify in favor of the bill, and one person came from outside to oppose it. I can tell you right now that one group that didn't come in to testify in public was the Attorney General's Office. The Attorney General didn't come in when the comments and the questions would actually be part of the public record. The Attorney General came in to give their opinion during executive session, when there could be no rebuttal. There was no public record of what she said, and no one could ever hold them to the standard they claim exists. When I say "claims to exist", I know of a justifiable shooting in Nashua a few years ago where even the Nashua police wouldn't talk to the Attorney General's Office because there's not a level of trust when it comes to justification. I asked the Attorney General, "If someone punched me in the face, would I be allowed to use deadly force?" "No." "When they punch me in the face a second time, could I use deadly force?" "No." "How about a third time?" "Well, no." "How about if that person was a professional boxer?" Now

think back to the police officer who got beat up by a professional boxer, suddenly the light bulb went off, "Well yeah." So what am I supposed to do while the guy's beating me up? I have the ability to defend myself, but I've got to ask him the right questions. Are you a professional boxer? If he says no, I better think, geez, well are you a martial artist? All the while I'm getting pummeled. I have the ability to stop my face from being crushed, but if I go by the AG, I've got to ask some questions first. How about running away. "Well, I guess you don't have to turn your back, but if you can get off to the side you can". So now I have to think okay, I have a gun, he's got a baseball bat. Maybe he won't use it, maybe he will. He really only wants my wallet, if I just give him my wallet. Well, wait a minute, why should I give him my wallet? That's my money. But I can run off to the side. Hopefully he doesn't throw the baseball bat at me and hit me in the head. I don't know. But this is what the AG says, "Oh, but don't worry. If it happens, we'll be on your side." Whose side? If you're on my side, then let me defend myself against someone who thinks that my property ought to be in their pocket. Maybe the \$100 I have in my pocket's the groceries for my family for the week, and somebody says "I want your \$100 because I want to go get high. Give it to me." You think I don't have the right to protect myself? Now maybe I don't have to shoot him, maybe I don't have to show the gun. Then again, maybe he's a professional boxer and wants to beat me to a pulp for my \$100 grocery money. And we're going to say, because the previous legislature never thought about this, that we shouldn't change it. Well it's a changing world. I can talk to thousands of people in the state of New Hampshire who will tell you that they used to leave their doors unlocked and not many people do that today. I can talk to you about people who used to say it was great to be able to leave your car, walk downtown, you never worried about getting accosted. How many of you have parked in the legislative garage and never thought about somebody coming up and robbing you until a few weeks ago? It's changed. This isn't rural New Hampshire anymore, and we should be allowed to protect ourselves by any means, so long as the person we're protecting ourselves from is acting unlawfully. Thank you, Mr. President.

SENATOR FLANDERS: Thank you, Mr. President. I'll be very brief. I'm going to vote with the committee on this, and I just want to explain why. I think that Senator Foster did a wonderful job by explaining the legislation, but the example used by Senator Letourneau, is in my opinion, if Judge Bunnell had reached in her pocketbook and shot Carl Drega when he walked into her office, you didn't need this legislation. You don't need this legislation. She chose, rather than reach into her pocketbook if there was a gun, she chose to run. This legislation is not going to change that. Senator Clegg is talking about, when he first started talking, the example he was talking about, getting hit in the face, then it went to a baseball bat. I think that changes the situation of what you're being attacked with, with the baseball bat. The legislation that we have, in my opinion, covers all of the situations we have. I see no need to put any such legislation like this on our books. I'm going to say again, exactly what Senator Foster said. We have just been voted three years in a row the best state to live in. Are we looking for a problem? Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in support of the committee. We're all concerned about safety; we're all concerned about security. As Senator Flanders just said, we're voted the best place in the United States to live. Well safety and security come as part of that designation. The laws that we currently have in the

books, RSA 626:7 and RSA 627:1 are pretty explicit, and there is, and let me say, a common misconception about these laws. The person who uses deadly force does not have to prove that he or she acted in self defense. Rather, there is a presumption that she did so, and that the prosecution is required to rebut this presumption in order to obtain a conviction. So, obviously, if you perceive that there is a problem, you can use deadly force now. That's part of the law, and our current statutes have been good. Our law enforcement plays a significant role in protecting the public. In my community, they do an outstanding job and, in the communities I represent, they do an outstanding job. Our crime rate is low, our incidents of conviction, if indeed a crime occurs is high. We do a very good job. We do a very good job given the statutes that are in place now. We don't need to create a situation where our cities become shooting galleries. We don't need that. What we need is safety and security. That's in place as I speak. Under the current law, a person is justified in using deadly force against another if the person reasonably believes, reasonably believes, that the other person is about to use deadly force against her or another person, is about to commit kidnapping or a forcible sex offense, is likely to use any unlawful force against her or another person while committing or attempting to commit a burglary, is likely to use any unlawful force in the commission of a felony, against her or within her dwelling or curtilage. The current law works. The current law is accessible. We have significant protection for the individual. They can exercise that given the circumstances that I've just portrayed and looking at our statutes. We're considered the best place to live in the United States. Why do we need something like this that in essence creates a perception that it's not a good place to live? It is a good place to live. We have the ability to own arms. We have the ability to use them. Sealed permits have been given out. There's never been a problem with that, the possession of a concealed weapon. There is no evidence that the current law is being abused or needs revision. The law, as currently written, reaches a proper balance between the right to protect oneself and the need to prevent unnecessary loss of human life. Unnecessary loss of human life, because once a life is taken, that life can't be restored. Thank you, Mr. President.

SENATOR LETOURNEAU: Thank you. As I read this bill, Senator, it only changes the language from within a person's dwelling to any place where one of our citizens has a right to be. Wouldn't you say that that covers it all?

SENATOR D'ALLESANDRO: Thank you, Senator Letourneau. My perception is that exists today. You have that right today, given the current statutes that we have in place and the circumstances that I've presented. We have that today.

SENATOR LETOURNEAU: Senator, if we have that right today, what's your opposition to putting it into the law?

SENATOR D'ALLESANDRO: I think we have the law. Why create another one?

SENATOR LETOURNEAU: Apparently it's not there.

SENATOR BURLING: Thank you, Mr. President. Senator D'Allesandro, would you yield to a question?

SENATOR D'ALLESANDRO: Yes, the member yields.

SENATOR BURLING: I would like to focus for a minute on the issue of duties that we owe, as members of this Senate. Would you agree that we have some duty to provide the police departments and the Department of Justice with the tools that they need to prosecute the laws of the state of New Hampshire and to ensure the public safety of the people of New Hampshire? And, would you agree with me that they've been very clear about what they want, vis-à-vis this bill?

SENATOR D'ALLESANDRO: Yes.

SENATOR BURLING: And so, if I represented to you Senator, that the Attorney General had stopped and talked with me about how very much she wanted this bill to be defeated, would you think that was a good reason to vote no?

SENATOR D'ALLESANDRO: I would believe you, and certainly taking that into consideration is very important.

SENATOR BURLING: Thank you.

SENATOR CLEGG: Senator D'Allesandro, if you'll yield?

SENATOR D'ALLESANDRO: Of course, Senator Clegg.

SENATOR CLEGG: Senator D'Allesandro, since you seem to believe that the bill isn't necessary because it's already covered in law, but I would love to be able to show you what the AG said, but the AG never spoke in public. But I can tell you that the AG, when they spoke in executive session, had a totally opposite view that you and I probably have. So don't you think it would be better to assist ourselves and show the AG that that's what we think, that you have the right to defend yourselves? When the AG says, and again, I wish I could show you, but they never spoke in public. Don't you think that we ought to be able to define that for ourselves?

SENATOR D'ALLESANDRO: Senator, you make a good point. That would have been nice to have happened in the committee so that you had, an accurate record of what the Attorney General felt. But my perception is, after reading the law, and after making my own decisions, that I think the current report is the way to go. Thank you.

SENATOR HASSAN: Thank you, Mr. President. I wasn't planning to speak on this, but some of the discussion that we've had this morning causes me to rise in support of the committee's recommendation to ITL, because, as I listen to the discussion, and I went back and read this bill, it appears to me that this bill would allow the following scenario to occur. A young person in one of our communities, let's say a teenager, develops a drug problem, and as a result of developing that drug problem, the teenager decides to run down the street and snatch my laptop out of my hand, no evidence that the teenager is armed, runs by me, snatches the laptop. According to this bill, I get to then pull out a gun and shoot that teenager dead. I value that teenager's life more than I value my laptop. That teenager, according to this bill, that teenager does not have to put me in danger for me to be entitled to shoot him or her and I think that is wrong. Our current statute is well thought out. We have not heard of one example at the hearing, as I understand it, because I asked members of the Committee, one example, of a New Hampshire situation where somebody has been charged with murder or manslaughter or any kind of homicide because of a misapplication of our current statute. I know that crime scares us all, but our current statute allows us to protect ourselves with deadly force in our homes and curtilage, and when we are

ourselves in fear of deadly force. And I do not want to start punishing petty criminals or misguided people who are not putting anyone in physical harm by shooting them. Thank you.

SENATOR CLEGG: Senator Hassan, if she'll yield?

SENATOR HASSAN: Yes, sir.

SENATOR CLEGG: Senator Hassan, I actually have two questions. First one is that you said that you heard nothing, that there's been nothing that's happened that would warrant this, and I just want you to know that you're in good company, because Chief Bailey said the same thing. And I'll ask you the same question I asked him. Should we wait until something drastic happens before we consider doing something like this?

SENATOR HASSAN: Since I believe our law already protects us from anything drastic happening, I don't think **TAPE CHANGE**

SENATOR CLEGG: **TAPE CHANGE**...doesn't agree with your interpretation nor would Senator D'Allesandro's, and again, I'd like to state for the record that I'd be happy to show you that testimony, if the AG's office had come during public, and we had a record of what she said. So I guess you have to take my word that she doesn't agree. How do we fix that if we don't pass this bill?

SENATOR HASSAN: Well, sir, first of all I would respond that if the AG's Office appeared in executive session they obviously did appear in public since executive sessions are held in public. I'm sorry I couldn't attend. But I do...I have read the Attorney General's Office letter, and I do believe, as I understand current law, and as I understand the Attorney General's position, that there is a current balance that allows us to protect ourselves from deadly harm.

SENATOR CLEGG: Follow up? Senator, do you agree that executive sessions are not recorded, so there really is no public record?

SENATOR HASSAN: I agree that there is no public transcript. Yes.

SENATOR CLEGG: Thank you.

SENATOR BOYCE: I'm trying to figure out a scenario that makes sense to me on this, and I'm curious if, let's say, a young woman, a single mother, had to evict her live-in boyfriend because of some situation, and someone who wasn't related to her, a friend, came to be there when this person was being put out of the house. And let's say for instance, the guy being thrown out goes into a rampage and starts destroying everything in the house. He's not hitting her, and it's not this other person's house. And, in the process, the person that's there helping simply takes the guy and throws him bodily out the door. The guy hits his head on a rock. Under the current law, would you believe that person possibly could be charged with manslaughter? Would this allow them to have a defense that they used that deadly force, not in defense of their own house, not because they thought that they were going to be injured, or somebody else was going to be injured, but simply because somebody was causing a felony, and they used the force they thought was necessary to stop the perpetrator, and it resulted in a death? Do you think that person should be charged with manslaughter, and would this bill possibly help us in that situation?

SENATOR CLEGG: Well, in all honesty, I believe the situation you just explained is already covered under the law. It's within someone's residence, and curtilage, and the force was used against someone committing a felony. So we are covered.

SENATOR BOYCE: But it was not his house and it was no threat against him personally, I'm just, it seems to me a loophole in the current law, and I'm just curious.

SENATOR CLEGG: Well it certainly...the one point you make is that deadly force isn't always a gun. It could be someone's abilities, it could be the professional boxer, a martial artist, on the other side, defending themselves. So I guess the answer to your question is yes, but the scenario you give is kind of clouded as to which part of the law we would actually use.

SENATOR BOYCE: Okay. Thank you.

SENATOR LARSEN: Thank you, Mr. President. We've been hearing...we've been hearing that the Attorney General did not weigh in on this. This issue today is truly about the safety of our families and our streets. And I trust, between the Attorney General's Office, Criminal Justice Bureau and the New Hampshire Association of the Chiefs of Police, that their assessment of the safety of our streets is the one which is more likely to have a reasonable basis. We heard the Attorney General did not weigh in on this issue. I have a letter dated February 22, 2006. Many of us have this letter; it was copied to Senators Clegg and Foster; it was written to Senator Burling; and it identifies their position, and I'd like to just read the summary page. We've heard a little bit of what they had to say, but they summarized it, saying in short, "Senate Bill 318 would drastically alter the current law and condone the use of deadly force in situations that would present a serious risk to the public or in which the use of such force was not warranted. RSA 627:4, in combination with the requirement that the state disprove self defense beyond a reasonable doubt, provides ample protection for those who are forced to use deadly force in self defense." The letter goes on to say, "Indeed in the past year the Attorney General's Office has twice made the decision not to charge a person who has killed someone and claimed self defense because the circumstances indicated the use of deadly force was justified under the statute. There is no evidence that the current law is being abused or needs revision. The law as currently written, provides a proper balance between the right to protect oneself and the need to prevent the unnecessary loss of human life." That is the Attorney General's statement. Nathaniel Sawyer, New Hampshire Association of Chiefs of Police writes, "Senate Bill 318 would extend the more lenient standard now applicable only to one's dwelling and curtilage to any place where a person has a right to be." Here again, they say "our safety is important." That place would include any public place such as a mall, a school, an airport or simply walking down the street. It would permit a person to use deadly force against another in those situations, even if the person could readily remove him or herself from the situation with complete safety and without exposing anyone else to danger from the use of deadly force. The Chiefs of Police write, "We are not aware of any problems with the current law that would warrant such a significant expansion of the law. On the other hand, such an expansion could increase the potential for deadly encounters erupting on our streets." Do you want your streets to be safe? Do you want to feel safe walking down the street? You have to vote with the committee if you believe that those who are best in control of the safety of our streets feel that we are increasing the potential for deadly encounters erupting on our streets. This bill should be voted inexpedient to legislate. The Judiciary Committee was wise in their vote, and took some courage, but listen to those who know the safety of our streets best, and vote with the committee, inexpedient to legislate.

SENATOR CLEGG: Senator Larsen. Senator Larsen, you cited two cases where the Attorney General had a case of self defense, and two deaths. Can you tell me if those two cases were inside someone's home and curtilage or were they just out in a random public area?

SENATOR LARSEN: I assume, because the Attorney General cited the case, it was one which they thought was a good example.

SENATOR CLEGG: Well was it a good example of someone out in public? In other words, you don't know where those cases, because I'm not aware of any, I want to say, self defense deaths outside someone's home. I'm aware of two recent cases that were inside someone's home. So, if they're citing two cases, can you tell me if they were two cases in public or two cases in your private home and curtilage?

SENATOR LARSEN: I do not know the specific instances that this letter alludes to, but I do know that, despite the common misconception, a person who uses deadly force does not have to prove they acted in self defense and there's a presumption that she did so, and so, in every case, whether it's on the street or in the home, there's a presumption the state would have to prove that you did not act in self defense.

SENATOR CLEGG: Follow up? Is there also something in the statute that says that, if you can remove yourself, that you're supposed to do that first?

SENATOR LARSEN: There is that, and that is one of the statements which is part of the law in RSA, in the RSA, and it also allows for you to use deadly force, and you have the presumption that you were protecting yourself and the state has to prove otherwise so.

SENATOR BURLING: Question of Senator Larsen. Is it not in fact the case, Senator, that the state's obligation, once the defense of self defense is raised, it is the state's obligation to prove the negative, and they have to do that beyond a reasonable doubt?

SENATOR LARSEN: That's correct.

SENATOR BURLING: In other words, they have to show that there was no questionable or colorable claim about self defense beyond a reasonable doubt.

SENATOR LARSEN: That's correct. That's the way the statute is, that's why both the Attorney General and the Chiefs of Police believe we have adequate protection for both the safety of our families, people on the streets, and people in their homes.

SENATOR BURLING: And, Senator, would I be correct in assuming that's under existing law without the benefit of this amendment?

SENATOR LARSEN: Absolutely.

SENATOR MORSE: Thank you, Mr. President I'm like to move to question.

SENATOR GATSAS (In the Chair): I have three more speakers.

SENATOR BARNES: Thank you, Mr. President. I want to start off with the Attorney General. Number one, I think she's doing a great job, and I think she's a great lady. I have no problem with Kelly Ayotte as our Attorney General. But I just heard a minute ago about a letter that went to three Senators. For some reason, she must have had me off her mailing list. I haven't received a letter concerning this important piece of legislation. I haven't seen it. Is my name on the letter, Senator? The

name you read, you didn't read my name. I haven't see a letter from the Attorney General. In years past, and I've been here for a couple of years, and I've been involved with some rather interesting issues concerning law enforcement, because 99 percent of the time I'm with the my chiefs of police and the sheriff and everybody else. In the past, Attorney Generals have talked to me. They've called me at home about their concerns. They've sent me letters. Well, I was a little surprised hearing all of this debate here today, that...then about the Attorney General, and I certainly don't want to knock her, she's doing a great job for the state and for the citizens in the state, and she will continue to. But if this issue is so darn important to her, I think I should have received a letter like every other Senator should have received. Second point. About two weeks ago, just before the break, and a couple of you met the young man, he's a police chief in Pittsfield. Pittsfield happens to be in the great District 17. He said, "I'd like to come in and talk with you, Senator," I said come on down. He came in and guess what? He had two pieces of legislation, this was one of them he wanted to talk to me about. And we had an understanding when he left the room, he knew exactly where I was coming from. And I said to him, "Why are you here? What is your capacity?" Well he happens to be of the Chiefs' Association, he apparently is the government relations individual. Now last night, I got home rather late, we had a birthday party for my wife with the kids, and there was a message from my police chief. Wanted to talk to me. Called this morning at 7:30 didn't come on 'til 8 o'clock, so I didn't get a chance to talk to him. I called him before we came in here, and he's in a meeting in Plaistow. So I haven't talked to my chief. I don't know if that's what he wants to talk to me about, or if he wants to tell me I was driving too fast yesterday. But I represent twelve towns, and I've only heard from the gentleman from Pittsfield who does represent, he's the government relations fella, but if it's such a darn big issue in District 17, with the chiefs of police, I'm a little surprised my phone didn't ring, because boy it rings on other matters. I will rest my case that I don't think every chief of police in this state of New Hampshire feels the same way that maybe the Association does. I don't think they all march to the same tune. I don't want everybody in this room to think that every police chief out there is against this bill because I've got a hunch that they aren't. And I was going to ask to move to question, but it's already been done very eloquently by my comrade from Salem, so I'll sit down. I know you have two more speakers, and the horse is kind of dead and the legs are up in the air. So let's move it and go to lunch.

SENATOR FOSTER: I'm not sure if I've ever spoken for a second time on a bill, so I ask for people's indulgence. One point I wanted to make, and it was actually been raised in some of Senator Letourneau's comments, is keep in mind that what the legislation does, is it says that this ability to use unlawful force arises when you're in any place where the actor has a right to be. So if I'm at a bar, and I'm acting up, and the bouncer goes to throw me out, and uses unlawful force against me and tosses me out, and I think that it's inappropriate 'cause he's assaulting me, and I have a right to be there, can I use deadly force if this bill passes? I don't know, but I'll tell you what, we're going to have a lot of litigation over that issue, a lot of fights over that. Second point I wanted to make was, I commented on the people testifying, and I did it because, having served on Judiciary for three years, when issues of gun rights and issues related to that come up, my experience has been that I can't fit the



number of people into the room, and the hearing goes on for a long time, because when issues of this come up and, people care about it, they come out in droves. And I also get, traditionally, a heck of a lot of emails, and a lot of phone calls, and a lot of letters, and I'm not sure I've gotten an handful. I got a letter from a particular national organization, I suspect all of us did, but I didn't get a lot of communications on this issue, as dying for people to want this, that this is something necessary to expand their rights. So that's why I raised that. On Senator Boyce's question, in fact, Senator Clegg answered it right, but actually there's another provision that would have covered that situation where we're allowed to use deadly force, is someone likely to use any unlawful force against a person present while committing or attempting to commit a burglary, which is what's going on when you're tearing up a house and putting somebody at least a little bit at concern for their own person. So I still haven't heard a scenario really today, other than the ones that Senator Clegg raised about being punched in the face, and that kind of gets me to my last point. And if I made a mistake with a hearing, and I think I did, I should have recessed it, because Ann Rice called that day, who testifies before our committee on all criminal law matters, and indicated she couldn't be there because she had a conflict over in the House, and I think all of us have conflicts that come up. And we all know that Representative Crowe has a similar bill over in the House, and we know the Attorney General's Office testified as to that, and we all heard the news reports about the Attorney General's position on a very similar piece of legislation. And yes, Attorney Rice did write us a letter, and it was submitted to the people in the committee. Senator Clegg doesn't recall getting it, but I believe Senator Gottesman recalls getting it that day. And I don't think it's unusual for our agency heads to write letters to our committees, because I thought our committee process kind of meant something. We're the people that hear the testimony, and if I made a mistake in making sure that she was at the executive session, I will apologize for that. But I don't think it's all that unusual for us to have agency heads there when we're trying to figure out what's going on with a piece of legislation. So I asked her to come, and she did answer a series of questions, and Senator Clegg's right, it's not on the record, but all of us heard it, and after we heard that, the vote was what it was, which was 4-2 recommending inexpedient to legislate. So I ask again that you support that motion. Thank you, Mr. President.

SENATOR BRAGDON: Thank you, Mr. President. I had thought about moving to question, but since I'll be the last speaker, I think I'll, I had originally asked to speak for a second time. Two things I think I'd like to point out, just for the record and some clarification. Senator Hassan used an example of somebody running by and grabbing your laptop and taking it and running off, and then this bill would allow you to shoot them. That's not the case because, at that point, the felony has already occurred. So I would clarify, just for the public record, that that's not an example of something that this bill would allow. And the second thing that's been brought up is boy, this hasn't happened before, we really don't need the passage of this law because clearly it's all taken care of, even though it may not say that in the law right now. I can only say that, up until the Kelo decision in Connecticut, who would have thought that the state would take somebody's land and give it to somebody else. Clearly sometimes you have to take action before things happen. Thank you, Mr. President.

SENATOR HASSAN: Thank you, Mr. President. Question of Senator Bragdon, if I might? On the example I gave and your response, if there are just two people on that street, who gets to say whether the shooting occurred in the actual taking of the laptop or shortly thereafter? If there are only two people there, how do we know what happened?

SENATOR BRAGDON: Well, it would certainly would be disputed, wouldn't it?

SENATOR HASSAN: Thank you.

**The question is on the committee report of inexpedient to legislate.**

**A roll call was requested by Senator Hassan.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Burling, Green, Flanders, Odell, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**The following Senators voted No: Gallus, Kenney, Boyce, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**Yeas: 11 - Nays: 12**

**The committee report of inexpedient to legislate failed.**

Senator Martel requested the record show he intended to vote yes on the motion inexpedient to legislate. Senator Martel did not request reconsideration on the vote.

Senator Bragdon moved ought to pass.

**Adopted.**

**Ordered to third reading.**

**Recess.**

**Out of recess.**

### **COMMITTEE REPORTS**

**SB 368-FN**, relative to life settlements. Banks and Insurance Committee. Ought to pass, Vote 3-2. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President. This is another easy one. This bill has been around well over a year. We've studied it, and I can tell you that the original bill has been rewritten and ripped up and rewritten and added to and amended, and it's one of those bills that we never, I don't care how many hours we sat down, we never were able to get full agreement. When we don't get full agreement, then we come in to the chamber and say okay, you decide. I think what you have to decide today is, we have agents coming into New Hampshire that are going to start selling viatical settlements. Right now, there are no statutes at all to govern it. What we tried to do is to come up with a system that would indeed govern what they do. What you got to realize that these people are coming in and going into people's homes, elderly people who may have just been diagnosed with cancer or diagnosed with something and they need money to pay their hospital bills or they need money to pay off this or that. And so they're surrendering their life insurance, for pennies on the dollar in most cases. My feeling was, and I'm going to share my thoughts with you, was that the person going into my house

when I'm old and senile, I want them to know what they're doing. This bill says they have to have some training. It says that they just can't walk around and come in and start doing it. These are life insurance salesmen and they've got to know what they're doing and they've got to know how to treat the customers. What we've tried to do in this bill is to have a consumer protection for the elderly and the people who are trying, who've got to cash in their life insurance. It's too bad they have to do this. This is a very small business in New Hampshire now, but it's going to get bigger and bigger as people live longer. So when the bill first came in, we went to the Insurance Department, and the Insurance Department went and they wrote regular language like other states, and like I said, it got amended and pushed and shoved and so forth. We think, three of us, felt that this was a good piece of legislation. So today is your day to decide whether you want these people coming in, having no training, maybe you don't even know what it is, going into somebody's house or into somebody's nursing home, and then saying okay, here's what I've got, the product and I'm going to take your life insurance policy and I'm going to give you pennies on the dollar. It's too bad this has to happen, but it's a way for people to bail themselves out of hospital bills and any type of debt that they may have. Basically, I'm not going to continue on it, but we've spent a lot of time on this, and I will admit that at no time did we ever all agree on it. So I think that what we have to do is to look at it today and say is this something we want to vote today and pass it on to the House and let them, they're going to argue about it, too, because we argued for about a year. But I would like to see it pass, I would like to see it go on. I think it's a situation that we really need in this state, and I'd hate in a couple years from now to find that some people have been really, really, **TAPE INAUDIBLE** because we didn't have any rules or regulations on this type of settlement. Thank you very much.

SENATOR GOTTESMAN: Thank you, Mr. President. I would like to congratulate Senator Flanders for making every possible effort to get the parties who are interested in this particular piece of legislation to talk to each other. They just talked and talked and talked and nothing, as far as I'm concerned, came out in terms of an agreement. I have absolutely no dog in this fight, and I became very interested in it when I had to look up the word, what a viatical settlement was. I had no idea how this all worked, and I tried to educate myself on it. It is not as fearful as Senator Flanders has made you feel, but I think today we're not really talking about the underlying policy issue, should these products be here or not. They are already here, they are available for our citizens. There has been no complaint whatsoever about these products in New Hampshire. The Insurance Department has not processed one complaint about these products, and as far as we know, no one has had any trouble with it. So the policy issue is not really what we're talking about. What we're talking about is that there are two competing versions of this particular bill. One is from the people who actually sell the product, and they were the ones who actually brought this in anticipation that some day there might be some regulation, and the other is what the Insurance Department has come out with. Strange as it may be, since I've been on the Banks and Insurance Committee, every time the Insurance Department comes in, they tell us what they're proposing is the NAIC model. In this case, the people who came in with the bill originally, actually brought in the NAIC model, but that was not what the Insurance Department was willing to accept. They want much, much more regulation in terms of licensing beyond what is expected of any other licensed insurance broker in the state,

in my opinion, so that they would keep this product from growing and competing with them for things that they're selling. Many other states have adopted legislation on this, but they have adopted legislation closer to what the, not the version that the Insurance Department has brought forward. I am looking at this particular product as an alternative for some people who have insurance who may want to cash in their policy at some point in time and receive more than what the life insurance company wants to pay. Now if you think about this simply. What the life insurance companies actually object to, is that someday they're going to have to actually pay these policies. So many people pay premium and premium and premium, and then they give up their policy, they cash them in, and they get a very short return on their money. This gives someone who owns a policy an opportunity to go talk to another broker about buying their policy. Now, as Senator Flanders said, we tried to incorporate all sorts of consumer protections in this. Some of them are there, in both versions, and I think we've tried to do a pretty good job about this. The one thing that I want to tell you is that the NAIC is actually going to review this whole policy in their upcoming meeting. It's number one on their agenda. They review these things every five years. So, even if we do this, there's going to be a change that comes in shortly, within a year, that says no we don't want to do it the way you've done it, we want to do it all over again. So I frankly think that, and I want to mention to you that Senator Foster had to attend a funeral that day, and I'll speak for him, and I think he would have been the other person added to the 2, so it would have been 3 to 3, and I think under the rules that we've discussed, it would have been ITL. So I would like to ask you to vote no on the ought to pass, and send them away for awhile 'til they come back with a version that meets the NAIC model as it is going to be constructed going forward. Thank you.

SENATOR BARNES: Thank you, Mr. President. Senator, would you believe that this happened in many committees over the past year and a half when a vote comes up a tie somebody disappears so it doesn't come out inexpedient to legislate so it could come forward to this floor for debate? What I'm trying to say is that this bill would not, in my opinion, have been ITL if Senator Foster hadn't been there? Would you believe that?

SENATOR GOTTESMAN: If I may respond. I am not an expert on the rules of the Senate, but I think we had this very discussion this morning, and the discussion, as the information was related to me, is that if there is a tie vote, that the bill was going to come to the floor as an ITL, even though it was 3 to 3. And I'm relying on others for that information.

SENATOR BARNES: I appreciate that, but most committees, I don't think that we've had any 3 to 3 votes up here. I think somebody has disappeared, gone to make a phone call when the vote comes up so it can get to the floor for a vote.

SENATOR GOTTESMAN: Well that may be. It hasn't happened in my presence, but I know you've been here longer than I have and I respect that.

SENATOR BARNES: Now this has just happened.

**Recess.**

**Out of recess.**

SENATOR FLANDERS: Thank you. I have talked to the Insurance Department about what Senator Gottesman testified to about being on the priority list. I'm told by Commissioner Sevigny that there's several insur-

ance laws in Washington and, as a result of that, that may not be discussed this year. And I'm just saying, notice I used the word "may", but I'm told from the meeting that Commissioner Sevigny just came back from. So I just want to remind everybody, and it was in my notes, and I didn't read it, that there have not been any complaints in New Hampshire, but there have been many complaints in other states where this type of product is being offered more readily than here in New Hampshire. So I just want to remind you for the last time, if you vote this down, you're going to have a bunch of people coming into New Hampshire, going around doing viatical settlements without any knowledge, without any licensing, without knowing the product probably. If you pass this, we've got some governing, we've got the Department overlooking. We have nobody else in the state of New Hampshire that can give a product in insurance that's not licensed and overlooked by the Insurance Department. Why would we let these people, who they're talking to the most dangerous people they could take advantage of, in the whole insurance industry? You've got to remember that, where they're going. Nursing homes, people's homes, eighty-five years old. No regulations. The Insurance Department will have absolutely no control over them. So if that's what you want, that's fine, because that's why we're here today, because we couldn't agree. But if you ITL this, then they can go fancy-free all over the state and whatever they do, if somebody complains to the Insurance Department, guess what? Insurance Department is not going to be able to do a thing. Some little old lady calls up and says hey, they took my insurance policy and gave me \$2.95. Commissioner Sevigny is going to say too bad, I can't do anything about it. Legislature didn't want to regulate them. So I'll just leave you with that thought. Thank you.

SENATOR GOTTESMAN: Senator Flanders, if I may. Do you recall there being anyone who came to the Banks and Insurance meeting and complained that there were eighty-five year old people in nursing homes asking to have their life insurance policy sold?

SENATOR FLANDERS: No, I don't recall any testimony, but I presume that's what the whole product is about, isn't it?

SENATOR GOTTESMAN: Are you aware, may I follow up? Are you aware that this is a product that actually can be used by anyone who owns a life insurance policy of your age, of my age, or someone who is old enough to have kept paying these premiums for years and then can choose to go to an outlet to try to get the highest value that they can for this policy? Are you aware of that?

SENATOR FLANDERS: I am aware of that. I also am aware, Senator, that we did hear testimony in the very beginning during the hearings and so forth that they came in and testified, and I remember him, somebody who had just been diagnosed with cancer, diagnosed with a fatal disease and they need money. Do you remember hearing that testimony? That would be the older person who is desperate for money, and that was the type of thing that I was referring to.

SENATOR GOTTESMAN: May I respond to that, Mr. President?

SENATOR GATSAS (In the Chair): You've got a question, Senator Flanders?

SENATOR FLANDERS: He asked me if I considered testimony and that's the testimony I remember hearing.

SENATOR GOTTESMAN: May I? Do you remember, Senator Flanders, that the testimony was that the origination of some of these policies was

during the time when age was a new development in our country, and that some people actually had to sell their policies to pay for medication and that's what we were talking about at the time, and therefore, special rules were put into place within those companies so people would not be taken advantage of? Do you remember that?

SENATOR FLANDERS: I remember it.

SENATOR GOTTESMAN: Thank you.

SENATOR FLANDERS: May I respond by saying that would depend upon the company, wouldn't it?

SENATOR GOTTESMAN: I would think it would as it would with any life insurance company that was selling a product.

SENATOR FOSTER: Thank you, Mr. President. I just want to speak briefly. Normally, I am very concerned about consumer protection issues, and it is true that this bill would provide some protections of some kind. The problem is that there are also other aspects of it that, in my view, would effectively make the ability to sell this product very limited. There are parts of this legislation which make the sales very difficult. And what I recall from the hearing, and I may have this slightly wrong, but it's pretty close, is that you'd have to have more time on the job, more training to sell viatical settlements and to sell life insurance policies, and whole life policies, and I can recall asking somebody what's so confusing about a viatical settlement, I go and I go so somebody, or somebody comes to me, or I go to them and I say well I'll offer you x amount of dollars, and you'll sell me the policy so the consumer gets a lump sum. The difficult part is knowing how much to pay for the thing, because you've got to pay premiums into the future. It's not that confusing for the consumer. Now, that isn't to say they can't be taken advantage of; they can in this bill will build with some of those things. But to me, this extra training that's necessary for people who sell viatical products, is really, I think, a desire to kind of keep the market small and to limit it, which means the consumers aren't going to get the product. So to me, this isn't the right solution today, and hopefully maybe, as I do think Senator Flanders tried to do, is try to get the parties together and to get a compromise. This just isn't the right compromise. Thank you.

**Motion failed.**

Senator Gottesman moved inexpedient to legislate.

**Adopted.**

**SB 368-FN is inexpedient to legislate.**

**SB 240**, relative to transmission poles or structures on public highways. Energy and Economic Development Committee. Inexpedient to legislate, Vote 2-1. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I thought we might actually pass a committee recommendation here, but I move to table.

**MOTION TO TABLE**

Senator Bragdon moved to have SB 240 laid on the table.

**Adopted.**

**LAIID ON THE TABLE**

**SB 240**, relative to transmission poles or structures on public highways.

**SB 243**, establishing a commission to study rural transit in New Hampshire. Energy and Economic Development Committee. Ought to pass, Vote 3-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move Senate Bill 243 ought to pass. This bill establishes a commission to study rural transit in New Hampshire. The committee heard testimony from numerous people and organizations who testified on the benefits of rural transit. The study committee will consider problems that may arise from rural transit and will work towards solutions. That being said, Mr. President, in view of our effort of consolidating, I would move to table 243 at this time.

SENATOR BOYCE: I move that Senate Bill 243 be laid upon the table.

### **MOTION TO TABLE**

Senator Boyce moved to have SB 243 laid on the table.

**Adopted.**

### **LAID ON THE TABLE**

**SB 243**, establishing a commission to study rural transit in New Hampshire.

**SB 292-FN**, relative to permits for combustion of certain waste. Energy and Economic Development Committee. Inexpedient to legislate, Vote 2-1. Senator Odell for the committee.

### **MOTION TO TABLE**

Senator Larsen moved to have SB 292-FN laid on the table.

**Adopted.**

### **LAID ON THE TABLE**

**SB 292-FN**, relative to permits for combustion of certain waste.

**SB 314-FN-L**, establishing minimum renewable standards for energy portfolios. Energy and Economic Development Committee. Ought to pass with amendment, Vote 4-1. Senator Odell for the committee.

## **Energy and Economic Development**

**March 1, 2006**

**2006-1248s**

**06/09**

### **Amendment to SB 314-FN-LOCAL**

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

I Statement of Purpose. The general court finds that:

I. Increased use of renewable energy technologies and continued use of existing renewable energy technologies that decrease nitrogen oxide and particulate matter emission rates can reduce air pollution in the state and air pollution transported across state lines, and thereby improve air quality and help advance long-term climate change strategies.

II. Renewable energy technologies provide fuel diversity to the state and New England generation supply and have the potential to lower and stabilize future energy costs by reducing the region's dependence on imported fossil fuels such as natural gas and oil.

III. It is in the public interest to stimulate investment in new, lower emission, renewable energy technologies and investments in improving air emission quality from existing renewable energy technologies.

IV. It is in the public interest to support incentives to reduce New Hampshire's consumption of fossil fuels consistent with regional, national, and international policy on promoting renewable energy and which also have the potential of reducing the long-term cost of energy.

2 New Subparagraph; Application of Receipts; Compliance Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (242) the following new subparagraph:

(243) Moneys deposited in the compliance fund established under RSA 374-G:6.

3 Default Service. Amend RSA 374-F:3, V(c) to read as follows:

(c) Default service should be designed to provide a safety net and to assure universal access and system integrity. Default service should be procured through the competitive market and may be administered by independent third parties. ***The default service so procured shall include any renewable energy certificates the utility is obliged to purchase pursuant to RSA 374-G, with the cost of such certificates or alternative compliance payments recovered through the default service charge.*** The allocation of the costs of administering default service should be borne by the customers of default service in a manner approved by the commission. If the commission determines it to be in the public interest, the commission may implement measures to discourage misuse, or long-term use, of default service. Revenues, if any, generated from such measures should be used to defray stranded costs.

4 New Chapter; Electric Provider Renewable Energy Requirement. Amend RSA by inserting after chapter 374-F the following new chapter:

## CHAPTER 374-G

### ELECTRIC PROVIDER RENEWABLE ENERGY REQUIREMENT

374-G:1 Definitions. In this chapter:

I. "Certificate" means the electronic record produced by the New England Power Pool Generation Information System (GIS) its designee or successor, identifying each mega-watt hour generated by a renewable energy resource or any successor mechanism that represents each megawatt-hour generated by a renewable energy resource, or such alternative documentation evidencing the same if the GIS is no longer maintained and no successor mechanism has been established.

II. "Commission" means the public utilities commission.

III. "Compliance year" means a calendar year beginning January 1 and ending December 31, for which a provider of electricity must demonstrate that it has met the requirements of this chapter.

IV. "Eligible biomass technologies" means biomass technologies using as their primary fuel source non-construction and demolition debris derived material such as brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips, shavings, sawdust, and slash; and energy crops, biogas, or biodiesel; provided that the generation unit has a quarterly average nitrogen oxide (NOx) emission rate of less than or equal to 0.075 pounds/million British thermal units (lbs/Mmbtu), and a quarterly average particulate emission rate of less than or equal to 0.02 lbs/Mmbtu. The term "primary fuel source" means at least 90 percent of the total energy input into the generating unit, on an Mmbtu basis.

V. "End-use customer" means any person or entity in New Hampshire that purchases electrical energy at retail.

VI. "Historical generation baseline" means the average annual electrical production from the eligible renewable energy resources, stated in megawatt-hours (MWhrs), for the 3 calendar years 1995 through 1997,



or for the first 36 months after the commercial operation date if that date is after December 31, 1994 (the “baseline period”); provided however, that the historical generation baseline shall be measured regardless of whether or not the average annual electrical production during the baseline period meets the eligible requirements of this paragraph.

VII. “Provider of electricity” means a provider of electricity to any end-use customer located in this state, including, without limitation, the local distribution company providing default service or similar service under state law, including RSA 374-F, but shall not include:

(a) A person who provides his or her own electricity from on-site generation which supplies electricity exclusively from renewable energy resources, qualifying small power production facilities, and qualifying cogeneration facilities as defined in RSA 362-A:1-a; or

(b) The provision of the internal electrical needs of any electrical generating station from its generation or from affiliate generation.

VIII. “Renewable energy resources” means new renewable energy resources – class I, incremental renewable energy resources – class I, or existing renewable energy resources – class II. An electrical generating facility selling its electrical output at long-term rates established before January 1, 2006 by orders of the commission under RSA 362-A:4 shall not be a renewable energy resource – class II, until the date on which it ceases to sell its electrical output at those original long-term rates.

IX. “Renewable energy resources – new-class IA” means the production of electricity from any of the following, provided the resource has a commercial operation date after January 1, 2006:

(a) Solar photovoltaic or solar thermal electric energy;

(b) Wind energy;

(c) Geothermal energy;

(d) Fuel cells utilizing renewable fuels;

(e) Ocean thermal, wave, or tidal energy;

(f) Biologically derived methane gas from anaerobic digestion of organic materials from such sources as yard waste, food waste, animal waste, sewage sludge, and septage, and landfill waste; and

(g) Eligible biomass technologies having a gross nameplate capacity of 50 megawatts (MW) or less, including any biomass unit whose primary fuel source was coal prior to January 1, 2006.

X. “Renewable energy resource – new-class IB” means the production of electricity from solar photovoltaic or solar thermal energy and an operation date after January 1, 2006.

XI. “Renewable energy resource – new incremental (class IC)” means the incremental output in any compliance year over the historical generation baseline, provided that such existing renewable energy resource (class II) was certified by the commission to have demonstrably completed capital investments after January 1, 2006 attributable to the efficiency improvements or additions of capacity that are sufficient to, were intended to, and can be demonstrated to increase annual electricity output. The determination of incremental production shall not be based on any operational changes at such facility not directly associated with the efficiency improvements or additions of capacity.

XII. “Renewable energy resources - existing (class IIA)” means the production of electricity from any of the following, provided the resource has a commercial operation date for electrical generation before January 1, 2006:

(a) Biologically derived methane gas from anaerobic digestion of organic materials from such things as yard waste, food waste, animal waste, sewage sludge and septage, and landfill waste;

(b) Eligible biomass technologies having a gross nameplate capacity of 25 MWs or less; and

(c) Municipal solid waste combustion technologies subject to RSA 125-M.

XIII. "Renewable energy resources – existing (class IIB)" means the production of electricity from hydroelectric energy that has a gross nameplate capacity of 5 MWs or less and are constricted in their operation by fish ladders or other similar fish facilities.

374-G:2 Minimum Renewable Standards for Energy Portfolios.

I. Providers of electricity in this state shall obtain renewable energy certificates from renewable energy resources to meet the minimum renewable standards for its energy portfolio established by this section.

II. For the period of January 1 through December 31, 2007, during that calendar year and in each subsequent calendar year through December 31, 2013 and as provided in RSA 374-G:4 of this chapter, a provider of electricity shall obtain renewable energy certificates from the various classes of renewable energy resources, defined in RSA 374-G:1, representing the following percentages of its total kilowatt-hours of electricity supplied to its end-use customers unless modified by the provisions in paragraph IV:

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>Thereafter</u>
Class IA +/or C	0.5%	1%	1%	1%	2%	3%	4%	4%
Class IB	0.01%	0.02%	0.04%	0.08%	0.15%	0.20%	0.30%	0.3%
Class IIA	3%	4%	5%	6%	6%	6%	6%	6%
Class IIB	1%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%

III. On or about January 1, 2010, the commission shall open a docket to conduct a review of the requirements in paragraph II and make recommendations for any changes to the legislature to be effective after July 1, 2011. In the docket the commission may also determine the adequacy or potential adequacy of renewable energy resources to meet the percentage requirements of paragraphs II and III of this section. If the commission determines an inadequacy or potential inadequacy of supplies for the required percentages, the commission shall recommend to the general court a revised schedule of required percentages to achieve the purposes of this chapter.

IV. If a provider of electricity represents to an end-use customer that the provider of electricity is selling to the retail customer energy that includes renewable energy resources, such representation shall include a statement of the minimum renewable standard for the provider of electricity established in paragraph II. The minimum renewable energy percentages set forth in RSA 374-G:2, II shall be met for each electrical energy product offered to end-use customers, in a manner that ensures that the amount of renewable energy to end-use customers voluntarily purchasing renewable energy is not counted toward meeting such percentages.

V. Wholesale and retail electric suppliers under supply contracts executed by providers of electricity as of the effective date of this chapter shall be exempt from the requirements of paragraphs II-IV, provided however, that no exemption shall extend beyond 36 months after the effective date of this chapter. Under no condition during this transition period shall a minimum renewal standard obligation be shifted to another customer or customer class in order to compensate for a delay in implementation of the minimum renewal standard to another customer or customer class due to this exemption.

### 374-G:3 Renewable Energy Certificates.

I. The renewable energy program established in this chapter shall utilize the regional generation information system (GIS) of energy certificates administered by the Independent System Operator-New England, Inc. (ISO-New England) and the New England Power Pool (NEPOOL) or their successors. If the regional GIS certificate tracking system administered by the ISO-New England is no longer operational or accessible, the commission shall develop an alternative certificate program, after public notice and hearing, designed to be as comparable to the GIS certificate tracking system as possible.

II. The commission shall designate in a timely manner New Hampshire eligible renewable resources to the ISO-New England.

III. Certificates obtained for purposes of complying with this chapter shall come from renewable energy resources within the ISO-New England region unless an external unit contract for delivery of the energy to the ISO-New England control area is executed and such contract includes associated transmission rights for delivery of the generation unit's electrical energy over the ties from an adjacent control area to the ISO-New England control area.

374-G:4 Sale or Exchange of Certificates. A certificate may be sold or otherwise exchanged by the renewable energy resource to which it was initially issued or by any other person or entity that acquires the certificate; however, the certificate may only be used once for compliance with the requirements of this chapter and may not be used for compliance with this chapter if used for compliance with any requirements of another jurisdiction. Except as otherwise provided in paragraphs II and III, certificates shall be used by providers of electricity for compliance with the requirements of RSA 374-G:2 in the calendar year in which the generation represented by the certificate was produced. Compliance with each year's RSA 374-G:2 requirement shall be determined with certificates issued in the certificate trading periods associated with the calendar year of compliance.

II. A provider of electricity may use certificates associated with renewable energy resource production during one calendar year for compliance with the requirements of this chapter in either of the 2 subsequent calendar years, provided such certificates:

(a) Have not been used for compliance in another jurisdiction and are used only once;

(b) Were in excess of those needed for compliance with this chapter in the year in which they were generated;

(c) Have not otherwise been, nor will be, sold, retired, claimed, or represented as part of electrical energy output or sale, or used to satisfy obligations in jurisdictions other than New Hampshire, demonstrated by retiring banked certificates in the compliance year in which they were generated; and

(d) Used by a provider of electricity do not exceed 30 percent of the provider's obligations under this chapter for the calendar year in which such certificates are used.

III. In addition to certificates produced in calendar year 2007, a provider of electricity may use renewable energy resources class I or class II certificates associated with generation during calendar year 2006 and those associated with generation during the first calendar quarter of 2008 for compliance with its calendar year 2007 obligations under RSA 374-G:2, provided:

(a) Renewable energy resources class I certificates are used for calendar 2007 class I obligations and renewable energy resources class II certificates are used for calendar year 2007 class II obligations; and

(b) No more than 30 percent of the 2007 calendar year obligation under RSA 374-G:2 of this chapter is met with such certificates.

374-G:5 Information Collection. Within 180 days of the end of each calendar year, each provider of electricity shall submit a report to the commission, in a form approved by the commission, documenting its compliance with the requirements of this chapter. The commission may investigate compliance and collect any information necessary to verify and audit the information provided to the commission by providers of electricity.

374-G:6 Alternative Compliance.

I. There is hereby established a compliance fund. This nonlapsing revolving special fund shall be continually appropriated to be expended by the commission in accordance with this section. The state treasurer shall invest the moneys deposited therein as provided by law. Interest received on investments made by the state treasurer shall also be credited to the fund. All payments to be made under this section shall be deposited in the fund. The moneys paid into the fund under paragraph II of this section shall be used and administered by the commission for the following purposes: supporting thermal and electrical renewable energy initiatives, energy efficiency, and demand-side management including programs that reduce demand for both electricity and non-renewable fuels used in heat production and transportation, with the exception of funds collected relative to compliance with class IB. The moneys paid into the fund relative to compliance with class IB production of electricity from solar photovoltaic or solar thermal energy shall be used by and administered by the commission for supporting solar energy resources.

II. An electricity provider shall discharge any annual class IA or IC, or both, shortfall in its portfolio requirements by making a payment into the fund of \$50 per megawatt-hour of renewable energy obligation in 2007 dollars, adjusted annually by the annual change in the United States Bureau of Labor Statistics Consumer Price Index, which may be made instead of standard means of compliance with the statute. The revised rate per megawatt-hour shall be published by the commission by January 31 of each year.

III. An electricity provider shall discharge any annual class IB shortfall in its portfolio requirements by making a payment into the fund of \$200 per megawatt-hour of renewable energy obligation in 2007 dollars, adjusted annually by the annual change in the United States Bureau of Labor Statistics Consumer Price Index, which may be made instead of standard means of compliance with this chapter. The commission by January 31 of each year shall publish the revised rate per megawatt-hour.

IV. An electricity provider shall discharge any annual class II shortfall in its portfolio requirements by making a payment into the fund of \$25 per megawatt-hour of renewable energy obligation in 2007 dollars, adjusted annually by the annual change in the United States Bureau of Labor Statistics Consumer Price Index, which may be made instead of standard means of compliance with this statute. The commission by January 31 of each year shall publish the revised rate per megawatt-hour.

374-G:7 Application.

I. The commission shall certify generation facilities as either renewable energy resources class I or class II by issuing a determination within 45 days of receipt of an application. The application shall contain the following:

- (a) Name and address of applicant;
- (b) Facility location and NEPOOL GIS identification number;
- (c) Description of the facility, including fuel type, gross generation capacity, commercial operation date, and, in the case of a biomass renewable energy resource, NOx and particulate matter emission rates and a description of pollution control equipment or practices proposed for compliance with applicable NOx and particulate matter emission rates; and
- (d) Such other information as the applicant may provide to assist in the determination of the generating facility as a renewable energy resource.

II. Biomass facilities otherwise meeting the requirements of a renewable energy resource shall be certified by the commission subject to compliance with the applicable NOx and particulate matter emission standards. Each such renewable energy resource shall file with the commission within 45 days of the end of each calendar quarter an affidavit attesting to the renewable energy resources average NOx emission rate in lbs/Mmbtu for such quarter and the particulate matter emission rate test results, in lbs/Mmbtu produced in accordance with RSA 374-G:8. Upon receipt of verification of emissions from the department of environmental services, the commission shall notify the GIS of such renewable energy resource's eligibility for certificates and trading as a renewable energy resource in New Hampshire.

374-G:8 Verification of Emissions. Any source seeking to qualify as an eligible biomass technology shall verify emissions in accordance with the following methods:

I. For nitrogen oxide emissions, the source shall install and operate continuous emissions monitors which meet department of environmental services' standards as codified in rules.

II. For particulate matter emissions, the source shall conduct stack tests in accordance with the New Hampshire department of environmental services' approved methods. Such tests shall be conducted annually for a period of 3 years. Upon completion of 3 annual tests which demonstrate compliance with the particulate matter emission rate specified in RSA 374-G:1, IV, the source may request, subject to New Hampshire department of environmental services' approval, to revise the particulate matter stack testing frequency to once every 3 years.

374-G:9 Rulemaking. The commission shall adopt rules as necessary, pursuant to RSA 541-A, to implement this program.

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

SENATOR ODELL: Thank you, Mr. President. I move Senate Bill 314-FN-L ought to pass with amendment. This bill establishes standards requiring the use of renewable energy resources by providers of electricity for sale to retail customers in New Hampshire. Similar bills have already passed in Massachusetts, Maine, Connecticut and Rhode Island. Vermont is currently considering comparable legislation. Passage of this bill will require that renewable resources must account for a certain percentage of the electricity sold to retail customers. Providers will verify compliance through a renewable energy certificate program, which provides for trading of renewable energy certificates among market participants. The amendment is the result of collaborative work between the Department of Environmental Services and varied interested parties. The testimony of each stakeholder was considered in creating an amendment that will allow them to reach the goals defined in the bill. The amendment also extends the grandfathering period to three years, which will allow contracts that predate the effective date of the legislation to

expire, without requiring contracts to be rewritten. Please join the Energy and Economic Development Committee in voting ought to pass with amendment and help send this bill to the Finance Committee for additional work. Thank you, Mr. President.

SENATOR MORSE: Senator Odell, thank God we had lunch. House Bill 1146, I don't know if it's come to your committee, or it's in your committee right now, but the bill establishing a committee to study renewable portfolio standards. Isn't that exactly what might happen with Senate Bill 314?

SENATOR ODELL: No, what is actually a piece... 314 is a bill that actually implements a renewable standards portfolio policy. The study bill that you have heard in our committee on Tuesday afternoon and it's being held in that committee with the understanding of the sponsor, and at a certain point, we would bring it to the floor for action here, and if it was adopted, probably put it on the table so it would be consolidated with other legislation dealing with energy policy.

SENATOR FULLER CLARK: I would also like to rise in support of this bill at this time and to say that, in relationship to the study committee, that the sponsor of the study committee is also a sponsor of this bill. But between the time when that study committee was filed and this legislation has been moved forward, many, many of the individuals that would have been involved in the study committee have been players in crafting the legislation that we're now urging to go before the Finance Committee for a discussion, not of the policy, but of the financial implications. And, because of the complexity of this bill, until the amendment is passed here on the floor through the recommendation of the policy committee, that's when we're going to be able to get the detailed analysis and implications with regard to the potential cost and the relationship of that cost to what we've seen happening to energy costs from external forces over this past year.

SENATOR MORSE: Thank you, Mr. President. Earlier today, when we were discussing this bill, I knew it was coming to Finance because there was some problems and I said that's fine, I'll agree to accept it in Finance, we can always turn it into a study committee, not knowing there was a study committee coming across from the House. Having said that, I'd like to speak now as to why I don't believe it is going to ever get out of Finance, it shouldn't come there in the first place, because this is 65 cents a month to almost \$8 a year on each user. Tens of millions of dollars eventually, are going to be taxed, taxed, on the people of the state of New Hampshire if we do this. So you can send it to Finance, but I can't believe that we're going to vote out a tax of this substance at all. So you may want to support it and do a goody two shoes thing, but I don't agree with that. You've sent enough bills to Finance already to sink a ship, and this is tens of millions of dollars that you're going to tax the people in the state of New Hampshire.

SENATOR BOYCE: Thank you, Mr. President. I rise in opposition to the committee report. And, as the chairman of Finance has said, I believe that the biggest problem with this is the cost. And while the goal of trying to reduce the reliance on imported fuels is admirable, I don't believe that that's what this does. And, in looking at the bill, it shows that by year 2014 and thereafter, over 11 percent of the electricity produced in the state or consumed in the state, would have to be produced by these alternative sources, and if those sources did not materialize, and nobody

was able to produce that electricity, then that 11 percent of everybody's, including the state, and the municipalities', electric bill would then be paid as a tax. A tax on that 11 percent would be \$25 per megawatt hour, \$200 per megawatt hour, \$50 per megawatt hour, or I think the other is 25. But, in other words, we're going to be saying that if we can't produce alternative energy in the state in the amounts that we need, we're going to be paying a tax on 11 percent of our electric use because of that. And the other side of this is that there are companies that are just chomping at the bit to have us pass this because they have some non-economically feasible production methods that they are just hoping that they will be able to put on line so that they can, instead of this tax of \$200 per megawatt hour, they can get paid \$199 per megawatt hour for producing that 11 percent of the electricity. So I see this as a boondoggle, something that's not ready for primetime, and I think that the study bill coming from the House is where we should go with this. Thank you.

SENATOR CLEGG: Thank you, Mr. President. I rise in support of the committee. While I'm not in favor of adding more taxes or more user fees **TAPE CHANGE** I still think Finance ought to take a look at this bill and see if maybe there isn't some money in something, some place, and I'm not saying there is, but if there's anybody that's creative, it's certainly the Finance Committee in the Senate. So the least we can do, money falls from the sky sometimes, up in smoke? So I think, from a policy perspective, I think the Energy and Economic Development Committee has done a good job, and the least we can do as members of Finance, and I am a member, is take the bill, see if we can make it work, and if we can't, we can come back next week and give the same speeches. Thank you, Mr. President.

SENATOR BURLING: There's no following that, Mr. President.

SENATOR BRAGDON: I had indicated I had wanted to speak. I thought you had written my name down, but apparently not. I rise as a cosponsor of the bill, and in agreement with what Senator Clegg said. The Energy and Economic Development Policy Committee feels that it's in the best long term strategic interest of the state to diversify our energy base, and enhance our environment as well. Clearly there's a number of complex financial implications there that should be looked at, which we believe is more fitting in the Finance Committee. I will point out that there was a range given of costs, and Senator Morse was kind enough to indicate the top end of the range at 65 cents per month. The bottom end of that range is 5 cents a month, which equates to, I believe, if my math serves me correct, 60 cents per year. So policy wise, we feel it's good. We'd like you to pass it on to Finance.

SENATOR FULLER CLARK: Senator Bragdon, could you also perhaps explain the issue of that there are some review mechanisms that have put in place? We were hearing the implications of what might happen in 2014. But it's my understanding that there are some opportunities to be able to revisit this legislation as we move forward to insure that there are not serious negative economic implications, and I'm wondering if you could comment on that.

SENATOR BRAGDON: Off the top of my head, I can't recall the details of those review mechanisms, though I agree they are in there. And I would also point out that the Office of Consumer Advocate is on board with this.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Bragdon.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Kenney, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**The following Senators voted No: Boyce, Gatsas, Morse.**

**Yeas: 20 - Nays: 3**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 653-FN-L**, relative to bonds for construction, development, improvement, and acquisition of broadband facilities. Energy and Economic Development Committee. Ought to pass, Vote 2-1. Senator Burling for the committee.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move Senate Bill 292-FN ought to pass. Mr. President, this bill...This is not my day. You know this is, I don't know who delivered the letters, but somebody's also messing with my remarks because they keep changing the numbers. Well, I think it's 653 according to the caption, but the text is, never mind. I move 653-FN-L ought to pass. This bill attempts to address the complex issues surrounding underserved areas of our state which desperately want the economic benefit of broadband. This bill, in such areas, authorizes a municipality to issue bonds for broadband infrastructure, it exempts broadband infrastructure bonds from municipal debt limits, and it brings to the decision making...brings the decision making process back to the municipalities, allowing citizens to help themselves when private carriers have failed to provide necessary service. The core of this bill is the fundamental belief in home rule and the right of our citizens to decide for themselves how best to advance their economic interests. Please join the Energy and Economic Development Committee in voting ought to pass. Thank you.

SENATOR BRAGDON: Thank you, Mr. President. Would this be an appropriate time to introduce a floor amendment?

SENATOR GATSAS (In the Chair): If you want to speak to your amendment as it's being passed out, it is.

Senator Bragdon offered a floor amendment.

Sen. Bragdon, Dist. 11

**March 7, 2006**

**2006-1288s**

**08/09**

**Floor Amendment to HB 653-FN-LOCAL**

Amend RSA 33:3-g, I as inserted by section 3 of the bill by replacing it with the following:

I. A municipality may issue bonds for the purpose of financing the development, construction, reconstruction, renovation, improvement, and acquisition of broadband infrastructure in areas not served by an existing broadband carrier or provider that would be provided at a fee to broadband carriers that provide broadband services. Without limiting the foregoing, broadband infrastructure may be the subject of public-



private partnerships established in accordance with the provisions of RSA 33:3. No bond proceeds shall be used for the development, construction, renovation, improvement, or acquisition of a broadband infrastructure in areas served by one or more broadband carriers as of the date of the issuance of the bond.

SENATOR BRAGDON: My constituent who is here hasn't moved all day, so we need to pass out some amendments. The amendment would be number 1288 and, Mr. President, I offer the amendment out of concern not for the principles of the bill itself, which is to provide high speed internet service to those areas of the state that for one reason or another do not have high speed internet service. My concern, however is that, in so doing, we create a situation in some instances where the municipality is competing against the service providers, and maybe as an example, I was going to use Senator Clegg, but he's not in his chair, but let's pretend that that Senator Clegg does not have high speed internet service at his house, I do not have high speed internet service at my house, but for some reason, Senators Gottesman and Foster do have internet service at their house, which I'm sure is no way related to their professions.

SENATOR GOTTESMAN: That's cause we pay our bills.

SENATOR BRAGDON: That's what it is. They can afford to, I'd imagine. So if the municipality decides to run their infrastructure, which is what this bill allows, to pay for and build the infrastructure to connect myself and Senator Clegg to the internet world, and that line passes right past Senators Foster and Gottesman, who already have service through a private company, then the town, if the bill passes as it is, would allow the town then to compete against the carriers that we already have. And I'm looking over the materials provided by the local government center. One question asked was, are you suggesting that we allow municipalities to compete with private industry? The answer is no. However, what the bill does might allow that to happen. And secondly, if private industry can't afford to do it why can municipalities? Well because municipalities don't have to make a profit, don't have to pay taxes, they can bond it over longer terms at lower rates. Private industry is at a disadvantage when competing against the towns. So I'm all in favor of allowing the service be provided should the town decide to, to areas that don't have it. I am concerned about them competing against the providers that are already out there. Now maybe that's a good idea, I'm not convinced, but I really think that's a particular area that would need much more discussion and debate, so I'd prefer to make specific, and the last sentence is what the amendment is. It adds that last sentence on that says "no bonds proceeds shall be used for" blah blah blah "in areas served by one or more broadband carriers as the date of the issuance of the bonds." In other words, if people are already being served by broadband providers, then this thing paid for by the taxpayers cannot be used to compete against the ones already there. Thank you, Mr. President.

SENATOR FOSTER: Question of Senator Bragdon. I was trying to understand, probably my lawyer thing coming out here, but it says "no bonds proceeds shall be used" blah blah blah "in areas served". What does it mean by "area"? The word "area"? Does that mean town, the community, part of the town, all the town, because that isn't clear. And I guess what I understand, and I could be wrong about this, but talking to another Senator prior to this session, he pointed out that sometimes a town can have service but it hasn't been sort of formally extended

out to your part of the town, but with a cost you could get it extended out. And would this in effect prohibit, because the area's served, but not right to your house?

SENATOR BRAGDON: If you give me one second, Senator. I can't seem to find the bill right here, here we go, I believe the bill has, in fact, earlier, on the third line down on the amendment talks about areas not served, and that's a particular definition within the bill itself. And so clearly, an area that is served is one that falls outside that definition of one that is not being served. But I do not have a specific definition within the amendment for that.

SENATOR FOSTER: Follow up? So you're suggesting that, if we look at the law, the term "area" is defined some place?

SENATOR BRAGDON: Yeah, let me read it for you, if I may. "Areas not served" means any part of a municipality without a wireless or facilities based broadband service. Basically "areas not served" means any part of a municipality without broadband service, so an "area served" is those that do.

SENATOR FOSTER: Thank you. I'm not sure that clarifies it, but thank you.

SENATOR BURLING: Thank you, Mr. President. I haven't had a chance to focus in great depth on this amendment, but I do rise in opposition to the principle. Again, from my perspective, we have had this debate on the issue of home rule for years, and every one of has stood up and spoken with their heart and soul about how much we believe in the right of our citizens to control their own behavior at the local level. The principle of this bill is to give them that power. In essence, the principle of the bill is to return debates like this one to the local town hall where that debate properly belongs. In this form, the language used from lines 8 to 10 on the floor amendment serve only one purpose and that is an anti-competitive purpose. It is to prohibit a certain kind of competition with existing companies that believe they have themselves a franchise. I have spent the last several years trying to get broadband service for my neighbors and I know that a road that runs north south in Cornish may have broadband service, while the three intersecting roads don't. And it doesn't matter how much I beg or plead, I don't seem to be able to get the wire run out those crossing roads. The very power to debate, discuss, and decide at the local level, is the power that will allow people ultimately, in their local communities, to get access to broadband. And all of us know that that is the ability to compete in the 21<sup>st</sup> century economy. It is something that every citizen in this state ought to have the chance to get. So, I respectfully ask you to pass this bill without this amendment so that our constituents can have what they really want, which is the ability to debate, decide and get broadband.

SENATOR ODELL: Thank you, Mr. President. Very briefly, having heard the debate on this in our committee. Two points. One is this amendment, in a sense, allows the companies to cherry pick to the disadvantage of a municipal broadband system. In other words, using Senator Bragdon's example, but changing it a bit, this is like the last mile in the telephone industry and who wants to pay for that. What would happen with an amendment like this is the communities would be relegated to the most expensive infrastructure and the least productive in terms of cost benefit relationship. So I think that that is damaging from that standpoint. So I think that this amendment should be defeated. Thank you.

**Floor amendment failed.**

**The question is on the committee report of ought to pass.**

**A roll call was requested by Senator Green.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Kenney, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

**The following Senator voted No: Boyce.**

**Yeas: 22 - Nays: 1**

**Adopted.**

**Ordered to third reading.**

**HB 1115**, relative to the definition of resident for purposes of fish and game laws. Environment and Wildlife Committee. Ought to pass, Vote 4-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 1115 ought to pass. This legislation will change the Fish and Game Department's residency requirement for the purposes of obtaining a fish and game license and registering a snowmobile or OHRV from six months to sixty days. New residents have sixty days to register their motor vehicle in New Hampshire. Since the Fish and Game Department accepts a New Hampshire motor vehicles driver's license as a proof of residence, it makes sense for the Department's residency requirement to be consistent with the motor vehicle laws. The Environment and Wildlife Committee unanimously asks for your support in the ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1283**, relative to sheep and goat identification requirements. Environment and Wildlife Committee. Ought to pass, Vote 4-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Mr. President. I move HB 1283 ought to pass. I also rise to assure the rest of the Senate that the Environment and Wildlife Committee does know the difference between a goat and a sheep. However, this legislation will require that all sheep and goats be officially identified in accordance with federal standards whenever there is a change in ownership of the animal. This bill was a request from the Department of Agriculture, Markets and Foods, and will bring state laws regarding identification into compliance with federal law. Without this legislation, farmers would not be able to cross state lines with these animals to participate in fairs and shows out-of-state. The Environment and Wildlife Committee asks for your support on the motion of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1296**, relative to the voluntary scrapie flock certification program. Environment and Wildlife Committee. Ought to pass, Vote 4-0. Senator Eaton for the committee.

SENATOR EATON: Thank you. This is much different than the scrapie bill we had two years ago and I know it sticks out in your mind. I think so. And I hope we pass this one, you never know though. It's a companion

bill to House Bill 1283, and will help to prevent the spread of scrapie, a fatal neurological disease among sheep and goats. And, if you need to know more, Senator Odell will have a class on that later. And again, this was asked for by the state veterinarian to bring state law into compliance with federal regulations. Without this legislation, sheep and goats will not be able to cross state lines or participate in fairs and shows.

**Adopted.**

**Ordered to third reading.**

**HB 1657**, establishing a wildlife legacy initiative for gifts and donations for fish and wildlife conservation programs. Environment and Wildlife Committee. Ought to pass with amendment, Vote 4-0. Senator Eaton for the committee.

**Environment and Wildlife**

**February 22, 2006**

**2006-1222s**

**10/09**

**Amendment to HB 1657**

Amend the bill by replacing section 1 with the following:

1 New Section; Fish and Game; Wildlife Legacy Initiative Amend RSA 206 by inserting after section 33-b the following new section:

206:33-c Wildlife Legacy Initiative; Account Established.

I. The executive director may establish a wildlife legacy initiative that encourages gifts and donations to support fish, wildlife, and marine resource conservation projects, conservation education activities, and opportunities to use, access, and appreciate these public resources by promoting the benefits of the initiative and recognizing individuals or organizations for their voluntary participation. The executive director in establishing any relationship with such persons shall use care to deal with persons who are supportive of the full mission of the fish and game department and not persons opposing the legal taking of game or fish.

II. The executive director may establish levels of giving and offer incentives for various levels of donations, enter into agreements and partnerships with the public or private sector as necessary to develop, market, promote, solicit for, and conduct the wildlife legacy initiative. The executive director may issue certificates, documentation, and other gifts to identify and recognize participants.

III. There is established an account within the fish and game fund to be known as the wildlife legacy initiative account. All gifts and donations received through the wildlife legacy initiative shall be deposited in this account. Notwithstanding any other provision of law to the contrary, donations made to the wildlife legacy initiative shall not require acceptance by the commission or the governor and council. Moneys deposited in the wildlife legacy initiative account are nonlapsing and continually appropriated to the fish and game department and may be used with approval of the fish and game commission for the purposes stated in paragraphs I and II.

Amend the bill by replacing section 5 with the following:

5 Effective Date.

I. Sections 2 and 4 of this act shall take effect January 1, 2007.

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

SENATOR EATON: Thank you. I move House Bill 1657 ought to pass with amendment. The legislation will help the Fish and Game Department with some of the financial difficulties it is facing as we go forward.

House Bill 1657 will give the Executive Director of Fish and Game the ability to enter into partnerships with other sports organizations to raise money and support for the Department. All gifts and donations received through these partnerships will be placed into a special account known as the "Wildlife Legacy Initiative Account." Bird watchers and hikers and organizations that support these activities are the types of groups that would be targeted. And supporting licenses may be sold to indicate various levels of donations as there are many people who support Fish and Game, but have no need for any type of regular hunting type license. This legislation also repeals the super sporting license as this initiative was not a successful way to raise money. We ask for your support. Also, the committee amendment makes a technical correction to the legislation and changes its effective date.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 1659**, relative to the use of certain small caliber firearms in taking wildlife. Environment and Wildlife Committee. Ought to pass, Vote 4-0. Senator Eaton for the committee.

SENATOR EATON: Thank you. I move House Bill 1659 ought to pass. Current statute prohibits the use of .22 caliber rimfire firearms in the taking of deer, bear and moose. House Bill 1659 will prohibit the use of a .22 caliber rimfire firearm or smaller, and they now have a .17 caliber firearm. These small caliber firearms are not appropriate for the taking of large game animals.

**Adopted.**

**Ordered to third reading.**

**SB 285-FN**, equalizing the pay of administrative judges in the judicial branch. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President. I move Senate Bill 285 ought to pass. Currently, the two administrative justices overseeing the district and probate courts receive the same salary as the trial judges they supervise. However, the chief justice of the Superior Court, who is also an administrative justice, is paid at a higher level than the judges he supervises. The committee believes that all trial court judges should be treated on the same level and that the salary for the administrative justices should reflect the responsibility of the position. The committee recommends ought to pass on Senate Bill 285. Note the effective date on this in not until July '07. This bill affects two justices and a total cost of the bill is \$19,801. Justice Broderick is trying to fix some areas in the courts, trying to keep everybody on an even scale, and believes that the administration, these three judges that run the three courts, should be paid on the same level. We ask that you ought to pass the Senate Bill 285. Thank you.

SENATOR MORSE: Senator Flanders, I noticed a couple of these bills, and I'm only coming at them from a Finance end, and I know they're in policy committees. But pre-doing the budget for next year, was there any discussion about that? Is that why we're pushed out to next year? Because we're not going to...

SENATOR FLANDERS: Yes. Mr. Zibel testified. He realized what he doing, and it will be included in their budget when they submit it.

SENATOR MORSE: So if we vote for this today, we're pre-doing the next budget that that money's going to be added to it?

SENATOR FLANDERS: In their budget yes. That's my understanding.

SENATOR GREEN: Thank you, Mr. President. I don't know what the timeframe is here, but did anybody ask the court if they were able to solve this in '06?

SENATOR FLANDERS: Yes. In fact, Mr. Zibel testified if we passed it upon immediate, they would find the money somewhere to do it. But this is what they preferred to do.

SENATOR GREEN: Further question? There was no proposed amendment to change it to '06 if the money was available?

SENATOR FLANDERS: No. We were not asked to do that. I think a question was asked of Mr. Zibel and he said, well if you did change it we'd be able to do it at the present time. But this is what they requested, and we didn't change it.

SENATOR D'ALLESANDRO: Thank you, Mr. President. A question of Senator Flanders and I just want to make something clear based on what Senator Morse said. What we're doing then, is we're committing, in the next biennial budget, to fund these positions at the salaries that are now being brought forth in this bill. So they're currently making whatever they're making, but we are agreeing to raise their salaries in the next biennium to the levels that are here and to fund all of the benefit package that goes with that. But my question I guess, goes back to Senator Morse. Are we pre-budget...putting something in the budget that's not in the budget now?

SENATOR MORSE: That's my understanding.

SENATOR D'ALLESANDRO: Thank you.

SENATOR FOSTER: I didn't intend to speak but I just wanted to say a couple of quick things. I believe I am the prime sponsor of this legislation. What, Senator Green's question actually is a good one, but what the court also said, in answering that question, they made a commitment, as I understand it, and probably Senator Morse knows better than I on this, that they would stick within the budget which they put together and they didn't want to come in and ask for additional compensation. But would it be fair to make a change now? Yes it would because it's really a policy issue, is why do we have differential pay for these judges, it really is an historical thing as they testified. So that was the reason why they didn't want to ask. Thank you, Mr. President.

SENATOR GREEN: Again, with permission of the sponsor and the chairman, in my understanding of this bill was that they were able to find the money to enact it immediately within their current budget. I share some of Senator Morse's concerns about us passing bills that commit to the budget next time which has not even been discussed yet. And if the department in this case, says yes, we can find the money with the existing revenues, what we should be doing is just passing it and changing the date and let them take it out of the budget. And then when they come back next year, it will be a question of us discussing the budget. So with that in mind, Mr. President, I would like to offer a table of this for a minute and let me get an amendment and change the effective date if that would be agreeable to the body.

SENATOR GATSAS (In the Chair): I can't accept your motion, Senator. You spoke.

SENATOR GREEN: I spoke. I'm sorry.

SENATOR FLANDERS: I move that we table this bill and I would like to wait so I can check back with the court before we do the amendment, and maybe bring it off the table next week.

SENATOR GATSAS (In the Chair): Thank you. I'll accept your motion, but there were a couple of speakers before you and I just...as a courtesy, I think they...Senator D'Allesandro.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I appreciate the courtesy. Thank you. As I look at this, I'm very troubled about what we're doing. Because what we're saying in this bill, is that we're committing in the next biennium to at least two administrative judges getting a \$9,900 increase in pay, that's two, with the possibility that more judges may get that increase in pay. Now, if you do \$9,000, \$9,000, \$9,000, \$9,000, \$9,000, kind of ends up to real money. And it seems to me, by this piece of legislation, we are committing to a line item in the next biennial budget that includes this money. Not a good way to do business in my opinion. I've been around here a long time and I've never seen this one yet. This is a new twist that I have not seen before, that you will supposedly cover it in this year with internal monies, but look for future monies to come in the next biennium. I don't think that's a good way to do business, and I will not be voting for this bill because of that. Thank you, Mr. President.

SENATOR FULLER CLARK: I did want to comment on the testimony that we heard and to refer everyone to the fiscal note which has been somewhat addressed, does say here that the total cost going forward from 2008 would be \$19,801.72 and before it says there might possibly be one additional administrative judge in the future. So it would be talking about if we were to be funding this as two, and possibly three, but not an ongoing sequence. I do hear some of the concerns about in terms of process, but I think it is important to understand the actual dollars, and how many individuals would be receiving a salary increase.

SENATOR MORSE: I just, Mr. President, thank you. I just, it was the principle part and maybe Senator D'Allesandro picked up on that, that I am concerned about here. Because it's come up, there's a couple of more pieces coming along that are going to be same way, and one of the ways the Senate balanced the budget was in the jobs line. I mean, we looked at vacancies hard, which didn't hurt the departments, and here we're pre-committing to the next budget. I'm just concerned about the precedent we're going to set by doing that and I think that we should be aware that that's what we are doing. Thank you.

### **MOTION TO TABLE**

**Senator Flanders moved to have SB 285-FN laid on the table.**

**Adopted.**

### **LAID ON THE TABLE**

**SB 285-FN**, equalizing the pay of administrative judges in the judicial branch.

**SB 339**, changing certain job titles and responsibilities in the department of transportation. Executive Departments and Administration Committee. Ought to pass, Vote 2-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 339 ought to pass. Senate Bill 339 establishes the position of director of policy for the Department of Transportation, increases the salary and expands the duties of the director of administration, and removes the position of director of public works. Senate Bill 339 simply aligns job titles with the duties being performed and represents a change that should have been made during the budget process last session, but was inadvertently left out. The committee recommends that this chamber passes this piece of legislation.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 352-FN**, relative to the regulation of real estate appraisers. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 2-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. The committee voted on Senate Bill 352 ITL because the amendment was late in reaching the committee, and I would ask you to defeat the motion and I would speak to an ought to pass motion and a floor amendment that I would like to present to the Senate. So, I'd like a motion to defeat ITL.

**Motion failed.**

SENATOR KENNEY: Thank you, Mr. President and thank you, fellow Senators, for that vote. Senate Bill 352 would bring federal transactions made by licensed...

SENATOR GATSAS (IN THE CHAIR): Are you making a motion ought to pass first?

SENATOR KENNEY: Okay. Would you like me to do that?

SENATOR GATSAS (IN THE CHAIR): Please.

SENATOR KENNEY: I make a motion of ought to pass on Senate Bill 352 with the floor amendment, but we need to pass out the floor amendment.

Senator Kenney moved ought to pass.

Senator Kenney offered a floor amendment.

Sen. Kenney, Dist. 3

**March 8, 2006**

**2006-1309s**

**10/05**

### **Floor Amendment to SB 352-FN**

Amend RSA 310-B:1 as inserted by section 1 of the bill by replacing it with the following:

310-B:1 Purpose. The purpose of this chapter is to bring New Hampshire into compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. ~~[The federal act's purpose is to protect federal financial and public policy interests in real estate related transactions by requiring that real estate appraisals used in connection with federally-related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.]~~ *However, any real estate appraisal service performed by an individual licensed or certified under this chapter shall be subject to the supervision of the board.*



Amend RSA 310-B:2, II as inserted by section 2 of the bill by replacing it with the following:

II. "Appraisal *report*" or "real estate appraisal *report*" means a written *or oral* statement [~~independently and impartially~~] prepared by a licensed or certified appraiser, [~~and~~] *whether or not* used in connection with a federally-related transaction under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information. *Nothing in this paragraph shall be interpreted to effect the right of any person to provide services under RSA 310-B:3, II, III, or IV.*

Amend the bill by inserting after section 3 the following and renumbering the original sections 4 - 12 to read as 5 - 13, respectively:

4 Classes of Licensure or Certification; Apprentice. Amend RSA 310-B:6, I(a) to read as follows:

(a) Apprentice. The apprentice real estate appraiser classification shall consist of those persons who do not meet the requirements under subparagraph (b), (c), or (d), but are in the process of completing the requirements for one of the classifications of a real estate appraiser. Apprentice real estate appraisers shall be required to work under the supervision of a New Hampshire [~~licensed or~~] certified appraiser until the requirements for licensure or certification have been met.

Amend the bill by replacing section 13 with the following:

13 Effective Date.

I. Section 4 of this act shall take effect December 31, 2007.

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

SENATOR GATSAS (In the Chair): If you would speak to your amendment as it's being passed out.

SENATOR KENNEY: While we're passing this out, I'll make mention that Senate Bill 352 would bring federal transactions made by licensed and certified appraisers under the oversight of the Real Estate Appraisal Board. Senate Bill 352 also creates language relative to lapsed licenses, which there's none in statute currently. The bill also changes the certification cycle from three to two years; the current three-year cycle is out of step with the federal two-year examination cycle. Senate Bill 352 also adds language that an oral report from a licensed and certified appraiser is supported by relevant market information as is required of written reports. There was a concern that Senate Bill 352 would impact the ability of the real estate agents from providing market analysis, broker opinions, values or appraisals of properties within the scope of their real estate business. The amended language that you have in front of you in the floor amendment 1309 clarifies that Senate Bill 352 is not intended to affect the ability of anyone in New Hampshire who is not licensed by the Appraisal Board to provide appraisal services or non-federally related transactions, as appraisers in New Hampshire have been doing for decades. This amendment also clarifies that anyone who holds the designation of a licensed or certified appraiser falls under the jurisdiction of the Appraisal Board even when providing appraisals of real estate for non-federally related transactions. In light of the amendment, the committee recommends ought to pass with amendment. Thank you, Mr. President.

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 284-FN**, establishing a third full-time justice position in the Manchester, Nashua, and Concord District Courts and equalizing the annual salaries of all justices of the Manchester, Nashua, and Concord District Courts. Finance Committee. Ought to pass, Vote 6-0. Senator Clegg for the committee.

**SENATOR CLEGG:** Thank you, Mr. President. I move Senate Bill 284-FN ought to pass. The legislation establishes a third full-time judge in the Manchester and Nashua District Courts and equalizes the salaries of these two associate judges. Under the weighted caseload system, the Manchester and Nashua Courts have had the equivalent of 3.3 and 3.4 full-time judges. During the past year, Manchester District Court had twenty-one different judges sitting on cases while Nashua had twenty-seven different judges. This legislation would put into place two full-time judges leaving the positions to be filled by visiting judges only to the extent of .3 and .4. This bill will increase state expenditures by \$74,917 in fiscal year 2007 and \$148,410 each year thereafter. The Finance Committee asks your support for the motion of ought to pass.

**SENATOR MARTEL:** Thank you, Mr. President. I know I was just one of the cosponsors of this bill, and I'm speaking before the sponsor would. I surely want to emphasize how important this piece of legislation is to dealing with backlogged court cases and court in the city of Manchester, and also Nashua. The impact of these cases backing up are really causing problems in the fact, as Senator Clegg just mentioned in his introduction, that the pressure on these judges has been immense, so hasn't it been on the clerks and also the staff of the courts both in Manchester and Nashua. I am proud to say that I am a cosponsor of this bill, and I know that it's the right thing to do, and I ask everyone to please follow the committee report and vote this ought to pass, and I thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 302-FN**, relative to real estate brokers. Finance Committee. Ought to pass, Vote 6-0. Senator Larsen for the committee.

**SENATOR LARSEN:** Thank you, Mr. President. I move Senate Bill 302 ought to pass. This bill makes technical changes to the licensing requirements for real estate brokers. The legislation has a total fiscal impact of less than 10,000 in each of the fiscal years '06 through 2010. The Finance Committee asks for your support for the motion of ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 381-FN-A-L**, expanding business tax credits to enhance research and development. Finance Committee. Interim Study, Vote 6-0. Senator Morse for the committee.

**SENATOR MORSE:** Thank you, Mr. President. I move SB 381 to Interim Study. This legislation expands business tax credits to enhance research and development. The bill currently has a very large fiscal note and shows a \$230 million loss in revenue. The sponsor of the bill was working with the Department of Revenue to bring that fiscal note down; however the committee feels that this should be sent to interim study. Thank you.

**MOTION TO TABLE**

Senator Clegg moved to have SB 381-FN-A-L laid on the table.

**Adopted.**

**LAID ON THE TABLE**

**SB 381-FN-A-L**, expanding business tax credits to enhance research and development.

**HB 380**, relative to absentee voting. Finance Committee. Ought to pass, Vote 6-0. Senator Larsen for the committee.

SENATOR LARSEN: Thank you, Mr. President. I move House Bill 380 ought to pass. This bill establishes special absentee voting procedures for emergency services workers who are unable to vote in person because they've been deployed to a disaster. This would have a small financial impact that can be absorbed within the department's budget. The Finance Committee asks for your support of the motion ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 649-FN-A-L**, establishing a commission to study the costs and funding of medicolegal investigations and autopsies. Finance Committee. Ought to pass, Vote 6-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. An appropriate subject, autopsies. I move House Bill 649 ought to pass. This House Finance Committee did extensive work on this legislation and amended the bill into a study committee. Since 1996, the counties have had the right to refuse costs for autopsies and other medical examinations. Although the state picks up the responsibility in those instances, additional funding has not been made available and, at the rate of declination by the counties has been steadily increasing. This study will provide a further in-depth look at the issue and will clearly define the responsibilities between the state and the counties for autopsies and medicolegal investigations. The Finance Committee asks your support for the motion of ought to pass.

**Senator Morse offered a floor amendment.**

**Sen. Morse, Dist. 22**

**March 9, 2006**

**2006-1318s**

**08/09**

**Floor Amendment to HB 649-FN-A-LOCAL**

Amend paragraph I of section 2 of the bill by inserting after subparagraph (i) the following new subparagraph:

(j) The state chief medical examiner, or designee.

SENATOR MORSE: Thank you Mr. President. I rise to offer an amendment.

SENATOR GATSAS (In the Chair): While that's being passed out, would you speak to your amendment please?

SENATOR MORSE: Yes, Mr. President. It's a very simple amendment. In Finance, we heard testimony that the Chief Medical Examiner was not included on this committee, but the deputy was, solely because the deputy attended all the hearings in the House and helped them build

the legislation. The House wants to keep the deputy on there, but I believe what we heard was that we should be adding the Chief Medical Examiner or a designee of his choice. So I offer that amendment.

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 229**, relative to subsidizing malpractice premiums for certain specialties. Internal Affairs Committee. Inexpedient to legislate, Vote 5-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move Senate Bill 229 inexpedient to legislate. The Internal Affairs Committee feels that, while the goals of this bill are noble, the state shouldn't be in the business of subsidizing medical malpractice premiums. Please join the Internal Affairs Committee and vote inexpedient to legislate. Thank you.

SENATOR BURLING: Mr. President, this idea was mine. I rise in support of the motion. I mean to say only one thing, and that is the evidence this year is pretty clear that hospitals are now doing this kind of subsidization to get doctors that they need into their areas of expertise and the only consequence of that for us is that, as we review the budget process next year, we'll want to be clear that we pay the hospitals the full amount to which they're entitled.

**Committee report of inexpedient to legislate is adopted.**

**SB 236**, establishing an employment restriction on former board members of public corporations. Internal Affairs Committee. Inexpedient to legislate, Vote 5-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that Senate Bill 236 be inexpedient to legislate. This bill defines a public corporation and prohibits a public corporation from employing a former board member for one year. The Internal Affairs Committee, while working with the prime sponsor of this bill, was unable to come up with the necessary changes to make this bill acceptable. Please join the Internal Affairs Committee and vote inexpedient to legislate. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SCR 8**, declaring the general court in opposition to the federal Real ID Act of 2005. Internal Affairs Committee. Ought to pass, Vote 5-0. Senator Bragdon for the committee.

### MOTION TO TABLE

Senator Bragdon moved to have SCR 8 laid on the table.

A roll call was requested by Senator Estabrook.

Seconded by Senator Clegg.

The following Senators voted Yes: Gallus, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Morse.

The following Senators voted No: Burling, Gottesman, Foster, Larsen, Letourneau, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 14 - Nays: 9

**Adopted.**

**LAI D ON THE TABLE**

**SCR 8**, declaring the general court in opposition to the federal Real ID Act of 2005.

**SB 262**, establishing a strategic planning commission for gender-responsive management of female offenders in the criminal justice system. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Roberge for the committee.

**Senate Judiciary**  
**February 22, 2006**  
**2006-1199s**  
**08/09**

**Amendment to SB 262**

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

**AN ACT** establishing the position of an administrator of women offenders and family services within the department of corrections, and establishing an interagency coordinating council on women offenders, and making an appropriation therefor.

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

1 New Sections; Administrator of Women Offenders and Family Services; Council Established. Amend RSA 21-H by inserting after section 14-a the following new sections:

21-H:14-b Administrator of Women Offenders and Family Services.

I. There is hereby created the position of administrator of women offenders and family services within the department of corrections. The administrator shall be responsible for programming and services for women offenders in the statewide adult correctional system including probation, parole, and correctional facilities. The administrator of women offenders and family services shall be a classified position.

II. The administrator shall:

(a) Establish goals and objectives for statewide correctional systems within the framework of the department's philosophy, including planning, organizing, implementing, directing, and monitoring statewide gender-responsive programs and services, as well as developing policies, procedures and standards for the provision of such programs and services. The administrator shall participate in the development, implementation, and review of all policies, directives, and standards that involve supervision of women offenders. The administrator shall also coordinate continuum and continuation of gender-responsive services to women offenders moving from one setting to another, and re-entering their communities.

(b) Write standards for, execute, and monitor all non-clinical contracts with service providers who work exclusively with women offenders. The administrator shall review and provide feedback on an ongoing basis on all clinical contracts and services for women offenders regarding consistency with contract language and gender-responsive principles.

(c) Establish and coordinate partnerships, and maintain working relationships within the department of health and human services, with other government agencies, with communities and with community-based organizations, volunteers, advocacy groups, the academic community, and other external stakeholders.

(d) Provide supervision and technical assistance to field and women's facility superintendents and managers regarding issues related to women offenders and gender-responsive programs, services, and practices. The

administrator shall provide input into the evaluations of other facility superintendents, field managers, and personnel relative to their roles in the supervision and provision of services for women offenders.

(e) Provide input regarding necessary data collection and evaluation to measure effective programming and supervision of women offenders. The administrator shall consult with and provide input with other directors regarding appropriate levels of staffing in both the field and institutions responsible for the management of women offenders. The administrator shall also confer with and make recommendations to the commissioner regarding women offender supervision and services and oversee the planning, development, and implementation of training guidelines for staff working with women offenders, and recommend changes in duties assigned to casework and security staff who work with women offenders.

(f) Review internal and external investigations into personnel and administrative and criminal matters involving women offenders. The administrator shall act as a resource in cases of staff sexual misconduct involving women offenders and provide input into personnel actions for addressing misconduct involving staff who work with women offenders and misconduct involving women offenders.

(g) Be involved in review and evaluation of expenditures and spending plans as they relate to the provision of program services for women offenders. The administrator shall prepare budget recommendations regarding women offenders' program services consistent with the departmental budget cycle. The administrator shall also engage in budget formation, grant applications, and resource allocation activities related to women offenders as assigned.

(h) Chair the interagency coordinating council for women offenders.

#### 21-H:14-c Interagency Coordinating Council for Women Offenders.

I. There is established an interagency coordinating council for women offenders.

II.(a) The members of the council shall be as follows:

(1) One member of the governor's office, appointed by the governor.

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

(3) One member of the house of representatives, who shall be knowledgeable about county corrections, appointed by the speaker of the house of representatives.

(4) The executive councilor representing district 5/Goffstown.

(5) The commissioner of corrections, or designee with knowledge of field services, community corrections, and the family connections center at the lakes region facility.

(6) The warden of the state prison for women.

(7) The commissioner of health and human services, or designee with knowledge of behavioral health, alcohol and other drug policy, and the family assistance program.

(8) The director of division of children, youth and families, or designee.

(9) The attorney general, or designee.

(10) The chief justice of the superior court, or designee.

(11) The chief justice of the supreme court, or designee.

(12) The commissioner of the department of education, or designee with knowledge of Title IX, Carl Perkins Grants, and other federal funding sources.

(13) One member from the Hillsborough county government, appointed by the New Hampshire Association of Counties.

(14) One former inmate at the state prison for women, appointed by the governor.

(15) A representative from the New Hampshire commission on the status of women, appointed by the governor.

(16) A representative from the New Hampshire Coalition Against Domestic and Sexual Violence, appointed by the governor.

(17) A representative from New Hampshire Task Force on Women and Addiction, appointed by the governor.

(18) A representative from the Citizens Advisory Committee of the New Hampshire State Prison for Women, appointed by the governor.

(19) A community member with knowledge of correctional practices with particular expertise with female offenders, appointed by the governor.

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

III. The duties of the council shall be as follows:

(a) Identify opportunities for interagency cooperation in the effective management of female offenders.

(b) Develop memoranda of understanding outlining "in-kind" services or cooperation to provide services to incarcerated women and their children.

(c) Develop cross training opportunities to foster understanding of system responses to the shared population across agencies of incarcerated women and their children.

(d) Develop gender-specific treatment for co-occurring conditions and a continuity of treatment from incarceration to community.

(e) Coordinate interagency case management and re-entry planning.

(f) Assess the impact of incarceration on family relations during and after incarceration.

(g) Approve the hiring of an administrator of women offenders and family services, to assist the council in performance of its duties.

(h) Apply and administer federal and private sector grants for the furtherance of the duties of the council and the development of gender-responsive, trauma-informed management of female offenders and their children.

IV. The council shall meet at least monthly during its first year, then at least quarterly thereafter. The administrator of women offenders and family services shall act as chairperson of the council. The council shall convene at the call of the chair when deemed necessary by the chairperson.

V. The term of each member appointed under paragraph III who has a term of office shall be coterminous with their term in office. The terms of the remaining members shall be for 3 years. Vacancies shall be filled for the remainder of the term in the same manner and from the same group as the original appointment.

2 New Classified Position; Funding. The position of administrator of women offenders and family services established under RSA 21-H:14-b, as inserted by section 1 of this act, shall be a classified position at labor grade 33. Funding for this position shall not affect the general fund appropriations reduction required in 2005, 176: 11. The funding for the administrator of women offenders and family services position shall be from the department of corrections' fiscal year 2007 operating budget.

3 Effective Date. This act shall take effect July 1, 2006.

**2006-1199s****AMENDED ANALYSIS**

This bill establishes an administrator of women offenders and family services, and an interagency coordinating council on women offenders, and makes an appropriation to the department of corrections to hire an administrator of women offenders and family services.

SENATOR ROBERGE: Thank you, Mr. President. I move Senate Bill 262 ought to pass as amended. The provisions of Senate Bill 262, as amended by the Judiciary Committee, allow for establishing a position of administrator of women offenders and family services within the Department of Corrections as well as creating an interagency coordinating council on women offenders. There are currently about one hundred women in Goffstown and about forty women at Shea Farm. Ninety percent of these women are head of household and they average 2.5 percent children each, at a cost of the state of \$23,938 to incarcerate a woman for one year at Goffstown, and for an average of \$25,000 annually for one child in foster care system. The recidivism of women in prison in New Hampshire is around 50 percent. In Maryland, after the provisions contained in this legislation were adopted, programs put in place to address their recidivism problem, women left in prison, it dropped to 3 percent. This legislation seeks to establish a parenting program, life skills program, methods of reuniting the family while enabling the offender to care for her children. The state of New Hampshire cannot afford to ignore problems in the prison system and this is an important first step. I have some points here that will address the amendment that I'm sure will follow. Ninety-five percent of the incarcerated population in the prison in New Hampshire are men. Women were added only after suing the state for a prison of their own. In 1989, due to the economy of scale, they did not get the resources that they need and that men get in prison. Concord prison for men has a complete high school on its campus. The primary vocational training for women, according to the double jeopardy standard, is sewing. These women have kids for whom they are responsible the minute they are released. They're not going to make too much money in 2006 with sewing as your primary skill. Senate Bill 262 establishes an administrator of female offender services for the first time within the Department of Corrections. There are two positions that are dedicated to programs right now within the Department of Corrections. One at Concord Prison for men and one at Berlin Prison for men. While these positions we're told are responsible for establishing programs for all inmates, their concentration is on the 95 percent of the population, the male offenders. It's time to pay attention to women offenders. For the sake of the children, they need your support. For this sake, for the sake of the state, which is paying the exorbitant funds for female offender incarceration, yet remains a legal vulnerability for the provisions of its services it provides for female offenders. I ask you please, support Senate Bill 262.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in support of the bill. Our treatment of female offenders has really been an extremely long and tedious process. At one time, we sent all female offenders out-of-state. We were sued, and as the result of that, got into a joint venture with the county, basically Hillsborough County, to house female offenders in Goffstown at what was then the Hillsborough County Facility. Currently, it services both county female inmates and state inmates. The facility is at about 104 percent of capacity. It's a very, very



difficult situation. The average literacy rate of a person at that institution is about fourth grade. They have 2.5 children. The recidivism rate is quite high. It's about 50 percent. And one of the reasons for this is we have nothing for these inmates to do while they're incarcerated. There's nothing for them to do. Now having been around for both the suit at the women's prison and the suit at the men's prison, I can tell you that we've spent a tremendous amount of money at the male facilities. We built an additional male facility in Berlin. But in terms of the women, the only thing we've done is we've taken Shea Farm and taken it away from men as a halfway house and moved it to women. Something like this is desperately needed because we're on the cusp of another lawsuit. We have one currently at the men's prison that's being adjudicated as we speak. And as a result of that decision, it appears to me that we're going to be faced with another financial situation that this state is going to have to bear. We don't want to have that at the women's situation, so hopefully, this will in some way forestall that, and it will also provide an opportunity for women to get better training, to get better education, and to lower the recidivism rate. I think it's a very, very important situation. It's something that we have swept under the rug for years. But we have to address it now. We have to address it because, not only is it very important, but it's an area upon which we are going to be sued. We're going to be threatened with legal action. It's a very important situation. And when we talk about equity, there is an inequity. We do treat men in the penal institutions better than we treat women. We have no jobs for women. We do have training programs for men. We have treatment for men. We don't have that for women. There's an inequity there. Studies have shown if we provide these kinds of services to women, we'll lower the recidivism rate, and we'll put these women back out into society where they can become productive members of society. In reference to Senator Roberge's comments about sewing being one of the things that's left, it is. That's one of the things that women do in prison. They also make baskets, and only a few of them can do that. I mean, it's almost absurd for us to be in the 21<sup>st</sup> century talking about things like this happening at one of our penal institutions. We're supposed to bring people there and prepare them for re-entry into the society so that they can become productive citizens. This goes a little way to doing that. You know, it's a baby step. It's not a big one, but it's something that we ought to do, because it makes good sense. It's good public policy to address a problem and to go forward. Thank you, Mr. President.

SENATOR BOYCE: Thank you, Mr. President. I have a couple of problems with this bill, with the amendment in particular. I'm looking at the list of people who are...who would be on this council, and I see a lot of micro management going on in this bill. It says that the Executive Council gets to put somebody on there and it has to be the one from District 5. The Commissioner of Corrections gets to put somebody on there, but it has to be somebody who specifically has certain knowledge in community corrections and family connection center at the lakes region facility experience. The Commissioner of Health and Human Services gets to designate somebody, but they have to have knowledge in behavioral health, alcohol, and other drug policy and family assistance programs. The Commissioner of Department of Education gets to designate somebody as long as they have knowledge of Title 9, Carl Perkins grants and other funding sources. One member from the Association of Counties, but they have to be from Hillsborough County. This is...you know, I've seen a lot of commissions but I don't believe I've ever seen one that went to

that level of micro management. And then, getting back to the discussion we had previously on a bill setting up a budget item in the next upcoming budget, this adds a new classified position, the funding of which will be in the 2007 budget. So we're again trying to budget something before we have the budget before us. I think that this bill maybe is well-intended, but, I think that it also ignores the fact that most of our prison inmates are men, and the recidivism of men is much higher than it is for women, and I think maybe we ought to be devoting some resources to them as well. So, I'm not in favor of the bill as written, and thank you.

SENATOR FOSTER: Senator Boyce, in hearing your first criticism, it sounded like you were criticizing the commission because it was well thought out. I mean, I've been on these study committees and commissions and you get people appointed and they aren't particular helpful. This is trying to direct the process so it's productive. Don't you think that's a good thing, you know, to have productive commissions here?

SENATOR BOYCE: Well, I think that the Commissioner of Corrections, the Commissioner of Health and Human Services, the Commissioner of the Department of Education, the Association of Counties, and the Executive Council also. I think that they have...you know, some definite expertise in what they do, and we're telling them they can appoint somebody, but we're pretty much telling them...we might as well give them name of the person that we want to put in there. I think it's a little over the edge. Thank you.

SENATOR FOSTER: Actually, I had one further question, but maybe this is more appropriate for the chair. Isn't it...I'm sure that this would go to Finance if it were passed then?

SENATOR GATSAS (In the Chair): Senator, it's going to Finance.

SENATOR FOSTER: Thank you.

SENATOR CLEGG: Thank you, Mr. President. I'd like to clear up a misconception that they only have basket weaving and sewing at the women's prison in Goffstown. I want to point out that it's very, very difficult to get the right information as a legislator. But I'm lucky enough to have Katie Coburn as an intern, and I'll tell you, when you ask her to dig the information, she doesn't stop and she finally got something from the women's prison. They have forty-one vocational courses at the women's prison in Goffstown, and none of it's basket weaving. It's accounting, it's business law, business records control, economics, employment communications, hospitality marketing, human relations, language classes, practical record keeping, psychology, and something that I know I could use, resolving problems in conflicts. There's forty-one things that they have. That doesn't include the rehab classes. I got the best intern there was, Senator. I can't argue with him. On the rehab classes, they have things like health workshops, parenting groups, reintegration, emotional awareness, bereavement, adjustment, parole, first aid trauma, anger management, relapse prevention, substance abuse. They have a ton of programs over there. But I was in the same hearing as everybody else. And you know what? It sounded to me like they didn't have anything. When you get to the men's, under education, you get GED preparation, skill building for GED graduates, apprenticeship programs. It's not as extensive on the men's side as it is on the women's. But I'll leave that, the rest of that for my amendment. But I wanted to correct the misconception that the women's classes are about sewing and basket weaving, because far from it. It looks to me like they've got one heck of a business course in the prison today. Thank you, Mr. President.

SENATOR MORSE: Thank you, Mr. President. I was just going to point out what you already did. That there is a \$75,000 expense and we ask for this to come to Finance. While people are digging on Corrections though, for the next week, because we will probably exec this next week, there is 146 vacancies when I checked and gave you the information two days ago. So I got to believe there's a lot of money in Corrections, still sitting there, because we only have sixty jobs. So there's...if someone wants to work on an amendment, I'm sure we'll do one.

SENATOR FULLER CLARK: Thank you very much, Mr. President. I would like to say that I was fortunate enough to have a tour of the women's prison in Goffstown about six months ago. And it was certainly, while I was there at the prison, that I did not see any of these types of courses being offered or taking place. And I did see the sewing, and the ironing and some of these other things. Now they may be there, they may be on the books, but I don't actually know if they're being offered. And certainly my experience in the tour that I had, and the situation that I saw for these women, there aren't the classrooms, there's a very, very small, library, there aren't computers, there isn't any opportunity to train them so that they can go out and work in the 21<sup>st</sup> century. So I'm just putting that out there as what happened to me when I had the experience of actually having a tour. And I do not understand the disconnect between the visit there and the information that's being put before us today. Thank you.

SENATOR CLEGG: Senator Clark, would you believe that I read to you from a paper that was faxed to me on the 9<sup>th</sup> of February 2006 from the Department of Corrections, and that later on I will see to it that you have a copy so that you can double check with the Corrections as well, because I also was under the impression that you were, from a tour? But, upon a little bit of prodding, we find that they do offer these, I just don't know when.

SENATOR FULLER CLARK: Response. I hope, Senator Clegg, that we might be able to work together on this to really get validation in terms of what might be listed and what is actually offered.

SENATOR CLEGG: Thank you.

SENATOR ESTABROOK: Thank you. It's similar to Senator Clark's comment at the end there. I wondered if they sent you information about how many people are actually enrolled in those programs?

SENATOR CLEGG: No, they did not.

SENATOR ESTABROOK: Thank you.

SENATOR GREEN: Thank you, Mr. President. I was not going to speak, but I am hearing all of this dialogue and I guess I think I have something to offer to the discussion. When we were going over the budget two years ago, the Goffstown prison was on the cut list. If people remember, they were going to close that prison. Some of us went over and spent some considerable amount of time over there. Not only that prison, but all the prisons in the system, because they were also talking about cutting inmates in Concord. We're looking at that in terms of that proposal was a real proposal or not. At the Goffstown prison, which is of course a rented facility from Hillsborough County, they have a library. They have some educational staff. The prisoners are, the young ladies are on a schedule for these academic programs. They can do a GED program while they're in. I think what the real difference is, as far as I could

see from the prison in Concord, and the men's prison and the women's prison in Goffstown, was on the vocational side. That's where the real issues are. I think there were some academic offerings. I think in both places they had programs to offer GED learning skills so they could take their test and come out with a high school equivalency. But, on the vocational side, there was nothing. It was almost nonexistent. That's why I think, when you start talking about sewing and those kind of things, that's what we are talking about. I did not, and I had a good chance to really have a pretty intensive discussion with the educational people over there, 'cause they do have some educational staff. Now I don't know what the debate is on this bill, whether or not we are providing adequate opportunities for women or not. I come down clearly on the side that no, we're not, okay? The issue is, are we going to spend money on Corrections? I mean, I don't know about you people, but everything I've seen with Corrections, is the state better do something because we're not doing very well in terms of, in my opinion, of supporting financially, our corrections systems. The crowded conditions in the Goffstown facility was unbelievable. It really was. I mean, it was a really crowded facility. Now, you know, I'm with you, I'd like to the citizens slow down, but I'm telling you, we got crowded facility, we've got understaffed, we've got lack of vocational, we have some academic. We've got some problems. So I don't know, I think...I mean this bill here is such a...it's fine, but it's a very minute step in terms of trying to look at the problem and see if we can help it. I know we've got some real financial problems. I don't know what we're going to do with all the requests for money. We're going to have to determine priority, there's no question...all the stuff can't get funded. But I'll tell ya, this is one you ought to be funding. This is one we need as a state if we're going to be responsible. Thank you.

SENATOR LARSEN: Thank you, Mr. President. I am really enthusiastic about this bill, and I want to applaud Senator Roberge and all of those who have worked on this bill, because I think it is a historically important time that we begin to address the needs of the more than a hundred women who are in our prison system. There's some important facts. As you heard, the state prison in New Hampshire for women, was not established until 1989. New Hampshire Prison for Women is the only facility in the Department of Corrections system that does not offer a state-funded parenting program. There's no on-site medical unit, and it's out of compliance with the American Disabilities Act. This state is not providing programs to female victims of abuse, and yet the research suggests that this is a contributing factor for criminality among women. Yet there are state run domestic violence programs provided to inmates at the New Hampshire State Prison for Men, and at the NCF. There's no full-time psychiatrist assigned to the New Hampshire State Prison for Women, and women have to pay \$3 at the prison to get a referral to see a psychiatrist. There's no state-funded programs to address substance abuse in the women's prison, but the men's prison has a state-funded substance abuse programs and NCF has two state funded programs for alcohol and drug therapeutic unit and positive connections. At the men's prison in Laconia, there is a new family connections, which is a wonderful program. There is no such program at the very place where so many women are mothers. The majority of women offenders are in fact mothers who are at risk. They're non violent offenders. These women are most often the victims of crimes before they become perpetrators of crimes. They have been taken away from their children and the kids are six times more likely to be in jail at some point, because they've grown up

in such a fragmented household. Both male and female offenders we recognize have children, but in New Hampshire, only 10 percent of women offenders' children are living with their biological father, and 75 percent of male offenders' kids are living with their biological mothers. That means that we are not only punishing the mothers, but we're punishing kids and we're destroying families without offering treatment to rehabilitate women once they get out, so that they can in fact...we can in fact, lower the...what is a 50 percent recidivism rate among New Hampshire inmates. In essence, we're asking a really important but very small request and that is that we model ourselves after some other states that have in fact created these interagency coordinating councils for women offenders. There's not a big cost to doing this. But it puts together those people into a room, the warden of a state prison for women, the commissioner of Health and Human Services designee. Someone who knows something about alcohol and drug abuse. We're creating a commission. We're not asking for the world here. We're just asking for a commission that will coordinate interagency dialogue so that there might be in fact some resolutions to these. And finally, it asks for an administrator of women offenders. And here again, we're not asking for eight coordinators of women offenders, but one position. When I was looking to fill this position and try to find the vacancies over at the state corrections, there is a significant amount of salaries remaining in the vacant salary line. A significant dollar amount, even after they are meeting their requirements in the budget to have budget cutbacks. So the money is there. There is an ability to find and title a position, but that's what Finance should do. What this Senate, I'm asking all of you to do, and I know Senator Roberge joins me, is to pass this to Finance, and to help us get this interagency discussion going, which will in fact help us avoid some of the litigation and lawsuits that New Hampshire is actually...has actually faced. We already have \$600,000 paid out in litigation from previous cases. We have four rape allegations and possibly more to come and a class action lawsuit. We can save ourselves a lot of money by focusing on this and in fact, in the long run, we can save ourselves a lot of heartache as we re-strengthen families and hopefully, strengthen women as they come out of this system, so that they can stand on their own two feet and support their families, and be in fact, productive members of our society. I urge you to think clearly on this bill. It is simply an interagency coordinating committee, and one person in the department of corrections whose job it is solely to think about the prison system as it affects women. Thank you.

SENATOR CLEGG: A second time. Thank you, Mr. President. I just want to correct again, some misinformation we had gotten originally from the Department of Corrections. Substance Abuse program in the Goffstown Prison for Women. Substance Abuse Programming Relapse Prevention: Tuesday, Wednesday, Thursday, 10-11 taught by staff; Substance Abuse - Level 1- education: Monday, Tuesday, Wednesday, Thursday, 8 a.m. to 12. Staff; Substance Abuse - Level 2: Wednesdays and Fridays, 9-10, staff; Recovery Group: Tuesday, Wednesday, 10-11, staff; I just want to show that originally the information given to us is, in my opinion, not correct. And with pushing and prodding and digging, we're finding that some of the programs that we're looking to institute already exist.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I'd like to address two things, first of all the commission that my colleague, Senator Boyce, is concerned about. The Goffstown Prison is in District 5. That's Executive Council District 5. That Councilor represents that

district, so it makes good sense to put that Councilor on the commission. It is in Hillsborough County, so it makes good sense to put someone from Hillsborough County on that commission. I think, when you look at the composition of the commission, it's a good commission, put together for all of the right reasons. People who have a vested interest in what's going on and have a statewide interest, should be on the commission, and as a result, they're on the commission. Why are people involved with Title 9? Because Title 9 was the gender equity legislation passed by the United States government which provided for equity. So it's a good thing for that person to be on there. So you look at the composition of the commission and my colleague, Senator Foster, pointed out, "it's a good commission, a well thought out commission", and as a result of that, I rest my case with regard to that. Double Jeopardy, a study done by the New Hampshire Commission on the Status of Women, was released in December of 2004. An errata was released in January of 2005. One of the comments in this report was this: "Key staff members cited a major concern in their meeting with the investigators. The absence of programs and meaningful activities for women housed at the facility. There are no standardized programs for female inmates at the facility, comparable to those provided for male inmates in the system, including drug and alcohol programs, mental health services, hobby crafts, chaplainry services, and vocational programs, etc..." One of the real situations that we face at the women's facility is illiteracy rate. Now, if you are illiterate to the fourth grade level, and by the way, if you're not reading at grade level by the third grade, you never reach grade level, then that's a very difficult situation. You're not going to take accounting. You're not going to take economics, you're not going to take all of those courses because damn it! You can't read! And if you can't read, you can't take any courses! So it just seems to me that we ought to get to the basics in dealing with these women, because these women keep coming back year after year. They get out. They recycle themselves. So no one's going to tell me that offering high level courses, if indeed they're offered, because the testimony indicates they're not offered. By offering high level courses, you're going to have people who can't read taking them! That's number one. Number two. Anyone who has been to that facility, look at the physical plant. If there's room in that physical plant for anything but incarceration, brother, I want to see it. You've got women who are there for life. Their life in a building. They're in a room for the rest of their life. We've got two murderers there. McLaughlin's wife is one of them. There is no room in that facility. It's a very small training room. The rest of it are just residential places. So when you tell me that they're offering all of these amenities, I just fail to see it. I visit that prison. It's in my district. I represent Goffstown. I've been to that prison on countless occasions. And I see the mothers seeing their children. And I recognize that these women are basically at a loss in terms of moving out into society. By this commission, and by this person, we are trying to offer them an opportunity to succeed. An opportunity to succeed. We're locking them up again. We're locking up 50 percent of them. And every time they come back, it's a \$25,000 bill that we pay. We don't have any alternatives there. We have to pay it. So it seems to me anything that we can do to move this forward, we ought to do. And I recommend that everybody read the Double Jeopardy Study, because it's a very important one, and it's something that we should be looking at. I was on the Executive Council when we went through a situation where women would come, their families would come before the Council and say, "I can't see my wife. My children can't see my wife" because we've incarcerated her in Connecticut, Vermont,

or Kentucky, or in Texas, because that's where they had room for these people. So we were forced into a prison situation. Now we have to make that situation at least tolerable. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. Senator D'Allesandro?

SENATOR D'ALLESANDRO: Senator Barnes?

SENATOR BARNES: Weren't you on a study committee of this women's prison the last past year?

SENATOR D'ALLESANDRO: Wasn't I on a study committee? No. Not on the women's prison. I was on a study committee for the secure psychiatric unit.

SENATOR BARNES: Excuse me. I don't want to get into psychiatric unit.

SENATOR D'ALLESANDRO: I'm just telling you what I was on.

SENATOR BARNES: I want to get into this study committee because I was on it, and I went to the Senate...former Senate President and asked him to put you on it because it was your district. I thought you were put on it.

SENATOR D'ALLESANDRO: To study the women's prison? I don't believe I was on a commission to study the women's prison.

SENATOR BARNES: Okay. I'm sorry. I suggested that you be there instead of me because you were the Senator.

SENATOR D'ALLESANDRO: But I was put on a commission to study the penal system that Laura Pantelakos chaired, if that's the one you're referencing.

SENATOR BARNES: No. The one I'm saying is the one that I was appointed to by the former Senator President. I went to that office and suggested that you take my place because you're the Senator from that district. I thought you might have had some updated information that you could share with us.

SENATOR D'ALLESANDRO: No.

SENATOR BARNES: And I don't disagree with you because I was there for one trip to it and I'm not against you and your arguments. I just thought you had maybe more updated information since 1972 or what have you.

SENATOR D'ALLESANDRO: The best information that I have as I say, is the Double Jeopardy Report, which was issued in December of 2004 with an errata in January of 2005. I currently serve on the commission that was created, Laura Pantelakos is the chair, to look at the penal system in its entirety. And I also serve on the commission that was created, Representative Joe Stone chairs, on the secure psychiatric unit at the prison, which by the way, is another problem, because we're in litigation as we speak. We're in litigation in the Superior Court and a decision is being brought down that's going to cause us some significant problems.

SENATOR BARNES: Thank you, Senator. I'm glad I asked that question.

SENATOR D'ALLESANDRO: I'm always glad when you ask a question, Senator Barnes, 'cause I want to answer it in it's entirety.

SENATOR BARNES: You did.

SENATOR D'ALLESANDRO: Thank you.

SENATOR HASSAN: Thank you, Mr. President. I rise simply to try to very briefly clarify some of the confusion. I would just refer people to page 17 of the Double Jeopardy Report published in December 2004 with an errata in '05. Footnote 5 indicates how some new substance abuse programs were introduced after this commission began to investigate. It is not a therapeutic program which is what we are talking about here. The footnote explains perfectly, I think, what the real situation is and I just urge all my colleagues to read it. Thank you.

SENATOR GOTTESMAN: Thank you, Mr. President. Just two points. One, no one showed up in opposition to this bill. Number two, the most moving testimony, in addition to the fact that there were many people who came who were advocates for this bill, was someone who was named Linda Party, who testified on behalf of the Women of New Hampshire, she called it. She was a convicted drug dealer who subsequently had her record annulled. She was involved in community work. Somebody took her by the hand and helped her and brought her along. She is now involved in very positive work. She is a trusted person in our community and in our society. And I felt that, if we could do that for other women, that we would be accomplishing something. And I would ask that this be approved. By the way, the amendment that I believe is going to be handed in, was considered at the committee, and it was rejected. So I suggest that, if we could, move on, if we have to see the amendment, we can consider it and then go forth. Thank you, Mr. President.

### **Amendment adopted.**

Senator Clegg offered a floor amendment.

Sen. Clegg, Dist. 14

**February 22, 2006**

**2006-1180s**

**08/09**

### **Floor Amendment to SB 262**

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

AN ACT establishing the positions of administrator of women offenders and family services and administrator of male offenders and family services within the department of corrections, and establishing interagency coordinating councils on women and male offenders, and making an appropriation therefor.

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

1 New Sections; Administrator of Women Offenders and Family Services; Council Established. Amend RSA 21-H by inserting after section 14-a the following new sections:

21-H:14-b Administrator of Women Offenders and Family Services.

I. There is hereby created the position of administrator of women offenders and family services within the department of corrections. The administrator shall be responsible for programming and services for women offenders in the statewide adult correctional system including probation, parole, and correctional facilities. The administrator of women offenders and family services shall be a classified position.

II. The administrator shall:

(a) Establish goals and objectives for statewide correctional systems within the framework of the department's philosophy, including planning, organizing, implementing, directing, and monitoring statewide



gender-responsive programs and services, as well as developing policies, procedures and standards for the provision of such programs and services. The administrator shall participate in the development, implementation, and review of all policies, directives, and standards that involve supervision of women offenders. The administrator shall also coordinate continuum and continuation of gender-responsive services to women offenders moving from one setting to another, and re-entering their communities.

(b) Write standards for, execute, and monitor all non-clinical contracts with service providers who work exclusively with women offenders. The administrator shall review and provide feedback on an ongoing basis on all clinical contracts and services for women offenders regarding consistency with contract language and gender-responsive principles.

(c) Establish and coordinate partnerships, and maintain working relationships within the department of health and human services, with other government agencies, with communities and with community-based organizations, volunteers, advocacy groups, the academic community, and other external stakeholders.

(d) Provide supervision and technical assistance to field and women's facility superintendents and managers regarding issues related to women offenders and gender-responsive programs, services, and practices. The administrator shall provide input into the evaluations of other facility superintendents, field managers, and personnel relative to their roles in the supervision and provision of services for women offenders.

(e) Provide input regarding necessary data collection and evaluation to measure effective programming and supervision of women offenders. The administrator shall consult with and provide input with other directors regarding appropriate levels of staffing in both the field and institutions responsible for the management of women offenders. The administrator shall also confer with and make recommendations to the commissioner regarding women offender supervision and services and oversee the planning, development, and implementation of training guidelines for staff working with women offenders, and recommend changes in duties assigned to casework and security staff who work with women offenders.

(f) Review internal and external investigations into personnel and administrative and criminal matters involving women offenders. The administrator shall act as a resource in cases of staff sexual misconduct involving women offenders and provide input into personnel actions for addressing misconduct involving staff who work with women offenders and misconduct involving women offenders.

(g) Be involved in review and evaluation of expenditures and spending plans as they relate to the provision of program services for women offenders. The administrator shall prepare budget recommendations regarding women offenders' program services consistent with the departmental budget cycle. The administrator shall also engage in budget formation, grant applications, and resource allocation activities related to women offenders as assigned.

(h) Chair the interagency coordinating council for women offenders.

#### 21-H:14-c Interagency Coordinating Council for Women Offenders.

I. There is established an interagency coordinating council for women offenders.

II.(a) The members of the council shall be as follows:

(1) One member of the governor's office, appointed by the governor.

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

(3) One member of the house of representatives, who shall be knowledgeable about county corrections, appointed by the speaker of the house of representatives.

(4) The executive councilor representing district 5/Goffstown.

(5) The warden of the state prison for women.

(6) The commissioner of health and human services, or designee with knowledge of behavioral health, alcohol and other drug policy, and the family assistance program.

(7) The director of division of children, youth and families, or designee.

(8) The attorney general, or designee.

(9) The chief justice of the superior court, or designee.

(10) The chief justice of the supreme court, or designee.

(11) The commissioner of the department of education, or designee with knowledge of Title IX, Carl Perkins Grants, and other federal funding sources.

(12) One member from the Hillsborough county government, appointed by the New Hampshire Association of Counties.

(13) One former inmate at the state prison for women, appointed by the governor.

(14) A representative from the New Hampshire commission on the status of women, appointed by the governor.

(15) A representative from the New Hampshire Coalition Against Domestic and Sexual Violence, appointed by the governor.

(16) A representative from New Hampshire Task Force on Women and Addiction, appointed by the governor.

(17) A representative from the Citizens Advisory Committee of the New Hampshire State Prison for Women, appointed by the governor.

(18) A community member with knowledge of correctional practices with particular expertise with female offenders, appointed by the governor.

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

III. The duties of the council shall be as follows:

(a) Identify opportunities for interagency cooperation in the effective management of female offenders.

(b) Develop memoranda of understanding outlining "in-kind" services or cooperation to provide services to incarcerated women and their children.

(c) Develop cross training opportunities to foster understanding of system responses to the shared population across agencies of incarcerated women and their children.

(d) Develop gender-specific treatment for co-occurring conditions and a continuity of treatment from incarceration to community.

(e) Coordinate interagency case management and re-entry planning.

(f) Assess the impact of incarceration on family relations during and after incarnation.

(g) Approve the hiring of an administrator of women offenders and family services, to assist the council in performance of its duties.

(h) Apply and administer federal and private sector grants for the furtherance of the duties of the council and the development of gender-responsive, trauma-informed management of female offenders and their children.

IV. The council shall meet at least monthly during its first year, then at least quarterly thereafter. The administrator of women offend-

ers and family services shall act as chairperson of the council. The council shall convene at the call of the chair when deemed necessary by the chairperson.

V. The term of each member appointed under paragraph III who has a term of office shall be coterminous with their term in office. The terms of the remaining members shall be for 3 years. Vacancies shall be filled for the remainder of the term in the same manner and from the same group as the original appointment.

21-H:14-d Administrator of Male Offenders and Family Services.

I. There is hereby created the position of administrator of male offenders and family services within the department of corrections. The administrator shall be responsible for programming and services for male offenders in the statewide adult correctional system including probation, parole, and correctional facilities. The administrator of male offenders and family services shall be a classified position.

II. The administrator shall:

(a) Establish goals and objectives for statewide correctional systems within the framework of the department's philosophy, including planning, organizing, implementing, directing, and monitoring statewide gender-responsive programs and services, as well as developing policies, procedures and standards for the provision of such programs and services. The administrator shall participate in the development, implementation, and review of all policies, directives, and standards that involve supervision of male offenders. The administrator shall also coordinate continuum and continuation of gender-responsive services to male offenders moving from one setting to another, and re-entering their communities.

(b) Write standards for, execute, and monitor all non-clinical contracts with service providers who work exclusively with male offenders. The administrator shall review and provide feedback on an ongoing basis on all clinical contracts and services for male offenders regarding consistency with contract language and gender-responsive principles.

(c) Establish and coordinate partnerships, and maintain working relationships within the department of health and human services, with other government agencies, with communities and with community-based organizations, volunteers, advocacy groups, the academic community, and other external stakeholders.

(d) Provide supervision and technical assistance to field and men's facility superintendents and managers regarding issues related to male offenders and gender-responsive programs, services, and practices. The administrator shall provide input into the evaluations of other facility superintendents, field managers, and personnel relative to their roles in the supervision and provision of services for male offenders.

(e) Provide input regarding necessary data collection and evaluation to measure effective programming and supervision of male offenders. The administrator shall consult with and provide input with other directors regarding appropriate levels of staffing in both the field and institutions responsible for the management of male offenders. The administrator shall also confer with and make recommendations to the commissioner regarding male offender supervision and services and oversee the planning, development, and implementation of training guidelines for staff working with male offenders, and recommend changes in duties assigned to casework and security staff who work with male offenders.

(f) Review internal and external investigations into personnel and administrative and criminal matters involving male offenders. The ad-

ministrator shall act as a resource in cases of staff sexual misconduct involving male offenders and provide input into personnel actions for addressing misconduct involving staff who work with male offenders and misconduct involving male offenders.

(g) Be involved in review and evaluation of expenditures and spending plans as they relate to the provision of program services for male offenders. The administrator shall prepare budget recommendations regarding male offenders' program services consistent with the departmental budget cycle. The administrator shall also engage in budget formation, grant applications, and resource allocation activities related to male offenders as assigned.

(h) Chair the interagency coordinating council for male offenders.

21-H:14-e Interagency Coordinating Council for Male Offenders.

I. There is established an interagency coordinating council for male offenders.

II.(a) The members of the council shall be as follows:

(1) One member of the governor's office, appointed by the governor.

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

(3) One member of the house of representatives, who shall be knowledgeable about county corrections, appointed by the speaker of the house of representatives.

(4) The executive councilor representing district 2/Concord.

(5) The executive councilor representing district 1/Berlin.

(6) The commissioner of corrections, or designee with knowledge of field services, community corrections, and the family connections center at the lakes region facility.

(7) The warden of the northern New Hampshire correctional facility for men.

(8) The warden of the state prison for men.

(9) The warden of the lakes region facility.

(10) The commissioner of health and human services, or designee with knowledge of behavioral health, alcohol and other drug policy, and the family assistance program.

(11) The director of division of children, youth and families, or designee.

(12) The attorney general, or designee.

(13) The chief justice of the superior court, or designee.

(14) The chief justice of the supreme court, or designee.

(15) The commissioner of the department of education, or designee with knowledge of Title IX, Carl Perkins Grants, and other federal funding sources.

(16) One member from the Merrimack county government, appointed by the New Hampshire Association of Counties.

(17) One member of the Coos county government, appointed by the New Hampshire Association of Counties.

(18) One member of the Belknap county government, appointed by the New Hampshire Association of Counties.

(19) One former inmate at northern New Hampshire correctional facility, appointed by the governor

(20) One former inmate at the state prison for men, located in Concord, appointed by the governor.

(21) One former inmate at the lakes region correctional facility, appointed by the governor.

(22) One representative from the New Hampshire Coalition Against Domestic and Sexual Violence, appointed by the governor.

(23) A representative from the citizen's advisory committee for the northern New Hampshire correctional facility.

(24) One representative from the alcohol drug abuse, prevention, intervention and treatment commission.

(25) One representative from the New Hampshire commission on the status of men.

(24) One representative from the National Congress for Fathers and Children.

(26) One representative from the Stop Abuse For Everyone organization.

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

### III. The duties of the council shall be as follows:

(a) Identify opportunities for interagency cooperation in the effective management of male offenders.

(b) Develop memoranda of understanding outlining "in-kind" services or cooperation to provide services to incarcerated men and their children.

(c) Develop cross training opportunities to foster understanding of system responses to the shared population across agencies of incarcerated men and their children.

(d) Develop gender-specific treatment for co-occurring conditions and a continuity of treatment from incarceration to community.

(e) Coordinate interagency case management and re-entry planning.

(f) Assess the impact of incarceration on family relations during and after incarnation.

(g) Approve the hiring of an administrator of men offenders and family services, to assist the council in performance of its duties.

(h) Apply and administer federal and private sector grants for the furtherance of the duties of the council and the development of gender-responsive, trauma-informed management of male offenders and their children.

IV. The council shall meet at least monthly during its first year, then at least quarterly thereafter. The administrator of male offenders and family services shall act as chairperson of the council. The council shall convene at the call of the chair when deemed necessary by the chairperson.

V. The term of each member appointed under paragraph III who has a term of office shall be coterminous with their term in office. The terms of the remaining members shall be for 3 years. Vacancies shall be filled for the remainder of the term in the same manner and from the same group as the original appointment.

2 Appropriation to the Department of Corrections. The sum of \$ 150,000 is hereby appropriated for the fiscal year ending June 30, 2006 to the department of corrections, for the purpose of hiring an administrator of women offenders and family services and an administrator of male offenders and family services. The department also may accept any grants or federal funds available for such purpose. The funds shall be in addition to any other funds appropriated to the department of corrections. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

3 Effective Date. This act shall take effect July 1, 2006.

## 2006-1180s

## AMENDED ANALYSIS

This bill establishes an administrator of women offenders and family services, an administrator of male offenders and family services, an interagency coordinating council on women offenders, and an into agency coordinating council on male offenders. The bill makes an appropriation to the department of corrections to hire an administrator of women offenders and family services and an administrator of male offenders and family services.

SENATOR CLEGG: Mr. President, I'd like to offer amendment 1180. Thank you. A member of the New Hampshire Commission on the Status of Women stated that the prison environment, and I quote, "created a laboratory where the human spirit and soul is abandoned." Is this laboratory environment only in the women's prison? Do the 2,057 men currently in the men's facility in New Hampshire not feel that they, too, are trapped and abandoned? Discrimination comes in many forms. It's based on race, age, disability and gender. The proposed bill without this amendment is most certainly discrimination. How can we have a commission which addresses the inadequacies of the women's facilities but not the men's? How is that not discrimination? The issue here is gender discrimination. And, if there will be an administration for the female inmates, there most certainly should be an administration for the men. In committee, when I asked Commissioner Wrenn if he would oppose amending the legislation to have the same council for men, he said, "no". When I asked him if the same problems existed for men as exist for women, he said, "yes". The amendment that I'm proposing would include a council for women and a council for men. We're not trying to take anything away from the women. We're just trying to give the same opportunities to all prisoners. My problem isn't that women need the funding or an agency to deal with their problems. My problem is that we're acknowledging the problems only in the women's prison with this bill, and ignoring the problems in the men's prison. I'm still pretty sure that that's discrimination. In my amendment, we add the council for men and we mirror the commission makeup that would be in the women's council. I refuse to stand for any legislation that blatantly discriminates against one group or another for any reason. And, if this legislation is passed, we are discriminating against the men. Supporters of this proposal stated that Maryland, Connecticut have similar programs where a special councilor commission is set up to look into gender responsive issues in those states' prisons. In 1998, the substance abuse and mental health services administration, a federal program, gave Maryland a two year grant to start up a project, and this is the project that the sponsors of the legislation brought in that we should mirror. There was a trauma, addictions, and mental health program for women in Maryland prisons. No information was provided for the program after the year 2000 however. I asked the question and nobody knew why 2000 were the only figures. But it turns out that when the grant ran out in 2000, the Maryland Health Administration and AID's Administration, picked up the funding and expanded the program to include men. They renamed the program "TMR". Jenny House, current director of TMR in an email, said that since men were integrated into the program, the prison saw a big reduction in the number of times they had to use restraint or force against all inmates, and the facilities are running much smoother. Let me repeat, since they have integrated men into the program, the prison saw a big reduction in the number of times they had to use restraint

or force against all inmates, and that the facilities are running much smoother. So why would we want to prevent positive results by only dealing with one piece of the population? In Connecticut, both men and women have equivalent programming. However, the women's prison sponsor sleepovers for incarcerated women and their children. The men are only allowed normal visitation, but not overnight. If supporters of the bill wanted to use Connecticut as an example of a model prison, perhaps discussing a state where women are treated without favor would have been more appropriate. In 2003, the National Institute of Correctional Technical Assistance Report, which was cited in the hearing, was some of the problems discovered in the New Hampshire prison, they quoted at the lakes region facility, "opportunities for women prisoners are assigned here, are more extensive than the Goffstown facility." But as we know, in 2004, all the women in the lakes region were moved to Shea Farm. One of the questions that I have is, where'd the money go that we used for the programs over there? The NIC report also quotes a problem with funding and programming at the facility. In 2003, the state prison for women was awarded national accreditation, and the accreditation is a professional peer review based on over four hundred mandatory and non-mandatory national standards. In 2005, the Department of Corrections increased mental health treatment opportunities for female offenders in Goffstown. Now in the prison, there are other support groups, group therapy, alcoholics anonymous, sexual offender program, HIV education, workshops and bereavement groups. And it was initiated by the staff at the Department of Corrections. In December of '05, the Department of Corrections received federal funds for additional educational programs. Now we talk about how much money goes where. We received \$42,500. That money went to 2,000 men inmates and \$51,000 went to 100 women. If you do the math, it turns out \$21.25 per male and \$51. for each female. You want to talk about not getting proportional payments? Well it seems to me like they're getting about twice as much. The men have a right to be upset and feel cheated. With this money, the women are getting new computers, curriculum updates for their business and occupation programs and will address the areas of expanding career and technical education. Currently in the state prison there are forty-one vocational programs. That's a far cry from the allegations that the women inmates do not have enough options. I'm not saying that we shouldn't have a commission for women; I'm saying that I believe that, in order to be fair, we listened to the what the testimony was. There's a need for both sides to have advocacy. Having two commissions does nothing less than assist all members of the prison population. Having just one, based on gender, is in fact discrimination at it's highest. Thank you, Mr. President.

SENATOR BARNES: Thank you very much. And Senator, it's going to be a very short response, I hope.

SENATOR CLEGG: I doubt it.

SENATOR BARNES: Your amendment that you're proposing, that you're going to be asking us to vote on...that you are asking us to vote on. All it adds to this piece of legislation, it doesn't alter this piece of legislation that is in front of us, it just adds the same position for the men's prison?

SENATOR CLEGG: That's correct. It mirrors for the men in the prisons, the proposal to have a commission for women.

SENATOR BARNES: So it doesn't do a darn thing to the prison bill except add what you're looking for, equal treatment for the males?

SENATOR CLEGG: Parity. Correct.

SENATOR BARNES: Okay. Thank you, Senator.

SENATOR CLEGG: You're welcome.

SENATOR BURLING: A question of Senator Clegg. Recognizing your enthusiasm for passage of this legislation, I would like your assurance, if you can give it, that if this amendment passes, you will use all of your power as the Republican Leader to ensure that this bill, with both commissions, passes not only this body but also the House next door?

SENATOR CLEGG: Senator, it would be the second time in this session that Senator Larsen and I went arm and arm over to the House to push a piece of legislation. I would be more than happy to do that.

SENATOR BURLING: I take that as a yes.

SENATOR CLEGG: Yes.

SENATOR FOSTER: Thank you, Mr. President. As Senator Gottesman said, this amendment was considered by the committee and it failed. And none of us on that committee support discrimination. We felt, I think, that it was important to start one of these two commissions with one of these two administrators to see whether it worked. You know, we debated this bill, gosh about an hour, before we even got to this amendment. So you'd think if we were so certain it was going to work, boom, it would have just sailed through, right? But it didn't. We had to talk about it a little bit. There was some concerns, even concerns about the person currently having this amendment before us. So we felt as a committee, let's see **TAPE CHANGE I** it works, my guess is we'll be doing exactly the same thing and adding a position. The other thing I would say is, there's a question, at least that I have from information that I have, as to whether this position, in the case of men, already actually exists in that budget, that there already is a person doing programming at least. There certainly is not a commission, but there is a question as to whether there is a position. Whether there is or not, I guess, remains to be seen. The sense of the committee was let's go a little slow. Let's see if it works. Let's see if we have the results that Maryland had. If it does, I'm sure we'll be...somebody will be filing a bill right away to add the position in for the men's prison. Thank you.

SENATOR LARSEN: I rise to urge you not to pass the amendment. I have no problem in the long run, with creating a similar coordinating council for men in the prison system. I represent Concord. I represent the largest number of those in the correctional system in the state, and I recognize and have been through that prison. I know the needs we have in the men's prison. But, what we're working on is a bill that in fact has the enthusiasm and the interest of all of those who are in the list to serve on a coordinating council, to do this job now. I think we need to look at as a pilot position. In Maryland, they passed a similar project and found that, by implementing gender responsive trauma informed treatment programs for female offenders, they actually were able to use those things...those projects which they studied in a small way on the women offenders, and translate them into the men's programming. They ended up improving their outcomes because of that pilot project that first started on a small system with women. If you end up...I know it looks kind of funny to have the kind of the goose and the gander amendment here, but if you create that, what you do is you have the commissioner of the Department of Education trying to serve on two committees, all



at the same time. It is not particularly reasonable to think that they would find the time to do a good job on both, and I'm afraid both would be shortchanged. The only final...the only final statement I would say is that the creation of an administrator for men in this bill adds to its cost, but it also is interesting because, in trying to locate the vacant position in the Department of Corrections that could in fact be used for this position, the position of administrator of programs for men is already being filled. As I called over there, position #19953 is in fact the position of Administrator of Programs for Men. So in essence, we'd be creating an additional position while it was just filled. It makes no sense to do that now. I agree, we need to pay attention to the entire Department of Corrections, but I believe this is a very small step which we can take to begin what I see as a pilot project. And I am being asked if we can call a quick recess.

**Recess.**

**Out of recess.**

**The question is on adoption of the floor amendment.**

**A roll call was requested by Senator Clegg.**

**Seconded by Senator Barnes.**

#### **PARLIAMENTARY INQUIRY**

SENATOR D'ALLESANDRO: Mr. President, would you state the motion please?

SENATOR GATSAS (In the Chair): The parliamentary situation is we are voting on floor amendment 1180. The adoption of floor amendment 1180.

**The following Senators voted Yes: Kenney, Boyce, Bragdon, Clegg, Gatsas, Letourneau.**

**The following Senators voted No: Burling, Green, Flanders, Odell, Roberge, Eaton, Gottesman, Foster, Larsen, Barnes, Martel, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

**Yeas: 6 – Nays: 16**

**Floor amendment failed.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

Senator Clegg is in opposition to SB 262.

**SB 333**, relative to inquiries of DWI defendants regarding establishments serving alcohol to the defendants. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Foster for the committee.

**Senate Judiciary**

**February 22, 2006**

**2006-1209s**

**03/04**

#### **Amendment to SB 333**

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

1 New Paragraph; Penalties for Intoxication or Under Influence of Drugs Offenses; Inquiry. Amend RSA 265:82-b by inserting after paragraph VIII the following new paragraph:

IX. In every case of a conviction or a plea of guilty to a violation of RSA 265:82 or RSA 265:82-a, the court shall inquire of the defendant, before sentencing, regarding whether the defendant was served alcohol prior to the violation at an establishment licensed to serve alcohol on the premises and the name and location of said establishment. Any information so acquired by the court shall be transmitted by the clerk to the liquor commission and such establishment.

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

SENATOR FOSTER: Thank you, Mr. President. I move SB 333 ought to pass with amendment. I brought this legislation forward at the request of a colleague of mine who made me aware that there are provisions that have been adopted in other states that were used there to make highways safer. The provisions of SB 333, as amended by the Judiciary Committee, directs the court to inquire of a defendant at the time he or she is convicted of driving while intoxicated offense whether he or she was served alcohol prior to the violation at an establishment licensed to serve alcohol, and if so, the name of the establishment. The bill, as amended, provides that the information acquired by the court will be transmitted to the Liquor Commission as well as to the establishment named by the defendant. This data can then be used by the Liquor Commission to better enforce our state liquor laws and to investigate those few establishments that fail to carry out their duty not to serve intoxicated individuals. This will help keep our highways safer for our constituents. The Judiciary Committee recommends that this legislation be adopted as amended and asks for your support. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 355-FN**, relative to unlawful possession of alcohol by a minor. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Roberge for the committee.

**Senate Judiciary**  
**February 22, 2006**  
**2006-1208s**  
**03/04**

### **Amendment to SB 355-FN**

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

1 Unlawful Possession of Alcohol by a Minor. Amend RSA 179:10 to read as follows:

179:10 Unlawful Possession [~~and Intoxication~~] **of Alcohol by a Minor.**

I. Except as provided in RSA 179:23, any person under the age of 21 years who has in his or her possession any liquor or alcoholic beverage, or who [~~is intoxicated by consumption of an~~] **has consumed any** alcoholic beverage, shall be guilty of a violation and shall be fined a minimum of \$300. Any second and subsequent offense shall be fined at least \$600. For purposes of this section, alcohol concentration as defined in RSA 259:3-b of .02 or more shall be prima facie evidence of [~~intoxication~~] **consumption.** [~~No portion of this mandatory minimum fine shall be waived, continued for sentencing, or suspended by the court.~~] **In lieu of any or all portions of such fines, the court may impose commu-**

*nity service for such period as the court deems appropriate under the circumstances.* In addition to the penalties provided in this section, the court may, in its discretion, impose further penalties authorized by RSA 263:56-b.

II. Except for persons convicted on the basis of [intoxication] *having consumed an alcoholic beverage*, any person under the age of 21 years convicted of unlawful possession of liquor or beverage shall forfeit the same, and it shall be disposed of as the court directs. The proceeds, if any, shall be paid into the treasury of the county in which the proceedings were determined.

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

**2006-1208s**

### AMENDED ANALYSIS

This bill changes the prohibition on intoxication by a minor to a prohibition on consumption of any alcoholic beverage by a minor.

SENATOR ROBERGE: Thank you, Mr. President. I move Senate Bill 355 ought to pass with amendment. The provisions of this legislation deal with the continuing and sometimes tragic events which arise from underage alcohol consumption. Current law was intended to establish that in New Hampshire we have zero tolerance for underage drinking. However, if a young person is caught and there is a reasonable suspicion that alcohol has been consumed, unless he or she agrees to a breathalyzer test, conviction is often difficult. The courts construe the law as requiring proof of intoxication and that is difficult without the test. The amendment now provides that only consumption needs to be established. The committee also adjusted the penalties in current law to give the court flexibility to require community service in lieu of monetary fines believing that it is often more effective to educate the young person about the offense. The legislation is consistent with other important bills adopted to address underage consumption of alcoholic beverages and provides another means of getting help to those who need it. The Judiciary Committee recommends that this legislation be adopted as amended in committee. Thank you for your support.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

SENATOR CLEGG: Thank you, Mr. President. I rise in opposition to the bill as amended. Although the amendment is much better than the original bill, I still have some serious concerns about what we're doing here. What it says is, "has consumed any alcoholic beverages." And what's the standard of proof? A cop walks by, thinks he smells alcohol and suddenly you're guilty. There's no probable cause, there's no stumbling, there's no nothing. As one college student said to me, "Senator, go ahead and pass it 'cause I know you need probable cause to stop me in my car, so maybe from now on, instead of walking from that party to the dorm, I'll take my car." I have a problem with that. I'd rather they didn't drink, but I'm not so foolish as to think they're not going to. I have yet to go to a college campus where there wasn't some evidence of underage drinking. When I grew up, we had the Vietnam War, and when you were eighteen, you were old enough to go there, so you were old enough to have a drink. And then, because of money, the federal government said raise it back to twenty-one or lose some highway funds, and you know how we are here. If it's for money we're going to do it. So what did we do to our col-

lege students with this bill? We said if the cop doesn't like you on campus, all he's got to do is continuously go up and say "I smell alcohol, come with me." There's nothing in here says he gets to take a breathalyzer if he's tired of getting harassed. Nothing. No guarantee that he can take a breathalyzer. Not only that, why should he have to? Just because some cop doesn't like you, you got to continuously prove that you haven't done anything? When did we change that standard of evidence? I always thought it was innocent until proven guilty. This bill says guilty. Now come prove to me you're not. And I don't think it's right. I ask you what happens when I walk by the cop and I'm under twenty-one and I smell like marijuana? Nothing. So if a college kid doesn't have a car that he can get into to force you to have probable cause, he can switch his relaxation from alcohol to marijuana 'cause it isn't going to get him a \$300 fine as long as he's not carrying it with him. But the smell of alcohol, even if it's Nyquil, is going to get you a \$300 fine. I don't know what message you want to send. I heard the chief talk about a problem with St. A's students, and I can picture with this bill, them walking in on campus, slow weekend, "Let's go round up the frat boys." And I had a picture of a frat boy here. 1973, graduate, "Let's go round 'em up." What I'm saying is remember when you were in college, your mother and father told you not to do certain things, and did you listen? Well with this bill, your student won't be, your kid won't be calling up for 300 for books, he's going to call for 300 bucks because he took Nyquil and some cop didn't like him. And remember, it doesn't say he gets to take a breathalyzer test. It just says, cop says you were drinking, you're guilty, come to court. What's it cost you to go to court. I could ask my colleague from Nashua 'cause I know he's done a little criminal defense. It's probably going to be cheaper to pay...no offense David...It's probably cheaper to pay the \$300 fine than it is to hire a lawyer to prove that you were on Nyquil. I rise in opposition. I won't vote for this. I'm not for underage drinking, but I'm certainly not for making every kid on a college campus a criminal, pay \$300 and then \$600. I know it says community service in there, but I don't know many kids who are in college who have time for community service, they barely have time for their studies. So I won't support the bill, I know some of you will. I know it's not popular to go against bills like this, but personally, I'll take the chance of my reelection because the difference between making a kid go through this and my election, I'd rather not get elected, and allow the college kids an opportunity to become productive adults without this kind of thing hanging over their head. Thank you.

SENATOR FLANDERS: Thank you, Mr. President. We've been through this several times. I want to remind this chamber that, before my time in this chamber, this legislature voted it was illegal for anybody under the age of twenty-one years old to be in possession of alcohol. And that's the law. And I don't care whether Senator Clegg says it's okay that college kids can drink or not. I don't care. The law says he can't. And let me tell you something that happens up north, a couple of stories that I explained to the committee. Vermont has this law. New Hampshire does not. This happens up in Senator Gallus' district. The kids go into Canada where they can drink. And where do you think they come back into the United States? Certainly not in Vermont. They come back into New Hampshire. So we've got the whole end of New Hampshire with these young students coming back, trying to get back into Vermont, and we can't do anything about it, because, in order to prove possession, they have to have it in their hand. If a police officer goes in the kid throws the beer can into the woods, you can't prove possession. You can't prove

possession unless it's in their hand. If it's in their belly, damn it, that is possession. You think of the automobile accidents we've had because of booze. I have a friend of mine who's a chief in a college town, not one of the big colleges, but over in my area. In the last two years, he's had six deaths, alcohol, in death, alcohol poisoning, six. And he says "give me something, that I can get these kids off the street, I can lock them up so they don't keep drinking and dying. Give me something." If we can save one life with this bill, it's worth it, and I'm sorry for Senator Clegg, that he thinks we're picking on these kids. When you pick them out of an automobile, like I did because I am a police officer, and when you pick that kid out of an automobile dead, you wish somebody had done something to help them. So I'm sorry, if he thinks that police officers are going to just pick them. I think that's baloney, you still then have to go through a court system, if you want to. And I say, with all the underage drinking we have in this state, we ought to do something about it. And I think everybody should vote for this and I'm going to close by saying that if we save one eighteen, nineteen-year-old boy or girl, we've done a good job today.

SENATOR MARTEL: Thank you, Mr. Chairman, I mean Mr. President, excuse me. I, too, am in favor of this bill. I, too, was a college student. I, too, was a fraternity brother. I still am. Charter member of my fraternity. Did we have our wild days back then, back in the sixties now, not in the seventies? As that picture portrays that went around the room. And yes, like everyone else, we had a good time. Senator D'Allesandro remembers some of those. He didn't partake with us, but he would remember them. Let me get more serious now. Anyone who's underage, and Senator Flanders is absolutely right when he says "the law is the law and twenty-one is the age." Now, there are millions of kids who would love to have that age dropped, to sixteen, seventeen some down to fifteen years of age, just so that they can get the thrill of that first drop of alcohol in their system. There is an exception that we have today for minors who partake for certain religions who allow taking of both bread and wine, like in the Catholic Church, the Orthodox Churches, and also some Protestant religions who perform Communion. And, at that time, anyone, whatever age, the parents allow them to take, can drink wine. Now, I can see that that's a tradition, families allowing it, but is it the same as going out and having a six pack of beer, a case of beer, a keg? No, it's not. Does anybody go around and badmouth policemen and start harassing policemen because they're out of control, because they're drunk? Or trying to hide? No. Let me ask you this. What's the difference between beer and marijuana? One's a drug, one's alcohol and they're both illegal. I beg to differ that if you stand next to a person who has taken, or partaken, I should say in marijuana, and if you can't smell them a mile away, you know something's wrong about that. The policemen can surely, surely, make sure that they take those people and arrest them for doing drugs. I've never taken an illegal drug in my life and I'm proud of it. But I tell you, I've had to deal with some situations with friends and neighbors, one of my family, and I tell you, that it's a tough job for the cops to look at these kids and see them intoxicated, smelling like a brewery or distillery, as well as those who partook in drugs, marijuana or other types. Mr. President, I urge that we pass this bill. As a policeman's son, I always got it twice. I learnt young to be respectful. I urge that we vote this as ought to pass as it is, and I ask you to all to consider what I just said.

SENATOR BARNES: Move the question, Mr. President.

SENATOR GATSAS (In the Chair): I have four more speakers, Senator. Then we'll move the question.

SENATOR BARNES: Thank you maybe they can reduce their speaking time.

SENATOR LETOURNEAU: Thank you, Mr. President. I want to clear it up, I was never a frat boy, before we get started. Sounds like it was a lot of fun though. I want to remind my good friend from District 14 that when we did have the eighteen-year-old drinking law, our highway fatalities were through the roof, and the several years following bringing it back to twenty-one, the fatalities dropped dramatically, and then they dropped dramatically again when we went to .08. This particular bill was brought in to be a tool to be used primarily for home parties. What is happening now, the police get called to a situation where there's a loud disturbance and there's a party going on, and the kids throw all the booze out the backyard, none of them have anything in their hands, they can't do anything. Recently, we had two deaths in Derry, teenage kids. I don't know if I should just keep on going, there's more discussion going on around me here. We had two teenage fatalities in Derry as a direct result of a home party. Police couldn't act ahead of time. As a result, we have these kids that are dead, could be your daughter, your granddaughter, your grandson, or your granddaughter. It's to prevent them from getting in those cars and driving home. I urge the passage of this bill. Thank you.

**A roll call was requested by Senator Roberge.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Kenney, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Morse, Hassan, Fuller Clark.**

**The following Senators voted No: Gallus, Boyce, Clegg, Estabrook.**

**Yeas: 19 - Nays: 4**

**Adopted.**

**Ordered to third reading.**

**SB 356-FN**, relative to undue hardship knowingly caused by persons aiding in the transfer of assets. Judiciary Committee. Inexpedient to legislate, Vote 4-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move Senate Bill 356-FN inexpedient to legislate. The provisions of Senate Bill 356 sought to prohibit the transfer of assets for the purpose of collecting public assistance and to punish anyone who assists in any way of making such a transfer. No limitations of such...no limitations of the timeframe involved were actually given. Testimony received at the public hearing stated that parts of this bill are clearly unconstitutional. In fact, this very issue has been litigated and found unconstitutional primarily because the relationship between attorney and client is one that is protected. It was also indicated that it is already a Class B felony to aid in a fraudulent transfer of assets over and above this particular legislation. The legislation sought to prevent an attorney or financial planner or, in effect, their employers, supervisors any partnership, corporations that they're involved in, which could include insurance companies, that provide any sort of planning, estate planning, annuity products, that might be con-

strued as avoiding or being a fraudulent transfer to collect public assistance. The Judiciary Committee, strike that. The one thing I wanted to add is that, if it is determined that this particular legislation is violated, then the person who commits the violation would be subjected to a misdemeanor. So an attorney, financial planner, or anyone else along the line who has anything to do with aiding and abetting in the transfer would be prosecuted for this. The Judiciary Committee recommends that this legislation not be adopted and asks your support. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 401-FN**, relative to the Hanover-Lebanon District Court. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Roberge for the committee.

**Senate Judiciary**  
**February 23, 2006**  
**2006-1231s**  
**08/09**

**Amendment to SB 401-FN**

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

AN ACT establishing a committee to study the weighted caseload system.

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

1 Committee Established. There is established a committee to study the weighted caseload system and its impact on the number of judges needed in and assigned to certain district courts.

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 of representatives.

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

3 Duties. The committee shall study the weighted caseload system and its impact on the number of judges needed in and assigned to certain district courts.

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

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before December 1, 2006.

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

**2006-1231s**

**AMENDED ANALYSIS**

This bill establishes a committee to study the weighted caseload system and its impact on the number of judges needed in and assigned to certain district courts.

SENATOR ROBERGE: Thank you, Mr. President. I move Senate Bill 401-FN ought to pass with amendment. The provisions of Senate Bill 401

as introduced sought to make the Hanover-Lebanon District Court a full-time court with a full-time judge. The Judiciary Committee is totally understanding of the frustrations of the law enforcement community when they have persons to bring to court, but the court is not open. We also understand that the complication in changing the number of court days for this year. However, if the Hanover-Lebanon District Court were to be made full-time, there would be many other district courts in our state with larger caseloads and greater demand which are not full-time courts with full-time judges. Therefore, the Judiciary Committee recommends that this legislation be adopted as amended in order to create a study committee, and I would ask that this be tabled at this time. Thank you.

### **MOTION TO TABLE**

**Senator Boyce moved to have SB 401-FN laid on the table.**

**Adopted.**

### **LAIID ON THE TABLE**

**SB 401-FN**, relative to the Hanover-Lebanon District Court.

SENATOR BURLING: Mr. President, there was a discussion of this earlier and we had reached an agreement as to the procedure on this bill. I have a floor amendment, which we had agreed to discuss prior to the tabling motion.

### **MOTION TO REMOVE FROM THE TABLE**

**Senator Flanders moved to have SB 401-FN removed from the table.**

**Adopted.**

**SB 401-FN**, relative to the Hanover-Lebanon District Court.

**The question is on the adoption of the committee amendment (1231).**

**Amendment adopted.**

Senator Burling offered a floor amendment.

Sen. Burling, Dist. 5

**March 8, 2006**

**2006-1306s**

**09/01**

### **Floor Amendment to SB 401-FN**

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

AN ACT establishing a committee to study the weighted caseload system and requiring a minimum number of judicial days to be held at the Lebanon District Court.

Amend the bill by inserting after section 5 the following and renumbering the original section 6 to read as 7:

6 Lebanon District Court. During calendar year 2006, the Lebanon District Court shall be operated with the same number of judicial days as were held in 2005.

**2006-1306s**

### **AMENDED ANALYSIS**

This bill establishes a committee to study the weighted caseload system and its impact on the number of judges needed in and assigned to certain district courts.



The bill also requires a minimum number of judicial days to be held at the Lebanon District Court during calendar year 2006.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move the adoption of floor amendment 1306, and I ask to speak to that.

SENATOR GATSAS (In the Chair): Yes, speak...talk to your amendment, please.

SENATOR BURLING: This amendment, Mr. President, simply is a hold harmless during the pendency of the study of the weighted caseload. And if I may, let me begin by saying, there are two times today when I've missed the presence of Carl Johnson even more than regularly. This is one of those moments because the good Senator from District 2 and I share a problem. The problem is that the Lebanon District Court, which represents our communities, last year, had 166 judge days, under the weighted caseload as it was then computed. This year, the same court, serving the same number of communities with the addition of Dorchester, New Hampshire, which was just added in, thereby increasing the jurisdictional block of the Lebanon District Court, has seen its weighted caseload go up 154 percent. It's seen the arrest performance of its largest contributing police department go up 200 percent in three years, and yet it has gone from 166 judge days to 121 judge days. All of us will begin to experience this kind of crisis. It is untenable, and more than that, it is a direct transfer of costs from the state government down on the local property taxpayer. It is a direct cost transfer down because those police department budgets must deal with the fact that there aren't enough judge days to handle their cases in a rational and appropriate manner. What happens? The overtime budget of each of the police departments, Enfield, Canaan, Lebanon, Hanover, Lyme, I can go through the whole list, all of those overtime budgets go through the roof because you wind up with officers standing around waiting to get their cases heard, and because there are fewer judge days, you lose witnesses, you suffer from motions to dismiss. This is not a problem that is going to get resolved easily or today. But I stand here to tell you, on behalf of myself and the Senator from District 2, that we've got a problem. And as I look at what we've done just today, a new District Court judge for Manchester, Concord and Nashua, and an increase in salary for the administrative judge of the Family Division, the District Court and, I believe, the Probate Court, I'm asking you to think about where the money's coming from to pay for that. Well I've got a hint where the money's coming from, it's coming from Senate District 5 and Senate District 2, and that won't wash. We were promised, each and every one of us, that there was a wall around the District Court system. Well the wall turns out to be Chinese paper, and not very good paper at that. I am grateful that you're allowing the study committee to go forward. I would love to have your support, but more than that, I'd like your understanding because we need to fix this. We cannot fund positions in the Judiciary by cutting a vital District Court from 166 judge days to 121 judge days and think that the Senator from District 2 and the Senator from District 5 are just going to whistle and forget about it. Thank you, Mr. President.

SENATOR MORSE: Thank you, Mr. President. I know it's getting late in the day and we're all trying to listen, but I know we debated a bill just awhile ago that talked about police having to pay overtime. Senator Barnes brought the bill in, it was 5 percent or something we were going to give back to the community. I think we all have this problem

in all our communities and this is coming in about one district. I can't support that. Again, this is just another thing that's going to add to the budget quite frankly. Thank you.

SENATOR BURLING: Thank you. I was asked to clarify. Some of you know that I'm married to a judge. My wife is in fact the longest serving woman on the New Hampshire bench, but she's in the Superior Court, not the District Court. None of this discussion affects her or the court on which she sits. I'd just like that to be clear on the record. I'm doing this because I represent a district that is hard pressed and Senator Johnson isn't here.

**Floor amendment failed.**

### MOTION TO TABLE

**Senator Boyce moved to have SB 401-FN laid on the table.**

**Adopted.**

### LAID ON THE TABLE

**SB 401-FN**, establishing a committee to study the weighted case load system.

**SB 231**, relative to the residency requirement to qualify for the elderly property tax exemption. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move ought to pass on Senate Bill 231. This legislation will eliminate the five-year residency requirement to qualify for the elderly property tax exemption. The committee found that other tax exemptions do not require the residency requirement. In addition, durational requirements, such as this five-year residency requirement, have been struck down by the Supreme Court several times. The court's decisions have focused primarily on the fact that residency requirements interfere with citizens' rights to move freely from one state to another. The committee requests your support for their motion of ought pass on Senate Bill 231.

**Adopted.**

**Ordered to third reading.**

**SB 241**, allowing municipalities to exclude certain retirement assets from consideration in qualifying for the elderly property tax exemption. Public and Municipal Affairs Committee. Ought to pass, Vote 6-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I'm just grabbing my notes here real quick. I move Senate Bill 241 ought to pass. This legislation will allow municipalities to exclude certain retirement account assets in the net assets qualification for the elderly property exemption. Currently, retirement plans are considered assets and push many elderly people over the threshold that would qualify them for an exemption. Under this legislation, proceeds received as net income from tax deferred retirement plans will not count towards one's net income. This will even the playing field and is a fair way to approach the elderly property tax exemption. The Public and Municipal Affairs Committee asks for your support for the motion of ought to pass. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 254**, renaming a certain bridge in the town of Stratford the Janice Peaslee Bridge. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Martel for the committee.

**SENATOR MARTEL:** Thank you, Mr. President. I move Senate Bill 254 ought to pass. This legislation will rename the Maidstone-Stratford Hollow Bridge that runs over the Connecticut River and connects the towns of Stratford, New Hampshire and Maidstone, Vermont, the Janice Peaslee Bridge. Ms. Peaslee worked tirelessly to reopen this bridge. The bridge is important to the North Country because, without it, residents are forced to travel fifty to sixty miles out of their way. Although Janice Peaslee is a State Representative in Vermont, she has done a lot of work for our state. Both communities support naming the bridge after her as a sign of appreciation. The Public and Municipal Affairs Committee asks for your support in the motion of ought to pass. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 323**, establishing a legislative youth advisory council. Public and Municipal Affairs Committee. Ought to pass, Vote 6-0. Senator Hassan for the committee.

**SENATOR HASSAN:** Thank you, Mr. President. I move Senate Bill 323 ought to pass. This legislation will establish a legislative youth advisory council. The purpose of the youth advisory council is to engage New Hampshire's youth in the legislative process. The committee heard testimony from many young people who were thrilled that they may have an opportunity to interact with legislators one on one and have an impact on the public policy process. I will also note that we also heard some of the most true and clear testimony that I have heard this year in committee from a young man who reminded us how significantly young people can be impacted by the decisions we make and how important it is for us to have their feedback and their ideas as we make those decisions. This will provide an opportunity for us, as legislators, to gain a better understanding of our state's youth as we are not always fully aware of the impact our decisions have. The Public and Municipal Affairs Committee asks for your support for the motion of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 327**, establishing the New Hampshire civil war cannon restoration fund. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Barnes for the committee.

**SENATOR BARNES:** Thank you, Mr. President. Before I start on the blurb, I would like to pass these photographs along to my colleagues so, as I'm speaking, they can take a look at them. A number of years ago, I sat on the Joint Historical Committee and I had an opportunity to be involved with going over to the state armory, in one of their sheds, to see these wonderful weapons that we're going to talk about. I move Senate Bill 327 ought to pass. It will set up a Civil War Cannon Restoration Fund. The National Guard will be authorized to accept gifts, grants or donations from any public or private source for cannon restoration. The civil war cannons have been kept by the state for many years, are original, irreplaceable, and have a lot of historical as well as monetary value to them. It is time to do something with the cannons before their significance is forgotten.

And I'll add to that, that the committee that I sat on and the group of us over there, and I believe Representative at the time, Letourneau, was part of that committee, was involved. Those cannons were about to be sold to some art dealer or some individual out-of-state for God knows how little money. Those things are solid brass. And if you're looking at those photographs, you'll notice caissons **TAPE CHANGE** and correct me if that data's wrong, and I'm sure Senator Letourneau is ready with a speech on this, because this is his baby. I believe it was 1905, in that vicinity, when the United States Congress sent a letter up here giving those cannons to the state of New Hampshire. They were used, my understanding is, by one of our outfits, one of our artillery outfits. Notice that Senator Kenney, Army Field Artillery outfits, in the Civil War, manned by New Hampshire regulars in the US Army. Just for the record. The committee asks for you people to support this piece of legislation which is important to the history of this state. And, with that, I will rest my case. Thank you.

**SENATOR MARTEL:** Very briefly Mr. President. When I was in OCS back in the '60s I remember every single one of those cannons and we polished those things over and over and over again. And I'm sorry to see they got in such disarray but they're beautiful items and they're very vital to the history of the state. And I urge that we ought to pass this bill. Thank you.

**SENATOR LETOURNEAU:** Thank you, Mr. President. This is just a short blurb. Thank you, Senator Barnes, for your eloquent speech on the cannons. I really appreciate it, and I agree with everything you said. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 337**, relative to the sale and repurchase of property acquired by tax deed. Public and Municipal Affairs Committee. Ought to pass, Vote 6-0. Senator Martel for the committee.

**SENATOR MARTEL:** Thank you, Mr. President. Excuse me. I move Senate Bill 337 ought to pass. The intent of this legislation is to close loopholes and clarify current law. Municipalities will be able to inspect property acquired by tax deed prior to offering the property for sale. This will allow the property to be fixed and upgraded before being sold. Senate Bill 337 will also require the municipality to send a notice by certified mail to the owner...to the former owner at least ninety days prior to offering the property for sale. Currently, a former owner may give notice that he or she is ready to pay all costs associated with the property within thirty days of receiving notice from the municipality of intent to sell, or within three years if no notice is served. This is a problematic...this is problematic for municipalities as they often cannot locate the former property owners to serve the notice to and thus cannot do anything with the property for three years. Senate Bill 337 will reduce the time the former owner has to notify the municipality of intent to pay from three years to one year. Additionally, the bill also makes a former owner's title, upon repurchase, subject to the requirements by the municipality to bring the property into compliance with state and municipal codes. The Public and Municipal Affairs Committee asks for your support for the motion of ought to pass, and I thank you very much, Mr. President.

**SENATOR FOSTER:** Senator Martel, the very last section of the bill, and I think you were talking about it, cuts off the obligation to notify the homeowner, if you're going to just sell the property and/or to distribute

the proceeds to that individual. And you're indicating that the municipalities have trouble because they can't find the people. And I was wondering, obviously, somebody whose home is taken by tax deed or maybe the property's run into a pretty serious financial situation, why the committee didn't consider leaving the three years in place and requiring publication or something, or sending notice to the last known address. Shortening this up to one year, if I'm understanding this bill right, where you're taking somebody's home and selling it might be viewed as unnecessarily punitive.

SENATOR MARTEL: Thank you, Senator Foster, for asking the question. I believe the intent here is to make sure that the property...that people are notified properly, but also to make sure the properties don't degrade, become degraded and run down. So you know, by notifying them, using the one-year notice, they're able to get the properties in fine shape, but also make sure that the owners know that they could be offering them for property for sale. So I believe that's what the intent is.

SENATOR FOSTER: Follow up? Probably, maybe my question wasn't clear. Let me just direct you to page 2, section Roman VIII, which is on the second page there it says...

SENATOR MARTEL: Excuse me. Is that as introduced or as amended, Senator?

SENATOR FOSTER: There is no amendment. Am I correct?

SENATOR MARTEL: I just wanted to make sure because I was trying to find that page. Okay.

SENATOR FOSTER: Roman VIII says "the duty of the municipality to notify the former owners and to distribute proceeds pursuant to RSA 80:88, and the former owners' right of repurchase under RSA 80:89 shall terminate", it used to say three years, now it says one year. So I understand the rest of the bill, I understand where everybody's going, but on this particular one, I think it's talking about selling the property certain, sometimes the county gets a windfall, and I think the obligation is to try to send the money back to the owner, or the right of repurchase for the owner if they can pay the taxes. So I was wondering why, maybe somebody else from the committee can tell me why, shortening it down just to that one year from the three-year period.

SENATOR MARTEL: My understanding was that they did it because the fact of trying to get in touch, and getting to the families before the properties get run down, for the owners' right of repurchase, okay, under those sections. And I don't know any more than that Senator. I thought that was the intent, just to make sure everything, that there was nothing, that the owners knew, that they knew quicker and that the properties wouldn't go down. Would Senator Burling?

SENATOR BURLING: We were told at the committee meeting and I can't say that I verified this, but the officer from Berlin who came to present this, pointed out that current law basically is a six-year statute. There's three years in which the landowner has the right to pay off and then there's another three years under this section 80:88. So what you're doing here is you're really reducing a six-year term to four. And, not to pick on any north country community, but this is a problem which is most pressing for large cities and there is trouble brewing if they're not able to get in there quicker. So we thought, frankly, going from six years to four still left plenty of adequate protection. The other thing I would say,

Senator, as you correctly intimated, the community doesn't get to keep the sales price of the property when they sell it. They only get to pay off the taxes and then hold the proceeds for the owner of record and that obligation to hold the excess proceeds, if you will, on sale continues.

**Adopted.**

**Ordered to third reading.**

**SB 390**, relative to membership of the board of tax and land appeals. Public and Municipal Affairs Committee. Ought to pass, Vote 3-2. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 390 ought to pass. Senate Bill 390 changes the appointing authority for the membership of the Board of Tax and Land Appeals. Currently, this Board is appointed by the Supreme Court. Senate Bill 390 will give the Governor, Senate President and Speaker of the House the authority to appoint people to the Board for five-year terms. Elected officials should be responsible for making these appointments because they are closer to and more accountable to the people of the state. The committee on a 3-2 vote asks your support on passing this piece of legislation.

SENATOR HASSAN: Thank you, Mr. President. I rise in opposition to the committee report. I was one of the two votes against it. I want to point out to the body that the Board of Tax and Land Appeals is in fact a type of judicial entity. People can bring their cases either to the Superior Court or to the Board. The Board does not set tax policy; that's what we do, and we are in fact accountable to voters, and should voters have difficulty with the implementation by the Board, if they think the Board is not clear on what our policy is, they have a right to elect us or not elect us, and urge us to pass legislation to clarify what our tax policy is. And that's how they have accountability to ensure that we are listening to their concerns about tax policy in this state. What the Board does is decide cases. They have a duty to be impartial and look at the facts, as our policy...and then apply the law as we have set the law to those facts, and their ability to be impartial, and to be fair, rests on a certain degree, as it does in any judicial process, of insulation from the political pressures that come with elections. So, the Supreme Court currently appoints the Board members for five-year terms. If they do their job competently, they can be reappointed, but there is a five-year check on them. But, passing this bill will in fact make it much harder for our judicial officers, really in these cases, to do their job impartially. So I urge you to reject the ought to pass and allow us to bring forward an ITL motion.

SENATOR FLANDERS: Thank you, Mr. President. My question was who the two votes were. One was you because you said you were. Who was the other one who voted against it? Thank you.

SENATOR BURLING: Thank you, Mr. President. I have a slightly different spin on this. I've always believed that, if you collected snakes, you ought to be sure what kind of snake it was before you brought it into the house. This is a snake that will bite us. Politicizing the selection process of the Board of Land and Tax Appeals in a season of our state's history where people are unhappy with their assessments, they're unhappy with eminent domain, let me remind everybody that this is the Board that decides eminent domain cases. Politicizing the selection of those Board members is bringing a black mamba into your baby crib. Because the minute that somebody powerful loses an assessment case before the Board

of Land and Tax Appeals that your legislative officers selected, you can watch, well you've reprimanded me once already for saying a bad word, I won't use the bad word that came to mind, all heck will break loose. That's not something we want to do. It's also not something we would be well-intended to do. This is an old form of appointing the membership of this Board. It is a very important board. It is chaired by an absolutely wonderful person, and it has a really extraordinary record, and I think that we should not go down this road, particularly not over an issue as narrow as the view tax, which is the potting soil in which this particular plant grew up.

SENATOR BARNES: Thank you, Mr. President. Senator Burling, would you believe that you brought a snake into the room and I want to bring the fox into the chicken coop because occasionally...

SENATOR BURLING: It must be getting close to dinner.

SENATOR BARNES: ...apparently it wasn't mentioned that some of these cases, guess where they end up? The Supreme Court. And, who appoints that group? The Supreme Court. Would you believe?

SENATOR BURLING: Well, I would believe, but I don't know what implication to draw from that. I draw the implication that it is a system designed to ensure that experienced and capable people are picked to sit on the Board of Land and Tax Appeals.

SENATOR BARNES: Would you believe Senator, another question, a follow up if I may, that I have faith in the Governor who is elected by the people, to represent the people, the President of the Senate, who originally is elected by the people and then the folks in the body, and the Speaker of the House, who is also elected by the people? I do have faith in those people to make the right decisions also, whether they be Republicans or Democrats.

SENATOR BURLING: May I respond briefly? I absolutely believe that you believe that. My point is a little more subtle. My point is, when you give a power to appoint this significant to an elected official, you create the potential for pressures you may not want to deal with. Imagine, if you will, a race for Speaker, in which one of the issues becomes who it is that's going to get appointed to fill a vacancy on the Board of Land and Tax Appeals. Imagine, if you will, two people otherwise equally politically balanced, beginning to get votes by promising that, if they're elected, so and so is going on the Board of Land and Tax Appeals. That's not a good solution.

SENATOR FLANDERS: Thank you, Mr. Chairman. I'm reading the notes here quickly, and it appears that this thing has worked well for years. I guess my question to the committee is, did you get any complaints about it not working? Because we got a person testify that it's worked well for ninety-five years, another person saying that there really has been no problem there. So is it a problem that needs to be solved or is it something that I'm not reading here? Thank you.

SENATOR BURLING: Thank you, Mr. President. Well, that was one of the startling things about this whole hearing since the person who was most clearly the advocate for change said he had nothing but praise for current membership of the Board. So, all I could discern from that was he wanted to politicize the system, and since that's the principle I disagree with...

SENATOR FLANDERS: Thank you.

SENATOR FOSTER: I have no idea on this. How long do people currently have for their terms? Is it five years as well?

SENATOR BURLING: They all serve for five years, yes.

SENATOR FOSTER: Thank you.

SENATOR BARNES: Thank you, Mr. President. A little earlier, my friend Senator Burling made mention of the fact that he missed greatly today, his good friend from District 2, Senator Johnson. If you look at the bill, it's Senator Johnson's bill. Senator Johnson put that bill in, in good faith and came to testify on it and I put a lot of faith in Senator Johnson. He doesn't put legislation in usually that is not needed. Just for the record. He's my good friend also from District 2.

SENATOR FLANDERS: May I suggest, just as a suggestion, that we put this on the table or special order it until Senator Johnson gets back. I'd like to hear his comments.

### MOTION TO TABLE

**Senator D'Allesandro moved to have SB 390 laid on the table.**

**Adopted.**

### LAI D ON THE TABLE

**SB 390**, relative to membership of the board of tax and land appeals.

**HB 1119**, relative to naming the Richard Monahan Bridge in the town of Carroll. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 6-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President. Before I report on this, I'd like to say that Senator Morse and Senator D'Allesandro, I apologize and you have properly thanked me for spending money before we have it and for putting money in next year's budget, and I want you to know that I'm quite used to that. My wife is always telling me I spend money before we get it. Thank you. Thank you, Mr. President. I move House Bill 1119 ought to pass. This bill provides that the bridge spanning the Ammonoosuc River in the town of Carroll, which most of us know as Twin Mountain, be named the Richard Monahan Bridge. The Transportation Committee had the honor of hearing some very moving testimony from the family. For the record, I'm going to give you a very brief history, because I think it should be on the record. This young man went to Vietnam, and served time in Vietnam and came back and worked his way through some police departments, became Chief of Police in Carroll, and married and had children, and then, at a very young age started not feeling well. And many, many doctors visits and no diagnosis, and we heard the wife testify and the daughter was there. Eventually it was determined that he was suffering from exposure to Agent Orange and he died a horrible death. Something I did not know, but we heard testimony about Vietnam veterans who die after their term of service from injuries sustained while on duty, they aren't eligible to have their name on to the Vietnam veterans' memorial, and the family felt very strongly that they wanted their loved one someplace memorialized. And so we've agreed and passed unanimously that they name this bridge in Carroll, which is right in the center of town, and it would be a very nice tribute to the testimony on a very nice young man, thank you.

**Adopted.**

**Ordered to third reading.**



**HB 1198**, establishing a committee to study highway rest areas. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 5-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I move to table this bill.

### MOTION TO TABLE

**Senator Martel moved to have HB 1198 laid on the table.**

**Adopted.**

### LAID ON THE TABLE

**HB 1198**, establishing a committee to study highway rest areas.

**HB 1468-FN-L**, relative to Reservoir Road in the town of Deering and Lyme Road in the town of Hanover. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 6-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move House Bill 1468-FN-L ought to pass. This bill reclassifies a portion of Reservoir Road in the town of Deering as a class 5 highway, and a portion of Lyme Road in the town of Hanover as a class 4 highway. The towns of Deering and Hanover both support this bill, as does the Department of Transportation. Please join the Transportation Committee and vote ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 304**, relative to negotiating provider payments by the commissioner of the department of health and human services. Ways and Means Committee. Inexpedient to legislate, Vote 3-2. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 304 inexpedient to legislate. The committee felt that the effect of this bill would be to tie the hands of the Commissioner of Health and Human Services in negotiating the best deal for the state, and instead would require him to spend all the money appropriated regardless. The Ways and Means Committee asks your support for the motion of inexpedient to legislate. Thank you.

SENATOR GREEN: Thank you, Mr. President. I am the sponsor of this legislation. It is legislation that was in the budget two years ago, language. It was there for a reason. It was not there so that the Department would spend all the money that was appropriated. That was not the purpose of the language. We don't set the budget with an understanding that all the money will be spent. We set a rate for providers. That rate is established to serve the people who are eligible in that program. We have a list of providers in the state, all the way from hospitals to agencies who serve Medicaid patients. The reason I brought this bill, and the reason I supported it originally, was that the Department has a reputation of being very dictatorial to the agencies that we ask to contract with the state of New Hampshire and provide services. It's an adversarial relationship, yet they are doing the state's work. For us to suggest that we are not going to negotiate in good faith, what are contract negotiations all about? It doesn't mean you always agree; it means you make a good faith effort to come to agreement. Most agreements I've seen, whether they be in the provider area or negotiations with unions,

the best agreement usually is both sides don't like what the end result was. But the reality is that this type of language asking the Commissioner of the Department of Health and Human Services to negotiate in good faith with our providers, what's the alternative? He doesn't have to negotiate in good faith? Is that what we're saying? I don't think that we, the Senate, want to send that kind of message. I'm surprised we would want to. Now, if the law requires that the state provide services to people who are eligible, and we don't provide them, what usually happens is this. And we have been renown for doing this, and that is we create a waiting list. So we say we aren't going to serve those people, because there's not enough money. Now there's a couple of ways the state can, in good faith, meet their responsibility, and that is you set a budget, and a budget I remind you, is an estimate. It's never exact. You base it on data you have from the previous budget or from expectations from surveys that you do, how many people will be eligible to receive those benefits and you appropriate the necessary funds. You hope you don't have to spend it all, but if you do, you do, and you also have to, I'm sure, the Commissioner I'm sure does this, we've all done this, is you have to move things around in line items to meet your goals. We give the Commissioner that kind of flexibility, because I thought it was our goal as a state to meet our obligations. I think it's also our goal to say to the Commissioner or anybody else who's negotiating on our behalf, that they do it in good faith. Now I don't know, we were talking about another term to use in this bill. I don't know another term to use. It's either in good faith or it isn't. If someone can give me a magic other word that will communicate that we want to make sure that our administrators are treating people decently in their process, then give me the good word. If you look at the minutes of the hearing, nobody appeared against this bill. Nobody. No one had a problem with it. And those who did appear were people who have had experiences with the Department on the way in which they make their decisions about serving the public. So I just think that the reputation of the state and our image as elected officials voting against something that is against good faith negotiations, makes us look awfully bad. I don't think we want to do that. This does not mean you have to spend more money; it doesn't mean that at all. But it does mean that, if you have the money in the budget, that you spend it if you have enough people who are eligible. This bill says, it says very clearly, that you can't overspend the budget. It says "within the framework of the appropriation". No one's asking the state to spend more. We hope we don't have to spend as much. But we are making a statement that the Commissioner "must" negotiate in good faith based on the amount of money he has available to him as appropriated by this body. I would ask at this point that we overturn the committee report, which is inexpedient to legislate, and move on and pass it as an ought to pass. My understanding that if it was to pass, I don't know that, but there may be an issue. Would that go to Finance Mr. Chairman, Mr. President?

SENATOR GATSAS (In the Chair): The chairman has said yes it will.

SENATOR GREEN: Okay, then that's fine. The point is, if we pass this bill, it will go to Finance, and I would think that we will have a chance in Finance to verify that there will be no additional cost to the state of New Hampshire. Thank you.

SENATOR FULLER CLARK: Thank you very much. Senator Green, would you take a question please?

SENATOR GREEN: Yes, I'd be glad to.

SENATOR FULLER CLARK: Is it true, as I have heard from a number of the residential providers, that they have, there has been no effort to review and to negotiate with them what the rates would be that would be set by the Department, and there have been no actual face to face interactions between the Department and these residential agencies? And, is this not an attempt in this bill to try to ensure that at least that conversation and that review takes place?

SENATOR GREEN: The bill does say that he should negotiate in good faith. I can't comment on whether he's met face to face with people. All I can comment is what I get for feedback from the agencies around the state that basically what they get, is they get a notice, as to their rate, and they get a notice as how many people they're allowed to serve. That's not the way it's supposed to be. If people are eligible, they're supposed to be served, legally. That's why we end up in court, we don't serve them. So I can't respond to whether agencies meet face to face with him. I think in some cases the Commissioner has tried to meet with people. I don't think he hasn't not done that, but I think that when it's all said and done, that it's not a negotiation. It's kind of a here it is, take it or leave it attitude, and I guess part of the process of negotiating for me is, not only how many people are being served, but what is the nature of the services they are going to get. Because that affects the rate, and when you have a situation where you are in a negotiating session, and you are not really negotiating, you are being directed as to what is going to be, you either make it work or you don't make it work and you go out of business, whatever that amounts to. Thank you.

SENATOR MORSE: Thank you, Mr. President. I'd just like to remind the Senate and the Finance Committee of the work that they did in this category and I couldn't find a better place to describe our work on fulfilling the state's obligation. But in the committee report, which was short, and there were only two people that spoke, besides the Senators there, but Kathleen McDermott testified that prior to this current fiscal year, most providers received no rate relief for a period of five years. She also went on to state the RSA that said they should have got that. I said on the floor, when we brought the budget out, that we brought an honest budget, we stated in the budget that the amount in the budget was what we had and that's what were going to spend, and I even stated that we finally gave these people a raise when other budget committees couldn't give a raise to these people. I think we were very honest. But it left here, and for those that weren't on the Committee of Conference, the Speaker, in the Committee of Conference, actually put a date certain in the Committee of Conference that the Commissioner had to announce the rates. Now I don't know what more we can do. Because I told the Senate President I think the way we find out as Senators, whether or not we're accomplishing our job with what's going on in that Department is hearing from the people that aren't getting serviced, and I'm not hearing that. So I think he's doing a great job. And I just noted, when we were in caucus this morning, that the Fiscal Committee, for those of you that sit on it, had a document that was an inch thick of transfers. It was the normal way. I checked. I hadn't seen it before, but back to 1996 it has been a normal way of moving money around in that Department to serve the people. It's his job. He's doing a great job at it, haven't heard complaints, and I thought we did an honest job in the budget. I do agree, with that wording, it's hard to vote against this. But the fact is, I think we're accomplishing it.

SENATOR GREEN: Senator Morse, please. Senator, I don't disagree that the committee did a good job. I'm going to ask a question. Would you take a question? Is there anything in this legislation that requires the state to spend more money?

SENATOR MORSE: I don't know that, at this point, Senator, where it says that he has to meet face to face, spend more money. I would say your answer is probably it doesn't require any more money. Spending money that is in the line item without being able to transfer it because it wasn't being used for something. I don't know if it stops that.

SENATOR GREEN: I would just say that the intent is not to stop that. I think I've clearly stated what the intent of the legislation is. It's really to enforce the state to live by its obligations, by treating people decent and negotiating in good faith. That's what it means to me.

SENATOR MORSE: And to answer that question, which I believe is there, I believe we are doing it in good faith, and I think we made some solid efforts in this budget to make sure that we stated that good faith, and I don't think this is needed. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise against the inexpedient motion and I want to say two things. I've served with two chairmen of Finance who did an outstanding job, and who did negotiate in good faith, and have produced budgets that were acceptable. But it seems to me that what we have to do as a legislature, is set an example and maybe it has to be codified, that we want people negotiating in good faith. That's something, we put a lot of trust in our people, we say we bring these things to the table, this is the budget that we present to you, but we want you to negotiate in good faith. When there's that breach of good faith, then we have a problem in this legislative process. As Senator Morse points out, there haven't been a lot of complaints. I've fielded some concerns with regard to the Department of Health and Human Services. I try to handle them as expeditiously as we can. As a matter of fact, as I've said to Sonja, what we've got to do, we keep a notebook and everyday we try to something good for people. And many of those are Health and Human Services related items, are they not? So I think in good faith means a lot. It sends a message to the people of the state of New Hampshire that this is a representative body, this is a responsive body, and we are going to do things in good faith. Does that mean we have to spend more money? No. What it means is, when we sit down with people and we negotiate, we're there to negotiate with people. We're going to accept their side then we're going to make a decision, but we're going to do it with an open mind. We're going to move this process with all of the best intentions. And I struggled with this good faith, because it's very, very, difficult. Very difficult to put a real handle on it, to say exactly what is in good faith? But it appears in numerous documents as we go through our life. So I think it's a good situation. I think it's a good requisite and it's something that we should support. Thank you, Mr. President.

SENATOR LARSEN: I, too, rise to support the language that requires the Commissioner to negotiate in good faith. I agree that the budget did address this issue this year, but I have to say, for those of us who suffer through the long hours of the Administrative Rules Committee, we just recently had a debate about the rates paid to residential care providers.

And while it might not have been with Senator Morse in the room, there were many of us who heard long hours, or at least a good couple of hours of debate about the way that the Department sets rates. There was in Administrative Rules, which not everyone gets to see, but we saw, there was an effort to say that, although they may set the rates, the Department is only going to be responsible for paying that part of the rate which is budgeted. If it's not budgeted, they're not going to pay the rate that they've negotiated. They're...they also brought evidence in the Administrative Rules Committee that there was money lapsed back, although the legislature had approved money for residential care in prior years, money was lapsed back into the general fund rather than paying the rates that had been agreed to. So those issues have come up in Administrative Rules, and I have to say that this language is not, would not be harmful to, but would in fact promote a good dialogue between the Commissioner and the providers, because they are in fact, in residential care treating the most at-risk children that we have in our state, those children the state is responsible for. And these are kids who have suffered abuse or neglect or are at risk of other dangers. So it makes sense to negotiate in good faith because we need those people's services. Thanks.

SENATOR BRAGDON: Mr. President, I'd like to move to question.

SENATOR GATSAS (In the Chair): I have one more speaker, Senator Martel.

SENATOR MARTEL: Thank you, Mr. President, I'll be very brief. It's my understanding that you have a very good understanding as to how we deliver services and how we spread the allocation of funds across the table, okay, for helping people across the state, whether they be children, or they be are adults, it doesn't matter. The Commissioner we have in place today is not only a commissioner, but he is a master planner. And master planner to its highest, is a person who can ideally budget, and put a budget in place, have the bumps in the road along the budgeting process, come out and make the best possible decisions made for the better good of the people. Sometimes that doesn't mean more money. It means to be more accurate in how we administer services. Sometimes that's even better. Because then the dollars that we spending are dollars which are accurately being spent, okay, for services of people which they deserve. Sure, we could always spend more and more, and I agree with that in certain places. But overall, Mr. President, our Commissioner is doing an extremely good job, and he should be credited, you know, commended for that, and he is. And I urge you to please overturn this ITL motion so that we can move on with another motion, Mr. President.

**Motion failed.**

Senator Green moved ought to pass.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 363-FN-A-L**, requiring the department of revenue administration to cease collection of any Internet-related communications services tax and establishing a commission to study and determine the effect of ceasing the collection of Internet-related communications services tax. Ways and Means Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

**Senate Ways and Means**  
**February 22, 2006**  
**2006-1215s**  
**09/01**

**Amendment to SB 363-FN-A-LOCAL**

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

**AN ACT** prohibiting the department of revenue administration from collecting any communications services tax that is not permissible under federal law; and establishing a commission to study and determine the effect of ceasing the collection of Internet-related communications services tax.

Amend the bill by replacing section 1 with the following:

1 Internet Tax Freedom Act; Compliance. The department of revenue administration shall not collect any communications services tax under RSA 82-A that is not permissible under federal law.

**2006-1215s**

**AMENDED ANALYSIS**

This bill prohibits the department of revenue administration from collecting any communications services tax that is not permissible under federal law. The bill also establishes a commission to study and determine the effect of ceasing the collection of Internet-related communications services tax.

**SENATOR CLEGG:** Thank you, Mr. President. I move Senate Bill 363 ought to pass with amendment. The bill will ensure that New Hampshire does not collect any communication services taxes that would be in violation of federal law. Excuse me. The bill also establishes a commission to study the effects that this loss in revenue will have on the state. While New Hampshire is currently grandfathered with regard to the collection of internet related communications services taxes, that provision will expire before this year is up. This bill will ensure that we do not collect the tax illegally. The Ways and Means Committee recommends that this legislation be adopted and asks for your support. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 1605-FN**, relative to transfers from prepaid fish and game license fund. Ways and Means Committee. Ought to pass, Vote 4-0. Senator Odell for the committee.

**SENATOR ODELL:** Thank you, Mr. President. I move House Bill 1605 ought to pass. This bill would change the formula for annual transfers from the prepaid Fish and Game License Fund for lifetime licenses sold. Under the current formula, the fund is rapidly depleting. The change in formula outlined in this bill will help to stabilize this fund in the short term and improve its overall performance in the long run. The Ways and Means Committee recommends that the legislation be adopted and asks for your support. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 1658**, relative to authorizing agreements by the fish and game department with nonprofit partners for the purpose of accepting gifts, grants, bequests, or donations to further department goals. Ways and Means Committee. Ought to pass, Vote 5-0. Senator Gallus for the committee.

**SENATOR GALLUS:** Thank you, Mr. President. I get to use the three most misused words here today. "I'll be brief". I move House Bill 1658 ought to pass. This bill will allow the Department of Fish and Game to establish a non-profit foundation for the purpose of raising money for the Department. The committee heard testimony from the assistant director of Fish and Game Department that they have already received an early indication that sportsmen and other wildlife enthusiasts would be very receptive to donating to this private foundation. The Attorney General's Office will also assist with various aspects of the foundation's establishment. The foundation will provide a means for the Department to garner additional revenue which they desperately need. The Ways and Means Committee recommends that this legislation be adopted and asks your support. Thank you.

**Adopted.**

**Ordered to third reading.**

### RESOLUTION

Senator Clegg 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 all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

### LATE SESSION

#### Third Reading and Final Passage

**SB 231**, relative to the residency requirement to qualify for the elderly property tax exemption.

**SB 241**, allowing municipalities to exclude certain retirement assets from consideration in qualifying for the elderly property tax exemption.

**SB 254**, renaming a certain bridge in the town of Stratford the Janice Peaslee Bridge.

**SB 284-FN**, establishing a third full-time justice position in the Manchester, Nashua, and Concord District Courts and equalizing the annual salaries of all justices of the Manchester, Nashua, and Concord District Courts.

**SB 302-FN**, relative to real estate brokers.

**SB 318-FN**, relative to the use of deadly force to protect oneself.

**SB 323**, establishing a legislative youth advisory council.

**SB 327**, establishing the New Hampshire civil war cannon restoration fund.

**SB 333**, relative to inquiries of DWI defendants regarding establishments serving alcohol to the defendants.

**SB 337**, relative to the sale and repurchase of property acquired by tax deed.

**SB 355-FN**, relative to unlawful possession of alcohol by a minor.

**SB 363-FN-A-L**, prohibiting the department of revenue administration from collecting any communications services tax that is not permissible under federal law; and establishing a commission to study and determine the effect of ceasing the collection of Internet-related communications services tax.

**HB 380**, relative to absentee voting.

**HB 649-FN-A-L**, establishing a commission to study the costs and funding of medicolegal investigations and autopsies.

**HB 653-FN-L**, relative to bonds for construction, development, improvement, and acquisition of broadband facilities.

**HB 1115**, relative to the definition of resident for purposes of fish and game laws.

**HB 1119**, relative to naming the Richard Monahan Bridge in the town of Carroll.

**HB 1283**, relative to sheep and goat identification requirements.

**HB 1296**, relative to the voluntary scrapie flock certification program.

**HB 1468-FN-L**, relative to Reservoir Road in the town of Deering and Lyme Road in the town of Hanover.

**HB 1605-FN**, relative to transfers from prepaid fish and game license fund.

**HB 1657**, establishing a wildlife legacy initiative for gifts and donations for fish and wildlife conservation programs.

**HB 1658**, relative to authorizing agreements by the fish and game department with nonprofit partners for the purpose of accepting gifts, grants, bequests, or donations to further department goals.

**HB 1659**, relative to the use of certain small caliber firearms in taking wildlife.

## ANNOUNCEMENTS PARLIAMENTARY INQUIRY

SENATOR CLEGG: Mr. President, I have a parliamentary inquiry. It's concerning the crossover date. If I understand correctly our rules, all bills need to be out of the policy committees by March 22<sup>nd</sup> and then we will have those ready for a calendar for the following Thursday, which will actually be the last day for the Senate to act on Senate Bills. Is that correct?

SENATOR GATSAS (In the Chair): My understanding was that March 22<sup>nd</sup> was the bills...we were going to hear all bills that would leave the Senate.

SENATOR CLEGG: That would be Wednesday, March 22<sup>nd</sup>. Is that the day we are actually having a session day or is it the following Thursday that we have a session day to dispose of all bills? If I read the rules, Mr. President, it says, "Wednesday, March 22, 2006 deadline for Policy Committees to report on Senate **TAPE CHANGE** If I could get a clarification.

SENATOR GATSAS (In the Chair): Senate Bills will be heard on the 29<sup>th</sup> of March. All bills must be out of committees by then, March 22<sup>nd</sup>.

SENATOR CLEGG: Thank you, Mr. President.



**PARLIAMENTARY INQUIRY**

SENATOR HASSAN: Parliamentary inquiry?

SENATOR GATSAS (In the Chair): Senator Hassan.

SENATOR HASSAN: Would it be the Thursday a week after the 22<sup>nd</sup>, meaning it would be the 30<sup>th</sup>?

SENATOR GATSAS (In the Chair): The 30<sup>th</sup>, I am sorry. Thank you.

SENATOR HASSAN: Thank you.

**RESOLUTION**

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, processing enrolled bill reports and amendments.

**Adopted.**

**In recess to the Call of the Chair.**

**HOUSE MESSAGE**

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

**HB 624-FN**, relative to penalties in certain health and health-related professions.

**HB 1155**, creating a violation for failure to pay a highway toll.

**HB 1174**, requiring that voters who request a secret ballot be present at the town meeting.

**HB 1217**, requiring the secretary of state to publish certain information on campaign contributions.

**HB 1235-FN**, establishing a criminal penalty for driving a commercial motor vehicle while violating an out-of-service order.

**HB 1238-FN**, relative to centralized voter registration database information.

**HB 1278**, increasing the fine for violating certain laws relative to labor.

**HB 1320**, relative to penalties for planning and zoning violations.

**HB 1330**, clarifying the laws relative to municipal enrollment in the National Flood Insurance Program and relative to adopting flood insurance rate map amendments.

**HB 1349**, relative to costs of personnel and rates for equipment use in hazardous waste incidents.

**HB 1403**, relative to explanations of proposed constitutional amendments appearing on the ballot.

**HB 1407**, relative to funding exotic aquatic weeds eradication and control.

**HB 1478**, relative to penalties for employers who give false or incomplete required information about employees to the department of employment security and establishing an amnesty period for certain unpaid contributions.

**HB 1526**, relative to the composition of the medical review subcommittee of the medical review board.

**HB 1530**, naming the road to the supreme court and the administrative office of the courts Charles Doe Drive and naming the campus of the supreme court and the administrative office of the courts Charles Doe Place.

**HB 1627**, relative to the assessment of open space land.

**HB 1660-FN**, regulating identity theft.

**HB 1715-FN**, relative to funding of the professional assistance program of dentists.

**HB 1751**, relative to penalties for failure to have workers' compensation coverage.

**HCR 20**, a resolution commending the New Hampshire committee for Employer Support of the Guard and Reserve.

**HCR 25**, urging the United States to withdraw funding for the United Nations if the United Nations adopts a resolution in violation of the United States Constitution.

**HJR 21**, urging the university of New Hampshire to restore intercollegiate baseball and softball.

### INTRODUCTION OF HOUSE BILL(S)

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 624-FN to HCR 25**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 624-FN**, relative to penalties in certain health and health-related professions. (Executive Departments and Administration)

**HB 1155**, creating a violation for failure to pay a highway toll. (Transportation and Interstate Cooperation)

**HB 1174**, requiring that voters who request a secret ballot be present at the town meeting. (Public and Municipal Affairs)

**HB 1217**, requiring the secretary of state to publish certain information on campaign contributions. (Internal Affairs)

**HB 1235-FN**, establishing a criminal penalty for driving a commercial motor vehicle while violating an out-of-service order. (Transportation and Interstate Cooperation)

**HB 1238-FN**, relative to centralized voter registration database information. (Internal Affairs)

**HB 1278**, increasing the fine for violating certain laws relative to labor. (Banks and Insurance)

**HB 1320**, relative to penalties for planning and zoning violations. (Public and Municipal Affairs)

**HB 1330**, clarifying the laws relative to municipal enrollment in the National Flood Insurance Program and relative to adopting flood insurance rate map amendments. (Public and Municipal Affairs)

**HB 1349**, relative to costs of personnel and rates for equipment use in hazardous waste incidents. (Public and Municipal Affairs)

**HB 1403**, relative to explanations of proposed constitutional amendments appearing on the ballot. (Internal Affairs)

**HB 1407-FN-A**, relative to funding exotic aquatic weeds eradication and control. (Environment and Wildlife)

**HB 1478**, relative to penalties for employers who give false or incomplete required information about employees to the department of employment security and establishing an amnesty period for certain unpaid contributions. (Banks and Insurance)

**HB 1526**, relative to the composition of the medical review subcommittee of the medical review board. (Executive Departments and Administration)

**HB 1530**, naming the road to the supreme court and the administrative office of the courts Charles Doe Drive and naming the campus of the supreme court and the administrative office of the courts Charles Doe Place. (Transportation and Interstate Cooperation)

**HB 1627**, relative to the assessment of open space land. (Energy and Economic Development)

**HB 1660-FN**, regulating identity theft. (Judiciary)

**HB 1715-FN**, relative to funding of the professional assistance program of dentists. (Executive Departments and Administration)

**HB 1751**, relative to penalties for failure to have workers' compensation coverage. (Banks and Insurance)

**HCR 20**, a resolution commending the New Hampshire committee for Employer Support of the Guard and Reserve. (Executive Departments and Administration)

**HCR 25**, urging the United States to withdraw funding for the United Nations if the United Nations adopts a resolution in violation of the United States Constitution. (Energy and Economic Development)

**HJR 21**, urging the university of New Hampshire to restore intercollegiate baseball and softball. (Education)

**Out of Recess.**

### LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*March 16, 2006*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good morning. I understand that at yesterday's St. Patrick's breakfast, some very weighty matters were jestered, at least two of them. Without a doubt there is a lot of substance in this Senatorial body, but I look around and I'd say spread unequally amongst the twenty-four districts. But remember, it is weighty legislation and substantial leadership and ample wisdom that will most profoundly affect the imprint you leave upon this place once your part's done. And above everything else, it is transparent integrity, humility and compassion, that some misguided folks see as weaknesses, by the way, that will make true heavyweight champions of each of you no matter what the bathroom scales might say. So let us pray.

*Gracious Creator, remind us that You have crafted each one of us in Your own image and likeness, on the inside, more than on the outside. And may we build this day upon that too often hidden scaffolding that shapes us and supports us and dignifies us, when we are aware of it and when we are not, for that is the only reliable framework of our hope. Amen*

Senator Roberge led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS

### INTRODUCTION OF SENATE BILL(S)

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered CACR 43-44, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

06-3065

**CACR 43**, relating to the cost of education. Providing that the legislature shall determine and define the content, extent, and funding of education. (Gatsas, Dist 16; Clegg, Dist 14; Gallus, Dist 1; Bragdon, Dist 11; Barnes, Dist 17; Morse, Dist 22; Johnson, Dist 2; Eaton, Dist 10; Boyce, Dist 4; Roberge, Dist 9; Green, Dist 6; Flanders, Dist 7; Kenney, Dist 3; Martel, Dist 18: Finance)

06-3066

**CACR 44**, relating to limits on the taking of private property. Providing that a person's property shall not be taken by eminent domain if the taking is for private use. (Green, Dist 6; Giuda, Graf 5: Finance)

## COMMITTEE REPORTS

**SB 268**, raising the age of required attendance of children in school. Education Committee. Ought to pass with amendment, Vote 3-2. Senator Green for the committee.

### Senate Education

**March 7, 2006**

**2006-1291s**

**04/05**

### Amendment to SB 268

Amend RSA 193:1, I(b) as inserted by section 1 of the bill by replacing it with the following:

(b) The child is receiving home education *and is therefore exempt from this requirement*; [or]

Amend the bill by inserting after section 3 the following and renumbering the original sections 4-5 to read as 5-6, respectively:

4 Home Education; Definitions. Amend RSA 193-A:1, I to read as follows:

I. "Child" means a child or children at least 6 years of age and under [16] 18 years of age who is a resident of New Hampshire.

SENATOR GREEN: Thank you, Mr. President. I am happy to stand up here before you today, members of the Senate, and support and ask you to vote in favor of Senate Bill 268. That bill, of course, is referred to in some circles as the "dropout bill"; some of us refer to it as an "alternative education" bill; and some people refer to it as the "increase in age

to attend school” bill. All three of those, I believe, are accurate in terms of the bill. Senate Bill 368 [sic] will amend a 103 year old law, that was established when New Hampshire was largely a state of farms, textile mills, and shoe factories and students were allowed to legally quit school when they turned sixteen in order to go work. Many of these rules date back to the more agrarian times. Back then, students could leave school and get a job in a mill or on a farm; and, of course, that assumption is basically no longer true. Today it takes a good education, it takes an understanding of the technology of today, and it behooves us to do what we can, in terms of policymaking, to keep these young people in school, and promoting their educational opportunities. As the pool of dropouts continues to grow, employment opportunities for them are more limited, because today’s economy requires the labor force to have increased literacy, more education, enhanced technical skills, and lifelong learning. This bill is supported by law enforcement. It’s supported by education and business community, although I’ll say to you that there are some educators who are not in that group, but the vast majority of them are. And it’s an effort to keep kids in school. As many of you know, two years ago this bill was before us, but not the same bill, the concept was in before us, which was to change the age from sixteen to eighteen. I voted against that bill at that time for a very important reason. Having been a former educator, I happen to know what it is to deal with young people who no longer want to be in school. The problem is that we in school, as a culture, have decided that there is one track for all children. We have broken that to some extent, but that’s still basically the concept. The culture of education is, it’s a traditional academic program, we do everything we can to keep them in that program even though they don’t want to be there. Thirty years ago, I had the important role of cosponsoring education to support and build the first vocational high schools in this state. That program had the same critics as this bill has. And the basic critic was, “Yes, we think we ought to have vocational education, but we don’t want to pay for it.” Well you know what? We did pay for it. We have, I believe in this school, somewhere in the vicinity of fourteen vocational high schools in this state. Every student in this state, if they want to go to vocational schools, they can go. They don’t even have to go to their own high school, they can go different, they have regional agreements that are developed over the years with these school systems. So we do have that alternative in place. We have worked hard in this body to promote and support alternative education. But it’s never been an approved program for education of our youngsters, and this bill, for the first time, takes and defines, and it’s actual policy, that the state of New Hampshire will support, and the educational establishment will support, alternative educational plans for children, which are no longer have to be just traditional. In this bill, we lay out very carefully some alternatives that are available. We mirror the actual endorsement of the State Board of Education in their Real Work Program definition. Internships are allowable and supported. These are the kinds of programs that we should be doing. The business community has to be a partner in this. They want to be a partner in this. They want a labor force that they can hire, and is educated in a way in which they can support. Internships will allow them to do that. One other thing that gets involved here, and it’s not just internships people, it’s all kinds of alternatives spelled out in this bill. I could go through each one, but they’re there. I came on this bill with the understanding that it was just going to be a sixteen to eighteen-year-old bill, and I was not going to support it. But, if we were going

to try to change the culture of education in this state, and we were going to look at ways to support alternative ways to keep children in school, I was going to support it. We will not in any piece of legislation, guarantee that there will be no dropouts. There will be dropouts no matter what we do. Because there are some cases we just don't know what to do with, I'll admit that. But we should make every attempt to keep every youngster possible into a program. Now, out of the traditional school, these programs are important, and they are individually approved, and these youngsters hopefully will be interested. And I think part of keeping children in school is to keep them interested. The other thing I want to address, because I think it's important we address it. Most people seem to think, and I don't happen to believe this, but this is the line that we get. "We can't do this because it's going to cost us money." That goes back to my days when we promoted vocational education. The reality is, and I believe this firmly, when we, as a public society, decided that we were going to educate all children, and were going to have public, and people were going to have a choice between public and private schools, that that decision was that these children would have their education paid for. We have a state law right now that requires us to educate every student in this state to age twenty-one. What concerns me is that that argument, if you turn the question around is, "What do we want to do, save money by making sure kids leave school earlier?" I don't think so. I don't think that's the message we want to send. Are we building budgets at the local level that are going to guarantee that a certain number of children are leaving school or quitting school? No, that's not how we build budgets. We build budgets with the anticipation that all those children who are on the enrollment at the time we pass the budget, that they're going to continue to be in school for that next year. Now, if they leave school and we save money, have we really saved money? My argument is no. We'll see those youngsters later on along the way. Unemployment, welfare, and other kinds of social ills, will come back to haunt us because these youngsters have not gotten themselves an education. We have in this bill, allowed youngsters to go through this program until eighteen, stay in school, get an education, and they'll either get a diploma or a GED. Now I'm not going to make a value judgment about that. I think each child is different; every child needs a program which is different and unique to them. If we decide to go down this road, let's talk about money a few minutes. Knowing what I know about what's in the State Department of Education funds right now, and the amount of money they haven't spent, some of it is earmarked, some of it's dedicated, but a great deal of it is, as long as we are showing improvement of schools through No Child Left Behind, some of those funds are available. I have also been told that there are many other funds that we can be applying for if we make this policy position of the state to prevent dropouts and we will be applying for those funds. I've also heard the argument that it's a 28A problem. It isn't a 28A problem. They're already responsible for these children. We're not mandating anything. They already have to educate these children. There's no new mandate. So 28A is a red herring; it's not true. We have a lot of alternative programs in schools, and let me tell you, some school systems have done a great job in providing these programs. We've got to make this a statewide policy that these children are going to have educational opportunities. And I'm willing to work with anybody who wants to figure out if they think there are particular programs that need additional help, I think the money is there, it's a question of how we direct those funds. There is no new taxes in this bill; there

doesn't have to be. We already fund every one of these children we're talking about. And we've got to educate them, but the problem we've got is to make sure they want to be educated. The old saying says you can lead a horse to water, but you can't make them drink. We've got to find ways to have these youngsters drink, to improve their opportunities, as they grow older and develop a need to create a family and support a family and support themselves. So I ask you at this point, to please support the committee and approve this piece of legislation. Thank you, Mr. President.

SENATOR JOHNSON: Question for Senator Green. Senator Green, would you agree that, with the effective date taking effect July 1 of 2008, that that will give sufficient time to come into the alternative learning plan stage and also look at the funding?

SENATOR GREEN: Absolutely, Senator. That's one of the reasons we made the date of enactment that date, so there'd be plenty of time for the schools and the state to work out whatever issues they needed to work out if there was a need for funding.

SENATOR BARNES: Thank you, Mr. President. First off, I'd like to start out with, do you believe that's the longest blurb I've ever heard since I've been in the chamber? Congratulations.

SENATOR GREEN: Would you believe, Senator, that was all written down?

SENATOR BARNES: Thank you, Senator. Is this bill going to go to Finance?

SENATOR GREEN: My understanding is that that would be the desire of some Senators, yes that's correct. I don't know.

SENATOR GATSAS (In the Chair): It will go to Finance.

SENATOR GREEN: There you go. The Chair has spoken.

SENATOR BARNES: Follow up question, Mr. President? Thank you, Mr. President. I think everything in here is fantastic, I have seen an alternate source of education over in the city of Manchester, and I've visited an alternative section over there with some of my colleagues about a month ago, and some of the young folks that were in the program came up here to testify on this piece of legislation. And I know you don't want to hear about money, but would you believe it's going to Finance, so I'm sure the Finance Chairman and all of his committee would be able to come back here and explain to us a little bit more about the money situation.

SENATOR GREEN: May I answer your question, Senator?

SENATOR BARNES: No, it's not necessary.

SENATOR GREEN: I do care about money, Senator, as you know, a great deal. Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. Again, it's a pleasure to join Senator Green on an education proposal before this body. I'd like to thank him, all the supporters and the Governor for setting the goal and jumpstarting progress on retaining more New Hampshire students through to high school graduation. The thing I like most about this bill is that it's all about how we can help students succeed. The bill doesn't just raise the age, it creates a new process for those over sixteen to receive a waiver by creating an alternative learning plan. Not forcing students to stay in school, but forcing students to have a plan for getting

their diploma or GED. While it also retains an exemption for the best interest of the child for the few who we know, as Senator Green said, we are not going to be able to see through to graduation. But right now, students know that at the age of twelve or so, that they can begin to disengage from school and dropout at sixteen. Right now, under current statute, it's much too easy to say okay, here's the door. This statute creates an alternative response which is why? What can we do? That's exactly what they've been doing up on Franklin, not a rich district, and they've brought down their dropout rate considerably. SB 268 will move us to create new alternatives, to help students overcome the personal and social obstacles that cause them to drop out. It gives an imperative to teachers, administrators, parents, communities and the students themselves to develop alternative pathways to getting that high school diploma or its equivalency. For today, I'd urge the Senate to embrace this bill, as in the best interests of not only New Hampshire students, but the state's future economy. Thank you, Mr. President.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in support of Senate Bill 268. I think Senator Green has articulated many of the reasons why this bill is different than other bills that have been brought before us. It makes sense in that it proposes a series of alternatives, and these alternatives make available to the student options, and students should be able to exercise those options. As a teacher all of my life, one of the most difficult tasks that I had to encounter was talking to a student about whether they should remain in school or not, and trying to articulate to that student the benefits of remaining in school. We've seen numerous charts that say high school graduate earns more than a non-graduate, college graduate earns more than a non-college graduate, and so forth. So the educational component is really clearly defined, as to the monetary value of finishing school. Now I come from the largest school district in the state, and I had the privilege of serving on that school board for ten years. We do two things in Manchester to try to improve our dropout rate, because our dropout rate was significant. In the New England Association evaluation of Manchester Memorial and Manchester Central High School, we found that that dropout rate was significant. We've initiated an alternative program called "The Pass Program". This Pass Program is contained within the system, and it takes kids who have dropped out, they re-enter the system and get their high school diploma. It's been a successful program. It just can't handle the numbers that want to join. Senator Green talked about the technical school. We have the Manchester School of Technology, which is a regional technical school. Some of you may remember Representative Andrea Scranton from Keene. Andrea Scranton and I were in the House when we proposed the first technical addition to a high school that was done in Keene. The thing that makes this bill so imperative is that we're facing a crisis in this nation and this crisis is really competitiveness in the worldwide market. The country of Great Britain has just mandated the teaching of Mandarin in their schools because of the growth and expansion of the Chinese economy. That's our competitor and, in order to be viable in a competitive market, you need an educated workforce. High school is the first step. And we've got to make sure that all alternatives are available to students. As both Senator Estabrook and Senator Green pointed out, you're not going to get 100 percent. One hundred percent success doesn't exist. But we should make every effort to give every student an opportunity to succeed in their own fashion, and that's why the alternatives proposed in the bill make a great deal of sense. It's



good public policy to do what's in the best interest of the people that you represent. Education has been, and will be, that ingredient that provides for a better life. We should try to provide every opportunity for every student to have that. As Senator Green pointed out, this nation made a commitment to public education. The first public school in the nation was in Boston, Massachusetts. We made a commitment to provide education because our perception was that education was the key to the American dream. This takes us one step forward in terms of allowing that American dream to come to fruition. On the cost side, as Senator Green pointed out, the law clearly states that, up until age twenty-one, you have an opportunity. We have to pay for that. So I think the cost is de minimis. The fact that we're doing this makes a great deal of sense at this time, and in this place. Thank you, Mr. President.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 1503**, relative to financial programs administered by the postsecondary education commission. Education Committee. Ought to pass, Vote 5-0. Senator Eaton for the committee.

SENATOR EATON: Thank you. House Bill 1503 is a request from the Post Secondary Education Commission and also is sponsored by the chairs of both the House and Senate Finance Committees and it's to allow financial aid dollars to be non-lapsing in order to better serve the students of New Hampshire. It changes the enrollment status and the ability of an institution to match state funds which often occur at a time in the fiscal year which prevents the commission from using financial aid funds. Over the past few years, \$6,000 to \$15,000 has lapsed into the general fund and these dollars should be going directly to the students. It's just an offset of when they get the funds and when they can use them. The second half of the bill is housekeeping related and will update statutes to better meet the needs of the Commission. And please join the Education Committee in voting this bill ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 162**, relative to general rules for vessels operating on water. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 4-1. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I move House Bill 162 inexpedient to legislate. This bill establishes general speed limits for vessels. This bill also requires a violation of the general rules for vessels operating on the water become part of the motor vehicle driving record of the person convicted. The Transportation Committee believes that the goals of this bill can best be achieved through better enforcement of our current boating laws, specifically the safe passage laws, and more education concerning boating activities. Please join the Transportation Committee and vote inexpedient to legislate. Thank you.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I am the one in the 4 to 1, and I rise with a profound sense of how much information people have tried to communicate to us all in the last few months. This bill has been an extraordinary learning experience for me and it is

an experience I do not regret for a minute. Because, in the process of listening to both sides of this discussion, I should say all sides of this discussion, I have learned a lot about how people view New Hampshire and how people view the basic values of this state, and how they see the future of their recreational experience here in New Hampshire. I've heard people talk about the kinds of worry that they experience when operating on a lake in a boat, where other boats are proceeding at what is perceived to be high speed. I've learned a lot about the kind of balance that people want to see in the shared use of this state and its extraordinary natural blessings. This isn't an easy call. It may be for some of you, but it isn't for me. I know that all balancing tests ultimately come down to taking some risk as a politician, listening to people who may be angry at you if you vote against what they think are their interests. But really this is a discussion which leads me to think we need to be thinking about sharing rather than the absolute right of one group or another. I've heard a lot of things about boat use in the course of this debate. I've heard some people say that one group, and it's so easy to point a finger, but it doesn't help much, one group wants to drive another group of boats off of a lake. That's simply not true. Everybody I've heard in this discussion understands that all of us, and our visitors from elsewhere in New England, have a right to share the lakes. I've heard some people say that it's a fundamental right. It's always tricky language, fundamental right, to do ninety miles an hour across the surface of our beautiful waters. That's an interesting proposition. Since we can't do ninety miles an hour legally across the tarmac of any of our road systems, I'm sort of intrigued by the notion that we have a fundamental right to do that. I come down in this bill to the following: this is an issue about families, it's an issue about safety, it's an issue about sharing, and it's an issue about the future of New Hampshire. Families because I want all families that come to New Hampshire's lakes to feel that they can safely use the lakes as a shared resource without fear of loss of life or limb. It's about sharing. We have these beautiful lakes, they are extraordinary. But the fact of the matter is that technology gives one group or another the power to drive other people from the surface of the lake. The simple fact of the matter is, it is a scary thing to be in a rowboat when some distance away a motor boat is doing ninety miles an hour across the surface of the water. John Kennedy in PT 109 could only do forty-five knots on a good day with his motors clean. We're talking about vessels that now do ninety to a hundred miles an hour and we're talking about a growing industry which markets those vessels to a buying public that thinks that that's a good idea, that it's fun. It may be incredibly fun. I've never owned a boat that came anywhere near doing a third of that but, I assume it's fun, and I assume that people really want to do it. But you can't say that that is a fundamental right, which is not to be restricted, without affecting the rights of other people. Because there are people in this state who love to proceed at a stately 1.5 miles an hour paddling their canoe from the shore of a lake to an island partway out in the lake and their sense of security and safety for their family and shared experience of a lake is affected by the velocity of the boats that are proceeding across the lake. I heard that from so many people. I sat through a wonderful public hearing, which I congratulate my chair, was extended so that more people could speak, and I came away with a clear impression. There is a problem of sharing on the lakes. It is a problem which we have an obligation to address. We cannot dismiss it. We cannot deny it. We cannot relegate one group of boaters or another group of citizens to the status of second class participants in the boating experience. There are ways we could deal with this. By sharing space, or sharing time, or

limiting speed. This bill before us proposes to limit speed. It's what we do on the roadways because we know we have to share the roadways one with another, and we know that that's a rational thing to do, limit speed. In the end, though I know there are many other ways to approach this problem, it came down in the committee to making a choice between inexpedient to legislate, or saying no to inexpedient to legislate. I vote no on inexpedient to legislate. I do that today as well because I know that some of my colleagues have floor amendments that really ought to be considered in this process. They are floor amendments that address other issues that we ought to consider like tidal waters or the concept of addressing Winnepesaukee only. Those are things that we should discuss, deliberate and decide upon. So, Mr. President, I'm going to vote inexpedient to legislate one more time, excuse me I'm going to vote against inexpedient to legislate one more time in the hope that we get to work out some kind of a compromise solution on this. It is a problem, and if we fail to address it today I guarantee you we'll be back here addressing it another time. I just hope that when we come back another time, it isn't after somebody's had a terrible collision at ninety miles an hour that causes loss of life. Thank you, Mr. President.

SENATOR LETOURNEAU: Question of Senator Burling. Senator Burling, isn't it true that when we heard the testimony that the problem really arises is not so much speed as congestion on the lake?

SENATOR BURLING: Thank you for the question. We heard so many things, and I think that it's fair to list some of them. We heard that it is congestion on the lakes. And I have to answer your question fully, so I will. There's clearly a congestion issue out there. It is a congestion issue which is greater on some days and lesser on others; greater on some parts of the lake and lesser on others. But we also heard that, and I'm sorry to say this, almost consensus that the Marine Patrol is utterly incapable of doing anything to protect the citizens of the state of New Hampshire operating in boats on Winnepesaukee. I heard that from almost everybody. I heard about failure to enforce. I heard about failure to enforce particularly the 150 foot separation rule. All of those things may be true, but all of them it seems to me, are aggravated by the condition of high speed. I hope that's...

SENATOR LETOURNEAU: Follow up question? Just one last question, I won't limit this. But do you know how many boats are actually able to do ninety miles an hour, what the percentage of boats on any particular lake are able to go that fast?

SENATOR BURLING: The truth of the matter is I haven't a clue. What I am aware of is that there are flyers, and I've seen some them around here today. Senator Johnson actually has two of them on his table in front of him, which clearly show that people are marketing some boat products as being capable of doing ninety miles per hour plus and those are being advertised as the perfect boat for Winnepesaukee. Now that may be, but I find it a little horrifying to consider. I think one of the things we could do and ought to do, if we defeated inexpedient to legislate, is take some time to collect some data about how many boats there are that can do more than sixty miles an hour, have a database of information so that we're not deciding this on the basis of anecdote and what I would call political posturing, because unfortunately, this debate out in the public got into a lot of political posturing. It sort of, as I say, finger pointing doesn't get you very far, but it seems to have become important in this debate.

SENATOR LETOURNEAU: Thank you, Senator Burling.

SENATOR MARTEL: Thank you very much, Mr. President. I have a question of Senator Letourneau. Senator Letourneau, if we look at the docket on currently House Bill 162, but it was under any other parts of legislation in the past. Isn't it true that this is almost twenty times that this bill has been studied or looked into? Can you come to some kind of conclusion that we have probably come to today? Or we did to in our committee hearing? Isn't it true?

SENATOR LETOURNEAU: I would say yes, this bill has been through a lot of committee hearings and it has been through a lot of study and this is probably the reason why we voted inexpedient to legislate.

SENATOR MARTEL: Thank you.

SENATOR JOHNSON: Thank you, Mr. President, as a long time resident of Meredith and forty-nine years on Lake Winnepesaukee, I think I have a pretty good stake in what's going on here, so I would like to take a few minutes if I may. I sent a letter to all of my colleagues which I believe was delivered yesterday, and I'm not going to read the whole thing, but I would like to just point out a few things. In one section I said, "I would like to challenge your thought process with the description of three words. Logic - the science of correct reasoning, the science which deals with the criteria of valid thought or correct reasoning, valid induction or deduction, as logic shows us a better course. Speed - to move rapidly, especially more rapidly than is safe or allowed. Addicted - devoted or given up to a practice of habit, especially a bad habit. I believe we have seen an increase in boat speed addiction which will only worsen over time as this happens to dangerous scenarios that this high speed boating activity creates will worsen as well. The thought process of people creating these dangerous scenarios appears to be "The lake is my playground, everyone else get out of my way." So that leaves logic, correct reasoning that will prove to us House Bill 162 should be voted ought to pass to demonstrate to the citizens and visitors of New Hampshire that the lakes are for everyone's safe enjoyment. I would also like to point out and refer you to RSA 270:1, declaration of policy, "In the interest of public safety and the protection of property, it shall be the duty of the Commissioner of Safety in all cases, not provided for by the United States inspection laws, and in all cases in which inspections are not regularly made there under, to provide for the inspection on any public waters of the state of all commercial and private boats" and so forth. And then in II, "In the interest of maintaining the residential, recreational and scenic values which New Hampshire public waters provide to residents of the state and to the promotion of our tourist industry and in light of the fact that competing uses for the enjoyment of these waters, if not regulated for the benefits of all users, they diminish the value to be derived from them. It is hereby declared that the public waters of New Hampshire shall be maintained and regulated in such a way as to provide for a safe and mutual enjoyment of a variety of uses, both from the shore and from waterborne conveyances. Such provisions shall take into consideration the following: the variety of special uses appropriate to our lakes, public safety, protection of environment and water quality, and the continued nurture of New Hampshire's threatened and endangered species." And I'll follow up that in one question that was asked, is the Silver Sands Marina up on Winnepesaukee advertising a Fountain 35 Lighting, ninety plus miles per hour, and another one the Fountain 29 Fever,

eighty plus miles an hour. So, is that what we want to happen on our lakes? I don't think so. So I would ask that we turn down the ITL and vote ought to pass on 162. Thank you.

SENATOR KENNEY: Thank you, Mr. President. I rise in support of the merits of House Bill 162, but I understand that there is some substantive flaws in House Bill 162 and today I find myself somewhat in a conundrum when I look at both sides of the issue. I first want to compliment the public, who have provided great insight throughout all the public hearings that they have been at, whether they've been for or against this bill or trying to see the outcome in a different manner. Last summer we had three public hearings in the Lakes Region, and two of those public hearings were in my district, Moultonborough and Wolfeboro, again I thank the public for coming out, 'cause I truly have learned a lot through this process. This bill originally started out in the House as a Lake Winnepesaukee bill. It shifted and then it included all the lakes in New Hampshire and also included the tidal waters. That's where I think it lost me a little bit **TAPE CHANGE** Lake Winnepesaukee; ideally I probably would have gone along with a nighttime speed restriction. I'm still not there with a daytime restriction on Lake Winnepesaukee when it comes to speed. I do believe our small lakes in New Hampshire should have speed restrictions, primarily because they're small lakes, they're built up today, they have a lot of boat density, and it's just an accident waiting to happen. I also believe that in this bill that the tidal water restriction with boat speed should be taken out. Hence, I'm not overly satisfied with the bill, but I understand the merits. Now people argue that you're taking away our freedoms, if you were to pass this bill. Now I understand that we are the "Live Free or Die" state, and obviously tourism is the second largest industry in the state and we want to develop a recreational environment, a family environment that says come to New Hampshire, boat on our lakes, enjoy the fresh air, the water quality that we all enjoy. But we do have laws on the books. You have laws on Newfound Lake that has speed restriction. You have laws on Lake Chocorua that says you can't have a motorboat on that lake. You have a process when it comes to ski craft that, if your body of water chooses, with ten petitioners, you can eliminate ski craft on that body of water. But it really comes down to what the pulse and sense of the public is on that body of water. There is a sense in the state today that there's questions about speed and safety, and there's been a tremendous amount of outpouring of that, as well as on the other side, who say please don't restrict us, we want to enjoy boating as we've known and have grown up with. I'm here today to say that this bill probably does not have enough legs to perhaps pass; however, this issue will not go away for New Hampshire. This is a serious issue and we need to create an environment where families and the public can enjoy our waterways and feel safe. There are many residents in my area, in Wolfeboro, Moultonborough and Tuftonboro, come to me and said we've been on Winnepesaukee for fifty years and we don't feel safe on going out on the weekends any longer. And you know, that's because there's more people on the lakes. Population has grown from half a million when my parents first came to New Hampshire; it's up to 1.3 million. We're a tourist state; we're going to expect more boats on our lakes. We're just going to have to respect each other's rights. We're going to have to get along, and stop the polarization on this issue, because the reality is we're all in it with one vested interest, that is to make New Hampshire the most livable state in the country, which it is, and to maintain that status. But let's get along on

this issue, and try to maybe in the future, establish a commission to bring all the concerns, whether it be radar concerns, whether it be enforcement concerns, whether it be speedometers on boats, whatever it is that we need to do to bring the stakeholders and the parties together to come up with mutual agreement because I hate to see polarized issues like this in our state. I just think it's unwarranted, and I think, at the end of the day, we're all trying to do the right thing. Thank you, Mr. President.

SENATOR HASSAN: Thank you, Mr. President. I rise in opposition to the ITL motion and just would echo some of the comments of both my colleagues, Senator Burling and Senator Johnson, in particular. I, too, have thought about this issue a great deal. I have received a great deal of mail. I have weighed both sides carefully. I needed to become much more informed about the issue because I do not regularly travel up to Winnepesaukee and I have not boated there in many, many years. So, for me, gathering information and listening to people throughout the state and a number of people who don't live in the state who chose to contact us as well, and I come down to this. This is, as we have discussed, a balancing of freedoms. It is the freedom to travel fast, to feel the physical freedom that speed gives you, balanced against the freedom to feel safe if you are in a vehicle that doesn't go as fast or does not have a motor. It is the balance of perception. There are people who, with all good intention and good faith told me, that those who think a speed limit is appropriate are wrong that speed is an issue, are wrong to feel unsafe. I can't change someone's perception of safety and this body can't. We have to listen to both. I was ultimately swayed by the people who said to me they understood why people wanted to travel above speeds of forty-five miles per hour on the lake, but that they felt that some of the people who traveled at the highest speeds in the boats that rise highest off the lakes literally don't see some of the people they pass at those high speeds. They may think they are being safe, but they may not see everyone they are passing in ways that are frightening to others. So ultimately, as I listened to this, I came down to thinking that when there is a group of people...a group of citizens who are truly afraid on the lakes and limit their use accordingly, when there are property owners on Winnepesaukee who call me and say they can no longer rent their homes, or have more difficulty renting their homes because vacationers are scared to go out on the lake as a family. When people tell me that the real problem is congestion, I believe congestion is a problem. I also know that when there is congestion, you ask people to slow down so that they can be more careful with each other and avoid accidents that congestion causes. When I hear all of that, and I hear on top of it, counsel from my colleagues who happen to be in a different political party than I am, but who have years and years of experience on the lakes and as legislators, to both the House and in the Senate, I am compelled to err on the side of safety. If this bill does not address the safety concerns that everyone shares, those for this bill and those against this bill all want a safe lake. If this does not work, we will hear about it soon enough. But I believe at the end of the day, that this will be a reminder to people on the lakes to slow down, that there will be some enforcement issues, but most people knowing that there's a speed limit will slow down and become more careful and, at the end of the day, I believe this bill will give us safer and healthier lakes. So I urge my colleagues to overturn the ITL. I know that other of my colleagues have amendments that I have joined in to address the tidal water issue, and I think we could make great progress on this if we overturn this ITL this morning. Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. As everyone else, we've been inundated with information and that's really in stark contrast to what usually happens with most of the bills we hear. Usually if we get a few calls telling us there's a problem around some particular issue, we get concerned, we try to do something about it. Well, I think that the amount of concern that was expressed to us convinced me that there is a problem here, that speed is a part of the problem at least, and that doing nothing is not the best solution. I'd like to consider some alternative solutions as other folks have said. I've prepared a floor amendment that would take this issue back to Lake Winnepesaukee where it began in the House. I think, in addition to learning from everyone that there is a speed issue, I think we also learned that this issue is most important to the area around Lake Winnepesaukee. That's where it started in the House; I think the House got carried away. It should be taken back to Winnepesaukee, and it also should, as a Senator from the Seacoast, I have to say remove tidal waters, and there's another floor amendment that would allow us to do that. So I'll be voting against the ITL, and would hope that you would, too, so that we can consider some alternative solutions. Thank you, Mr. President.

SENATOR BRAGDON: I move the question.

SENATOR GATSAS (In the Chair): I have two speakers left.

SENATOR FULLER CLARK: Thank you very much, Mr. President. I rise in opposition to the ITL motion on House Bill 162. And I am here today to say that I have been a boater all of my life on both lakes and on the ocean, and I wonder how many of you have actually gone forty-five miles an hour on a lake. It is ample speed to provide a reasonable limit for those individuals because ultimately what this bill is all about is what Senator Johnson said, is about safe and mutual enjoyment of our lakes. And it's clear to me, that without putting in place a measurable standard, that we have no mechanism to be able to enforce the speed at which boats travel on the various lakes around the state. Other states have passed speed limits, and we know that certain lakes in New Hampshire have passed speed limits and it has worked, and they continue to be able to serve everyone in a way that secures safety for all. I'm also here to say that I will be offering, if we're able to overturn the report of ITL, an amendment, that's 1388, which would make it clear that the speed limit set forth in subparagraph B of House Bill 162, shall not apply to waters under federal jurisdiction and that includes our tidal waters, because they are under federal jurisdiction and they are already regulated. So that we need to understand that we need to separate out that issue, but we need to move ahead once that amendment has been passed in order to ensure for everyone, both those people who live here and those people that visit here, that our lakes are going to be welcoming and safe and hospitable for all. Thank you.

SENATOR LARSEN: Thank you, Mr. President. I, too, rise to speak against the ITL. I think on an issue that has generated this much public interest, it's important to state my reasons for being against the inexpedient to legislate, and in fact, for supporting a reasonable speed on New Hampshire's lakes. There's evidence, as we all know, despite how many emails you might have gotten and how many letters you might have gotten, that while you might count up the letters and emails you've received, the polls are showing in fact that 63 percent of New Hampshire's voters favor a 45/25 speed limit on New Hampshire lakes. Surveys also show 84 percent believe the speed limits would make New Hampshire

lakes safer, and 74 percent also think that the speed restrictions would make our lakes more enjoyable. There's evidence that this law would work. Neighboring states, Massachusetts, Maine and Rhode Island, already have forty-five mile per hour speed limits on their lakes and other states choose to go more locally in limiting their speeds according to each lake. There's evidence that this bill would work. In Lake George, that's had speeding limits for many years in New York. Officials says that while there are very few tickets issued, that the greatest effect of this law is that it deters the problem, and that's its greatest benefit. But I think the most important thing is in fact, that we recognize that New Hampshire has been recognized as the most livable state in the nation, and one of the reasons for that is that we are seen as a state that promotes family enjoyment of its beautiful lakes and communities, that it is a safe state and that the people can safely live here and enjoy the benefits of this state, and that it's a state that in fact has a good sense of community, that we in fact, care for each other and the rights of others. And I would simply close in reminding people that oftentimes, as you're driving New Hampshire's highways, and I wish that I had had time to get a copy of the sign, the sign says, "Drive with courtesy. That's the New Hampshire way." I think that that's the message that this bill sends, and we need to overturn the ITL and vote ought to pass.

SENATOR LETOURNEAU: Thank you, Mr. President. Senator Larsen, you brought up Lake George. Are you familiar with the fatal accident that happened on Lake George last summer?

SENATOR LARSEN: I'm not, but I'm assuming that in any, just as we have highway speed limits, we have accidents and fatalities on the lakes in the same way you have fatalities on highways.

SENATOR LETOURNEAU: Follow up? Do you know if Lake George has a safe passage law similar to what we have here in New Hampshire?

SENATOR LARSEN: I have not sat through all the hearings that you have, Senator, and I applaud the committee for all the hours of testimony and especially Senator Burling, who I understand spent many hours hearing the testimony. I do not know all the specifics of Lake George, but simply the information I've received is that in fact the greatest benefit to Lake George's law is the deterrence benefit and it has not necessitated increased marine patrol. But just as our highways speed limits deter excessive speeds, although we have speeding on our highways, we know that just the appearance of a state trooper parked on the side of the road all of us know causes people to go a little slower. It doesn't require the issuance of massive amounts of tickets, but it's in fact the knowledge that there is some upper limit which won't be tolerated in terms of speed because it endangers others.

SENATOR LETOURNEAU: Just so you're aware, follow up, just a comment, would you believe that Lake George does not have a safe passage law and they had this massive fatality simply because two large boats that were carrying lots of passengers, tourists, got too close to each other and swamped one and it sunk. Just so you know that that won't happen here because of our safe passage law.

SENATOR LARSEN: I believe that any laws that we can pass which increase safety on our lakes is a good one, and I hope that we don't have those kinds of accidents in our state.

**Recess.**

**Out of recess.**



**The question is on the committee report of inexpedient to legislate.**

**A roll call was requested by Senator Johnson.**

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Gallus, Boyce, Green, Flanders, Roberge, Eaton, Bragdon, Gottesman, Clegg, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Morse.**

**The following Senators voted No: Johnson, Kenney, Burling, Odell, Foster, Larsen, Estabrook, Hassan, Fuller Clark.**

**Yeas: 15 - Nays: 9**

**The committee report of inexpedient to legislate is adopted.**

**HB 1154-FN**, relative to eligibility for special number plates for veterans. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 5-0. Senator Letourneau for the committee.

**SENATOR LETOURNEAU:** Sorry, what bill are we on? Thank you, Mr. President. I move House Bill 1154 ought to pass. This bill removes a barrier to an honor due to a veteran that is not currently available to all veterans. If a veteran has their property in an irrevocable trust and then their vehicle belongs to the trust, not the veteran, therefore by prohibiting them from obtaining a special New Hampshire veterans' license plate. House Bill 1154-FN requires a simple form to be developed by the Department of Motor Vehicles that would indicate the veteran has demonstrated to the Department that they are eligible to display the New Hampshire veterans' license plate. Please join with the Transportation Committee and voting ought to pass. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HJR 24**, supporting efforts for commuter rail in the state of New Hampshire. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 4-1. Senator Burling for the committee.

**SENATOR BURLING:** Thank you, Mr. President. I move House, excuse me, HJR 24 ought to pass. This joint resolution expresses support for the efforts to restore commuter rail to New Hampshire. Population growth and movement trends within New Hampshire in the last decade have dramatically affected the ability of our state's infrastructure to continue supporting the needs of our residences and businesses. New Hampshire's population is expected to double in the next twenty to twenty-five years, which will make transportation issues even more important. Commuter rail is one possible solution. Please join the Transportation Committee in voting ought to pass. Thank you, Mr. President.

#### **MOTION TO TABLE**

**Senator Clegg moved to have HJR 24 laid on the table.**

**The question is on the motion to lay on the table.**

**A roll call was requested by Senator Foster.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Morse.**

**The following Senators voted No: Burling, Gottesman, Foster, Larsen, Estabrook, Hassan, Fuller Clark.**

**Yeas: 16 – Nays: 7**

**Adopted.**

### **LAI D ON THE TABLE**

**HJR 24**, supporting efforts for commuter rail in the state of New Hampshire.

**SB 244**, relative to alternative regulation of small incumbent local exchange carriers. Energy and Economic Development Committee. Ought to pass, Vote 4-0. Senator Boyce for the committee.

**SENATOR BOYCE:** Thank you, Mr. President. I move that Senate Bill 244 be ought to pass. This bill deals with telephone companies that serve less than 25,000 lines. It allows them to compete on a more equal basis with the competitive local exchange carriers. And this bill eliminates the language requiring that rates not exceed the prevailing rates throughout the state, but it maintains a limitation on any increase from their previous rates to no more than 10 percent per year. This is to allow the little, very small phone companies to actually compete on a more rational basis with their competition that are less regulated. So I would ask to you vote for this. I believe there is a floor amendment that may follow this, and thank you.

**SENATOR D'ALLESANDRO:** Thank you, Mr. President. Question of Senator Boyce. Senator Boyce, does this mean that each year, a rate increase can take place as long as it's not more than 10 percent? That's without going to the PUC, or without having that...go through some kind of a hearing, a rate hearing.

**SENATOR BOYCE:** I believe that is the effect. The current language in the statute has that 10 percent limitation, but it also has the limitation that they have to look at all the prevailing rates across the state, and that it can't be more than that and it seems pretty cumbersome to me. But we have to remember that the telephone business is getting more competitive, and these competitive local exchange carriers can come into these small telephone companies' areas and compete with them directly. So if they get out of line too far in their prices, they will see competition. That's what's happening now. They're regulated now. They can't raise their rates to equal what the competitive local exchange carriers are doing. This allows them to do that, but if they get out of line, the competition will put them back in line.

**SENATOR D'ALLESANDRO:** Thank you.

Senator Odell offered a floor amendment.

**Sen. Odell, Dist. 8**

**March 8, 2006**

**2006-1303s**

**06/01**

### **Floor Amendment to SB 244**

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

**AN ACT** relative to alternative regulation of small incumbent local exchange carriers and relative to unclaimed deposits for utility services.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 Abandoned Deposits. Amend the section heading and paragraph I of RSA 471-C:8 by replacing them with the following:

471-C:8 Deposits *and Other Payments* as Held by Utilities.

I. A deposit, including any interest thereon, made by a subscriber with a utility to secure payment or any sum paid [~~in advance~~] for utility services [~~to be furnished,~~] less any lawful deductions, that *is due and owing but* remains unclaimed by the owner for more than one year after termination of the services for which the deposit or [~~advance~~] payment was made is presumed abandoned.

2006-1303s

#### AMENDED ANALYSIS

This bill modifies the rate requirements that a small incumbent local exchange carrier must meet to qualify for alternative regulation by the public utilities commission and corrects an RSA subdivision heading.

This bill also clarifies the presumption of abandoned deposits.

SENATOR ODELL: Than you Mr. President. I'd like to move a floor amendment, floor amendment 1303, and speak to that amendment.

SENATOR GATSAS (In the Chair): The floor amendment will be passed out.

SENATOR ODELL: Thank you very much. This is a simple amendment to correct an error that was made in legislation, I believe last year when we found a way to fund the cost of maintaining public interest telephones, the pay phones, in areas where there may be that there's no cell phone coverage and for other reasons. The problem was that we went ahead and funded those public interest telephones with money from the treasury that had been on deposit, when people took out a telephone and then never claimed that money. So the problem is that the phone company doesn't require deposits any longer they actually check your credit if you have good credit you can get a phone. So we had to find another source for the money for the public interest telephones and so what it is, is monies that the phone company has charged you that you move or something and they can't refund it to you. So we're not taking money, it's phone company money, it's similar to the money we put in there originally but if we don't do this, there will be no money to fund the public interest telephones in New Hampshire. So I ask you to help me support this.

SENATOR LARSEN: Question of Senator Odell. Senator Odell, you look reluctant to answer questions, but what happens it appears that, I guess I need to understand under what conditions or how a subscriber is notified that they can get their money back.

SENATOR ODELL: Through the regular process of a customer subscriber relationship, they're notified in the normal course of business and if the phone company tries to return the money to them, but if they've moved, and after a year, there's no way to get in touch with that person, then the money comes to the equivalent of abandoned property. This is not dissimilar to what happened with the deposit money. The difference is that, if the phone company bills you, you were late in paying, and they send you another bill and you pay that bill and all of sudden you've paid that bill twice, you move away a year later. That's abandoned property and it would come to fund these public interest telephones.

SENATOR LARSEN: Further question. So the consumer is in fact, there is an attempt to return the money to the consumer?

SENATOR ODELL: Absolutely.

SENATOR LARSEN: Thanks.

SENATOR ODELL: And, in this case, the telephone company has failed to be able to do that following their normal process.

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

Senator Foster Rule #42 on SB 244.

### **MOTION OF RECONSIDERATION**

Senator Barnes, having voted with the prevailing side, moved reconsideration of HJR 24 whereby it was laid on the table.

SENATOR BARNES: The reason I ask for that, some of you are wondering what's going on. Senator Green was tied up in conference outside and missed the roll call and he would like to be recorded. So I'm asking for reconsideration so Senator Green can have his vote recorded. Thank you.

**Adopted.**

**HJR 24**, supporting efforts for commuter rail in the state of New Hampshire.

### **MOTION TO TABLE**

**The question is on the motion to lay on the table.**

**A roll call was requested by Senator Foster.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Morse.**

**The following Senators voted No: Burling, Gottesman, Foster, Larsen, Estabrook, Hassan, Fuller Clark.**

**Yeas: 17 - Nays: 7**

**Adopted.**

### **LAID ON THE TABLE**

**HJR 24**, supporting efforts for commuter rail in the state of New Hampshire.

**HB 669-FN**, establishing a committee to study state laboratory water tests and fees for such tests collected by the department of environmental services. Energy and Economic Development Committee. Ought to pass with amendment, Vote 4-1. Senator Letourneau for the committee.

**Energy and Economic Development**

**March 8, 2006**

**2006-1299s**

**06/01**

### **Amendment to HB 669-FN**

Amend subparagraph I(b) of section 2 of the bill by replacing it with the following:

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

**MOTION TO TABLE**

**Senator Letourneau moved to have HB 699-FN laid on the table.**

**Adopted.**

**LAID ON THE TABLE**

**HB 669-FN**, establishing a committee to study state laboratory water tests and fees for such tests collected by the department of environmental services.

**HB 1156**, changing the notification for public hearings on ski area passenger tramway rules from registered mail to first class mail. Energy and Economic Development Committee. Ought to pass, Vote 4-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move House Bill 1156 ought to pass. This bill changes the notification for public hearings on ski area passenger tramways rules from registered mail to first class mail. Allowing the notices for these public hearings to be sent first class instead of registered mail would bring them in line with the rest of the Department of Safety notices. Currently, notices are sent to about thirty-five participants, four times a year, at a considerable cost to the state. While there is no fiscal note attached, changing the mailing method will reduce costs to the state. Please join the Energy and Economic Development Committee in voting ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1471-FN**, repealing the statutes relative to regional highway conferences. Energy and Economic Development Committee. Ought to pass, Vote 5-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that House Bill 1471-FN ought to pass. This bill repeals the statutes relative to regional highway conferences and came at the request of the Department of Transportation. The Committee heard testimony from the Department that highway conferences are a duplication of the efforts of the ten-year transportation plan program meetings, which they've come into place since the initiation of these statutory conferences. There is low public attendance, in some cases zero, and there's very little input when there is public attendance. Many of the issues that used to be discussed in these conferences are now covered by the ten-year plan hearings or are handled by email or telephone. Please join the Energy and Economic Development Committee on voting ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 250**, relative to lead paint poisoning prevention. Environment and Wildlife Committee. Ought to pass with amendment, Vote 4-0. Senator Hassan for the committee.

**Environment and Wildlife**

**March 7, 2006**

**2006-1284s**

**01/09**

**Amendment to SB 250**

Amend the bill by deleting sections 7-11 and renumbering the original section 12 to read as 7.

Amend the bill by replacing section 7 with the following:  
7 Effective Date. This act shall take effect January 1, 2007.

**2006-1284s**

#### AMENDED ANALYSIS

This bill clarifies enforcement procedures regarding orders of lead hazard reductions.

SENATOR HASSAN: Thank you, Mr. President. I move Senate Bill 250 ought to pass with amendment. Lead paint poisoning is still a critical health problem for children around our state. Lead poisoning causes developmental delays and other persistent health problems in children which can result in death. This legislation will allow the Department of Health and Human Services to work more efficiently with property owners to address the issue of lead-based hazards. Current law does not allow meaningful steps to be taken until lead poisoning has already occurred in a child and the damage has been done. This legislation allows the Department and landowners to take a more proactive approach to the problem. The committee amendment deletes the study committee portion of the bill. The committee asks for your support on the motion of ought to pass with amendment. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in support of the legislation and to thank the committee for their diligent work on this piece of legislation. As pointed out, given the demographics, the city of Manchester has the highest percentage of lead poisoning cases in the state, as a result of the age of our property and this goes a long way into bringing the landlords as well as the tenants and the state, into a much better situation where they can mediate these problems and get things solved. So I appreciate the work of the committee. I understand that the release of the study committee is agreed to by both parties and I think it's a good piece of legislation. It's something that we need and the problem will be solved if we keep working on it. So thank you, Mr. President.

SENATOR MARTEL: Thank you, Mr. President. I also stand in full support of the ought to pass motion of this bill. Lead poisoning is a very, very serious problem, as Senator D'Allesandro just previously said to me, said to us, in Manchester and it's also crawling across the entire state. As old homes get older, lead paint is more prevalent, and if lead paint is found in homes, there's a study that was made that shows that if lead paint is to be removed, the cost goes to the house and not to the owner because, if you sell a home, all the lead paint has to be removed, so it's an outstanding debt the current homeowner, who has property which has lead paint. The other thing is that the Department of Health and Human Services is agreeable to removing the lead paint and also the hazards of it, and the study committee portion of this bill was found to be, the Department had the resources to conduct more of an informal study on the issue shown that should the study committee be removed from the bill. So we do have consent of the Department and I urge that we pass this bill, Mr. President, as is, with the amendment. Thank you very much.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 386**, relative to large groundwater withdrawals. Environment and Wildlife Committee. Ought to pass with amendment, Vote 4-0. Senator Barnes for the committee.

## Environment and Wildlife

March 7, 2006

2006-1285s

06/01

### Amendment to SB 386

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

1 New Paragraph; Definitions; Large Groundwater Withdrawal Added. Amend RSA 485-C:2 by inserting after paragraph IX the following new paragraph:

IX-a. "Large groundwater withdrawal" means any withdrawal from groundwater of 57,600 gallons or more of water in any 24-hour period at a single property or place of business.

2 New Paragraph; Duties of the Department; Groundwater Management in the Public Trust Added. Amend RSA 485-C:3 by inserting after paragraph V the following new paragraph:

VI. Manage and preserve the state's groundwater on behalf of the citizens of the state, recognizing that any private use of groundwater and other public waters shall be reasonable in light of the protected interests of the general public in the use and enjoyment of groundwater and other public waters by ensuring that no unmitigated adverse impact, as defined in this chapter, occurs.

3 Groundwater Protection Act; Rulemaking Amend RSA 485-C:4, XII (a) to read as follows:

(a) Criteria and procedures for requiring persons to identify and address impacts of withdrawals on surface waters, subsurface waters, water-related natural resources, and public, private, residential, and farm wells within the ~~[anticipated zone of contribution to the]~~ ***potential impact area of the proposed withdrawal as defined in RSA 485-C:21, V-e.***

4 Groundwater Protection Act; Notification Required. Amend RSA 485-C:14-a to read as follows:

485-C:14-a Notification of Large Groundwater Withdrawal Required. Notwithstanding any provision of law to the contrary, before any person may withdraw 57,600 gallons or more of water in any 24-hour period from a well, such person shall provide written notice to the governing body of the municipality in which the well is located and to the governing bodies of each municipality and each supplier of water within the ~~[anticipated zone of contribution to the well]~~ ***potential impact area of the proposed withdrawal as defined in RSA 485-C:21, V-e.*** This section shall apply only to wells established after the effective date of this section.

5 Groundwater Protection Act; Approval for Large Groundwater Withdrawals. Amend RSA 485-C:21 to read as follows:

485-C:21 Approval for Large Groundwater Withdrawals.

I. No person may withdraw 57,600 gallons or more of water in any 24-hour period from a well sited after the effective date of this section without the prior approval of the department.

II. Applications for approval of water withdrawals of 57,600 gallons or more per day shall be filed with the department on a form approved by the department. A preliminary report submitted by a public water system pursuant to department rules shall be an application for purposes of this section. Copies of the application and any subsequent materials

submitted to the department shall be forwarded by certified mail by the applicant to the governing bodies of each municipality and each supplier of water within the ~~[anticipated zone of contribution to the well]~~ **potential impact area of the proposed withdrawal as defined in RSA 485-C:21, V-e**. The department shall provide the governing body of each municipality with copies of any mailed correspondence sent to the applicant. The department shall provide the applicant with copies of any mailed correspondence sent to or received from the governing body of a municipality.

III. Following the submission of the application, the department shall hold a public hearing on the application in the municipality in which the proposed withdrawal is to be made upon the request of the governing body of any municipality or supplier of water within the ~~[anticipated zone of contribution]~~ **potential impact area**, provided that such a hearing is requested within 15 days of receipt of the application.

IV. The department shall hold the public hearing within 30 days after the request of the governing body of the municipality or the supplier of water made pursuant to paragraph III. Notice of the hearing shall be made by the applicant and shall be published twice in 2 different weeks, the last publication to be 7 days before the hearing, in one newspaper of general circulation throughout the state and another newspaper of general circulation in the municipality. The notice shall also be posted in 2 public places in the municipality.

V. The applicant and the governing body of each municipality and each supplier of water within the ~~[anticipated zone of contribution to]~~ **potential impact area of the well** may submit comments to the department relative to the proposed withdrawal within 45 days after the public hearing in the municipality or, if no hearing is requested, within 45 days after the receipt of the application. If the comments relative to the application make recommendations to the department, the department shall specifically consider such recommendations and shall issue written findings with respect to each issue raised that is contrary to the decision of the department.

V-a. Upon the request of the governing body of a municipality within the ~~[anticipated zone of contribution]~~ **potential impact area**, the department shall hold a public hearing, after receipt of the final report, and prior to a final decision. The department shall notify the municipalities within 10 days of receiving the final report. The municipalities shall have 15 days within which to request a public hearing. Notice and response to hearing requests shall be the same as that required under paragraph IV.

V-b. The department's decision on the application shall be based on a demonstrated need for the withdrawal after review of:

- (a) A description of the need.
- (b) A conservation management plan.
- (c) A conceptual hydrologic model of the withdrawal.
- (d) A water resource and use inventory.
- (e) The effects of the withdrawal on water resources and uses.
- (f) Completion of a withdrawal testing program.
- (g) Development of an impact monitoring and reporting program.
- (h) Identification of potential mitigation measures.

V-c. *In order to preserve the public trust, no large groundwater withdrawal shall cause an unmitigated impact including:*

*(a) Reducing the withdrawal capacity of a private water supply well of a single residence as a result of the reduction of available water that is directly associated with the withdrawal, including:*



(1) Any reduction in capacity for wells with a capacity less than water well board recommended optimum minimum flow capacity of 4 gallons per minute for 4 hours before the withdrawal;

(2) Any reduction in capacity below 4 gallons per minute for 4 hours, for wells that had a capacity greater than 4 gallons per minute for 4 hours, before the withdrawal; or

(3) A reduction in capacity where the well still has a capacity between 4 gallons and 10 gallons per minute for 4 hours and the user provides information indicating that the reduction in flow has resulted in the inability to meet their water needs;

(b) Reducing the capacity of a public, drinking water supply below the minimum withdrawal rates required per consumer determined by the following:

(1) Minimum daily amounts of drinking water shall be determined per use based on the design flow criteria established for public water supply systems established in rules adopted by the department; or

(2) Where it is verified that such wells were unable to produce the design flow before the withdrawal began, the adverse impact shall be any reduction in the ability to produce water;

(c) Reducing the capacity of a water supply that is used for a multiple unit dwelling residence, but that is not a public water supply, that results in the inability to continue established activities or maintain existing water capacity requirements;

(d) Reducing the capacity of a private, non-residential, non-drinking water supply that results in the inability of a commercial, industrial, or retail facility to continue established services or production volumes;

(e) Reducing the ability of a registered water user to produce volumes equivalent to the average daily withdrawal for a specific calendar month as determined by discharge measurements and reports made to the department in accordance with the water user requirements under RSA 488 or other previous water use reporting requirements of the department;

(f) Reducing surface water levels or flows that will, or do, cause a violation of surface water quality rules adopted by the department;

(g) Causing a net loss of values for submerged lands under tidal and fresh waters and its wetlands as set forth in RSA 482-A;

(h) Causing the inability of permitted surface water or groundwater discharges to meet permit conditions;

(i) Reducing river flows below acceptable levels established pursuant to RSA 483;

(j) Causing the contamination of groundwater obtained from wells or surface waters from contaminated groundwater whose flow has been altered by the withdrawal, or cause the contamination of an aquifer or contribute to the spread of any existing contamination;

(k) Causing the long-term predictable rate of replenishment of the aquifer that is the source of the withdrawal to be exceeded.

V-d. Terms and conditions of approval for a large groundwater withdrawal may be altered by the department to accommodate for drought conditions or new withdrawals.

V-e. Applications for large groundwater withdrawals shall be accompanied by an impact assessment of the potential impact

*area of the proposed withdrawal to demonstrate the preservation of the public trust as set forth in paragraph V-c. The impact assessment shall include at a minimum the following:*

*(a) The maximum extent of the cone of depression created by the withdrawal with the assumption of a conceptual hydrological model condition of 180 days of continuous pumping at maximum volumes without recharge from rainfall or snowmelt;*

*(b) The maximum extent of the recharge area for the withdrawal with the assumption of a conceptual hydrologic model condition of 180 days of continuous pumping at maximum volumes without recharge from rainfall or snowmelt; and*

*(c) The downgradient area of the withdrawal which shall include:*

*(1) An existing or new delineation of a potential impact area large enough so that the size of the entire study area for the withdrawal is at least 10 times the size of the recharge area for the withdrawal;*

*(2) An existing or new delineation of a watershed where the amount of water crossing the downgradient boundary, that is, leaving the study under current conditions, is at least 10 times the amount to be withdrawn; or*

*(3) An alternative method of estimating a potential impact area provided it relies on conservative assumptions, is demonstrated as appropriate for the site by test results, and is clearly explained and justified.*

VI. *(a) Decisions of the department may be appealed in accordance with RSA 21-O:7, IV.*

*(b) Any party shall have the right to appeal from the decision of the water council to the superior court of the country in which the large groundwater withdrawal is to be made to determine the validity and the reasonableness of the department's action on the permit. The appeal shall be filed within 60 days after the decision of the water council. The appeal shall suspend the decision of the department pending the outcome of a preliminary hearing. The appeal, so far as practicable, shall have precedence over other actions in the same court.*

VII. Records of public hearings shall be available pursuant to RSA 91-A.

VIII. *Before the department issues a large groundwater withdrawal permit, any municipality in which a well is sited or proposed to be sited, or any municipality within the potential impact area of the proposed withdrawal pursuant to paragraph V-e, may require the department to determine that the withdrawal will not infringe on the public's use of groundwater, including any contribution to wetlands and surface waters, by ensuring that the requirements of paragraph V-c are met. The department's determination shall be based on substantial evidence and shall include the methods, evidence, and data it used to support its judgment.*

IX. *The department shall allow any municipality showing that it may be substantially and specifically affected by a proceeding under this chapter to intervene as a party in the whole or any portion of the proceeding and shall allow the municipality to participate by presentation of argument orally or in writing or for any*

*other purpose, as the department may order. A municipality that intervenes before the department shall retain its status through any appeal of the department's decision.*

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

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 386 ought to pass with an amendment. This legislation will clarify the criteria the Department of Environmental Services uses to make judgments on large groundwater withdrawal permit applications. This legislation will also allow local communities impacted by large groundwater withdrawals to participate in the permitting process by giving them intervenor status, although the communities do not have veto power. Additionally, an appeal to the Superior Court will be added to the appeals process. Currently, appeals go first to DES; then to the Supreme Court. Nothing in the legislation is inconsistent with DES's current administrative rules. Placing the criteria in the statute will be helpful to DES during the permitting process. The committee amendment corrects a technical error that occurred during drafting. It also adds clarifying language by changing the term "watershed" to "potential impact area of the proposed withdrawal." The committee asks for your vote on the unanimous decision of the committee, and I thank my colleagues.

SENATOR BOYCE: I'm sorry. I would like to ask a question of the group. Who spoke on this? I forget. Senator Barnes. I'm just looking through this and we've had several bills that dealt with this before, and I see that the definition of "large groundwater withdrawals" is this 57,000 gallons per twenty-four hour period, which if I remember right, in the past, I divided that out, and it comes to six gallons a minute, or something like that. Is that still the same?

SENATOR BARNES: Senator, I'd like to defer this to the gentleman, if I could, the sponsor of this piece of legislation to answer that question. I don't want to give you the wrong answer. If you would accept, that I'd appreciate it.

SENATOR BOYCE: Fine.

SENATOR GREEN: Thank you, Mr. President. The answer to your question is it's the same number.

SENATOR BOYCE: Follow up on that. I see in the bill on page 8 of the amendment, committee amendment, on page 8, it's talking about, in A 3 about a reduction in capacity where the well still has a capacity between four and ten gallons per minute. So this is talking about if this new well, which may be six gallons per minute, is somehow found to be reducing the capacity of the well that's already taking ten gallons per minute, which I guess is already a large withdrawal. It may be an existing source that's already there. I'm just concerned that we're really not talking about large, not really talking about large withdrawals with that 57,000 number because six gallons per minute, if I remember right, and I think I said this on the floor before, is what they said my daughter's well, when they drilled it for her house, was producing the six gallons per minute, and that's for a single family residence. I'm curious what a large withdrawal really is, if a single family residence's well could be in the range of a large groundwater withdrawal. And if we're talking about one of the mitigating, one of the things that need to be mitigated if we're reducing a well that's producing between four and ten gallons per minutes, I'm not sure we're talking apples and apples here. I'm really concerned. Is this really about large water withdrawals?

SENATOR GREEN: It is based on the definition of the current statute. We did not change any definitions or any calculations in terms of how it is defined by DES in this bill. There were no changes, and again, DES went through this in detail, came out and testified in support of it. The AG has gone through it on the legal side, and we have not created any problem with the existing. What we've done basically, is we've put further definition in so that people understand exactly, but not the areas you've cited.

SENATOR BOYCE: Just one point of follow up. I'm looking now on page 6 in the committee amendment, and it says that there's a new paragraph, definitions, and that large groundwater withdrawal is added to the definitions and that's where the 57,600 figure is. So I guess you say you're not changing the definition, but it looks to me like you're putting in a definition of large water groundwater withdrawal of 57,600.

SENATOR GREEN: My understanding is the way this is drawn up, it's not my understanding, I know that there were no changes in the gallons. That's in the existing statute.

SENATOR BOYCE: Okay. Thank you.

SENATOR MORSE: Senator Green, and I might have just woken up, and if I have, help me out a little bit here. I made a mistake six years ago, I think it was, in this body, letting the plant industry bar something that's going to happen next year that's 10 percent of my business, and I'm just wondering now. I pump a heck of a lot more water than you're talking about in this document, every day, starting probably April 1, and they set up, there's new nurseries setting up every eight miles every year. Is this going to affect the nursery man, and I know I pump more than that amount of water.

SENATOR GREEN: The answer to your question is your ability to get a permit. The only changes in this bill that will affect anything is two things. One, that the communities will have an opportunity to respond. And, the other issue is, we defined, and it's not a complete new definition because it's in the current rules, we brought it all together, we brought the rules and the statutes so they're consistent and the whole area of what public trust is. We defined what those criteria are. This would not affect anybody who's currently pumping, in terms of additional water being pumped. But, if you're a new applicant, that's what it's going to affect. But it does not affect the amount of water you can pump. It does not affect anything that deals with the rules that are not currently in place right now under the rules as opposed to in the statutes.

SENATOR MORSE: Further question. Did that industry come and testify at all, and let me clarify my question. If you go to a state like **TAPE CHANGE**

SENATOR GREEN: ...concerns. DES met with the industry, I did not. I'll be very honest with you. I let DES do that, so to make sure that I was not influenced one way or another about DES's concerns versus theirs. We took some testimony, you'll find it in your packet, there was testimony, but we dealt with it. Now did we deal with everything that they wanted? Probably not, like in most negotiations. But that negotiation took place with DES and the industry.

SENATOR MORSE: Thank you, Senator Green.

SENATOR GREEN: You're welcome.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

SENATOR MORSE: Before I stand up I'd better think. Well we have Finance. Mr. President, having not looked at this bill, I guess I probably should have. I guess I want to ask the sponsor the question of whether, if I was uncomfortable now voting today, would they be more comfortable if I ask for this to go to Finance or if we put it on the table so I could check into it? That'd be a question of the sponsor, yes.

SENATOR GREEN: I don't know why it would go to Finance; there's no added cost. There's nothing in here that creates a financial impact. The concerns you raised would be policy issues. So I don't know how you want to deal with it.

SENATOR MORSE: Thank you, Senator.

### **MOTION TO TABLE**

Senator Morse moved to have SB 386 laid on the table.

SENATOR BARNES: Yes, of Senator Morse. Senator Morse, I understand you have a concern and I know a lot of things have been going on and you have been very busy so you didn't have a chance to look at this and all of a sudden the light went on and then you might have a problem. I understand that. Wouldn't it be better perhaps, for us to send this out today?

SENATOR GATSAS (In the Chair): Senator Barnes, we're in the voting mode.

SENATOR BARNES: Woops. Okay. Sorry...

**The question is on the tabling motion.**

**A division vote was requested.**

**Yeas: 11 – Nays: 13**

**Motion failed.**

**The question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Boyce.**

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Burling, Green, Flanders, Odell, Roberge, Bragdon, Gottesman, Foster, Larsen, Gatsas, Barnes, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**The following Senators voted No: Boyce, Eaton, Clegg, Letourneau, Morse.**

**Yeas: 19 - Nays: 5**

**Adopted.**

**Ordered to third reading.**

**HB 719-FN**, recodifying the Articles 1 and 7 of the Uniform Commercial Code. Executive Departments and Administration Committee. Ought to pass, Vote 3-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 1719 [sic] ought to pass. In 1985 the National Conferences of Commissioners on Uniform State Laws stated updating, or started updating the uniform

laws. The two sections in House Bill 719 represent the last two sections to be recodified, articles 1 and 7. Article 1 is made up of definitions that have been agreed to by various parties. Article 7 addresses warehousing and bills of lading, in particular electronic lading for which there is no language currently. The uniform language in the bill is being re-enacted across the country as best possible and there were no objections to the bills at the public hearing. The committee recommends ought to pass on House Bill 1719 [sic]. Thank you, Mr. President.

### POINT OF ORDER

SENATOR FOSTER: Point of order? ...floor amendment. Would they have to do it before this motion is voted for?

SENATOR GATSAS (In the Chair): Yes.

SENATOR FOSTER: Thank you, Mr. President.

Senator Barnes offered a floor amendment.

**Sen. Barnes, Dist. 17**

**March 16, 2006**

**2006-1416s**

**05/01**

### Floor Amendment to HB 719-FN

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

AN ACT recodifying the Articles 1 and 7 of the Uniform Commercial Code and relative to lobbyist name tags.

Amend the bill by inserting after section 47 the following and renumbering the original section 48 to read as 49:

48 Repeal. RSA 15:2-a, II, relative to the name tag exemption for lobbyists testifying before a legislative committee, is repealed.

**2006-1416s**

### AMENDED ANALYSIS

This bill:

I. Recodifies the Uniform Commercial Code Article 1 - General Provisions based on the 2001 revision of Article 1 by the National Conference of Commissioners on Uniform State Laws.

II. Recodifies the Uniform Commercial Code Article 7 - Documents of Title based on the 2003 revision of Article 7 by the National Conference of Commissioners on Uniform State Laws.

III. Repeals the name tag exemption for lobbyists testifying before a legislative committee.

SENATOR BARNES: Thank you, Mr. President and thank you, Senator Foster. May I speak on this while it's being passed out?

SENATOR GATSAS (In the Chair): You may speak to your amendment as it's being passed out, Senator.

SENATOR BARNES: Thank you very much. An interesting thing happened yesterday in committee. For sixteen years, I've been going to committee meetings, and many lobbyists have spoken in front of the committees. And yesterday was the first time that I've ever seen a lobbyist give testimony without an orange badge on. And that lobbyist was nice enough to explain to me that the RSA says the lobbyists don't have to wear their orange badges when they're testifying in front of the committees. I said son of a gun, that's kind of odd, and I'd really appreciate him

bringing it to my attention. It was George Roberts who brought it to my attention; I thought it was very nice of him to do that. So that's why I'm bringing this amendment. When they're in the State House, in the hallways in the LOB, they have to wear their badges. But they go into committee, the current law says they don't have to. I think that'd be kind of difficult for these folks to take them on and off. And for all these years I have never seen a lobbyist address a committee without his or her badge on. So that's why I'm bringing this very simple amendment on, and what it does, is repeals RSA 15:2(a)(2) relative to name tag exemption for lobbyists testifying before a legislative committee is repealed. That means a lobbyist, when he's in our building, and he's testifying in front of one of our committees, he or she will proudly wear their orange badge. Thank you, colleagues. I'd appreciate your support on this.

SENATOR KENNEY: Thank you, Mr. President. I would just rise to support my colleague, Senator Barnes, on this floor amendment, 1719. I was the chairman of the ED & A committee and the individual that he described, I thought was speaking on his behalf because they had not signed in as representing anyone in particular. So, when I spoke to the individual, "Mr. So and So, you're representing yourself?" He said, "No I'm not, I'm representing..." "Well you didn't write it down." I think by having this requirement, the orange badge on a lobbyist's lapel there or pocket is probably a good idea so it will stop some of the confusion.

SENATOR CLEGG: Question of Senator Barnes if I might? Senator Barnes, last week we had a little problem with a lobbyist with a little note that was attached to some fundraising letters and I took great offense to that. I'm just wondering, by any chance is this the same lobbyist?

SENATOR BARNES: I have no idea. It hasn't been brought to my attention who the individual is, it hasn't been made public. I hear a lot of conversations in the hallway, but no one has come out and told me who that individual was. So I cannot honestly answer that question.

SENATOR CLEGG: So we may have two rogues around here, not just one?

SENATOR BARNES: Might be possible.

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**Recess.**

**Out of recess.**

### **MOTION TO REMOVE FROM THE TABLE**

Senator Flanders moved to have SB 285-FN removed from the table.

**Adopted.**

**SB 285-FN**, equalizing the pay of administrative judges in the judicial branch.

**The question is on the committee report of ought to pass.**

Senator Flanders offered a floor amendment.

Sen. Flanders, Dist. 7  
Sen. Green, Dist. 6

**March 16, 2006**  
**2006-1423s**  
**10/09**

**Floor Amendment to SB 285-FN**

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect July 7, 2006 at 12:01 a.m.

SENATOR FLANDERS: I have an amendment, Mr. President.

SENATOR GATSAS (In the Chair): Senator Flanders, would you like to speak to your amendment?

SENATOR FLANDERS: Thank you, Mr. President. This is one that I presented last week and I asked to put it on the table so we could check back with the courts. Basically, it changes the salary of two judges and the amount is \$19,801. The Chief Justice has been contacted, and said that the money is there to do this now. So my amendment will read that the effective date will be July 7, '06 at 12:01. And then they can even this out and it will be in their budget next year. So I ask you to please vote ought to pass.

SENATOR MARTEL: Thank you, Mr. President. Senator Flanders, did I just hear you say that this would go into effect July 1, 2006?

SENATOR FLANDERS: Yup.

SENATOR MARTEL: It's got 2007 as a date on what I've got in my hand anyway.

SENATOR GREEN: July 7, '06.

SENATOR MARTEL: Well, I just got this. It was passed out.

SENATOR FLANDERS: The amendment hasn't been passed out yet.

SENATOR MARTEL: Oh, it hasn't been passed out. I'm sorry because we've got this as it was handed out. Alright, thank you.

SENATOR FLANDERS: This is amendment 1423s and all it does is change the effective date, and it will take effect July 7, 2006 at 12:01 am.

SENATOR MORSE: I just rise in opposition to this. We just passed the budget this past June, and we didn't deal with this in the budget, and this is supposedly an off-budget year, but I think next week you'll see that it isn't, and this is just going to add to what we're doing. So I'm opposed to it.

**Floor amendment adopted.**

SENATOR BURLING: Thank you, Mr. President. I recognize I run the risk of being hit by a large flying object by standing up and saying this again, but I'm going to bring up Lebanon District Court one more time. The reason there is a pool of money available to pay this within the Judiciary budget, is of course because cutbacks in judge times in some of our district courts has made that fund available. I don't think this is the right way to do pay increases in the middle of the budgetary cycle. It seems to me that we should decide what we're going to do in terms of funding district courts, before we take funds out of the district courts and transfer it over to the pay raise side. These, I'm not speaking to the importance of these pay raises, they may be critical, but I don't think we've given that question anything like enough deliberation. Thank you, Mr. President.



SENATOR FOSTER: Thank you, Mr. President. I rise in support of the committee report of ought to pass and now as amended. I want to remind the body that the amendment that we just passed was not a request of the court, they were willing to stay within their budget, but I do agree with the amendment, because I think that if there's an inequity in the salary, which is what the Chief Judge thinks, let's fix it now and not wait. So I think the amendment makes some sense, the court was willing to stay within their budget. I do think this is a policy issue, this pay increase, it's not just a pay increase. What we're talking about was inequality between the Chief Judge of the Superior Court and the people who are in effect, the Chief Judge of the District Court and the Probate Court. They're not called that; they're Administrative Judges. The policy here was to bring everybody up to the same level, so I ask the body to support the bill as amended. Thank you very much.

SENATOR BURLING: Thank you, Mr. President. I've just been asked whether I can act on this since my wife is a judge. Again, I will simply say, my understanding of the bill before us affects only the Probate and District Court Administrative Judges. I don't see anything in this that affects a Superior Court Judge. My wife is on the Superior Court. I just want to be clear on the record about that. If it were otherwise, I would absent myself from this discussion.

SENATOR FLANDERS: I believe what this bill does is bring that pay level up equal to the Superior Court. But there is no increase or any money involved in the Superior Court.

SENATOR D'ALLESANDRO: Thank you, Mr. President. Of Senator Flanders. I had a quick conversation with Senator Green about this. But my question is, the dollars for this pay raise are contained within their operating budget now. Is that correct?

SENATOR FLANDERS: Yes.

SENATOR D'ALLESANDRO: And going forward, will the courts be then asking for an increase to cover this for the next biennium?

SENATOR FLANDERS: I would have to assume that, when they write their budget next year, they will have to include this in the salary. It will be a piece of the budget next year. I presume it will.

SENATOR D'ALLESANDRO: Thank you.

SENATOR MORSE: Question of Senator Flanders. Would you believe that, in the Department of Safety, with all the pay raises we gave last year that we created a whole set of inequities that they'd like to see addressed that we haven't addressed this year?

SENATOR FLANDERS: I would believe that.

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 343**, relative to emergency contraception. Health and Human Services Committee. Inexpedient to legislate, Vote 3-3. Senator Martel for the committee.

SENATOR MARTEL: Thank you very much, Mr. President. Senate Bill 343 came out of our committee with a 3-3 vote on an inexpedient to legislate motion. The vote reflects the strong beliefs and the extensive

debate in the committee, both for and against the bill. We do not believe an amendment to the bill would have changed the outcome of the tie vote and we are glad to bring this bill to the Senate for debate and a vote by the entire chamber. And I thank you very much, Mr. President and I will speak to this after others have spoken as well. Thank you, Mr. President.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in support of the motion of inexpedient to legislate. Last year, we passed Senate Bill 30, Senate Bill 30 having to do with emergency contraception. Now we passed this bill for three very important reasons. First of all, it improved access to healthcare. Secondly, it reduced unintended pregnancies and abortions. And thirdly, it controlled the cost of healthcare by supporting effective models of care. That was the rationale by which this body, the House, passed this bill, and it was signed by the Governor. Some of the items contained in this bill are just totally unacceptable if we're to perform the functions of a good public policy. Three, falling into line with the three items I just mentioned - improving access to healthcare, reducing unintended pregnancies and abortions, and controlling the cost of healthcare by supporting efficient models of care. Some of the items contained in this bill violate some of those tenets. And I think one of the most abusive items is that a young person, or a person, I won't say young person, a person, who believes that they're in danger because of a failure of a contraceptive or a rape or something, rape or incest, they must report that to an authority before they can get their prescription filled, and this prescription is viable within 24/48/72 hours at max. Second provision, that a pharmacist who will not distribute the emergency contraceptive because of some reason will not have to do that. In the legislation, we made this a voluntary situation, we set up an education process whereby the Board of Pharmacy would train pharmacists and those pharmacists would do this on a voluntary basis. So it evidently violates that particular situation that we put together in order to make this thing an acceptable situation on a voluntary basis. What we're trying to do is promote good policy, and this is good policy. I think anyone who had their television on this morning has an indication of the deviant sexual behavior that's taking place all around the world. It was on the net. We had an arrest situation yesterday, not only in the United States, but in other countries of the world where children are being abused. Children are being abused and people are making a fortune on this. This situation helps us. Hopefully we prevent that other situation, we prevent that. Incest, rape, these are things that happen and a young woman has to have the ability to deal with this. I think inexpedient is the way to go. We've done something we can all be proud of. We've passed a piece of legislation, passed through the House, signed by the Governor, it's effective, it is not going to promote promiscuity. It is not going to do that. We have a situation in New Hampshire where teenage pregnancies have gone down considerably and that's because people do talk to their parents. In 80 percent of the cases a young woman who's had a problem will speak to her parent, will get permission. This is for those exceptions. And I would hope that you support the inexpedient and we move on with this calendar. Thank you, Mr. President.

SENATOR BARNES: Mr. President. Senator D'Allesandro?

SENATOR D'ALLESANDRO: Yes, Senator Barnes.

SENATOR BARNES: Statement number one, I am not one that's proud of Senate Bill 30 that was passed in the last session. But does this, Senate Bill 30, the bill that this body passed last year and that the Governor signed, does that allow young ladies, twelve years old, to get this without parental consent? Just a yes or no would be sufficient, sir.

SENATOR D'ALLESANDRO: Well, I want to be even more than sufficient. I want to cover every base, I want to cover every base, Senator. Senator, there is no age restriction.

SENATOR BARNES: Thank you very much, Senator. That is what I wanted to know.

SENATOR ESTABROOK: Thank you, Mr. President. Question of Senator D'Allesandro. As you say, there is no age restriction. But isn't it also true that the physician or pharmacist who fills this request for medication must make a judgment that the minor is mature enough to consent to treatment, and that that is true with all medical practice with regard to adolescents?

SENATOR D'ALLESANDRO: That is absolutely true, and that's why we set up a program where these pharmacists would be trained in conjunction with the medical profession.

SENATOR ESTABROOK: Thank you.

SENATOR FULLER CLARK: Thank you very much, Mr. President. I, too, rise in support of the ITL motion on Senate Bill 343. As you know, Senate Bill 343 would prevent or delay many teens, especially young teens, from accessing emergency contraception. Emergency contraception is a form of hormonal birth control that can prevent unwanted pregnancy or abortion. And the FDA Advisory Committee has unanimously concluded that use of emergency contraception is both safe and effective. To suggest, as some who support this bill have, that access to emergency contraception is the same as access to tanning booths or body piercing is ludicrous. This bill, by preventing or delaying access to emergency contraception, could and may very well endanger a young woman's health or even her life, and would force her to use abortion as the only way out of an unintended pregnancy. Emergency contraception prevents pregnancy, and while we all believe that parental involvement is desirable, there are many minors, according to studies that have been done, 20 percent of them who will not use emergency contraception if they have to tell their parents first and have their consent. In addition, Senate Bill 343 allows emergency contraception as the only prescribed medication that pharmacists may refuse to dispense. Allowing pharmacists to refuse to fill emergency contraception for a woman of any age is clearly discriminatory against women and should not be permitted. Passage of Senate Bill 343 will only increase abortions, especially among our most vulnerable teenagers. There is no doubt in my mind that we should all be working together to reduce, not increase abortion, and for this reason I urge this Senate to vote ITL on Senate Bill 343. Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. I can't let it go without speaking out against this outrage. The first part of this bill which requires parental consent, as others have said, is only going to lead to more abortions. Consent is something that this body has repeatedly rejected with regard to abortion itself because we understand that the victims of sexual assault or incest can be harmed by that requirement. It's no less true when we're talking about emergency contraception. And that we would, as policy, make it more difficult to get emergency contracep-

tion than to get abortion just boggles my mind. This is an area in which fast access is the key, and even more than in the case of abortion, we are going to harm victims of sexual assault and incest by passing this legislation. In addition, parental consent is in conflict with Title X and the Medicaid statutes. We are putting our pharmacists in a legal bind. Are they going to be held accountable for violating federal statute? Now let's move onto the second part of the bill, which is even more outrageous. In the second part of the bill, we are going to give pharmacists the opportunity to opt out of filling prescriptions on moral or religious grounds for emergency contraception. For nothing else, nothing else at all. First of all, it makes absolutely no sense to give them that power, and not give them that power over regular contraception. Now I think when all women are involved, you're going to hear quite an outcry that I can't go to my local pharmacy and fill my contraception prescription. Obviously for me it's not longer an issue. But, I do think that you should stop and think long and hard how you would feel if you had a prescription and you went to your local pharmacist and they refused to fill it. Your physician prescribed it to you, but your pharmacist is allowed to say no and tell you that you must drive, in the case of rural or low income women, miles and miles and miles. The bill doesn't even have a provision that says the pharmacist has to tell you where you can get it. Think about things that you use prescriptions for. I could think up an example that would be quite controversial today, but I'll go past that and go to something a little less controversial. What if you had a prescription for Ambien or Xanax, you needed that to help you sleep. Well my pharmacist thinks that's not good, we should have only people to sleep naturally. I don't believe in affecting sleep with medication. So I'm going to refuse to fill your prescription. Really, stop and think about how you are discriminating against women through this bill and please uphold the ITL.

SENATOR LETOURNEAU: Thank you, Mr. President. I'm the sponsor of this outrageous bill. First I'd like to say that this Senate Bill 343 is a good bill. It enhances two important rights that were neglected when we passed this Senate Bill 30 last year. First is the fundamental right of parents raising and caring for their children, particularly in a circumstance where the law, on its face, has called it an emergency situation. Parents must be involved. It is a parent, not the pharmacist, who will make decisions on the child in a situation like this. It is the parent, not the pharmacist, who will be at home with the child and observe any side effects from this emergency contraception. We have state laws requiring parental consent for tanning, body piercing, seat belts, helmets, the list goes on. When the decision is even a greater importance, it's wrong for the parents to be completely excluded from the decision making. And I'm going to read a letter from a parent, it is a very short letter. "Sir: This past summer my daughter turned seventeen. She was given the morning after pill four times in less than three months. I had no idea at the time. She bled for five weeks and then went and had a normal cycle and then not another cycle for three more months. She's still not sure she hasn't wrecked her body and is afraid to go to the doctor." In a further communication with this lady, she tells me that she was going to different places so that they didn't know she was getting it from prior places. We don't have any protection in the law for that. The second right that's in this bill, is the right of conscience of pharmacists who believe that emergency contraception can cause abortions and those who therefore do not believe that they can morally dispense this drug. I'll remind everybody that the FDA has not approved over the counter sales of this

drug yet. It's not approved by the FDA. We're not talking about letting the pharmacist not prescribe a prescribed drug; we're talking about over the counter sales. Undoubtedly, there is more people who disagree with those pharmacists, but how do we deny them the ability to exercise their right of conscience in this controversial area without fear of what may be done to them by other employers? There are very few family-owned pharmacies left in this state; most of them are big corporations, CVS, Walgreen, Wal-mart, you name it, and if you work for them and they develop a policy and you don't follow through with that policy, you lose your job. I think this goes a long way to protect those individuals. Thank you very much, Mr. President.

SENATOR ESTABROOK: Yes, question of Senator Letourneau. Thank you. You said in your remarks that we're not dealing with prescription drugs, we're dealing with over the counter. I take a look at section Roman VII of the bill. It says the pharmacist may object to filling a prescription for a drug used as emergency contraception, and it goes on and in no way restricts this to minors. It allows the pharmacist to refuse to fill my prescription no matter what my age.

SENATOR LETOURNEAU: I think you're correct. I'm sorry I misspoke on that. But we also allow conscientious objectors from the military. If you don't believe in killing people, you can be absolved in the military if we give you a desk job somewhere in the rear. This is nothing different.

SENATOR ESTABROOK: Follow up. I agree with you that there are issues of conscience. But if you're in general trying to address that issue of conscience, why don't you extend this to all drugs?

SENATOR LETOURNEAU: I don't know that I want to answer that question. This is simply a moral thing. You may not agree with it, but I do.

SENATOR HASSAN: Thank you, Mr. President. I rise in support of the LTD. There's that moment on Sesame Street... ITL, what did I just say? LTD, you see? Let's try that. So, I rise in support of the inexpedient to legislate and I thank you, for your patience with me. There's that game on Sesame Street which says "which of these things is not like the other?" Unwanted pregnancy is just very clearly not like tanning, and not like body piercing, and not like ear piercing, and I can't say that strongly enough. It's a red herring to make people believe that the two issues are the same or to pretend that they are. We allow minors in this state to get medical treatment for things like sexually transmitted diseases without their parents' consent, because as important as a parent's right to be involved in their child's medical care is, what is more important is the child's right for safety and health. And sometimes parental involvement and a child's safety and health are inconsistent and incompatible and that's just a fact of life. It is a very difficult fact of life, but it is what it is. I care more about my child's safety and health than I care about my right to know every single thing that is going on with him or her. As far as the FDA approval of emergency contraception goes, it was the overwhelming recommendation of the scientists on the multilayered scientific panels that have studied emergency contraception to allow it to be dispensed over the counter because the overwhelming scientific evidence is that this is a safe way of preventing unwanted pregnancies. We have yet to understand why the FDA has indefinitely postponed its decision, but the conjecture is that it is because of the political climate in Washington D.C. and nothing to do with the science. And we have an obligation to our children and to adult women to base our decisions on science and not politics. Finally, as to the pharmacists' conscientious

objection clause here, many people of conscience have to decide what line of work they are going to be involved in. Doctors, nurses, physical therapists, pharmacists, deal with people day in and day out whose behavior they may not approve of, and whose medical treatment decisions they may not agree with. But they don't second guess the individuals who are making the decisions. And I will also note that a minor can walk into a drug store today and buy Tylenol, they can buy Advil, they can buy any number of over the counter medications, that if used without proper supervision or proper understanding can do lifelong harm. Tylenol can lead to liver problems, Motrin can lead to significant stomach problems, but we don't require parental consent for the purchase of those to minors as well. So for all those reasons, I urge my colleagues to support the inexpedient to legislate.

SENATOR MARTEL: Thank you very much, Mr. President. Senate Bill 30 from last session has allowed the distribution of emergency contraception to a child of less than eighteen years of age and that is a flaw. Parental consent or a pharmacist conscience provisions are necessary because the effects of emergency contraception on children have not been determined. That is a fact. To suddenly treat a child as an adult is not responsible, and to treat a pharmacist as a machine who randomly dispenses medications disregards the lengthy training of pharmacists. That is true. In addition, the emergency contraception may not suppress ovulation and prevent fertilization but instead may prevent implantation of an already conceived embryo and therefore constitute a direct action against the life of a human being, and that would be a new human, and that is fact. Senate Bill 343 will protect children, as well as the rights of pharmacists and I would urge my colleagues to join me in voting to down the ITL on this bill on 343. I'd just like to state one more fact from the hearing report, Mr. President, where it states, it was earlier said, that pharmacists can opt out in larger pharmacies. It says the side effects of emergency contraception are considerable and the drug is abortive in nature because it prevents implantation." The policy at Brooks Pharmacy is that their pharmacists cannot deny anyone emergency contraception. So no matter what age, Mr. President, they can get it and go in there and get it at Brooks Pharmacy without it being determined that they're not responsible enough to have this type of medication. And there's one more statement here that says medical professionals provide emergency treatment in emergency situations are allowed to do this without parental consent. And anything could happen in an emergency sense where this medication is dispensed, and I'd hate to be in a situation where that would happen. Thank you, Mr. President.

SENATOR BURLING: Thank you, Mr. President. Mr. President, my dear friend and colleague from District 19 spoke about rights, and he spoke about the rights of pharmacists and the rights of parents, and it struck me as a cry in the wilderness that he did not speak of the rights of young women. I stand up simply to say I support the inexpedient to legislate because I think every young woman in this state should have the right to make a choice that's different than an abortion or childbirth. And if you take that choice away from them, that's all they're left with.

**The question is on the committee report of inexpedient to legislate.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Boyce, Burling, Green, Flanders, Odell, Eaton, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**The following Senators voted No: Johnson, Kenney, Roberge, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**Yeas: 14 - Nays: 10**

**The committee report of inexpedient to legislate is adopted.**

Senator Boyce requested the record show he intended to vote no on the motion inexpedient to legislate. Senator Boyce did not seek the courtesy of reconsideration on SB 343.

**SCR 6**, urging Congress to take legislative action regarding embryonic stem cell research. Health and Human Services Committee. Inexpedient to legislate, Vote 3-3. Senator Martel for the committee.

SENATOR MARTEL: Thank you very much, Mr. President. SCR 6 came out of our committee with a 3-3 vote on an inexpedient to legislate motion. This is another vote that demonstrates strong beliefs and the extensive debate that took place in the committee both for and against the bill. Mr. President, I urge that we continue to debate on this in other votes that will come up, with other amendments as we go along, and I'm opening it up with that debate. Thank you very much, Mr. President.

SENATOR ESTABROOK: Thank you, Mr. President. I rise to oppose the ITL motion and I understand that people would rather have the debate after that vote has been taken, but I need to make some general remarks with regard to this resolution. SCR 6 calls on Congress to pass legislation such as the identical HRA10 and S471 to promote embryonic stem cell research. The legislation would enable federal funding of embryonic stem cell research under the conditions that it used freely donated embryos otherwise destined to be discarded from in vitro fertilization treatment. Embryonic stem cells are derived during the blastosis period of development, when the embryo is six to eight cells in size. Once derived, depending on the presence or absence of particular biochemical signals, the extracted cells have the potential to develop into specialized cells, such as muscle, blood or brain. Or beta cells to produce insulin for diabetics, or neurons to produce dopamine to treat Parkinson's disease. Embryonic stem cells can differentiate into almost any type of cell. So-called "adult stem cells" have limited ability to differentiate; hence the need for embryonic stem cells. Current federal policy on federal support for embryonic stem cell research is to limit funded research to the twenty-two lines developed before August 2001. That's four years ago, five years ago almost. In the ensuing years, these twenty-two lines have become contaminated as documented in the information left for you in your mailbox. Since then, new methods have been developed to keep new lines healthier, part of the result of research that continues under private funding, but to a much smaller extent than would be possible under federal funding. Privately funded research is also made more difficult, significantly more difficult, with the federal prohibition in place. There is much more research needed to be done, lots to be done on differentiating of the cells and other research questions. And the prospect of this research moving forward without United States federal support, has some serious consequences in science, health care and economics. The potential benefits of cell bases therapies, the most promising treatment for most degenerative diseases, combined with their potential use in testing drugs more effectively, makes embryonic stem cell research a cut-

ting edge realm of science. The current prohibition **TAPE CHANGE** any of our country's brightest young scientists from working in this field. On a global scale, the prospect of this realm of science moving forward without the benefit of American scientists' expertise is scary. Federal funding would also mean that the National Institute of Health would be able to regulate the research; something that's not done at all right now. Now this resolution is not about abortion. It is not about creating embryos for the purposes of research. It is about embryos that would otherwise be thrown away, over 100,000 a year, following the end of fertility treatments, the same source as the twenty-two lines already approved. This resolution is also not about a one-sided moral imperative. There is a pro-life moral imperative behind this resolution. It is the imperative that says the best way to respect and value life is to use the life potential of the embryo, whose life potential is certain to otherwise be destroyed, to help living sick people. This resolution is also not about partisanship. A coalition from both sides of the aisle supported this legislation through the US House. Our own Congressman Bradley was a cosponsor of that legislation. The US Senate has not yet taken action on the legislation since it passed the House. The New Hampshire Brain and Spinal Cord Injury Advisory Council has sent letters to our US Senators urging their support. The New Hampshire legislature's passage of this resolution would be our collective letter sent urging their support. I urge you now to overturn the ITL, but I want to clarify before we have that vote, that just because a member votes to overturn the ITL, does not mean the member is in support of stem cell embryonic research. My understanding is that the reason some people will vote to overturn the ITL is to support an amendment that would essentially strip this bill of all meaning. We will have that debate when the amendment is brought forward, but I want to clarify that the issue will not be decided by this ITL vote, and that by supporting the overturning of it, you are not putting yourself on record in support of embryonic stem cell research. Thank you.

SENATOR FLANDERS: I'll be very brief. Last evening I spoke with a young lady who lives in my town of Antrim, who was in an automobile accident about six months ago, where she hit a moose up on Route 9. Wasn't speeding, wasn't her fault. The moose came out, and she hit the moose and she now is in a wheelchair. She's a paraplegic, and she called me to ask me to vote for this. She now is at HealthSouth. She's in braces, and she's able to walk in water, and she told me, "I would like to hope that I could walk on ground." I promised her that I would vote for this, and then I got to thinking. I don't know the answer to this, but I'm going to throw it out and let you think about it. I wonder how many of the youngsters at Crotched Mountain might be helped by this type of therapy? So I ask you to overturn the ITL and let's support this young lady in Antrim who's in a wheelchair, and see if we can help her to walk on ground. Thank you very much.

SENATOR BARNES: Thank you. Of Senator Estabrook, if she'd be so kind. Senator, it's a real simple question. Just needs a yes or a no. Do you really think that if you send this resolution down to Washington? that this chamber is going to get a letter back from any of our four Congressional delegates? Yes or no, Senator.

SENATOR ESTABROOK: I'm not looking for a letter back. I'm looking for a positive vote when the Senate votes on this and I think if we send a message it may influence that vote. Yes.

SENATOR BARNES: Thank you very much.



SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise to speak against the inexpedient to legislate. All of us in our life have run into a friend that's had a particular sickness, maybe Parkinson's disease, maybe Alzheimer's, one of our friends is a paraplegic or something of that nature. My father died of Alzheimer's disease. I saw my father deteriorate. A brilliant man really. I saw him fall apart to the point in his life when he couldn't eat, when he couldn't talk, when he couldn't communicate, couldn't walk. I saw my father die in a situation that I wouldn't want any human being to go through. I saw a young man, young man who I coached in high school get into an automobile accident. That young man's a paraplegic; he's been a paraplegic for almost forty years. That guy survives because he's got the courage and the will to be a business owner, and he had the fortitude to just stay in there and hang in there. But what if stem cell research had been part of an ongoing process where revitalizing the spine was really attainable? We're doing something that affects Alzheimer's, is really attainable. Because we're all in that situation, each and every one of us suffers that risk. And it makes good science. I mean the most notable person that we all recognize, Mrs. Nancy Reagan, the wife of President Ronald Reagan, you don't find anyone more conservative, has been an advocate of stem cell research. Mrs. Reeves, her husband, spinal injury in a horse jumping accident, an advocate of stem cell research recently passed away. The glimmer of hope is what we cling to. The fact that science which has done so many things. Did we ever think that we'd cure polio? I can remember when I was a youngster growing up, my neighbor getting polio. There was no chance of success, there was the iron lung. Jonas Salk comes up with a vaccine. How do you get there? You get there through good scientific research, and this scientific research is cutting edge research, but it's something that, if we believe in, we have to support. If we believe, and I think we live in hope, that's the one thing that we all can cling to, that some day we will come up with a solution for these problems, for these severe problems. And in answer to Senator Barnes' question, do I expect Washington to write us a letter? No. But what I expect is that the thought process that Senators, Representatives, that represent us go through will reflect our thinking, and will take that into consideration. Any time I have an opportunity to vote for something that's going to in any way make a person's life better, or give an opportunity for that person's life to be better, I will stand up for that. Thank you, Mr. President.

### PARLIAMENTARY INQUIRY

SENATOR BARNES: Is it in order for a parliamentary inquiry?

SENATOR GATSAS (In the Chair): Parliamentary inquiry?

SENATOR BARNES: When this, if this passes, the Senate Joint Resolution passes, is it going to go to Washington with the roll call vote so they'll know what the vote is in Washington, they'll know it isn't unanimous, so they'll know what the vote is on it? Does that happen on these Senate Joint Resolutions?

SENATOR GATSAS (In the Chair): I can't give you that answer Senator. I guess...

SENATOR BARNES: If that isn't so, I'll bring an amendment forward to have that happen. I think, if we send something down there, I think they should know what the vote of this chamber is. I think that they just shouldn't take it as a unanimous vote.

SENATOR GATSAS (In the Chair): Senator, if you wish to bring an amendment in to say that, that's certainly is your prerogative.

SENATOR BARNES: That's what I'm going to have to do.

### PARLIAMENTARY INQUIRY

SENATOR GATSAS (In the Chair): Parliamentary inquiry of Senator Estabrook.

SENATOR ESTABROOK: Yes, Mr. President. Thank you. If we were to have a roll call vote, would that not indicate as a matter of public record that it was not unanimous?

SENATOR BARNES: It would be public record here in New Hampshire, but Washington sometimes doesn't get the answer.

SENATOR GATSAS (In the Chair): It would be public record here in New Hampshire, but sometimes Washington doesn't get that answer.

SENATOR ESTABROOK: Thank you, Mr. President.

SENATOR BARNES: So do I need an amendment, Mr. President?

SENATOR GATSAS (In the Chair): I would suggest that if you would want the roll call vote to accompany this bill, you may want to get an amendment.

SENATOR BARNES: Thank you, Mr. President.

SENATOR HASSAN: For a question of Senator Estabrook please. Senator Estabrook, is there anything that would prevent this body from drafting a cover letter indicating what the roll call vote was when it sends the resolution down to Washington?

SENATOR ESTABROOK: No, Senator Hassan, I don't think there would be, nor do I think that it would be anything that would prevent Senator Barnes himself from writing or calling to provide that information.

SENATOR BARNES: Just an answer. Senator Barnes can call. He has many times in the past, and sometimes the calls don't come back to me. That's why I'd like the roll call to accompany this piece of paper if it should pass and go to Washington. I know they're very busy down there and sometimes they don't get a chance to get back to their constituents. Not like you and I, we always get back to ours, but sometimes they're too busy down there. So I don't trust that, I want to have it go down with it, if I can get the votes to have that happen.

SENATOR GATSAS (In the Chair): Senator, if this body would like to send the roll call vote along with the resolution, without objection. So you don't need your amendment Senator.

SENATOR BARNES: That would be appreciated. Thank you, very much.

SENATOR GATSAS (In the Chair): Thank you.

SENATOR FULLER CLARK: Yes, thank you very much. I have a question of Senate D'Allesandro. Senator D'Allesandro, I have a stepbrother who came down with Parkinson's disease at age fifty-two. Do you believe that, if we are able to pass this resolution and send it to Washington, that this would provide him with a glimmer of hope that he needs as he begins to see his life deteriorating before his very eyes, whereas, in normal circumstances, he could look forward to twenty-five or thirty-five more years of a healthy and robust existence?

SENATOR D'ALLESANDRO: Thank you, Senator Clark. I think anything that we do that shows that we're progressing in a movement in the scientific manner would certainly bring that ray of hope into one's life. We live on hope.

**The committee report of inexpedient to legislate failed.**

Senator Estabrook moved ought to pass.

Senator Bragdon offered a floor amendment.

Sen. Bragdon, Dist. 11

**March 16, 2006**

**2006-1420s**

**01/03**

**Floor Amendment to SCR 6**

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

A RESOLUTION urging Congress to support stem cell research.

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

Whereas, an estimated 128,000,000 Americans suffer from the crippling physical, economic, and psychological burdens of chronic, degenerative, and acute diseases, including diabetes, Parkinson's disease, cancer, and Alzheimer's disease; and

Whereas, chronic, degenerative, and acute diseases result in extreme human loss and suffering for those who suffer from them and their families and caregivers, and result in hundreds of billions of dollars annually in medical treatment and lost productivity costs; and

Whereas, stem cell research offers immense promise for developing new medical therapies for these debilitating diseases and is a critical means to explore the fundamental questions of biology and could lead to improved treatments and potential cures for diabetes, Parkinson's disease, Alzheimer's disease, spinal cord injuries, burns, cancer, heart disease, and other diseases; and

Whereas, the United States has historically taken a leading role in funding biomedical research and has been a haven for open scientific inquiry and technological innovation, and, as a result, is the preeminent world leader in biomedicine and biotechnology; now, therefore, be it:

Resolved by the Senate, the House of Representatives concurring:

That the New Hampshire general court hereby urges Congress to support stem cell research; and

That copies of this resolution be sent by the senate clerk to the Speaker of the United States House of Representatives, the President of the United States Senate, and the New Hampshire congressional delegation.

**2006-1420s**

**AMENDED ANALYSIS**

This senate concurrent resolution urges Congress to support stem cell research.

SENATOR BRAGDON: Mr. President, I would like to introduce an amendment to SCR 6, amendment 1420s.

SENATOR GATSAS (In the Chair): Floor amendment 1420s has been proposed. Is there any discussion on the amendment?

SENATOR BRAGDON: I'd like to discuss my amendment as it's being passed out, Mr. President. Mr. President, generally I'm not a big fan of

resolutions, and the more specific the resolutions are in relation to federal legislation that may change at any given time, the less thrilled I am with it, though I know we do it all the time. In the Health and Human Services Committee hearing on SCR 6, we heard compelling testimony from people whose lives could be greatly improved if some of the potential of stem cell research were to be achieved. Most, if not all of the testimony, centered around embryonic, or so called embryonic stem cells. However, in reading through some of the materials handed out by the bill's proponents, I found that there are many other different kinds of stem cells. On just one page of the reading materials we were provided, it was listed the following: embryonic stem cells, cord stem cells, adult stem cells, hematopoietic stem cells, stromal stem cells, mesentimal stem cells, multipotent adult progenitor cells, pluripotent stem cells. It also indicated that new tests had been developed to obtain these precious embryonic stem cells, without harming the embryos, which are equally precious to some, in the process. So all these things were not addressed by the bill being referenced within SCR 6, and with that in mind, I put together this amendment, which is more of a general support of stem cell research bill that does not have reference to specific types of stem cells, but basically says that we encourage our Representatives and Senators in Washington to support continuing stem cell research in the broader sense, where the most possibility lies for this to be used to improve people's lives, and that's why I offered this amendment. Thank you very much.

SENATOR ESTABROOK: Thank you, Mr. President. The amendment does, as I had suspected remove the word "embryonic", and, by doing so, it renders the resolution completely and utterly meaningless. The debate in Washington is not over stem cell research in general. What is happening today is happening today, and will not be affected by this watered down resolution. The debate in Washington is over embryonic stem cell research and there's a reason for that. Reading from information provided by the Juvenile Diabetes Foundation, answer to the question, "Is adult stem cell research a feasible alternative?" Which is many of the types that the Senator had referenced, and the answer is, "A policy limiting embryonic stem cell research cannot be justified by redirecting resources to other scientific avenues such as adult stem cells, which, unfortunately, have not yet shown the same potential for treating a wide range of diseases." Researchers have been studying mature or adult stem cells for more than thirty-five years. Clinical therapeutic application has succeeded to the greatest extent with hematopoietic stem cells, HSC, as replacement for bone marrow components usually for patients with cancer who are receiving radiation or chemotherapy. Such stem cells transplants have been proven to be very useful in this setting, but have shown no other use in most other areas, including type 1 diabetes. Research on types of stem cells, other than embryonic, while of course helpful and does add to the scientific body knowledge and is helpful in treating disease, does not have nearly the potential that embryonic stem cell research has. And the basic reason for that is that the other types of stem cells, whether they be adult, or taken from the placenta or many other ways that they are extracted, those other types do not have the scientific ability to differentiate and become the wide range of cells that embryonic cells have the capability to become. If we limit our research by excluding embryonic stem cell research, which is exactly what this resolution chooses to do, then we have limited the ability of science to achieve the results that we have described earlier. I'd like you think about a

couple of other things. I'll give you a concrete example of what we're losing as result of limiting our research to stem cells that are not embryonic. Over at Stanford it seems, we have a couple of geneticists from the National Cancer Institute who are leading scientists in this field, and they've decided to go work in Singapore. Their names are Copeland and Jenkins, famous for discovering a way to accelerate the identification of cancer causing genes in mice. Scientist hope to advance this discovery by using embryonic stem cell cultures to build models of leukemia, lymphoma and other cancers. If researchers can learn which genes are mutated into cancer, they could possibly develop drugs to block mutation. "It is a loss for Stanford and a loss for America," said Irving Weissman, director of Stanford's Institute for Cancer. Without a doubt, they are the best people I know to find out which genes are altered to cause cancer. We're giving up that kind of opportunity, we're sending our scientists to the following list of countries, where embryonic stem cell research is permitted. Australia, Brazil, Canada, Czech Republic, Denmark, Estonia, Greece, Hungary, Iceland, Iran, Latvia, Russia, Slovenia, Spain, Sweden, Switzerland, Taiwan, Belgium, China, India, Israel, Japan, South Korea, the Netherlands, United Kingdom. That's where the research will be taking place. It will be taking place without the benefit of the mainstream of American scientists' expertise, without the benefit of federal funding, which is how all science research in this country takes place, because of federal funding. One more scientific fact about why the existing lines are not usable. In August of '01, when that policy was instituted, we thought there were going to be seventy-eight lines. Unfortunately, only twenty-two of those remain. As I said earlier, those twenty-two are contaminated with mouse feeder cells, thereby making their therapeutic use for humans unsuitable. The current federal policy concerning stem cell research is compromised and does not enable this research to be fully explored. The policy has stalled progress in America and this resolution presented in this amendment will do absolutely nothing. And it is a sham, and your vote in favor of it will be seen by the public for what it is. It is not a vote in favor of embryonic stem cell research, which is what the question is that we have before us today. And, by trying to avoid that question, you're doing your constituents a disservice. I urge you to vote against the amendment and, if the amendment were to pass, vote against the bill. It's worthless.

SENATOR MARTEL: Thank you very much, Mr. President. Several individuals used statistics and then only give you half the statistic instead of the entire statistic. I'll just read you a document from a statement from the original seventy-eight stem cell derivations that were declared eligible for US federal funding under the August 2001 policy. Soon after the Bush policy statement, New Hampshire established the Human Embryonic Stem Cell Registry.

SENATOR GATSAS (In the Chair): Senator, I hate to interrupt you.

SENATOR MARTEL: Sure, go ahead.

SENATOR GATSAS (In the Chair): I just want to make an introduction. We have home schoolers from throughout the whole state of New Hampshire. Senator, I apologize. If you want to start from the beginning...

SENATOR MARTEL: Thank you very much, Mr. President. Back then, twenty-one stem cells lines were available for distribution and study. The list now includes seventy-eight stem cell derivations. Whether it's debated one research is, as to whether even seventy-eight lines is an adequate number to create the necessary environment to initiate wide-

spread scientific investigation in the field. The more critical point is that few of those seventy-eight stem cell derivations are or ever will be usable by scientists. They won't need them because they keep recreating themselves and there'll be so many, that scientists won't know what to do with them. These stem cells treat many of the illnesses that we see today. Of course, there are some and I admit that we'll still do a lot of research because some of the stem cells may have to be investigated even more and researched even more to be able to resolve those diseases. Well then, I'm all for that, like I think everyone in this room is. So from a practical standpoint, many of the derivations are now being characterized and being used in the American research community and also here in the state. A year after the policy statement was issued, scientists estimated there were more than seventy purported human embryos stem cell derivations that met the American criteria for federally funded research. Once again, only sixteen of those were available for distribution. Today, we have seventy stem cell lines, and then they talk about two years ago, two years later, less than a third of the lines the administration thought would be available for research in fact were not, in fact were available, excuse me. They just can't use them fast enough. Just to finish, Mr. President, is this topic goes on forever, and it should, the right debate, that we were talking about the right issues. I think this amendment does a very good job of what we want to do here. A policy limiting embryonic stem cell research cannot be justified according to certain people, but there are other researchers and scientists who say we can use adult stem cells for the same purposes. So it depends which side of the house you belong to. There's a need to transfer the focus of stem cell lines that have not shown as much promise as adult stem cells have. And, as SCR 6 would do, and I urge the Senate to join me and looking at this amendment that just came to us as the beginning point for sending a message down to Washington about our sincerity in looking for stem cells that do work in the research areas, and I thank you, Mr. President.

SENATOR FOSTER: Senator Martel, you think, and I agree, that stem cell research might provide great cures for lots of diseases and you said that you support that. That's right?

SENATOR MARTEL: Correct.

SENATOR FOSTER: And that you feel that adult stem cells will provide help in that area?

SENATOR MARTEL: Yes.

SENATOR FOSTER: Do you know, as you're sitting here today, that embryonic stem cells won't also provide cures and maybe different cures for diseases?

SENATOR MARTEL: Senator, it all depends on which side of the house. Embryonic stem cells that are available are being used for research among scientists. Adult stem cells are also being used by scientists for the same purposes. Finding that they have similar results, not negative results, positive results. Advantages of availability of funding for stem cell research now, it's \$100 million annually, and it was less than \$25 million as allocated last year for stem cell research, I mean for embryonic research. So there are far more dollars going in for stem cell research, and the lines we have available are more than sufficient, both embryonic and stem cell, to continue the research that we need to do. They redevelop, they just recreate themselves, Senator.

SENATOR FOSTER: Senator, I guess would it be fair to say then, where you and I disagree is that you want to limit the scientists into what's existing now, and not to release their hand so that the incredible power of our university system and our researchers can just utilize this resource without having their hands tied or one hand tied behind their back?

SENATOR MARTEL: I would never tie the scientists' back behind anybody's back, Senator, and to imply that, I resent. I believe that scientists are doing a fine job and they will excel like they always have excelled, no matter what stem cells they use. And, to say that I want to tie their hands behind their back because I'm stating what the facts are in the entire report is wrong. And I will no longer take any more questions, Senator.

SENATOR FOSTER: Thank you.

### PARLIAMENTARY INQUIRY

SENATOR GREEN: Mr. President. Parliamentary inquiry?

SENATOR GATSAS (In the Chair): Parliamentary inquiry.

SENATOR GREEN: Can we have a quorum to do business?

SENATOR GATSAS (In the Chair): As soon as a roll call is asked we'll get "em" in here.

SENATOR GREEN: Okay. Thank you.

**The question is on adoption of the floor amendment.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**The following Senators voted No: Gallus, Burling, Odell, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 14 - Nays: 10**

**Floor amendment adopted.**

SENATOR ESTABROOK: Thank you, Mr. President. As a sponsor of the resolution, I now ask the body to kill it. It's totally and utterly meaningless. I want the record to reflect that, will do absolutely no good, and I'd also like the body to know that the House committee hearing a similar resolution, rejected this approach overwhelmingly, for the very reason that it stripped it of all meaning.

### MOTION TO TABLE

Senator Larsen moved to have SCR 6 laid on the table.

**The question is on the motion to lay on the table.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Bragdon.**

### PARLIAMENTARY INQUIRY

SENATOR BURLING: Parliamentary inquiry?

SENATOR GATSAS (In the Chair): Parliamentary inquiry?

SENATOR BURLING: Mr. President, I gather we're taking a roll call on the motion to table. Am I right?

SENATOR GATSAS (In the Chair): Senator, you're absolutely right.

**The following Senators voted Yes: Gallus, Burling, Odell, Eaton, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**The following Senators voted No: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**Yeas: 11 – Nays: 13**

**Motion failed.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 312**, relative to the appointment of parenting coordinators. Health and Human Services Committee. Ought to pass, Vote 6-0. Senator Kenney for the committee.

#### **MOTION TO TABLE**

Senator Kenney moved to have HB 312 laid on the table.

**Adopted.**

#### **LAI D ON THE TABLE**

**HB 312**, relative to the appointment of parenting coordinators.

**HB 325**, relative to proceedings under the Child Protection Act. Health and Human Services Committee. Ought to pass with amendment, Vote 6-0. Senator Gallus for the committee.

**Health and Human Services**

**March 7, 2006**

**2006-1277s**

**09/01**

#### **Amendment to HB 325**

Amend section 2 of the bill by inserting after RSA 169-C:12-d the following new section:

169-C:12-e Confidentiality of Health Care Records During Investigation. If a health care provider has records or evidence relating to the investigation of acts suspected pursuant to this chapter, such health care records may be withheld from the parents or guardian by the provider pending the lawful investigation of alleged abuse or crimes. During the investigation, other health information may be released at the provider's discretion, upon appropriate consent, to fulfill the purposes of comprehensive medical care of the child. Upon conclusion of the investigation, the provider, parent, guardian, the division, or law enforcement may petition the court for continuation of such protection of the child's health records, subject to court review of the conditions related to the child's present and future safety and the child's reasonable expectation of privacy in the course of health treatment. Notwithstanding the provisions of this section, specific or limited evidence which is used in proceedings pursuant to this chapter shall be subject to the court's applicable rules of evidence, including discovery.



**2006-1277s****AMENDED ANALYSIS**

This bill changes the filing deadlines for certain reports and records to 5 business days prior to a child abuse or neglect hearing. The bill establishes certain requirements for medical examinations of children who are alleged to have been abused or neglected. This bill requires interviews of children who may be victims of child abuse or neglect to be videotaped or audio recorded in their entirety.

The bill also temporarily suspends a suspected parent's access to a child's medical records while an alleged child abuse or neglect case is investigated.

**MOTION TO TABLE**

Senator Gallus moved to have HB 325 laid on the table.

**Adopted.**

**LAIID ON THE TABLE**

**HB 325**, relative to proceedings under the Child Protection Act.

**HB 590**, excluding stepchildren from the definition of "child" in the context of support orders. Health and Human Services Committee. Ought to pass, Vote 5-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you very much, Mr. President. I move ought to pass on House Bill 590. Testimony revealed that, while stepparents do not have the statutory rights of biological parents or adoptive parents, stepparents are included in the law addressing support for dependent children. The issue arises primarily during divorce proceedings when stepparents are legally responsible for financial reliability while possessing none of the associated rights that parents or adoptive parents possess. Once the divorce is final, the stepparent's financial obligations are terminated. In every other instance, stepparents are not financially liable for stepchildren. Stepparents do not have rights of inheritance from stepchildren; neither are stepparents included in the definition of "parent" under the Child Protection Act, and in order to pick up stepchildren at school, stepparents have to provide a note from the parents. House Bill 590 recognizes the discrepancy in the New Hampshire law and the committee recommends ought to pass, and I thank you very much, Mr. President.

**MOTION TO TABLE**

Senator Fuller Clerk moved to have HB 590 laid on the table.

**A division vote was requested.**

**Yeas: 7 – Nays: 14**

**Motion failed.**

SENATOR FOSTER: Thank you, Mr. President. I rise in opposition to the committee report. Normally this subject matter comes to the Judiciary Committee. I suspect it did not because we have more than our fair share of bills this year, and the Senate President's trying to spread the wealth, shall we say. This bill has been submitted into the legislature on at least two separate occasions from Representative Bickford, who you'll see yet again as the only sponsor of this piece of legislation, and each time the Judiciary Committee has recommended that it be found inexpedient to legislate and it has died in the previous two sessions, once back in 2002 and again in 2003. So it's been found not good policy by the

Judiciary Committee on a couple of occasions. And what we're hearing is that the only situation where this would come into effect, is where, at least I think from the comments, if I understood them, that when parents who are married and there are stepchildren, by one parent or the other, in that marriage, are getting divorced. At that point in time, support may not be ordered, by the traditionally, the father, to take care of the stepchild of the mother who he has now chose to leave. And one is I question whether that's good policy, but beyond that, as I've read through the legislation, and I think that others have here, too, I'm not sure that's all that it does. Reading the case of Logan v. Logan from the Supreme Court which dealt with this issue goes through and explains that parents have an obligation to provide support for their stepchildren during marriage, and this piece of legislation, as I read it, strikes out the word stepparents from a bunch of different places, including the provision which would obligate a parent to take care of a stepchild during the course of their marriage. That isn't what I ever heard Representative Bickford say when he's come to the committee when I've heard this bill, and I bet he didn't say it to the committee this time. But at least it looks like to me by the amendments being made to 546-A:2 in the legislation that that could be, maybe, an intended or perhaps unintended consequence. So you can imagine a hypothetical where a person has the child, maybe the natural father's killed, mother gets remarried at age two, they have a few kids, marriage ends at age seventeen. What do you only have to take care of the three? Or, maybe decide they don't want to take care of the stepchild at all at some point along the way because the stepchild kind of makes you angry. I'm just not sure this is good policy, and I suspect that the Judiciary Committee is one of whom I served on, and one previously who I did not serve on, I was not in the Senate, may have taken up those kinds of considerations. And I would at least like to know that the committee that heard the bill this time considered all the ramifications of this legislation as opposed to that little narrow situation which I think you can argue both sides. And even arguing both sides of that, when the parents are getting divorced, you know can sometimes reconcile, and I think the idea of the law right now is, once you do indeed get divorced, and there's no longer any relationship, perhaps at that point the obligation for taking care of that stepchild should end. But divorce is a process; it isn't an instantaneous event, a lot of things happen. Sometimes people reconcile; sometimes they get back together, they separate again. I don't understand why we need to do this. I'm not sure what the crying need to deal with this particular situation is. Finally, I'll mention that there are what appear to be, and I'm going to overstate this, but I'll tell that it feels this way, dozens of bills dealing with this general subject matter that are working its way through the legislature. That's why I had asked and thought I had an agreement to table the previous two bills and this bill. But we decided to cherry pick I guess and only take the first two and put them on the table and not this one. I think we ought to be dealing with all these things the same way if we're going to deal with them, see where we are at the end of the session. There's a lot of work that needs to be done on this subject matter. So I would ask not to accept the committee report of ought to pass, and instead I would like to ultimately, hopefully, put forward an alternative motion. Thank you, Mr. President.

SENATOR LARSEN: Question of Senator Foster. While this wasn't in your committee, I understand your request for the courtesy as Chair of Judiciary to look through all of the issues relating to custody. My ques-

tion, and maybe you can't answer it because you didn't hear this whole issue yet, but I see that John Williams from the Department of Health and Human Services came to the Health and Human Services Committee that heard the bill, and in fact mentioned that if a stepparent has been in the role of supporting that stepchild for many years, the court can review that issue. My question is what happens in the case of a stepchild, who say, has been in the household for twelve years with that stepparent and in fact, the legal parent, the biological parent is deceased? In the best interest of the child, what happens if House Bill 590 passes for that child? If we're looking to having just debated the importance of embryos, is it not in fact in the best interest of a living child to know that there's at least some means of support?

SENATOR FOSTER: The child is not adopted and, for whatever reason, the parent chooses not to take care of that child anymore. I don't think, if this bill were to pass, there'd be any obligation whatsoever to support that stepchild. And I'll also note that, in the previous two hearings on this bill, it didn't happen this time, counties came in and expressed concern because of course a lot of these children end up on public assistance ultimately. So we're getting back to that situation where the ever present property tax seems to come into play, which one of the Senators likes to speak about quite a bit. Thank you.

SENATOR JOHNSON: Thank you. Mr. President, thank you. I want to follow up on Senator Foster's mention of House Bill 586. I did pull out the blurb that was given by former Senator Fernald. "House Bill 586 attempted to excluding stepchildren from the definition of child in the context of support orders. Sponsors of the legislation stated that different courts treat the stepparent relationship differently, that the court had invited the legislature to address this relationship in a recent ruling." As Senator Foster said, the counties opposed the provisions of HB 586 because it would place an additional burden on the county budgets, as currently the counties pay for services and the family's total income is taken into account. During considerable discussion, the Judiciary Committee was uncomfortable removing statutorily the obligation of a stepparent to assist in the care of a child by the relationship while the child's parent remains intact. Therefore, the Judiciary Committee recommends that HB 586 be inexpedient to legislate. Thank you, Mr. President.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I want to just speak briefly on this fact. There are a number of bills on this subject matter and they've gone to different committees and obviously one of the reasons is because certain committees were overburdened. My committee heard one bill that has a relationship here, and it seems to me, what I thought would happen is that we would table these bills and then look at this subject matter in its totality because it is far reaching and it does have a dramatic effect on the parents, the children, and everyone else involved. We have heard testimony when we heard 1580. I think Senator Odell and Senator Gallus were with me on that hearing, that there's a court function that's in question, how this is handled in court, how it's handled by marital masters, et cetera. So it seems to me, unless we embrace all of these and bring them together and get the benefit of that, we're not going to come up with some solid recommendations that go forward. And, there is another item that was passed by this legislature where an expert was being called in, who was an expert economist, who was going to give us an overview and an analysis of this subject matter. And one would need that to make really good decisions. So I'm hop-

ing that we can make another motion on this bill, and again look at everything in totality, because I think it makes sense in terms of us delivering the best results. Thank you, Mr. President.

SENATOR MARTEL: Thank you very much, Mr. President. I hope that the statement that was made earlier, Mr. President, I'd like to reply to that about my, an agreement being made to table, table a bill. Senator Foster and I did discuss this in my office. We had already heard the bills, and I had informed you of that, and you made that proposal to me, whether or not we should probably try to enjoin them all and I said, join them all, excuse me, and I said that I would discuss it with also the caucus, and that's exactly where we left it. Okay? Now this was discussed and we are now at this point. Mr. President, I'd like to get up and just explain how the committee came to its decision on a 5 to 0 vote on ought to pass on this bill. Representative Bickford, who is a sponsor of this bill, introduced it and said that stepparents are not parents, stepparents do not have the parental rights, and stepchildren have no inheritance rights. Representative Bickford said that, when picking up stepchildren at school, as was stated earlier in my opening, stepparents have to provide a note from the parent demonstrating that the stepparent may pick up the children. The committee heard that stepparents are not included in the definition of parent under the Child Protection Act. However, stepparents are included in the law addressing support for dependent children. Representative Bickford said that the experience, as a member of the New Hampshire House of Representative is a good example of what House Bill 596 seeks to address. The Representative's ex-wife petitioned the Representative to pay child support, and even though she had left the Representative to live with the child's biological father, and the Representative never adopted the child. "It is the father who should be paying the child support," said Bickford **TAPE CHANGE** the Department's position, but he personally said, "Financial liability of a stepparent terminates when the divorce is made final." So, whenever final the divorce is terminated, everything is final. Williams reiterated that, during a divorce, stepparents are responsible for financial liability, but do not have the associated rights of parents or adoptive parents have. They're totally different categories. This is the case of *Logan v Logan*, which was studied before; the Supreme Court suggested that it would be reasonable for the legislature to consider this issue. We heard everything about this in the committee and the committee came in an ought to pass motion of 5 to 0 because it followed all of the information that we had received in a positive way, there was. No one was there to speak in the negative on this, and, Mr. President, I urge that we pass this bill as we go on this afternoon. Thank you, Mr. President.

SENATOR BURLING: Thank you, Mr. President. Senator, would you yield to a question?

SENATOR MARTEL: Sure.

SENATOR BURLING: Would you agree with me, Senator, that, as we have in the last ten years, created the Family Division, of our court system and given the Family Division jurisdiction over the breakup of families, that it is somewhat incongruous to say to people unhappy enough to be stepchildren, that they're not part of the family, and that their consideration and concern should not be considered by the Family Division?

SENATOR MARTEL: I have my personal feelings on that, Senator and that is that the order of Family Division is... I'll have to look into that matter to see exactly what they said on this matter. I'd be glad to come

back to you on that. But that never came up as a discussion, by anyone who sat and attended this hearing, and before that and before the committee. So I thank you very much for your question.

SENATOR LETOURNEAU: Senator Burling? Do you yield? Senator Burling, would you agree with me that at least that the biological father should be responsible for the welfare and caring of the child?

SENATOR BURLING: My response to that I take directly from the earlier testimony of Senator Foster. I think he had it exactly right. The process of divorce is a process of, in many ways, disassembling a family, a group of people who have come together, either through biology or in a modern sense, through marriage and law, to make a family. And when that unit comes apart, every member of it, in my view, has a right to have their interests and rights weighed and balanced by the court that makes orders relative to their well-being. If there are children who are stepchildren, they're part of that family, and as far as I can tell, in the last decade, every public policy decision we've made, has been to emphasize this is about families and it's about fairness and protecting the interests, particularly of the children. So I think this is an anti-family proposal.

SENATOR LETOURNEAU: Follow up? Just a follow up. Not a lengthy answer please. I'm very fortunate. I've been married to my bride for forty-five years, and I intend to stay that way. So this is a new area of expertise for me. But in the example that was used in the testimony, that the person involved moved back in with the biological father, and the person who was left standing outside, and I'm thinking that maybe there's a double dipping going on here. There's somebody that's paying and somebody else is paying also, somebody's getting paid twice here. Would you agree with that? I'm thinking in terms of money here.

SENATOR BURLING: Of course I understood that to be the case. I can only just say that that is a horrifying prospect to me, but since I have absolute faith and confidence in the marital masters and Family Court Division judges who decide these things, I cannot imagine any judge or marital master of this state who would let that go on.

SENATOR LETOURNEAU: Well, I'm glad you have that faith. Thank you.

SENATOR FULLER CLARK: Thank you very much, Mr. President. I rise as a member of the Health and Human Services Committee who voted ought to pass for this bill in the committee. But I would like to say that at that time, that no history of previous consideration before the Judiciary was brought to our attention, and it has been clarified since then that one of the issues is that that child, during the period from when the divorce is filed to when the divorce might be decreed final, could very much be left in jeopardy, that stepchild, and particularly if there were no biological parent. So it seems to me, that from my point of view, I can no longer vote for this legislation, because it sets a child at risk in a situation where we don't want that child to be at risk. And clearly, during the time that the stepfather was involved in the marriage, he was providing some economic support to that family, and until it has been ultimately settled by the courts, I do not believe that we, as the legislature, should prematurely interfere with the risk that we might be putting a child or several children at risk, and so therefore, I'm going to change my vote on the floor of the House. Thank you.

**SENATOR FLANDERS:** Thank you, Mr. President. Based upon the testimony of Senator Foster and Senator D'Allesandro, I ask that we reconsider our vote to table. There are some other bills that I think... I just ask that we reconsider that vote.

**SENATOR GATSAS (In the Chair):** That was a motion to speak, Senator Flanders, or was that a motion?

**MOTION TO TABLE**

Senator Flanders moved to have HB 590 laid on the table.

**A division vote was requested.**

**Yeas: 9 - Nays: 14**

**Motion failed.**

**SENATOR CLEGG:** Mr. President, first off I want to make a couple of points. No one showed up in opposition to this bill in testimony. And I know how important that was last session when we looked at a number of issues, and we looked and we said, no one opposed the bill, why are we doing this? Well nobody opposed the bill again. The biological parent, being dead. How many of you really think, if the biological parent was dead that the kid wouldn't be on SSI? Let's be honest. As soon as that parent dies, that child goes on supplemental social security. So it's not like we're throwing them off to the county. This is a bill that a lot of people want to go on the table because they don't like the bill. It's not so that we can put it in another bill, it's so that the bill dies. And if you listen to the floor speeches, try it again tonight on the web, that's what you'll hear. This bill shouldn't pass. Well then vote the bill up or down. It's not about putting it on another bill; it's about whether you think this is the right thing to do. And I'll say it again, nobody showed up in opposition, and any child with a dead biological parent is going to already be on supplemental social security. Thank you, Mr. President.

**The question is on the committee report of ought to pass.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Gallus, Kenney, Boyce, Green, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**The following Senators voted No: Johnson, Burling, Flanders, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 14 - Nays: 10**

**Adopted.**

**Ordered to third reading.**

**HB 1118**, requiring paper ballots at all elections. Internal Affairs Committee. Ought to pass, Vote 4-0. Senator Bragdon for the committee.

**SENATOR BRAGDON:** Thank you, Mr. President. I move HB 1118 ought to pass. This bill would simply put into statute what is currently practiced throughout New Hampshire by requiring paper ballots at all elections. Please join the Internal Affairs Committee and vote HB 1118 ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 382**, relative to the guardian ad litem board. Judiciary Committee. Ought to pass with amendment, Vote 6-0. Senator Foster for the committee.

**Senate Judiciary**

**March 7, 2006**

**2006-1283s**

**09/01**

**Amendment to SB 382**

Amend RSA 490-C:4, I(g) as inserted by section 3 of the bill by replacing it with the following:

(g) Investigate and resolve complaints against certified guardians ad litem, **and against formerly certified guardians ad litem who are claimed to have engaged in acts or omissions prohibited when certified.** The board may, upon the [filing] *submission* of a *written allegation or* complaint against a *presently or formerly* certified guardian ad litem who holds, *held, or may hold* an appointment in a case under the authority of a court, refer that matter [~~for appropriate investigation and resolution by the appointing]~~ to the appropriate court *for investigation, resolution, or other action.* Such referral may be *made regardless of whether the allegation or complaint relates to a case which is then pending in court and may be made* in lieu of or in addition to [~~the~~] *any* investigatory or disciplinary procedures [~~of~~] *that* the board *may itself be authorized to pursue.* The board may further informally resolve complaints by agreement. *A complaint relating to a trial or judicial proceeding in progress shall be dismissed without prejudice, unless the board for good cause votes to proceed immediately with such complaint.*

Amend RSA 490-C:4, II(k) as inserted by section 3 of the bill by replacing it with the following:

(k) *Establish procedures and requirements relative to the maintenance or disclosure of confidential information received by, or used in investigations or in hearings, proceedings, or other activities or matters before the board.*

Amend RSA 490-C:5, II(h) as inserted by section 4 of the bill by replacing it with the following:

(h) *Procedures and requirements relative to maintenance or disclosure of confidential information received by, or used in investigations or in hearings, proceedings, or other activities or matters before the board.*

Amend RSA 490-C:5-a, I as inserted by section 5 of the bill by replacing it with the following:

I. To be eligible for *initial* certification, [~~conditional certification, temporary certification,~~] recertification, reinstatement, or renewal of certification, as a guardian ad litem under this chapter, an applicant shall be of good character and shall meet such criteria or requirements as may be established by the board.

Amend RSA 490-C:5-b, II(d) as inserted by section 6 of the bill by replacing it with the following:

(d) The board, *its representatives or its agents* may, *without a specific court order,* disclose to any [~~New Hampshire~~] court [~~with the authority to~~] *that* [~~appoint~~] *appoints* [a] *or oversees* [~~guardian~~] *guardians* ad litem, *or any other entity or group* which possesses oversight authority over *any type of* [~~the~~] professional [~~activities~~] *ac-*

**tivity** of [~~individuals~~] **persons** who may serve as a guardian ad litem, any records, documents, or information in the possession of the board, **whether oral or in writing**, [~~relating to a certified guardian ad litem, an applicant for certification, or a formerly certified guardian ad litem.~~] **including but not limited to that information described in RSA 490-C:4, II(b), unless such disclosure is prohibited by court order. In assessing whether or not to make a disclosure or engage in a communication under this subparagraph, consideration shall be given to whether or not it is likely that information conveyed will be further disseminated in a manner contrary to New Hampshire law.**

Amend the introductory paragraph of RSA 490-C:5-b, VI(b) as inserted by section 6 of the bill by replacing it with the following:

**(b) Limitations, prohibitions, or instructions under subparagraph (a) may include, but need not be limited to, limitations or prohibitions on, or other instructions regarding, any one or more of the following:**

Amend the introductory paragraph of RSA 490-C:5-b, VIII(a) as inserted by section 6 of the bill by replacing it with the following:

**VIII.(a) In addition to any other procedures, including those under paragraph VI, which the board may apply at a hearing, proceeding, or other matter before the board, the board may also limit access to, or place limitations on, a person's use in a hearing, proceeding, or matter, of particular documents or materials if:**

Amend RSA 490-C:5-c, II as inserted by section 7 of the bill by replacing it with the following:

II. In addition to paragraph I, the board, members of the board, the board's representatives and agents, including but not limited to presiding officers and investigators, and its employees, shall be immune from criminal action or penalties, and actions or penalties for the alleged commission of a violation, for the disclosure of confidential information, including but not limited to actions under laws imposing penalties for the disclosure of certain information in cases in which a guardian ad litem may be involved, or any law relative to the confidentiality of records, documents, or communications, provided that such action was undertaken in the good faith performance of official duties believed authorized under this chapter. This immunity shall not apply to actions commenced under RSA 490-C:5-b, IX, except in the case of communications between the board, its members, its representatives, or its agents, and a court.

Amend the bill by inserting after section 8 the following and renumbering the original section 9 to read as 10:

9 Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.

**2006-1283s**

#### AMENDED ANALYSIS

This bill permits the guardian ad litem board to communicate with certain groups about guardians ad litem.

SENATOR FOSTER: Thank you, Mr. President. I move SB 382 ought to pass with amendment. The provisions of SB 382, as amended by the



Judiciary Committee, permit the Guardian Ad Litem Board to communicate with certain groups about Guardians Ad Litem when complaints are filed. Because the complaints will often require to delve into delicate matters, for example, matters related to juveniles, legislation is needed to allow the board to receive and review the confidential information in order to deal with the complaint. The GAL Board is an arm of the executive branch, not the judiciary, so existing laws related to nondisclosure of this information would otherwise apply, and would in effect, make it impossible the role the legislature had in mind when it created the Guardian Ad Litem Board. The committee amendment makes some technical changes requested by the board. It also makes one important substantive change. While the majority of the board prefers that no one be able to file a complaint against a GAL, while a case is pending before the courts, a majority of the Judiciary Committee felt otherwise and wanted the tool available to the board in limited circumstances. The amendment draws on language used by the Judicial Conduct Committee in cases involving a complaint while a case is pending before a judge. It creates a presumption that a complaint filed when a case is pending will be dismissed, unless the board, for good cause, votes to proceed immediately. It is the committee's intent that good cause would be in cases where a Guardian ad Litem displayed an extreme dereliction of duties, such as showing up to an interview with the child while intoxicated or failing to completely do the required investigations in a case that had been ordered by court. The cause would not exist merely because the complainant disagrees with the GAL's report. The Judiciary Committee recommends that this legislation be adopted as amended and asks for your support. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 1225-FN-A**, relative to the judicial branch family division for the Henniker and Hillsborough District Courts. Judiciary Committee. Ought to pass, Vote 6-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move House Bill 1225-FN ought to pass. The provisions of this bill establish locations for the Family Division for Henniker and Hillsborough. Under the current statute, all people in Hillsborough would be required to come to Concord for Family Division matters. This bill provides a temporary location in Henniker, with the understanding that as soon as, or if, the new District Court facility is built in Hillsborough, the Family Division would switch to the new court. The Judiciary Committee recommends that this legislation be adopted and asks for your support. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1654-FN**, relative to the probate court mediation fund and fee. Judiciary Committee. Ought to pass, Vote 6-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move HB 1654-FN ought to pass. The provisions of HB 1654 merely repeal the sunset provision of the Probate Court Mediation Fund and fee, which was set to expire on June 30, 2007. Currently, about two-thirds of the mediation

related cases in the Probate Court end in settlement. These mediated cases have a shorter court life span, and end up as more successfully resolved cases. Mediators receive a flat \$350 fee for each mediation case they accept, regardless of how long the case takes. Their fees are paid by a \$5 surcharge that has been added onto each case filed in the Probate Court system. The Judiciary Committee recommends that this legislation be adopted and asks for your support. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 404**, relative to retirement benefits, optional benefits, and the collection of overpayments by the Manchester employees' contributory retirement system. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Martel for the committee.

**Public and Municipal Affairs**

**March 9, 2006**

**2006-1316s**

**10/03**

**Amendment to SB 404**

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

AN ACT relative to retirement benefits, service credits, and administration of the Manchester employees' contributory retirement system.

Amend the bill by inserting after section 3 the following and renumbering the original section 4 to read as 6:

4 Manchester Retirement System; Service Buybacks. Amend 1973, 218:10, III, as amended by 2002, 194:1, to read as follows:

III. A member who ceases to be a member, withdraws his or her member contributions pursuant to section 11 of this act, and later becomes a member again, may make a request after the member's return to city employment for service buyback of prior service credit for the previous time served as a member. ~~[No benefits other than the right to withdraw member contributions pursuant to section 11 of this act shall accrue with respect to such previous period of service until the member shall have completed 5 years of continuous service in the current period of employment.]~~ If a service buyback is not made, the member's benefit shall be based solely on the member's years of service and final average earnings after the break in service.

5 New Sections; Service Credit; Spousal Acknowledgment. Amend 1973, 218 as amended by 2002, 194 and 2005, 41 by inserting after section 28 the following new sections:

218:29 Credit for Service in Other Public Retirement Systems.

I. Notwithstanding any provision of this chapter to the contrary, any member of the Manchester Employees' Contributory Retirement System, in service on or after June 30, 2006, who was formerly a member of a public employees' retirement system elsewhere in the United States, shall be allowed to purchase credit for such service as creditable service in the Manchester Employees' Contributory Retirement System; provided, however, that creditable service in the Manchester Employees' Contributory Retirement System which is purchased under this paragraph shall not be deemed creditable service for the purpose of eligibility for medical and surgical benefits as a retired employee under section 28. For such members, only creditable service performed in the city of Manchester as a member of the Manchester Employees' Contributory

Retirement System shall be counted as creditable service for the purpose of eligibility for medical and surgical benefits as a retired employee under section 28. For the purposes of this section, "public employees' retirement system" shall include any retirement system established and maintained by the United States government, the members of which are federal government employees. For the purposes of this section, any military service not otherwise authorized pursuant to section 10, paragraph I shall not be included as creditable service in a public employees' retirement system. The member shall meet the following conditions to purchase credit under this section:

(a) The member has terminated employment and active membership in the other public system and has become a member of the Manchester Employees' Contributory Retirement System; and

(b) The member applies for service credit, on a form designated by the board; and

(c) The member provides such information and certification from the other public employer and other public retirement system as the board may require; and

(d) The member pays to the Manchester Employees' Contributory Retirement System the full cost for buy-in of creditable service as provided in section 10, paragraph VI, including prepayment of any actuarial calculation fee as determined by the board; and

(e) The amount of creditable service purchased shall be either the full length of service rendered in the other system or a pro-rata portion of such service purchasable with the maximum amount which the member is permitted to withdraw from the other system; and

(f) In no case shall the creditable service purchased exceed the service time rendered in the other public system, or include any service period for which the member remains eligible for benefits in the other public system.

II. Upon certification by the Manchester Employees' Contributory Retirement System of eligibility for other public system service credit, and upon payment by the member of the cost of such credit, and with the approval of the board of trustees, the member shall receive credit for such other public system service.

III. In no case shall other public employees' retirement system service purchased as creditable service in the Manchester Employees' Contributory Retirement System under the provisions of this section be deemed to be creditable city service for the purposes of eligibility for longevity or other benefits solely within the discretion of the city of Manchester.

218:30 Spousal Acknowledgment. Any application for any type of benefit under this act, including but not limited to retirement benefits, return of contributions, or disability retirement allowances shall include a statement made by the spouse of the member, if any, acknowledging that the spouse has read and understands the provisions of this act concerning the benefits and payments options and the benefit and payments options, if any, the member has elected to receive. Such statements shall be signed in the presence of a notary public or retirement system employee.

**2006-1316s**

#### AMENDED ANALYSIS

This bill makes changes to the Manchester employees' contributory retirement system including:

I. Clarifying the calculation of benefits and optional benefits.

II. Providing for the correction, collection, and compromise of overpayments of benefits.

III. Establishing credit for service in other public retirement systems.

IV. Requiring spousal acknowledgments.

SENATOR MARTEL: Thank you very much, Mr. President. I move Senate Bill 404 ought to pass with amendment. Senate Bill 404 is housekeeping legislation that will update the Manchester employees' retirement system, by clarifying the calculation of benefits and optional benefits. Senate Bill 404 establishes a provision that will provide credit for service in other public retirement systems. This element of portability is necessary as it allows people greater mobility among plans. This legislation would also require spousal acknowledgements. The Public and Municipal Affairs Committee asks for your support on the motion of ought to pass with amendment, and I thank you, Mr. President. It was very, I'm very proud to have brought this forward. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 405**, relative to the acceptance of certain tax-sheltered funds by the Manchester employees' contributory retirement system. Public and Municipal Affairs Committee. Ought to pass, Vote 4-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I move Senate Bill 405 ought to pass. Senate Bill 405 is a companion bill to Senate Bill 404. Senate Bill 405 will allow the Manchester employees' contributory retirement system to accept certain tax-sheltered funds for service buy-backs of its members. The city of Manchester has been doing this under administrative rules and would like for it to be in the statute. The Public and Municipal Affairs Committee asks for your support for a motion of ought to pass on this bill as well, and I thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 581**, relative to approval and review of municipal charters. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move House Bill 581 ought to pass. This legislation will clarify and review an approval process for municipal charters. House Bill 581 changes certain dates relating to the organizational meeting of a municipal charter commission. It also allows the Secretary of State, the Attorney General and the Commissioner of the Department of Revenue Administration to jointly review proposed charters, charter revisions, and charter amendments. This will allow for one report to be issued instead of three. The Public and Municipal Affairs Committee asks for your support of ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 645-FN**, relative to fire-safer cigarettes. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move House Bill 645 ought to pass. It will mandate only fire-safer cigarettes be sold in New Hampshire. This legislation is not about reducing smoking, or tax rev-

venues received from cigarette sales. It is about preventing loss of life due to the careless disposal of cigarettes. Two in five victims of cigarette fires are not smokers themselves, but the victims are often children and the elderly. A similar law has been in effect in New York since 2004. The committee heard testimony that there have been no significant changes in the long term trend of cigarette sales, prices, or tax revenues in New York since the fire-safer cigarettes have been sold. Sales trends in border states were not affected either. Based on New York's experience, there should be no significant impact on New Hampshire's tobacco tax revenue due to the introduction of fire-safer cigarettes. In the past three years, twelve citizens have died due to fires caused by cigarettes. If the fire-safer cigarettes worked just 50 percent of the time, six lives may have been saved. The Public and Municipal Affairs Committee asks for your support on the motion of ought to pass. Thank you.

SENATOR BOYCE: I rise in opposition to this bill. I think that this is actually pretty silly. I understand that the intent is to try and prevent some deaths due to cigarette fires. However, I believe that, if you look at the research, you'll probably find that the overwhelming majority of all fire, cigarette started fires, are actually the result of over-consumption of alcohol. It had nothing to do really with the cigarettes, that was just the accident that happened because of the alcohol abuse. I also believe that if there was a demand on the part of the public for fire-safe cigarettes, that they would be sold as an option in the stores today. I don't see that happening; I don't believe that will happen. I do believe there will be an effect on the state tax. I believe that many of the cigarettes that we now sell to people out of the state, those sales would go away. And we know that our cigarette tax is much higher here. The tax revenue is much higher here because we sell cigarettes to people in Massachusetts and Maine and Vermont, and I'm sure to the state of New York. I'm sure that some of those sales will go away because people will opt not to buy the fire-safer cigarettes. There will be some difference in the way they smoke, the way that they burn. The fact that they don't burn when they're sitting in an ashtray will mean that people will be lighting up more often, relighting the same cigarette. And if they're using matches to do that, they'll be inhaling more sulfur, and there will probably be deleterious effects to their lungs breathing the sulfur in the matches. This is a bill that ought not to pass, and I ask the members to vote against it. Thank you.

SENATOR FLANDERS: I'd like to just ask if this bill is passed, will it go to Finance?

SENATOR GATSAS (In the Chair): The Chairman has asked for it to go to Finance.

SENATOR FLANDERS: Thank you.

SENATOR ROBERGE: Yes, Mr. President. I just wanted to discuss a little bit about somebody who happens to be impaired, if in fact, I think we're talking about somebody who falls asleep or passes out with a cigarette, a lit cigarette. The fire-safer cigarettes are meant to go out if they're not smoked. You have to be continually drawing on them or they will go out. So if they do drop a cigarette in a chair, or someplace inadvertently, it is designed to go out. The studies show, and there have been many studies on this, people, they did studies, people smoking fire-safer cigarettes versus the other type of cigarettes, and the people did not notice any change in the way they smoked, or the taste, or whatever it is people

get out of smoking a cigarette. And that was no change. The other thing is the taxes. I don't think there will be any difference in the amount we sell. There's no difference in how they smoke. New York, if they lost any money at all, it was because the tax went up, in conjunction with the fact of the fire-safe cigarettes coming in. And so the two things came together. However, we're not going to have that happen here, so I don't envision any difference in our sales at all. Thank you.

SENATOR BARNES: Thank you, Mr. President. I represent twelve towns and, out of my twelve towns, I had nine fire chiefs, who I consider experts on fire safety, ask me to vote the way I'm going to vote today, and that is to pass this piece of legislation. I think our fire chiefs don't think this is a silly bill. I don't think it's a silly bill, and if my fire chiefs were the experts on fires and pulling people dead out of fires, I'll take their advice over some other folks who I don't think have had the same experience. And with that, I will sit down, but I hope everyone in here, or the majority at least, thirteen of us, vote yes on this piece of legislation.

SENATOR LETOURNEAU: Thank you. Senator Roberge? Senator Roberge, was there any testimony given during the committee hearings, as the result of forest fires because of cigarettes being thrown out of car windows?

SENATOR ROBERGE: I don't remember anything about forest fires, Senator.

SENATOR LETOURNEAU: Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

### **MOTION TO REMOVE FROM THE TABLE**

Senator Fuller Clark moved to have SB 316-FN-L removed from the table.

**The question is on the motion to remove from the table.**

**A roll call was requested by Senator Fuller Clark.**

**Seconded by Senator Barnes.**

### **PARLIAMENTARY INQUIRY**

SENATOR MARTEL: Parliamentary inquiry, Mr. President?

SENATOR GATSAS (In the Chair): Senator Martel.

SENATOR MARTEL: I have no objection for this coming off the table, Mr. President. What I'm trying to find out is there was supposed to have been an amendment, that's supposed to have brought been, which clarifies the ambiguities that were in the bill. And, I'm wondering, is it now or after that we discuss it?

SENATOR GATSAS: The question is on removing the bill from the table.

SENATOR MARTEL: Okay. I'll wait.

**The following Senators voted Yes: Burling, Green, Gottesman, Foster, Larsen, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Morse.**

**Yeas: 10 - Nays: 14**

**Motion failed.**

**SB 103-FN-A-L**, establishing a committee to study alternatives for funding the operation and maintenance of state-owned dams and making an appropriation to the state dam maintenance fund. Finance Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

**Senate Finance**  
**March 13, 2006**  
**2006-1338s**  
**06/09**

**Amendment to SB 103-FN-A-LOCAL**

Amend the bill by replacing section 6 with the following:

6 Appropriation. The sum of \$1 is hereby appropriated to the department of environmental services dam maintenance fund, established under RSA 482:55, for the fiscal year ending June 30, 2007. This sum is in addition to any other funds appropriated to the department of environmental services. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

**2006-1338s**

**AMENDED ANALYSIS**

This bill establishes a committee to study alternatives for funding the operation and maintenance of state owned dams. This bill also makes an appropriation to the department of environmental services dam maintenance fund.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 103 ought to pass with amendment. The bill presented to the Finance Committee appropriated general funds to cover the short-term annual deficit in the Dam Maintenance Fund. The Committee recognizes the importance of addressing the pressing need of repairing many dams in the state, and the potential damage it could cause to thousands of homes. Therefore, the committee amended the bill to wait for the study committee's findings as to how to fund the Dam Maintenance Fund, and appropriated one dollar as a placeholder. The Finance Committee asks your support for the motion of ought to pass with amendment.

**Amendment adopted.**

SENATOR FULLER CLARK: Yes. I have a question of Senator Clegg. Senator Clegg, by allowing this bill to go forward with the amendment, are we putting any of our dams at risk?

SENATOR CLEGG: No, Senator. The problem with the original bill was actually all we were doing was bonding debt that was already bonded. And so, what we were doing was nothing. So this allows a placeholder so that as it goes to the House, we can actually figure out a way to get money to repair the dams.

SENATOR FULLER CLARK: Thank you.

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 225-FN-A**, relative to horse and dog racing. Finance Committee. Ought to pass, Vote 3-2. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move Senate Bill 225 ought to pass. The bill reduces the amount of racing days required

for horse and dog racing to fifty calendar days. The committee received testimony that the definition of a racing day was previously interpreted as a scheduled performance. By reducing the amount of calendar days required, race tracks will attract quality horses. This will help the track put together good programs, which in turn will be attractive to those attending these programs. In addition, this legislation is necessary so that simulcasting can continue to take place year round, instead of only on days with live racing. Rockingham Park alone pays \$745,000 in property taxes, \$180,000 for police details, \$27,000 for water and sewer, \$121,000 in racing fees, \$1.1 million in breakage, and between \$250,000 and \$500,000 in outs are paid to the state in addition to the rooms and meals tax and the lottery. The state has been an integral partner with the racing industry for a hundred years. The Finance Committee asks your support for the motion of ought to pass to continue this partnership. Thank you, Mr. President.

SENATOR CLEGG: Senator D'Allesandro, you ran off a lot of numbers that are very impressive. But I also know that the track is under auction. Can you tell me how much the owners are going to receive for the sale of that track?

SENATOR D'ALLESANDRO: Thank you for the question, Senator Clegg. I have no idea. I'm not privy to any negotiations between the track and any outside vendors. So I have no idea.

SENATOR CLEGG: Thank you.

SENATOR D'ALLESANDRO: You're welcome.

SENATOR BARNES: Yes, a comment. I'm going to ask for a roll call on this piece of legislation.

SENATOR D'ALLESANDRO: Second.

SENATOR BOYCE: I rise in opposition to this bill. The statute, as it stands, I think reads pretty clearly. It says that the licensee has scheduled at least one hundred days of live racing. Now, in committee, we were told that even though that very clear language is in the statute in several places, that even though it says simply one hundred days of live racing, that the Pari-Mutuel Commission has somehow decided that a day is not a day. Sounds like the court redefining the word cherish. A day is not a day. A day is something when you have live racing, and because you have two sets of races, that becomes two days, or if you have three sets of races, that becomes three days. These tracks have been allowed over the past few years, to get away with having less than one hundred days that they actually held races. So, I believe that these tracks have been in violation of this statute over some period of time. It's now come to my attention that that was the case, and I think, rather than give them a pass and reduce the number of calendar days, the bill does amend it to calendar days, I believe that we should hold the tracks to the original statute, and if they want to have simulcasting, they should do what the law says. They should have been doing this all along. I'm appalled that the Pari-Mutuel Commission has somehow decided that they have the ability to amend legislative language simply on a whim. Because, I don't know how much clearer you can make it, but it says that the licensee has scheduled at least one hundred days of live racing. A day is a day is a day. I think that we at least need to look a little further into this, and maybe we need to ask the Attorney General's Office to explain to us how we can remove the Pari-Mutuel Commission members who approved less than one hundred days in order to have a



simulcasting license. I think that, if the legislature says that we will have a certain number of days of some activity happen before some other activity can take place, I think that the agencies of this government should abide by what that legislation says. So I am opposed to making this change simply on the fact that it's already been changed by someone who has no authority to do that, and I therefore think that we ought to seek their removal from office. Thank you.

SENATOR MORSE Thank you, Mr. President. I first want to point out that Rockingham brought this bill forward, because they've been racing fifty-eight days, and it came up this year that that wasn't going to work. So they suggested to put in the legislation so that it would work. Two years in a row they've done it. They've submitted the same calendar this year. And in my opinion, I have idea on auctions, I can't answer your question, Senator Clegg. But I'm willing to bet there were some before this, because I think they're trying to find a way to make it work. That's what that's about. I couldn't even begin to tell you what the worth is, but I can tell you most of the guys that are involved in the ownership are in their eighties. I mean, where are they going with this? I'm not sure they're ready to get involved in some massive construction project that Salem doesn't want to see down there. They'd rather see a racetrack all along. Along with it, we'd like to see some of farm land that's left, which there isn't much, stay. But I mean quite frankly, in my district, when I pick up a paper and see a paper mill closing with two hundred and fifty jobs, which I've cared about Senator Gallus' district just as much as he has, I think about the same thing when you're talking about Rockingham. Nothing different. I represent that district and I think about the jobs in that district when you talk about this. They've been good people to me, they're always out there helping the community, and that's what it's always been about with them. They're not pulling any wool over anyone's head here. They submitted the same exact schedule. That's it. All I'm asking for is support for a business in my community.

**The question is on the committee report of ought to pass.**

### PARLIAMENTARY INQUIRY

SENATOR LETOURNEAU: Parliamentary inquiry?

SENATOR GATSAS (In the Chair): Parliamentary inquiry.

SENATOR LETOURNEAU: Thank you, Mr. President. Isn't this bill ought to pass as amended?

SENATOR GATSAS (In the Chair): What we're voting on is the bill on ought to pass as amended... ought to pass, I'm sorry, not amended. If you're in favor of the bill you will vote yes. If you're opposed to the bill you would vote no.

**A roll call was requested by Senator Barnes.**

**Seconded by Senator D'Allesandro.**

**The following Senators voted Yes: Johnson, Kenney, Burling, Flanders, Roberge, Eaton, Bragdon, Gottesman, Foster, Larsen, Martel, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

**The following Senators voted No: Gallus, Boyce, Green, Odell, Clegg, Gatsas, Barnes, Letourneau.**

**Yeas: 16 - Nays: 8**

**Adopted.**

**Ordered to third reading.**

**SB 262**, establishing the position of an administrator of women offenders and family services within the department of corrections, and establishing an interagency coordinating council on women offenders, and making an appropriation therefor. Finance Committee. Ought to pass, Vote 4-1. Senator Larsen for the committee.

**SENATOR LARSEN:** Thank you, Mr. President. I move Senate Bill 262 ought to pass. This bill establishes the position of administrator of women offenders and family services within the Department of Corrections, as well as creating an Interagency Coordinating Council on Women Offenders. The committee learned this legislation uses funds from the Department's vacancies and no new funds are appropriated. The Finance Committee asks for your support of the motion ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 305-FN**, relative to the regulation of recreational therapists. Finance Committee. Ought to pass, Vote 5-0. Senator Larsen for the committee.

**SENATOR LARSEN:** Thank you, Mr. President. I move Senate Bill 350 [sic] ought to pass. The bill adds recreational therapists to the professions licensed under the New Hampshire Board of Allied Professionals. The newly established Recreational Therapy Governing Board will operate as a 125 percent board, meaning it will support itself. As such, they'll generate the 25 percent more in revenues than is expended in operation. The Finance Committee asks for your support of the motion ought to pass.

**SENATOR HASSAN:** Just a quick question of Senator Larsen, if I may? I believe we're referring to Senate Bill 305. Is that correct?

**SENATOR LARSEN:** I apologize. There was a typo in my remarks, and I didn't catch it. It is. I'm moving Senate Bill 305 ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 307-FN**, relative to catastrophic special education funding. Finance Committee. Inexpedient to legislate, Vote 3-2. Senator Morse for the committee.

**SENATOR MORSE:** Thank you, Mr. President. I move Senate Bill 307 inexpedient to legislate. This bill removes the statutory language that calls for catastrophic special education aid to be prorated based on budgeted funds. This bill would require the state to pay for the full cost of special education catastrophic aid. This legislation was described by LBA as being an open-ended warrant. Funding in this manner places a burden on the budgeting process. The Finance Committee asks for your support for the motion of inexpedient to legislate. Mr. President, I'd like to just continue. I'm not sure where we say that it places a burden on the budget process, is how it should be taken by this body. What it does is, and you wouldn't do this at home, it basically signs a bunch of checks without checking to see how much money you have in the checkbook. I understand the concern here. We often have to go back and look and see if there's enough money in this category. But the fact that we are up here, we should be going back and putting in a piece of legislation and doing that. This will bypass that. We won't know what's happening when we do it. And I think that's just the wrong process to do in financing. I have nothing against what the sponsor's trying to do, to make sure the

state lives up to its obligations. But the fact is, we check it when we do the budget, and it's been done before in the second year, where people have come back... **TAPE CHANGE** Have we always funded it? The answer to that question is no. For one reason or another, it's been prorated. But the fact is, it causes discussion in the second year, instead of just having this legislation, which would keep the checkbook open. Thank you.

**SENATOR BURLING:** Thank you, Mr. President. Mr. President, I rise, and I can say with absolute honesty, there's nobody more tired of this discussion than I am. But, it has to go on. This is the way we condemn our towns to the ongoing game of catastrophic aid Russian roulette. The issue of where a child is born, and what the tax situation in that town might be, has nothing to do with the way the burden of catastrophic aid should be distributed. It's a state obligation. This bill would force us, finally, to acknowledge our obligation to defray that expense without qualification, and without modification. It is appalling that after all our years of complaining about the Feds' failure to fully fund catastrophic aid, we continue to act just like them. I suggest it's time we had the courage of standing up for our constituency. I suggest it's time for us to vote no on inexpedient to legislate, and yes on Senate Bill 307.

**SENATOR HASSAN:** Thank you, Mr. President. And I just rise to say once again, I acknowledge that this body cares very much about the communities and the families affected by catastrophic aid, but the fact of the matter is, that in every biennium, we do not fully fund catastrophic aid, and what this does for the school systems and the communities, and the families affected, is it divides, and causes special attention in towns where children who are in need of extensive special service, become symbols in their towns of high school expenditures, or expenditures at the local level that aren't made for other things that the school system needs. It's unfair and particularly stressful for the children and families involved in becoming symbols of a kind of spending that those children and their families don't want to be in the first place. So I would urge us to continue our work towards fully funding catastrophic aid every biennium; to find the political will to make it a priority. Thank you.

**SENATOR GREEN:** Thank you, Mr. Chairman. I was not at the Finance Committee meeting when the vote was taken. I think that this bill, as a lot of things we do around here, is an attempt for us to be honest with ourselves and with our constituents. This is one of these bills that, if we don't fund it, the local taxpayers are going to pay for it, because it's going to be paid for, one way or another. It's not like we're dodging the bullet and we aren't going to pay for these children and these catastrophic services. So the real issue here is, since it is a law that we have lived with since the beginning of special education, and it's been our share, as the state, to fund the services to these children, and even though, on many occasions we have been short in our appropriation, and we've come back to the legislature. Sometimes the legislature funds it, sometimes it doesn't. And I guess what this is trying to do is make sure the legislature does fund it. This is one of those issues, in one of those areas, where if you're going to have priorities in this world, this is certainly one of them. I want to see these children served. I want to see us, as a state, step up to the plate, and honor our obligation, and I don't want to leave it saddled on the back of the property taxpayers because we've failed to meet our obligation. As a sponsor of this bill, as one of the sponsors, I strongly urge you to overturn the committee report and vote in favor of this bill. Thank you.

SENATOR MORSE: Thank you, Mr. President. I just want to remind this body, it's your decision when it comes to this. The last budget before this one, there was a shortfall. Obviously we decided, we, in here, that we were going to leave the shortfall for one reason or another. You make these same decisions at home, and don't say it's because I don't support cat aid. This is a policy decision on how to run a budget. I can tell you Senator Barnes asked for a new document, which I keep in my office, to say where we are each week, in voting. But I want to read the comments on spending and voting, and I want to read the comments that LBA put in. "If the ITL report is overturned, this bill will increase general fund expenditures starting in FY 2007 that contains an open ended appropriation for a shortfall in catastrophic aid". There is no dollar amount in the columns. There's none. They can't tell you. It's just not a good way to run a government or your home. That's all this bill is about. I agree with the sponsors. But I'm sure that if you're in a year, and we're debating because we have \$40 million in surplus this year, we're debating spending bills. But I'm sure if you were in a year where you had a \$10 million shortfall, you'd be debating priorities that are left. That's what it comes down to, and that's the only reason that this committee voted this out ITL, is because it's open ended, and it doesn't let us come back to have that debate. And by the way, in this week's calendar, there's a million and one dollar in appropriations. Everything else kind of washes itself. But that's what's in there, a million one dollar.

**The question is on the committee report of inexpedient to legislate.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Green.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Morse.**

**The following Senators voted No: Burling, Green, Odell, Gottesman, Foster, Larsen, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 12 - Nays: 11**

**The committee report of inexpedient to legislate is adopted.**

Senator Flanders was excused for this vote.

**SB 308-FN-A-L**, making an appropriation for school building aid. Finance Committee. Ought to pass, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 308 ought to pass. The bill makes an appropriation for school building aid. The Department of Education testified that there is an \$880,000 shortfall as a direct result of the legislation previously passed. More schools are now eligible for building aid. The bill addresses that situation. The Finance Committee asks for your support in the motion of ought to pass.

SENATOR LARSEN: I rise to support the motion of ought to pass and to applaud the Finance Committee and all the members of the Senate, whom I assume will join in recognizing our obligation to meet the school aid at the levels that we've committed.

**Adopted.**

**Ordered to third reading.**

**SB 309-FN-A**, establishing a commission to study inclusion of service as a part-time district court judge in the calculation of retirement benefits. Finance Committee. Ought to pass, Vote 5-0. Senator Larsen for the committee.

### **MOTION TO TABLE**

Senator Larsen moved to have SB 309-FN-A laid on the table.

**Adopted.**

### **LAIID ON THE TABLE**

**SB 309-FN-A**, establishing a commission to study inclusion of service as a part-time district court judge in the calculation of retirement benefits.

Senator Burling Rule #42 on SB 309-FN-A.

**SB 350-FN**, relative to boarding kennels. Finance Committee. Ought to pass, Vote 5-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 350 ought to pass. This legislation establishes licensure for animal boarding establishments and also establishes license fees, renewal fees, and allows for inspection. A new fiscal note was issued indicating that this would create a small cost for the Department of Agriculture, Markets and Foods, but the costs will be absorbed within the Department, and no new funds are appropriated. The Finance Committee asks for the motion of ought to pass.

**The question is on the committee report of ought to pass.**

**A roll call was requested by Senator Boyce.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Burling, Green, Odell, Roberge, Eaton, Bragdon, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, Morse, Hassan, Fuller Clark.**

**The following Senators voted No: Boyce, Gottesman, Foster, D'Allesandro, Estabrook.**

**Yeas: 18 - Nays: 5**

**Adopted.**

**Ordered to third reading.**

Senator Flanders was excused for this vote.

**SB 353-FN**, relative to registration of criminal offenders convicted of homicide. Finance Committee. Ought to pass, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 353 ought to pass. This bill allows for notification to a victim's next-of-kin when someone is being released from prison following conviction for first or second degree murder or manslaughter. As this bill was amended by the Judiciary Committee, the bill has a small fiscal note due to the notification when a convicted murderer has been released. Any costs will be absorbed by the Department of Safety and no new funds are appropriated. The Finance Committee asks your support for the motion of ought to pass.

**Adopted.**

**Ordered to third reading.**

**SB 365-FN**, relative to the lottery commission. Finance Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

**Senate Finance**  
**March 13, 2006**  
**2006-1343s**  
**08/09**

### **Amendment to SB 365-FN**

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

AN ACT establishing a committee to study the lottery commission's authority to operate and advertise, as well as incentive caps and payout restrictions on prizes.

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

1 Committee Established. There is established a committee to study the lottery commission's authority to operate and advertise, as well as incentive caps and payout restrictions on prizes.

2 Membership and Compensation.

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

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

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

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

3 Duties. The committee shall study the lottery commission's authority to operate and advertise, as well as incentive caps and payout restrictions on prizes.

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

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2006.

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

**2006-1343s**

### **AMENDED ANALYSIS**

This bill establishes a committee to study the lottery commission's authority to operate and advertise, as well as incentive caps and payout restrictions on prizes.

### **MOTION TO TABLE**

Senator Clegg moved to have SB 365-FN laid on the table.

**Adopted.**

### **LAIID ON THE TABLE**

**SB 365-FN**, relative to the lottery commission.

**Recess.**

**Out of recess.**

**SB 374-FN**, relative to the healthy kids corporation. Finance Committee. Ought to pass with amendment, Vote 3-2. Senator Clegg for the committee.

**Senate Finance**  
**March 13, 2006**  
**2006-1342s**  
**05/03**

### **Amendment to SB 374-FN**

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

**AN ACT** relative to the state children's health insurance program.

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

1 Purpose. The purpose of this act is to ensure the best and highest utilization of the state children's health insurance program resources for the benefit of the children of New Hampshire. It is the intent of the general court that every eligible child be given the opportunity to fully utilize the benefits of this program in order to promote the health and well being of our youngest citizens.

2 New Paragraph; State Children's Health Insurance Program. Amend RSA 126-A:5 by inserting after paragraph XIII the following new paragraph:

XIV.(a) Notwithstanding any provision of law to the contrary, beginning July 1, 2007, the commissioner shall implement the state children's health insurance program through a contract, which shall be renewed biennially. The commissioner shall have the authority to adopt rules, pursuant to RSA 541-A, to the extent necessary to facilitate the purposes of this paragraph.

(b) The contract shall include the following information, which the commissioner shall submit to the legislature by March 1 of each odd-numbered year for inclusion in the state's biennial operating budget:

(1) The per-member per-month rate for the health and dental insurance to be paid according to the contract; and

(2) Any other costs associated with the contract that will impact the state operating budget.

(c) Notwithstanding any provision of law to the contrary, the commissioner, in consultation with the commissioner of administrative services, may implement a self-insured health plan for children who receive health insurance coverage under the state children's health insurance program.

3 Healthy Kids Corporation. Notwithstanding RSA 126-A:5, XIV, as inserted by section 2 of this act, or any other provision of law to the contrary, the commissioner shall use the healthy kids corporation as the sole source provider of administrative and outreach services for the state children's health insurance program and premium billing and collection services for the Medicaid for Employed Adults with Disabilities (MEAD) program until July 1, 2007. As part of the premium reconciliation process, the commissioner may allow the healthy kids corporation to retain up to the sum of \$100,000 for fiscal year 2006.

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

**2006-1342s**

### **AMENDED ANALYSIS**

This bill requires the department of health and human services to implement the state children's health insurance program through a contract.

This bill also requires use of the healthy kids corporation as the sole provider of administrative and outreach services for the state children's health insurance program and premium billing and collection services for the Medicaid for Employed Adults with Disabilities program until July 1, 2007.

SENATOR D'ALLESANDRO: Thank you, well, where's...Senator Clegg's not here. I'll take it for Senator Clegg. Oh, Senator Clegg.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 374 ought to pass with amendment. Am I on the right bill? I get confused today. The amendment adopted by the Finance Committee gives the Commissioner of Health and Human Services the ability to implement the state children's health insurance program through a contract on a biennial basis. This will provide more predictability as the costs for the programs currently are in constant flux. It also requires that the Healthy Kids Corp. be the sole source provider for administrative and outreach services for the children's health program until July of 2007. The intent is to keep Healthy Kids whole for 2007. In the event there is a large increase in the number of kids enrolled in the program, they can come back to the legislature for additional funding. The Finance Committee asks for your support for the motion of ought to pass with amendment. And, Mr. President, while I'm standing, I will say that we sat at a table with Healthy Kids. This is the agreement we reached. And if you want to ask the Governor, he'll tell you when he sat at the table, this is the agreement we reached. Now I understand that Healthy Kids doesn't want to keep that bargain. And that's fine, Mr. President, because now I know who to spend time with to try to find compromise, and with who that would be a total waste of time, because nothing in that meeting can be believed. Thank you.

SENATOR LARSEN: I rise to oppose the amendment in the Senate Calendar. As a member of the Healthy Kids Board, I was not present at discussions that led to this amendment appearing in the calendar, at least the one that was referred to. However, I am aware of the affect that this amendment will have on the Healthy Kids. Senate Bill 374 was originally introduced to avoid, to ensure that the full appropriation for Healthy Kids is spent in '06, because that's what we appropriated in the budget. It was also going to be used to avoid a \$5 per child monthly premium increase, or other changes in the family cost sharing in the Healthy Kids Silver Program. The way this amendment is drafted, it would result in the Healthy Kids Program absorbing \$220,000 loss on its contract with the Department of Health and Human Services. By doing this, the Healthy Kids Program in New Hampshire would forego \$150,000 in federal matching funds already appropriated. Apparently, in a meeting, the Healthy Kids participants of that meeting offered to dedicate \$227,000 of its net assets to Outreach to enroll more children. We do anticipate a shortfall in the needs of Healthy Kids Silver in '07, which I assume we will address, as we continue to discuss supplemental budgets. Health and Human Services is prohibited from expending more money on Healthy Kids Silver Program than is appropriated without legislative approval. So for the '07 discussion, we will need to have some discussion, how Healthy Kids will be able to continue reaching out and providing health insurance to the kids of this state. This bill also would, as amended, would require Health and Human Services to bid out the administration of the Healthy Kids Silver Program biennially. By bidding it out, we will lose all of those nego-



tiated discounts that Healthy Kids now has with providers, with doctors and hospitals across the state. Right now, because Healthy Kids is a non-profit, the doctors and hospitals of this state offer a discount to the Healthy Kids participants and that translates to a \$19 per child, per month savings. If the administration, I'm sorry, if the operation of this program were to be bid out and taken by a third party, those discounts would no longer be there. We have the third most successful ability to, or we are third most successful in insuring children in the nation. It is a program which works. It is a program which I understand people want to have continuing discussions on. But I ask you to not go with this amendment in the Senate Calendar. We will continue to have discussions how we fund the '07 year. But the original bill was meant to say we budgeted for it, it's in the appropriation of our budget for Healthy Kids, and to authorize its expenditure so that we continue to get the federal matching funds that are something like 65/35. Sixty-five percent of this is paid for by the federal SCHIP program, and we want to continue that matching fund, that matching ability with the federal government. Thank you very much for your attention.

Senator Bragdon in the Chair.

SENATOR GATSAS: Senator Larsen, I would hope that your references to the providers, that in no way, just because Healthy Kids has this, that if somebody else got that contract, that they wouldn't provide the same services at the same discounts to the children of this state. You didn't intend that, did you?

SENATOR LARSEN: I understood that the reason that the providers offer such a discount is because it is seen as a non-profit, which is simply aimed at offering low cost health insurance to the kids of this state. If it is operated by a third party administrator, who is a for-profit, the providers would see that as a for-profit, and would not, perhaps be willing to offer the same discounts. That's what I've always understood in my discussions on this topic.

SENATOR GATSAS: Follow up? Senator, I would hope you're not speaking for the providers. Because, if you're speaking on behalf of the providers, saying that they would not offer those same benefits to the children of this state that are the most needy, just because a for-profit is having that program in place, I hope you're not speaking for the providers.

SENATOR LARSEN: I am not authorized to speak for the providers. All I am saying to you is it's logical, and I've been advised every time I've ever heard a discussion of this, that the same provider discount would not be extended because it would be seen as a for-profit operation and I know that the third party oftentimes, health insurers are not seen as something which providers want to give a magnanimous gift back to. I'm not sure that they would want to do that. I think Healthy Kids is well-respected in this state, and that's the reason they get the discounts.

SENATOR GREEN: Thank you, Mr. President. I'm looking at the original bill. I'm looking at the amendment, and I have had dialogue regarding this amendment, so there'd be no misunderstanding. I know, what basically the deal, the agreement was, with Healthy Kids. I believe that the agreement, as I understand it, is that they could live with '06, although our bill calls to make them whole in '06. But the problem I have is '07. There is nothing in this amendment that lays out a guarantee, or suggestion, or appropriation or whatever it takes to make sure that in '07, they're whole, because it's going to take some money to make

them whole. The number I have is about \$1.8 million, of which 65 percent of that will be federal dollars. So, I don't know how we're going to get there. I'm just concerned that there be some language in here to make me feel comfortable, at least as a participant in the agreement. I think the President of the Senate, Senator Gatsas, I take him at his word, that he's committed to doing that. But I also know that things change, and when we get down to the nitty-gritty, if we've got the money or not got the money. If we've got the money, and we feel comfortable that the money will be there, I would feel a lot better in terms of my side of the agreement, that being part of this, that that money is there. If it's not there, and we are not able to appropriate the funds, and get those federal dollars as part of the overall need for Healthy Kids in '07, we're going to be sitting here wondering what the heck we're going to do. So, that's my reservation. And that's the word I want to use. I've indicated that to my colleagues on the Republican side, and I don't know how to resolve it, other than to re-refer it back to the committee and see if we can resolve that. If we can't, then I'm very uneasy voting for this amendment. Thank you, Mr. President.

**SENATOR CLEGG:** Senator Green, you might have been absent, but would you believe that the Commissioner of Health of Human Services stated that he has the money, and that the full intent of the Finance Committee, as well as the Department of Health and Human Services, is to come up with that money, and that we don't need to make an additional appropriation because it's there? We have assurances. And, since we're also, most of us on the Fiscal Committee, we're positive that the Commissioner's going to do as he said?

**SENATOR GREEN:** Yes, I agree that, that's my understanding he said that, okay? But let me just say for the record, and I want to be very, very clear, this is a public setting. I have a problem with those kinds of commitments on dollars that have not been earmarked. If in fact this kind of money is taken out of other parts of the Health and Human Services budget, someone else is going to get gored in this process because you just don't have all that kind of money. We've been wrestling with this whole issue of him, what he can do in terms of transferring money. And the more power we give him, the more he can, and I have concerns about his behavior with providers, as you know. So, I'm just not comfortable with that being a guarantee that the money will be there.

**Recess.**

**Out of recess.**

**SENATOR CLEGG:** Thank you.

**SENATOR MORSE:** Thank you. I'd just like to speak about Finance in general, because this piece of legislation's starting to get a little bit under my skin because of the way we've allowed it to happen, quite frankly. We brought this into committee on the 25<sup>th</sup> of January, and I understand the process in Finance is a process. And I don't think I've shut anyone down, even when we end up next week, talking about a bill about septic. I called the two people who that had the biggest concerns and said, "come to the meeting." One couldn't come because of his health. But this particular bill bothers me, because I've been asking for amendments for a month and a half now to come in on this bill. And it's not like we haven't asked for the discussion to come in for a month and a half on this bill. That was even after the frustration of being here last June, and watching, I was looking at a number of \$112, and then come back to the fall,

a number of \$117 or \$118, is what the contract was actually going to be, when they already knew it, and then to be talking about an '07 number, this was in the committee a month ago now, a month and a half ago, of \$147 for '07, which would cause a million dollar shortfall, which is why people are saying there should be an appropriation. So, what happens is, they go negotiate what I thought was a pretty good amendment. In between there, I've heard anywhere from \$130, to \$134, to \$137. So obviously, someone on the outside is very concerned right about now. I can tell you, if you get it down to \$128, that's what's in the budget. But the fact is, we went through a process. Everybody got to speak, the vote wasn't rushed in committee, and here we are. Now, it's only a tool for the commissioner to negotiate. And the fact is, will it leave a shortfall in general funds? No one knows. We don't even address that in this bill at this point because we don't know. We don't know if there's a shortfall. It may be able to work. Just like you're asking for it to work in '06. You're asking for it to work in '06 because the money is there. We appropriated some \$10, \$11 million. That money's there. Usage doesn't quite drive it there, but you're saying the additional dollars, you want to be able to move over to make it work because we accepted the fact that the contract went up. Sounds like a logical thing that you might be trying to do, but I can tell you, we budget on lapses, and we move surplus around in that Department consistently to satisfy needs. But the fact is, you're asking for that to work. What the deal was, well we'll share it a little bit, because you're building a kitty and we don't even know why you're building a kitty. Because we're always here. I know, you're going to tell me that you need twenty-three days, or thirty-eight days on end. I still don't understand why, because we are always here. No one's saying they don't support Healthy Kids. What people are trying to do is have a budget. But anyways, in '06, what the problem comes down to is, we saw money sitting in this organization and we said they should be putting it up first. We compromised on that. At least that's what the sponsors and everybody involved, the Senate President did. In '07, we just said this thing's got to go out to bid. We need to know what every two years, what it is. We don't think that's unrealistic to ask these organizations that know every penny they're spending in reverse. I thought it was a pretty good compromise. The part that really bothers me is, it wasn't a compromise that came at the last minute. I mean, they've been working pretty hard on this since the twenty-fifth of January. I've been asking for it every time, and they told me it was coming. Even when I said push it along, because I was getting frustrated I didn't see it, they went and kept working at it. So I really don't think anybody shortchanged anybody. I don't think Commissioner Stephen has stepped in here and tried to side-step the legislature. I think it was good business. I think it's working. I think the outside organizations are actually getting a little concerned, and they should be, because there's no way we should be going from the \$112 we heard, to \$147. And that's why I asked you to support this. I am willing to take it back to the committee, but the fact is, I think the work's been done.

SENATOR GATSAS: Thank you, Mr. President. Let's understand that I really do respect this chamber. The only thing I probably respect more than this chamber, my mother, my wife, and kids. So let's not for one second believe in our hearts that I'm looking to hurt kids 'cause I know that goes out here about Healthy Kids. It was thrown in my face, Senator, what if we bring you 400 more kids? I told that person, bring them. We'll find the money to insure them. I was told four weeks ago, in a room,

when I always ask, can I have some material before we meet, and Senator Larsen, I apologize, you weren't at that meeting, but I don't think you invite me to every meeting that you have in your office. So, I sat there. They said we should give them \$147,000 in federal funds. I asked the Commissioner, "Can we just do that?" The commissioner's answer said no. So, when Healthy Kids stands here and says, well you can give us all the money that was appropriated in the budget, because \$150,000 is federal dollars, it can't be done. It cannot be done. That comes from the Commissioner. You can't just arbitrarily send money when you don't spend it. Just because it's allocated in the budget, and you aren't insuring kids, you just can't send the money. We sat there. Was there a representative from the Governor's office? Yes, there was. As a matter of fact, she didn't even know that there was a report that was going to be sent to us and come before us. She was as shocked as I was. The rate, \$147 a month. Anybody hear that rate? I never heard it until that day. So I went to the provider. They sent me a letter. The meeting that we had was back in sometime in late February, early March. I think it was late February. Anthem never gave out a rate until sometime in March. So, it's not about kids, because everybody in here would go to the mat for every kid that needs the funding. So let's not fool ourselves. We sat and we, Senator Morse allowed them to come before the full Senate to question Healthy Kids last year during the budget process. We were in a room. I asked questions. Most Senators were there. Okay? Senator Morse didn't hear 117 a month. Senator Gatsas didn't hear 117 a month. Senator Clegg didn't hear 117 a month. Senator Larsen didn't hear 117 a month. But we were told people knew about it. Well, who knew about it and why wasn't it presented that day when we were working on the budget? We were in a room. They had allies in that room. There's no reason why somebody wouldn't have said, "Ladies and gentlemen, the \$112 you're talking about doesn't exist." You're putting together a fictitious budget. We're going to be charged 117; we're going to have to absorb that. Anthem gave them that quote long before we were in the budget process. So, if we feel uncomfortable about the Commissioner, how uncomfortable should we feel about the people that are running Healthy Kids, the honesty that they bring to this body? I have a problem when we talk about kids because that's what we should be gearing to. If we can find those 10,000 kids, and if I have to worry about outreach, then come to Manchester. You can find outreach there. It's not hard. You can't do it out of Concord. Go to Manchester. You probably can find 2,500 kids that need this. Senator D'Allesandro's district is loaded with them. So let's talk about reality. If somebody wants to just say we're going to put a million dollars in there, because we don't trust the Commissioner, then fine. We watched him two weeks ago in Fiscal transfer \$7 million. Seven million dollars. I don't think anybody's talking about hurting Healthy Kids. And if providers want to say that, if it's a non-profit, and that's the only way they're going to extend those discounts to those children, I can tell you tomorrow, I'm going to ask for the providers, and I'm going to send them a letter, and I want them to respond to me publicly, publicly, that that's what they would do to the kids in the state of New Hampshire. That they won't extend those discounts to those children, because nobody makes any money on those discounts, it's to help those kids get insured. And that's wrong. Do I have a passion for this? You're right. I've been working on it for five weeks. I thought we had a deal. The deal was clear. We gave them \$95,000 that they picked up from payments from parents in '05. We allowed them to collect \$100,000 in '06. And they were

going to spend \$200,000 out of that \$2 million kitty. I don't know how that \$2 million arrived there. Maybe we ought to do an audit. I hope those aren't state funds. But I really don't care. But maybe we should start talking about it. So, if that's the reality of this, and we don't trust the Commissioner, because we're never here, and we never meet once a month in front of Fiscal, then I have a problem with this. Because I sat there in good faith, and thought we negotiated in good faith, a deal to protect the children in this state that most needed it. That's what this is all about. The kids. And Senator Morse is right. The rate went from 147, magically, it's down to 134. I don't know. I don't know how that happened. I would hope that everybody that negotiates, negotiates in good faith. My understanding is there was never 147 on the table. I don't know that. I wasn't at the table. So with that, we should move this along, because the House is going to look at this and they're going to go through the litany of this bill like there was no tomorrow. Thank you.

Senator Barnes moved to recommit.

**Adopted.**

**SB 374-FN is recommitted to the Finance Committee.**

**SB 398-FN**, relative to political contributions and expenditures. Finance Committee. Ought to pass, Vote 5-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 398 ought to pass. This legislation will clear up any gray areas with respect to campaign reporting, filing, expenditures and contributions. There is a fiscal impact of less than \$10,000 each year from fiscal years 2007 to 2010. The Finance Committee asks for your support for the motion of ought to pass.

### PARLIAMENTARY INQUIRY

SENATOR BURLING: Mr. President, I'm sorry. I have a parliamentary inquiry as relates to the last action just taken. I'm sorry to be out of order. I thought we were up against some rules, deadlines relative to FN bills. If I misunderstood, or was this not something we needed...I thought we had to act on this today, 374-FN.

SENATOR GATSAS (In the Chair): Is that a question...a parliamentary question?

SENATOR BURLING: That's a parliamentary inquiry of you, Mr. President.

SENATOR GATSAS (In the Chair): The question is that Finance is meeting on Monday. It's been recommitted to Finance. There will be an addendum calendar coming out of that committee for Wednesday's session on the fourth. So the bill will be in front of us again on Wednesday to meet the crossover deadline.

SENATOR BURLING: Follow up. Would I be correct in understanding that any and all actions this Senate may choose to take would be permitted by the application of our rules as of that date? In other words, we haven't lost anything by failing to act today. Does anybody know the answer to that?

SENATOR GATSAS (In the Chair): That's a very broad question, and I will say, on the bill that you're discussing, that you are in question on the parliamentary question...

SENATOR BURLING: Yes, 374.

SENATOR GATSAS (In the Chair): 374. That bill will go to Finance. It's recommitted. It'll come out of Finance on Monday on an addendum calendar to be voted on, on Wednesday, and nothing will be lost by the legislation.

SENATOR BOYCE: Thank you. Now that I'm clear which bill I'm on again. I stand again to oppose, at least major sections of this bill. I think I spoke a little bit about it two weeks ago when it was before the body, and I just want to note some of my problems with this. The first part of it, sections one through six...one through five, I don't have any real problems with. They're mostly making some needed corrections. But when you get to section six of this bill, this is all basically new stuff, and it puts a lot of requirements on candidates and their political committees that were not there before. And I don't think that they have really any, do any good for the public in their right to know what's going on, because they're very technical and require that you, within twenty days of becoming a candidate, or registering a committee, you have to establish a bank account. You have to tell the Secretary of State where the bank account is. And, if you change the bank account, you have to tell the Secretary of State that you've changed the bank. If you change your treasurer, you have to tell the Secretary of State that you've changed the treasurer. One of the new sections here, on page three of the bill, line nine, it talks about "the account shall be used exclusively for the purpose of receiving contributions, and making expenditures for a candidate or committee". But then a little further on, it says that "no contributions to, or expenditures by another candidate or political committee shall be deposited to or dispersed from this account". Now I'm not really clear whether that means that if, as happened with me and another Senate candidate a few years ago, he was approaching the primary, and found that he had more money in his primary account than he logically could spend, and decided to make a contribution from his account to my account, so that I could make use of it in the last few days and buy some radio time. I think, actually, he said "buy some radio time". I'm not convinced that this allows it. It says that it has to be for the one candidate that it's set up for. It goes on to detail, a lot of detail, about what you have to do. Now, in one section, it says that a candidate, a candidate who's making expenditures only for his own, of his own personal funds, says he doesn't have to open an account. But then later, it says that a candidate that does not establish political committee "shall" open an account. So, in one place, it says that you don't have to have an account; in another place it says you do. The **TAPE CHANGE** here, have gotten mailings on both sides of a particular issue that they were either for or against, they had some organization give them a mailing. Now, in the past, we've never had to ask them, "Well, how much did you spend to compile the names, or buy the list that you're mailing to? How much did you spend having somebody design that piece of mail? How much did you spend on postage? How many people did you mail it to?" We didn't have to ask those things, because it was an independent, in-kind contribution. Now, I'll name the names. NARAL did it on one side, and Right-To-Life did it on the other side. I don't know how much they spent on those mailings. Never had to ask, because we didn't have to detail how much an in-kind contribution was worth. I think what this will do is it will force some of these people to make their in-kind contributions without the candidates' knowledge. So, then something will go out that we have no knowledge of, we might not want have had it go out, but because if they told us about it ahead of time, we'd have to declare it as a political con-

tribution. So, I think it's going to increase the outside interference in our elections, much as the McCain-Feingold bill has done for federal elections. We have huge organizations on the outside of political parties and candidates' committees that are now doing more advertising, and more mailing, and more political nonsense without regulation. They would be outside of this, because if they are a committee that's doing this completely from outside of the state, I don't think that we're going to be able to regulate them. If somebody, some millionaire somewhere, decides he wants to see somebody in this state elected or defeated, and spends all that money out-of-state, we'll never see it. They'll never file a committee in this state, so we'll never know, except that the mail will show up in our constituents' mailboxes. So, I think some of this bill, while well-intentioned, I'm sure, is going to do exactly the opposite of what the sponsors intended. It will not give the public more information as to who's spending money on campaigns. It will probably have the effect of giving them less information because it will be out-of-state organizations that are going to be doing things to interfere with our political process, and we have no control and no expectation of any kind of reporting from them as to what they're doing. We won't be able to reach out and grab them and say, "Why did you do this?" In fact, we probably will see mailings come from places that will not be even identified as to the source, and certainly not the source of the money that paid for it. So I really don't think this is the bill that we ought to be passing. I think that we should have more disclosure of where the money comes from. We should have disclosure as to where the money goes to. But we shouldn't be nit-picking how it's done. We shouldn't be spelling out that you have to go get an account, a special account, and tell the Secretary of State where it is, tell him when you change the account number. It even says that the account has to be in the name of the political committee. Now, I know that in some cases, it makes more sense to have one account that's sort of a generic, for instance, Boyce for Senate account. This time my political committee, I think is, Rob Boyce for Senate 2006. Well, two years ago, it was Rob Boyce for Senate 2004. Well this means I've got to go change that bank account, get a new account, and it probably will mean that I'll have to go out and hire somebody to do the accounting for my campaign, and I can tell you that there is somebody who used to be in this chamber who regrets having gone out and hired somebody to handle a campaign account, for a campaign he was running. Because the guy took off with the money. I don't think that this is where we want to be going. We ought to be simply saying, when you get money from somebody for your campaign, tell us where you got it, who it was that you got it from, and what you spent it on. We don't need this much detail. And, I also think that we ought to be looking at the other side of this issue, which is we have the method of voluntary campaign spending caps. If we take the cap, we can take \$5,000 checks. If we don't take the cap, we can take \$1,000 checks. Well the amount that the cap is for our seats, \$20,000 in a primary, \$20,000 in the general. Well, I did a little figuring with some of the campaign disclosure statements from the last election, and I found out that it cost nearly \$50,000, average, to run a Senate campaign, whether it was successful or not. The average amount spent on a Senate campaign in the primary last time was \$50,000, and about the same for the general. So, we're saying that virtually nobody is going to take that voluntary cap anymore, especially if they think they're going to be hit from one of these out-of-state groups that this bill would probably bring in more of. So, I think that if we want to make a

change in this, what we ought to do is simply do the first couple things in this, the first five sections, do a couple of the other pieces in it, but not get down to the knit-picking detail that this one has, and also change the limits on the campaign expenditures and contributions. I think we ought to raise the limit from 20,000 for a Senator race, to at least 50,000, because that's the average. Maybe we ought to raise it to 100,000, because there are several people in this room that have raised and spent \$100,000 to get or keep a Senate seat, or to protect themselves from somebody that was spending that kind of money. So, I think that we ought to be real, we ought to look at what's really happening out there. We shouldn't be forcing the out-of-state people to spend money without coming to tell us about it, and giving it to us directly. I have no problem with people giving money to campaigns, as long as we know who they are. I have a real problem with people out-of-state that collect money from who knows where and spend it to change our political climate here, without having to report where they got their money. So, I don't think this is a good bill, and I don't think we ought to pass it as it is. Maybe we need to study it for another year. I certainly don't think we ought to put this kind of bill in for this year, and try to have everybody comply with it by the first week in June. Thank you.

SENATOR HASSAN: Thank you, Mr. President. I rise just to say that it is not my understanding, nor do I think it is the Public and Municipal Affairs Committee's understanding, that this changes the obligation in any way to report in-kind contributions, or changes the obligation in any way in terms of when one coordinates with outside expenditures and when one does not. I don't think that changes any of the current law. Thank you.

SENATOR BARNES: Thank you, Mr. President. Senator Boyce certainly voiced some concerns on this bill, when first it came to the Senate floor before it went to Finance. I don't remember, I don't think it was a roll call, I think it was a voice vote, and I think it breezed by. There are twelve senators, it's a bipartisan piece of legislation, and I want to remind everyone sitting in this room, my name is a sponsor, but I'm not the guy that put this together. There was a lot of work done on this by the Secretary of State's Office, along with the Attorney General's Office. A lot of discussion, and they're the ones that put this together so I could bring it forward. And I think that we should pass this, and if Senator Boyce, or anyone else has a problem with it, then take their battle over to the House. Thank you, Mr. President, and I hope we can support this piece of legislation.

SENATOR CLEGG: Thank you, Mr. President. I rise to support the piece of legislation. It is the second committee. Why we took it to Finance is beyond me. I didn't see where the state was going to give us any money. I was kind of hoping, but... If someone has an idea that maybe we should open up contributions, there's bills coming over from the House. I can assure you you're getting one that would be right for you to change the limits in it, that says if the railroad people want to give you \$100,000 to run your campaign, you can accept it. And you know what? Personally, I don't care if you do that. Because, as long as you have to report it, I know who's giving you the money, I'll know more about you. What this bill does, in my opinion, is let some more sunshine in. It doesn't stop anybody from complying with the cap, but I don't think there's anybody here that's complied with the cap, except for maybe one or two, who don't really have races. We haven't been able to comply with the cap since I was in the House. I'm not sure the House members comply with the cap anymore, because the districts got bigger. I know in my district it costs



\$35,000 to do regular mailings through the primary and the general. That's with no opponent. So, I know I'm not going to comply with the cap. And that's not what this bill does. This bill tries to clean up some sections, and as I said, if everybody really believes that we ought to be able to take \$20,000 from the railroad, or \$20,000 from the dodge ball company, then as long as they report it, then I'm fine. But, you'll have a bill for that. This isn't the appropriate one. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 399-FN**, relative to the powers of state government in the event of a pandemic. Finance Committee. Ought to pass with amendment, Vote 5-0. Senator Morse for the committee.

**Senate Finance**

**March 13, 2006**

**2006-1344s**

**01/09**

**Amendment to SB 399-FN**

Amend the bill by replacing section 3 with the following:

3 New Section; Communicable Disease; Custody; Rationing; Cost of Items. Amend RSA 141-C by inserting after section 17-a the following new section:

141-C:17-b Custody; Rationing. If there is a statewide or regional shortage or threatened shortage of any anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents, the commissioner, with the approval of the governor, may control, restrict, and ration the use, sale, dispensing, distribution, or transportation of such agents as necessary to best protect the health, safety, and welfare of the people of this state. In making rationing or other supply and distribution decisions, the commissioner may determine the preference and priority for distribution of such agents, such as giving preference to health care providers and emergency response personnel. The commissioner shall have the discretion to take custody of all supplies of specific anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents existing within the state to ensure that such agents are distributed and utilized appropriately.

141-C:17-c Certain Cost Required. In the event of a pandemic, the commissioner shall pay to the retailer the retail cost of any items to be acquired by the department, the cost as it was the day prior to the outbreak of such pandemic.

**SENATOR MORSE:** Thank you, Mr. President. I move Senate Bill 399 ought to pass with amendment. This legislation would give the Commissioner of Health and Human Services, with the approval of the Governor, the authority to control, restrict, and ration the use and distribution of vaccines, and anti-toxins in the event of a shortage during a pandemic. The amendment to the bill requires the Commissioner to pay the retail of the cost of items acquired by the Department, the cost, as it was the day before the outbreak of the pandemic. The Finance Committee asks for your support for the motion of ought to pass.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**MOTION TO REMOVE FROM THE TABLE**

Senator Johnson moved to have SB 390 taken from the table.

SENATOR JOHNSON: Yes, thank you Mr. President. I'd like to take Senate Bill 390 off the table. 390 is relative to membership...

**Adopted.**

**SB 390**, relative to membership of the board of tax and land appeals.

SENATOR JOHNSON: 390 is relative to membership of the Board of Tax and Land Appeals. I want to start out by thanking the Senate President for tabling this bill the last time until I was able to get down here. In the meantime, I've done a little more research, of which I will present to you.

SENATOR GATSAS (In the Chair): Everybody has 390? Okay, Senator.

SENATOR JOHNSON: Thank you. Over the past year, it has come to my attention that there has been a lot of media coverage on the assessment and reassessment of property by the Department of Revenue Administration. Having piqued my interest, I thought it would be helpful to look at the current statistics for some clarification. I thought the best place to start was the makeup of the Board of Tax and Land Appeals, which is in section 71-B:2, which reads as follows: "Appointment, Term, Chairman. The members of the Board shall be appointed by the Supreme Court, and commissioned by the Governor for a term of five years, and until their successors are appointed and qualified, provided however, that of the members initially appointed to the board, one shall be appointed for a two-year term, one appointed for a three-year term, one for a four-year term, one for a five-year term. All appointments thereafter shall be for a five-year term, provided however, that any vacancy on the board shall be filled for the unexpired term. The Supreme Court shall designate one member as chairman to serve in that capacity for the duration of his term." Quite frankly, I was shocked that the appointments were made by the Supreme Court. In my sixteen years in the legislature, I had never observed or heard of a board that was appointed by the Supreme Court. A body, not elected, but appointed. I have since found out that, in 2003, House Bill 693 addressed the same problem on the Ballot Law Commission, confirmed by the Secretary of State, Bill Gardner. The bill went to Senate Internal Affairs, passing on a 2-1 vote. On the floor of the Senate, Senator Boyce, Senator Barnes, Senator Martel and Senator Clegg spoke in favor of the bill. Senator Larsen spoke in opposition. The bill passed on a roll call vote of 15-8. Those for the bill were Senator Gallus, Johnson, Kenney, Boyce, Green, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse and Prescott. Against the bill were Below, Flanders, Odell, Foster, Larsen, and D'Allesandro, and Estabrook, and Cohen. I believe this very important Board, which makes decisions, that affect our citizens, from all over the state, should be men and women who are selected by elected officials who are closer to the people and accountable to the process. This bill has nothing to do with the members of the Board. It's about process. And I ask for your vote of ought to pass on Senate Bill 390. Thank you, Mr. President.

**Recess.****Out of recess.**

**The question is on the committee report of ought to pass.**

SENATOR HASSAN: Thank you, Mr. President. I would move to special order this to next week. We had put this on the table in recognition

of the fact that its sponsor was unable to be with us on a bill that we thought he might want to participate in, and also might want a roll call, and another member of our body, who I know cares deeply about this bill, is not able to be here right now, because he's fulfilling his duty as a town moderator tonight. So, I would ask that we special order it until next week, so that we can all be present here, for what I expect would be a roll call vote.

### SPECIAL ORDER

Senator Hassan moved that **SB 390**, relative to membership of the board of tax and land appeals, be made a special order for March 22, 2006.

**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(s):

**HB 1115**, relative to the definition of resident for purposes of fish and game laws.

**HB 1119**, relative to naming the Richard Monahan Bridge in the town of Carroll.

**HB 1283**, relative to sheep and goat identification requirements.

**HB 1468-FN-L**, relative to Reservoir Road in the town of Deering and Lyme Road in the town of Hanover.

**HB 1605-FN**, relative to transfers from prepaid fish and game license fund.

**HB 1658**, relative to authorizing agreements by the fish and game department with nonprofit partners for the purpose of accepting gifts, grants, bequests, or donations to further department goals.

**HB 1659**, relative to the use of certain small caliber firearms in taking wildlife.

Senator D'Allesandro moved adoption.

**Adopted.**

### RESOLUTION

Senator Clegg 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 all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

### LATE SESSION

#### Third Reading and Final Passage

**SB 103-FN-A-L**, establishing a committee to study alternatives for funding the operation and maintenance of state-owned dams and making an appropriation to the state dam maintenance fund.

**SB 225-FN-A**, relative to horse and dog racing.

**SB 244**, relative to alternative regulation of small incumbent local exchange carriers and relative to unclaimed deposits for utility services.

**SB 250**, relative to lead paint poisoning prevention.

**SB 262**, establishing the position of an administrator of women offenders and family services within the department of corrections, and establishing an interagency coordinating council on women offenders, and making an appropriation therefor.

**SB 305-FN**, relative to the regulation of recreational therapists.

**SB 308-FN-A-L**, making an appropriation for school building aid.

**SB 350-FN**, relative to boarding kennels.

**SB 353-FN**, relative to registration of criminal offenders convicted of homicide.

**SB 382**, relative to the guardian ad litem board.

**SB 386**, relative to large groundwater withdrawals.

**SB 398-FN**, relative to political contributions and expenditures.

**SB 399-FN**, relative to the powers of state government in the event of a pandemic.

**SB 404**, relative to retirement benefits, service credits, and administration of the Manchester employees' contributory retirement system.

**SB 405**, relative to the acceptance of certain tax-sheltered funds by the Manchester employees' contributory retirement system.

**SCR 6**, urging Congress to support stem cell research.

**HB 581**, relative to approval and review of municipal charters.

**HB 590**, excluding stepchildren from the definition of "child" in the context of support orders.

**HB 719-FN**, recodifying the Articles 1 and 7 of the Uniform Commercial Code.

**HB 1118**, requiring paper ballots at all elections.

**HB 1156**, changing the notification for public hearings on ski area passenger tramway rules from registered mail to first class mail.

**HB 1225-FN-A**, relative to the judicial branch family division for the Henniker and Hillsborough District Courts.

**HB 1471-FN**, repealing the statutes relative to regional highway conferences.

**HB 1503**, relative to financial programs administered by the postsecondary education commission.

**HB 1654-FN**, relative to the probate court mediation fund and fee.

## ANNOUNCEMENTS

### RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the purpose of introducing legislation, sending and receiving messages, processing enrolled bill reports and amendments.

**Adopted.**

**In recess to the Call of the Chair.**

### HOUSE MESSAGE

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

**SB 211-FN**, relative to pharmaceutical marketers.

**HOUSE MESSAGE**

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

**SB 128-FN**, relative to the establishment of emissions reduction standards as required by the Clean Power Act.

**HOUSE MESSAGE**

The House of Representatives has adopted the recommendation of the Committee of Conference to which was referred the following entitled Bill:

**SB 206-FN**, relative to the state code of ethics and establishing an executive ethics commission.

**HOUSE MESSAGE**

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

**SB 104-FN**, relative to the tax exemption for water and air pollution control facilities.

**HOUSE MESSAGE**

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

**HB 1113**, adding a definition of "public academy" to the definition of "high school".

**HB 1116**, relative to service of the notice to quit and writ of summons in landlord tenant actions.

**HB 1168**, establishing a commission to determine how to optimize boating safety on water bodies.

**HB 1172-FN**, relative to registration of political committees.

**HB 1188**, relative to notice before entry into a condominium unit.

**HB 1192**, relative to property and casualty insurance.

**HB 1194**, relative to job protection for firefighters, rescue workers, and emergency medical personnel.

**HB 1206**, relative to the assessing standards board.

**HB 1209**, relative to notification requirements for criminal offenders.

**HB 1215**, relative to the winter maintenance of Diamond Pond Road in the towns of Colebrook and Stewartstown.

**HB 1216**, relative to the sale of unpasteurized milk.

**HB 1223-FN**, relative to the use of real estate brokers by the department of transportation.

**HB 1243-FN**, reducing certain fines for motor vehicle violations.

**HB 1260**, relative to informing first-time driver's license applicants of the controlled drug laws.

**HB 1274**, relative to certain disclosures to the department of health and human services.

**HB 1295**, requiring notification regarding brake shift interlock and key positions by automobile dealers to consumers.

**HB 1298**, establishing a study committee to evaluate disciplinary procedures of the board of medicine.

**HB 1315**, relative to the definition and classification of dams.

**HB 1317**, relative to the control or eradication of exotic aquatic weeds and requiring a review by the department of agriculture, markets, and food, the department of environmental services, the fish and game department, and the department of resources and economic development, evaluating the current permitting process for special permits for aquatic applications of pesticides to control or eradicate exotic aquatic weeds and making recommendations to improve the process.

**HB 1324**, relative to the commission to study the state park system.

**HB 1343**, relative to the duties of the council on resources and development.

**HB 1426**, granting a right-of-way over state-owned land.

**HB 1433**, establishing a committee to study secured landfills and establishing a moratorium on the incineration of construction and demolition waste.

**HB 1452-FN**, requiring insurance coverage for the cost of testing for bone marrow donation.

**HB 1480**, amending the provisions relative to registration of criminal offenders.

**HB 1487**, relative to marriage licenses.

**HB 1491**, establishing a committee to study the publicly owned treatment plant needs of New Hampshire.

**HB 1506**, requiring children 12 years of age or under to wear personal flotation devices.

**HB 1508**, relative to acceptance of applications by planning boards.

**HB 1517-FN**, relative to membership on the board of medicine and the medical review subcommittee.

**HB 1534**, relative to maintaining construction and demolition debris as a solid waste.

**HB 1536**, relative to bonds required from persons excavating or disturbing certain highways.

**HB 1546**, relative to patient information.

**HB 1555**, establishing a commission to investigate cost drivers in providing health care.

**HB 1565**, relative to evictions in cases involving incidents of domestic violence.

**HB 1566**, relative to the definitions of resident for motor vehicle law purposes and domicile for voting purposes and relative to vehicle registration and driver's license requirements.

**HB 1568**, establishing a committee to study the siting and construction of commercial wind energy facilities.

**HB 1574**, relative to membership on the public employees deferred compensation commission.

**HB 1582**, prohibiting New Hampshire from participating in a national identification card system.

**HB 1603-FN**, relative to administration and enforcement by the division of forests and lands over forest resources and timber harvesting.

**HB 1609-FN**, requiring a pilot project to estimate future water needs and availability.

**HB 1667-FN**, establishing penalties for methamphetamine manufacturing and possession of substances with intent to manufacture methamphetamine.

**HB 1672-FN**, relative to a registry for substantiated cases of abuse, neglect, or exploitation of incapacitated adults and establishing a task force relative to central registries.

**HB 1674-FN**, requiring emergency care providers to report information on certain sexual assault crimes to law enforcement officials.

**HB 1683-FN**, establishing a homestead food license for residential, non-commercial kitchens.

**HB 1711-FN**, relative to the regulation of fuel gas fitters.

**HB 1756**, relative to alternative regulation of small incumbent local exchange carriers.

**HB 1761**, relative to hold over tenants in vacation or recreational rental units.

**HB 1768-FN**, establishing a committee to study the effects of rescinding the charter of the New Hampshire Bar Association, and relative to the regulation of attorneys by the supreme court.

**HJR 25**, encouraging the United States Congress to propose an amendment to the Constitution concerning eminent domain.

**CACR 41**, relating to representative districts. Providing that representative districts shall be apportioned according to specified standards.

### INTRODUCTION OF HOUSE BILL(S)

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 1113 CACR 41**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 1113**, adding a definition of "public academy" to the definition of "high school". (Education)

**HB 1116**, relative to service of the notice to quit and writ of summons in landlord tenant actions. (Judiciary)

**HB 1168**, establishing a commission to determine how to optimize boating safety on water bodies. (Transportation and Interstate Cooperation)

**HB 1172-FN**, relative to registration of political committees. (Internal Affairs)

**HB 1188**, relative to notice before entry into a condominium unit. (Public and Municipal Affairs)

**HB 1192**, relative to property and casualty insurance. (Banks and Insurance)

**HB 1194**, relative to job protection for firefighters, rescue workers, and emergency medical personnel. (Banks and Insurance)

- HB 1206**, relative to the assessing standards board. (Executive Departments and Administration)
- HB 1209**, relative to notification requirements for criminal offenders. (Education)
- HB 1215**, relative to the winter maintenance of Diamond Pond Road in the towns of Colebrook and Stewartstown. (Transportation and Interstate Cooperation)
- HB 1216**, relative to the sale of unpasteurized milk. (Environment and Wildlife)
- HB 1223-FN**, relative to the use of real estate brokers by the department of transportation. (Capital Budget)
- HB 1243-FN**, reducing certain fines for motor vehicle violations. (Finance)
- HB 1260**, relative to informing first-time driver's license applicants of the controlled drug laws. (Transportation and Interstate Cooperation)
- HB 1274**, relative to certain disclosures to the department of health and human services. (Health and Human Services)
- HB 1295**, requiring notification regarding brake shift interlock and key positions by automobile dealers to consumers. (Transportation and Interstate Cooperation)
- HB 1298**, establishing a study committee to evaluate disciplinary procedures of the board of medicine. (Executive Departments and Administration)
- HB 1315**, relative to the definition and classification of dams. (Environment and Wildlife)
- HB 1317**, relative to the control or eradication of exotic aquatic weeds and requiring a review by the department of agriculture, markets, and food, the department of environmental services, the fish and game department, and the department of resources and economic development, evaluating the current permitting process for special permits for aquatic applications of pesticides to control or eradicate exotic aquatic weeds and making recommendations to improve the process. (Environment and Wildlife)
- HB 1324**, relative to the commission to study the state park system. (Environment and Wildlife)
- HB 1343**, relative to the duties of the council on resources and development. (Capital Budget)
- HB 1426**, granting a right-of-way over state-owned land. (Capital Budget)
- HB 1433**, establishing a committee to study secured landfills and establishing a moratorium on the incineration of construction and demolition waste. (Energy and Economic Development)
- HB 1452-FN**, requiring insurance coverage for the cost of testing for bone marrow donation. (Banks and Insurance)
- HB 1480**, amending the provisions relative to registration of criminal offenders. (Judiciary)
- HB 1487**, relative to marriage licenses. (Public and Municipal Affairs)
- HB 1491**, establishing a committee to study the publicly owned treatment plant needs of New Hampshire. (Energy and Economic Development)
- HB 1506**, requiring children 12 years of age or under to wear personal flotation devices. (Environment and Wildlife)



- HB 1508**, relative to acceptance of applications by planning boards. (Public and Municipal Affairs)
- HB 1517-FN**, relative to membership on the board of medicine and the medical review subcommittee. (Executive Departments and Administration)
- HB 1534**, relative to maintaining construction and demolition debris as a solid waste. (Energy and Economic Development)
- HB 1536**, relative to bonds required from persons excavating or disturbing certain highways. (Transportation and Interstate Cooperation)
- HB 1546**, relative to patient information. (Health and Human Services)
- HB 1555**, establishing a commission to investigate cost drivers in providing health care. (Health and Human Services)
- HB 1565**, relative to evictions in cases involving incidents of domestic violence. (Judiciary)
- HB 1566**, relative to the definitions of resident for motor vehicle law purposes and domicile for voting purposes and relative to vehicle registration and driver's license requirements. (Internal Affairs)
- HB 1568**, establishing a committee to study the siting and construction of commercial wind energy facilities. (Energy and Economic Development)
- HB 1574**, relative to membership on the public employees deferred compensation commission. (Executive Departments and Administration)
- HB 1582**, prohibiting New Hampshire from participating in a national identification card system. (Public and Municipal Affairs)
- HB 1603-FN**, relative to administration and enforcement by the division of forests and lands over forest resources and timber harvesting. (Environment and Wildlife)
- HB 1609-FN**, requiring a pilot project to estimate future water needs and availability. (Energy and Economic Development)
- HB 1667-FN**, establishing penalties for methamphetamine manufacturing and possession of substances with intent to manufacture methamphetamine. (Judiciary)
- HB 1672-FN**, relative to a registry for substantiated cases of abuse, neglect, or exploitation of incapacitated adults and establishing a task force relative to central registries. (Health and Human Services)
- HB 1674-FN**, requiring emergency care providers to report information on certain sexual assault crimes to law enforcement officials. (Judiciary)
- HB 1683-FN**, establishing a homestead food license for residential, non-commercial kitchens. (Health and Human Services)
- HB 1711-FN**, relative to the regulation of fuel gas fitters. (Executive Departments and Administration)
- HB 1756**, relative to alternative regulation of small incumbent local exchange carriers. (Energy and Economic Development)
- HB 1761**, relative to hold over tenants in vacation or recreational rental units. (Judiciary)
- HB 1768-FN**, establishing a committee to study the effects of rescinding the charter of the New Hampshire Bar Association, and relative to the regulation of attorneys by the supreme court. (Executive Departments and Administration)

**HJR 25**, encouraging the United States Congress to propose an amendment to the Constitution concerning eminent domain. (Public and Municipal Affairs)

**CACR 41**, relating to representative districts. Providing that representative districts shall be apportioned according to specified standards. (Internal Affairs)

### HOUSE MESSAGE

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

**HB 298**, relative to consolidating statutes relating to driving while intoxicated.

**HB 1111**, designating the pumpkin as the New Hampshire state fruit.

**HB 1265**, establishing the council on the relationship between public health and the environment.

**HB 1333**, relative to solid waste reduction goals.

**HB 1335**, relative to the authority of law enforcement officers during a state of emergency.

**HB 1337**, establishing the amusement ride safety advisory board.

**HB 1351**, relative to the rulemaking process.

**HB 1356**, relative to on-board diagnostic system inspections.

**HB 1357**, relative to the legislative facilities committee.

**HB 1373**, establishing a commission to study ways to encourage the proper recycling and disposal of grease trap wastes and to determine ways to develop additional disposal capacity.

**HB 1377**, relative to certain mandatory minimum sentences.

**HB 1386**, relative to exceptions to the prohibition on carrying and selling knives.

**HB 1394**, relative to determination of value of property in current use.

**HB 1420-FN**, prohibiting remote control and Internet hunting and relative to exceptions to the prohibitions on the sale of firearms to minors and the furnishing of arms to persons under 16.

**HB 1429**, relative to municipal exemptions for hazardous waste cleanup liability.

**HB 1446**, requiring the department of resources and economic development to prepare and submit a management and financial plan to the general court and the public prior to the opening of the Berlin regional ATV park.

**HB 1448**, relative to the applicability of drivers' license revocations for drugs or alcohol involvement.

**HB 1455-FN-A**, relative to the disposal of video display devices.

**HB 1463-FN**, relative to boating and water safety.

**HB 1592-FN**, making certain changes in the insurance laws.

**HB 1595-FN**, relative to certification of electronic systems technicians by the electricians' board.

**HB 1613-FN-L**, relative to polling place arrangement and accessibility.

**HB 1620-FN**, relative to hunting restrictions of certain convicted felons.

**HB 1624-FN**, relative to boat noise.

**HB 1625**, establishing penalties for guardians ad litem who fail to file reports which are required by the court.

**HB 1630-L**, relative to land use change taxes imposed for certain road construction on rights-of-way.

**HB 1631-FN-L**, relative to property taxation of certain property of the Appalachian Mountain Club.

**HB 1633-FN**, relative to membership, eligibility, and financing of the New Hampshire retirement system.

**HB 1652-FN**, relative to certain insurance claims.

**HB 1696-FN**, relative to the cremation of human remains.

**HB 1718-FN**, requiring a written disclosure statement be provided to prospective nursing home facility clients.

**HB 1745-FN**, relative to methamphetamine-related crimes involving children and incapacitated adults.

**HB 1758**, classifying biodiesel as a renewable energy source.

**Adopted.**

### INTRODUCTION OF HOUSE BILL(S)

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 298 to 1758**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 298**, relative to consolidating statutes relating to driving while intoxicated. (Judiciary)

**HB 1111**, designating the pumpkin as the New Hampshire state fruit. (Banks and Insurance)

**HB 1265**, establishing the council on the relationship between public health and the environment. (Environment and Wildlife)

**HB 1333**, relative to solid waste reduction goals. (Environment and Wildlife)

**HB 1335**, relative to the authority of law enforcement officers during a state of emergency. (Judiciary)

**HB 1337**, establishing the amusement ride safety advisory board. (Executive Departments and Administration)

**HB 1351**, relative to the rulemaking process. (Executive Departments and Administration)

**HB 1356**, relative to on-board diagnostic system inspections. (Transportation and Interstate Cooperation)

**HB 1357**, relative to the legislative facilities committee. (Internal Affairs)

**HB 1373**, establishing a commission to study ways to encourage the proper recycling and disposal of grease trap wastes and to determine ways to develop additional disposal capacity. (Environment and Wildlife)

- HB 1377**, relative to certain mandatory minimum sentences. (Judiciary)
- HB 1386**, relative to exceptions to the prohibition on carrying and selling knives. (Judiciary)
- HB 1394**, relative to determination of value of property in current use. (Public and Municipal Affairs)
- HB 1420-FN**, prohibiting remote control and Internet hunting and relative to exceptions to the prohibitions on the sale of firearms to minors and the furnishing of arms to persons under 16. (Environment and Wildlife)
- HB 1429**, relative to municipal exemptions for hazardous waste cleanup liability. (Public and Municipal Affairs)
- HB 1446**, requiring the department of resources and economic development to prepare and submit a management and financial plan to the general court and the public prior to the opening of the Berlin regional ATV park. (Environment and Wildlife)
- HB 1448**, relative to the applicability of drivers' license revocations for drugs or alcohol involvement. (Transportation and Interstate Cooperation)
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- HB 1633-FN**, relative to membership, eligibility, and financing of the New Hampshire retirement system. (Executive Departments and Administration)
- HB 1652-FN**, relative to certain insurance claims. (Banks and Insurance)
- HB 1696-FN**, relative to the cremation of human remains. (Public and Municipal Affairs)
- HB 1718-FN**, requiring a written disclosure statement be provided to prospective nursing home facility clients. (Health and Human Services)
- HB 1745-FN**, relative to methamphetamine-related crimes involving children and incapacitated adults. (Judiciary)

**HB 1758**, classifying biodiesel as a renewable energy source. (Energy and Economic Development)

**Out of Recess.**

### LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*March 22, 2006*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good morning! I have a magnificent grandfather clock built by my dad of polished walnut and beautiful brass workings. Currently this clock is silent and still because one of the little parts inside is worn out, and I'm too cheap to pay for it. But despite that fact, as you know, that clock still reports time accurately twice each day for a few brief moments. I have to say however that time-wise it is not all that useful unless I happen to glance at it at just the proper instant. I have, however, a new battery driven watch which I absolutely love. It is a Swiss Army watch, and it runs so well that it can tell me more than I ever really need to know. Not only does it report that it is now 10:35 and 10 seconds, but today is March 22, and in Rome, Italy it is 4:25 in the afternoon. You're welcome, Lou. Frankly, the clock that my dad built is a lot prettier than my wrist-watch, but this watch works quietly, relentlessly, and accurately, and so I depend upon it as a timepiece while I depend upon my dad's clock for nostalgia. There's a point. As you and I live out our swiftly passing days and exercise our leadership, we can choose to be Swiss Army watch like, current, timely, informative, and running well or we can live and serve like my grandfather clock, a reminder of the good old days, lovely to look at in those comfortable chairs, immovable and therefore correct and on target every now and then, but not what we would be if that little part inside of us was not worn out. I wonder which your constituents and mine would prefer. Let's pray.

*Gracious Lord of both grandparents and children, as we go about the work You give us each to do, whether it is this day heavy lifting or light, may You show us each how to tell time accurately and then how to keep it. Amen*

Senator Eaton led the Pledge of Allegiance.

### INTRODUCTION OF GUESTS

### COMMITTEE REPORTS

### SPECIAL ORDER

**SB 390**, relative to membership of the board of tax and land appeals. Public and Municipal Affairs Committee. Ought to pass, Vote 3-2. Senator Barnes for the committee.

**SENATOR BARNES:** Thank you very much, Mr. President. I'm going to have to shoot from the cuff on this. It was a 3-2 vote in committee that it ought to pass. We heard a lot of testimony on it, and I'm sure there's

going to be some debate here on the floor. But it did pass the committee on a 3-2 vote, and it's a situation that an individual brought forward. I perhaps should turn some of this conversation over to Senator Johnson, who's the prime sponsor, and I think I would like to yield to Senator Johnson because I'm sure he can let everyone know why that bill is in front of us today.

SENATOR JOHNSON: Thank you, Mr. President. As you know, this bill was special ordered in our last meeting. So, with that, I would like to, as a reminder, read my remarks again if you would bear with me please. Over the past year, it has come to my attention that there has been a lot of media coverage on the assessment and reassessment of property by the Department of Revenue Administration. Having piqued my interest, I thought it would be helpful to look at the current statistics for some clarification. I thought the best place to start was the make-up of the Board of Tax and Land Appeals, which is in Section 71B:2 which reads as follows: "Appointment, term, chairman. The members of the board shall be appointed by the Supreme Court and commissioned by the Governor for a term of five years and until their successors are appointed and qualified; provided however, that of the members initially appointed to the board one shall be appointed for a two-year term, one shall be appointed for a three-year term, one for a four-year term, and one for a five-year term. All appointments thereafter shall be for a five-year term; provided, however, that any vacancy on the board shall be filled for the unexpired term. The Supreme Court shall designate one member as chairman to serve in that capacity for the duration of his term". Quite frankly, I was shocked that the appointments were made by the Supreme Court. In my sixteen years in the legislature, I had never observed or heard of a board that was appointed by the Supreme Court, a body not elected but appointed for life. I have since found out that in 2003 House Bill 693 addressed the same problem on the Ballot Law Commission, and this was confirmed to me by the Secretary of State, Bill Gardner. The bill went to Senate Internal Affairs passing on a 2-1 vote. On the floor of the Senate, Senator Boyce, Senator Barnes, Senator Martel and Senator Clegg spoke in favor of the bill, and Senator Larsen spoke in opposition. The bill passed on a roll call vote of 15-8. Voting for the bill were Senators Gallus, Johnson, Kenney, Boyce, Green, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, and Prescott, and against were Below, Flanders, Odell, Foster, Larsen, and D'Allesandro, also Estabrook and Cohen. I believe this very important board, which makes decisions that affect our citizens from all over the state of New Hampshire, should be men and women who are selected by elected officials who are closer to the people and accountable to the process. This bill has nothing to do with members of the board. It's about process. And yesterday, I had a nice chat with Mr. Paul Franklin who is the Chairman of the BTLA Board, and he understood my position even though he didn't agree with it. I assured him that this again, was nothing about the board itself, but about the process. So with that, Mr. President, I ask this body to vote ought to pass on SB 390. Thank you.

SENATOR BURLING: Thank you, Mr. President. Ninety-five years ago, Mr. President, this state decided that it would see to the appointment of members of the Board of Land and Tax Appeals by having the Supreme Court appoint them as judicial officers. We have been doing this in this way since 1911. This bill is the third time in the last decade that parties and interests have tried to change that. I'm here to talk just briefly about why changing it is such a bad idea. The Board of Land and

Tax Appeals handles what you would guess, appeals from assessments and tax assessments by towns. It also handles all of the initial eminent domain proceedings, contested eminent domain proceedings in the state of New Hampshire. It is a judicial body and, as a judicial body that handles some of the most important issues in our current society, it should and ought to be, as apolitical as we can make it. The current system, which has been in place for ninety-five years, guarantees the appointment of officers to the Board of Land and Tax Appeals who are not part of the political pushing and shoving that we as Senators are so used to. That is as it ought to be. One of the toughest things about this bill is that we've now had to debate it twice, and last time I asked a rhetorical question, and the rhetorical question was, "Can you imagine a race for Speaker of the House in which one group of legislators approached by a candidate for Speaker say, "We'll give you our votes; there are thirty-five of us, but you have to tell us that you'll put one of us on the Board of Land and Tax Appeals". We ought to be frightened of such a prospect, and we also ought to be honest enough to know that that is exactly what will happen if we politicize this appointment process. This is a solution without a problem. For ninety-five years, the Board of Land and Tax Appeals has done its duty and done it well, and done it above political involvement. It is such an important issue that many of us have received letters from municipal officials, county officials, and other interested folks. I was particularly delighted to receive this letter from Michael E. J. Blatsos, the Mayor of Keene, who took the time to write a Senator who isn't even from his area to say the following. "One of the primary responsibilities of the BTLA is to decide tax cases based upon facts of law and assessment methodology. To avoid political pressures in the decision-making process, it is important that the members of the BTLA continue to be appointed by the Supreme Court, not underscored, the Legislature or the Governor. Members of the BTLA should not be put in a position of reprisal or fear of replacement should they render a decision opposed to those who control appointments." It cannot be said more clearly than that. I ask you to vote down the pending motion of ought to pass, and to allow us to move on to Inexpedient to legislate. This is not a good change. It is not something we should do.

SENATOR JOHNSON: Yes. Question for Senator Burling.

SENATOR BURLING: Yes, sir.

SENATOR JOHNSON: Senator Burling, can you imagine an aggrieved taxpayer that goes before the Board of Tax and Land Appeals and is turned down at that level, and then he goes to the Supreme Court and then he realizes that the court of the people that have appointed the people to the Board? How do you think he's going to feel about that judgment?

SENATOR BURLING: Senator, in all candor, you know I'm a lawyer, and you know I passed the New Hampshire Bar in 1972. I've been in a system in which exactly that kind of relationship exists in the ordinary course of the administration of justice. There is a Supreme Court, and it has the power of review over both district and superior court justices. Issues go up and down that system of appeal on a regular basis. I believe the current system with them appointing the judicial officers on the BTLA works perfectly. And if I were to advise, as an attorney, an applicant to the BTLA who felt he or she wanted to appeal on up the system, I would say, "You should have confidence it will be fair and just because for ninety-five years, that is exactly the way it has been."

SENATOR JOHNSON: That's not what I've heard from my constituents.

SENATOR ESTABROOK: Thank you Mr. President. I rise in opposition to the ought to pass, and with pleasure stand to support one of the communities I represent, and also to say that I am in full philosophical agreement with them. I also received a letter from the Assessor's Office in the city of Dover that I represent, and I just want to read a couple of those sentences from that letter. "If this legislation is passed, the property tax appeal process would be thrown into the political arena. This would expose our property tax system to disarray and inequities. The appointing authority of the BTLA should remain in the hands of the Supreme Court. The implementation of this legislation could be disastrous." So, with pleasure I, too, believe that it is perfectly appropriate that an appellate board be appointed by the Supreme Court. Thank you, Mr. President.

**The question is on the committee report of ought to pass.**

**A roll call was requested by Senator Johnson.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Roberge, Clegg, Gatsas, Barnes, Martel, Letourneau.**

**The following Senators voted No: Burling, Green, Odell, Eaton, Bragdon, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

**Yeas: 11 - Nays: 13**

**Motion failed.**

Senator Burling moved inexpedient to legislate.

The motion of inexpedient to legislate is adopted.

Senator Bragdon in the Chair.

**CACR 43**, relating to the cost of education. Providing that the legislature shall determine and define the content, extent, and funding of education. Finance Committee. Ought to pass with amendment, Vote 5-3. Senator Boyce for the committee.

**Senate Finance**

**March 20, 2006**

**2006-1457s**

**04/10**

**Amendment to CACR 43**

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

RELATING TO: public education.

PROVIDING THAT: the legislature shall have the authority to make reasonable determinations of the content, extent, funding, and delivery of public education.

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 83 the following new article:

[Art.] 83-a. [Content, Extent, Funding, and Delivery of Public Education.] The legislature shall have the authority to make reasonable determinations of the content, extent, funding, and delivery of public education.



II. That the above amendment proposed to the constitution be submitted to the qualified voters of the state at the state general election to be held in November, 2006.

III. That the selectmen of all towns, cities, wards and places in the state are directed to insert in their warrants for the said 2006 election an article to the following effect: To decide whether the amendments of the constitution proposed by the 2006 session of the general court shall be approved.

IV. That the wording of the question put to the qualified voters shall be: "Are you in favor of amending the second part of the constitution by inserting after article 83 the following new article:

[Art.] 83-a. [Content, Extent, Funding, and Delivery of Public Education.] The legislature shall have the authority to make reasonable determinations of the content, extent, funding, and delivery of public education."

V. That the secretary of state shall print the question to be submitted on a separate ballot or on the same ballot with other constitutional questions. The ballot containing the question shall include 2 squares next to the question allowing the voter to vote "Yes" or "No." If no cross is made in either of the squares, the ballot shall not be counted on the 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 2006 General Court" shall be printed in bold type at the top of the ballot.

VI. That if the proposed amendment is approved by 2/3 of those voting on the amendment, it becomes effective when the governor proclaims its adoption.

**2006-1457s**

#### AMENDED ANALYSIS

This constitutional amendment concurrent resolution provides that the legislature shall have the authority to make reasonable determinations of the content, extent, funding, and delivery of public education.

SENATOR BOYCE: Thank you, Mr. President. I move that CACR 43 ought to pass with amendment. We all know that there are two ways that the Constitution can be changed. Well, three if you count what the court can do to it. We'll discount that for today. The two ways that the Constitution can be changed are that both the House and the Senate concur and vote in a super majority to send the question to the people, and the people get to change the Constitution. We can't change the Constitution. Only the people can do that, and they have to do it by a two-thirds majority at the polls. The other way that the people can change the Constitution, because it is actually their Constitution, not ours. The other way is through a Constitutional Convention. We can call for a Constitutional Convention. The voters can do that, but they can only do that when it appears on the ballot. We can put it on the ballot, and then they get to decide whether they have it or not. Or it will appear on the ballot recurring every so many years and I forget the exact number, maybe ten. But if it hasn't appeared on the ballot in a certain number of years it appears on the ballot automatically. So the people get a chance to make changes to the Constitution. It's intended to be a very difficult process. So today I stand before you asking you to start the process and allow the people to decide whether or not they want to change the Constitution. What we're asking today is, should this language be put before the voters in November? Should we ask the people of the state, "Is what they

want that the Legislature shall have the authority to make reasonable determinations of the content, extent, funding, and delivery of public education?" This is intended to let them decide whether or not they want to clarify what John Adams wrote two hundred and some years ago and put in the Massachusetts Constitution the words, he wrote it to be "Legislatures of all future periods shall cherish the interests" blah, blah, blah "of education." Those were his words. When our founders, our drafters of our Constitution, wrote it into our version of the Constitution, they changed it slightly and said it was the "Legislators" and "Magistrates of all future periods shall cherish the interests of literature, arts", and so forth. There is contention as to whether or not anything in that says that the court gets to make up the extent, the content, and delivery and funding of education, or should it as it has for most of this state's history, shall it be determined by the legislature? And, of course, the legislature cannot act alone either. We have to act with the Governor. If we make a determination as to what the content of education is, the extent of education, the funding, and who gets to deliver that education. If we make determinations dealing with public education which the Senate agrees with, the House agrees with, the Governor still has to agree with it. If all that happens, then it becomes the law, and that's education funding, delivery, content, whatever we want to do. But we already have that ability, I believe. We have had for two hundred and some years. There were a few people across the river who decided a few years ago that we didn't. And so this is simply to allow the people to make the final determination as to whether or not this body, that body, and the Governor have the ability to decide how much we should spend on education, what should be taught in public education, who should deliver public education, and how old the kids have to go to school. Now, we already do most of those things, but we get challenged every once in awhile. This won't, if this passes, this won't preclude the court from coming in and saying that what you've done is not a responsible, reasonable thing to do. We will end up back in court at some point over it I'm sure, but then we've been in court over the current wording for how many years, twenty now? So I think it's time that we allow the people to make a determination as to what they want the Constitution to say. If they don't want the Constitution changed, they will tell us that. Now they've had opportunities in the past to deal with exactly this subject, and the one time that I'm aware of was in the Constitutional Convention of, I believe, 1850. It was chaired by none other than Franklin Pierce. In that Constitutional Convention, which the State Archives has the journal, and surprisingly, the journal has been transcribed into Word, Microsoft Word format, so you can put it on your computer and read it there. I don't know who did that. I don't know why. It's not something that the Archives seems to have done on everything from that period, but that one journal is there. And in that journal they discussed all sorts of things. One of them was that, because there was no right written into the Constitution to a public, free education, they felt that it was necessary to make a change to the Constitution. They looked at the Constitution and said Part II is how government operates. Part I is the Bill of Rights. If there's a right to a free, public education, it needs to be in Part I, if that is a fundamental right. So they proposed an amendment. They told the people, "We think that we ought to move Article 83 from Part II to Part I." Make it clear that it's a right. That there is a right. They also felt that there was a problem in Part I of the Constitution in Article 6. There was some language in there saying that the towns shall always have the right to select and

pay for their own teachers. That sort of conflicts with the state having all the obligation and responsibility. That's still there. That hasn't been changed. Neither has moving Part II Article 83 to Part I of the Constitution. The people, in 1850, voted that they did not want to change the Constitution. The issue was, "Is the right to a free, public education, is that a fundamental right?" The Court decided ten years ago, twenty years ago, that it was, that somehow this language that John Adams wrote got transmogrified or whatever into our Constitution as an obligation of legislators, individual legislators, to cherish the interests of arts and education. The court has decided that somehow that language says that we must provide an adequate education and pay for it at state expense by some tax. I believe the purpose of all of this has been to bring forth an income tax upon the state. We don't want an income tax in this state, I don't believe. I don't believe the people do. I believe that we need to end the current merry-go-round with the court of every time we pass a funding plan it goes to the court. The court says no. We pass a funding plan. It goes to the court. The court says no. We need to make this change. We need to allow the people to make this change, so that we stop the merry-go-round. We need to have the people tell us once and for all. Are we in charge of funding and content of education, or is the court? That's what this really comes down to. We're asking the people to decide. We're asking, asking us to let the people decide. If we pass this, it goes to the House. The House will have to do the same thing. If they pass it, then the people will have their chance. If we vote no today, we're saying no, we don't want the people to decide. We don't trust our constituents enough to let them go to the ballot next November and vote yes or no. I want to change the Constitution, or no, I don't. That's what we're voting for today. Do we trust our constituents enough to let them decide? They trust the Constitutional Convention in 1850 trusted the people to decide then. They made a decision then. We're asking the people, we're asking ourselves, to allow the people to make a choice this time. So I ask you to join the Finance Committee and support the motion of ought to pass with amendment. Thank you.

SENATOR GATSAS: Thank you, Mr. President. I don't know what success I'm going to have to change some minds, but I'm certainly going to take the opportunity because I think this is an important issue that we need to move forward with. So again you're going to hear the passion because I believe that this is the right thing to do. We've walked around these hallways for the last few months and we've talked about partisanship. We've talked about being bipartisan. There isn't a bigger piece of legislation that's going to come before this body that's more bipartisan than this. There was a Constitutional Amendment that was brought forward by a Democratic Governor in 1998, Governor Shaheen. It came to the Senate, and it left the Senate to go to the House. A lot of the Senators in these seats should thank her for being the help to get them to these seats. But this is about the kids. We sat here two years ago. We had an education funding plan that the courts said didn't make sense, and we had to start all over again. The biggest objection we had from the communities. We don't have a funding number so that we can put our budgets together. Every community must know by November to start their budget process. We've just taken a vote a few minutes ago about the Supreme Court. There were some people that thought the Supreme Court shouldn't be involved in the Board and Land Appeals. There were some that thought they should be. We're going to talk about a piece of legislation in the next two pieces that talks about what we believe, or

some people believe, that the age should change from sixteen to eighteen. There are probably constituents out there that want to challenge that to the Supreme Court, but we as a legislature have the opportunity to make those decisions. There's another bill here, that's 306, establishing a quality early learning opportunity initiative. We as a legislature are making that decision. We're doing it right here. Hopefully, the House is going to pay attention to what we tell them, and we try and pay attention to what they tell us. But those are initiatives that come before us. There was an education funding bill that passed the Senate, and I know some people will say, "Well, there was another one here. That also got thirteen votes." So maybe the next thing we should do in the next week or so, we should bring that amendment forward. We should pass that bill and send it to the court for an opinion, because that one's no more constitutional than the report we just got from a judge. So let's end it. Let's stop playing the game. It's very clear. We'll hear testimony in a few minutes. Reasonable is a different idea by different people. Well, the question is adequate. I read some emails from people today that think the word adequacy is in the Constitution. This is a separation of powers. If the court said the bill was wrong you need to fix it, that's one thing. To say you can't eliminate donor towns and you can't do transition. Guess what? The Governor's plan didn't have donor towns. It didn't have a statewide property tax either, but it had transition. So let's understand where we are because maybe that bill needs to go to the Supreme Court, and we can then say, "Is it constitutional or not?" and maybe at that point we will find that we have a bipartisan relationship with getting a Constitutional Amendment passed. This is about the kids. We as a legislature talk about content. We have that ability to talk about content. We had a debate on this floor last year about civics and whether that should be in legislation that a child learns it. We decided that, not the court. This amendment is not to usurp judicial oversight. This is there so that we can make decisions. We make them now. When the majority rules, it moves forward. We had an education funding bill come out of the Senate. Came out with a pretty big vote in the House. A lot of people weren't happy, but that's the way things operate around here. The people send us here for decisions, but let's not kid ourselves. If we talk about true bipartisanship, this is it. There are some people in the House that are in this Senate now that voted for that Constitutional Amendment in 1998. They voted for it, and it was a tougher version than what I've brought you today. I merely believe that we make the decisions, and we should make them here. Allow the people that send us here, and that's the question, allow those people, once and for all, to either say yes or no because we're only going down a very slippery slope. And it's truly about a broad-based tax. Because the only way you're going to define adequacy, the only way you can define that is with an awful big bucket of money. And if that's the question, if it's truly about money as I asked one of the members of New Hampshire Café, instead of 11 million if you've got 15 would you be leading the charge for this? After a fifteen second delay, the answer was, "I don't know." It's about money. Let's not kid ourselves. No matter what bill we bring forward folks, you are never going to get everybody to agree. There is education funding plans that I can show you probably from one to five hundred that you can pick from. You need to create two hundred and thirty-four different education funding plans to make every community in this state happy. So let's think about where we're going. Let's think about what we're doing. Because we all have an opportunity today and that opportunity is much bigger than we'll ever see again. Let's not fool ourselves. It's about a broad-

based tax. And everybody says, "I don't want to hear that because that's not what it's about." The quotes are going to come fast and furious. I'm not a constitutional expert. I presented a bill last week. I looked at it over the weekend. I must have talked to two or three hundred different people. I've come to a conclusion that going into Article 83 probably wasn't the place to go. That's where every other Constitutional Amendment has gone. If we individually read Article 83, we probably wouldn't vote for that today. There are some pieces in there that a lot of us wouldn't vote for. But that was written two hundred years ago. And we all stand here and we take an oath to the New Hampshire Constitution that we all keep near and dear to our hearts. So I attempted to come outside of Article 83 and made it Article 83-A. So, instead of John Q. Public going to the polls and reading two pages that was written two hundred years ago and really not having a clear idea of what we're looking at, one sentence is what the Constitutional Amendment was all about, so that when people read it, they have a very clear, concise idea. You don't need to be a Constitutional Amendment expert. You don't have to be an attorney. You can be John Q. Public and read it and understand it. So when we leave these halls, and we talk about bipartisanship, let's just remember today, because today's an important day. This Senate has the opportunity, and I know that some people think opportunities come every now and then. They came in '98, and some people in this chamber voted for it. They took that opportunity and they moved it forward whether they were in the House or in the Senate. Let's give the people of New Hampshire a chance. They won't let us down. We'll hear from them. They'll talk to us. They'll knock at our doors. They'll send us the emails, and they will call us. And when it's done and over with, they have their vote. We should not take that vote away from them. They are smarter, brighter, more clever than we ever thought of. Give them the opportunity. They won't fail us. So remember, when we talk about bipartisanship, maybe we need to find an amendment and look for a judicial review on any other bill we're looking to do. And maybe that might come sooner than we think. Thank you, Mr. President.

SENATOR LARSEN: Thank you, I've been before this legislature and working on these issues for the last twelve years. But I think what we're looking in this amendment to do is to change what is that novel and sacrosanct language that John Adams whom we borrowed from created two hundred years ago. That language stated that the...it is the duty of the legislature, legislators and magistrates, meaning our judges, in all future periods of this government, to cherish the interests of literature and sciences in all seminaries and public schools. We've heard the argument that this amendment is not intended to get the courts out. But, if you look at the language, the language says "the legislature shall have the authority to make reasonable determinations of the content, extent, funding, and delivery of public education". We, as a legislature, already have that responsibility. We do not need it in what is a sacrosanct, as many of us believe, Constitution. We do not need to reassert what is already our authority to make reasonable determinations of content, extent, and funding. This issue has been before the courts six times since 1993, the issue of education funding, and it's been there precisely because we have been under-funding the cost of education for all those years. Many of us spoke to the last education funding plan, concerned that it was unconstitutional, and in fact it was found to be unconstitutional on its face. I'm not a lawyer, but facial, a finding of facial unconstitutionality is apparently so obvious that the funding laws have the

appearance of willful breaches of the Constitution by the legislature. I don't believe it was in that sense willful. I do believe that people here are making their best efforts to come to some resolution of education funding, but I think it truly has been the problem that we have not faced up to our own responsibilities. Not that we need to add our responsibilities into the Constitution, but that we need to face up to them. The word "reasonable" in this amendment, we had a remarkable, a remarkable sage. And it's not very often that our hearings have someone so wise that it almost stops people in their daily hearing process and they listen carefully, and Fred Upton was there the other day to speak to his concerns for this bill. He in fact has been a lawyer, a chairman of the school board. He's written numerous pieces on school funding, and he pointed out that the word reasonable in this amendment is an invitation to litigation. That it will lead to further litigation because everybody's version of reasonable is different. We know that as we argue things every day in this Senate. And I would finally say, that we need to face up to our responsibilities on education funding. We do not need a Constitutional Amendment to clarify that that is our responsibility, and we need to recognize the words of John Adams who wrote, "The dignity and stability of government in all its branches, the morals of the people, and every blessing of society depends so much upon an upright and skillful administration of justice that the judicial power ought to be distinct from both the Legislative and Executive, and independent upon both so that it may be a check upon both and both should be a check upon that." I think we need to listen to those two hundred year old words and take **TAPE CHANGE** and vote this amendment down.

SENATOR GATSAS: Thank you, Mr. President. Senator, if we have the ability to make educational decisions, then why did the court order us to define an adequate education?

SENATOR LARSEN: What the court asked us to do was to identify what is a reasonable education, to list those features of an education that would prepare our young people for the society of today and a strong economy. We were able to do that. We have worked on that in many committees. You and I have worked on committees together. The court is asking us to define that so that we can figure out how we reasonably deliver it to the children of this state.

SENATOR GATSAS: But they did order us to define an adequate education?

SENATOR LARSEN: Yes. It's been repeated in numerous Claremont decisions.

SENATOR GATSAS: Thank you.

SENATOR FOSTER: Thank you, Mr. President. I rise in opposition to the Constitutional Amendment that is before us today. I think we all hold our constitutions in very high regard. They're our most important legal documents. United States Constitution and the New Hampshire Constitution are what make this government work. It's what protects our rights and protects our country, and it's a model for the world, both of our Constitutions. So it is hard to amend, and it's supposed to be hard to amend. It requires 60 percent of the members not even the people who are here, 60 percent of the members, to change. We're not a ballot law state. We don't just put things on the ballot. We can't in fact do that. Only with Constitutional Amendments can we do it, and only with 60 percent of the membership, and I'd suggest to you that that also suggests we're

supposed to be very deliberative when we go and look at a Constitutional Amendment. We're not supposed to decide things fast and quick and without real thought. This Constitutional Amendment, this language, has been before us about fifty hours I think. I never even saw it until yesterday. I didn't know it was out there because I wasn't on the Finance Committee that heard this Constitutional Amendment. A Constitutional Amendment that deals with education, a committee that I am on. I would have thought, if we're dealing with education, it would have gone to the policy committee but, because of the pressure of time, we had to bring it forward right away so we could vote on it today. And what emergency was that? Well, I guess it's Judge Groff's decisions on litigation that was brought by the community I live in and that many of you live in, on a bill that we passed last year that was challenged. So it's an emergency that arises from that, and it's an emergency that I'd suggest was somewhat self-created because frankly, that decision was no surprise to me at all. I expected that to happen. We had communications from our Attorney General's Office that a similar piece of legislation, that in the colloquy on this floor, was said to be basically the same bill. They told us there were problems with it, but we proceeded and passed it anyway, as did the House, and the result that had been predicted happened. So here we are. Now we're told there's really no other solution. There was another solution. There was another bill that this body supported that we're told by that same AG's Office was defensible and that they felt could pass constitutional muster. Wouldn't change our tax structure at all. We chose not to proceed with that one, but we can do that. We can do that in the future. We're not under some emergency that we have to act. There's no time deadline that we've been told that we must act by, and this can be dealt with in the way we've been trying to deal with it, and we can put a constitutional plan forward. So for me, I don't lightly amend the Constitution, and I certainly don't do it on an amendment that I've seen for less than twenty-four hours. So I would ask this body to oppose the Constitutional Amendment. Thank you very much.

SENATOR GATSAS: Question of Senator Foster. Senator Foster, would you believe that this body doesn't have the ability to amend the Constitution? Only the people of the state of New Hampshire have the ability to do that. Would you believe that?

SENATOR FOSTER: I believe that they can do it after we deliberate on it, think about it, and think it's of a worthy language that we would put on the Constitution. The people can only do it after they've asked us to deliberate, and that's the way the process is set up.

SENATOR GATSAS: Follow up. So I guess the answer to your question is, "We aren't amending the Constitution here."

SENATOR FOSTER: We are putting, we are deliberating on a Constitutional Amendment that we think is, if we are going to vote in favor of it, we think it's appropriate and are recommending it to the people to vote in favor. Otherwise, we wouldn't vote for it.

SENATOR EATON: Thank you. As we debated the Constitutional Amendment today, we're reminded of another day last year when the Senate debated education funding, and at that time there were three plans - the Gatsas Plan, the Lynch Plan, and the Morse Plan. The Lynch Plan and Gatsas Plan had two things in common. First, thirteen Senators voted for each of them, and second, they had a lot of the same characteristics that the Superior Court found unconstitutional. Both plans repealed the existing definition and costing of an adequate education, and both plans

eliminated donor towns. I'm mentioning this, not to pick on either plan. I mention this to illustrate the problem with trying to solve education funding. Funding plans that will pass constitutional muster like I think the Morse Plan did, do not distribute state grants as nicely as plans that to use Governor Lynch's words, "direct more state aid to the communities that need it the most." So, in other words, education funding plans that make the most sense to the people and their elected representatives don't make sense to the court. We do need to change that. Uncertainty over education funding is hurting our schools and hurting this state. And to quote Governor Lynch again, "We cannot improve quality if we spend every year re-fighting school funding, if we are constantly changing the rules on communities." No one is saying that we should get the courts out of education funding. That was said today earlier. What we're saying is that we need to change the way future lawsuits are decided. What we're saying is that, if you support the concept of sending more state aid to the needy communities, and if you supported either the Lynch Plan or the Gatsas Plan last year, then you should support a Constitutional Amendment. Thank you.

**SENATOR GATSAS:** Senator Larsen. Senator, just for informational purposes, would you believe that the Constitution has been amended for various things to provide for absentee voting in general elections, to provide that in order to vote or be eligible for office a person must be able to read the English language and to write, to prevent those who are convicted of treason, bribery, willful violation of the election law from voting or holding elective office, to reduce the voting age to eighteen? That was done in 1976. To provide accessibility to all registration and polling places. Those are some of the reasons the Constitution was amended. So that body that you were talking about that we all hold so near and dear to our hearts, people in the last forty years believed that there were reasons why we should change that Constitution, and I certainly think you would agree with me, that changing the age to age eighteen, to allow those people to vote, was a reason to change the Constitution. Wouldn't you agree?

**SENATOR LARSEN:** What you just read me was an expansion of a right, a fundamental right to vote. Oftentimes, expanding expansion of human rights and clarification of human rights is worth going into what is I consider a sacrosanct Constitution. What we are being asked to do today in fact is a restriction on those recommendations and liberties that are guaranteed in the Constitution because it would further add to our problem of finding a responsible way to fund of determining amongst ourselves a responsible way to fund public education in a constitutional way. And I would point out that because I've been here almost as long as the Dean (it feels like it anyway), it wasn't that long ago, in my first years here, that it was determined to be reasonable that we spent \$60 million on a funding formula called Augenblick. And I came in with the bill to fully fund what was the formula that had been agreed upon, and I was told that it was outrageous that I brought that bill in. I was on Senate Education at the time, and I have the Senate Education Chairman on tape calling it outrageous that I had the gall to bring in a bill that would fully fund Augenblick. It would have spent \$120 million, and it would have at least have been us responsibly and reasonably addressing education at the time.

**SENATOR GATSAS:** Follow-up. Would you believe Senator, that that today the state spends roughly \$1 billion, when you add in special education, building aid, and the education funding formula that we have



in place? So certainly the legislature has taken a far leap from that Augenblick formula that you brought forward of \$120 million, and I certainly applaud you for that, but today it's \$1 billion. If we'd passed the Augenblick formula, who knows? We still might only be at \$140 million or \$150 million, and then the students wouldn't be getting the quality that they're getting from the education funding plan that since then we've sent forward. Would you agree?

SENATOR LARSEN: And I would respond that the courts are what made us meet our responsibility, at least in a greater way than we had been, and it is only through that check and balance of the courts that the legislature took action.

SENATOR GATSAS: Follow-up for the last one. So again, the separation of powers where we have the ability to do it here because you didn't look for the courts for your Augenblick formula. You were looking to spend 120. That was sufficient, and you didn't go to the courts for it. So what you're saying is, because the courts came back and said you must spend 820, your Augenblick formula at that time wasn't a good idea?

SENATOR LARSEN: The courts didn't tell us we had to spend \$800 million. The courts told us we had to responsibly fund education in a way that we had determined was constitutional and adequate.

SENATOR GATSAS: Thank you.

SENATOR CLEGG: Thank you. I rise in favor of the amendment, and I'd like to just quote a couple sections of the court case. I'd like you to see that, in Judge Groff's order it says, "The court recognizes, as did Justice Horton in his dissent in Claremont II, that constitutional adequacy is not general adequacy. The former must be determined by a careful reading of our Constitution. The latter may be important to the makers of policy, but it is clear one man's adequacy is another's deficiency. Under our system of government, the elected representatives of the people must strike the balance. The Court agrees with Justice Horton's dissent". It also said "The Supreme Court clearly indicated that the constitutional adequacy does not require a uniform expenditure per pupil throughout the state". But yet here's a case that tells us we didn't do it right. They agree that it's our responsibility, but they're standing here now saying, "We don't agree with your responsibility." Last session, there were two bills on the floor; each got thirteen votes. Both bills devastated the district that I represent. I encouraged Londonderry and the members of New Hampshire Café to move forward because I didn't believe at that time either bill was constitutional, and like the previous speaker, if somebody has doubts, you have my vote to send the other thirteen votes on that plan to the Supreme Court, and let them give us an opinion on whether or not it's even worth bringing back to debate. What I fear most if we don't pass this, is that the court will do for education what it did for redistricting. Any time the Supreme Court sticks its nose into something it knows little about, the results aren't the best. I don't know how many people are still happy with redistricting. I know, if we had the opportunity, many would redistrict again. Do we really want the courts to do the same thing to education? My district, Londonderry, Auburn, and Hudson, should receive the same amount of money per child as anyone else, and I don't like the idea that you think because we make more money in Londonderry than they do in Berlin, that we should receive less money for education, because I'll tell you, it's a lot cheaper to buy a house in Berlin and maintain it than it is in my district. But what we're looking for here, I can argue this all day long, but it's not

about education funding. This amendment's about who gets to determine, who gets to direct, and if we don't do this, what we're saying to the court is, "Go ahead, you did such a great job with redistricting, let's see what you do with education funding." Thank you.

**The question is on adoption of the committee amendment.**

**A roll call was requested by Senator Gatsas.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Morse.**

**The following Senators voted No: Burling, Odell, Gottesman, Foster, Larsen, Letourneau, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 14 - Nays: 10**

**Amendment adopted.**

### PARLIAMENTARY INQUIRY

SENATOR KENNEY: Parliamentary inquiry, Mr. President? If I just voted yes, I was voting on the amendment to this CACR 43? Thank you.

SENATOR BRAGDON ((In the Chair): Yes. I apologize. The adoption of the amendment requires on a majority vote. The amendment passes 14 to 10.

### MOTION TO TABLE

Senator Clegg moved to have CACR 43 laid on the table.

**Adopted.**

### LAIID ON THE TABLE

**CACR 43**, relating to the cost of education. Providing that the legislature shall determine and define the content, extent, and funding of education. Senator Gatsas in the Chair.

**CACR 44**, relating to limits on the taking of private property. Providing that a person's property shall not be taken by eminent domain if the taking is for private use. Finance Committee. Ought to pass, Vote 6-2. Senator Green for the committee.

SENATOR GREEN: Thank you, Mr. President. I move that CACR 44 ought to pass. This legislation will go to the citizens of this state on this November's ballot using simple and direct language that everyone can understand. The CACR precludes the use of eminent domain to take property for the sole purpose of turning it over for private development or private use. Although legislation has passed addressing this issue, that is very, very, also very important, a Constitutional Amendment is needed to prevent judicial determination of eminent domain in the event a statute is interpreted as being inconsistent with the constitutional language. I ask you please to support the Finance Committee's recommendation of ought to pass insuring what happened in *Kelo vs. the City of New London* does not happen here in New Hampshire. Thank you, Mr. President.

**Recess.**

**Out of recess.**

Senator Burling offered a floor amendment.

Sen. Burling, Dist. 5

**March 21, 2006**  
**2006-1489s**  
**06/10**

### Floor Amendment to CACR 44

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

RELATING TO: limits on the taking of private property.

PROVIDING THAT: no person's private real property shall be taken by eminent domain unless it is to be put to public use.

Amend paragraph I of the resolution by replacing it with the following:

I. That the first part of the constitution be amended by inserting after article 12 the following new article:

[Art.] 12-a [Power to Take Property Limited.] No person's private real property shall be taken through the exercise of eminent domain unless that real property is to be put to public use.

Amend paragraph IV of the resolution by replacing it with the following:

IV. That the wording of the question put to the qualified voters shall be:

"Are you in favor of amending the first part of the constitution by inserting a new article 12-a to provide that private property can only be taken as follows:

[Art.] 12-a [Power to Take Property Limited.] No person's private real property shall be taken through the exercise of eminent domain unless that real property is to be put to public use."

**2006-1489s**

### AMENDED ANALYSIS

This constitutional amendment concurrent resolution prohibits the exercise of eminent domain to take a person's private real property unless it is to be put to public use.

SENATOR BURLING: Mr. President, I rise to move a floor amendment 1489s, and I'll try to discuss it if I may while that's being passed out?

SENATOR GATSAS (In the Chair): Certainly, go right ahead.

SENATOR BURLING: I move the adoption of this floor amendment, Mr. President, for a couple of very straightforward reasons. It was my complete privilege to observe, not as a member, but as a Senator watching a group of Senators spend the summer and fall pulling together what I regard as a magnificent piece of legislation relative to the use of eminent domain. That bill, which bears the sponsorship signature of every Senator in this hall, is a truly informed, well thought out, and expressive statement about the use of eminent domain in the state of New Hampshire. I am proud to be a sponsor of it, but even more than that, I'm proud to be associated with the Senators whose work made it possible. And I particularly refer to my friend, the Senator from District 12, who did exceptional work, and I refer of course to the colleague immediately to my left, Senator Green, whose passion for this subject impelled us toward passing that bill. So why does my floor amendment become important? This floor amendment keys to the language of the statute that twenty-four of us sponsored. It reflects the same use of language. It is in fact exactly the right constitutional mirror of the statute that

we've already sent over to the House. The original draft of CACR 44 doesn't do that. It takes a completely different model. And I hate to be a technician about such things, but I worry that, if we pass both, we will simply establish a conflict which may defeat our best efforts to achieve the core values that we tried to achieve in the passage of that statute. That, Mr. President, is why I offer this very simple floor amendment and I hope everyone will understand that what I'm trying to do is speak to my sense of pride in what we did as a body such a short time ago. I understand that that's coming up for a public hearing at the end of March in the House, and if we believe in what we did then, I hope you'll adopt this floor amendment because this language does the trick.

SENATOR FOSTER: Senator Burling, if I might. Senator Burling, so your thought is that the piece of legislation that everybody in here sponsored and voted on, would help a court down the road in legislative history of this whole issue because it will be more work for them to draw upon as opposed to perhaps you know the amendment that didn't go through quite as much work and affect us before, so this tracks that statute and will bring all that to bear?

SENATOR BURLING: Thank you, Senator. That is exactly what I think. Some of you know who know me know that I'm a great railroad buff. If you want to have a railroad, both rails had better be four feet, eight inches apart from each other for the entire length of the track. If one goes left or right, the train winds up in the ditch. This constitutional language should exactly parallel the statutory language and vice versa. Thank you.

SENATOR CLEGG: Senator Burling, if you'll yield.

SENATOR BURLING: I yield.

SENATOR CLEGG: Senator Burling, the piece of legislation that all twenty-four of us sponsored and sent out of here has not been adopted by the House yet. Is that correct?

SENATOR BURLING: Senator, in all candor, I don't know. I have on hearsay a statement that it is to be heard I think in late March, the final week of March.

SENATOR CLEGG: So it's quite possible that the House, having just also voted on a CACR, may very well change the statute to mirror something different and not necessarily pass what we passed. Is that correct?

SENATOR BURLING: Senator, as a former House member, I know full well that that is possible. I just don't think it's advisable because I think what we sent them is awfully good legislation.

SENATOR CLEGG: Thank you, Senator.

SENATOR GREEN: Thank you, Mr. President. I'm going to rise in opposition to the amendment, but let me explain my issue here. I support, and I continue to support SB 287. That's not an issue for me. I think what we're doing here is we're mixing a little bit apples and oranges. I just want to make sure that you understand where I'm coming from. Under the proposed amendment, the key word in here which is different than the original Constitutional Amendment that was suggested that you would support, and that, the real...in that definition, in that amendment it said at the end, unless that real property is to be put to public use. Then you've got to go to the definition of public use, and that's where it gets kind of fuzzy for me in terms of what are we saying is allowable

for eminent domain. In this Constitutional Amendment that you have before you, the original bill that was brought to you today, we've wrestled with this for a long time, and I have been part of an ongoing debate, I shouldn't say debate, discussion, intellectual discussion with the House on what words we should put in a Constitutional Amendment that will resonate with the voters to understand what we're asking them to do. And one of the key components was make sure it's clear and it's in simple language. When you put in language in this amendment, and you put in the word public use, and we define public use in a different way, which is not quite the way in which most people understand it, then we get into this whole issue of public use - public purpose again, and now we get into a debate. The original Constitutional Amendment that was presented to you today is the exact same language that just passed the House. Exactly. Which means that in this discussion process, we were successful working with the House to come up with agreeable language that both the House would present to its body and we would present to ours. That's a process that I think will guarantee that this will be on the ballot in November. If we pass something different now, and they pass something different, we're going to be debating this again between now and the end of this process, and there will be a question of whether or not there will be agreement. I happen to agree and have prior agreement with the members of the House on the language they just passed. I think it's very clear when you say, "No part of a person's property shall be taken by eminent domain and transferred, directly or indirectly, to another person if the taking is for the purpose of private development or other private use of property." We're talking about use of public property to help private individuals or corporations. So I think that's where the dilemma is in my thinking. We've got an agreement with the House right now. We have something exactly the same as the House. I don't believe that we should be trying to recreate something that we'll have to find another agreement on later. And so I would ask you to reject the amendment and pass the original Constitutional Amendment as presented. Thank you, Mr. President.

SENATOR FOSTER: Senator Green?

SENATOR GREEN: Yes.

SENATOR FOSTER: Will we have to have a hearing on the House's CACR and go through this exercise again? I was just curious. If it's the same language.

SENATOR GREEN: Well, I hear, that's the process. But I think, at this point, I'm as the sponsor and I hope enough colleagues of mine feel that this is an important enough issue that we ought to put the stamp of the Senate on this issue now.

SENATOR FOSTER: Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. Of Senator Green?

SENATOR GREEN: Yes.

SENATOR D'ALLESANDRO: Senator Green, if the, if the language in the House is exactly the same as we have, and you've made an agreement with the House, then wouldn't it be advisable to just put this on the table as we have a piece of legislation coming over that's exactly the same, and why duplicate it?

SENATOR GREEN: Well, a lot of times we duplicate things, Mr. Senator, because we as a Senate want our position clearly stated before the House version comes over. We have agreement, but we also have the need for the Senate to present its position on this particular language.

SENATOR D'ALLESANDRO: Thank you, Senator.

SENATOR GOTTESMAN: Thank you, Mr. President. I stand here in somewhat disbelief in where we've come in this process because then Senate President Eaton put together a group of people who worked together to try to study this issue, and I congratulate him for that, and I thank him for putting me on the commission because this has become the most important issue to my constituents and to other constituents throughout the state. Together, Senator Odell and I and the other members of the committee, tried to work on this consistently to come up with something that pleased the most people who had a stake in this particular issue and I think we did. I think, if you look at what came out as the final report from the Senate President's Task Force on Eminent Domain, which was signed by Senator Odell, Senator Clegg, Senator Foster, Senator Green, Senator Bragdon, and myself, we set forth what we wanted to do. We wanted to introduce legislation to clarify that eminent domain takings must be justified by a public use of the land, that the occurrence of public use should be consistent throughout the statute whether referencing takings for economic revitalization or development, public housing for the housing authority as well as the general process governing eminent domain taking. We did that. We came up with a definition that we brought to this body. We had all twenty-four of us, including our long lost friend, Senator Kenney, who was in Iraq at the time, sign on to this bill. It did exactly what we said we were going to do. Why on earth, first of all, I wasn't consulted about any changes, but why on earth would we change our position? What you don't understand, I think that's important is, the House had a position on this particular legislation. We rejected it. We rejected it in the study committee. We felt that our language was correct. And, to quote Senator Green, who says "That we must clearly state the Senate position", which is I think what he just said. We did in SB 287, together, bipartisan, with a smile on our faces. We did what we were charged to do, and now today we want to go to some language that opens the whole thing up. I may be a constitutional lawyer, unlike some of the people here who think that they're not. I think we did our job, and I think that the reason for Senator Burling's amendment is to address that issue. We should be consistent with what we have undertaken to do, and with that consistency, we will prevail. It is the Senate's position and I thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I, too, rise to support the Burling amendment and say that, what Senator Gottesman just articulated was a process, and we all believe in the process. The process was bipartisan in nature. It was a process that took place over an extended period of time so that all of the information required could be gathered, and that study was brought forth as a report. That report was accepted by the Senate, and a piece of legislation was introduced on the fourth day of January of 2006. That piece of legislation was then referred to Public and Municipal Affairs. It had a public hearing. That hearing, the final hearing, was held on February 8<sup>th</sup> in room 103 at 11:00 a. m. The result of that committee hearing was ought to pass. It went to the floor, and it was passed 24-0. There wasn't a dissenting vote. So we upheld the position of the Senate. After due deliberation, after ad-

equate public hearing, and after the sentiment of this body was expressed on the floor of the Senate. A unanimous vote, we don't have many of those. I mean that's truly bipartisan, when it's 24-0. We passed it. It's now over in the House. It'll be heard on March 28<sup>th</sup> at 1:00 p. m. in Room 208, so we all have an opportunity to again express our opinion. But if we're talking about process, bipartisanship, and establishing a position, we have a position, and that position was unanimous. There wasn't one dissenting vote. And I concur with my colleague from Nashua, we ought to support the Senate's position. I mean all of us voted for it. It isn't like we're talking half of us and saying, "These guys are for it, and these guys are against it." It was 24-0. Even George Washington didn't have that kind of support when he was elected President of the United States. There was one dissenting vote. So we did better than George Washington. We did it unanimously. Thank you, Mr. President.

SENATOR GREEN: Thank you, Mr. President. For Senator Burling, please?

SENATOR BURLING: Gladly.

SENATOR GREEN: Senator, I know that you've brought in this amendment. I guess I am reading the original bill, the original language, and then your language, and do you feel that there is anything contrary to the statute that we passed that is contrary to the language that's on the CACR 44 as presented?

SENATOR BURLING: Mr. President, this is very hard for me to say, but yes, and I base my answer on a lot of experience as a draftsman and a lawyer. The language used in the original text of this bill veers so far from the clarity, simplicity, and elegance of what we did in the statute as to be truly appalling in my view, and you know, none of us likes to do this, but I can just imagine the lawsuits that spill out of the passage of the original text. I think we did something extraordinary, even magnificent in the passage of the statute, and I just would hope that we could stick to that, and even better, I hope we could persuade the House to join us in that.

SENATOR GREEN: What in the language of the original bill do you have a problem with?

SENATOR BURLING: In all candor, you would not give me time enough to do what I'm going to do. But I will touch briefly on the kinds of things that concern me. Any time you use the phrase "directly or indirectly", you set up an opportunity for challenge. "No part of a person's property shall be taken by eminent domain and transferred directly or indirectly". Does that mean fee simple? Does it mean by lease? Does it mean by secondary eminent domain? Does it mean by custom? Does it mean by mere rental? What does it mean? What is a transfer as opposed to a permission? What is inferred by this sentence structure? That gets me to that one, and I need a court to get me through that process. "To another person." those three words "To another person." Does that mean another physical human being, a legal entity, does it mean a transfer (we've got problems defining transfer) but to another person? Does it mean that a state exercises eminent domain and takes land which is used for a public purpose and then is transferred from let's say DOT over to DOE? Is that included within the prescription to another person or is it not? I don't know. If the taking is for the purpose of private development or other private use of the property. No taking is for the purpose of private development. The much more difficult question is, can you have a taking for a public purpose which has

private consequence? And I'm sorry, I don't mean to be a pain in the neck, but those are the kinds of... this is why I say the simplicity of the statutory language is so elegant, and all of you did such a good job coming up with it.

SENATOR LARSEN: Personally, personally, I prefer what we did not so long ago when we passed this bill in statute because I believe that there are in fact instances when eminent domain takings, while the public may not be fully informed on those, they are to the public benefit. I prefer to put it in statute as we begin to work through how we address the fears that were given to people about their private property of Kelo in the Kelo decision. So I prefer us to go through the process of hearing what the House has to say about our statutory changes. But it appears that we are in a political process that...where it's politically popular to jump into our Constitution and solve everything by our Constitution. If we're going to do that, I'd like to do it in a way that's clear and simple and people can understand it. I simply have to say that here in Concord, eminent domain was in fact put to good use, and I think the voters here in Concord would have approved, and the city of Concord took the Holiday Inn. I'm sorry, they were trying to take railroad property, and the city was having difficulty, and the railroad company was having difficulty finding clear title. The city of Concord took the railroad property by agreement through the railroad, and sold it to the Holiday Inn. There is an entire redevelopment going on within a block of here, and there's another redevelopment that the city has used within a half a block of here where they've used eminent domain to good purpose. It did not harm any private person's property, but those were instances when the city of Concord benefited from that process. We heard that there've been over 10,000 cases of eminent domain problems nationwide, but New Hampshire has not been a state that's had any. There's been no coercive taking that's been identified for public use in forty years in New Hampshire. Those were some of the things heard in committee. So, if we're going to have to do this because it's needed for people to feel safe that their private property is safe from government taking, let's do it right. Let's do it simply. Let's ask the voters if they believe this is the language. But let's give them the right language, and that is this amendment that you have before you. Thanks.

SENATOR CLEGG: Thank you, Mr. President. I rise in opposition to the amendment, and since we've brought up the Concord issue, in Finance we had a member of the Municipal Association come speak to us, and he used that as an example, used eminent domain because there was some cloud in the title. They weren't sure that the railroad actually owned the land that they were trying to grab, and it's quite possible that someone else owned that property, and the easiest and quickest way was eminent domain because if they had used the more reasonable, by a title, they would have had to advertise. They would have had to actually look to see if there was anybody who owned that piece, and if they'd done that, maybe that person would want to get paid. So they used eminent domain, grabbed it real quick, and sold it to the hotel. Now understand another thing. The Municipal Association in New Hampshire actually filed an amicus in support of the Kelo decision. So the group that supports our municipalities, the group that's supposed to be our municipalities, supported grabbing private property to benefit a private company. Keep that in mind when you look at this. Don't be confused by lawyers standing up saying, "How do you define persons?" because no matter



what we do in here, we create work for lawyers. That's what they do. They go to court and they try to decide what it was we really meant when we said what we said. Thank you, Mr. President.

SENATOR GOTTESMAN: On behalf of all of those lawyers that the Senate supports, I thank you. I have nothing further.

**The question is on adoption of the floor amendment.**

**A roll call was requested by Senator D'Allesandro.**

**Seconded by Senator Estabrook.**

**The following Senators voted Yes: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**Yeas: 8 - Nays: 16**

**Floor amendment failed.**

SENATOR BURLING: Thank you, Mr. President. I owe it to the record to explain why I'm going to vote no, and it is largely because I feel impelled by the last full speech before we just took that last vote. I am a lawyer. I don't make a dime practicing law, and I haven't made a dime practicing law since 1985. I bring my legal skills, whatever they may be, and however you care to value them, right here, on behalf of the 55,000 people of Senate district 5. I regard you as my friends and colleagues, every one of you. You are free to reject whatever perception I may bring to this debate, but I want to assure you I believe with all my heart, that the point I was trying to make about the difficulty in this language currently in the CACR 44, that those concerns are real and substantive. And my hope now is that we find a chance to get to the House and see if we can persuade them as to the wisdom of our original formulation of this problem. I'm very sad to see that this, in the end, became a partisan issue. It isn't. It shouldn't be. And in my view, it won't be. I tried to bring whatever analytical skills and wordsmithing skills I had to the benefit of the Senate position, or what I understood was the Senate position. Perhaps it is that we are simply moving too fast on these issues of state importance to understand what's really going on. Thank you, Mr. President.

SENATOR GOTTESMAN: Thank you, Mr. President. I, too, rise because I feel that we, together, had a lot invested in the language that we adopted. I just want to remind those here that the primary source of the language that we actually adopted came from our own New Hampshire Farm Bureau. That was the best language that was available after looking at everyone's input that was involved in these proceedings. That made sense to all of us. We crafted it a little bit better and we adopted it. I find it very hard to participate in language that I had no authorship in or, you know, I was not consulted about, in light of the fact that it wasn't in any committee that I had any participation in. But I would tell you I am invested in this issue. This is the most important issue to the constituents of the state of New Hampshire and we want to make sure that they have the most protection available under whatever eminent domain procedures we adopt beyond what we presently had. Thank you, Mr. President.

SENATOR CLEGG: Thank you. When I gave my speech, I never meant to belittle anything anyone said. It was an attempt at a little bit of levity. I think that Senator Gottesman said it best when he stood up with a smile and said, "thank you for all your business." This doesn't have to be partisan. There's this document and there's another document coming over. I think we've all worked hard. I think this language is good language. Do I think this is the end of it? No, 'cause our document goes over to the House, their document comes over to the Senate. Right now they're pretty much the same, but it doesn't stop us from talking. So by passing this, we still keep what the Senate intended, and that's that no one loses their property for the benefit of a corporation. And if the government is going to take your property, it has to benefit the public and only the public. Thank you, Mr. President.

**The question is on the committee report of ought to pass.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Estabrook.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Foster, Clegg, Gatsas, Barnes, Martel, Letourneau, Estabrook, Morse, Hassan, Fuller Clark.**

**The following Senators voted No: Burling, Gottesman, Larsen, D'Allesandro.**

**Yeas: 20 - Nays: 4**

**Adopted by the necessary 3/5 vote.**

**Ordered to third reading.**

**SB 268**, raising the age of required attendance of children in school. Finance Committee. Ought to pass with amendment, Vote 6-2. Senator Green for the committee.

**Senate Finance**

**March 20, 2006**

**2006-1459s**

**04/05**

**Amendment to SB 268**

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

**AN ACT** raising the age of required attendance of children in school and establishing a 2-year pilot program for increasing vocational education opportunities in the Manchester and Nashua school districts and making an appropriation therefor.

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

5 Vocational Education Programs; Manchester and Nashua School Districts; Pilot Program. There is hereby established a 2-year pilot program to be conducted in the Manchester and Nashua school districts to identify pupils in those school districts who are interested in vocational education programs and to establish procedures for increasing opportunities for such pupils to participate in vocational education programs. The commissioner of the department of education, or designee, shall work with the superintendents of the Manchester and Nashua school administrative units, the relevant school principals and teachers, and any other individuals who the commissioner and superintendents jointly determine are necessary for accomplishing the purpose of the pilot program.

6 Appropriation. There is hereby appropriated the sum of \$600,000 for the fiscal year ending June 30, 2007 and the sum of \$600,000 for the fiscal year ending June 30, 2008, to the department of education for the purposes of section 5 of this act. The governor shall draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

7 Repeal. The following are repealed:

I. RSA 193:1, IV, relative to withdrawal from school for children who are at least 16 years of age but under 18 years of age.

II. Section 5 of this act, relative to the pilot project in the Manchester and Nashua school districts.

8 Effective Date.

I. Sections 5, 6, and 8 of this act shall take effect January 1, 2007.

II. Paragraph II of section 7 of this act shall take effect January 1, 2009.

III. The remainder of this act shall take effect July 1, 2008.

**2006-1459s**

### AMENDED ANALYSIS

This bill raises from 16 to 18 the age for compulsory school attendance and provides a procedure for a pupil who is at least 16 years of age to obtain an attendance waiver from school. The bill also establishes a 2-year pilot program in the Manchester and Nashua school districts to increase opportunities for interested pupils in those school districts to attend vocational education programs and making an appropriation therefor.

SENATOR GREEN: I want to make sure I get the right bill. 268?

SENATOR GATSAS (In the Chair): 268.

SENATOR GREEN: Thank you. Thank you, Mr. President. I move that Senate Bill 268 ought to pass with amendment. The current statutes provide that an education must be provided until a high school diploma has been received or the pupil is twenty-one, whichever comes first, and I'm referring to RSA 189:1-a. Senate Bill 268 requires that children attend school until age eighteen. While certain students will be determined not to finish school, there are others that will stay in school if they are accommodated. That's what this legislation does. The amendment passed by the Finance Committee establishes a pilot program in Nashua and Manchester to identify students that are interested in vocational education programs and appropriates \$600,000. Nashua and Manchester have been identified because they already have alternative education programs in place. As the pool of dropouts continues to grow, employment opportunities for them are more limited because today's economy requires of the labor force increased literacy, more education, enhanced technical skills, and certainly lifelong learning. Please join me in helping to reduce dropout rate by requiring students to stay in school until age eighteen. Please support the committee recommendation of ought to pass with amendment. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in support of the bill as amended. I think it's a good example of again bipartisan support with regard to a piece of legislation that makes a great deal of sense given what's going on in our economy and given what's going on in the world today. We recognize the fact that traditional schools are not the right thing for everyone, and in the bill alternate programming is suggested. I think that's vital. Having been a teacher, a high school teacher, a college teacher, I understand the merits of the legislation, and certainly understand the merits of the amendment in looking at programs that are

already established and may be driving off of those programs so that other alternatives can be made available to students throughout our state. So it's a good piece of legislation. It's a piece of legislation whose time has come. We're not an agrarian society any longer. We don't have the mills in Manchester where kids would be dropping out of school in order to go to work in a textile mill or a shoe factory. All of that's changed. Education is vital, and this is a reaction to that situation. So I think it's a good piece of legislation. It's something that we should be proud of. Thank you, Mr. President.

SENATOR BARNES: Question of you, Mr. President. I'm sorry I missed the front end of this. I was out getting lunch. If I vote for what is being discussed now, am I voting to have children stay in school, or does this have something to do with the alternative program? What am I voting for? Alternative programs, which I'm firmly in favor of, or keeping kids in school that don't want to be there disrupting the rest of the classroom which I'll vote against?

SENATOR GATSAS (In the Chair): Senator, right now you are voting on the committee amendment.

SENATOR BARNES: What does the committee amendment say?

SENATOR GATSAS (In the Chair): Senator D'Allesandro, do you want to address the committee amendment?

SENATOR D'ALLESANDRO: If I might, Mr. President. Thank you very much. What the committee amendment does, Senator Barnes, is it appropriates \$600,000 to support these alternative programs that are in existence in Manchester and Nashua. The alternative programs also encompass the surrounding communities.

SENATOR BARNES: Thank you, Senator D'Allesandro. You brought my brain waves back into the mix.

SENATOR D'ALLESANDRO: You're welcome, Senator Barnes.

SENATOR BARNES: However, voting for this, I want to vote for the alternative deal. But I can't do it the way you have it because the part I of this bill keeps those kids in school who are disrupting the students and they're the ones that the teachers call me and ask me please don't vote for it, Senator, we don't want those people disrupting our classrooms. So I can vote for alternative; I believe in it. You have a great program in Manchester that I was able to be at. But I cannot vote for keeping kids in school that shouldn't be there that are disrupting their classroom and using people's tax dollars to mess things up.

SENATOR D'ALLESANDRO: If I might address that, I would believe that. Senator Barnes, if you read the text of the bill, what the bill provides for is alternatives for those students, so that the disruptive student who, for some reason can't remain in a traditional environment, has an opportunity to create a program and move outside of that environment. And you're voting for the amendment because what the amendment does is provide some funding for those traditional environments. And if you don't like it, don't vote for it.

SENATOR BARNES: Mr. President, is this divisible? I want to vote for alternatives, but I don't want to vote for the rest of it. I think it's wrong.

SENATOR FULLER CLARK: Thank you very much. Senator D'Allesandro. I'd just like to...is it not true or could you make it clear that, if a stu-

dent wished to pursue, for instance their GED, outside of the traditional classroom, can they do that as opposed to having to remain in a regular full-day curriculum?

SENATOR D'ALLESANDRO: Thank for the question, Senator Clark. Yes. Again, the text of the bill provides for these alternatives and has a process by which these alternatives can be accomplished. Thank you.

SENATOR BRAGDON: Question for Senator D'Allesandro, my good friend and lover of civics.

SENATOR D'ALLESANDRO: I can't wait. I can't wait.

SENATOR BRAGDON: Isn't it true that a student can drop out now and still take a GED? Does this do anything for a student who wants to take a GED? Can he do it now?

SENATOR D'ALLESANDRO: A student, a student can now drop out and take the GED exam when they're sixteen. That's correct. What this does is embellishes that opportunity in terms of providing the opportunity to get educated beyond sixteen in an environment that they choose, which I think is a wonderful opportunity rather than rather than what's available now.

SENATOR BOYCE: Thank you, Mr. President. I rise sort of in opposition to the committee amendment, more in opposition to the underlying bill. I will be bringing forward a floor amendment after this vote that will do exactly what Senator Barnes has suggested. It will put the cart in front of the horse instead of...the horse in front of the cart instead of, as I believe this bill is now, the cart's before the horse. The idea of giving kids an incentive to stay into school I think is a good idea, and that's why I'm basically in favor of the committee amendment. I'm in favor of giving kids a reason to stay. However, if we pass the underlying part of the bill that says they have to stay regardless of whether they want to, I think that there will be some unintended consequences. Some kids will decide that, "Well, I don't have a choice. I do have a choice. I'm going to go to Boston. I'm going to go to New York. I'm going to live on the streets." It may cause some kids to leave, whereas otherwise, they might stay and work at some menial job for a year, and they find out that, "Gosh, I don't like menial jobs. I want something better. To get something better, I got to go back and get that GED." That's what happens now. Kids leave the system. They don't automatically leave the state. But I think that if we pass this, they don't want that truant officer coming after them knocking on the door and saying, "Why aren't you in school?" They're going to leave. They're going to go away. We need to set up the programs first. We need to set up a program to keep the kids here. Then, if it looks like they're all staying in school 'til they're eighteen, the other part of the bill won't be needed anyway. But to say to all the kids in the school that are between sixteen and eighteen, "Unless you live in Manchester or Nashua or I guess maybe Portsmouth, we don't really necessarily have anything to help you out but you got to stay there anyway". I've been in those classrooms. I've listened to kids that were fifteen years and nine months old saying they can't wait for the day that they turn sixteen 'cause they're dropping out. Whether or not their parents let them I don't know, but that's what they said. And, it is disruptive to be in a classroom with kids who don't want to be there and there's not really much you can offer them because there's not outside opportunities in most school systems. It's nice that Manchester, Nashua, and Portsmouth have some alternatives available. Some other schools may have come up with some attrac-

tive alternatives that help. But to simply say okay we're going to change the age requirement today, and maybe if this pilot program works, in a couple years we may have something that we can offer the kids in the other school systems. I think we're doing it backwards. So I would, whether or not this amendment passes or fails, I am intending to bring out a floor amendment which will take out the age requirement change and simply leave in the new program part of it that the Senate Finance Committee sought to put in there. Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. I rise in support of the bill. Everyone knows that I've been on board with this in the beginning because I think it's all about helping kids succeed. I'd like to put something that's been said here today to rest. This bill is not about keeping kids in school who don't want to be in school. There is no way, shape, or form this bill is about that. Neither Senator Green nor myself would ever support such a concept. As a former teacher, I know very well that it's counterproductive to keep kids in school when they don't want to be there. However, what the bill does say, it doesn't say they have to stay in school, what the bill says is that they have to have a plan so that somewhere down the road they will achieve their GED or their high school diploma. They want to take one course next semester at night and go work, fine. But they're going to have a plan that leads to eventual success. And if we come across the occasional student, as we will, who cannot create such a plan, there is a best interest of the child exemption. So we are not forcing students to stay in school with this bill. We are forcing them to build a future for themselves and more importantly even I think, we are forcing schools to meet their needs. I spent most of, not most of, but a good deal of time on Monday visiting the Dover Adult Learning Center, speaking to a combined class of adult basic education students and a teen class there, and it was really quite an enlightenment. Most of what they wanted to talk about was this bill and most of them thought this bill was a great idea. I heard from students there who walked away from school at sixteen, and the school never even contacted them. Doesn't even know that they're not there. Keeps marking them absent. I talked to a forty-three year old man who wishes that at the time he dropped out of school this legislation had been in place and somebody had shown him a path to success. Now he's back getting his GED. Sure, you can go get your GED under the current statute if you want to drop out, but no one is encouraging you to do that. This bill encourages students to succeed. It doesn't put them in little boxes. It doesn't tie them to their seats. It asks the school to step up to the plate, get the guidance counselor, the principal, the parent, and the student together, and figure out what will work for this student. What's wrong with that? This is a bill we should be supporting. It will help our constituents, and it will help the state down the road. Thank you, Mr. President.

SENATOR MARTEL: Thank you, Mr. President. I also rise in support of this legislation. I'm proud to be a co-sponsor of it. We, in Manchester, also in Nashua, but primarily Manchester, because that's where the focus...have the tremendous privilege of having a school especially for children who have a difficult time being educated in a normal environment of the regular school system. They may be troublesome. They may be slow. They may be not interested. They may be talkative. But, when they go to this school, under the rigors of the curriculum that's there and everything that's offered for these students to have, all the different courses they can take, we had the privilege of seeing their eyes glimmer with enthusiasm when we went to visit the tech center at Manchester

Memorial High School. It was incredible. We were allowed to be in the room. There were five of us there including the Governor, the Senate President, the Majority Leader, and also two other Senators besides myself who saw and were able to ask questions directly of these students, asking them whether or not they would ever consider going back to regular school, and most of them who were asked that question boldly stood up and answered said, "No. We are really enjoying what we're doing here and we're able to get something so that we can utilize it in our future. And proudly so we're here." The teachers never even participated in this discussion. That's what I loved about it. They were not under the pressures of teachers. They all left. But the other thing is, is that I had the opportunity firsthand to witness this program with one of my children. One of my children went through three years of high school and decided that he had had enough. After taking a year off, we were able to convince him, with the help of the...not the Superintendent but the man in charge of Education in charge of Jim Schubert who is charge of Education System over there at the tech school, to convince him to come back to the school and to participate in the programs that were being offered to him like others. And my son kind of balked at first. But then he came, and he was involved. He graduated at the age of twenty. Didn't matter to him. He was proud that he finished. He was proud that he was able to accomplish something, a sense of accomplishment he now carries in the military. And he was able to do it with honors, like many of these other students. We need to continue to have institutions like this available for these students who cannot get through school for various reasons. It's a great system, and I fully support it, and thank you very much, Mr. President.

SENATOR LARSEN: I kind of lost track of the fact that we're simply debating the amendment. But the amendment I rise to support. It in fact does what people had hoped the dropout bill would do, which is it establishes alternative programs and a way to see how those alternative programs work. I wished that it included communities other than Manchester and Nashua because there are alternative programs in other parts of the state, but by passing this amendment, we are offering kids in Hooksett, Auburn, Candia, Londonderry, Goffstown, Pelham, Hudson, Amherst, Milford, and Hollis another choice for a way, an alternative school that might work for them. I think it makes sense to pass this amendment. I hope that, through proving that these pilot programs work, that when the bill takes effect, we have some experience that we will be able to use to show that in fact it does help kids get through what we know is the essential steps of graduating from high school.

**Recess.**

**Out of recess.**

**Amendment adopted.**

SENATOR BRAGDON: Thank you, Mr. President. I would like to rise in opposition to Senate Bill 268, and I guess, before I state why, I need to really commend the Governor and all those involved for recognizing the problem that we have in the state of New Hampshire with the dropout rate, and I certainly don't want my opposition to this bill to take any attention away from the need to continue addressing this problem. That being said, I think we've had some tremendous success in the last five years. The dropout rate in New Hampshire has dropped by a third, and it's through efforts like the alternative programs being discussed right

now that have helped that to happen. I serve on a school board. This is my tenth year. We have an excellent alternative program that's worked very well for our students, and I'm a former high school teacher, so I'm certainly very familiar with the situations we have. My opposition to this bill is based on my feeling that the bill will be ineffective in reducing the dropout rate, and ineffective in increasing the graduation rate. In reality, what we want to be dealing with is not the dropout rate. We don't really want to keep people from dropping out more so than we want to get them to graduate. And there's a big difference between those two. Just because someone stays around for another couple classes, it doesn't mean that they graduate. And that's my big concern. I fully support giving kids a reason to stay in school, but I even more so support the need to get them that high school diploma which opens the door for their future. I think there's probably two specific areas that cause me concern. First, I think that we're aiming in the wrong direction here. The primary difference between the bill that we have before us now and current law, is how it affects those who are younger than eighteen. Because currently, if you're eighteen, you can just stop coming. Under this bill, if it passes, if you're eighteen, you just stop coming. So what we're really focusing on is those kids who decide they're going to drop out at age sixteen. That's the target. Looking at some of the numbers by my estimation 93 percent of the dropouts in New Hampshire drop out after the age of sixteen. We are focusing on our attention not at the core part of the problem. 93 percent drop out after the age of sixteen by the numbers I've seen. So let me repeat then the vast majority a vast majority those who drop out of school in New Hampshire do so after they reach the age of eighteen, and this bill has no affect on them. So, one, I think we're aiming at the wrong target and two, I think the data shows that increasing the dropout age is not an effective way to increase the graduation rate, because the goal again, is to graduate, not to avoid dropping out. We've done no one any favors if they end up dropping out at age eighteen without a high school diploma. Some data to support that, according to the U. S. Department of Education "states with high dropout ages are only half as likely to have high graduation rates". Again, a higher dropout age half as likely to have high graduation rates and three times more likely to have low graduation rates. It seems ironic that, by raising the dropout age we actually can decrease the graduation rate. An analysis done at Cornell University, in 1996 both Kansas and Texas increased their dropout ages from sixteen to eighteen, and in both states four years later the graduation rate was lower than it was when they started. In fact, across the nation, there was a very slight decrease in the graduation rate. In these two states, the decrease was ten times more than it was as a national average. The conclusion of the Cornell analysis there seems to be no significantly positive effect of raising the dropout age from sixteen to eighteen, and there may actually be a negative impact. I think we're currently spending around \$25 million across the state on dropout prevention programs. I think we need to focus those on areas that have been proven to be effective and not pursue a concept that seems to have the opposite effect. I know that if we pass this we can go and we can tell our constituents that we've done something to solve the dropout problem. I don't think we have. In talking with teachers and superintendents and principals, I think they all acknowledge there are times when we just need to let this happen. And again, the data shows that, the higher the dropout rate, the lower the graduation rate, and I think what we all want to see is the graduation rate increase. Thank you, Mr. President.



SENATOR GOTTESMAN: Thank you, Mr. President. In all due respect to Senator Bragdon, we must be talking to different teachers because the teachers tell me that they want those kids to have expectations when they're twelve and thirteen years old so that when they get toward fourteen, fifteen, they're not thinking about the day after they're sixteen and pulling out of school. That is our obligation to give them the best opportunity that they can have to complete a full education. I'm not familiar with the statistics, and you know I appreciate Senator Bragdon's detail, but I think we are a unique place, with a unique opportunity, that has been used in other states, that has worked. We recently had a visit by a dignitary from another state who told us about how it was successful in that state, and, you know, we think that this is something, and I'm proud to be a cosponsor of this bill. We think this is something that will make a change, and make a statement to our youth that will allow them to move forward with some positive reinforcement that we, as a community, feel that this is very, very important. Thank you, Mr. President.

SENATOR BRAGDON: Question for Senator Gottesman. Senator Gottesman, I appreciate your concern and agreement with me that we need to be focusing our attention at ages twelve and thirteen. What does this bill do for those who are twelve and thirteen?

SENATOR GOTTESMAN: Well, it makes it a statement that they're not going to be able to be thinking about leaving school at sixteen like their parents or like their uncles did, or like their older brothers and sisters did. It allows them to start thinking about the fact that they have an obligation to themselves, and that we have expectations of them that will allow them to get to a higher level of education, make them competitive on a global market that we're all concerned about, and hopefully give them the confidence to continue either in regular school or in one of these alternative programs.

SENATOR HASSAN: Thank you, Mr. President. I rise in support of the bill and I do so because I think some of our debate about this issue misses the mark. We have a compulsory attendance age right now of sixteen. It was set in 1903. If there are people in this chamber who do not believe there should be any compulsory age for completion of one's education for staying in school, then they should vote against this bill and they should urge the repeal altogether of the sixteen-year-old compulsory attendance limit. But the fact is that limit was set in 1903 when one could support themselves in agriculture or manufacturing at age sixteen and when that was an appropriate age limit given our economy. Our economy today demands a workforce that has graduated from high school, and it is true that our eighteen year olds and all our adults will not be able to participate fully in this economy without a high school diploma. I've spent some time in the Exeter School District where we have alternative programs, an adult education program, a regional vocational program, with teenagers and young adults, some of whom have dropped out of school, and Governor Lynch was with me at the time. These students and their teachers asked us repeatedly about special circumstances where it might be appropriate for somebody under eighteen to take some time away from school and then come back to it. And, as we explained the bill to them, they expressed their support for it understanding that what it did was create a partnership between schools and young people to insure that young people get the high school education that they need to be competitive in today's global economy. To say that this will somehow keep disruptive students in their seats and will greatly disrupt schools, I think misconstrues the bill which addresses possible disruptions and also ignores the

fact that people do not become magically disruptive at age sixteen. We are already dealing with students who have different learning styles, different needs. This bill just supports us continuing to do that to the point where they can get a high school education and be truly competitive and full citizens in today's economy and democracy. Thank you, Mr. President.

SENATOR D'ALLESANDRO: To address a couple things that my colleague Senator Bragdon said, because we're both school board members. I spent ten years on the Manchester School Board and I know that he's an outstanding member of the Milford School Board. So I commend you for that. And I think your point about level of expectation and graduation rate is really what we should focus on. We should be encouraging students to graduate, graduate and get their diploma, and I think we do that really from the beginning. You know, civic involvement begins in kindergarten. It doesn't begin in the 9<sup>th</sup>, 10<sup>th</sup>, or 11<sup>th</sup> grade. It really begins at home, transfers to kindergarten, and then goes through. And by having that sentiment and that mentality in place, I think the encouragement begins there. And, if a student is having a difficulty in what we would call the traditional environment, it's then that these alternatives are being proposed, and this is after consultation with members of the school. And I think the parents get involved in that, too. But sure we're talking about graduation rate. And we're giving more kids an opportunity to do some things that they feel good about, and they feel good about themselves, because they must feel good about themselves if they're going to achieve. And I, too, have been to other high schools. There's a work study program at Goffstown High School, where they put kids out into the community. In Manchester, we have the PASC which is a fine alternative program. We just need more of these, and you're exactly right. Emphasizing the graduation rate with our ultimate goal to have 100 percent of those students who enter, graduate. That may not be achievable, but it's a lofty goal, and it's a goal that we should strive for. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. Senator D'Allesandro, one word out there that I haven't heard mentioned today maybe you could enlighten the body on it because you probably know a lot more about it than I do because of all the years you've served on the board in Manchester. And it's headed up by former Senator Bobby Stephens, and it's called the JNHG program. And those of you who follow the trail on St. Patrick's Day know that he every year, for the last number of years, has a get-together, and the money goes to the JNHG program, and I've been deeply involved with it in the town of Raymond when I was on the school board, very involved with it. But perhaps you could enlighten us about the JNHG program because I think that's a program that sort of fits into what we have here, and I'd appreciate it if you could enlighten the rest of the group.

SENATOR D'ALLESANDRO: Thank you for the question, Senator Barnes. By the way the New England Board of Higher Education recently honored the program, Jobs for New Hampshire Graduates at our annual dinner in Boston as an outstanding contribution to education. The program provides scholarship money and alternative programming for students who have left high school, and we had a wonderful representation from a young woman at Bobby Stephens' get-together telling how this incentive got her to go on to finish her high school education, get the diploma, and then go on to college. It's a great alternative program, and it's a very good model for people to follow. Thank you, Senator Barnes. You're welcome, Senator Barnes.

Senator Boyce offered a floor amendment.

Sen. Boyce, Dist. 4

**March 22, 2006**

**2006-1498s**

**04/10**

### **Floor Amendment to SB 268**

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

**AN ACT** establishing a 2-year pilot program for increasing vocational education opportunities in the Manchester and Nashua school districts and making an appropriation therefor.

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

1 Vocational Education Programs; Manchester and Nashua School Districts; Pilot Program. There is hereby established a 2-year pilot program to be conducted in the Manchester and Nashua school districts to identify pupils in those school districts who are interested in vocational education programs and to establish procedures for increasing opportunities for such pupils to participate in vocational education programs. The commissioner of the department of education, or designee, shall work with the superintendents of the Manchester and Nashua school administrative units, the relevant school principals and teachers, and any other individuals who the commissioner and superintendents jointly determine are necessary for accomplishing the purpose of the pilot program.

2 Appropriation. There is hereby appropriated the sum of \$600,000 for the fiscal year ending June 30, 2007 and the sum of \$600,000 for the fiscal year ending June 30, 2008, to the department of education for the purposes of section 1 of this act. The governor shall draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

3 Repeal. Section 1 of this act, relative to the pilot project in the Manchester and Nashua school districts is repealed.

4 Effective Date.

I. Section 3 of this act shall take effect January 1, 2009.

II. The remainder of this act shall take effect January 1, 2007.

**2006-1498s**

### **AMENDED ANALYSIS**

This bill establishes a 2-year pilot program in the Manchester and Nashua school districts to increase opportunities for interested pupils in those school districts to attend vocational education programs and makes an appropriation therefor.

**SENATOR BOYCE:** Thank you Mr. President. I'd like to offer a floor amendment. I'll speak to it as it's being passed out.

**SENATOR GATSAS (In the Chair):** Floor amendment 1498.

**SENATOR BOYCE:** Thank you. This is essentially the committee's committee amendment. All I've done is make it so that it replaces all of the bill. And so it's an opportunity to establish the pilot program allowing the schools to go forward and attract kids to stay in school until graduation. It gives them a...gives these schools some money to fund these pilot programs, and it allows us to take a couple years and look at how

we can actually increase the graduation rate, and then, if that's still not working, we can then come back and look at other possible ways to do this. But, as I said before, I think we've got the cart before the horse the way this bill was out of committee. So this is the same language that's in the committee amendment, but it simply strips the rest of the bill. So it gives \$600,000 as an appropriation, to be used for vocational education programs in Manchester and Nashua, pilot program, two years to see if they can attract kids to stay in school 'til graduation. And this is what Senator Barnes was asking for I believe, and I hope that I can get some votes on this to pass it along, and I won't take a lot of time discussing it. Thank you.

SENATOR GREEN: Thank you, Mr. President. SB 268 that is currently before you as it came out of the Finance Committee has its structure in place so that these school districts themselves have the same motivation that we have, which is to keep these children in school and have them graduate. I don't...I believe that the schools themselves, with these comments I've heard today about they don't want kids in the classroom disrupting the classroom. I agree with that. The incentive is to find a way to get them out of the classroom and get them into a constructive program that they in turn will stay in the educational system and get their diploma. That's what this bill is all about. This amendment does not do that. This amendment simply says that we're going to appropriate \$600,000 for two pilot programs, and we're going to leave the age of sixteen, and we're not going to worry about those kids from sixteen to eighteen. If they won't stay, fine. They don't want to stay, fine. We're not going to do anything. We're not going to worry about them. I think that we want to, as legislators, see that these children get an education. I think we want to make sure the schools work hard to place children in other alternative programs. If you look at the bill, and you look at the second page of the bill, actually the first page of the actual language. Under the alternatives, "alternative learning shall include age appropriate academic rigor and flexibility to incorporate the pupil's interest and manner of learning". That's about their own educational plan. "These programs may include but are not limited to, such components or combination of components of extended learning opportunities as independent study". They don't have to be in the classroom to do independent study. Private instruction. You don't have to be in the classroom to get private instruction. Performing groups. You don't have to be in the classroom to be part of a performing group. Internships. You don't have to be in the classroom to do an internship. Community service. You don't have to be in the classroom to do that. Apprenticeships. You don't have to be in the classroom to do that. You work with the business community. You may even be making money while it's a work study program. And you know what? We'll even go along with online courses. Again it's going to require that we pay attention to these young people, and that we in turn, expect the schools to track them and develop a plan for them to continue their education. Now that's what this is about. This is not about keeping children sitting in a classroom disrupting the classroom. Because I would not support that. I never have. But it is an opportunity for us to say to ourselves, and to our students, and to our parents, and to our children, that look, we think education is important and it's critical. This amendment strips that whole concept right out of here. So I would rise in opposition to the amendment and ask that we support the bill as originally amended as it came out of the committee. Thank you.

SENATOR FLANDERS: **TAPE INAUDIBLE** and I've listened here for well over an hour, and there's one word that I haven't heard, and I think I should have heard and that's "parents" and the bill does say that, if we're going to do alternative programs, the parents are going to have a say in this because that was most of the calls that I got.

SENATOR GATSAS (In the Chair): That's a question Senator? That was a question?

SENATOR FLANDERS: If I just very briefly, my question is, and I don't know who's going to answer this one. But when I was on the school board way back when we developed the Con Val School, a nine-town school, we spent a great deal of money with the vocational program. All part of the school. They build a house every year and they sold it, and I think that's where we're heading back to, and I think we better be ready for this. If we're going to pass this type of legislation, we've got to go back to that. It almost faded out and I don't know whether Senator D'Allesandro can tell me why we did away with those. I think I know the answer, but my question is that's where we were, that's where we tried to do thirty years ago, and I think we're right back to where we were thirty years ago. Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. I do remember in my remarks mentioning the parents. The parents are definitely an essential ingredient in developing the plan, and their inclusion is in fact, in the bill on page 2, section 2 at the top, "at least one parent or guardian of the pupil is to be involved in the process of developing the alternative plan". I brought in legislation years ago on parental involvement in schools. It's very clear to me and all of the sponsors that the parents need to be involved and that's why we made sure it's in the bill. Thank you.

SENATOR FULLER CLARK: Thank you very much, Mr. President. I rise in opposition to the amendment that is before us. I believe that it is critical that we create a broad framework that makes a statement from this legislative body about the significance and importance of education through your high school years. And what this amendment would do is it would remove those principles, remove that statement, remove the structure within which students are now going to be provided with a variety of alternatives to move forward. I, frankly, would be embarrassed to have this legislature vote against this bill because of the significant message and the statement that we make in the beginning of the 21<sup>st</sup> century, and I'm talking about the total bill, in terms of knowing that education is the key **TAPE CHANGE** of success in the future and that it's a high school diploma and a high school experience that is going to make it possible. All of the tools are in place now to give these students a support system under the framework of this legislation, to help them move forward and get that diploma. And, if we do not pass this legislation it's like we're saying to the rest of the public out there, and to our students, and to that generation, that it's okay to drop out at sixteen. It is not okay to drop out at sixteen and all of us know that. So I urge you to defeat this amendment and move forward with the legislation because it creates that framework where we can give students a greater opportunity to experience success and move forward and be contributing members of our society.

**Floor amendment failed.**

**The question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Martel.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Burling, Green, Odell, Roberge, Gottesman, Foster, Clegg, Larsen, Gatsas, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**The following Senators voted No: Boyce, Flanders, Eaton, Bragdon, Barnes, Letourneau, Morse.**

**Yeas: 17 - Nays: 7**

**Adopted.**

**Ordered to third reading.**

SENATOR GATSAS (In the Chair): This is the order that we will proceed in to see if we can't get it to the 3:00 hour. Is Senate Bill 374, in the Finance Addendum, Senate Bill 397, Senate Bill 407. We will then move to the regular calendar, Senate Bill 273, Senate Bill 317, Senate Bill 385 and House Bill 1370.

SENATOR BARNES: I was looking for that bill that we talked about earlier on the Purple Heart. Is that one of the bills you mentioned, because there's been a request for a roll call on that and I don't know whether you've got that on your list or not?

SENATOR GATSAS (In the Chair): HJR 23?

SENATOR BARNES: That's on your list? Is it? In talking to Senator Kenney and a few of the other folks, we would like all twenty-four of us to be on board on that one.

SENATOR GATSAS (In the Chair): We'll add that to the list, Senator.

SENATOR BARNES: Thank you.

SENATOR LARSEN: Mr. President?

SENATOR GATSAS (In the Chair): Yes.

SENATOR LARSEN: I understand that we skipped over Senate Bill 403 for a roll call. That's on the bottom of page five in Public Affairs.

SENATOR GATSAS (In the Chair): I apologize, Senator. I'll add that to the list. That will come in after the HJR. So that's Senate Bill 403.

SENATOR HASSAN: I believe there is no interest in roll calling 273, Mr. President.

SENATOR GATSAS (In the Chair): We'll take 273 off the list. The list before us without objection.

SENATOR D'ALLESANDRO: Would you go over those again please?

SENATOR GATSAS (In the Chair): Yes. Certainly. We will start again. In the Addendum Calendar, Senate Bill 374, Senate Bill 397, Senate Bill 407. In the regular calendar, Senate Bill 317 in Finance, Senate Bill 385 in Finance, House Bill 1370 in Finance, HJR 7...23, I'm sorry. House Bill 403. Senate Bill 403 in Public and Municipal. The HJR 23 is in Transportation.

**SB 374-FN**, relative to the healthy kids corporation. Finance Committee. Ought to pass with amendment, Vote 5-3. Senator Morse for the committee.

Senate Finance  
 March 20, 2006  
 2006-1465s  
 05/04

### Amendment to SB 374-FN

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

AN ACT relative to the state children's health insurance program.

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

1 Purpose. The purpose of this act is to ensure the best and highest utilization of the state children's health insurance program resources for the benefit of the children of New Hampshire. It is the intent of the general court that every eligible child be given the opportunity to fully utilize the benefits of this program in order to promote the health and well being of our youngest citizens.

2 Department of Health and Human Services; Healthy Kids Silver Program; Fiscal Committee Approval Required for Expenditures Above Budgeted Amounts. Amend 2005, 117:119 to read as follows:

177:119 Department of Health and Human Services; Healthy Kids Silver Program; Cap. Notwithstanding any other provision of law, for the biennium [~~beginning July 1, 2005 and continuing thereafter~~] ***ending June 30, 2007***, the department of health and human services shall not increase expenditures in approved budgets for the Healthy Kids Silver Program without prior approval [~~and additional appropriations from~~] ***of the fiscal committee of the general court. If the commissioner of the department of health and human services projects that expenditures for the Healthy Kids Silver Program will exceed the department's current appropriation for the Healthy Kids Silver Program, the commissioner may recommend rate reductions in any program and such other program changes elsewhere in the department as deemed necessary to offset the amount of any such deficit. The commissioner shall submit to the fiscal committee of the general court and to the finance committees of the house and the senate any such proposed changes, which shall be subject to the prior approval of the fiscal committee of the general court.***

3 New Paragraph; State Children's Health Insurance Program. Amend RSA 126-A:5 by inserting after paragraph XIII the following new paragraph:

XIV.(a) Notwithstanding any provision of law to the contrary, beginning July 1, 2007, the commissioner shall implement the state children's health insurance program through a contract, which shall be renewed biennially. The commissioner shall have the authority to adopt rules, pursuant to RSA 541-A, to the extent necessary to facilitate the purposes of this paragraph.

(b) The contract shall include the following information, which the commissioner shall submit to the legislature by March 1 of each odd-numbered year for inclusion in the state's biennial operating budget:

(1) The per-member per-month rate for the health and dental insurance to be paid according to the contract; and

(2) Any other costs associated with the contract that will impact the state operating budget.

(c) Notwithstanding any provision of law to the contrary, the commissioner, in consultation with the commissioner of administrative ser-

vices, may implement a self-insured health plan for children who receive health insurance coverage under the state children's health insurance program.

4 Healthy Kids Corporation. Notwithstanding RSA 126-A:5, XIV, as inserted by section 2 of this act, or any other provision of law to the contrary, the commissioner shall use the healthy kids corporation as the sole source provider of administrative and outreach services for the state children's health insurance program and premium billing and collection services for the Medicaid for Employed Adults with Disabilities (MEAD) program until July 1, 2007. As part of the premium reconciliation process, the commissioner may allow the healthy kids corporation to retain up to the sum of \$100,000 for fiscal year 2006.

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

**2006-1465s**

### AMENDED ANALYSIS

This bill:

I. Requires fiscal committee approval for expenditures above budgeted amounts for the Health Kids Silver Program.

II. Requires the department of health and human services to implement the state children's health insurance program through a contract.

III. Requires use of the healthy kids corporation as the sole provider of administrative and outreach services for the state children's health insurance program and premium billing and collection services for the Medicaid for Employed Adults with Disabilities program until July 1, 2007.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 374 ought to pass with amendment. The amendment adopted by the Finance Committee gives the Commissioner of Health and Human Services the ability to implement the state's children's health insurance program through a contract on a biennial basis. This will provide more predictability as the costs for the program are in constant flux. This gives the Commissioner the ability to increase expenditures for the Healthy Kids Program and increase the rate or the per member per month payment that the Department pays to Healthy Kids for the program. The amendment also provides the Commissioner with the flexibility, if expenditures for Healthy Kids exceed appropriations, the Commissioner can recommend a rate reduction in other areas of the Department to offset the deficit with the approval of the Fiscal Committee. The intent is to keep Healthy Kids whole. The Finance Committee asks for your support for the motion of ought to pass with amendment.

SENATOR LARSEN: I rise to oppose the committee amendment. Healthy Kids is a program that works. Healthy Kids is a program that has covered 71,000 New Hampshire children with health insurance who would otherwise be uninsured. The original bill started out as a bill attempting to do something very simple. We were trying to avoid increasing family premiums on kids in the Healthy Kids program. We we're trying to say that the legislature meant what it said when it committed monies in its budget for Healthy Kids. Unfortunately, this intent, the intent of this bill, has been misunderstood. It's also unfortunate that the amendment leaves \$150,000 of federal funds on the table that could be used to insure kids in New Hampshire. It's important for the record to reflect that the Senate Finance Committee expressed its strong intent to fund every eligible child in the Healthy Kids Silver Program, and I applaud Senate Finance for doing that. But I also hope that the Commissioner



will follow through with his commitment to expend the additional \$180,000 in fiscal year '07 that the legislature appropriated for outreach, so we can continue to find and enroll children. We need to understand that this amendment does not provide the funding for '07 that we know will be necessary. This amendment gives more latitude to the Commissioner to find additional funds, but we need to be careful because the place we're telling the Commissioner he can find those additional funds is from possible cuts in other programs in his Department. As a board member, and I'm assigned by the Senate President to be a member of Healthy Kids, I can attest to the integrity of the Healthy Kids Corporation. The organization takes its mission to heart, and its work diligently to foster one of the most successful public-private partnerships in the history of New Hampshire, something that has successfully covered 71,000 kids, and we hope to cover them all, all those who are uninsured. As a result, New Hampshire's the third best state for covering kids. It's important that, in the process of our trying to fund Healthy Kids, we don't disparage or destroy what is a wonderfully, successful program for New Hampshire. I urge you to vote no on the amendment. It's important for the kids of this state that we continue to operate this program on a non-profit basis. Thank you.

SENATOR BARNES: Thank you, Mr. President. I laud Senator Larsen for all her work that she's done for Healthy Kids. I have backed Healthy Kids, and actually Healthy Kids is a good name for it, but there's something else that goes along with Healthy Kids. It's healthy parents. It's parents, and I use the word "healthy", peace of mind for the parents that have children that don't have the insurance. So it's not just Healthy Kids; it's self-esteem, and I've seen this firsthand. That's why I have always been in favor of this program. Maybe not always, but in the last couple of years when my personal experience came forward. Last week I voted against the amendment. Senator Gatsas, our Senate President, was nice enough to try to set up a meeting with a number of us this past Monday. He got me out of bed early, and I was up here at 8:00, and Commissioner Stephen was there. Commissioner Stephen, and I'm saying this for the record, I've known the Commissioner for a number of years. I backed him when he ran for Congress the last time. I know him pretty well. I've traveled with him, and I've spent time with him. I think he is an honest, upright individual. I have never had any qualms about what he has told me. It has always come out the way he has said. Having said that, he guaranteed to me that there would be money there; there would be no child left out of this program. Those were his words. I said, "Now this is very important, Commissioner." I sat here this past week and voted against the amendment because there was a concern about the money, and your concerns are legitimate, Senator. I'm not saying they aren't, and I also know that you were tried to be reached for this meeting and for some reason you didn't get the message, and I understand that happens to me quite often, too, up here. But the bottom line is, Commissioner Stephen, Commissioner of Health and Human Services, which is our largest department with about what 52 percent of the budget, Chuck, maybe 51 percent of the budget in that area? Here's a man that we have responsible for all of that money that we have here in this state. I trust him, and when he said, "Jack, (actually he didn't say Jack, he keeps calling me Senator darn it all, I want him to call me Jack, but he didn't) I guarantee you that my Department will have the money, and there will be no child left out of this program." I looked him in the eyes. I shook his hand, and I believe what the man said. Having said that, I'm

going to go along with what the Commissioner told me. And with that, I'll sit down and hope my colleagues, if you have any questions on this you've already talked to the Commissioner. If you haven't, please talk to him after this is over so you'll maybe feel a little bit better about the program if it goes the way a different way than what you might wish.

SENATOR ESTABROOK: Thank you, Mr. President. Thank you, Senator Barnes. It's interesting to know about that conversation. I wondered if you could tell me whether you discussed at all whether the program structure would remain intact in terms of the health benefits that it provides, and the co-payments that are required, or whether there are changes anticipated in the program even though all children will be covered? What will they be covered by?

SENATOR BARNES: Okay, Senator, I got to tell you this. I was only one of the people in the meeting, and I didn't bring that up with the Commissioner. My concern was children and parents not having the coverage for their children, so that was my main thrust. I wanted to make sure that all the children in this state that needed it, and the parents that needed it for their children, would be taken care of. So, those were my questions.

SENATOR ESTABROOK: Follow-up? Thank you, Mr. President. Yes, I know. That's what I mean. I'm glad you shared that because we all share an interest in having every child insured. My question though is to what extent does the Commissioner guarantee that they would be insured? What would the program look like? What benefits would be provided? Would they be the same as they are today, or not?

SENATOR BARNES: My understanding is from the Commissioner all the children in this state that need the program will be covered unless they get, my assumption, it's an assumption I'm saying to you now, please remember it's not what the Commissioner is saying. I'm assuming his comments were the program as it stands now, that's what will be there.

SENATOR ESTABROOK: Thank you, Senator.

SENATOR MARTEL: Thank you very much, Mr. President. I want to thank Senator Larsen also Senator Barnes for being so involved with the Healthy Kids Program. I had the discussion with the Commissioner yesterday, and I brought him **TAPE INAUDIBLE** I said "Commissioner, I need to speak with you regarding Healthy Kids, couldn't attend that meeting on Monday." And I said, "We need to make sure that all the children in the state of New Hampshire will be covered whatever cost within reason of the budget." The Commissioner looked at me, and he said, "Senator, I will cover the children for FY '06 and '07, and we will then debate how much money we will apply to the program in the future years." Now I see this program growing in future years, and I'm very, very happy about that. I'm not happy because children need the program because they can't get other help through other health insurance. But, if they're on this program, I'm very happy that they're able and their families are able to get coverage for those children, and he guaranteed that. And I looked at the numbers here in the...if you look at the methodology of the on the special note, fiscal note I mean. It states that 65 percent of the funds, okay, of the appropriation is funded by the federal government, and then the 35 percent will be appropriated for the state, from the state, meaning that there's a total of in excess of \$10 million, okay, which is going to be available to be administered for kids for Healthy Kids Corporation over a period of time. So I am convinced

that our children will be covered to the fullest extent and that the Governor, I mean excuse me, the Commissioner, has committed to that, and his word is can't say golden because I don't want to say that, but his word is very important to all of us. He's kept his word, and the work he's done as Commissioner. And I thank you, Mr. President.

**SENATOR MORSE:** Thank you, Mr. President. The I can assure this body that concerns over the issues that Senator Estabrook brought up are not what we were debating in Finance. I've heard those same concerns before and I'm sure they're going to come up in the future, and they'll come up in futures, and futures, and futures as people debate that program, which is natural. But what's come up here is about Finance, and let me just point out something from last week and how dramatically different it is this week. Last week, I was asked to make an appropriation, and I understand that. I was asked to make a general fund appropriation. And, at the time, it was a million dollars, which was right. At the time that's what I had heard. Then we met with the Commissioner on Monday, and it's now \$600,000. My point being is, that Department has these flexibilities all the time, all the time. It's on usage. In this case it had to do with prices, which is one major part of this legislation. We should be getting quotes for two years because we were looking at in the budget, somewhere like \$112 in '06 and \$128 I think in '07. That went to \$117 in '06 and as high as, when they were looking for a million dollars, as \$147 to cover the same per member per month in '07. You can't budget like that. It makes it awful difficult. So this legislation was just working to fix that. Along with it was the concern that, if there's a shortage of money, is something going to happen that the insurance policies aren't going to be paid for? We've satisfied that by saying he can transfer money and come to Fiscal. We even went a step further in Finance. I believe every Finance member that was there nodded their head and said yes. If the Commissioner comes before Finance, God willing we're all there next year, and says, "I have a shortage of money, and I can't transfer it to make this happen", that we will support him in putting up general fund dollars. Nobody walked away from that obligation. So I think this is a good piece of legislation. It's going to help in future years with budgeting, and do I think there'll be discussions about Healthy Kids? There's always going to be discussions about programs we create. It's not what was done in this bill. Thank you.

**The question is on the adoption of the committee amendment.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**The following Senators voted No: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 16 - Nays: 8**

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 397-FN-A**, establishing a temporary energy tax credit against the business enterprise tax. Finance Committee. Ought to pass, Vote 5-3. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 397 ought to pass. The state often reaches out to the public in times of fiscal need through increased taxes. Likewise, in times when revenues have a higher than expected return, the state should give the money back to the taxpayers where it rightfully belongs. This legislation does that. Although my first preference would be to lower the business enterprise tax, I am told that we would it would be very difficult to manage at this point. This legislation, however, provides a one-time temporary reduction in the BET up to \$500. The credit amount depends on the fuel and energy consumption and how much was paid towards the BET. The Finance Committee asks for your support in giving back to the small businesses by voting of ought to pass. I would like to speak.

### PARLIAMENTARY INQUIRY

SENATOR D'ALLESANDRO: Mr. President, parliamentary inquiry. I have an amendment to offer. Senator Morse wish to speak, do I offer my amendment after he speaks? Well, he requested to speak first. Then I defer to the Senator.

SENATOR GATSAS (In the Chair): It's further discussion. You want to bring your amendment, go ahead and then Senator Morse can speak.

SENATOR D'ALLESANDRO: Okay.

Senator D'Allesandro offered a floor amendment.

Sen. D'Allesandro, Dist. 20

**March 22, 2006**

**2006-1501s**

**09/01**

### Floor Amendment to SB 397-FN-A

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

AN ACT relative to an exemption for certain new businesses from the business enterprise tax.

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

1 Business Enterprise Tax; Definition of Business Enterprise; Exemption for Certain New Businesses. Amend RSA 77-E:1, III to read as follows:

III. "Business enterprise" means any profit or nonprofit enterprise or organization, whether corporation, partnership, limited liability company, proprietorship, association, trust, business trust, real estate trust or other form of organization engaged in or carrying on any business activity within this state, except such enterprises as are expressly made exempt from income taxation under section 501(c)(3) of the United States Internal Revenue Code to the extent such enterprise does not engage in any business activity constituting unrelated business activity as defined by section 513 of the United States Internal Revenue Code. Each business enterprise under this definition shall be subject to the tax imposed under RSA 77-E as a separate entity except that trusts treated as grantor trusts under section 671 of the United States Internal Revenue Code shall be included in the return of their owners, and such owners shall be sub-

ject to the tax thereon to the extent any such owners would be considered a business enterprise hereunder notwithstanding the existence of the trust. The use of consolidated returns as defined in the United States Internal Revenue Code or of combined reporting is not permitted. Notwithstanding any other provision of this paragraph, an enterprise shall not be characterized as a business enterprise and shall be excluded from taxation at the entity level if it is a qualified investment company as defined in RSA 77-E:1, XIV. ***A business enterprise which has not conducted any business activity in this state on or before July 1, 2005 shall, for 2 consecutive taxable periods after beginning to conduct business activity in this state, be exempt from taxation up to \$500 under this chapter for each taxable period in which the business activity conducted in this state does not realize a profit.***

2 Effective Date. This act shall take effect July 1, 2006.

2006-1501s

#### AMENDED ANALYSIS

This bill exempts certain new businesses from the business enterprise tax for up to \$500.

SENATOR GATSAS (In the Chair): You're offering 1501? Speak to your amendment as it's being passed out.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I, too, share Senator Morse's concerns about the small business person, because I think it's very, very important, and we know that the small business person, as well as our other businesses, have been inflicted with extra costs having to do with fuel. But I think it's very important that we not only address this situation in terms of helping people, but we promulgate what I believe is good tax policy, and good tax policy provides something that's needed as it remains an incentive for that business to stay in business. So the context of my amendment says that a business enterprise which has not conducted any business activity in the state on or before July 1, 2005 shall, for two consecutive taxable periods, after beginning to conduct business actively in this state, be exempt from taxation up to \$500 under this chapter for each taxable period in which the business activity conducted in this state does not realize a profit. I think that's very important, because these are businesses, start-up businesses, that pay a tax without recognizing a profit because they pay the BET, and this exemption is targeted to the BET. So what we're doing is helping people who aren't making a profit but who pay a tax and have had that burden on them, to relieve some of that burden up to the \$500. I think that's good tax policy because we're helping those who need our help the most. They're not making a profit. They're here basically in incubator status to try to create jobs and try to get the economy moving, and we're helping them up to \$500. Good tax policy. That's consistent with what we've done in Finance, and I think consistent with how we run the state. It's a conservative modality because it helps those who need the help the most. They're not making any money. They're paying a tax. They get an exemption of up to \$500, which was the premise that the original legislation was based on. But I think we're addressing this situation to the most neediest businesses. Thank you, Mr. President.

SENATOR CLEGG: Senator D'Allesandro, in my community, there was a group that wanted to put in a driving range in a certain parcel of land, but they couldn't because zoning didn't allow them, but it did allow them

if they were non-profit. So they set up a non-profit corporation and they got their driving range in. They made a few hundred thousand dollars, and they took it all as salary so they had no profit. Would they be entitled to the credit under your amendment, that type of business?

SENATOR D'ALLESANDRO: Sure, because this is applied to the business enterprise tax which you pay regardless. Now the fact that you didn't make a profit, that's a decision that the Department of Revenue Administration would make. We've given him that latitude in many of these situations.

SENATOR CLEGG: But it doesn't matter whether they make a half a million dollars in salary. As long as there was no profit in the corporation, they could get this \$500 credit, but my mom and pop grocery store down the street that hopefully makes a little bit of a profit, wouldn't be entitled to that \$500 credit under your amendment?

SENATOR D'ALLESANDRO: Well, I think I'd need a clarification of that from the Department of Revenue Administration because, whether you're making a profit or not, you pay the business enterprise tax.

SENATOR CLEGG: But Senator, if I'm...I just want to be...follow-up. I just want to be clear that your amendment would only grant the \$500 credit to a corporation or entity that didn't make a profit.

SENATOR D'ALLESANDRO: Well, what it follows is the current law having to do with the business enterprise tax, and it talks about taxation as a qualified investment as defined in RSA 77-E-1 XIV. So if indeed that's the case, I guess I defer to the Revenue Administration to make that decision.

SENATOR CLEGG: Thank you, sir.

SENATOR D'ALLESANDRO: Thank you, Senator Clegg.

SENATOR BURLING: Thank you. Would the Senator yield?

SENATOR D'ALLESANDRO: Yes. Thank you.

SENATOR BURLING: In fact, Senator, as I heard you describe this and as I looked at the text, what you're really doing is you're targeting this return of tax revenue, if you will, to start-ups. And what you didn't mention in your response to Senator Clegg was the essential element of a business that is new to New Hampshire as of 2005. Isn't that really the impetus for doing this?

SENATOR D'ALLESANDRO: That's correct. That's correct. Thank you, Senator.

SENATOR BARNES: Thank you, Mr. President. What about the folks that are out there that aren't making money, that aren't new, that have been there for before this time period that you have? What are we doing to them because there are a number of them out there? I know a couple of them. So, what does your amendment do for them? It doesn't look like it does anything.

SENATOR D'ALLESANDRO: That's correct, Senator Barnes. I think what I'm looking at is good tax policy for the state. In my opinion, this is good tax policy.

SENATOR BARNES: Thank you, Senator.

SENATOR D'ALLESANDRO: You're welcome, Senator Barnes.

SENATOR GREEN: Of Senator D'Allesandro. Actually I have two, Mr. President, but I'll take one at a time. As I'm looking at this, we have a fiscal note on the bill, original bill. You have a fiscal note on this, Senator. Do you have an idea what the fiscal impact is?

SENATOR D'ALLESANDRO: I think the fiscal impact would be something like this, Senator. We tried to go to the Secretary, or we did go to the Secretary of State's Office and tried to find out the number of new start-up businesses that occurred in one year, and the number of people who asked for trade names was around 16,000. So if you took that as it is, it would be about a half a million dollars.

SENATOR GREEN: Second question, Mr. President. Thank you. As I'm reading this, I'm trying to figure out if you do it the way you're doing it, all the other businesses that this original bill gives the \$500 credit to, they would not get the credit. Is that correct?

SENATOR D'ALLESANDRO: That's correct, Senator.

SENATOR GREEN: So we're only...we're limiting the credit to just start-ups for the first two years?

SENATOR D'ALLESANDRO: That's correct.

SENATOR GREEN: Okay. Thank you.

SENATOR D'ALLESANDRO: Thank you, Senator.

SENATOR MORSE: Thank you, Mr. President. First of all let me thank Senator D'Allesandro for coming around to looking at tax credits because I think it's a great idea. I just think we should go all the way, and I'd like to explain why, because I just didn't do this and say we're going to give back 17 or 18 million. The Commissioner testified to 17 million. The fiscal note says 18 million. Fact is, we were talking in surplus in '06 and '07. We're going to deal with '05 a little later today, but we were talking in surplus in '06 and '07 of somewhere north of \$40 million. Well this bill reduces revenues, and a bill we're going to hear that Senator Odell introduced reduces revenues. Between the two of them, they reduce revenues by \$19 million. The Senate, and I hope Senator Barnes is listening, has had spending if we go through today and approve everything, except for the tobacco bill from Senator Clegg, if we approve everything, we've spent \$13 million of which ten of that is the money we put in the energy bill of which we know we only use \$5.6 or \$5.7 million. The rest of it we're going to use for the departments. Having said that, you're at \$32 million. Senator D'Allesandro's going to present to you that '06 and '07 have 42 million in surplus, and that's being conservative, which is the way we want to be. So the Senate's position is to use revenue reductions and expenses at \$32 million. Forty-two million is what we have in surplus. There's a \$10 million cushion there for what is coming over from the House. I think that's pretty prudent. I debated in my mind, up until when we had this meeting Monday, whether or not to go forward with this. We were waiting for numbers from Representative Major, which you'll all have a copy of today because I understand you're getting a copy, and they're out there. So I don't think we're putting this state in any jeopardy by doing this. What I do believe is we're giving the money back to the people that paid it. Let them decide if they want to take their \$500 and invest it in some charity, invest it in some land organization, pay a bill at their business that they might have accrued over the winter because of the new prices in heating oil. I think that's prudent, and we've done it all in a fashion that makes sense. We were slow about it. We were

methodical. It adds up. It leaves \$10 million on the table. I'm sure people are going to want to spend it, but that debate will still go on the rest of the season. I'd appreciate your support. I don't believe Senator D'Allesandro's amendment goes far enough, and I'd vote against that. Thank you.

SENATOR BOYCE: I rise in opposition to the amendment, not that I'm against new businesses and start-ups, but because I'm looking at where this surplus is that we have, where it came from. And I understand that the largest chunk of it came from repatriation which is where the federal government gave a tax advantage to some corporations to acknowledge that they were in fact United States corporations and, if they brought their money back home rather than keep it offshore somewhere, there were some advantages to them. In doing that, it meant that they had to pay some taxes to the state of New Hampshire. So this chunk of money came in. It's one-time money. Now that's money that was not paid by some corporations that were doing business in the state. Now it has been. We've been taxing all the corporations in the state, all the private businesses, all the mom and pops. We tax them all, and we've been doing that all along. So, here's this chunk of money that hadn't been taxed because they were hiding it from us offshore. Whether that's legitimate or not, I don't care. They were doing it. We now have this money that we didn't get before. It's replacing money that was taxed from the businesses in the past. I think it's only fair that we create a mechanism that gives it back to the businesses. Now the BET is, I guess you would call it a regressive tax in that it taxes basically every dollar that comes into a business. It's essentially a sales tax that applies to everything, even services. So when a business is doing business, they're paying this tax on all the money that comes across their desk. Even if they go out and get a loan, they have to pay this money on the loan. So it seems to me that the logical place to give this money back to the taxpayers is to the group of the taxpayers that actually were being taxed more because another group weren't being taxed. It seems just fair to me that a business tax windfall, instead of just spending it on things that we don't necessarily need to do, we should give it back to the taxpayers, and this is a good way to do it. We give them an incentive to make their business more energy..energy efficient or whatever; it's an energy tax credit. So we have a logical basis for giving it back to that group of businesses, not just the small group of people who happened to start up a new business this year or last year, but people who have been in business and have been taxed more than they ought to because some businesses were not being taxed. So I am against the amendment. I'm for the bill. Thank you.

SENATOR GOTTESMAN: Question of Senator Morse. Senator Morse, we've heard a lot today about where these monies come from. But the monies that we're talking about, aren't they from the general fund at this point in time?

SENATOR MORSE: Yes.

SENATOR GOTTESMAN: And follow-up please? And general fund is not only the result of the payment of taxes by businesses, but by individuals as well. Isn't that correct?

SENATOR MORSE: Yes, but I think Senator Boyce pointed out where the overages are coming from and they're coming from businesses.

SENATOR GOTTESMAN: Follow-up? And, Senator Morse, knowing how much this Senate loves law firms and lawyers, I want to ask you. My law



firm, which is a small law firm or Senator Foster's law firm which is a huge law firm, and every other business or profession in this state that is functioning well right now would be entitled to apply for this \$500 credit. Isn't that correct?

SENATOR MORSE: Yes, small or large.

SENATOR GOTTESMAN: Okay, and one last follow-up. And, do you think it would be make more sense to help businesses that are starting up in the state of New Hampshire who have struggles as new businesses as opposed to those who are settled and substantial in this state?

SENATOR MORSE: As a lawyer, that's leading me down a path. Let me explain the path that I came down when I did this. The fact is we voted back in November to give \$10 million to help those that needed it in the state of New Hampshire along with whatever extra federal money was coming into the state in oil. We also voted to advance \$3 million on electric needs. The next logical step was to help the small businessman more than the large businessman. That's why we chose to do it this way, but the \$500 obviously to a small businessman is much greater. We chose to help them with their energy needs by putting this legislation in place. I hope that answers your question.

SENATOR GOTTESMAN: I take that as a yes. Do I take that as a yes that it would be more helpful to a smaller businessman who's starting out than one of these established businesses?

SENATOR MORSE: Yes, definitely.

SENATOR GOTTESMAN: Thank you.

SENATOR BARNES: Yes. Thank you. Of Senator Gottesman. I'm not going to go back to 1972 in history.

SENATOR GOTTESMAN: I haven't spoken, but Senator Barnes is just too important a figure to resist.

SENATOR BARNES: Must be my necktie. Thank you, Senator. Everybody makes fun of lawyers. Not everybody, some people make fun of lawyers. You, you know you brought that up. I'm not going to go back to 1972 in history, but I'm going to go back and I can't tell you the year. But when a group of us conservative Republicans were in Governor Merrill's office talking about the BET, you might enjoy this piece of history, Senator, because you might not realize why the BET was sold to a group of conservative folks who didn't want any part of a new tax and what the pitch was. You know what the pitch was?

SENATOR GOTTESMAN: I'm hanging on every word.

SENATOR BARNES: We are going to get the doctors and the lawyers that aren't paying their fair share. I just thought you might like to know that.

SENATOR GOTTESMAN: Thank you. I appreciate your history.

SENATOR BARNES: That's what the BET tax was originally put in for; to get you lawyers and doctors.

SENATOR FOSTER: I'd actually was going to ask a question, but I guess I'll speak because I think Senator Gottesman sort of focused me on the point. My problem with this legislation, while it can always be helpful to give tax cuts, we are not a state rolling in cash. And if we are going to be giving out tax rebates and cuts, I think we need to be targeted and smart about the way we do it. For that reason, I support Senator D'Allesandro's amendment, and I hope it's adopted by this body. It's surgical. It will help

to create jobs. We need to be growing the tax base, and this will help do that. On the other hand, this bill as it's before us, while it certainly will go to the little guy, it goes to the biggest of the big guys, as Senator Gottesman pointed out with his questions to Senator Morse. Frankly, while my law firm or a bunch of our law firms will you know certainly appreciate you know this \$500, certainly we're not asking for it. Perhaps the place we got the pizza from will appreciate it. I suspect that he will appreciate it. He has high energy costs. But this is not targeted; it's going to everybody regardless of size, and as we well know many large corporations don't always make a profit year to year. And they'll be benefiting from this. It just doesn't seem to make any sense when we have a lot of tough decisions to make about where we are going to be spending our money. So I will be supporting the amendment, but not the bill. Thank you.

SENATOR BARNES: Senator Foster. Thank you, Senator Foster. Would you believe, Senator Foster, that the fellow that delivered the pizza today isn't going to get that under the amendment that Senator D'Allesandro and you are in favor of. He's not going to see it because he was in business before the date.

SENATOR FOSTER: That's true.

SENATOR BARNES: He's an old business, but he might be losing his fanny, too, because of just what you mentioned, the cost of things, and he's not getting them.

SENATOR FOSTER: And you know he...

SENATOR BARNES: So, that amendment does not take care of that small businessman who's losing his or her shirt.

SENATOR FOSTER: That's correct, Senator. I agree with that. If he's losing his shirt, I don't think \$500 is going to change and protect the business from real significant problems. This doesn't either go far enough, or it's benefiting the wrong people, in my view.

SENATOR BARNES: Thank you, Senator.

SENATOR LARSEN: I rise to support this amendment because it's good tax policy. It's interesting when I find myself agreeing with the *Union Leader* editorial, and the *Union Leader* editorial on this bill said "the idea was originally cut to give a permanent tax cut, but Senate Republican leaders determined it wasn't affordable, so they came up with the idea of giving a one-year credit for energy costs. The justification: gas, oil, natural gas, electricity costs all went up this winter, so businesses could use a break. But the costs of doing business fluctuates all the time. If the state starts giving tax breaks when business expenses rise, they'll be no end to the lobbying for additional breaks every year. This scheme strikes us as a clever way to give a subsidy disguised as a tax cut. Senator D'Allesandro's amendment in fact makes good economic sense because it has a ripple effect of creating jobs." It's interesting when a bill that's going to cost \$18 million in Finance Committee. I argue let's save that money for a good purpose, and I have a Senate **TAPE CHANGE**

SENATOR BURLING: I had to give you something, Mr. President. When we make choices about how we spend money, we ought to be looking to those choices which spread the benefit over the largest population possible. Where I come from, everybody benefits when somebody starts up a business. By targeting this money to those businesses which are starting up in the next two years, we are making a commitment to an idea

that will spread the benefit most broadly. As I say, where I come from, there are hundreds of people regularly starting out in business, looking to the state, to their local community to be a partner in the effort. I commend Senator D'Allesandro for what I think is a great approach. Frankly, the first time I looked at this I thought well, if we really wanted to get rid of this money, why don't we just give it back to the property taxpayers because they're the ones who are hardest hit in this state. Well, if we're not going to do that, let's at least do something that gives the largest population the best chance of a benefit. Thank you, Mr. President.

SENATOR CLEGG: I'm glad to see the previous speaker's on our side. Oh, wait. Listen. This is about not giving money away. The main bill is about not taking money from the small businessman. This amendment says "If you've had a hard time all winter, we care about everybody but you. We gave millions of dollars for oil heat help. We put in some money for the pharmacy. But, if you've been in business and you've been a taxpayer in the state of New Hampshire, we want to make sure we have both hands in your pocket." I ask that you vote this bill, this amendment down, so that we can actually say to the general public and, to use the words of my colleague, "So we can help the greatest amount of people by giving them a \$500 reduction in their obligation to the state." It's not like we're taking money out of the coffer. It really would be we're not taking money out of their pocket.

SENATOR BURLING: Thank you, Mr. President. Senator Clegg, I'm now I'm really confused. I just thought I heard three prior witnesses in favor of this the central idea, without the amendment, say that the money necessary to pay this has come from federal rebates of taxes basically associated with the fact that for years offshore corporations haven't been paying their fair share of federal and state taxation. Did I hear that incorrectly?

SENATOR CLEGG: No, you heard that correctly. And while we have that money in our coffers, we now have the ability not to take more money out of the local pocket by stating that they can take up to a \$500 credit on their BET tax.

SENATOR BURLING: So, Senator, in essence, what you're saying is, because there's a windfall from offshore corporations who have finally been taught their civic duty, we're going to take that money and give it to everybody who has a law firm or a dental practice or a machine shop, whatever?

SENATOR CLEGG: Let me dispel two myths. First off, for those law firms that don't think that this is fair, they don't have to apply for the credit. So they can pay it. And, as far as those people who are now become good corporate citizens and are going to pay, well for all the years that they weren't paying, all those little businesses were making up the difference. So, in fact, the little guy, he's taking his own money back.

SENATOR BURLING: One final follow-up. But, in the end, the source of these funds, however you want to describe it, is from federal dollars in our treasury because offshore corporations have finally been forced to pay their fair share of federal and state taxes.

SENATOR CLEGG: No, because I don't think they were forced to pay anything. I think the repatriation was voluntary.

SENATOR GALLUS: Thank you very much, Mr. President. It seems that Kevin and I are the only two people who haven't spoken here today. So

as long as we're all going to be speaking and dragging this thing out all day long, I just want to say that I'm unable to support this particular amendment submitted by my good friend, Senator D'Allesandro. And primarily first of all, \$500 is not going to create any jobs in the state of New Hampshire. And I feel, basically, we should give these funds back to the people who paid them. So let's help the businesses that paid these. Let's return some of these monies to those small and large law firms around the state of New Hampshire. I think that makes more sense. Thank you, Mr. President.

**Recess.**

**Out of recess.**

**The question is on adoption of the floor amendment.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**Yeas: 8 - Nays: 16**

**Floor amendment failed.**

**The question is on the committee report of ought to pass.**

**Adopted.**

**Ordered to third reading.**

Senator Barnes is in opposition to SB 397-FN-A.

**SB 407-FN-A**, relative to enforcement of labor statutes under current federal immigration laws. Finance Committee. Ought to pass with amendment, Vote 6-2. Senator Boyce for the committee.

**Senate Finance**

**March 20, 2006**

**2006-1474s**

**08/09**

### **Amendment to SB 407-FN-A**

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

1 Findings and Declaration of Purposes. The general court finds that:

I. The safety and economic well-being of the state depends on adequate protection of New Hampshire's borders under federal immigration law.

II. Under current federal immigration law, those who enter the borders of New Hampshire and the United States illegally and commit crimes therein are not held accountable for those crimes before they are deported.

III. Others who enter the state seeking employment but are undocumented are exploited by unscrupulous employers. These undocumented workers are paid lower wages, are denied benefits, such as health care, that are provided to citizen workers, and do not come forward to report the abuses because of their undocumented status.

IV. The increased costs to state and local government from the exploitation of employees, and increased noncompliance with laws and rules administered by the commissioner of labor harms both documented and undocumented employees.

V. The employer cost savings gained by noncompliance act as an economic incentive to even more noncompliance, particularly at worksites where aliens are employed.

VI. State-enacted laws addressing this issue, including those requiring employee verification, prohibiting the employment of illegal aliens, and other federal immigration law enforcement activity, such as the existing provisions of RSA 275-A:4-a, are consistently nullified and thus rendered unenforceable by courts because of constitutional and federal preemption considerations.

VII. The legislature is concerned about the low level of federal enforcement of federal immigration laws and its effect upon compliance with state laws and related adverse economic impact on our state, and wishes to encourage state law enforcement of such laws to whatever extent is permitted under federal law, including the broadened authority provided to state and local law enforcement officials pursuant to agreements with the United States Attorney General.

VIII. Present levels of enforcement of federal immigration law are an economic incentive for increased violations of state labor law, as well as exploitive working conditions for undocumented aliens.

IX. Enforcement of state labor protection and safety laws at worksites where aliens are employed will discourage such illegal activities, enable the department of labor to enforce laws designed to prevent the exploitation of workers, and mitigate other adverse impacts related to inadequate enforcement of federal immigration laws.

2 Inspections. Amend RSA 273:9 to read as follows:

273:9 Inspections. The commissioner shall, at such times as he *or she* shall deem it necessary, and without notice, visit ***worksites including but not limited to*** the manufacturing, mechanical, and mercantile establishments in the state, so far as practicable, for the purpose of ascertaining whether the laws with reference to employment are complied with, and for the further purpose of ascertaining if reasonable sanitary and hygienic conditions are maintained, calculated to promote the health and welfare of the working people. ***If in the course of such inspections, undocumented aliens as defined in RSA 275-A:4-a are apprehended, the presence of such persons shall be reported to the United States Citizenship and Immigration Services or the Office of the Attorney General, United States Department of Justice, or any successor agencies thereof, established to receive such information.***

3 Employment of Illegal Aliens Prohibited. RSA 275-A:4-a is repealed and reenacted to read as follows:

275-A:4-a Filing of Employer Statement; Alien Employers.

I. All employers shall file a statement with the department of labor declaring whether they employ aliens on premises they own, manage, or otherwise control.

II. Persons required to file under paragraph I shall retain, at the premises where such employment occurs, documentation or other evidence necessary to demonstrate on-premises compliance with the state employee protection laws, including, but not limited to, RSA 275, RSA 275-A, RSA 277, RSA 279, and RSA 281-A.

III. Persons required to file under paragraph I shall be responsible for compliance with this section by all contractors and subcontractors with respect to persons employed directly or indirectly on premises that they own, manage, or control.

IV. For purposes of this section, "person" includes any person, partnership, association, agency, firm, limited liability company, corporation, general contractor, subcontractor, or other entity who employs one or more persons whether in one or more trades, businesses, professions, or occupations and whether in one or more locations.

4 New Section; Severability. Amend RSA 275-A by inserting after section 4-a the following new section:

275-A:4-b Severability. If any provision of this chapter or the application of any provision to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to any other person or circumstance shall not be affected by that invalidation.

5 Penalties. RSA 275-A:5 is repealed and reenacted to read as follows:  
275-A:5 Penalties.

I. Any person, partnership, association, agency, firm, limited liability company, corporation, general contractor, subcontractor, or other entity who employs one or more persons who violates any provision of RSA 275-A shall be subject to a civil penalty of up to \$2,500 for each day of noncompliance, to be imposed by the labor commissioner in accordance with the procedures established in RSA 273:11-a. Any person aggrieved by the commissioner's assessment of such penalty may appeal in accordance with RSA 273:11-c.

II. Any employer who has filed a statement with the department of labor as required by RSA 275-A:4-a, I and who, in the judgment of the commissioner of the department of labor, has made a good faith effort to comply with the provisions of this chapter, shall not be liable for the penalties under paragraph I.

6 New Section; Rules. Amend RSA 275-A by inserting after section 5 the following new section:

275-A:6 Rules. The commissioner shall adopt rules, pursuant to RSA 541-A, to facilitate the administration and enforcement of this chapter.

7 New Section; Agreements Authorized. Amend RSA 7 by inserting after section 6-d the following new section:

7:6-e Agreements Authorized. Under the direction of the attorney general, and after proper training, state law enforcement agencies are authorized to enter into agreements with the United States Attorney General as provided by section 133 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and such other law enforcement activities as are permitted to state and local officials by constitutional and federal immigration law.

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

**2006-1474s**

#### AMENDED ANALYSIS

This bill authorizes state law enforcement agencies to enter into agreements with the United States Attorney General regarding state and local law enforcement activities permitted under federal immigration laws.

This bill also establishes registration requirements for employers of aliens and new penalties for employers of illegal aliens.

SENATOR BOYCE: Thank you, Mr. President. I move SB 407 ought to pass with amendment. This bill establishes a requirement for employers of aliens to register with the Department of Labor. Employers of undocu-

mented aliens may be fined for non-compliance while undocumented aliens may be reported to the federal government. The bill also allows for an MOU (memorandum of understanding) to be entered into with the U. S. Attorney General. It is already a violation of state law to employ undocumented aliens. Businesses that do so are taking jobs away from our own citizens and legal aliens and are paying people less money and often without benefits. The committee amendment is a refinement of the bill. Senator Clegg worked with several people that expressed concerns about the bill during the hearings such as terminology. The Finance Committee asks for your support in the motion of Ought to pass with Amendment. Thank you.

### **Amendment adopted.**

Senator Burling offered a floor amendment.

Sen. Burling, Dist. 5  
 Sen. Gottesman, Dist. 12  
 Sen. Foster, Dist. 13  
 Sen. Larsen, Dist. 15  
 Sen. D'Allesandro, Dist. 20  
 Sen. Estabrook, Dist. 21  
 Sen. Hassan, Dist. 23  
 Sen. Fuller Clark, Dist. 24

**March 22, 2006**  
**2006-1506s**  
**01/09**

### **Floor Amendment to SB 407-FN-A**

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

AN ACT establishing a commission to investigate the impact of illegal immigration on economics, public safety, communities, educational institutions, health care institutions, and political institutions in New Hampshire.

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

1 Findings and Declaration of Purposes. The general court finds that:  
 I. The safety and economic well-being of the state depends on adequate protection of New Hampshire's borders under federal immigration law.

II. The general court is concerned about the low level of federal enforcement of federal immigration laws and its effect upon compliance with state laws and related adverse economic impact on our state, and wishes to encourage state law enforcement of such laws to whatever extent is permitted under federal law, including the broadened authority provided to state and local law enforcement officials pursuant to agreements with the United States Attorney General.

III. Present levels of enforcement of federal immigration law are an economic incentive for increased violations of state labor law, as well as exploitive working conditions for undocumented aliens.

2 Commission Established. There is established a commission to study the effects of illegal immigration on economics, public safety, communities, educational institutions, health care institutions, and political institutions in New Hampshire.

3 Membership and Compensation.

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

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

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

(c) Five public members appointed by the governor.

(d) The commissioner of the department of labor, or designee.

(e) The commissioner of the department of safety, or designee.

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

(g) The commissioner of the department of revenue administration, or designee.

(h) The commissioner of the department of department of resources and economic development, or designee.

(i) The commissioner of the department of education, or designee.

(j) The commissioner of the department of corrections, or designee.

(k) Two representatives from the New Hampshire Association of Counties, appointed by the New Hampshire Association of Counties.

(l) One director of a county correctional facility, appointed by the New Hampshire Association of Counties.

(m) One representative of the New Hampshire Association of Police Chiefs, appointed by the New Hampshire Association of Police Chiefs.

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

4 Duties. The commission shall study the impact of illegal immigration on economics, public safety, communities, educational institutions, health care institutions, and political institutions in New Hampshire

5 Chairperson; Quorum. The chairperson of the commission shall be designated by the governor. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section.

6 Report. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2007.

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

## 2006-1506s

### AMENDED ANALYSIS

This bill establishes a commission to investigate the impact of illegal immigration on economics, public safety, communities, educational institutions, health care institutions, and political institutions in New Hampshire.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move the adoption of floor amendment 1506.

SENATOR GATSAS (In the Chair): Floor amendment 1506 has been proposed. Senator Burling, would you speak to the amendment?

SENATOR BURLING: Thank you, Mr. President. This bill has two parts. The first is a part which reflects and acknowledges some of the findings in the original text of the bill. The second part is a commission. Let me just, for the sake of the record, read into the record, what we think is absolutely clear. 1) The safety and economic well-being of the state depends upon adequate protection of New Hampshire's borders under federal immigration law. 2) The General Court is concerned about the low level of federal enforcement of federal immigration laws and its effect upon compliance with state laws and related adverse economic impact on our state, and wishes to encourage state law enforcement of such laws



to whatever extent is permitted under federal law, including the broadened authority provided to state and local law enforcement officials pursuant to agreements with the United States Attorney General. 3) Present levels of enforcement of federal immigration law are an economic incentive for increased violations of state labor law, as well as exploitive working conditions for undocumented aliens. Let me speak to those three concepts. We are finding, as a state Senate, that the federal government has defaulted under on its obligations to enforce federal immigration law. We believe that immigration law is a matter of federal law. There are fifty states in this union. The federal government is responsible for protecting our borders and enforcing immigration law, and they are failing utterly to do that. How then should we, the little state of New Hampshire, respond? We believe that is an incredibly important question, so important that it is worthy of the kind of deliberative study that this commission, which is the second part of this amendment, contemplates. Somebody said to me yesterday when he saw this, "This is a killer commission." Well, it's a killer commission because it includes everybody whose opinion actually ought to be sought out when deciding what to do about the federal failure to enforce federal immigration policy. We should have the Commissioner of the Department of Labor. We should have Safety. We should have Health and Human Services. We should have DRA. We should have Corrections. We should have people from the counties. We should have at least one county corrections official. This is simply conservative legislating. The federal government is failing to do its duty. The costs of that failure are going to impact our state. The correct response is to study the problem, not take on the federal obligation. Anybody who thinks the state of New Hampshire can simply pick up the bill for federal failure to enforce its own immigration laws hasn't looked at our budget recently. If we take on primary enforcement obligations of federal immigration laws, we run the risk of, at the very least, bankrupting some of our cities and some of our counties and probably doing serious damage to our state budget as well. This amendment reflects the truth that, before we do that, we ought to seriously consider what it is we're doing. That's the extent of this floor amendment, Mr. President, and I thank you for allowing me to speak to it. I urge consideration and adoption of this amendment.

Senator Bragdon in the Chair.

Senator Gatsas in the Chair.

SENATOR CLEGG: Thank you. I rise in opposition to the amendment. While I understand that, with a memorandum of understanding, there could be some costs to the local communities, I've seen nothing in the original bill that says your community or any county or the state has to set up a memorandum of understanding. Obviously, if the state did it, and it was going to cost more money, it would have to come through our budget, so we'd have a say there. If your local community happens to be on a border, and they want a memorandum of understanding, well last I knew they had to get their funds from the local citizens. So if it's going to cost something, don't do it. If that's what you want, don't do it. But I'm most concerned about what we leave out if we adopt this amendment. We leave out some solutions. We set up a commission to study something that we admittedly know is a problem. So we're going to study it again. But we heard from the unions that they have problems on job sites because there are underpaid laborers on the job because they're undocumented aliens. So in the bill without the amendment, we tell the

Labor Department to go in and fix it. We tell the Labor Department that, when they go in there and they find undocumented, they need to call the proper authorities and let them know. And that was to satisfy the unions. That was to satisfy the unions who said, "Our people are losing work because of undocumented workers." And we put in there that the Commissioner of Labor can visit work sites, including but not limited to, manufacturing, mechanical, and mercantile because there was a question of whether or not without that they were limited and not allowed on construction sites. I don't know. I'm not a lawyer. It looks good to me. Now it looks to me like they can go everywhere. So I would urge you not to study this issue. Not to study what we all agree is a problem, but to take a step towards fixing it. Fixing a problem that the unions say they have, fixing a problem that the Department of Labor has, and let's do it today, not two years from now. Thank you.

SENATOR FOSTER: Of Senator Clegg. This bill went to Finance. Is that right?

SENATOR CLEGG: I know I heard it in Finance, sure.

SENATOR FOSTER: Did it go through a policy committee?

SENATOR CLEGG: Well, Finance is a policy committee.

SENATOR FOSTER: On finance, right?

SENATOR CLEGG: It's a policy committee. I don't think we have a policy committee that deals solely with immigration. Perhaps you can help me out if we do.

SENATOR FOSTER: I don't think we do, but that probably poses my question and why yes follow-up, Mr. President. Sorry, I should have requested that. Senator Burling's amendment talks about study, so I wanted to ask...you know, again where this bill kind of moves through things fairly quickly, whether I'm reading it right. At our law firm, we have a subcontractor that cleans our office space because it's a fairly big office, and the way I read this, my firm would have to be sure that that subcontractor's complying with all immigration laws on my site because I'm a person in control of my premises, and somebody else is coming here and doing some work, and I guess I'd want to know how I could possibly do that if I'm reading it right.

SENATOR CLEGG: Well, you are reading it right. You have a responsibility to hire subcontractors or contractors who follow the law, and it's up to you to make sure you hire the proper people.

SENATOR FOSTER: Follow-up? So then I guess, if I understand it right, every week, as those employees turn over, I've got to go back and check and make sure that this subcontractor is following the law even though I don't hire those people. I don't know when they come and go. Frankly I see them because, unfortunately, I have this job, and I'm there late at night and they clean late at night. So how would I know when people come and go and whether they're still doing the right thing?

SENATOR CLEGG: Senator, you're not the one in your firm in charge. I wouldn't expect you to know, and I wouldn't expect you to ask the questions. But someone in your firm hires those people, has some kind of a contract. Part of their contract, at a minimum, ought to say that they're going to follow the law, and whoever deals with that contract ought to be responsible to check up once in awhile and make sure that the people there are not undocumented workers.

SENATOR FOSTER: Thank you.

SENATOR GOTTESMAN: Thank you, Mr. President. I just rise to point out the fact that all of my research into this area has determined that it's actually against federal law to inquire as to the validity of a person's working papers. Once they show you the papers and they appear to be appropriate, you're not allowed to ask where they came from, as ridiculous as that may be. So now an employer in the state, or a person who hires a subcontractor who has these folks who are working among them, are in a situation where they may think that there is a problem, but what incentive is there for an employer to even give anyone an opportunity who even looks or sounds like they are from a different place or speak a different language? They will not want to take the risk because, tucked in the very end of this bill, is a per day penalty of \$2,500 per violation for our businessmen in this state. So don't overlook what the penalty is that we are imposing upon our own business community. Thank you, Mr. President.

SENATOR KENNEY: I just had a question of the prime sponsor, Senator Green, if I may? The Employer Registration Enforcement Fund as I read this language here, are these two positions are going to be hired by the Department of Labor? Will they be hired once that particular fund generates revenue through this enforcement?

SENATOR GREEN: Senator, the amendment does not include those employees at this time. We anticipate working that out with the House. The amendment does not. But, the answer to your question is, in the original bill, the fees themselves, would have the fund in it before those people would be hired.

SENATOR KENNEY: If I may for a follow-up? Also, I had a question about the language. I believe it refers to the United States Citizenship and Immigration Service. The enforcement arm of the immigration service is the United States Immigration Customs Enforcement.

SENATOR GREEN: Yes it is. It's been changed in the amendment. We've picked that up.

SENATOR KENNEY: We've picked that up, and that's been corrected. Okay. Thank you.

SENATOR GREEN: Thank you.

SENATOR CLEGG: Question of Senator Green. Senator Green, there was a concern, just a moment ago, about employers and what you would have to go through. Am I wrong? Didn't you add something in the amendment that if an employer was complying with the law to the best of his ability that there'd be no fine, so there really wouldn't be a question about you take the papers, you believe them to be to be real?

SENATOR GREEN: On page 15 top of the page it talks about a what I call a "safe harbor clause", which basically says that, if an employer who has filed a statement with the Department of Labor as required under the section that creates the penalty who, in the judgment of the Commissioner of the Department of Labor has made a good-faith effort to comply with the provision of this chapter shall not be liable for the penalties which were created under that section.

SENATOR CLEGG: Follow-up? Follow-up, Mr. President? So, Senator, does that mean that if you've done everything that you believe to be correct, that you shouldn't have to worry about the fine?

SENATOR GREEN: Well, I mean you're going to have to...the Commissioner's going to have to think that you did everything in good faith. Here we go with the good faith again.

SENATOR CLEGG: So we're going to have to make sure we always have a good Commissioner?

SENATOR GREEN: I would hope so.

SENATOR CLEGG: Thank you.

SENATOR GOTTESMAN: Thank you, Senator Green while you're still standing. Senator Green, this means that our business community is going to have to go to the Department of Labor, probably with counsel, to defend their actions in terms of whether or not the hiring of a person was appropriate, whether they understood the paperwork was appropriate, whether in fact the paperwork was appropriate, and put that decision in the hands of one of the hearings officers over there at the Department of Labor. Is that correct?

SENATOR GREEN: Well, the way you describe it I'm not sure that that's correct. I think what happens here, as I understand this particular piece of legislation, it is to make sure that employers do not hire illegal aliens. That's what it's all about, and we can put all kind of roadblocks in that process. But we're trying to make sure that the people who are working in the state of New Hampshire, under our labor laws, we're not preempting any federal laws, have the proper paperwork if they are an alien and/or, of course, if they're a citizen, they're not affected by this anyway.

SENATOR GOTTESMAN: Follow-up? Senator Green, I understand the philosophy behind the underlying bill, but \$2,500 per day per offense is on the line as well as all the legal costs that our businesspeople are going to have to incur to go defend these cases. Correct?

SENATOR GREEN: Correct.

SENATOR GOTTESMAN: Thank you.

SENATOR BURLING: To speak a second time. I yield to anybody who wants to speak first.

SENATOR D'ALLESANDRO: Thank you, Mr. President. First I'd like to read into the record a letter from the President of the AFL-CIO. It's to Senator Sylvia Larsen. "Dear Senator Larsen, in response to your question regarding Senate Bill 407, please be advised that the New Hampshire AFL-CIO opposes the legislation. This is the position that we took at the public hearing, and after review of the amendments, our position has not changed. The New Hampshire AFL-CIO acknowledges the recognition by the Senate sponsors that there are abuses occurring in New Hampshire workplaces to undocumented workers. These abuses, however, are not exclusive to that group of workers, and in fact that characterization can be applied to a number of workers who labor in New Hampshire. The response to this should be to increase the capacity of the Department of Labor to effectively enforce all labor laws for all workers. To ask labor inspectors to now take on the task of the immigration police puts them at odds with the very workers they have a responsibility to protect. This chilling effect will only drive this problem further underground, cause more problems than it will solve. I hope that this letter clarifies our position regarding Senate Bill 407. As always, please feel free to call on me if you have any questions concerning our comments." I'd like that to be in the record because Labor is in opposition to this bill. And there has been some dialog that says labor was for this bill. Let me

talk to you a little bit about immigration because my family came here through immigration. We have a quota system, and that quota system allows a certain number of people from different countries to get into this country. That's how my grandparents got into America, through a quota system. Now we haven't adjusted those quotas for years, and as a result, we have problems with different countries who want more ability to immigrate than other countries where immigration has dropped off considerably. Now, during the Revolutionary War, we passed two acts, the Alien and Sedition Acts, and I hate the word "alien". An immigrant is an immigrant. When we think of alien, we think about a negative connotation. We shouldn't do that. There are people who want to come to America because we have said to the world, "This is the best place to live. This is where freedom reigns. This is where democracy is omnipresent. This is where if you need you can have opportunity." We've said that. We've encouraged that. We do that all the time. Our federal government has accepted the responsibility to maintain our borders. We, as taxpayers, give that money to the federal government, and we have entrusted in them, that service. They are to serve us in terms of protecting our borders. Under this scare of 9/11, we have received security monies to enhance border security. We have done that in New Hampshire. They've done it in Maine. They've done it in Vermont. They've done it anyplace. But the responsibility belongs to the federal government. We've got to do policing things in our own communities. That's where our people should be working. That's where the Department of Labor should be working, to protect businesses that exist in New Hampshire. We shouldn't be abrogating, or we shouldn't be letting the government abrogate a responsibility and accepting it by the states. We shouldn't do it. Do we have a significant problem in New Hampshire? The answer is no. We don't have a significant problem. We have two communities that have decided that they're going after illegal immigrants. They went to court and found that that wasn't supposed to be their job; it was the job of the federal government. Under this bill you can petition the Attorney General of the United States. You can be trained, and you can take that responsibility. But you're alleviating the federal government of that responsibility. It is their responsibility to protect our borders. What is wrong with studying this problem so that we come up with a reasonable, a reasonable idea of (a) what is the problem and how do we deal with it? To create a situation where a situation doesn't exist we've got a lot of things to think about in this state. We've got problems in Berlin with a company closing down. We've got a problem in Manchester with a company going out of business and leaving their workers high and dry. We've got a problem in Groveton with 180 people being laid off because a paper mill is going out of business. Those are the things that we should be thinking about. That's where the energies of this Senate should be - protecting people who don't have jobs. Aren't the aliens taking the jobs in Berlin? Are they, Senator? I don't think so. Aren't the aliens taking the jobs in Groveton? There aren't any jobs. We've got to create jobs. That's what our business is. That's what the business of this Senate should be. Thank you, Mr. President.

SENATOR BURLING: Thank you, Mr. President. I'll be very brief. I just want to come back to the amendment before us. The amendment talks about what I think is our fundamental legislative obligation. That is to think about what we're going to do before we do it. I think about the largest employers in my district, and I think of what Senator Gottesman and what Senator Foster said. They're going to have whole new ranks

of personnel managers just trying to keep up with the paperwork if this proposal passes before we've completed the deliberate study of it. And one other thing. You know, we talked about the sentence at the top of page 15. Think about what this really means for a minute. We're going to have a criminal penalty, \$2,500 per day per violation, and by operation of this language, we're going to make it discretionary. What the heck kind of law is that? If you're on the good side of the Commissioner, you're fine. No problem. But if you've ticked off the Commissioner, maybe you parked in his parking spot by mistake, it's \$2,500 a day per violation. We're supposed to be making law. This is not law; this is revenge. Thank you, Mr. President.

**Recess.**

**Out of recess.**

**The question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Hassan.**

**Seconded by Senator Burling.**

**The following Senators voted Yes: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**Yeas: 8 - Nays: 16**

**Floor amendment failed.**

**The question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**The following Senators voted No: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 16 - Nays: 8**

**Adopted.**

**Ordered to third reading.**

**Recess.**

**Out of recess.**

**SB 317-FN**, establishing a screening panel to review complaints to occupational and professional regulatory boards and establishing an appeals board to review decisions by occupational and professional regulatory boards. Finance Committee. Ought to pass with amendment, Vote 5-2. Senator Green for the committee.

**Senate Finance**

**March 15, 2006**

**2006-1406s**

**09/10**

**Amendment to SB 317-FN**

Amend RSA 541:5-a, IV as inserted by section 1 of the bill by replacing it with the following:

IV. The screening panel shall have 5 business days to review the complaint and determine whether the complaint has merit, by examining the grounds for dismissal of a complaint under the law applicable to the particular occupational or professional regulatory board or commission. During this 5-day period, the occupational or professional regulatory board or commission shall suspend its disciplinary proceedings regarding the complaint. The screening panel shall be granted access by the occupational or professional regulatory board or commission to all records pertaining to the complaint. The screening panel shall issue a written determination to the occupational or professional regulatory board or commission as to whether the complaint has merit. If the screening panel concludes that the complaint has no merit, the occupational or professional regulatory board or commission shall dismiss the complaint. If the screening panel concludes that the complaint has merit, the occupational or professional regulatory board or commission shall resume its disciplinary proceedings regarding the complaint.

Amend RSA 541:5-b, III as inserted by section 1 of the bill by replacing it with the following:

III. As an alternative to rehearing by the occupational or professional regulatory board or commission under RSA 541:2 through RSA 541:5 and as an alternative to appeal to the supreme court under this chapter, a decision by an occupational or professional regulatory board or commission may be appealed to the appeals board within 30 days after the decision is issued. The provisions of RSA 541:7 - RSA 541:11, relative to petitions, parties, notice, and fees for copies in appeals to the supreme court, shall also apply to appeals to the appeals board. The appeals board shall conduct a *de novo* review of the complaint under the same disciplinary and evidentiary standards and procedures applicable under the law to the occupational or professional regulatory board or commission. The chairperson of the appeals board may issue subpoenas requiring the attendance of witnesses and the production of evidence and may administer such oaths and take such testimony as he or she deems necessary. The appeals board shall issue its decision on the appeal in a written order within 30 days of hearing the appeal. Decisions of the appeals board may be appealed to the supreme court under RSA 541:6.

SENATOR GREEN: Thank you, Mr. President. I move that Senate Bill 317-FN ought to pass with amendment. This legislation creates an occupational professional screening board that will have the authority to determine whether or not complaints are legitimate and have merit. It also creates an appeals board to hear the appeals from decisions made by occupational and professional regulatory boards. Currently, the only appeal available is to the Supreme Court. They may also appeal any decision back to the same board that made the determination against them. The committee amended changes the review period from sixty days to five days. That's on the review period for the screening panel. As written, the screening panel will have five days to determine whether the complaint has merit. The newly created screening panel and appeals boards generate a fee to cover the cost of the operation. The Finance Committee asks your support for the motion to ought to pass with amendment. Thank you.

SENATOR EATON: Thank you. I rise in opposition to this. We have boards that are to cover all these occupations and professional regulatory boards and commissions. I served on one for nine years through a profession, and it had a public member on that. What this is doing is

adding another layer of bureaucracy. The watchers watching over the watchees, and if that board gets too powerful, are they going to have another board to watch them? And I just think it's adding another layer of bureaucracy to a system that doesn't seem to be broken. The public members are very, very essential on these boards, and you have professionals that are selected from all over the state. All the geographic areas are usually represented on this board. So I don't see that this is a necessary thing to do.

SENATOR GOTTESMAN: Thank you, Mr. President. I rise to echo sentiments that Senator Eaton has raised. Just today I received and many of you may have, letters from the Architects Board. These people are in control of their own profession, as are many of the people who are licensed throughout the state, and what we're doing is taking another layer. I mean talk about making more bureaucracy. I just don't understand why we would want to go to the trouble of assembling a new committee to find out if there's a valid complaint. I think these people who are on these boards are very capable of making a determination of whether or not there is a valid complaint. If there was one problem along the way I think we heard something anecdotally that there was one decision that took an inordinate amount of time. That's up to those members to rectify in a way that's meaningful to their own board and to their own members. We cannot police the world here, and I think that we are just going way overboard here. There is absolutely no need to have this oversight. It is fully engaged on behalf of each one of these organizations, and I will be voting against this bill.

**The question is on the adoption of the committee amendment.**

**A division vote was requested.**

**Yeas: 14 - Nays: 10**

**Amendment adopted.**

SENATOR FOSTER: I made this point last time, but I think it's worth repeating when this bill came up from the policy committee. I agree with what's been said. I think these boards are working. I don't hear that there's any great problem. But what we're now doing is, these boards, when I looked at them, all have public members, members who are not part of the occupation. Now what we're doing, as I understand it, is putting these boards together where the public members aren't there. We're taking the public members out of the process. I don't see why we would want to do that. I don't understand the need for this legislation. I know there's an anecdotal situation which does sound like perhaps it's problematic, but you don't undo a system that's been in place from these dozens and dozens of boards over one or two anecdotal problems. It just doesn't make any sense to me, so I'll be opposing this legislation. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I, too, will be opposing this legislation. There are twenty-five, excuse me there are twenty-seven occupational professional regulatory boards. Each of those boards has their own rules and statutes. They've performed well. They're 125 percent agencies. They've performed well. There have been very few complaints. It's something that works. It just seems to me we're taking something that has worked with the professionals and the laypeople on these boards, and we're moving it into a situation where it becomes a political situation. Not necessary. Just not necessary. Thank you, Mr. President.



**The question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**The following Senators voted No: Burling, Eaton, Bragdon, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 14 - Nays: 10**

**Adopted.**

**Ordered to third reading.**

**SB 385-FN**, relative to the membership and administration of the board of trustees of the New Hampshire retirement system, and relative to supplemental allowances. Finance Committee. Ought to pass with amendment, Vote 5-3. Senator Green for the committee.

**Senate Finance**

**March 16, 2006**

**2006-1415s**

**10/05**

**Amendment to SB 385-FN**

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

**AN ACT** relative to the membership and administration of the board of trustees of the New Hampshire retirement system, and relative to supplemental benefit amounts granted to retirees and beneficiaries.

Amend the bill by replacing sections 1-3 with the following:

1 Retirement System Board of Trustees; Membership. RSA 100-A:14, I is repealed and reenacted to read as follows:

I. The administration of this system shall be vested in a board of 17 trustees. Board members shall be as follows:

(a) The state treasurer who shall be an ex officio voting member of the board.

(b) Four public member trustees who shall be qualified persons with business or public administration experience, appointed by the governor and council. The governor shall designate one of the public member trustees to serve as chairperson of the board of trustees.

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

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

(e) One retired member of the retirement system who shall be a beneficiary under this chapter, appointed by the governor and council.

(f) Two employees nominated by the New Hampshire State Employees' Association, who may be employed by state or political subdivision employers, appointed by the governor and council.

(g) Two permanent policemen nominated by the New Hampshire Police Association, one of whom shall be a county, town, or city law enforcement employee and one of whom shall be a state law enforcement employee, appointed by the governor and council.

(h) Two permanent firefighters, one of whom shall be nominated by the New Hampshire Permanent Firefighters' Association and one of whom shall be nominated by the Professional Firefighters of New Hampshire, appointed by the governor and council.

(i) Two teachers, one of whom shall be nominated by the National Education Association - New Hampshire and one of whom shall be nominated by the American Federation of Teachers- New Hampshire, appointed by the governor and council.

(j) One employee of a political subdivision employer nominated by the New Hampshire Municipal Association, appointed by the governor and council.

2 New Paragraph; Retirement System Board of Trustees. Amend RSA 100-A:14 by inserting after paragraph I the following new paragraph:

I-a.(a) For members designated in subparagraphs I(f) – I(j), the respective organizations shall nominate from their members a panel of 5 persons no later than May 31 of each year, and the panels so named shall be filed with the secretary of state no later than June 10 of each year. From each of the panels the governor and council shall appoint one person. Persons appointed from panels named pursuant to this subparagraph shall be required to maintain active membership in their respective nominating organization during their service on the board of trustees. Failure to maintain active membership shall create a vacancy.

(b) Board members shall serve until a successor is appointed and qualified.

(c) Whenever a vacancy on the board of trustees occurs, the appointing authority shall fill the vacancy by appointing a member, pursuant to the required nomination procedure, who shall serve for the unexpired term. Members appointed to the board for full terms by the governor and council shall serve for a term of 2 years.

3 Applicability; Board of Trustees. Members of the retirement system board of trustees serving immediately prior to the effective date of this act shall serve the remainder of their term and until a successor is appointed and qualified. All subsequent appointments shall comply with the requirements of RSA 100-A:14 as amended by this act. Initial appointments of new members to the board of trustees by the governor and council may be for a term of one year to provide for staggered appointments.

Amend the bill by replacing all after section 5 with the following:

6 New Section; Supplemental Benefit Amount. Amend RSA 100-A by inserting after section 41-c the following new section:

100-A:41-d Supplemental Benefit Amount.

I. Any retired member of the New Hampshire retirement system or any of its predecessor systems, who has been retired for at least 12 months, or any beneficiary of such member who is receiving an allowance, shall upon approval by the fiscal committee of the general court be entitled to receive a supplemental benefit in an amount and at a time determined by the fiscal committee.

II. Not later than May 31 of each year, the fiscal committee of the general court may approve a supplemental benefit amount for the July 1 thereafter upon certification from the actuary of the amount of the benefit which may be granted to each member classification based on the funds available in the special account for each member classification. The actuary shall look at each member classification component of the special account separately and shall certify to the fiscal committee the funds available, and any other information required by the committee.

A one-time supplemental benefit amount granted by the fiscal committee of the general court shall not become a permanent addition to the beneficiary's base retirement allowance.

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

**2006-1415s**

#### AMENDED ANALYSIS

This bill makes changes in the membership and administration of the retirement system board of trustees. The bill also allows for one-time supplemental benefits to retired members and beneficiaries.

#### MOTION TO TABLE

Senator Green moved to have SB 385-FN laid on the table.

**Adopted.**

#### LAIID ON THE TABLE

**SB 385-FN**, relative to the membership and administration of the board of trustees of the New Hampshire retirement system, and relative to supplemental allowances.

**HB 1370**, transferring certain surplus moneys to the revenue stabilization reserve account. Finance Committee. Ought to pass, Vote 8-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move House Bill 1370 ought to pass. As part of the budget last year, the law that allows any surplus at the close of each fiscal biennium to be transferred into the rainy day fund was suspended to allow a \$30.5 million surplus to balance the budget. This legislation transfers any understated general fund surplus funds in excess of 30.5 million back to the rainy day fund. The State Treasurer recommends that 5 percent of the state operating budget be set aside in the reserve account. For the last three fiscal years, the state has maintained a \$17.3 million budget or 0.8 percent. The state bond rating is impacted by the reserve balance as our bonding costs for counties and municipalities. The fiscal committee asks your support for the motion of ought to pass.

**The question is on the adoption of the committee report of ought to pass.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

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

**Yeas: 24 - Nays: 0**

**Adopted.**

**Ordered to third reading.**

**HJR 23**, a resolution designating a Purple Heart Trail spur to the New Hampshire state veterans cemetery and providing additional signs for the Purple Heart Trail. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 6-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I move House Joint Resolution 23 ought to pass. The House Joint Resolution designates a Purple Heart Trail spur from the fork of U. S. Route 4 and U. S. Route 3 in Boscawen to the New Hampshire state veterans' cemetery and provides additional signs for the Purple Heart Trail established by 2004 SJR 2. The committee feels that the additional signs will make a nice addition to the entrance leading to the state veterans' cemetery. Please join with the Transportation Committee to vote ought to pass. Thank you.

SENATOR BARNES: Real quick because I know we're short on time. I'm sure we're going to have a roll call on this because I'm going to ask for it. And I'm sure we'll have a 24-0 vote on this. It's just an extension of what you folks did for the Purple Heart Trail last year, and with that, I'll end and say, "Thank you very much for your help on it."

**The question is on adoption of the committee report of ought to pass.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Gottesman.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

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

**Yeas: 24 - Nays: 0**

**Adopted.**

**Ordered to third reading.**

**SB 403**, relative to verification of identity when a person registers or attempts to vote. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 3-2. Senator Roberge for the committee.

**Public and Municipal Affairs**

**March 15, 2006**

**2006-1390s**

**03/04**

**Amendment to SB 403**

Amend RSA 654:12, V(b) as inserted by section 1 of the bill by replacing it with the following:

*(b) The secretary of state shall cause a letter of identity verification to be mailed by first class mail to each voter identified as a first-time election day registrant in New Hampshire who also did not verify his or her identity with an approved photo identification. The secretary of state shall mark the envelope with instructions to the United States Post Office not to forward the letter and to provide address correction information. The letter shall notify the person that a person who was unable to present photo identification registered or registered and voted using his or her name and address and instruct the person to contact the attorney general immediately if he or she did not register and vote.*

Amend the bill by deleting section 2 and renumbering the original sections 3-5 to read as 2-4, respectively.

Amend the bill by replacing sections 3-4 with the following:

3 Obtaining a Ballot; Verification of Age. Amend RSA 659:13 to read as follows:

659:13 Obtaining a Ballot. A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the *paper* checklist **and the supervisors of the checklist shall cause the centralized voter registration database to reflect the correction.** The voter, if still qualified to vote in the town or ward and unless challenged as provided for in RSA 659:27-33, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state.

4 Effective Date.

I. Section 3 of this act shall take effect September 1, 2006.

II. The remainder of this act shall take effect June 1, 2006.

**2006-1390s**

#### AMENDED ANALYSIS

This bill:

I. Requires proof of identity by persons registering to vote and modifies certain procedures for voter registration applications.

II. Requires supervisors of the checklist to include election day changes of address in the centralized voter registration database.

III. Adds the mailing address contained on the checklist to the public information subject to RSA 91-A.

SENATOR ROBERGE: Thank you, Mr. President. I move Senate Bill 403 ought to pass with amendment. This legislation will decrease the chances of voter fraud by requiring proof of identity by persons registering to vote and modifying certain procedures for voter registration applications. Individuals who cannot produce photo identification on Election Day will not be barred from voting, but with the Secretary of State's Office will do a follow-up to verify their identity. A letter of identity verification will be mailed from the Secretary of State's Office only to those people who could not produce photo identification and were first time voters in the state of New Hampshire. If this letter comes back as undeliverable, it will be given to the Attorney General's Office to investigate whether or not fraudulent voting occurred. The committee amendment removes the requirement that a voter's age range be listed and verified on the voter checklist. The Public and Municipal Affairs Committee asks for your support on the ought to pass as amended. Thank you.

SENATOR HASSAN: Thank you, Mr. President. I rise in opposition to the bill and to the amendment. This bill is a solution in search of a problem. As the League of Women Voters testified at our committee, out of 700,000 ballots cast in the election, our Attorney General's Office and Secretary of State have found exactly one case of voter fraud, a seventeen-year-old young man who zealously used his father's identification knowing his father was out of town. Our voting system in New Hampshire is praised throughout the United States. We have an excellent record, and we do not

need to be changing anything that is not broken. Of those 700,000 ballots, the League of Women Voters also told us that there were only fifty challenges, and only one of those fifty, as I said, was found to have constituted fraud. In addition to being a solution in search of a problem, this bill in fact discourages many of the people we otherwise encourage to vote from doing so. Namely, the younger, the students, the more transient people. I would like...the League of Women Voters came in to our committee, and part of their testimony which they submitted in a letter said this, "The bill targets thousands of New Hampshire citizens for government investigation. It establishes a system whereby citizens without a government issued photo identification will automatically be subject to felony investigation. The only purpose for sending letters to citizens without photo IDs is to question their right to vote. By singling out only citizens who do not have photo IDs, this bill is clearly discriminatory against those most likely to be without photo IDs including the young, poor, minorities, elderly, blind, handicapped, and new residents." We say that we want everyone to vote, but we are setting up a system here which discourages them from doing so. I will also note that we did not get a very thorough, I thought, fiscal note on this because of course now we're giving our Department of Justice and Secretary of State more work to do, again to go after a problem that does not exist. I urge this body to defeat the amendment and to overturn the ought to pass. Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. Senator Hassan has addressed most of the points that I was planning to raise, but I would just rise to support those points. As the Senator representing Durham, we have many, many students. I find that I need to speak out against this because, not only is it not addressing any existing problem, we don't have a problem, it's actually creating problems. It's going to create a lot of problems for folks who are transient, as Senator Hassan said, young, poor, minorities, people in new residences, those who have special needs. It's a very discriminatory bill, and as she said, we have no idea what it's going to cost. Are we going to give the AG's Office more personnel to do all these investigations? What happens if there's a mix-up in the mail? This is fraught with problems all to address something that is perfectly fine. There's no reason for us to pass this bill, and I hope we won't. Thank you, Mr. President.

SENATOR MARTEL: Thank you, Mr. President. I was on the same committee as Senator Hassan sitting and hearing the testimony on this bill. Did hear the points the League of Women Voters' representatives made, but the most poignant points were made and the very issue of this bill is when the Secretary of State got up and said, "If there's any bill that's going to pass regarding this matter, this is the one that I want. This is the key bill." I also want to bring up a point, Mr. President, of how people seem to always gather around...It's always the disabled or the people who are the street people or you know the poorest of the poor. What about the regular person? They're just as equal as anybody else in this voting situation that we have in the state of New Hampshire, but we always neglect them. You know, we should add people as people, voters as voters, not have some kind of designation for each group. I thank you, Mr. President. I urge passage of this bill.

SENATOR ESTABROOK: Thank you, Mr. President. Question of Senator Martel.

SENATOR MARTEL: I'm taking no questions, Mr. President.

SENATOR GREEN: Thank you, Mr. President. I rise in support of this legislation. Let me just say this to my colleagues. We have spent a considerable amount of time with the Secretary of State and the AG's Office to try to wrestle with this issue of complaints about people who are voting illegally. And the problem with the way the system is now, at least in the past, it was very difficult for them, the Secretary of State, to identify who they're dealing with. They get the complaints. They hear about where they live. They go check where they live. They're spending an awful lot of time following up these complaints. We passed a piece of legislation last year on HIPPA which we, with federal dollars, created this centralized voter registration checklist so that we know statewide who is registered properly and who should be voting. With that checklist and with the language in this bill, the Secretary of State will have the tools necessary for him to fulfill his responsibility when people charge fraud in voting. I think this helps everybody. I don't think any of us want people voting that shouldn't be voting. They should be voting. We want them to all vote. But it only takes one or two to foul up the system. What they say about a rotten apple in the barrel, that's what happens. And everybody thinks there's all kinds of fraud out there. I don't happen to believe there's all kinds of fraud out there by the way, okay, that's not what I believe. But I do believe that there are examples which cause a lot of gnashing of teeth that people are concerned about people voting improperly. So I think there is about, as I understood, there were four or five election bills between the House and Senate. And what we tried to do with this piece of legislation was to sit with the Secretary of State and the Attorney General's Office and say, "Look, all these bills are running around here. There's all kinds of ideas, and a lot of them were a lot more radical than this, I'll tell you. A lot of them have been killed; some are still alive. But this was the bill that put everything together in a way which was proper to administer by the state." And that's what we're doing here. Now, if you don't believe that we should have any legislation that deals with checking on people who are not voting properly or legally, then I guess you would not support this. But I think, if you want like I do, want to make sure the system is running properly and that we give them the tools to do the job, and we have given the Secretary of State the tools, and we have given up to now, the language in the statute for them to fulfill their statutory responsibilities, this is the piece of legislation that brings it all together. So I would ask you to support it. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in opposition to the bill. I live in the city of Manchester. One-third of the grammar school children that start at the Parker Varney School in September aren't there in June. One-third of that population is moving. It's moving around the city. Why are they moving around the city? Housing, the cost of housing, and other problems. But one third of those students, now those students have parents, and those parents are usually voters. What we have done in the last couple of sessions is ask these people to sign an affidavit, and the affidavit says, if you're registering for the first time, "I register. I submit to you a document. It's a bill or something of that nature, and under penalty of perjury and a \$1,000 fine, I register to vote." I think we ought to be going after all of the people who don't vote, who don't vote consistently. We ought to be sending them letters. Why aren't you participating in the process? You get a 25 percent turnout. I think that's the problem, and by doing things like this, we're discouraging people from voting. We should be working to get people to

participate in the process, not hindering. I can remember when I first started running for public office, and one of the towns in my district, in order to register to vote you had to have your passport or your birth certificate. Now how many people in this audience walk around with their passport or their birth certificate in their pocket? Very, very few. We also had situations where polls were open at 11:00 in the morning, and they closed at 6:00 at night. Guess who was restricted from voting? Everybody that had a job. So we've done away with those things. We put in uniform polling hours. We put in motor voter. I cannot understand why, when there isn't a problem, we want to address it. We should be getting more people to vote. Every effort should be made by this legislature, this state, and across the country to get more people to participate in the process. Thank you, Mr. President.

SENATOR HASSAN: Thank you, Mr. President. I just rise quickly to respond to the question of whether we want to go after people who are voting illegally, and of course we all do. The problem is this bill goes after people who are voting legally. This bill, if you have a son or daughter over at UNH, and they vote in November and, in early December, they move to a different apartment, and when they voted in November they were a first time registrant, and they didn't have their photo ID and they filled out an affidavit. Now they move apartments in December. The letter from the Secretary of State's Office, when it eventually gets sent, let's say it's a couple months down the road because we're not adding any extra staff in this bill, now goes to your student's old address in November. Guess what? Because that student no longer lives there, and it's not allowed to be forwarded according to this bill. Because that student no longer lives there, they are now subject to a criminal investigation by our Department of Justice just 'cause they moved! They voted legally, and now we're sending the AG's Office after them at expense that we don't need to make and we can't afford as a state. We don't have a problem here. This is going after legal voters who happen to be new voters, who happen to be disabled and elderly who don't have photo IDs, and it's a bad bill. Thank you very much.

SENATOR BRAGDON: I call the question.

SENATOR GOTTESMAN: Thank you. I just want to build on the last comment that Senator Hassan made. It wasn't that long ago that we were considering whether or not the Attorney General's Office was capable of making collections of amounts of money that were less than \$10,000 to which they said they didn't have the resources, and frankly, the interest of collecting that money on behalf of the state of New Hampshire. So now, without any further funding, we are going to ask them to start an investigation as to whether any fraudulent registration or voting occurred. And I think that is beyond the scope of what we should expect from them, and frankly beyond the scope of what is necessary here. Thank you, Mr. President.

SENATOR BOYCE: Thank you, Mr. President. I rise in favor of the bill, and what we're talking about here is one of our most fundamental rights, the right to vote. Now some people say that this type of bill might be taking away that vote from somebody, but I look at it as exactly the opposite. We're told that one person voted fraudulently that we know of, one person. One is too many. We need to protect the vote of the legitimate, law-abiding citizens who legally are entitled to vote. If one person (someone I heard mentioned was an exchange student from Kenya I think maybe) came over here on a scholarship. Not a citizen, not even



a resident. He's just going to college here temporarily on a foreign visa, and I understand he at least tried to vote. I don't know if he accomplished it. But that's wrong. That's wrong. That would be stealing someone else's vote. If someone if one person votes fraudulently, someone else's vote is cancelled. That vote is stolen. It's gone forever. One of our most fundamental rights is the right to vote. People in Iraq and Afghanistan stuck their finger in an inkwell to prove that they voted. It's an important thing. It's important we know who voted. Do we need to put inkwells at the ballots? I don't know. I don't think we need to go that far. But I think we need to at least verify that the person presenting themselves as John Q. Public to vote today is John Q. Public, and that he is legitimately a valid voter, a valid citizen, someone who is entitled to vote and is not stealing the vote from someone else. Thank you.

**Amendment adopted.**

SENATOR BURLING: I think it should be pointed out, Mr. President, that it is as much a theft of a vote to drive a legitimate voter away from the poll as it is to allow somebody not allowed to vote to vote fraudulently. What we're talking about here has much greater likelihood of driving valid voters away from the polls than it does in finding fraudulent voters. There is no problem. We shouldn't create one by passing laws which discriminate against the young, the students, and that portion of our population which moves freely within a city. It's a big mistake.

SENATOR CLEGG: Thank you, Mr. President. Unfortunately, we do have some problems. I know I've stated on the floor before that the Attorney General's Office does absolutely nothing. I've been on study committees. We've had cases where people have confessed, and Bud Fitch from the AG's Office stopped me and said, "Senator, we are doing something. We're just not making it public." They are taking people to court for fraudulent voting when they catch them. It's not, as some would like us to believe once in a great while. It's happening a great number of times, and I'll trust Bud Fitch when he says that the Attorney General's Office is working with the tools we've provided. And I think this is just another tool to stop people from voting either in two different places at the same election or voting in a place where they don't belong. Thank you.

SENATOR ESTABROOK: Yes. Thank you, Mr. President. I just wanted to share a thought that just went through my mind which is that anyone who moves in December is going to be investigated. Thank you, Mr. President.

SENATOR LETOURNEAU: Thank you, Mr. President. I'll be brief. I just want to remind people that in the last election during the Presidential election, Derry had 19,000 people come to the polls in one day. We have one single polling place. This particular piece of legislation would help speed up the affidavits. We had somewhere near the order of 4,000 sign-ups on the single day for motor voter. This would help our election officials move this process faster. Thank you.

SENATOR BURLING: Senator Hassan, were you with me in the room when this bill was heard in committee?

SENATOR HASSAN: Yes, I was, Senator.

SENATOR BURLING: Did you hear Deputy Attorney General Fitch testify?

SENATOR HASSAN: Yes, I did.

SENATOR BURLING: Do you remember hearing also what he had to say in Executive Session?

SENATOR HASSAN: Generally, yes.

SENATOR BURLING: Did you at ever, at any point, hear him say, "We have lots of cases. We're just not making them public."?

SENATOR HASSAN: No, I never heard that testimony.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**The following Senators voted No: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 16 - Nays: 8**

**Adopted.**

**Ordered to third reading.**

SENATOR GATSAS (In the Chair): I apologize. Let me just interrupt the Clerk for a second. The order that we will proceed in is Senate Bill 285, we will go right back to the Addendum Calendar. 285, 314, 352, 361, 380 and 406. Then, we'll go back to the regular calendar. I apologize.

**SB 285-FN**, equalizing the pay of administrative judges in the judicial branch. Finance Committee. Inexpedient to legislate, Vote 5-2. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 285 inexpedient to legislate. This legislation seeks to equalize the pay of administrative judges in the Judicial Branch and does not take effect until the next biennium. The Finance Committee worked very hard last year during the budget process with vacancies and specifically with the Judicial Branch to address their salaries. In addition, this would set a bad precedence because there are other departments that need to equalize pay among certain positions. If the legislature approved this particular department, the others also would need to be addressed. Rather than submitting legislation in between budget years, the Judicial Branch would be better served submitting such requests as part of a budget process as every other department does. The Finance Committee asks for your support of the motion of Inexpedient.

**Committee report of inexpedient to legislate is adopted.**

**SB 314-FN-L**, establishing minimum renewable standards for energy portfolios. Finance Committee. Ought to pass with amendment, Vote 7-1. Senator Odell for the committee.

**Senate Finance  
March 20, 2006  
2006-1460s  
06/09**

**Amendment to SB 314-FN-LOCAL**

Amend the bill by deleting section 3 and renumbering the original sections 4-5 to read as 3-4, respectively.

Amend RSA 374-G:2, I as inserted by section 3 of the bill by replacing it with the following:

I. Providers of electricity in this state shall obtain renewable energy certificates from renewable energy resources to meet the minimum renewable standards for its energy portfolio established by this section or make payments as provided in RSA 374-G:6, II, III, and IV.

Amend RSA 374-G:6, II-IV as inserted by section 3 of the bill by replacing them with the following:

II. An electricity provider may discharge any annual class IA or IC portfolio requirements by making a payment into the fund of \$0 per megawatt-hour of renewable energy obligation in 2007 dollars, adjusted annually by the annual change in the United States Bureau of Labor Statistics Consumer Price Index, which may be made instead of standard means of compliance with the statute. The revised rate per megawatt-hour shall be published by the commission by January 31 of each year.

III. An electricity provider may discharge any annual class IB portfolio requirements by making a payment into the fund of \$0 per megawatt-hour of renewable energy obligation in 2007 dollars, adjusted annually by the annual change in the United States Bureau of Labor Statistics Consumer Price Index, which may be made instead of standard means of compliance with this chapter. The commission by January 31 of each year shall publish the revised rate per megawatt-hour.

IV. An electricity provider may discharge any annual class II portfolio requirements by making a payment into the fund of \$0 per megawatt-hour of renewable energy obligation in 2007 dollars, adjusted annually by the annual change in the United States Bureau of Labor Statistics Consumer Price Index, which may be made instead of standard means of compliance with this statute. The commission by January 31 of each year shall publish the revised rate per megawatt-hour.

SENATOR ODELL: Thank you, Mr. President. I move Senate Bill 314 ought to pass with amendment. The bill establishes standards requiring the use of renewable energy resources by providers of electricity for sale to retail customers in New Hampshire. The amendment approved by the Finance Committee removes the financial impact. In the amendment, electric providers are required to obtain renewable energy certificates or make zero dollar payments to meet the minimum renewable standards established in the bill. The removal of the fiscal impact maintains the intent of the bill and allows the policy to go forward. Please join me in encouraging the use of renewable energy resources by supporting the motion of ought to pass with amendment. Thank you, Mr. President.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 352-FN**, relative to the regulation of real estate appraisers. Finance Committee. Ought to pass, Vote 4-3. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: I don't look like Senator Larsen. Thank you, Mr. President. I move Senate Bill 352 ought to pass. Senate Bill 352 would bring federal transactions made by licensed and certified appraisers under the oversight of the Real Estate Appraisal Board. It is not

intended to affect the ability of anyone in New Hampshire who is not licensed by the Appraisal Board to provide appraisal services for non-federally related transactions as appraisers in New Hampshire have been doing for decades. Anyone who holds the designation of a licensed or certified appraiser falls under the jurisdiction of the Appraisal Board, even when providing appraisals of real estate for non-federally related transactions. This bill would decrease state general fund revenue by \$74,250 in fiscal year 2007. The Finance Committee asks for your support of the motion ought to pass. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 361-FN**, relative to school district contingency funds. Finance Committee. Inexpedient to legislate, Vote 6-1. Senator Odell for the committee.

SENATOR ODELL: Thank you, Mr. President. I'll be very brief. This is my bill. I move Senate Bill 361 inexpedient to legislate. It's good policy. I've worked hard on it, and every time I do anything good, I end up with another question. Rather than putting it on the table, I would ask you to join me in voting ITL. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 380-FN-A**, establishing a research and development credit against the business profits tax. Finance Committee. Ought to pass with amendment, Vote 8-0. Senator Odell for the committee.

**Senate Finance**  
**March 20, 2006**  
**2006-1471s**  
**09/10**

**Amendment to SB 380-FN-A**

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

AN ACT establishing a research and development credit against business taxes.

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

1 New Paragraph; Business Profits Tax; Research and Development Tax Credit. Amend RSA 77-A:5 by inserting after paragraph XII the following new paragraph:

XIII.(a) There shall be allowed a research and development tax credit equal to 15 percent of qualified manufacturing research and development expenditures made or incurred during the taxable period. For purposes of this paragraph the term "qualified manufacturing research and development expenditures" shall mean any wages paid or incurred to an employee of the business organization for services rendered by such employee within this state within the meaning of RSA 77-A:3, I(b), provided that:

(1) Such wages may be treated as research and development expenditures under section 174 of the United States Internal Revenue Code; and

(2) Such services are undertaken for the purpose of discovering information which constitutes qualified research and development as defined in section 41 of the United States Internal Revenue Code and which is limited to the development of a new or improved manufacturing process or business component of the business organization.

(3) In no event shall the credit allowed under this paragraph exceed 5 percent of the tax due under this chapter before any credits under RSA 77-A:5 are taken into account or exceed \$100,000 for each taxpayer for each taxable period, or exceed a total amount of \$1,000,000 for credits claimed under this paragraph by all taxpayers in a taxable period; and provided further that the credit allowed under this paragraph shall be limited so that no more than 50 percent of such credit shall be attributable to wages paid to an employee who is not an "eligible employee" as defined in RSA 77-A:1, XXIII. If the total amount for the credits claimed under this paragraph by all taxpayers in a taxable period exceeds \$1,000,000, the commissioner shall prorate the amount of \$1,000,000 among taxpayers claiming the credit.

(b) For purposes of this paragraph, "employee" shall mean "an employee" as defined in section 3401(c) of the United States Internal Revenue Code and who is an "eligible employee" as defined in RSA 77-A:1, XXIII.

2 New Section; Credit Against Business Enterprise Tax. Amend RSA 77-E by inserting after section 3-a the following new section:

77-E:3-b Research and Development Tax Credit. The research and development tax credit allowed under RSA 77-A:5, XIII may be applied to either the tax imposed under RSA 77-A or the tax imposed under this chapter.

3 Effective Date. This act shall take effect July 1, 2006.

**2006-1471s**

#### AMENDED ANALYSIS

This bill establishes a research and development tax credit against the business profits tax and the business enterprise tax.

SENATOR ODELL: Thank you, Mr. President. I move Senate Bill 380 ought to pass with amendment. This bill recognizes and provides incentives to companies that spend their funds on research and development with a tax credit against the Business Enterprise Tax. Research shows that the short-term cost to the state for credits are made up by long-term positive investments of as much as \$2 for every \$1 of a tax credit. Thirty-four states have a research and development credit including all other New England states. This bill will help New Hampshire be more competitive to businesses and service and incentive for businesses to perform research and development. The amendment to the bill caps the credit to \$1 million at a taxable period for all applicants. In addition, it allows no applicant to receive more than \$100,000. In the event the amount of credits claimed exceeds \$1 million, the funds will be pro-rated among the applicants, allowing additional entities to participate. Please support the committee recommendation of Ought to pass with amendment to further encourage business investment in New Hampshire. Thank you, Mr. President.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 406-FN-A**, establishing a manufacturer's tax on cigarettes sold in New Hampshire. Finance Committee. Ought to pass with amendment, Vote 5-3. Senator Clegg for the committee.

**Senate Finance**  
**March 20, 2006**  
**2006-1473s**  
**09/10**

**Amendment to SB 406-FN-A**

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

AN ACT establishing a manufacturer's tax on cigarettes sold in New Hampshire; relative to the tax on tobacco products other than cigarettes; establishing a committee to study alternatives for funding the operation and maintenance of state-owned dams and making an appropriation to the state dam maintenance fund; raising the age of required attendance of children in school and making an appropriation therefor; making an appropriation for school building aid; relative to a public health response to arbovirus and making an appropriation therefor; and relative to a medical loan repayment pilot program and making an appropriation therefor.

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

4 New Paragraph; Tobacco Tax; Definitions. Amend RSA 78:1 by inserting after paragraph XX the following new paragraph:

XXI. "Loose tobacco" means granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco but does not include cigarettes or tobacco purchased for the manufacture of cigarettes by cigarette manufacturers; cavendish; plug and twist tobacco; loose leaf chewing tobacco; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco.

5 Tobacco Tax; Tax Imposed on Tobacco Products Other Than Cigarettes. Amend RSA 78:7-c to read as follows:

78:7-c Tax Imposed on Tobacco Products Other Than Cigarettes. A tax upon the retail consumer is hereby imposed on tobacco products other than cigarettes at a rate of 19 percent of the wholesale sales price ***on loose tobacco products and at the rate of 48 cents per ounce on all other smokeless products. Such tax shall be assessed on the net weight as listed by the manufacturer.*** The tax under this section may be rounded to the nearest cent if the commissioner determines that the amount of tax would not thereby be made materially disproportionate. No such tax is imposed on any transactions, the taxation of which by this state is prohibited by the Constitution of the United States.

6 Committee Established. There is established a committee to study alternatives for funding the operation and maintenance of state-owned dams.

7 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) Four 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.

8 Duties. The committee shall study the need for the operation and maintenance of state-owned dams, the existing funding sources for the operation and maintenance of state-owned dams including the state's hydro-lease program, established under RSA 481:32, and the state dam

maintenance fund, established under RSA 482. The committee shall develop recommendations for the continued operation and maintenance of state-owned dams and options for funding the state dam maintenance fund.

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

10 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2006.

11 Appropriation. The sum of \$1,000,000 is hereby appropriated to the department of environmental services dam maintenance fund, established under RSA 482:55, for the fiscal year ending June 30, 2007. This sum is in addition to any other funds appropriated to the department of environmental services. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

12 School Attendance; Compulsory Attendance by Pupil. Amend RSA 193:1, I to read as follows:

I. A parent of any child at least 6 years of age and under ~~[16]~~ **18** years of age shall cause such child to attend the public school to which the child is assigned in the child's resident district. Such child shall attend full time when such school is in session unless:

(a) The child is attending a public school outside the district to which the child is assigned or an approved private school for the same time;

(b) The child is receiving home education **and is therefore exempt from this requirement**; ~~[or]~~

(c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student's educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186-C:18 and equitable education grants under RSA 198:41;

**(d) The pupil has been exempted from attendance pursuant to RSA 193:5;**

**(e) The pupil has successfully completed all requirements for graduation and the school district is prepared to issue a diploma or the pupil has successfully achieved the equivalent of a high school diploma;**

**(f) The pupil has been accepted into an accredited postsecondary education program; or**

**(g) The pupil obtains a waiver from the superintendent, which shall only be granted upon proof that the pupil is 16 years of age or older and has an alternative learning plan for obtaining either a high school diploma or its equivalent.**

**(1) Alternative learning plans shall include age-appropriate academic rigor and the flexibility to incorporate the pupil's interests and manner of learning. These plans may include, but are not limited to, such components or combination of compo-**

*nents of extended learning opportunities as independent study, private instruction, performing groups, internships, community service, apprenticeships, and on-line courses.*

*(2) Alternative learning plans shall be developed, and amended if necessary, in consultation with the pupil, a school guidance counselor, the school principal and at least one parent or guardian of the pupil, and submitted to the school district superintendent for approval.*

*(3) If the superintendent does not approve the alternative learning plan, the parent or guardian of the pupil may appeal such decision to the local school board. A parent or guardian may appeal the decision of the local school board to the state board of education consistent with the provisions of RSA 21-N:11, III.*

13 School Attendance; Bylaws as to Nonattendance. Amend RSA 193:16 to read as follows:

193:16 Bylaws as to Nonattendance. Districts may make bylaws, not repugnant to law, concerning habitual truants and children between the ages of 6 and ~~[16]~~ 18 years not attending school ~~[and not having a regular and lawful occupation,]~~ **or who are not participating in an alternative learning plan under RSA 193:1, I(g)**, and to compel the attendance of such children at school; failure to comply with such bylaws shall constitute a violation for each offense.

14 Home Education; Definitions. Amend RSA 193-A:1, I to read as follows:

I. "Child" means a child or children at least 6 years of age and under ~~[16]~~ 18 years of age who is a resident of New Hampshire.

15 Truant Officers; Duties. Amend RSA 189:36 to read as follows:

189:36 Duties. Truant officers shall, when directed by the school board, enforce the laws and regulations relating to truants and children between the ages of 8 and ~~[16]~~ 18 years not attending school ~~[and without any regular and lawful occupation]~~ **or who are not participating in an alternative learning plan under RSA 193:1, I(g)**; and the laws relating to the attendance at school of children between the ages of 8 and 18 years; and shall have authority without a warrant to take and place in school any children found employed contrary to the laws relating to the employment of children, or violating the laws relating to the compulsory attendance at school of children under the age of 18 years, and the laws relating to child labor.

16 Repeal. RSA 193:1, IV, relative to withdrawal from school for children who are at least 16 years of age but under 18 years of age, is repealed.

17 Appropriation. The sum of \$5,000,000 for the biennium ending June 30, 2007 is hereby appropriated to the department of education for the purposes of implementing sections 12-16 of this act. This sum is in addition to any other funds appropriated to the department of education and shall not lapse until June 30, 2009. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

18 School Building Aid; Appropriation. The sum of \$1,000,000 for the fiscal year ending June 30, 2007 is hereby appropriated to the department of education to supplement existing appropriations to the school building aid grant program pursuant to RSA 198:15-a. This sum shall be used to offset any deficit in a school district's building aid grants resulting from changes to school building aid law. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.



19 Division of Emergency Management; State of Emergency. Amend RSA 21-P:35, VIII to read as follows:

VIII. "State of emergency" means that condition, situation, or set of circumstances deemed to be so extremely hazardous or dangerous to life or property that it is necessary and essential to invoke, require, or utilize extraordinary measures, actions, and procedures to lessen or mitigate possible harm. A ***"state of emergency" shall include an arbovirus public health threat.***

20 New Section; Removal of Standing Water Hazards. Amend RSA 105 by inserting after section 3-a the following new section:

105:3-b Removal of Standing Water Hazards. A local health or law enforcement officer may order removal or covering of standing water hazards on property. If the owner of the property, after notice has been delivered by certified mail or by hand delivery at the property owner's last known address fails to comply within a 72-hour period, such owner may be found guilty of a violation. If an arbovirus public health threat has been declared, local health or law enforcement officers may remove the hazard after one week and the property owner shall bear the expense of the removal of the hazard. In this section, "standing water hazard" means any container left open to rain or snow in a manner that allows water to collect and remain in the container in such a manner as to provide a breeding ground for, or to attract, insects. Containers treated with an adequate prophylactic pesticide treatment to prevent mosquito growth are exempt. "Standing water hazard" shall not include above ground or in ground swimming pools or feed or drinking equipment to include buckets and troughs used for livestock. Agricultural operations found to be in compliance with best management practices with regard to mosquito control by the department of agriculture, markets, and food shall be in compliance with this section.

21 New Sections; Communicable Disease; Mosquito Control Districts; Mosquito Control Fund. Amend RSA 141-C by inserting after section 23 the following new sections:

141-C:24 Mosquito Control Districts; Rulemaking. Contiguous municipalities may establish mosquito control districts for the purposes of applying for moneys from the mosquito control fund established in RSA 141-C:25 and for the purposes of applying for spraying permits. The commissioner, in consultation with the commissioner of the department of agriculture, markets, and food shall adopt rules, pursuant to RSA 541-A, relative to the establishment of such mosquito districts.

141-C:25 Mosquito Control Fund.

I. There is hereby established a mosquito control fund to assist cities, towns, mosquito control districts, and non-profit organizations by providing funding for the purpose of offsetting the cost of mosquito control activities including, but not limited to, the purchase and application of chemical pesticides. For the purposes of this section, "non-profit organization" means an organization which has tax-exempt status under section 501(c)(3) of the Internal Revenue Code and which represents members who own or which owns itself, property actively used for agricultural or recreational use. The purpose of the fund is to provide financial assistance, when needed, to cities, towns, mosquito control districts, and non-profit organizations engaging in mosquito control and abatement activities in response to a declared threat to the public health.

II. In order to be eligible to receive funding, a city, town, mosquito control district, or non-profit organization shall have in place a comprehensive mosquito control plan approved by the commissioner. This plan shall include at a minimum:

(a) A list of the pesticides (active ingredient) and methods by which these pesticides will be applied to ensure that the application is done in a safe and proper manner.

(b) Safeguards that will be taken to protect the health of the public, wildlife and resources within the state including provisions for the measuring and monitoring of residual pesticides in the water and soil.

(c) A comprehensive public awareness campaign geared toward prevention and designed to educate the public about the health risks associated with mosquitoes.

III.(a) The commissioner, in consultation with the Centers for Disease Control and Prevention, may determine that a threat to the public health exists that warrants expedited mosquito control and abatement activities within a city, town, mosquito control district, or non-profit organization. Such determination of an arbovirus public health threat shall be based on local factors which may include:

(1) Historical and current climatic conditions.

(2) Historical and current mosquito population indices.

(3) Historical and current mosquito, veterinary, and human arboviral disease surveillance.

(4) The commissioner must declare in writing to the governor and the commissioner of the department of agriculture that such a threat to the public health exists.

(b) An expedited approval process shall be established for the implementation of mosquito control and abatement activities, as described in this paragraph, including the application of pesticides. The commissioner of the department of agriculture, markets, and food may authorize expedited mosquito control and abatement activities pursuant to this paragraph.

IV. A city, town, mosquito control district, or non-profit organization shall be eligible to receive funds if the commissioner determines that:

(a) The city, town, mosquito control district, or non-profit organization has a comprehensive mosquito control plan approved by the commissioner in accordance with paragraph II;

(b) The city, town, mosquito control district, or non-profit organization has engaged or plans to engage in mosquito control and abatement activities pursuant to paragraph III;

(c) The commissioner, after consultation with the Centers for Disease Control and Prevention, has determined that mosquito control and abatement activities are appropriate to mitigate the public health threat; and

(d) The commissioner has filed written notice of a threat to public health with the governor and the commissioner of agriculture, markets, and food.

V. A city, town's, mosquito control district's, or non-profit organization's receipt of funds, as well as the amount of funding, shall be at the discretion of the commissioner subject to the following criteria:

(a) The nature and degree of the declared threat to the public health.

(b) The nature and degree of the city, town's, mosquito control district's or non-profit organization's mosquito control and abatement activities in response to the declared threat to the public health.

(c) The degree to which the non-profit organization's mosquito control and abatement activities will benefit the general public.

(d) The city, town, mosquito control district, or non-profit organization showing that the funding assistance from the mosquito control fund is necessary.

(e) The city, town, mosquito control district's, or non-profit organization's showing that the requested funding assistance is no more than 50 percent of the entity's mosquito control and abatement activities pursuant to the declared threat to the public health.

(f) Funding is available.

22 New Paragraph; Rulemaking Added. Amend RSA 141-C:6 by inserting after paragraph XXI the following new paragraph:

XXII. Procedures for administration of and disbursement from the mosquito control fund, established in RSA 141-C:25.

23 Appropriation.

I. There is hereby appropriated the sum of \$1 to the department of health and human services for the biennium ending June 30, 2007, for the purposes of funding the mosquito control fund established by section 21 of this act. This appropriation shall be reduced by the amount of any federal funds received by the department. This appropriation shall be in addition to any other funds appropriated to the department of health and human services. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

II. If the funds under paragraph I are insufficient to meet the necessary expenditures, the department of health and human services may request approval of the legislative fiscal committee to transfer funds from the general fund to the department of health and human services for the purposes of section 21 of this act.

24 New Paragraph; Exemption Added. Amend RSA 430:46, I by inserting after subparagraph (d) the following new subparagraph:

(e) Expedited mosquito control and abatement activities pursuant to a declared threat to the public health under RSA 141-C:25.

25 Task Force Established. There is established a task force to facilitate a coordinated local, regional, and state response to arboviruses in New Hampshire.

26 Membership and Compensation.

I. The members of the task force shall be as follows:

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

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

(c) The state epidemiologist.

(d) The state veterinarian.

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

(f) The commissioner of the department of agriculture, markets, and food, or designee.

(g) The commissioner of the department of resources and economic development, or designee.

(h) The executive director of the fish and game department, or designee.

(i) The commissioner of the department of environmental services, or designee.

(j) A representative from county government, appointed by the governor.

(k) An entomologist from the university of New Hampshire, appointed by the governor.

(l) Three locally-elected officials from towns or cities where arbovirus has been detected in animals or humans, at least one of whom shall be a public health officer, appointed by the governor.

(m) Two private citizens, each a landowner, officer, one of whom shall be nominated by the New Hampshire Farm Bureau Federation, appointed by the governor.

(n) Two members at-large, appointed by the commissioner of the department of health and human services.

II. The task force shall serve without compensation and may solicit any information from any person or entity the task force deems relevant to its purpose.

27 Duties. The committee shall:

I. Determine the coordination of and planning for mosquito control efforts, including a method to enable communities throughout the state to form mosquito control districts, or to be able to join together informally to file joint applications to engage in larvaecide or adulticide spraying.

II. Determine who should have certain mosquito control responsibilities according to expertise throughout the state.

III. Review and, if necessary, streamline state governmental processes required to implement mosquito control programs.

IV. Plan and coordinate public education and outreach regarding mosquito-borne illness.

V. Apply for funding from private and public sources for the purposes of responding to arbovirus threats.

VI. Determine a method to enable communities to order the removal of standing water hazards on private property and to levy fines on the property owner if necessary.

VII. Establish a mechanism to work with landowners for determining when a pond, marsh land, or wetland on private property is found to be creating a standing water hazard and a method to permit local communities to receive assistance from the fish and game department and the department of environmental services to determine if the standing water hazard can be removed.

VIII. Establish procedures for determining what, if any, mosquito control efforts will be undertaken in state parks.

IX. Establish a mechanism to protect certified organic farms from being treated with products that would void their certification.

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

29 Report. The task force shall make an interim report on or before November 1, 2006 with a report of its findings and any recommendations for proposed legislation and a final report on or before November 1, 2007 to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library.

30 Pilot Program; Appropriation; Medical School Loans.

I. The commissioner of health and human services shall establish a program to make payments owed on medical school loans for Dartmouth Medical School graduates and physicians who have performed residency training at Dartmouth-Hitchcock Medical Center who enter into agreements to provide medical services for at least 3 years in the North Country and other areas of New Hampshire which are underrepresented by physicians. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the requirements for and monitoring of participants in the program.

II. The sum of \$1,000,000 for the fiscal year ending June 30, 2007 is hereby appropriated to the department of health and human services,

for purposes of the pilot program established under paragraph I. This sum is in addition to any other funds appropriated to the department of health and human services. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

31 Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.

32 Effective Date.

I. Sections 1-3 of this act shall take effect January 1, 2007.

II. Sections 4-5, 11, 18-24, and 30 of this act shall take effect July 1, 2006.

III. Sections 12-16 of this act shall take effect July 1, 2008.

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

## 2006-1473s

### AMENDED ANALYSIS

This bill:

I. Establishes a manufacturer's tax on cigarettes sold in New Hampshire.

II. Clarifies and establishes tax rates for loose tobacco products and other smokeless tobacco products.

III. Establishes a committee to study alternatives for funding the operation and maintenance of state owned dams and makes an appropriation to the department of environmental services dam maintenance fund.

IV. Raises from 16 to 18 the age for compulsory school attendance, provides a procedure for a pupil who is at least 16 years of age to obtain an attendance waiver from school, and makes an appropriation to the department of education.

V. Makes a \$1,000,000 appropriation to the department of education to supplement existing appropriations to the school building aid grant program.

VI.(a) Clarifies that a state of emergency includes an arbovirus public health threat.

(b) Establishes a mosquito control fund in the department of health and human services to assist cities, towns, mosquito control districts, and non-profit organizations by providing funding to offset mosquito control activities. The commissioner of the department of health and human services is granted rulemaking authority for the purposes of the bill. The bill also makes an appropriation to the department for the purposes of funding the mosquito control fund.

(c) Allows local health or local law enforcement officers to order removal of standing water hazards.

(d) Establishes a 2-year task force for the purpose of facilitating a coordinated local, regional, and state response to arboviruses in New Hampshire.

VII. Requires the department of health and human services to establish a medical school loan repayment pilot program to encourage Dartmouth Medical School graduates and physicians who have performed residency training at Dartmouth-Hitchcock Medical Center to provide services in the North Country and other areas of the state underrepresented by physicians.

**MOTION TO TABLE**

Senator Clegg moved to have SB 406-FN-A laid on the table.

**Adopted.**

**LAIID ON THE TABLE**

**SB 406-FN-A**, establishing a manufacturer's tax on cigarettes sold in New Hampshire.

**SB 247**, establishing a right to work act which provides for freedom of choice on whether to join a labor union. Banks and Insurance Committee. Ought to pass with amendment, Vote 3-1. Senator Odell for the committee.

**Banks and Insurance**

**March 15, 2006**

**2006-1372s**

**06/09**

**Amendment to SB 247**

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

AN ACT establishing a committee to study the effect of the costs of health insurance on public employment contracts.

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

1 Committee Established. There is established a committee to study the effect of the costs of health insurance on public employment contracts.

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 of representatives.

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

3 Duties. The committee shall study the effect of the costs of health insurance on public employment contracts.

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

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before January 1, 2007.

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

**2006-1372s**

**AMENDED ANALYSIS**

This bill establishes a committee to study the effect of the costs of health insurance on public employment contracts.

**MOTION TO TABLE**

Senator Odell moved to have SB 247 laid on the table.

**Adopted.**

**LAI D ON THE TABLE**

**SB 247**, establishing a right to work act which provides for freedom of choice on whether to join a labor union.

**SB 267**, relative to the definition of employee and clarifying the criteria for exempting workers from employee status. Banks and Insurance Committee. Ought to pass with amendment, Vote 4-0. Senator Foster for the committee.

**Banks and Insurance****March 15, 2006****2006-1371s****06/09****Amendment to SB 267**

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

1 Procuring Employment; Imposition of Conditions; Definition of Employee Changed. RSA 275:4, II is repealed and reenacted to read as follows:

II. In this subdivision any person who performs services for pay for an employer is presumed to be an employee. This presumption may be rebutted as specified in subparagraphs (a)–(k). “Employee” means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VII(b) or any person who is deemed an independent contractor upon consideration of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person’s assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants’ work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the person’s business depends on the relationship of business receipts to expenditures.

(h) The person incurs in the first instance the main expenses related to the service or work performed.

(i) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(j) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(k) The person is not required to work exclusively for the employer.

III. The factors set forth in subparagraphs II(a)-(k) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs II(a)-(k) that exist in a given case, the more likely the individual will be deemed an independent contractor.

IV. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may be established by a written agreement, as set forth below, furnished by the commissioner and signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs II(a)-(e). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund. The written agreement shall be in the following form:

State of New Hampshire Department of Labor

VERIFICATION OF INDEPENDENT CONTRACTOR STATUS

To Be Completed By Independent Contractor At Time of Agreement to Provide Services

Name of Independent Contractor: \_\_\_\_\_

Federal Employer Tax ID. #  
Or Social Security Number: \_\_\_\_\_

Brief Description of Service(s) you are Providing: \_\_\_\_\_

Service(s) Are Being Provided To: Name and Address Of Business/Entity \_\_\_\_\_

Check all statements that describe your agreement with the business/entity to provide services:

(a) I have a federal employer tax identification number or social security number as listed above.

(b) I have control and discretion over the means and manner of performance and I am not directed or supervised by the business/entity.

(c) The time of performance is not dictated to me; or the business/entity and I have reached an agreement as to some or all of the following: completion schedules, range of work hours, maximum number of hours to be worked, and in the case of entertainment, the time such entertainment is to be provided.



(d) I hire and pay assistants, if any, and supervise the details of the assistants' work, if those assistants are my employees.

(e) I am in business for myself.

(f) The success or failure of my business depends upon the relationship of receipts to expenditures.

(g) I have continuing or recurring business liabilities or obligations.

(h) I am responsible for the expenses related to the service or work performed.

(i) I am responsible for the satisfactory completion of the work and may be contractually responsible for failure to complete the work.

(j) I supply the principal tools/equipment used in the work, with the exception of tools/equipment that are unique to the business/entity's special requirements or are located on the business/entity's premises/work site.

(k) I am free to perform services for other businesses/individuals.

IF AT LEAST 7 OF THE LISTED CRITERIA, (5 OF WHICH MUST BE (a)-(e)) ARE CHECKED, PLEASE CONTINUE FILLING OUT THIS FORM.

IF NOT, YOU ARE NOT PROPERLY CLASSIFIED AS AN INDEPENDENT CONTRACTOR.

I certify that I have completed this verification of independent contractor form knowingly and voluntarily and without duress or undue influence. I further certify as follows:

I understand that I am an independent contractor and not an employee of \_\_\_\_\_ (print name of business/entity). I understand that I am responsible to pay applicable state and federal taxes related to the payments I receive for the services provided hereunder.

I understand that as an independent contractor, I may be responsible for purchasing my own workers' compensation insurance policy. As an independent contractor I am not eligible to receive workers' compensation insurance coverage or benefits from \_\_\_\_\_ (print name of business/entity) or their workers' compensation insurance carrier.

I understand that as an independent contractor I am not an "employee" as defined under NH RSA 275:4, II; RSA 275:42, II; RSA 275-E:1, I; RSA 279:1, X; or RSA 281-A:2, VI(b)(1) and therefore I am not protected by/covered under state laws regarding procuring of employment, imposition of conditions, the payment of wages, minimum wage and overtime, whistleblowers' protection, or workers' compensation.

I hereby swear and acknowledge that the statements and representations made in this verification of independent contractor status are true and accurate and have been made by me knowingly and voluntarily and without duress or undue influence.

\_\_\_\_\_  
Signature of Independent Contractor

\_\_\_\_\_  
Signature of Business/Entity

\_\_\_\_\_  
Print Name of Independent Contractor

\_\_\_\_\_  
Print Name of Business/Entity

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

In accordance with RSA 281-A:2, VI(c): "...If the Commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer..."

## STATE OF NEW HAMPSHIRE

COUNTY OF \_\_\_\_\_, 2006

Subscribed and sworn to by \_\_\_\_\_, before me,  
on the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public/Justice of the Peace

My Comm. Exp.:

2 Payment of Wages; Definition of Employee Changed. RSA 275:42, II is repealed and reenacted to read as follows:

II. Any person who performs services for pay for an employer is presumed to be an employee. This presumption may be rebutted as specified in subparagraphs (a)-(k). "Employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VII(b) or any person who is deemed an independent contractor upon consideration of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the person's business depends on the relationship of business receipts to expenditures.

(h) The person incurs in the first instance the main expenses related to the service or work performed.

(i) The person is responsible for satisfactory completion of work and may be held contractually liable for failure to complete the work.

(j) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(k) The person is not required to work exclusively for the employer.

III. The factors set forth in subparagraphs II(a)-(k) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs II(a)-(k) that exist in a given case, the more likely the individual will be deemed an independent contractor.

IV. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may be established by a written agreement, as set forth in RSA 275:4, IV, furnished by the commissioner and signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs II(a)-(e). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund.

3 Whistleblowers' Protection Act; Definition of Employee Changed. RSA 275-E:1, I is repealed and reenacted to read as follows:

I. Any person who performs services for pay for an employer is presumed to be an employee. This presumption may be rebutted as specified in subparagraphs (a)-(k). "Employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VII(b) or any person who is deemed an independent contractor upon consideration of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the person's business depends on the relationship of business receipts to expenditures.

(h) The person incurs in the first instance the main expenses related to the service or work performed.

(i) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(j) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(k) The person is not required to work exclusively for the employer.

III. The factors set forth in subparagraphs II(a)-(k) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs II(a)-(k) that exist in a given case, the more likely the individual will be deemed an independent contractor.

IV. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may be established by a written agreement, as set forth in RSA 275:4, IV, furnished by the commissioner and signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs II(a)-(e). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund.

4 Minimum Wage Law; Definition of Employee Changed. RSA 279:1, X is repealed and reenacted to read as follows:

X. Any person who performs services for pay for an employer is presumed to be an employee. This presumption may be rebutted as specified in subparagraphs (a)-(k). "Employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VII(b) or any person who is deemed an independent contractor upon consideration of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the person's business depends on the relationship of business receipts to expenditures.

(h) The person incurs in the first instance the main expenses related to the service or work performed.

(i) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(j) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(k) The person is not required to work exclusively for the employer.

III. The factors set forth in subparagraphs II(a)-(k) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs II(a)-(k) that exist in a given case, the more likely the individual will be deemed an independent contractor.

IV. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may be established by a written agreement, as set forth in RSA 275:4, IV, furnished by the commissioner and signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs II(a)-(e). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund.

5 Workers' Compensation; Definition of Employee Changed. RSA 281-A:2, VI(b)(1) is repealed and reenacted to read as follows:

(b)(1)(A) Subject to the preceding subparagraph, any person, other than a direct seller or qualified real estate broker or agent or real estate appraiser, who performs services for pay for an employer, is presumed to be an employee. This presumption may be rebutted by proof that an individual is deemed an independent contractor upon consideration of the following criteria:

(i) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(ii) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather

than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(iii) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(iv) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(v) The person holds himself or herself out to be in business for himself or herself.

(vi) The person has continuing or recurring business liabilities or obligations.

(vii) The success or failure of the person's business depends on the relationship of business receipts to expenditures.

(viii) The person incurs in the first instance the main expenses related to the service or work performed.

(ix) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(x) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(xi) The person is not required to work exclusively for the employer.

(B) The factors set forth in subparagraphs (b)(1)(A)(i)-(xi) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs (b)(1)(A)(i)-(xi) that exist in a given case, the more likely the individual will be deemed an independent contractor.

6 Workers' Compensation; Definition of Employee; Reference Changed. Amend RSA 281-A:2, VI(c) to read as follows:

(c) Prima facie evidence that the criteria prescribed in RSA 281-A:2, VI(b)(1)(A)(i)-(ix) have been met may be established by a written agreement furnished by the commissioner and signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs (b)(1)(A)(i)-(v). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs (b)(1)(A)(i)-(xi) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund.

7 Effective Date. This act shall take effect January 1, 2007.

SENATOR FOSTER: Thank you, Mr. President. I move Senate Bill 267 ought to pass. This bill was originally brought forward as a result of work done by a study committee which looked at the problem of misclassification of employees as independent contractors in the workforce. This often happens because employers are not required to provide workers' compensation coverage to independent contractors. The amended version of the bill clarifies that anyone paid by an employer is an employee unless they meet certain criteria for being classified as an independent contractor, the criteria outlined in the amendment. The amendment also includes a form to be signed by the individual wishing to be classified as an independent contractor. The form will make it clear that by accepting the independent contractor status you're not covered by workers' compensation. The Banks and Insurance Committee recommends that this legislation be adopted as amended and asks for your support. However, to modify those remarks, I believe that there is a floor amendment to be presented by Senator Hassan and Senator Clegg, so I would ask, in the first instance, that this body vote down the committee amendment, so that floor amendment can be substituted which deals with many of the same things I talked about and makes some corrections.

**Amendment failed.**

Senator Hassan offered a floor amendment.

Sen. Hassan, Dist. 23

Sen. Clegg, Dist. 14

**March 22, 2006**

**2006-1505s**

**06/01**

**Floor Amendment to SB 267**

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

1 Procuring Employment; Imposition of Conditions; Definition of Employee Changed. RSA 275:4, II is repealed and reenacted to read as follows:

II. In this subdivision any person who performs services for pay for an employer is presumed to be an employee. This presumption may be rebutted as specified below. "Employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VII(b) or any person who is deemed an independent contractor upon consideration of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours,

and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person’s assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants’ work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the person’s business depends on the relationship of business receipts to expenditures.

(h) The person incurs in the first instance the main expenses related to the service or work performed.

(i) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(j) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer’s special requirements or are located on the employer’s premises.

(k) The person is not required to work exclusively for the employer.

2 New Paragraphs; Independent Contractor. Amend RSA 275:4 by inserting after paragraph II the following new paragraphs:

III. The factors set forth in subparagraphs II(a)-(k) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs II(a)-(k) that exist in a given case, the more likely the individual will be deemed an independent contractor.

IV. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may be established by a written agreement, as set forth below, when signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs II(a)-(e). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may also be established by a person’s representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer’s use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund.

State of New Hampshire Department of Labor

VERIFICATION OF INDEPENDENT CONTRACTOR STATUS

To Be Completed By Independent Contractor At Time of Agreement to Provide Services

Name of Independent Contractor: \_\_\_\_\_

Federal Employer Tax ID. #  
Or Social Security Number: \_\_\_\_\_



Brief Description of Service(s) you are Providing: \_\_\_\_\_

Service(s) Are Being Provided

To: Name and Address Of

Business/Entity \_\_\_\_\_

Check all statements that describe your agreement with the business or entity to whom you are providing services:

(a) I have a federal employer tax identification number or social security number as listed above.

(b) I have control and discretion over the means and manner of performance and I am not directed or supervised by the business or entity.

(c) The time of performance is not dictated to me; or the business or entity and I have reached an agreement as to some or all of the following: completion schedules, range of work hours, maximum number of hours to be worked, and in the case of entertainment, the time such entertainment is to be provided.

(d) I hire and pay assistants, if any, and supervise the details of the assistants' work, if those assistants are my employees.

(e) I am in business for myself.

(f) The success or failure of my business depends upon the relationship of receipts to expenditures.

(g) I have continuing or recurring business liabilities or obligations.

(h) I am responsible for the expenses related to the service or work performed.

(i) I am responsible for the satisfactory completion of the work and may be contractually responsible for failure to complete the work.

(j) I supply the principal tools/equipment used in the work, with the exception of tools/equipment that are unique to the business or entity's special requirements or are located on the business or entity's premises/work site.

(k) I am free to perform services for other businesses/individuals.

**IF AT LEAST 7 OF THE LISTED CRITERIA, (5 OF WHICH MUST BE (a)-(e)) ARE CHECKED, PLEASE CONTINUE FILLING OUT THIS FORM.**

**IF NOT, YOU ARE NOT PROPERLY CLASSIFIED AS AN INDEPENDENT CONTRACTOR.**

I certify that I have completed this verification of independent contractor form knowingly and voluntarily and without duress or undue influence. I further certify as follows:

I understand that I am an independent contractor and not an employee of \_\_\_\_\_ (print name of business or entity). I understand that I am responsible to pay applicable state and federal taxes related to the payments I receive for the services provided hereunder.

I understand that as an independent contractor, I may be responsible for purchasing my own workers' compensation insurance policy. As an independent contractor I am not eligible to receive workers' compensation insurance coverage or benefits from \_\_\_\_\_ (print name of business or entity) or their workers' compensation insurance carrier.

I understand that as an independent contractor I am not an "employee" as defined under RSA 275:4, II; RSA 275:42, II; RSA 275-E:1, I; RSA 279:1, X; or RSA 281-A:2, VI(b)(1) and therefore I am not protected by/covered under state laws regarding procuring of employment, imposition of conditions, the payment of wages, minimum wage and overtime, whistleblowers' protection, or workers' compensation.

I hereby swear and acknowledge that the statements and representations made in this verification of independent contractor status are true and accurate and have been made by me knowingly and voluntarily and without duress or undue influence.

<hr/> Signature of Independent Contractor		<hr/> Signature of Business/Entity	
<hr/> Print Name of Independent Contractor		<hr/> Print Name of Business/Entity	
<hr/> Date	<hr/> Fed ID # or Soc. Sec. #	<hr/> Date	<hr/> Fed ID # or Soc. Sec. #

In accordance with New Hampshire law: "If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer."

3 Payment of Wages; Definition of Employee Changed. RSA 275:42, II is repealed and reenacted to read as follows:

II. Any person who performs services for pay for an employer is presumed to be an employee. This presumption may be rebutted as specified below. "Employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VII(b) or any person who is deemed an independent contractor upon consideration of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the person's business depends on the relationship of business receipts to expenditures.

(h) The person incurs in the first instance the main expenses related to the service or work performed.

(i) The person is responsible for satisfactory completion of work and may be held contractually liable for failure to complete the work.

(j) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(k) The person is not required to work exclusively for the employer.

4 New Paragraphs; Independent Contractor. Amend RSA 275:42 by inserting after paragraph II the following new paragraphs:

II-a. The factors set forth in subparagraphs II(a)-(k) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs II(a)-(k) that exist in a given case, the more likely the individual will be deemed an independent contractor.

II-b. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may be established by a written agreement, as set forth below when signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs II(a)-(e). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund.  
State of New Hampshire Department of Labor

**VERIFICATION OF INDEPENDENT CONTRACTOR STATUS**

To Be Completed By Independent Contractor At Time of Agreement to Provide Services

Name of Independent Contractor: \_\_\_\_\_

Federal Employer Tax ID. #  
Or Social Security Number: \_\_\_\_\_

Brief Description of Service(s) you are Providing: \_\_\_\_\_

Service(s) Are Being Provided  
To: Name and Address Of  
Business/Entity \_\_\_\_\_

Check all statements that describe your agreement with the business or entity to whom you are providing services:

(a) I have a federal employer tax identification number or social security number as listed above.

(b) I have control and discretion over the means and manner of performance and I am not directed or supervised by the business or entity.

(c) The time of performance is not dictated to me; or the business or entity and I have reached an agreement as to some or all of the following: completion schedules, range of work hours, maximum number of hours to be worked, and in the case of entertainment, the time such entertainment is to be provided.

(d) I hire and pay assistants, if any, and supervise the details of the assistants' work, if those assistants are my employees.

(e) I am in business for myself.

(f) The success or failure of my business depends upon the relationship of receipts to expenditures.

(g) I have continuing or recurring business liabilities or obligations.

(h) I am responsible for the expenses related to the service or work performed.

(i) I am responsible for the satisfactory completion of the work and may be contractually responsible for failure to complete the work.

(j) I supply the principal tools/equipment used in the work, with the exception of tools/equipment that are unique to the business or entity's special requirements or are located on the business or entity's premises/work site.

(k) I am free to perform services for other businesses/individuals.

**IF AT LEAST 7 OF THE LISTED CRITERIA, (5 OF WHICH MUST BE (a)-(e)) ARE CHECKED, PLEASE CONTINUE FILLING OUT THIS FORM.**

**IF NOT, YOU ARE NOT PROPERLY CLASSIFIED AS AN INDEPENDENT CONTRACTOR.**

I certify that I have completed this verification of independent contractor form knowingly and voluntarily and without duress or undue influence. I further certify as follows:

I understand that I am an independent contractor and not an employee of \_\_\_\_\_ (print name of business or entity). I understand that I am responsible to pay applicable state and federal taxes related to the payments I receive for the services provided hereunder.

I understand that as an independent contractor, I may be responsible for purchasing my own workers' compensation insurance policy. As an independent contractor I am not eligible to receive workers' compensation insurance coverage or benefits from \_\_\_\_\_ (print name of business or entity) or their workers' compensation insurance carrier.

I understand that as an independent contractor I am not an "employee" as defined under RSA 275:4, II; RSA 275:42, II; RSA 275-E:1, I; RSA 279:1, X; or RSA 281-A:2, VI(b)(1) and therefore I am not protected by/covered under state laws regarding procuring of employment, imposition of conditions, the payment of wages, minimum wage and overtime, whistleblowers' protection, or workers' compensation.

I hereby swear and acknowledge that the statements and representations made in this verification of independent contractor status are true and accurate and have been made by me knowingly and voluntarily and without duress or undue influence.

Signature of Independent Contractor		Signature of Business/Entity	
Print Name of Independent Contractor		Print Name of Business/Entity	
Date	Fed ID # or Soc. Sec. #	Date	Fed ID # or Soc. Sec. #

In accordance with New Hampshire law: "If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer."

5 Whistleblowers' Protection Act; Definition of Employee Changed. RSA 275-E:1, I is repealed and reenacted to read as follows:

I. Any person who performs services for pay for an employer is presumed to be an employee. This presumption may be rebutted as specified below. "Employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VII(b) or any person who is deemed an independent contractor upon consideration of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the person's business depends on the relationship of business receipts to expenditures.

(h) The person incurs in the first instance the main expenses related to the service or work performed.

(i) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(j) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(k) The person is not required to work exclusively for the employer.

6 New Paragraphs; Independent Contractor. Amend RSA 275-E:1 by inserting after paragraph I the following new paragraphs:

I-a. The factors set forth in subparagraphs I(a)-(k) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs I(a)-(k) that exist in a given case, the more likely the individual will be deemed an independent contractor.

I-b. Prima facie evidence that the criteria prescribed in subparagraphs I(a)-(k) have been met may be established by a written agreement, as set forth below when signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs I(a)-(e). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs I(a)-(k) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund.

State of New Hampshire Department of Labor

VERIFICATION OF INDEPENDENT CONTRACTOR STATUS

To Be Completed By Independent Contractor At Time of Agreement to Provide Services

Name of Independent Contractor: \_\_\_\_\_

Federal Employer Tax ID. #  
Or Social Security Number: \_\_\_\_\_

Brief Description of Service(s) you are Providing: \_\_\_\_\_

Service(s) Are Being Provided To: Name and Address Of Business/Entity \_\_\_\_\_

Check all statements that describe your agreement with the business or entity to whom you are providing services:

- (a) I have a federal employer tax identification number or social security number as listed above.
- (b) I have control and discretion over the means and manner of performance and I am not directed or supervised by the business or entity.
- (c) The time of performance is not dictated to me; or the business or entity and I have reached an agreement as to some or all of the following: completion schedules, range of work hours, maximum number of hours to be worked, and in the case of entertainment, the time such entertainment is to be provided.
- (d) I hire and pay assistants, if any, and supervise the details of the assistants' work, if those assistants are my employees.
- (e) I am in business for myself.

(f) The success or failure of my business depends upon the relationship of receipts to expenditures.

(g) I have continuing or recurring business liabilities or obligations.

(h) I am responsible for the expenses related to the service or work performed.

(i) I am responsible for the satisfactory completion of the work and may be contractually responsible for failure to complete the work.

(j) I supply the principal tools/equipment used in the work, with the exception of tools/equipment that are unique to the business or entity's special requirements or are located on the business or entity's premises/work site.

(k) I am free to perform services for other businesses/individuals.

IF AT LEAST 7 OF THE LISTED CRITERIA, (5 OF WHICH MUST BE (a)-(e)) ARE CHECKED, PLEASE CONTINUE FILLING OUT THIS FORM.

IF NOT, YOU ARE NOT PROPERLY CLASSIFIED AS AN INDEPENDENT CONTRACTOR.

I certify that I have completed this verification of independent contractor form knowingly and voluntarily and without duress or undue influence. I further certify as follows:

I understand that I am an independent contractor and not an employee of \_\_\_\_\_ (print name of business or entity). I understand that I am responsible to pay applicable state and federal taxes related to the payments I receive for the services provided hereunder.

I understand that as an independent contractor, I may be responsible for purchasing my own workers' compensation insurance policy. As an independent contractor I am not eligible to receive workers' compensation insurance coverage or benefits from \_\_\_\_\_ (print name of business or entity) or their workers' compensation insurance carrier.

I understand that as an independent contractor I am not an "employee" as defined under RSA 275:4, II; RSA 275:42, II; RSA 275-E:1, I; RSA 279:1, X; or RSA 281-A:2, VI(b)(1) and therefore I am not protected by/covered under state laws regarding procuring of employment, imposition of conditions, the payment of wages, minimum wage and overtime, whistleblowers' protection, or workers' compensation.

I hereby swear and acknowledge that the statements and representations made in this verification of independent contractor status are true and accurate and have been made by me knowingly and voluntarily and without duress or undue influence.

\_\_\_\_\_  
Signature of Independent Contractor

\_\_\_\_\_  
Signature of Business/Entity

\_\_\_\_\_  
Print Name of Independent Contractor

\_\_\_\_\_  
Print Name of Business/Entity

\_\_\_\_\_  
Date Fed ID # or Soc. Sec. #

\_\_\_\_\_  
Date Fed ID # or Soc. Sec. #

In accordance with New Hampshire law: "If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer."

7 Minimum Wage Law; Definition of Employee Changed. RSA 279:1, X is repealed and reenacted to read as follows:

X. Any person who performs services for pay for an employer is presumed to be an employee. This presumption may be rebutted as specified below. "Employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VII(b) or any person who is deemed an independent contractor upon consideration of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the person's business depends on the relationship of business receipts to expenditures.

(h) The person incurs in the first instance the main expenses related to the service or work performed.

(i) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(j) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(k) The person is not required to work exclusively for the employer.

8 New Paragraphs; Independent Contractor. Amend RSA 279:1 by inserting after paragraph X the following new paragraphs:

X-a. The factors set forth in subparagraphs X(a)-(k) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs X(a)-(k) that exist in a given case, the more likely the individual will be deemed an independent contractor.

X-b. Prima facie evidence that the criteria prescribed in subparagraphs X(a)-(k) have been met may be established by a written agreement, as set forth below when signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs X(a)-(e). Nothing in this paragraph shall require



such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs X(a)-(k) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund.

State of New Hampshire Department of Labor

### VERIFICATION OF INDEPENDENT CONTRACTOR STATUS

To Be Completed By Independent Contractor At Time of Agreement to Provide Services

Name of Independent Contractor: \_\_\_\_\_

Federal Employer Tax ID. #  
Or Social Security Number: \_\_\_\_\_

Brief Description of Service(s) you are Providing: \_\_\_\_\_

Service(s) Are Being Provided To: Name and Address Of Business/Entity \_\_\_\_\_

Check all statements that describe your agreement with the business or entity to whom you are providing services:

(a) I have a federal employer tax identification number or social security number as listed above.

(b) I have control and discretion over the means and manner of performance and I am not directed or supervised by the business or entity.

(c) The time of performance is not dictated to me; or the business or entity and I have reached an agreement as to some or all of the following: completion schedules, range of work hours, maximum number of hours to be worked, and in the case of entertainment, the time such entertainment is to be provided.

(d) I hire and pay assistants, if any, and supervise the details of the assistants' work, if those assistants are my employees.

(e) I am in business for myself.

(f) The success or failure of my business depends upon the relationship of receipts to expenditures.

(g) I have continuing or recurring business liabilities or obligations.

(h) I am responsible for the expenses related to the service or work performed.

(i) I am responsible for the satisfactory completion of the work and may be contractually responsible for failure to complete the work.

(j) I supply the principal tools/equipment used in the work, with the exception of tools/equipment that are unique to the business or entity's special requirements or are located on the business or entity's premises/work site.

(k) I am free to perform services for other businesses/individuals.

IF AT LEAST 7 OF THE LISTED CRITERIA, (5 OF WHICH MUST BE (a)-(e)) ARE CHECKED, PLEASE CONTINUE FILLING OUT THIS FORM.

IF NOT, YOU ARE NOT PROPERLY CLASSIFIED AS AN INDEPENDENT CONTRACTOR.

I certify that I have completed this verification of independent contractor form knowingly and voluntarily and without duress or undue influence. I further certify as follows:

I understand that I am an independent contractor and not an employee of \_\_\_\_\_ (print name of business or entity). I understand that I am responsible to pay applicable state and federal taxes related to the payments I receive for the services provided hereunder.

I understand that as an independent contractor, I may be responsible for purchasing my own workers' compensation insurance policy. As an independent contractor I am not eligible to receive workers' compensation insurance coverage or benefits from \_\_\_\_\_ (print name of business or entity) or their workers' compensation insurance carrier.

I understand that as an independent contractor I am not an "employee" as defined under RSA 275:4, II; RSA 275:42, II; RSA 275-E:1, I; RSA 279:1, X; or RSA 281-A:2, VI(b)(1) and therefore I am not protected by/covered under state laws regarding procuring of employment, imposition of conditions, the payment of wages, minimum wage and overtime, whistleblowers' protection, or workers' compensation.

I hereby swear and acknowledge that the statements and representations made in this verification of independent contractor status are true and accurate and have been made by me knowingly and voluntarily and without duress or undue influence.

Signature of Independent Contractor	Signature of Business/Entity
Print Name of Independent Contractor	Print Name of Business/Entity
Date	Fed ID # or Soc. Sec. #
Date	Fed ID # or Soc. Sec. #

In accordance with New Hampshire law: "If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer."

9 Workers' Compensation; Definition of Employee Changed. RSA 281-A:2, VI(b)(1) is repealed and reenacted to read as follows:

(b)(1)(A) Subject to the preceding subparagraph, any person, other than a direct seller or qualified real estate broker or agent or real estate appraiser, who performs services for pay for an employer, is presumed to be an employee. This presumption may be rebutted by proof that an individual is deemed an independent contractor upon consideration of the following criteria:

(i) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(ii) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(iii) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(iv) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(v) The person holds himself or herself out to be in business for himself or herself.

(vi) The person has continuing or recurring business liabilities or obligations.

(vii) The success or failure of the person's business depends on the relationship of business receipts to expenditures.

(viii) The person incurs in the first instance the main expenses related to the service or work performed.

(ix) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(x) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(xi) The person is not required to work exclusively for the employer.

(B) The factors set forth in subparagraphs VI(b)(1)(A)(i)-(xi) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs VI(b)(1)(A)(i)-(xi) that exist in a given case, the more likely the individual will be deemed an independent contractor.

10 Workers' Compensation; Definition of Employee; Reference Changed. RSA 281-A:2, VI(c) is repealed and reenacted to read as follows:

(c) Prima facie evidence that the criteria prescribed in RSA 281-A:2, VI(b)(1)(A)(i)-(xi) have been met may be established by a written agreement as set forth below when signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs VI(b)(1)(A)(i)-(v). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs VI(b)(1)(A)(i)-(xi) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund.

State of New Hampshire Department of Labor  
VERIFICATION OF INDEPENDENT CONTRACTOR STATUS

To Be Completed By Independent Contractor At Time of Agreement to Provide Services

Name of Independent Contractor: \_\_\_\_\_

Federal Employer Tax ID. # \_\_\_\_\_  
Or Social Security Number: \_\_\_\_\_

Brief Description of Service(s) you are Providing: \_\_\_\_\_

Service(s) Are Being Provided To: Name and Address Of Business/Entity \_\_\_\_\_

Check all statements that describe your agreement with the business or entity to whom you are providing services:

(a) I have a federal employer tax identification number or social security number as listed above.

(b) I have control and discretion over the means and manner of performance and I am not directed or supervised by the business or entity.

(c) The time of performance is not dictated to me; or the business or entity and I have reached an agreement as to some or all of the following: completion schedules, range of work hours, maximum number of hours to be worked, and in the case of entertainment, the time such entertainment is to be provided.

(d) I hire and pay assistants, if any, and supervise the details of the assistants' work, if those assistants are my employees.

(e) I am in business for myself.

(f) The success or failure of my business depends upon the relationship of receipts to expenditures.

(g) I have continuing or recurring business liabilities or obligations.

(h) I am responsible for the expenses related to the service or work performed.

(i) I am responsible for the satisfactory completion of the work and may be contractually responsible for failure to complete the work.

(j) I supply the principal tools/equipment used in the work, with the exception of tools/equipment that are unique to the business or entity's special requirements or are located on the business or entity's premises/work site.

(k) I am free to perform services for other businesses/individuals.

IF AT LEAST 7 OF THE LISTED CRITERIA, (5 OF WHICH MUST BE (a)-(e)) ARE CHECKED, PLEASE CONTINUE FILLING OUT THIS FORM.

IF NOT, YOU ARE NOT PROPERLY CLASSIFIED AS AN INDEPENDENT CONTRACTOR.

I certify that I have completed this verification of independent contractor form knowingly and voluntarily and without duress or undue influence. I further certify as follows:

I understand that I am an independent contractor and not an employee of \_\_\_\_\_ (print name of business or entity).

I understand that I am responsible to pay applicable state and federal taxes related to the payments I receive for the services provided hereunder.

I understand that as an independent contractor, I may be responsible for purchasing my own workers' compensation insurance policy. As an independent contractor I am not eligible to receive workers' compensation insurance coverage or benefits from \_\_\_\_\_ (print name of business or entity) or their workers' compensation insurance carrier.

I understand that as an independent contractor I am not an "employee" as defined under RSA 275:4, II; RSA 275:42, II; RSA 275-E:1, I; RSA 279:1, X; or RSA 281-A:2, VI(b)(1) and therefore I am not protected by/covered under state laws regarding procuring of employment, imposition of conditions, the payment of wages, minimum wage and overtime, whistleblowers' protection, or workers' compensation.

I hereby swear and acknowledge that the statements and representations made in this verification of independent contractor status are true and accurate and have been made by me knowingly and voluntarily and without duress or undue influence.

Signature of Independent Contractor	Signature of Business/Entity
Print Name of Independent Contractor	Print Name of Business/Entity
Date	Date
Fed ID # or Soc. Sec. #	Fed ID # or Soc. Sec. #

In accordance with New Hampshire law: "If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer."

11 Effective Date. This act shall take effect January 1, 2007.

SENATOR HASSAN: Thank you, Mr. President. I rise to speak to a floor amendment, 1505s, and will speak to it if it's alright while it's being passed out. This is an amendment submitted by myself and Senator Clegg, and it really deals with technical errors that were in the committee amendment. As Senator Foster referenced, this bill is intended to prevent the problem of misclassification of employees as independent contractors, an issue that is particularly plaguing us in the construction industry at this time. What the amendment does is make sure that the new criteria that we've added to help determine whether somebody is an independent contractor is added to a total of five sections of our statute, all of which deal with the relationship between employer and employee. The section about procuring employment, the section about payment of wages, the section about the Whistleblower Protection Act, the section about minimum wage, and the section about workers' compensation. Did everybody get two? It should be a total of about sixteen pages, one amendment. Well, in any event, we are looking at 1505. You've got two copies of 1505 here, so it's just the single amendment, and I would also note a couple of things. As Senator Foster also referenced, there is provision in this law throughout all of those statutory sections that provide a form that both the person who is declaring themselves as an independent contractor and the employer or business or entity with whom they are contracting are both going to be attesting to this status, and the form makes clear that what, what the worker is giving up if they are an independent contractor in terms of certain protections. It also makes clear that if the Department of Labor finds that the employer yes

SENATOR GATSAS (In the Chair): I don't mean to interrupt you.

SENATOR HASSAN: Yes.

SENATOR GATSAS (In the Chair): For clarification.

SENATOR HASSAN: Yes.

SENATOR GATSAS (In the Chair): Because I'm looking at an amendment here.

SENATOR HASSAN: Yes.

SENATOR GATSAS (In the Chair): That looks like it's redundant three times. So maybe you can help me. I've looked at page 4.

SENATOR HASSAN: Yes.

SENATOR GATSAS (In the Chair): And I see some signature lines.

SENATOR HASSAN: Right.

SENATOR GATSAS (In the Chair): I then go to page 7, and it looks like it's those same signature lines.

SENATOR HASSAN: And that's because each of these sections where you see repeated language amends different sections of our entire statute. We are amending. We are putting the form, the reference to the form, in a total of five different sections of our statute because there are five different sections of statutes that deal with worker protection that are affected by whether you're an independent contractor or an employee. So, in order to amend all of those sections of the statute so that our Department of Employment Security as well as our Department of Labor as well as Wage and Hour, will all have the same criteria as to what's an employee and what's an independent contractor, and all will be able to use this form depending on the reference. That's the purpose. That's why you see these provisions repeated so many times.

SENATOR GATSAS: **TAPE INAUDIBLE** sixteen-page amendment.

SENATOR HASSAN: Yes.

SENATOR GATSAS: Is the correct number of pages?

SENATOR HASSAN: That is correct.

SENATOR GATSAS: Thank you.

SENATOR HASSAN: And, if I may, just to complete my point, the form also makes clear to employers that, if they are found by the Department of Labor to have coerced or induced an employee, somebody who is truly an employee to complete this form saying that they're an independent contractor, they will be fined if it is finding that they intended to misrepresent the person's status. There was some concern in committee and in our study committee that this might allow employers to try to coerce workers into signing a form. First of all, the form is evidence but not conclusive as to the person's status, but secondly, the Department of Labor will be watching the use of this form very carefully for the next year according to the remarks by the Deputy Commissioner to try to insure that that doesn't happen. Thank you.

**Floor amendment adopted.**

SENATOR GREEN: Question of Senator Hassan. Thank you. I'm looking here, and I see that there is a civil penalty of \$2,500.

SENATOR HASSAN: Yes, there's a civil penalty of \$2,500 if an employer uses this form to misrepresent the status of the worker.

SENATOR GREEN: I think it's appropriate. I just was verifying if that was true.

SENATOR HASSAN: Yes.

SENATOR GREEN: Thank you.

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 273**, relative to reasonable accommodations for employees with disabilities. Banks and Insurance Committee. Ought to pass, Vote 4-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move SB 273 ought to pass. This bill makes it an unlawful discriminatory practice to fail to make reasonable accommodations for an employee with a disability so long as providing the reasonable accommodation would not pose an undue hardship on the employer. The bill is intended to eliminate a loophole in New Hampshire law. While the state does prohibit employment discrimination based on disability, it does not presently provide for reasonable accommodations, and employers can use this as an excuse to discriminate. While this issue is covered by federal law, and New Hampshire residents do not have meaningful legal resolution within the state where small employers are involved. The committee heard testimony from numerous disabled citizens who explained how difficult it was for them to make a trip to Boston to pursue discrimination claims. Passage of this law will allow them to seek resolution right here in New Hampshire. The committee also heard testimony that most reasonable accommodations are not expensive, and the range would cost from \$100-\$500 with the median cost being \$240. By increasing opportunities for individuals with disabilities to seek employment where they are duly qualified, and lessen the number of individuals who would require public assistance and afford these individuals the satisfaction and independence associated with being gainfully employed. The Banks and Insurance Committee recommends that this legislation be adopted and asks for your support. Thank you, and I want to thank Senator Hassan for all her hard work on this. Thank you, Mr. President.

SENATOR HASSAN: I would yield for the moment to Senator Flanders.

SENATOR FLANDERS: Mr. President, I'd like to remind that there were no one no one spoke against this bill. No one signed up against this bill. It was a very interesting hearing. I wish you could all have been there. We had six or seven people in wheelchairs, and they each gave a history of what had been done for them. And one of them was that they got a two-by-four and put it under...two two-by-fours and put it under the desk, so that his wheelchair would slide underneath it. And we thought that was pretty reasonable. Everyone, everyone that came in to testify in a wheelchair had given an example of very little money involved, but they were able to work. If that if that two-by-four hadn't been put underneath that desk, that gentleman would have stayed home. This business of going to Boston. We went through this last year if you remember. We're asking these people in wheelchairs or whatever to somehow get into Boston. I even walk pretty well, and I don't even like to go to Boston. So we're asking these people to somehow get down there. My understanding is, someone correct me if I'm wrong, that they do get down

there and they wait about a year and a half if they're not going to go to court. I also understand that we have a very good review board here. I know the gentleman that's in charge of it, Attorney Brown. I understand it's all working well. So let's help these people be able to get their problems solved and be able to help some of these people work. There's interesting in one of the interesting ones, the gentleman from Crotched Mountain who works full-time at Crotched Mountain, severely handicapped, married, two children, a really nice success story, and I think if we pass this bill, let's get out there, let's help these people, and let's keep it here locally. Let's not send them to Boston. Thank you.

**SENATOR BRAGDON:** I rise in support of this bill, and I need to state for the record that this bill, being very similar to one that we defeated last year, and I voted against it last year. And it's one of the few times where I'm driving home and wondering all the way home whether I voted the right way on that bill. And I'd like to thank Senator Hassan for pursuing this and giving me the opportunity. I will be supporting this, this time. Thank you.

**SENATOR HASSAN:** Thank you, Mr. President, and thank you Senator Bragdon and Senator Foster for your thanks. I want to in addition thank the business community, particularly the BIA with whom I worked this fall so that we could understand each other's concerns and positions about this issue and work together, and in fact the BIA came to the hearing to say they no longer oppose this legislation. Most importantly, I would like to thank Senator Flanders who ran an extraordinarily gracious and thoughtful and sensitive hearing on this bill. Thank you.

**Adopted.**

**Ordered to third reading.**

Senator Bragdon is in favor of SB 273.

**SB 331**, relative to certain small loans. Banks and Insurance Committee. Ought to pass with amendment, Vote 5-0. Senator Foster for the committee.

**Banks and Insurance**

**March 15, 2006**

**2006-1376s**

**08/09**

### **Amendment to SB 331**

Amend the bill by replacing section 2 with the following:

2 New Paragraph; Provisions Applicable to Payday Loan Lenders. Amend RSA 399-A:13 by inserting after paragraph XVIII the following new paragraph:

IX. A lender shall not make a loan to a borrower who currently has outstanding or who has had outstanding within the previous 60-day period a payday or title loan. As part of its application process for such loan, a lender shall obtain a written statement under oath from the borrower certifying the borrower does not currently have outstanding and has not had outstanding a payday loan or title loan within the previous 60-day period.

Amend the bill by replacing section 3 with the following:

3 New Paragraphs; Interest Only on Title Loans. Amend RSA 399-A:14 by inserting after paragraph IV the following new paragraphs:

V. Apply any other charges or fees to title loans other than interest. Title loans shall incur interest only.



VI. Make a loan to a borrower who currently has outstanding or who has had outstanding within the previous 60-day period a payday or title loan. As part of its application process for such loan, a lender shall obtain a written statement under oath from the borrower certifying the borrower does not currently have outstanding and has not had outstanding a payday loan or title loan within the previous 60-day period.

Amend the bill by inserting after section 3 the following and renumbering the original section 4 to read as 5:

4 Title Loan Renewals. Amend RSA 399-A:15 to read as follows:

399-A:15 Title Loan Renewals. A title loan shall be for an original term of no more than one month. A title loan lender may allow such loan to be renewed no more than 11 additional periods each equal the original term, provided however, that at each such renewal the borrower must pay at least 5 percent of the loan's original principal balance, in addition to any finance charge owed, to reduce the principal balance outstanding. If the borrower cannot pay this principal reduction at any renewal, the title loan lender may either: (i) declare the borrower in default, or (ii) allow the loan to be renewed, provided that the lender shall reduce the current principal amount of the loan by 5 percent of the original principal amount for the purposes of calculating interest thereafter. This reduction in principal shall continue to be owed by the borrower, but such amount shall not be entitled to accrue interest thereafter. For the purpose of this section, a renewal is any extension of a title loan for an additional period without any change in the terms of the title loan other than a reduction in principal *and the interest rate as may be required to be reduced by this section. On any renewal, the rate of interest charged shall not exceed an annual percentage rate of 36 percent.* No accrued interest shall be capitalized or added to the principal of the loan at the time of any renewal.

SENATOR FOSTER: Thank you, Mr. President. I move SB 331 ought to pass with amendment. This bill deals with title and payday loans. A few years back we passed a law allowing so-called title and payday loans, and I sat in the committee. And we passed that, and I think at the time it passed, I kind of understood that these would be high interest rate loans, but I didn't realize how high they are. Many of these folks charge 500 percent interest give or take on their loans. So this bill started out with me seeking to cap the interest rate. But as I looked into it more, the industry came forward and said, "You know, we really need a relatively high interest rate because these are very short-term." I'm not sure I'm convinced on that point or not, but what I did become convinced about as I researched it more and looked over the internet, was that these this is an issue sort of nationwide. And one of the bigger problems that these loans present is that a lot of these individuals go from payday loan to payday loan to payday loan. A payday loan lasts about two weeks, and it is a very high rate of interest. But if you use it once a year, once every six months in a real pinch because you don't have any other credit, while it's expensive, it isn't a crusher. But if you go from payday lender to payday lender to payday lender each time paying on an annual percentage rate of 500 percent, by the time you're done, you've paid a heck of a lot for a relatively small amount of a loan. So what the amendment that the committee is recommending here does is provide sort of like the bill we heard a little bit ago that the borrower would go in and certify that they haven't taken out a payday loan in the previous sixty days, and that way they can't do this more than six times a year. The amendment also seeks to regulate renewal of title loans, but I do have a floor amend-

ment to take that out because I think it has an unintended consequence of perhaps encouraging title loan lenders rather than work with the borrower, to repossess the car, which is obviously an unintended result that I don't want to see happen. So I would ask that the committee amendment, this body adopt the amendment, so I can present the floor amendment that would take out that provision. Thank you, Mr. President.

**Amendment adopted.**

Senator Foster offered a floor amendment.

Sen. Foster, Dist. 13

**March 22, 2006**

**2006-1492s**

**01/09**

**Floor Amendment to SB 331**

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.

SENATOR GATSAS (In the Chair): Senator Foster, would you like to speak to your amendment as it's being passed out?

SENATOR FOSTER: Yes.

SENATOR GATSAS (In the Chair): 1492.

SENATOR FOSTER: Correct. As I did before. What this does is remove the provisions dealing with title loan lenders. What the provision provides is that the rate would be only be at 36 percent on a renewal the title loan lender can renew for twelve consecutive periods. While, as I said, I like the policy that I'm trying to do, I've been told by the industry and I had some concerns myself, that it might have an unintended consequence of encouraging these folks who have put their automobile as collateral, have that car repossessed. So while there may be a solution, this doesn't look like the right one, so I would ask that the floor amendment 1492 be passed, and that would take out that provision of the law for now.

**Recess.**

**Out of recess.**

**PARLIAMENTARY INQUIRY**

SENATOR BARNES: I just want to make sure that I'm clear on this. Senate Bills that aren't study committees that go on the table today, if we don't take them off by the time we leave here, they are dead. So, if we put a bill on the table, we're saying it's gone, it's history. Is that correct?

SENATOR GATSAS (In the Chair): It's past the deadline. That is correct. It would take two-thirds to take that bill off the table and move it forward. And the bill would have...and the House would have to accept it.

SENATOR BARNES: Two-thirds after the deadline, otherwise...

SENATOR GATSAS (In the Chair): After the deadline and the House would have to accept it.

SENATOR BARNES: Next session we can take a Senate Bill off if we have two-thirds to take it off?

SENATOR GATSAS (In the Chair): And the House would have to accept that bill.

SENATOR BARNES: Okay, so the bottom line is, in all probability, if we put things...Senate Bills on the table that aren't study committees, it's dead. That's what we're doing. We're killing it.

SENATOR CLEGG: Parliamentary inquiry. If we put them on the table, that means we haven't defeated them, and being the Senate, we can always find a germane bill to tack the information onto. Isn't that correct?

SENATOR GATSAS (In the Chair): We all understand what germaneness is in here.

**Floor amendment adopted.**

#### **MOTION TO TABLE**

Senator Flanders moved to have SB 331 laid on the table.

**Adopted.**

#### **LAIID ON THE TABLE**

**SB 331**, relative to certain small loans.

**SB 338**, relative to insurance coverage for childrens' early intervention therapy services. Banks and Insurance Committee. Interim Study, Vote 4-0. Senator Flanders for the committee.

#### **MOTION TO TABLE**

Senator Flanders moved to have SB 338 laid on the table.

**Adopted.**

#### **LAIID ON THE TABLE**

**SB 338**, relative to insurance coverage for childrens' early intervention therapy services.

**SB 369**, relative to portability, availability, and renewability of health coverage. Banks and Insurance Committee. Ought to pass with amendment, Vote 4-0. Senator Barnes for the committee.

#### **Banks and Insurance**

**March 15, 2006**

**2006-1375s**

**01/09**

#### **Amendment to SB 369**

Amend RSA 420-G:12, IV as inserted by section 2 of the bill by replacing it with the following:

IV. Each health carrier shall provide, at the time it gives a premium quote to a group, a rating disclosure form that identifies the health coverage plan rate and any adjustments to that rate resulting from the application of rating factors, including age, industry, and group size. The health carrier shall submit the rate disclosure form to the department for approval. Health carriers shall provide their insureds with renewal premium quotes at least 60 days prior to the expiration date of the policy.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 369 ought to pass with amendment. This bill will clarify for the small employer health insurance market which information is required in the Insurance Commissioner's report by mandating the use of the standard reinsurance form throughout the market. The bill will also require health insurance carriers to provide a rating disclosure form at the time they give a premium quote to a group. The rating disclosure form was developed by the advisory group that worked on Senate Bill 125 because it

was difficult for those purchasing group insurance to understand how rates increase. This bill will help the consumer to better understand how the rates are developed. The amendment simply requires that health carriers provide their insurance with renewal premium quotes at least sixty days prior to the expiration date of the policy. The Banks and Insurance Committee recommends that this legislation be adopted as amended and asks for your support, and I thank all of you for your help.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 232-FN-A**, making a capital appropriation to the department of health and human services for a dental facility in the town of Tamworth. Capital Budget Committee. Ought to pass with amendment, Vote 4-0. Senator Green for the committee.

**Capital Budget**

**March 15, 2006**

**2006-1401s**

**10/04**

**Amendment to SB 232-FN-A**

Amend the bill by replacing section 2 with the following:

2 Capital Appropriation to the Department of Health and Human Services for Dental Facility; Bonds Authorized.

I. For the purpose of state participation in building a dental facility as part of the Tri-County Community Action Program, there is hereby appropriated to the department of health and human services the sum of \$400,000, which shall be matched with \$780,000 of federal and local funds. Such funds shall be in addition to any other funds appropriated to the department of health and human services.

II. To provide funds for the state appropriation made in paragraph I, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of \$400,000 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.

SENATOR GREEN: Thank you, Mr. President. I move that Senate Bill 232 ought to pass with amendment. This bill makes a capital appropriation of \$400,000 for the tri-county community action program to address oral health for low-income individuals in the North Country. This will allow for the leverage of available federal and local funds. The tri-community action program has received support from the federal government, and the capital appropriation in this bill will build upon that support. There are many children that have been unable to schedule much-needed appointments with dentists. This helps address that critical need. The Capital Budget Committee asks your support for the motion ought to pass.

SENATOR BOYCE: Senator Green, I guess. I have to apologize. I wasn't in Capital Budget the day this was exceeded out. I guess it may have been one of the days when I was in five committees at one time and couldn't be everywhere at once. This bill came in as a request for bonding authority for this non-profit to build this thing. I'm now seeing that it's an appropriation, a straight appropriation bill, and didn't we hear testimony from the Dental Association maybe, that their experience with building

this type of situation across the state was that they could build several dental clinics and equip them for this kind of money? This is too much money for one clinic. Wasn't that what we heard?

SENATOR GREEN: The testimony, as I understood at the time, was that there were dentists that were up in that area who were opposing the bill. I didn't hear anybody say it was the Dental Society except a gentleman who was testifying was a former president of the Society. Okay? So they were really there testifying against this particular project, not any other project, as I understood it.

SENATOR BOYCE: I guess I'm just a little troubled that a bill that came in seeking bonding authority is now a half million dollar appropriation bill.

SENATOR GREEN: I don't recall. It may have been bonding last year, I've only seen it this year. This is the bill that I saw at the time, and in fact when I thought it was bonding last year I think it was half a million dollars. So it's now \$400,000.

SENATOR BOYCE: Thank you.

SENATOR MORSE: Just to clarify in on LBA's documents, they've picked it up as bonding general fund.

SENATOR GREEN: If that's what the bill says. The testimony had it as an appropriation, so we want to make sure it gets that clear. I want to make sure our intent is clear.

SENATOR MORSE: LBA had picked it up as bonding general fund. They didn't pick it up as an appropriation, so...

SENATOR GREEN: Mr. President, I would like a five-minute recess to make sure we get this clear. Thank you.

**Recess.**

**Out of recess.**

SENATOR GREEN: Thank you, Mr. President. In further looking at the language in the amendment, in the calendar, the question to Senator Boyce is the amount is bonded at the amount of \$400,000. The intent is very clear, and I misspoke when I said an appropriation. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 235**, relative to food safety in restaurants. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 4-2. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move Senate Bill 235 inexpedient to legislate. The bill would require restaurants with twenty-five seats or more to pay for an employee to become a certified food protection manager. Testimony revealed that the legislation will not apply to non-profits; neither will legislation apply to restaurants with less than twenty-five seats. The committee believes that Senate Bill 235 would create more regulation on small businesses and believes food service establishments and facilities already are licensed by the state of New Hampshire and that the food preparation course by the University of New Hampshire Cooperative Extension Service called "SAFE", (Safety Awareness for Food Establishments) is already being used by many food

establishments around the state on a voluntary basis at no cost. The committee believes the bill will exempt those establishments that hold the most potential to cause a food-borne illness and recommends inexpedient to legislate. Thank you, Mr. President.

**SENATOR D'ALLESANDRO: TAPE INAUDIBLE** will be clarified with the new legislation. The first was the not for profit entities who just served regular...who didn't offer regularly scheduled meals weekdays, but had something at a school event or a non-profit sporting event or a religious activity. All of those were exempt from the law. And then the law applied to a food service establishment with twenty-four seats or more. And food establishments which commercially processed food and retail stores with one or more food preparation areas, catering services off-site. I mean, those changes were made in the legislation to make it acceptable, and it seems to me one of the things that we have to be extremely cautious about is how we supervise the preparation of meals. More and more people are eating out, and it makes sense to have them eating in a safe and clean environment. This isn't an expensive situation. It doesn't bring an unfair burden on anybody. This bill went through a couple of iterations in order to address the concerns of those people, and I thought that we addressed them, so I rise to speak against the motion of inexpedient, and hopefully we can move on and get this bill ought to pass. Thank you, Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**Senator Bragdon in the Chair.**

**SB 263**, relative to inclusionary zoning and workforce housing. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 5-1. Senator Boyce for the committee.

**SENATOR BOYCE:** Thank you, Mr. President. I move that Senate Bill 263 be inexpedient to legislate. Senate Bill 263 was a critical counterpart to SB 190. However, SB 190 is now a study committee. We no longer have a need for this bill, so we've moved it inexpedient to legislate. Thank you.

**SENATOR FULLER CLARK:** Thank you very much, Mr. President. I rise in opposition to the recommendation of inexpedient to legislate, and I would just like to remind the members of the Senate that the lack of workforce housing is one of the most serious problems that is facing this state today. And in fact, in the southern part of the state, only 5 percent of the homes for sale are affordable for our policemen, our firefighters, our teachers, and comparable employees. We have seen property values spike over 80 percent in the past five years. This bill, in conjunction with 190, would have made it possible to give communities the opportunity to include the language that would make it possible for them to use inclusionary zoning at the local level. It was not mandated. It was simply enabling legislation, and it is legislation that has worked well in other states and other communities. It's clear to me that we're going to have to continue to address the issue of workforce housing. It's not going to go away, and this was a step in the right direction. And I'm very disappointed that this Senate chose both to kill Senate Bill 190 and then perforce to kill the Senate Bill before us. So I just think it's important to realize that we aren't addressing this issue. That we've heard from the Business and Industry Association. We've heard from the mayors of many communities, that this is something that we should be trying to solve. Thank you.

**SENATOR FLANDERS: TAPE INAUDIBLE** Mr. President, and I was asking the chairman to make sure I'm reporting correctly. Senator Larsen is a prime sponsor of this bill, and she was the one that moved ITL. And the history of that was that she tried to get... a lot of us met a couple of days before the hearing, and she couldn't come up with any agreement and didn't think it was going to make it through. So it was Senator Larsen who made the motion to ITL. Thank you.

**SENATOR D'ALLESANDRO:** Thank you, Mr. President. Just a couple of quick points about workforce housing. We've heard from our largest employers in the state that a significant problem is finding housing for their employees particularly in the southern tier. We did defeat Senate Bill 191. It just seems to me we've got to face the issue, and if we want to grow economically, if we want to provide adequate housing for these people that we keep bringing into the state, and remember the bulk of our workforce has been a workforce that has transitioned into the state of New Hampshire, and we've used that immigration as a significant bonus for our companies. And if we continue not to be able to provide them with adequate housing, affordable housing, then the problems are going to magnify. Thank you, Mr. President.

**SENATOR BURLING:** Just to follow up on that. Since everything comes full circle in this state, having four hospitals in my district, one of the reasons we can't find nurses in the state is we don't have workforce housing for them to live in. That means big institutions like hospitals are forced to start doing their own workforce housing projects. That diverts money from healthcare into housing. We need to address this problem. We need to address it soon.

**SENATOR FLANDERS:** Thank you, Mr. President. I agree. I voted for this last year. I think workforce housing is one of the biggest problems we have. But I gather that Senator Larsen didn't feel that she had the right (I wish she was here) didn't have the right wording or the right backing, and you're absolutely right. We have to do something about it, and one more year we've said, "Yes, we have to do something about it," and we haven't done it. But I give credit to Senator Larsen. She certainly tried. Thank you.

**SENATOR MARTEL:** Thank you very much, Mr. President. I also rise in opposition to this (excuse me let me take a deep breath here). I also rise in opposition to the ITL on this bill. There are situations where, especially in the southern tier, as Senator D'Allesandro just mentioned, and the previous speakers before that, that the employers that are coming in are having difficulty...difficult time for their employees, helping their employees find, in some cases, affordable housing. Now we're very fortunate in Manchester, we have a lot of technical jobs that are high-paying jobs, and those that market is very well accepted in the city of Manchester, and there are plenty of homes for those folks. What we don't understand is that, and we and this bill would help, which means that the immigrant population is coming in from different countries from around the world are coming here and being jammed into little homes in neighborhoods, and also away from their own population where they're scattered all over the place, and really are getting lost within the population as far as feeling comfortable about their surroundings. The other thing, too, is that they are all crashed, you know maybe fifteen, twenty of them are living in a two-bedroom apartment. You know on the fourth floor of a tenement building on Cypress Street or Belmont Street in the

city of Manchester in the middle of my district. So in those cases, we really have to work hard to be able to find that they're all projects okay that are abandoned within my district, and I'm sure within you know your areas somewhere around the state, that could promote housing for those people. And I've been working with them to do that and hopefully we can get that project that's around Belmont Street and around Young Street on the East Side of Manchester to do that. Promote it to our workforce housing for the people who really need it. So I will vote against the ITL on this bill, Mr. President, and I thank you very much.

SENATOR KENNEY: Thank you, Mr. President. I think everybody, particularly up where I live anyway in Carroll County, realizes that workforce housing or affordable housing is a crisis and that we need more of it. But, and there probably needs to be some teeth in some legislation in the future to try to address that. However, this bill is not the bill that does it. If you look at this bill, it says "the municipality that has adopted a master plan", and it goes on to say, "may adopt inclusionary zoning provision." So it doesn't say it has to. And then it also includes that it would not be more than 15 percent within that development for workforce housing. And then lastly it says, "Municipalities shall not use unreasonable requirements." Again, what's unreasonable? I think the primary sponsor of this bill realized that this wasn't the correct language or the right teeth in order to tackle the important policy issue of affordable housing and workforce housing in the state of New Hampshire. So I'd ask you to go ahead with the committee report of ITL.

SENATOR BARNES: Mr. President, of Senator Kenney, if he would. Senator Kenney, I believe I was there for the whole hearing, and I've been to a couple of other hearings on affordable housing, maybe on different committees. Isn't it true that Claire Monier, who's been a big pusher of workforce housing, she's worked very hard on it, did not come in and testify at this hearing?

SENATOR KENNEY: I didn't see her, Senator Barnes.

SENATOR BARNES: Follow-up question? Did you get a letter from her? Did we, committee members, get a letter from her asking us to support this bill?

SENATOR KENNEY: I did not see it, Senator Barnes.

SENATOR BARNES: I didn't either. Thank you very much.

SENATOR BURLING: I have a question for Senator Kenney. I know it's late in the day, but I find my mind wanders. I would just ask you to describe for me what great social wrong would be committed if we passed this bill, made a statement of policy, sent it to the house, and for once did something about workforce housing?

SENATOR KENNEY: That's a good question, Senator Burling. Thank you for the question. I just don't think the sponsor really thought that this was a ultimately a good piece of legislation when there was some clarity in the language, such as I'd mentioned, "Municipalities should not use unreasonable requirements for inclusionary zoning." Again, what is unreasonable? And I think that, if we're going to do something that's polished and that's refined, then we need to get support coming out of the committee and by the primary sponsor as well in order to send that policy question or that language over to the House.

SENATOR BURLING: Brief follow-up? Well, this is in the nature of a "Would you believe?" Recognizing that we've had the discussion about



reasonableness earlier this morning, I wonder if you would believe that Senator Larsen told me she just got tired of trying to push this bill and not being able to generate support?

SENATOR KENNEY: I know Senator Larsen probably as well as anybody here, and I don't think that she ever gets worn out on a piece of legislation.

SENATOR FULLER CLARK: Yes, please. I would like to ask Senator Kenney a question, and that has to do with the fact that, as part of the testimony, did we not hear that there were ways that this bill could be amended in order to send it forward and that Senator Larsen spoke to the fact that the intent of this bill was to encourage communities to follow the *Chester vs. Britton* decision from the New Hampshire Supreme Court? And so, I'd just like you to speak to that because the issue is that we could have taken this legislation and put forth this inclusionary zoning language, but the committee had really stood in the way of making that possible to happen and that's why Senator Larsen finally voted for the ITL.

SENATOR KENNEY: Again, I would just reiterate myself, Senator Fuller Clark, that Senator Larsen has never got worn out on an issue, and I don't think the committee ever, you know, stepped in her way. I think what the committee was looking for were all the parties, whether it be economic development parties, New Hampshire Municipal Association, or New Hampshire Housing Authority, that we finally all agree on the appropriate language to send over to the House. I think everybody acknowledges that affordable housing and workforce housing is an important and essential issue in the state of New Hampshire. How we get there, we don't want to overrun our small communities because they have local control issues that they want to deal with and they have moratorium issues, but they also need to know that they have a responsibility to look at good quality housing in their communities as well. Yes, you're right. The courts will probably have to step in from time to time if the New Hampshire legislature doesn't draft stronger language to encourage this type of housing, but that's where we are right now. Until all the parties come together and we're moving in the same direction, we're going to have this type of legislation that's not going to gain the support that it needs.

SENATOR FULLER CLARK: Okay, follow-up and then I will end it. I would just like to ask you, is it not true that as part of the testimony for this legislation that the Municipal Association came in and supported it? They did not oppose it.

SENATOR KENNEY: I'd have to go back to my, my records. I don't remember them supporting.

SENATOR FULLER CLARK: Thank you.

SENATOR KENNEY: It very strongly, but I'd have to go back and check. But if you say so, then I believe you.

SENATOR BARNES: Thank you, Mr. President. What I'm going to say is only my own opinion, it's nobody else's of why we have a problem with this workforce housing legislation. It's not because this committee that just sat on it voted 5-1 to kill it. That's not where it is at all. Let's be honest about it. The Senate President early on in his career in the state Senate I believe was on a committee with Senator Larsen working on workforce housing. So it's been around for a few years and I think we

all know how important it is. It is my opinion that, as long as the communities that we all live in, and we all represent, don't want it because it's going to bring more children into the community and we're going to have to build more schools with workforce housing. That's what it brings in. I feel, and as I'm saying it's only my opinion, that is one of the two reasons why workforce housing hasn't moved ahead because communities don't want to let it into their places because of their fear of increasing the school population. Number two, Senator Green and I are contractors. We build houses. We come into Raymond. We buy a whole mess of acres of land, and we can build houses for \$450,000. That's what the new houses in Raymond are going for. So, as Senator Green and Senator Barnes, the construction guys, building houses, are we going to build \$200,000 houses when we can build \$450,000 houses? I don't think you and I are going to do that. In my opinion, I think those are the two big problems, not the committee that voted 5-1, which I just heard a comment awhile ago. Those are the two reasons I think affordable housing has a problem. Do we have to attack them? Yes, we have to attack them. How we're going to do it and still playing with that. I guess it's been six years since we've been playing with it. So I don't have an answer, and hopefully we do have an answer. And I certainly don't want to go along with Senator Kenney made a slip of the tongue perhaps, I hope, that the court's going to settle this. We went through that this morning. We don't need the court. If we needed the court, we should bring them in here with the robes and let them run the damn place instead of us. So I don't want the court in here any more than is necessary. Thank you.

**The question is on the committee report of inexpedient to legislate.**

**A division vote was requested.**

**Yeas: 13 – Nays: 9**

**Committee report of inexpedient to legislate is adopted.**

**SB 342**, relative to the treatment of glaucoma by optometrists, and eliminating the joint pharmaceutical formulary and credentialing committee. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 6-0. Senator Flanders for the committee.

**Senate Executive Departments and Administration**

**March 15, 2006**

**2006-1393s**

**10/05**

**Amendment to SB 342**

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

AN ACT relative to the treatment of glaucoma by optometrists.

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

1 Definition of Pharmaceutical Agent. Amend RSA 327:1, III to read as follows:

III. "Pharmaceutical agent" means the following pharmaceutical products:

(a) Non-legend, over the counter, agents.

(b) Mydriatic and cycloplegic agents which are topically applied.

(c) Miotic agents approved [by the joint pharmaceutical formulary and credentialing committee and included in the formulary] **pursuant to RSA 327:6-a, VI.**

(d) Antibiotics, sulfonamides, and combinations thereof, which are topically applied or orally administered to treat or alleviate the effects of disease or abnormal conditions of the human eye, adnexa, and eyelids, excluding the lacrimal gland, or structures posterior to the iris, approved ~~[by the joint pharmaceutical formulary and credentialing committee and included in the formulary]~~ **pursuant to RSA 327:6-a, VI.**

(e) Anti-allergy medications, including but not limited to antihistamines, decongestants, and mast-cell stabilizers which are topically applied.

(f) Anesthetics and dyes which are topically applied.

(g) Ocular lubricants and hypertonic agents which are topically applied.

(h) Orally administered analgesic agents used for the purpose of alleviating pain caused by a disease or abnormal condition of the human eye or eyelid, excluding the lacrimal gland, or structures posterior to the iris. This may include class III and IV controlled substances approved ~~[by the joint pharmaceutical formulary and credentialing committee]~~ **pursuant to RSA 327:6-a, VI** and included in the formulary.

(i) Other pharmaceutical agents, any solely diagnostic agents, and diagnostic agents combined with pharmaceutical agents as defined in this paragraph and as approved ~~[by the joint pharmaceutical formulary and credentialing committee]~~ **pursuant to RSA 327:6-a, VI.**

(j) Non-steroidal anti-inflammatory agents approved ~~[by the joint pharmaceutical formulary and credentialing committee]~~ **pursuant to RSA 327:6-a, VI** and included in the formulary.

(k) Anti-glaucoma agents which are topically applied provided that an optometrist may dispense or prescribe such agents if the optometrist has met the requirements of RSA 327:6-c.

(l) Corticosteroids which are topically applied, as approved by the ~~[joint pharmaceutical formulary and credentialing committee]~~ **board.**

(m) Antiviral which are ~~[topically applied, provided that prior to dispensing or prescribing, the therapeutic pharmaceutical agent certified optometrist shall consult with an ophthalmologist with whom he or she has a collaborative relationship. The consultation shall be in a manner to be determined by the ophthalmologist]~~ **approved pursuant to RSA 327:6-a, VI.**

(n) Corticosteroids or antivirals, provided that optometrists with patients on corticosteroids or antivirals who demonstrate no improvement in 10 days shall be referred to an ophthalmologist.

2 New Paragraphs; Pharmaceutical Agents. Amend RSA 327:6-a by inserting after paragraph V the following new paragraphs:

VI. To the extent approval of pharmaceuticals is referenced in RSA 327:1, III, the board shall have the authority to review and approve topically applied pharmaceuticals and the joint pharmaceutical formulary and credentialing committee shall have the authority to review and approve orally administered pharmaceuticals.

VII. The board shall provide the board of pharmacy with a current list of pharmaceutical agents approved pursuant to paragraph VI. The current optometric formulary shall be available from the board and posted on the board's website.

VIII. Upon certification to treat glaucoma patients pursuant to RSA 327:6-c, the board shall issue a license to the optometrist with a "tpa/g" certification. A current list of "tpa/g" certified optometrists with date of certification shall be available from the board and posted on the board's website.

3 Joint Pharmaceutical Formulary and Credentialing Committee. Amend RSA 327:6-b, II to read as follows:

II. The committee shall meet quarterly to:

(a) Review **and develop** glaucoma reporting forms [~~and develop prescription drug protocols~~];

(b) Develop a glaucoma [~~reporting~~] **credentialing** form and patient consent form;

(c) [~~Approve corticosteroids for optometric use;~~

(d) ~~Determine which combination medications shall be considered one medication for the purposes of treating glaucoma patients.~~

(~~e~~) **Review suggestions, complaints, and concerns regarding the glaucoma certification process described in RSA 327:6-c, II, and report the results of its review to the board. This subparagraph shall not grant the committee additional authority or powers not stated in this subparagraph;**

(d) Provide minutes of their meetings to the board, the board of medicine, and the pharmacy board; **and**

[~~f~~] (~~e~~) Determine which optometrists have successfully completed the requirements of RSA 327:6-c and maintain a list of such optometrists[; and

(g) ~~Maintain a current list of approved prescription drugs which shall be available from the board].~~

4 Treatment of Glaucoma. Amend RSA 327:6-c to read as follows:  
327:6-c Treatment of Glaucoma.

I.(a) Optometrists seeking authorization to treat glaucoma shall complete at least 40 hours of classroom education, approved by the board, incorporating: epidemiology of the glaucomas; genetics of the glaucomas; anatomy, physiology, and mechanics of aqueous inflow and aqueous outflow; optic nerve anatomy and pathophysiology; neurotoxicity and neuroprotectants; receptor biology; pharmacology, clinical use and toxic effects of alpha and beta adrenergic agents, carbonic anhydrase inhibitors, prostanoids and cholinergic agents.

(b) Optometrists shall pass an examination approved by the board that covers the educational components listed in subparagraph (a). Upon passage of such exam, an optometrist shall have prescriptive authority during the clinical management period pursuant to RSA 327:6-a.

(c) The board [~~may~~] **shall** waive the requirements of [~~subparagraphs (a) and (b)] **this paragraph and of paragraph II** for optometrists who have **either graduated after 2002 or who have proof of 12 months of credentialed privileges to treat glaucoma by the United States Department of Defense, Department of Veteran Affairs, or the National Indian Health Service, verified by the board.**~~

II.(a) To be authorized to initiate treatment of glaucoma for patients 18 years of age or older, a therapeutic pharmaceutical agent certified optometrist shall complete the educational requirements in paragraph I and provide evidence of written referrals and consultations with an ophthalmologist. For purposes of this section, "glaucoma" means primary open-angle glaucoma; **and** "ophthalmologist" means a physician licensed under RSA 329 with a specialty in ophthalmology[; ~~and "treatment" means the use of no more than 2 concurrent topical prescription glaucoma medications].~~ The joint pharmaceutical formulary and credentialing committee shall review evidence of glaucoma co-management submitted pursuant to subparagraph (b).

(b) Except as provided in **subparagraph I(c) or** paragraph III, therapeutic pharmaceutical agent certified optometrists are required to provide evidence of successful collaborative treatment and co-manage-

ment of ~~[40]~~ **25** glaucoma patients, up to ~~[20]~~ **5** of which may be established patients, during a period of not less than 18 months for each patient, to ophthalmologists according to the following criteria:

~~[(i)]~~ **(1)** A new or existing glaucoma patient is examined and diagnosed by the optometrist;

~~[(ii)]~~ **(2)** The optometrist develops a proposed treatment plan and forwards the plan with examination documentation to an ophthalmologist for consultation;

~~[(iii)]~~ **(3)** The ophthalmologist, examines the patient and reviews the optometrist's examination documentation and proposed treatment plan;

~~[(iv)]~~ **(4)** The ophthalmologist, optometrist, and patient mutually agree to and document a treatment plan;

~~[(v)]~~ **(5)** The optometrist shall ~~[refer the patient within 30 days to]~~ **consult with** the co-managing ophthalmologist when any of the following occurs: the patient's target pressure is not reached within 90 days; ~~[the patient requires more than 2 prescription glaucoma medications;]~~ the patient is experiencing **documented** progression of optic nerve damage ~~[or; *the patient develops documented and repeated progression of*~~ visual field loss; or the patient develops angle-closure or other secondary glaucoma; and

~~[(vi)]~~ **(6)** For each **successfully co-managed** glaucoma patient the optometrist **and co-managing ophthalmologist** shall complete a glaucoma credentialing reporting form and submit the form to the joint pharmaceutical formulary and credentialing committee upon completion of the 18 months of treatment.

III. The ~~[following categories of optometrists may petition the]~~ joint pharmaceutical formulary and credentialing committee ~~[to]~~ **may** waive or reduce the ~~[consultation requirement from 40 to 20 patients:~~

~~(a) Optometrists who have graduated after 2002;~~

~~(b) Optometrists with proof of 12 months of credentialed privileges to treat glaucoma by the U.S. Department of Defense, U.S. Department of Veteran Affairs, or the National Indian Health Service;~~

~~(c) *requirements of RSA 327:6-c, I and II for the following categories of optometrists:*~~

~~(a) Optometrists with a license and proof of practice for 12 months *treating glaucoma patients* in another state that currently authorizes the treatment of glaucoma by optometrists; or~~

~~[(d)]~~ **(b)** Optometrists who have ~~[completed]~~ **proof of successful completion of** a 12-month accredited optometric residency program or its equivalent.

IV. ~~[(a)]~~ Upon certification to treat glaucoma patients~~;~~:

~~(a) For a period of 24 months, optometrists shall [refer] *consult with an ophthalmologist within 30 days* for each new glaucoma patient [within 30 days to an ophthalmologist] for confirmation of diagnosis and review of treatment plan. [After the 24-month period, optometrists shall consult with an ophthalmologist upon diagnosis of a new glaucoma patient.]~~

~~(b) An optometrist shall [refer a glaucoma patient] *consult with an ophthalmologist* within 30 days when any of the following occurs:~~

~~[(i)] The patient's target pressure is not reached within 90 days;~~

~~[(ii)] The patient requires more than 2 prescription glaucoma medications;~~

~~[(iii)]~~ **(1)** The patient is experiencing **documented** progression of optic nerve damage or **the patient develops documented and repeated progression of** visual field loss **on maximum tolerated medical therapy;** or

~~(iv)~~ (2) The patient develops angle-closure or other secondary glaucoma.

~~(b) Upon certification to treat glaucoma patients, the board shall issue a license awarding the optometrist with a "tpa/g" certification.]~~

5 Disciplinary Proceedings; Misconduct. Amend RSA 327:20, (g) and (h) to read as follows:

(g) Willful or repeated violation of the provisions of this chapter; ~~or~~

(h) Suspension or revocation of a license, similar to one issued under this chapter, in another jurisdiction and not reinstated; **or**

***(i) The use of any pharmaceutical agent by an optometrist not authorized under RSA 327:6-a or the use of any pharmaceutical agent other than those agents described in RSA 327:1 or those previously approved by the joint pharmaceutical formulary and credentialing committee.***

6 Repeal. RSA 327:6-b, III, relative to violations relating to the use of pharmaceutical agents, is repealed.

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

**2006-1393s**

#### AMENDED ANALYSIS

This bill revises the requirements for optometrists treating glaucoma patients.

SENATOR KENNEY: Thank you, Mr. President. I move Senate Bill 342 ought to pass with amendment. The bill as amended represents many hours of public testimony and private negotiation between optometrists and ophthalmologists. I wasn't there for the hearing. The most basic difference between the ophthalmologists and the optometrists is that the optometrists' training does not include four years of medical school. Current regulation that governs how optometrists may treat glaucoma are seen by the profession as overly burdensome and tilt in favor of the ophthalmologists. Senate Bill 342 as amended was crafted by the optometrics [sic] and the ophthalmologists as a compromise both could agree to. Senate Bill 342 as amended reduces the minimum number of co-managed glaucoma patients, expands the opportunities for recent optometry graduates to have certain requirements waived, involves optometrists more directly in glaucoma treatments. Currently, forty-one states authorize glaucoma treatment by optometrists without any initial co-management requirements. Senate Bill 342 as amended is a reasonable compromise that will not affect patients' safety, and the committee recommends ought to pass with amendment. Thank you, Mr. President.

SENATOR MARTEL: Thank you very much, Mr. President. I strongly support, as the prime sponsor of this bill, this issue finally bringing to rest the battle between optometrists and ophthalmologists. Senate Bill 342 is brought to the Senate in an attempt to resolve troublesome aspects of a bill passed in 2001 relative to the treatment of glaucoma by qualified optometrists. That process tried for four years to prove to be restrictive. The committee heard testimony that this was so cumbersome a process it may be inhibiting optometrists from coming back to New Hampshire to practice when they could practice to the full extent of their training in another state. In the eight weeks between the public hearing and the committee executive session on this bill, several individuals representing the optometry profession and the ophthalmologists spent significant time in good faith crafting a proposal which is the committee amendment. Passage of Senate Bill 342 with the amendment will bring New Hampshire closer to where the vast majority of states are

with respect to glaucoma practice. New Hampshire will still restrict optometrists to glaucoma practice more than at least forty-three other states, but the amendment represents a durable compromise between optometrists and ophthalmologists and is an improvement in our current law. Most of all, this bill, with the ED & A Committee amendment, is good for patients allowing more of them to potentially be treated by an eye care professional with whom they are comfortable, and had been seeing their whole life. This bill also makes sensible changes to laws relative to prescribing authority by optometrists, again recognizing the training level optometrists now possess today. This deserves our vote of support, and I ask everyone to please vote in favor of this because it really was an effort on both sides. People who worked together daily who could just barely speak to each other are now have now come to the table and have made a very strong statement together. So I urge that we support the ought to pass in this bill as amended, Mr. President, and I thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 718-FN-A**, relative to a state active duty death benefit for activated members of the New Hampshire National Guard and making an appropriation therefor. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Barnes for the committee.

**SENATOR BARNES:** Thank you, Mr. President. I move House Bill 718 ought to pass. House Bill 718 will help level the playing field relative to the current \$100,000 federal death benefit guard members receive when they are activated for duty by the President of the United States. Under House Bill 718, New Hampshire Guard members activated by the Governor of New Hampshire relative to declared emergency such as during the floods of last year, will receive a \$100,000 death benefit. The issue was studied extensively last summer and passed the House on a consent calendar. The committee recommends ought to pass, and we need your help on it. And thanks a lot.

**SENATOR BOYCE:** I see that this bill has an "FN" and an "A", and in committee we discussed that it would be creating a non-lapsing, continually appropriating fund which I know some members of this body don't like, so I'm assuming this will go to Finance where, if we amend it to make it so that it doesn't have that but still does the same effect of having the \$100,000 benefit, it would not be looked on askance by the members of this body I would hope.

**SENATOR GATSAS (In the Chair):** It's going to Finance, Senator. We'll see when it comes out of there.

**SENATOR BOYCE:** Thank you very much.

**SENATOR LETOURNEAU:** Senator Barnes. Senator Barnes, doesn't this level the playing field between the federal activation of the Guard and the state activation of the Guard?

**SENATOR BARNES:** That's my understanding, Senator.

**SENATOR LETOURNEAU:** Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. Chairman. A question of Senator Barnes. Senator, in the methodology it talks about members of our Guard who live in other states. We have some who live in Maine, Vermont, Massachusetts, Rhode Island, and Arizona that wouldn't be covered by this bill. Is there going to be an attempt to cover them?

SENATOR BARNES: That question came up because we had a Guard member that was assigned to the Pennsylvania Guard that was hurt. The Chief of Police up in Sugar Hill as a matter of fact, that was assigned to the 28<sup>th</sup> division of the Pennsylvania National Guard over in Afghanistan.

SENATOR D'ALLESANDRO: Right.

SENATOR BARNES: The intent is not to do that. The intent is for the New Hampshire Guard to be covered and not for the other Guard units to be covered.

SENATOR BOYCE: I can answer your question. The bill as amended by the House has attached to it a fiscal note that is as introduced. The fiscal note was for a much more complex bill. The fiscal note on this will simply say that, if a New Hampshire Guard member serving as a state call-up National Guard or Air National Guard. In other words, if the Governor calls them up, under that situation there will be a death benefit, but if it's Massachusetts or some other Guard, that's their...we're not going to cover people that are in other states where other governors call them up. It's only if our Governor calls up our Guard for a state emergency. So it's the fiscal note is not appropriate to this bill.

SENATOR D'ALLESANDRO: Okay, thank you. Thank you.

SENATOR BARNES: Thank you, Senator. I'd like to continue on just a little bit.

SENATOR D'ALLESANDRO: Sure, thank you.

SENATOR BARNES: This is strictly when the Governor calls the folks up it's for in-state duties. The Governor does not call our troops up to go to Iraq or anywhere else. That's by the federal government calls them up then they're covered by the federal. Is that right Senator Kenney? You've just gone through that.

SENATOR KENNEY: Yes.

SENATOR D'ALLESANDRO: But, but just further question. But if a person who lives in Massachusetts, but is a member of the New Hampshire Guard, will that person be covered?

SENATOR BOYCE: If they're a member of the New Hampshire Guard and they're called up by the New Hampshire Governor, they will be covered. Yes.

SENATOR D'ALLESANDRO: Yes, okay. But if further question if I might. But if they're called up by the federal government, then they're covered by the federal insurance and won't be covered by the state?

SENATOR BOYCE: If they're called up by the feds, they're covered under the feds.

SENATOR D'ALLESANDRO: Okay, yes. Thank you.

SENATOR KENNEY: I rise in support of House Bill 1718. [sic] What we have discovered through this whole process is that Title X, Title XXXII, whether it's state service or whether it's federal service, is that there's a great inequity that's going on with death benefits, with health insurance, and this is just a small step in the right direction in trying to provide a



death benefit to someone who's a state National Guardsman who's called by the Governor to go down to help out maybe in the Katrina hurricane situation. But, when it comes to when they're federalized, yes they receive SGLI which is insurance policy up to \$400,000 if they were to be killed say in Afghanistan or Iraq. However, that is voluntary. That is the individual member has to decide if they want to elect to pay that premium in order to get that death benefit, whereas this would just be covered by the state National Guardsman who's deployed by the Governor of New Hampshire. So hopefully that kind of clears up that issue.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 1114**, relative to regulation by the board of licensure of interpreters for the deaf and hard of hearing. Executive Departments and Administration Committee. Ought to pass, Vote 3-0. Senator Fuller Clark for the committee.

SENATOR D'ALLESANDRO: I will yield to Senator Fuller Clark.

SENATOR FULLER CLARK: Thank you. Thank you, Mr. President. I move House Bill 1114 ought to pass. The bill changes a requirement for the appointment to the Board of Licensure of Interpreters for the Deaf and Hard of Hearing. It moves the renewal date for licenses and it changes the non-resident exemption. Changing the cycle date for renewal will help eliminate the possibility of an unknown lapse of national certification. The membership changes to the Board, including eliminating the requirement that two members be state-screened interpreters are needed because there are so few state-screened interpreters. National certification, which has higher standards than state certification, is preferred by most interpreters, and out-of-state interpreters who can currently work for 250 hours a year in New Hampshire without holding a New Hampshire license are not submitting their cumulative hours to the Board, which makes this exemption impossible to track. House Bill 1114 will protect New Hampshire citizens with quality standards and jurisdiction for all parties. The committee recommends ought to pass on House Bill 1114. Thank you, Mr. President.

SENATOR MARTEL: Thank you very much, Mr. President. It's late in the day and I'm just going to get up and say that this bill is very much overdue. We have a very few number of people who are qualified interpreters in the state of New Hampshire. We do have agencies now like "WORDS" and other agencies in this state who are able to supply interpreters for different languages and different needs and let's say in hospitals, nursing homes, also in public institutions like schools, things like that upon request. This does not impose a penalty or does not impose an issue on people who may not wish to hire people to be interpreters even though by the ADA they're required to do so whenever there's a request. So I urge that we pass this bill and finally establish that we are doing the right thing in the state of New Hampshire in the hard of hearing community. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 298-FN**, relative to motor vehicle fines. Finance Committee. Ought to pass with amendment, Vote 8-0. Senator Clegg for the committee.

**Senate Finance**  
**March 15, 2006**  
**2006-1380s**  
**03/01**

**Amendment to SB 298-FN**

Amend the bill by replacing section 29 with the following:

29 Effective Date. This act shall take effect one day after the passage of the state operating budget for the biennium ending June 30, 2009.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 298 ought to pass with amendment. During the budget last year, the House doubled the motor vehicle fines to make the budget work. The Senate reluctantly agreed to it. Given that revenues have surpassed projections in '06 by 30 million, this legislation reduces the motor vehicle fines. Legislation does not affect this budget cycle. The committee amendment changes the effective date to one day after the passage of the next state operating budget to provide ample time for those relying on the revenue from the motor vehicle fines. The Finance Committee asks for your support.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I just want to make a couple of points because I think they're salient at this point in time. I recognize what Senator Clegg said. It wasn't our position, but we did increase those fines and, as a result of increasing of increasing those fines, we did some things to a couple of state departments that I think we're going to have to address in the operating budget. The first thing we did was we added, as a result of this increase, almost a million dollars to police standards and training. We gave them a million dollars more as a result of those fines. We also increased the money to the Victims' Assistance Fund by about \$10,000, and we put almost \$800,000 into the general fund. So by reducing these fines, we reduce Police Standards and Training by a million; we reduce Victims' Assistance by about \$20,000, and we reduce the general fund by \$800,000. Now those are things that we should take into consideration. We know what we're doing. Now the graciousness of the committee allowed this bill to be effective one day after the passage of the new budget for the new biennium so that we could address these things in the budget process next year. But I think everybody should know what we do as a result of this. Now let me repeat it. We, we decrease the money going to Standards and Training, and we know we send every police officer to standards and training, by a million dollars. We reduce the Victims' Assistance Fund, and we reduce the general fund. Thank you, Mr. President.

SENATOR CLEGG: Thank you. I'd just like to remind people what it was we did when we increased these fines. We had a gentleman that works downstairs in the cafeteria got a traffic fine, and the fine was \$250. And his take-home pay is \$265. That's what we did when we doubled. We left the guy fifteen bucks. Now he was doing traffic speed like we all do, and he was the one that got pulled out of line. Was he doing something wrong? Sure he was. But do we really want to take somebody's entire paycheck for making a simple mistake? I don't think so. It doesn't take effect until the next budget. All of those funds that may lose money, we'll fix. Thank you.

SENATOR MARTEL: Thank you very much. This is to Senator D'Allesandro. Could I just get a brief explanation about the \$20,000 you said that goes to Victims' Assistance?

SENATOR D'ALLESANDRO: Approximately, yes.

SENATOR MARTEL: What is that for?

SENATOR D'ALLESANDRO: That goes to the Victims' Assistance Fund. It's a fund that pays victims' assistance.

SENATOR MARTEL: What level of victims are you talking about?

SENATOR D'ALLESANDRO: Well, I don't **TAPE CHANGE** thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 304**, relative to negotiating provider payments by the commissioner of the department of health and human services. Finance Committee. Ought to pass with amendment, Vote 6-0. Senator Green for the committee.

**Senate Finance**

**March 15, 2006**

**2006-1402s**

**01/09**

#### **Amendment to SB 304**

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

AN ACT relative to provider payments negotiated by the commissioner of the department of health and human services.

Amend RSA 126-A:3, VIII as inserted by section 1 of the bill by replacing it with the following:

VIII. Notwithstanding any provision of law to the contrary, the department is not obligated to pay rates to providers higher than originally negotiated if the line appropriation is not fully spent. The department shall spend moneys budgeted for those persons needing services and shall not establish a waiting list to create a lapse to the general fund. No rules shall be adopted, pursuant to RSA 541-A, which are inconsistent with the provisions of this paragraph. The commissioner shall report quarterly to the fiscal committee of the general court, the governor, the speaker of the house of representatives, and the president of the senate concerning the status of appropriations for payments to providers and the rates negotiated and established by the department.

**2006-1402s**

#### **AMENDED ANALYSIS**

This bill clarifies how rates negotiated by the department of health and human services are spent and requires the commissioner of health and human services to make a quarterly report to the fiscal committee, the governor, and the general court relative to such negotiated rates.

SENATOR GREEN: Thank you, Mr. President. I move Senate Bill 304 ought to pass with amendment. The committee amendment to this legislation clarifies that the Health and Human Services Department is not required to pay higher rates to providers than was originally negotiated if all funds in that line item are not spent. It also requires that the Department to spend the budgeted money on those individuals that are eligible for services and prohibits the creation of a waiting list. In addition, the Commissioner of Health and Human Services will report quar-

terly for the Fiscal Committee on the status of appropriations for provider payments and the negotiated rates. The Finance Committee asks for your support for the motion of ought to pass with amendment. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 306-FN-A**, establishing a quality early learning opportunity initiative and making an appropriation therefor. Finance Committee. Ought to pass with amendment, Vote 4-1. Senator Clegg for the committee.

**Senate Finance**

**March 15, 2006**

**2006-1400s**

**09/03**

### **Amendment to SB 306-FN-A**

Amend the bill by replacing section 3 with the following:

3 Appropriation. The sum of \$500,000 for the fiscal year ending June 30, 2007 is hereby appropriated to the department of health and human services 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.

**2006-1400s**

### **AMENDED ANALYSIS**

This bill establishes a one-year quality early learning opportunity initiative in the department of health and human services and makes an appropriation from the general fund for such initiative.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 306 ought to pass with amendment. The legislation creates a one-year quality early learning initiative in the Department of Health and Human Services. The original funding source from this legislation was \$1 million from the high performance bonus that the Temporary Assistance to Needy Families Program received from the federal government. The Finance Committee had concerns about diverting the funds received from the high performance bonus. The amendment to the bill appropriates \$500,000 in general funds. The Finance Committee asks for your support for the motion of ought to pass with amendment.

SENATOR ESTABROOK: Thank you, Mr. President. In more ways than one, I know it's a busy day. I just have to stand and take a moment to extend a few additional thanks. This is a really important moment for me, and more importantly, for New Hampshire's children and families. Nothing could excite a former first grade teacher turned legislator more than the imminent passage of SB 306. This bill recognizes the importance of the early years as a time of critical development that lays the foundation for all future learning. It's a win for children, a win for parents, a win for childcare providers, and a win for business. I thank my Senate co-sponsors and all of my colleagues for making a real difference by supporting SB 306. Thank you, Mr. President.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 339**, changing certain job titles and responsibilities in the department of transportation. Finance Committee. Ought to pass with amendment, Vote 7-0. Senator Morse for the committee.

**Senate Finance**

**March 15, 2006**

**2006-1409s**

**05/09**

**Amendment to SB 339**

Amend the bill by inserting after section 3 the following and renumbering the original section 4 to read as 7:

4 Reappointment of Director of Administration and Director of Public Works. Pursuant to sections 1-3 of this act, the current director of administration shall become the director of policy, an unclassified position at labor grade GG, for the remainder of his current term as director of administration, and the current director of public works shall become the director of administration, an unclassified position at labor grade HH, for the remainder of his current term as director of public works.

5 Appropriation; Department of Transportation; Consultants. The department of transportation may hire up to 3 financial consultants, each of whom shall be paid from highway funds not otherwise appropriated an amount not to exceed \$70,000 per year, from class 46, for a period of not more than 2 years, to work with the department on such matters as may be recommended by the chief financial officer of the department of transportation.

6 Department of Revenue Administration; Salaries. Amend RSA 94:1-a, I(b), as follows:

I. By inserting:

(a) In Grade EE:

EE Department of revenue administration tax policy analyst

(b) In Grade GG:

GG Department of revenue administration assistant director,  
audit division

II. By deleting in Grade FF:

FF Department of revenue administration assistant director,  
audit division

**2006-1409s**

**AMENDED ANALYSIS**

This bill:

I. Establishes, within the department of transportation, the position of director of policy, removes the position of director of public works, and expands the duties of the director of administration so that the current director of administration may become the director of policy and the current director of public works may become the director of administration.

II. Permits the department of transportation to hire up to 3 financial consultants for a 2-year period.

III. Establishes, within the department of revenue administration, the position of tax policy analyst and changes the labor grade of the assistant director of the audit division.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 339 ought to pass with amendment. The first section of the committee amendment changes two classifications or titles within the Department of Transportation to reflect the actual duties performed. Positions within the Department of Revenue are also reclassified. No funding is associ-

ated with the reclassification. During the budget last year, a position of the Chief Financial Officer was created within the Department of Transportation to help the Department get a handle on the accounting of the highway fund. This amendment allows the DOT to hire up to three consultants to work with the Chief Financial Officer on this large and important task. Funding of these positions will come from the highway funds. The Finance Committee asks for your support of the motion of ought to pass with amendment.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 346-FN**, relative to septage management activities. Finance Committee. Inexpedient to legislate, Vote 7-1. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 346 inexpedient to legislate. This bill, as amended by the Senate, establishes new procedures for and exceptions to the permit process for the application of bio-solids and sets new standards and procedures for septage management facilities. The Department of Environmental Services recently went through a lengthy four-year process at JLCAR to adopt rules for sludge and septic management. Passage of this legislation would bypass that process. The committee also had concerns that this legislation would have increased costs due to the requirements that the Department of Environmental Services post two blocks notices in local newspapers and the mandatory public hearings for the issuance of septage permits. The Finance Committee asks for your support for the motion of inexpedient to legislate.

SENATOR FULLER CLARK: Yes. Thank you very much, Mr. President. I rise to oppose the recommendation of ITL, and I would like to thank the members of the Municipal and Public Affairs Committee for their willingness to work with me to provide compromised legislation that would have insured greater public notice to the public with regard to septic facilities. And I would also like to say that the genesis of this legislation was because ordinary citizens whose properties have been affected in the past were excluded from the committee that dealt, over four years, with the new rules that were put in place by JLCAR, and I think that, as the process moves forward, that what we're doing now is depriving municipalities and landholders of their right to know when these processes are going forward. And I'm disappointed that with the vote of ITL. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 354-FN**, requiring security officers of the New Hampshire hospital security force to be fully certified as police officers and including such security officers in group II of the New Hampshire retirement system. Finance Committee. Ought to pass, Vote 6-2. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 354 ought to pass. This bill is the last step in the transfer of New Hampshire Hospital officers from the Department of Health and Human Services to the Department of Safety. These officers perform the same duties as full-time police officers and deal with many of the same people. The fiscal note

assumes all officers of the New Hampshire Hospital will be trained to become police officers. However, several of these officers are already trained. This legislation will allow them to participate in the retirement system. The Finance Committee asks for your support of this motion of ought to pass.

SENATOR BARNES: Thank you. Sorry I was a little slow on the draw. Senator Clegg. Thank you, Senator Clegg. How much money's involved with this?

SENATOR CLEGG: Sir, I don't have the bill in front of me. I have the fiscal note now. Senator Barnes, it appears that the state expenditures would increase by \$9,848 in 2007, and in fiscal 2008, it looks to be about the same. So...

SENATOR BARNES: Thank you, Senator.

**Adopted.**

**Ordered to third reading.**

**SB 364-FN-A**, relative to funding of the fish and game search and rescue fund and making an appropriation therefor. Finance Committee. Ought to pass with amendment, Vote 7-0. Senator D'Allesandro for the committee.

**Senate Finance**  
**March 15, 2006**  
**2006-1408s**  
**08/09**

**Amendment to SB 364-FN-A**

Amend RSA 206:42, II as inserted by section 1 of the bill by replacing it with the following:

*II. The state treasurer shall deposit annually from the general fund into the special search and rescue fund an amount equal to the moneys collected pursuant to paragraph I during any fiscal year up to and including a total of \$100,000 annually. The governor is authorized to draw a warrant for such amount out of any money in the treasury not otherwise appropriated.*

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move Senate Bill 364-FN ought to pass with amendment. The bill requests an appropriation for the Fish and Game search and rescue fund. The Fish and Game Department is responsible for all searches and rescues in the woodlands and inland waters of the state, and also took the lead role in managing search and rescue operations during the Alstead floods of 2005. The search and rescue fund is funded from a dollar surcharge on private boats, OHRVs, and snowmobiles registered in the state. This has not changed since 1989. The fee provides \$190,000 for search and rescue, but the six-year average for spending is \$220,000 annually. The Fish and Game Department provides a valued service to the state and has a reputation for the quality service they provide. In an effort to avoid taking additional funds from anglers, hunters, and trappers, they have requested this appropriation. The amendment makes \$100,000 appropriation from general funds, and I might say that many of the search and rescues are not Fish and Game related. And I can only give you the example of the young man from Daniel Webster College who, unfortunately, was killed in a snowmobile on Lake Winnepesaukee. But that search and rescue operation was conducted by Fish and Game has nothing to do with Fish and Game related activities. So they are the designated search and res-

cue arm of state government and this appropriation is needed to continue that function. The Finance Committee asks your support for the motion of ought to pass with amendment. Thank you, Mr. President.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 367-FN**, imposing a penalty on Medicaid providers who receive overpayments of state Medicaid funds. Finance Committee. Ought to pass with amendment, Vote 8-0. Senator Clegg for the committee.

**Senate Finance**

**March 16, 2006**

**2006-1414s**

**05/03**

**Amendment to SB 367-FN**

Amend RSA 167:60-a, II as inserted by section 1 of the bill by replacing it with the following:

II. In conducting the review under paragraph I, the department may impose the following administrative penalty upon any Medicaid provider who, after notice of overpayments and identification of claims resulting in the overpayments, has violated the requirements of the Medicaid rules because the provider lacks proof or records that the goods or services were provided for covered goods or services: a penalty of up to 100 percent of Medicaid payments for goods or services, if the provider fails to demonstrate that the disputed goods or services were medically necessary, were covered goods or services, and were actually provided to eligible recipients.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 Appropriation; Supplemental Pharmacy Assistance. Amend 2006, 2:2 to read as follows:

2:2 Appropriation; Supplemental Pharmacy Assistance. Up to the sum of \$500,000 for the [~~fiscal year~~] *biennium* ending June 30, [~~2006~~] **2007** is hereby appropriated to the department of health and human services, for the purpose of providing supplemental pharmacy assistance. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated. If the commissioner determines additional funds are needed to provide the supplemental pharmacy assistance the commissioner, with the approval of the legislative fiscal committee, may expend other funds appropriated to the department for this purpose.

**2006-1414s**

**AMENDED ANALYSIS**

This bill:

I. Permits the department of health and human services to impose an administrative penalty on Medicaid providers for overpayments.

II. Extends the appropriation to the department of health and human services for supplemental pharmacy assistance during the period of transition to the new federal pharmacy benefit under Part D of the Medicare program.

This bill is a request of the department of health and human services.



SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 367 ought to pass with amendment. This legislation gives the Department of Health and Human Services flexibility relative to penalties issued to Medicaid providers for keeping incomplete records and making fraudulent claims. Currently they're forced to recover 100 percent or nothing. This allows them to recover at least 20 percent. Does not force them to implement the full 100 percent recovery. The amendment to the bill allows HHS to impose an administrative penalty on Medicaid providers for overpayments. In addition, it also clarifies the applicable period for pharmacy assistance during the transition period for the new pharmacy benefit under Medicare Part D. The legislation was approved...Senate Bill 393, was approved and signed by the Governor at the beginning of this year to assist many citizens without coverage for their prescription drugs. And in case everybody noticed I was tongue tied. That's the bill that allows us, the amendment also allows us to continue to have Medicare Part D assistance to the local people in New Hampshire who otherwise, because of Medicare Part D, fall through the cracks. Thank you.

SENATOR MARTEL: Thank you very much, Mr. President. I want to thank Senator Clegg for bringing this out this afternoon. Also, Mr. President, I'm really pleased to be the prime sponsor of this bill as well, that we finally brought this bill back to reality so that we can make sure that we clarify the situation. And Senator Clegg's introduction here really made it clear exactly what the intent of the Department is in collecting these overpayments from by error or you know, from overcharging primarily by error, of course. But I urge my fellow Senators to please adopt this and let's move forward on this because it will save the state a lot of money. And I appreciate all the efforts of everybody on this bill. Thank you very much, Mr. President.

### PARLIAMENTARY INQUIRY

SENATOR D'ALLESANDRO: Thank you, Mr. President. Parliamentary inquiry of the Chair. Is this question divisible? I'm asking the question if I might. The second part of this is really something that needs to be fast tracked, the \$500,000, and it would seem to me that we ought to get that on its way and through if it is a divisible situation.

SENATOR GATSAS (In the Chair): It's divisible, but I think if you take a look at the effective dates.

SENATOR D'ALLESANDRO: I was under the impression that we needed the \$500,000 immediately.

SENATOR GATSAS (In the Chair): Senator, the \$500 has already been appropriated. What this does is just go along with the Governor's executive order to extend the timeframe. This is merely an extension of the \$500 supplementary pharmacy assistance Medicare Part D. We already did the appropriation. We did that in the first bill, and it was for a thirty-day period. What this does is the Governor has extended it until June 30<sup>th</sup>, and this merely puts it in legislation to do it. So I don't I don't think we need to expedite it because it's already been done by executive order.

SENATOR D'ALLESANDRO: Okay. Thank you.

SENATOR MARTEL: Mr. President, I just want to make sure I understood that right. You did say \$500,000? You didn't say \$500. Right?

SENATOR GATSAS (In the Chair): No, \$500,000.

SENATOR MARTEL: Okay. Thank you.

**Amendment adopted.**

SENATOR BURLING: Thank you, Mr. President. Mr. President, I do need one thing clarified and I wonder if someone might yield to a question. It is not clear to me, Mr. President, that passage of particularly the first section. Does that generate a right of recovery for any overpayment plus an administrative fee? Are we saying, in essence, that somebody who has a mistake in their books and gets \$50,000 more than they're entitled to has to then return the \$50,000 and is subject as well to a potential \$50,000 penalty? Is that what we intend to do?

SENATOR CLEGG: Senator Burling, I think what we tried to do is we tried to make, we changed some language, and we tried to say that, if the provider lacks proofs of records that the goods or services were provided, then a penalty up to 100 percent. So if you billed for something and you never actually provided it, and you don't have anything to back up that you provided it, then yes, you could get penalized for 100 percent. But not for just...what we tried...we took out the minor bookkeeping mistake. Because you could make a mistake in your bookkeeping but still show that the patient actually resides someplace or...

SENATOR BURLING: I know it's late, and I'm not being clear with my question. My question is, Is it also our intent to assure that there is a right of recovery of the basic overpayment? because as I read this it's not clear to me that that's our intent.

SENATOR CLEGG: I believe that, it may not be clear, but I think in the rest of the statute it talks about the right of recovery by the state. So I think we do have the right to recover the additional money.

SENATOR BURLING: So, for the record, if I receive \$50,000 more than I'm entitled to, I will be required presumably to return the \$50,000, and if I don't have the right bookkeeping, I will be vulnerable to a \$50,000 penalty assessment?

SENATOR CLEGG: Exactly. Yes.

SENATOR ESTABROOK: Yes. Thank you, Mr. President. I'm not sure, I guess it's to Senator Clegg whoever. If I look at the amendment in the calendar and then compare it to the bill, it says that section 1 of the bill is replaced, so Roman I, II, and III of the original bill are all gone. Is that correct? I just want to make sure that we're not just replacing Roman I; we are also replacing Roman II.

SENATOR CLEGG: I believe, as I look at the amendment, it says, "Inserted by section 1 of the bill by replacing it with the following:" So I would agree with your statement.

SENATOR ESTABROOK: Thank you very much.

SENATOR CLEGG: Clarify? The question of Senator Burling I wanted to clarify that currently, when we penalize people for overcharging, we have no choice under current law but to charge them a full 100 percent, and we did fight for the language that said, "up to 100 percent." But we've also discussed that, on the recovery side, giving him the ability to go in someplace where there was an honest mistake made, they don't have the \$50,000. Currently he has no choice but to get 100 percent, and again we're hoping that he can limit or make some kind of a deal that is satisfactory to both parties.

**Recess.**

**Out of recess.**

SENATOR GATSAS (In the Chair): The parliamentary here. The question was on the adoption of the committee amendment. We passed the committee amendment. The bill is open to further amendment, so let's special order without exception, to the end of the day. Okay?

Senator D'Allesandro moved that SB 367-FN be made a special order for the end of the day.

**Adopted without objection.**

SB 367-FN is made a special order for the end of the day.

**SB 373-FN-A**, relative to a public health response to arbovirus. Finance Committee. Ought to pass, Vote 7-1. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move Senate Bill 373 ought to pass. This bill will establish a mosquito control fund to provide financial assistance to communities using mosquito control activities in response to a declared threat to public health. It also allows communities to voluntarily enter into mosquito control districts for the purpose of applying for monies from the mosquito control fund. This legislation also creates a task force to study the local, regional, and state responses to arbovirus. An appropriation of \$1 is made from the general fund as a placeholder. The Finance Committee asks your support for the motion of ought to pass. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 384-FN-A-L**, establishing an exemption from the real estate transfer tax for certain transfers of family farm and forest land. Finance Committee. Inexpedient to legislate, Vote 7-1. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 384 inexpedient to legislate. This bill creates an exemption for the real estate transfer tax for owners of family farm land that transfers their property to an LLC. At this point, I'd ask you to vote against that inexpedient motion, so I can offer a motion of ought to pass and then Senator Johnson would like us to look at an amendment.

**Motion failed.**

SENATOR MORSE: I move ought to pass on Senate Bill 384.

Senator Morse moved ought to pass.

Senator Johnson offered a floor amendment.

Sen. Johnson, Dist. 2

**March 21, 2006**

**2006-1490s**

**09/04**

**Floor Amendment to SB 384-FN-A-LOCAL**

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

AN ACT establishing a temporary one-time exemption from the real estate transfer tax for certain transfer of family farm or open space land.

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

1 One-Time Exemption From Real Estate Transfer Tax.

I. A transfer of one or more parcels of land that consist of farm land or open space land as defined in RSA 79-A:2 that is open to public recreational use under RSA 79-A:4, II, from a family holder to one or more family entities shall be exempt from the real estate transfer tax imposed under RSA 78-B. Application for exemption shall be made to the commissioner of the department of revenue administration prior to a transfer of real estate and shall be made on such form as the commissioner shall determine. The application shall be approved if the commissioner finds that:

(a) The transferor of the parcel is a family holder. A "family holder" shall consist of a person or family group consisting of an individual or a husband and wife, and may include any parent, grandparent, child, grandchild, or sibling of such individual or husband or wife, the spouse of such parent, grandparent, child, grandchild, or sibling, or any trust established by an eligible member for estate planning purposes and which is controlled solely by one or more of such eligible members of the family holder;

(b) The transferee of the parcel is one or more family entities. A "family entity" shall consist of a limited liability entity formed under New Hampshire law;

(c) Each holder's share of ownership and/or beneficial interests in such family entity or entities immediately after the transfer is the same as such holder's share of ownership of the family holder in the transferred parcel or parcels immediately before the transfer; and

(d) At least 80 percent of the assets of the family entity or entities immediately after the transfer consist exclusively of land that is in current use under RSA 79-A:4, II. The remainder of the assets of the family entity shall be ancillary to, and supportive of, a farm or open space land and its operation.

II. Each parcel of property is limited to one exempt transaction under this act.

2 Repeal. Section 1 of this act, relative to a one-time real estate transfer tax exemption, is repealed.

3 Effective Date.

I. Section 2 of this act shall take effect December 31, 2009.

II. The remainder of this act shall take effect January 1, 2007.

## 2006-1490s

### AMENDED ANALYSIS

This bill establishes a temporary one-time exemption from the real estate transfer tax for certain transfers of family farm or open space land.

SENATOR JOHNSON: Thank you, Mr. President. I do have a floor amendment to offer. Floor amendment 1490h [sic], and while that's being passed out, I would just like to apologize to the Finance Committee for probably my poor communication to bring this amendment to the committee, and I thank them for the opportunity to bring it out as a floor amendment.

SENATOR GATSAS (In the Chair): Floor amendment 1490 has been proposed. Is there any discussion? Senator Johnson?

SENATOR JOHNSON: Thank you, Mr. President, Senate Bill 384 as amended, is about those family farms and forest lands or open space lands on which the owners have allowed the state of New Hampshire to use in order to encourage hiking, skiing, snowmobiling, and other activities such as ATVing. These valuable recreational activities result in millions of dollars in revenue to the state of New Hampshire. The bill deals

with the transference of these parcels to one or more family entities. Under the provisions of this legislation, a family entity shall consist of a limited liability formed under New Hampshire law. The family entity must have the same owners as the original land, and at least 80 percent of the assets of the family entity must consist exclusively of land that is in current use under RSA 79-A:4-II. The remainder of the assets of the family entity shall be ancillary to, and supportive of, a farm or open space land and its operations. Each parcel of property is limited to one exempt transaction under this act. In a state which attracts millions of visitors annually and a state which has valued our historical and natural resources, the provisions contained within SB 384 as amended provide a small means of showing the importance of protecting these valuable land assets, and I ask for your support for this important legislation. And this has also been taken up with DRA and they're supportive of it, and so I ask for your support. Thank you.

SENATOR BARNES: Thank you, Mr. President. Senator Johnson, a quick question and I'm sure you have the answer. I don't see a fiscal note on here. What is going to be the cost if we vote for this?

SENATOR JOHNSON: Senator Clegg, was that discussed with DRA?

SENATOR CLEGG: If I may Mr.? DRA says that there should be no real fiscal cost because the purpose of this bill is not to actually sell property, but to help some of the larger parcels that open their land up to hunting and fishing and snowmobiling. It's to allow them to slide into a limited liability company solely for, or how would I say it, to protect themselves and their assets from lawsuits from people tripping and falling on their properties.

SENATOR BARNES: So the answer is there's no cost?

SENATOR CLEGG: There should be no cost if everybody does the right thing.

SENATOR BARNES: Thank you.

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 391-FN**, relative to insurance third party administrators. Finance Committee. Ought to pass, Vote 8-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move Senate Bill 391-FN ought to pass. This bill provides regulation for third party administrators and clarifies existing legislation that divided third party administrators into two groups, one that needed to have a license and one that needed an application for exemption. The Insurance Department has determined that this bill will have no fiscal impact. Please support the committee recommendation of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 402-FN-A**, relative to payment of unreimbursed storm-related damages incurred by the town of Hanover and affected surrounding towns and making an appropriation therefor. Finance Committee. Inexpedient to legislate, Vote 6-2. Senator Morse for the committee.

**MOTION TO TABLE**

Senator Morse moved to have SB 402-FN-A laid on the table.

**Adopted.**

**LAIID ON THE TABLE**

**SB 402-FN-A**, relative to payment of unreimbursed storm-related damages incurred by the town of Hanover and affected surrounding towns and making an appropriation therefor.

**HB 1226-FN**, relative to the New Hampshire Humanities Council. Finance Committee. Ought to pass, Vote 7-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move House Bill 1226 ought to pass. Every Governor since John Sununu has maintained an agreement with the New Hampshire Humanities Council that they may occupy state-owned space at no cost. In 2003 an audit was performed to determine who was occupying what state-owned space. This audit noted this agreement was oral and no legislative action supporting this agreement had taken place. This bill makes that agreement official. Rent for this space would cost \$18,000 a year. Recognizing the importance of the work done by the New Hampshire Humanities Council, the Finance Committee asks for your support for the motion of ought to pass.

**Adopted.**

**Ordered to third reading.**

SENATOR BARNES: Mr. President, I have a question for the Chairman of Finance, Senator Morse. Senator Morse, I know you're working on getting the answer. I just want to know how much we have spent today on the financial bills that were on the addendum and on the regular calendar. Have got a total of what we've spent today, what we okayed today?

SENATOR MORSE: Anticipating that Senate Bill 406 was not going to pass, I broke it out separately. In '06, we spent \$1 and in '07, we spent \$1,200,000.

SENATOR BARNES: That's the total amount of the bills that we acted on today?

SENATOR MORSE: Yes.

SENATOR BARNES: Thank you very much.

SENATOR MORSE: The total that you have acted on in the Senate, before crossover is, \$13 million. That's what you've acted on that we're sending to the House.

SENATOR BARNES: Thank you very much.

SENATOR ESTABROOK: Thank you, Mr. President. Question of Senator Morse. Does that include the funds that were allocated today to the energy credit for businesses?

SENATOR MORSE: No. See that's not an expense. And I didn't want to add to the confusion earlier today.

SENATOR ESTABROOK: I understand what you're saying. Yes, it's a decrease in revenue.

SENATOR MORSE: The good Republican I was, I worked on reducing revenues, not expending them.

SENATOR ESTABROOK: Thank you, Senator Morse.

**SB 395**, relative to the number of children in a licensed foster home. Health and Human Services Committee. Ought to pass with amendment, Vote 5-0. Senator Martel for the committee.

**Health and Human Services**

**March 15, 2006**

**2006-1374s**

**08/09**

**Amendment to SB 395**

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

1 New Subparagraph; Exception. Amend RSA 170-E:25, II(a) to read as follows:

(a)(1) "Foster family home" means child care in a residence in which family care and training are provided on a regular basis for no more than 6 unrelated children, unless all the children are of common parentage. The maximum of 6 children includes the children living in the home and children received for child care who are related to the residents.

*(2) If the limit of 6 children under subparagraph (a)(1) is reached, the foster family is willing and able to take a sibling or a group of siblings of a child already in their care, and the department has concluded that the foster family is able to provide for the safety, permanency, and well-being of the child or children, the department may, notwithstanding the limitations of subparagraph (a)(1), place the sibling or group of siblings in the foster family home.*

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

SENATOR MARTEL: Thank you very much, Mr. President. I move Senate Bill 395 ought to pass with amendment. Current law prohibits foster families from taking in a foster child where there are already six children in the home. However, the law does not take into consideration those foster families who are committed to maintaining a family unit of two or more siblings who are in foster care system in the foster care system. Senate Bill 395 would allow licensed foster homes to exceed the maximum limit of six children if receiving one or more siblings of a child already in the home. The committee amended the bill to clarify the Department's initial role in first determining that another child in the home would not jeopardize any other child's well-being, and the committee recommends ought to pass with amendment on this bill, Mr. President, and I thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 349**, relative to placement and removal of political advertising. Internal Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Boyce for the committee.

**Internal Affairs**

**March 15, 2006**

**2006-1413s**

**03/05**

**Amendment to HB 349**

Amend the bill by replacing section 1 with the following:

1 Placement and Removal of Political Advertising. Amend RSA 664:17 to read as follows:

664:17 Placement and Removal of Political Advertising. No political advertising shall be placed on or affixed to any public property including highway rights-of-way or private property without the owner's consent. [The earliest date on which political advertising may be placed or affixed shall be the last Friday in July prior to a state primary. All political advertising shall be removed by the candidate no later than the second Friday following the election unless the election is a primary and the advertising concerns a candidate who is a winner in the primary.] *Signs shall not be placed on or affixed to utility poles or highway signs. Political advertising may be placed within state-owned rights-of-way as long as the advertising does not obstruct the safe flow of traffic and the advertising is placed with the consent of the owner of the land over which the right-of-way passes.* No unauthorized person shall remove, deface, or knowingly destroy any political advertising which is placed on or affixed to **public property** or any private property except the owner of the property or a law enforcement officer removing improper advertising; ~~provided, however, that, before a law enforcement officer removes any advertisement, he shall notify the candidate that it is improper, and allow the candidate 24 hours to remove the advertisement himself].~~ *Political advertising placed on or affixed to any public property may be removed by state, city, or town maintenance or law enforcement personnel. Political advertising removed prior to election day by state, city, or town maintenance or law enforcement personnel shall be kept for one week at a place designated by the state, city, or town so that the candidate may retrieve the items.*

SENATOR BOYCE: Thank you, Mr. President. I move that House Bill 349 ought to pass with amendment. This bill establishes procedures for the removal of political property, political advertising placed on public property. It eliminates the requirement that law enforcement provide twenty-four-hour notice to a candidate before removing political advertising that's improperly placed on private property. It eliminates the date requirements for placement of political advertising and permits the placement of political advertising in state-owned right-of-ways under certain circumstances. The committee amendment clarifies who can remove political advertising and where such advertising can be placed. Please join the Internal Affairs Committee and vote House Bill 349 ought to pass with amendment. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 713-FN**, relative to a process for the request and disclosure of social security numbers. Internal Affairs Committee. Interim Study, Vote 4-0. Senator Boyce for the committee.

SENATOR BOYCE: Mr. President, I move this bill be special ordered until the next session. We have some things we want to try and do at that point.

SENATOR GATSAS (In the Chair): Not next Thursday, but the Thursday after that.

SENATOR BOYCE: It will be the next session that we hold.



SENATOR GATSAS (In the Chair): April 6.

SENATOR BOYCE: Thank you.

### SPECIAL ORDER

Senator Boyce moved that **HB 713-FN**, relative to a process for the request and disclosure of social security numbers, be made a special order for April 6, 2006.

#### Adopted.

HB 713-FN is made a special order for April 6, 2006.

**HB 1122**, relative to special elections. Internal Affairs Committee. Ought to pass, Vote 5-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President. I move House Bill 1122 ought to pass. This bill permits certain special elections to coincide with the regularly scheduled elections. This bill was requested by the Secretary of State's Office and is designed to prevent the scheduling of special elections in a manner that would bring further cost. Please join the Internal Affairs Committee and vote ought to pass. Thank you.

#### Adopted.

#### Ordered to third reading.

**HB 1147**, relative to the conduct of recounts. Internal Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Hassan for the committee.

#### Internal Affairs

March 15, 2006

2006-1412s

03/05

#### Amendment to HB 1147

Amend the bill by replacing section 5 with the following:

5 Town Elections; Board of Recount. Amend RSA 669:32 to read as follows:

669:32 Board of Recount. At the time and place so appointed and notified, the clerk shall publicly break the seal of and open the package in which the ballots of said election are kept; and, thereupon, said ballots shall be recounted by the clerk, the moderator, and the selectmen of said town who shall constitute the board of recount. *When counting the ballots, the board of recount or their assistants shall visually inspect each ballot. No mechanical, optical, or electronic device shall be used for the counting of ballots.* Any member of the board of recount who is one of the candidates for the office being recounted shall disqualify himself *or herself* from the board of recount for all official duties of said board. The moderator shall appoint an assistant who shall take the same oath as, serve in the same capacity as, and have all the powers of the recount official whom he *or she* has replaced.

SENATOR HASSAN: Thank you, Mr. President. I move House Bill 1147 ought to pass with amendment. This bill requires visual inspection of ballots during recounts and prohibits the use of any mechanical, optical, or electronic device to recount ballots. The committee amendment addresses the board of recount and allows for the board's assistants to visually inspect each ballot. Please join the Internal Affairs Committee and vote ought to pass with amendment on HB 1147. Thank you.

#### Amendment adopted.

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 230**, relative to the scope of liability of a medical director responsible for utilization review under the managed care law. Judiciary Committee. Ought to pass with amendment, Vote 3-0. Senator Clegg for the committee.

**Senate Judiciary**

**March 15, 2006**

**2006-1368s**

**01/09**

**Amendment to SB 230**

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

AN ACT relative to the qualifications and liability of the medical director responsible for utilization review under the managed care law.

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

1 Utilization Review; Qualifications of Medical Director; Duties. Amend RSA 420-J:6, V to read as follows:

V.(a) 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. *The medical director shall:*

*(1) Be licensed to practice medicine under RSA 329;*

*(2) Possess the education, training, and expertise to evaluate the medical condition of the insured; and*

*(3) Review the available medical documentation, notes of the attending physician, and test results and other relevant medical records of the insured.*

*(b) 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.]*

*(c) Any decision not to authorize coverage and the reason for the decision, including whether the coverage is included in the policy, shall be transmitted in writing in a timely manner to the insured, the provider of health care who recommended the service, and the primary care physician of the insured, if any. Any denial on a medical necessity basis shall be based on the review under subparagraph (a)(3) and include an explanation and specific reference with citation to the scientific basis or clinical judgment for the determination, applying the terms of the plan or the policy to the claimant's medical circumstances.*

2 Accident and Health Insurance; Minimum Standards for Claim Review. Amend RSA 415-A:4-a, I(c)(4) to read as follows:

*(4) If the claim denial is based on a medical necessity or experimental treatment or other similar exclusion or limit such denial shall only follow a complete review by the medical director of the available medical documentation, notes of the attending physician, and test results and other relevant medical records of the insured and then based upon that review, an explanation [of] and*

*specific reference with citation to* the scientific or clinical judgment for the determination, applying the terms of the plan or the policy to the claimant's medical circumstances;

3 Effective Date. This act shall take effect January 1, 2007.

**2006-1368s**

#### AMENDED ANALYSIS

This bill clarifies the qualifications and duties of a medical director and subjects him or her to civil liability for the negligent performance of his or her duties.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 230 ought to pass with amendment. Provisions of Senate Bill 230 deal with the area of medical insurance whereby the medical director can deny or approve certain tests and treatments. Testimony before the Judiciary Committee confirmed that medical directors in our state are physicians, yet they supposedly are acting based only on the terms of the policy, something anyone with a business degree could perform. The bill as introduced, sought to hold these doctors to the same standard as other doctors in the state who practice medicine. The committee amendment represents a compromise that was worked out with the representatives of health care insurance companies and Judiciary Committee members and would require that any denial for coverage be based upon the review of the prescribing physician's records and must explain in writing the basis for the denial. This compromised language provides much better protection for our insured. The Judiciary Committee recommends that this legislation be adopted with amendment and asks for your support.

#### **Amendment adopted.**

Senator Clegg offered a floor amendment.

Sen. Clegg, Dist. 14

**March 21, 2006**

**2006-1483s**

**01/09**

#### **Floor Amendment to SB 230**

Amend RSA 420-J:6, V(b) as inserted by section 1 of the bill by replacing it with the following:

*(b)* 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.

**2006-1483s**

#### AMENDED ANALYSIS

This bill clarifies the qualifications and duties of a medical director.

SENATOR CLEGG: Mr. President. I believe there's another floor amendment. I'd like to bring in floor amendment 1483.

SENATOR GATSAS (In the Chair): Floor amendment 1483. Senator speak to your amendment, please.

SENATOR CLEGG: During the process of this there were two people who actually talked to me. The main sponsor, I'd like to thank Dave Collins

from Anthem and Paula Rogers. And what we had done was inadvertently left some language struck out of the compromised amendment. Since those two came and spoke to us, we thought we'd fix it now, and what this does is puts back in the section that says, "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, and 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". We'd ask that you support that floor amendment.

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 321**, relative to delinquency proceedings for juveniles committing felony cruelty to animals. Judiciary Committee. Inexpedient to legislate, Vote 3-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move SB 321 inexpedient to legislate. The bill sought to provide that a minor over the age of fifteen who had committed severe acts of cruelty to animals could be transferred to the Superior Court and tried as an adult. Testimony did indicate that it is one small step from cruelty to animals to cruelty to humans. While the committee is totally sympathetic to the heinous acts against defenseless animals, we are hesitant to elevate these offenses to the same status as someone who has committed murder. We felt that most of the public would find trying young people who have expressed themselves in this way as adults troubling. Therefore, the Judiciary recommends that this legislation not be adopted and asks for your support. Thank you, Mr. President.

SENATOR MARTEL: Question, Mr. President, of Senator Foster. Senator Foster, was it... did anyone talk about the case where somebody might put gasoline on a dog or a cat or any other animal larger than that and just lighting them on fire and watching them burn 'til they go to a crisp? Did anybody talk about that situation? Because that happens. I just want to know.

SENATOR FOSTER: Yes, people discussed that there can be harsh treatment to animals. The question though that this bill presents is, do you want that person adjudicated as a juvenile and treated as a juvenile or do you want to put them into the adult system and ultimately the state prison? We felt that juveniles should be treated as juveniles, and hopefully they can be rehabilitated in the juvenile system and not in the adult system.

SENATOR MARTEL: Okay. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 324**, requiring notification concerning certain offenders against children. Judiciary Committee. Ought to pass, Vote 3-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I move Senate Bill 324 ought to pass. This bill allows the municipality to adopt an ordinance require that a neighbor of any person whose name appears on the list compiled under RSA 751-B:7 chapter 2 [sic] and has been released

into the municipality be notified of such person's release. This bill merely allows the municipality to notify, and has no mandate to notify, about these persons convicted of sexual acts being released into a community. While the attempt of this legislation is included in a larger House Bill dealing with sexual predators, we are still uncertain that this will pass the House. Thus, the Judiciary Committee recommends that this legislation be adopted and asks for your support. Thank you.

SENATOR BARNES: Thank you, Mr. President. Senator Letourneau, this is enabling legislation. Is that what I hear you say?

SENATOR LETOURNEAU: Yes, it is.

SENATOR BARNES: It's up to the community if they want to do it they can, the cities and towns can vote for this?

SENATOR LETOURNEAU: That is correct.

SENATOR BARNES: Follow-up. Does that have to go to the voters or just to the **TAPE CHANGE**

**Adopted.**

**Ordered to third reading.**

**SB 394**, establishing the Trust Modernization and Competitiveness Act. Judiciary Committee. Ought to pass with amendment, Vote 3-0. Senator Foster for the committee.

**Senate Judiciary**

**March 15, 2006**

**2006-1377s**

**08/09**

### **Amendment to SB 394**

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

1 Purpose. The legislature finds that:

I. The market for trust and trust services across the nation is a rapidly growing sector of the nation's economy.

II. New Hampshire is uniquely positioned to provide the most attractive legal and financial environment for individuals and families seeking to establish and locate their trusts and investment assets.

III. This act will serve to establish New Hampshire as the best and most attractive legal environment in the nation for trusts and trust services, and this environment will attract to our state good-paying jobs for trust and investment management, the legal and accounting professions, and support an infrastructure required to service this growing sector of the nation's economy.

IV. This act shall be known as the Trust Modernization and Competitiveness Act.

2 Nondepository Trust Companies; Examination. Amend RSA 383:9-d to read as follows:

**383:9-d Examination of Highly Rated Institutions; *Nondepository Trust Companies*.**

*I.* The bank commissioner may, at his or her discretion, waive one 18-month examination requirement under RSA 383:9 every 6 years for institutions which have consistently been given high ratings in past examinations. The commissioner may also substitute for an 18-month examination once every 6 years a report of a federal institution examining agency whose reports regularly include a report on New Hampshire

institutions. Within any 6-year period in which 4 18-month examinations are required under RSA 383:9, the commissioner may for highly rated institutions:

[I.] (a) Waive one examination; [and]

[H.] (b) Substitute for one examination a report of a federal bank examining agency whose reports regularly include a report on New Hampshire banks; and

[HH.] (c) Perform 2 examinations as required by 383:9.

***II. The commissioner may, at his or her sole discretion, upon the written request of a highly-rated nondepository trust company, satisfy the examination requirement of RSA 383:9, including modifications under paragraph I, for such trust company through an off-premises examination of:***

***(a) An audit report satisfying the requirements of RSA 384:43, I and II if it is prepared in accordance with RSA 384:43, III(a) and (b), and, with respect to a trust institution, including a fiduciary audit conforming to applicable generally accepted auditing standards; and***

***(b) Such other records and information of the institution as may be required by the commissioner.***

3 Powers and Inconsistent Charter Provisions. Amend RSA 384 by inserting after section 1-a the following new section:

384:1-b Powers and Inconsistent Charter Provisions. Unless otherwise determined by the bank commissioner, each savings bank, trust company, cooperative bank and other banking company chartered by the state of New Hampshire shall have all the powers, rights, benefits, privileges and procedures conferred upon each of such types of banks by the general statutes and rules adopted thereunder, subject to all the duties and restrictions contained in such general statutes and rules. The provisions of such general statutes and rules shall prevail over any inconsistent charter provisions of such banks.

4 Trust Companies; Banks Authorized to Invest Trust Funds in Affiliated Investments. Amend RSA 384:65 to read as follows:

384:65 Banks Authorized to Invest Trust Funds in Affiliated Investments.

I. Notwithstanding the provisions of any other law to the contrary, ***and in addition to any authority granted by RSA 564-B***, any bank, as defined in RSA 384:57, II, authorized to exercise trust powers in this state, is authorized while acting as a fiduciary to purchase for the fiduciary estate, directly from underwriters or distributors or in the secondary market:

(a) Bonds or other securities underwritten or distributed by such bank or an affiliate thereof or by a syndicate which includes such bank or affiliate, provided that such bank discloses in any written communication or account statement reflecting the purchase of such bonds or securities the nature of the interest of such bank or affiliate in the underwriting or distribution of such bonds and securities and whether such bank or affiliate received any fee in connection with such purchase; and

(b) Securities of any investment company [registered] ***as defined*** under the federal Investment Company Act of 1940 for which such bank or affiliate acts as advisor, distributor, transfer agent, registrar, sponsor, manager, shareholder servicing agent, or custodian, provided that such bank discloses in any written communication or account statement reflecting the purchase of such securities the nature of the relationship and whether such bank or affiliate received any fee for providing such services.

II. The authority granted in paragraph I of this section may be exercised only if:

(a) The investment is not expressly prohibited by the instrument, judgment, decree, or order establishing the fiduciary relationship;

(b) The bank discloses in writing to the person or persons to whom it sends account statements its intent to exercise the authority granted in paragraph I prior to the first exercise of such authority; and

(c) The bank procures in writing the consent of its cofiduciaries *with discretionary investment powers*, if any, to the investment.

III. A bank, acting as a fiduciary pursuant to RSA 384:65, I, may:

(a) Invest in the securities of an investment company or investment trust, to which such fiduciary or its affiliate provides services in a capacity other than as trustee, such as advisor, distributor, transfer agent, registrar, sponsor, manager, shareholder servicing agent, administrator, or custodian, and such investment is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor standard pursuant to article 9 of RSA 564-B.

(b) Be compensated by the investment company or investment trust for providing services in a capacity other than as trustee, such as advisor, distributor, transfer agent, registrar, sponsor, manager, shareholder servicing agent, administrator, or custodian, if the fiduciary at least annually notifies ~~the~~ *each* person ~~or persons~~ to whom it ~~sends~~ *is required to send* account statements *under RSA 564-B:8-813* of the rate and method by which the compensation was determined.

IV. Nothing in this section shall affect the degree of prudence which is required of fiduciaries under the laws of this state. Any bonds or securities purchased under authority of this section shall have sufficient liquidity and investment quality to satisfy the principles of fiduciary investment and the terms of the instrument, judgment, decree, or order establishing the fiduciary relationship.

V. Notwithstanding paragraphs I-IV, no bank authorized to exercise trust powers in this state which is acting as a fiduciary shall purchase for the fiduciary estate any fixed income or equity security issued by such bank or an affiliate thereof, unless the bank is expressly authorized to do so by the terms of the instrument creating the trust, a court order, the written consent of the grantor of the trust, or the written consent of the *qualified* beneficiaries of the trust, *as defined in RSA 564-B:1-103*.

5 Trust Companies; Bond Requirement. RSA 390:14 is repealed and reenacted to read as follows:

390:14 Bonds. Unless required by the order of a court with proper jurisdiction, no corporation or limited liability company authorized to act as trustee or executor in this state shall be required to give bond of an indemnity company licensed to do business in this state.

6 Repeal. RSA 390:16, relative to making loans from funds held in trust, is repealed.

7 New Section; Trust Companies; Definitions. Amend RSA 392 by inserting after section 1 the following new section:

392:1-a Definitions. For the purposes of title XXXV and RSA 359-C, as applicable:

I. "Confidential information," with respect to a trust company, includes the names of stockholders, members, or other owners; ownership information; capital contributions; addresses; business affiliations; findings of the commissioner or the board of trust company incorporation through any examination or investigation of the commissioner or the board of trust company incorporation; any information required to be reported or filed with the commissioner or the board, any information

that qualifies as any person's "nonpublic personal financial information" under Chapter V of the Gramm-Leach-Bliley Act of 1999 and the regulations implementing it; any information or agreement relating to any merger, consolidation, or transfer; any agreements or information relating to any relationship with a contracting trustee; and any other nonpublic information that, in the judgment of the commissioner, could be useful in connection with an act of bribery, extortion, identity theft, or terrorism.

II. "Depository trust company" means a trust company that is organized under this chapter and is not prohibited by its charter from accepting deposits.

III. "Family fiduciary services company" means a nondepository trust company that is organized under this chapter to engage in business with one or more family members and does not transact business with the general public, as defined in RSA 392:39-a, I(c) and is prohibited by its charter from making loans.

IV. "Nondepository trust company" means a trust company organized under this chapter but is prohibited by its charter from accepting deposits.

V. "Organizational instrument" means, with respect to a trust company, the articles of agreement for a corporation or the certificate of formation for a limited liability company.

VI. "Trust company" means a depository trust company or a nondepository trust company.

8 Trust Companies; Number of Organizers. Amend RSA 392:2 to read as follows:

392:2 [~~Incorporators~~] **Organizers**. Except as provided in this paragraph, [10] 3 persons may subscribe to [~~articles of agreement~~] **an organizational instrument** in writing for the purpose of forming a trust company and may, upon compliance with the provisions of this chapter, become a [~~corporation~~] **trust company** with all the powers and privileges and subject to all the duties, restrictions, and liabilities of a trust company, as set forth in the general laws now or hereafter in force relating to such [~~corporations~~] **trust companies**. If a trust company is being organized by a bank holding company or a financial holding company as defined by the federal Bank Holding Company Act of 1956, as amended, or by a savings and loan holding company as defined by the federal Savings and Loan Holding Company Act, as amended, or by any other type of company that will directly or indirectly hold all of the shares **or interests** of the trust company[~~'s capital stock~~], or in connection with a reorganization of a trust company into a holding company structure, then only the holding company or, if applicable, the subsidiary of the holding company that will hold all of the shares **or interests** of the trust company[~~'s capital stock~~], is required to subscribe to the [~~articles of agreement~~] **organizational instrument**.

9 Trust Companies; Limited Liability Company Powers. Amend RSA 392:2-a to read as follows:

392:2-a Limited Liability Company. Notwithstanding RSA 304-C:7, I or any other provision of law to the contrary, a trust company subject to the regulation of the bank commissioner may be organized as a limited liability company **with all the powers and privileges and subject to all the duties, restrictions, and liabilities of a corporate trust company**. A trust company organized as a limited liability company shall [~~be subject to the provisions of~~] **have all the powers and privileges and, except as otherwise provided in this section, be**



*subject to all the duties, restrictions, and liabilities of state [law] laws applicable to [such type of entity] a limited liability company;* ~~provided, however, any filing required to be made with the secretary of state shall be made instead with the bank commissioner].~~ Any reference to a corporation in the statutes governing trust companies shall also include a limited liability company. A trust company organized as a limited liability company shall be subject to all of the same laws and regulations that relate to a trust company organized as a corporation. All managers and employees of a trust company organized as a limited liability company shall be subject to the same duties and liabilities as pertain to directors, trustees, and employees of a trust company organized as a corporation. Any reference to corporations, directors, officers, stockholders or other like terms used to describe corporations in the statutes governing trust companies shall be construed to apply in the same manner to limited liability companies, managers, employees, members or other like terms used to describe limited liability companies unless the context otherwise requires. The organizational [~~instruments~~] **instrument** of a trust company chartered as a limited liability company [~~shall satisfy the requirements of the Federal Deposit Insurance Corporation in order to be deemed "incorporated" for purposes of federal deposit insurance~~] **shall provide that its existence shall be perpetual, that the company shall be managed by managers and that no member of the company shall be individually liable for the debts of the company, other than to the extent of the member's investment therein.**

10 Nondepository Trust Companies. RSA 392:3 is repealed and reenacted to read as follows:

392:3 Organizational Instrument

I. Said organizational instrument shall set forth that the organizers thereto associate themselves with the intention of forming a trust company, and shall specifically state:

(a) The name by which the corporation shall be known.

(b) The purpose for which it is formed, including, for a nondepository trust company, an exclusion from taking deposits.

(c) The name of the registered agent and the address of the registered office.

(d) The amount of its capital and the number of shares or interests into which the same is to be divided.

(e) Any other provisions consistent with the requirements of RSA 293-A if the trust company is in corporate form or RSA 304-C if the trust company is in limited liability form.

II. The provisions of RSA 293-A:5.01, 5.02, 5.03 and 5.04 shall apply to a trust company if it is in corporate form and the provisions of RSA 304-C:5 and 6 shall apply to it if it is in limited liability form. A copy of all notices required to be sent to the secretary of state shall also be sent to the commissioner.

11 Trust Companies; Organizer's Business Address. RSA 392:4 is repealed and reenacted to read as follows:

392:4 Signing Organizational Instrument. Each organizer shall subscribe to the organizational instrument the organizer's name, business post office address, and the number of shares of stock or interests which the organizer agrees to take.

12 Trust Companies; Application for Charter. RSA 392:5 is repealed and reenacted to read as follows:

392:5 Petition.

I. A petition setting forth said agreement of association or its terms, signed by the organizers to the agreement and requesting that the board

of trust company incorporation grant a charter shall be filed with the bank commissioner in the form prescribed by the commissioner. The commissioner shall designate in such form the questions, requests for information and certifications applicable only to deposit taking or lending institutions that need not be responded to by organizers of a nondepository trust company. An examination fee of \$ 5,000 shall be paid when the petition is filed. Sums collected under this section shall be payable to the state treasurer as restricted revenue and credited to the appropriation for the bank commissioner.

II. Upon receipt of a petition deemed to be complete by the commissioner, the commissioner shall promptly conduct an examination of all relevant facts connected with the formation of the proposed trust company. The commissioner may examine the following factors:

(a) The proposed market or markets to be served.

(b) Whether the proposed organizational and capital structure and the amount of initial capital appear adequate in relation to the proposed business and market or markets.

(c) Whether the anticipated volume and nature of business indicate a reasonable probability of success and profitability based on the market or markets proposed to be served.

(d) Whether the proposed officers and directors or managers, as a group, have sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed trust company will be free from improper or unlawful influence and otherwise will operate in compliance with law, and that success of the proposed trust company is reasonably probable.

(e) Whether the proposed name of the proposed trust company is likely to mislead the public as to its character or purpose or is the same as a name already adopted by an existing bank, savings association, or trust institution in this state, or so similar thereto as to be likely to mislead the public.

(f) Any other factor, as the commissioner may determine.

III. The failure of a petitioner to furnish required information, data, other material, or the required fee within 30 days after a request may be considered an abandonment of the petition.

13 Trust Companies; Investigation by Bank Commissioner. Amend RSA 392:5-a to read as follows:

392:5-a Investigations. For the purpose of any investigation under this chapter, the board *or the commissioner* shall have the power to subpoena witnesses and administer oaths in any adjudicative proceedings, and to compel, by subpoena duces tecum, the production of all books, records, files, and other documents and materials relevant to its investigation.

14 Trust Companies; Notice. RSA 392:6 is repealed and reenacted to read as follows:

392:6 Notice. Upon a determination by the commissioner that the petition is complete, he or she shall approve the form of a notice to be published in a newspaper of general circulation acceptable to the commissioner. The notice shall be published not later than 30 days after the date of approval. The notice shall state a date before which objections may be filed, which date shall not be later than 30 days after the publication of said notice. Any interested person may, within the time specified, file with the commissioner a statement of objection to the granting of such petition.

15 Trust Companies; Hearings. RSA 392:6-a is repealed and reenacted to read as follows:

392:6-a Hearing. The board may order within its discretion a public hearing on the petition. The board may approve or deny the petition with or without a public hearing. Any required public hearing shall be held at the time and place fixed by the board and a notice shall be published in accordance with the provisions of RSA 392:6. The board may prescribe reasonable procedural rules to govern the proceedings, including rules for maintaining the confidentiality of the portions of the petition, the commissioner's investigation, and the proceedings of the board that include confidential information or are determined by the board or the commissioner or otherwise determined by law to be confidential or to exempt a certain class of petitions from any public hearing requirement. The board shall keep a permanent verbatim record of all such evidence.

16 Repeal. RSA 392:7, relative to form of notice, is repealed.

17 Trust Companies; Decisions. RSA 392:8 is repealed and reenacted to read as follows:

392:8 Decision.

I. In deciding whether or not to grant the petition, the board shall consider the factors set forth in RSA 392:5, II. Upon reaching its decision, the board shall make a record thereof. If the petition is denied, it shall be dismissed and no new petition concerning the same company may be filed within one year thereafter.

II. If in any case the board shall be of the opinion that the petition does not satisfy the factors in RSA 392:5, II by the exercise proposed by the trust company of all the powers and privileges which are included in the petition, but that the same would be satisfied by the exercise of a part thereof, it shall so notify the petitioners; and in such case the petitioners may have leave to withdraw, and may at once file another petition setting forth new organizational documents, upon which the same procedure shall be had as upon the original petition.

18 Repeal. RSA 392:9, relative to new agreement, is repealed.

19 Trust Companies; Decisions. Amend RSA 392 by inserting after section 9 the following new section:

392:9-a Confidentiality.

I. All confidential information received in connection with any petition or application of or concerning a family fiduciary services company shall be confidential communications, shall not be subject to subpoena and shall not be made public unless, in the judgment of the commissioner, the ends of justice and the public advantage will be served by the publication of the information. The commissioner may, at his or her discretion on request or otherwise, determine that confidential information received in connection with any petition or application of or concerning a public trust company should not be publicly available, in which case such information shall be confidential communications, shall not be subject to subpoena, and shall not be disclosed unless, in the judgment of the commissioner, the ends of justice and the public advantage will be served by the disclosure of the information.

II. The commissioner shall give 10-days prior written notice of intent to disclose confidential information to the affected trust company. Any trust company which receives a notice may object to the disclosure of the confidential information and shall be afforded the right to a hearing in accordance with the provisions of RSA 383. If a trust company requests a hearing, the commissioner may not reveal confidential information prior to the conclusion of the hearing and a ruling. Prior to dissemination of any confidential information, the commissioner shall require a written agreement not to reveal the confidential information by

the party receiving the confidential information. In no event shall the commissioner disclose confidential information to the general public, any competitor, or any potential competitor of a trust company.

III. Nothing in this chapter is intended to preclude a law enforcement officer from gaining access to otherwise confidential records by subpoena, court order, search warrant, or other lawful means. Notwithstanding any other provision of this chapter, the commissioner shall have the ability to share information with other state or federal regulators with whom the department has an information sharing agreement. Nothing in this chapter is intended to preclude any agency of the state of New Hampshire from gaining access to otherwise confidential records in accordance with any applicable law, including in connection with an investigation or review of the secretary of state conducted in accordance with RSA 421-B.

20 Trust Companies; First Meeting. RSA 392:10 is repealed and reenacted to read as follows:

392:10 First Meeting. The first meeting of the organizers shall be called by a notice signed either by that organizer who is designated in the organizational instrument for the purpose, or by a majority of organizers, and such notice shall state the time, place and purpose of the meeting.

21 Repeal. The following are repealed:

I. RSA 392:11, relative to notice of meeting of trust company.

II. RSA 392:12, relative to waiver of notice.

22 Trust Companies; Subscribers Powers. Amend RSA 392:13 to read as follows:

392:13 [~~Subscribers'~~] **Organizers'** Powers. The [~~subscribers to the agreement of association~~] **organizers of a trust company in organization** shall hold the franchise until the organization has been completed.

23 Trust Companies; Organization. RSA 392:14 is repealed and reenacted to read as follows:

392:14 Organization. The organizers shall adopt bylaws which may be incorporated in an operating agreement if the company is a limited liability company, and shall also elect, or cause to be elected, such directors or managers and officers as may be required by the organizational instrument or bylaws. All directors, managers, and officers so elected shall be sworn to the faithful performance of their duties. A temporary clerk or secretary shall make and attest a record of the proceedings until the clerk has been chosen and sworn, including a record of such choice and qualification.

24 Trust Companies; Certificate. Amend RSA 392:15 to read as follows:

392:15 Certificate. A majority of the directors **or managers** who are elected at such first meeting shall sign and make oath to a certificate setting forth:

I. A true copy of the [~~agreement of association~~] **organizational instrument**, the names **and business post office address** of the [~~subscribers~~] **organizers** thereto, and the name[~~, residence~~] and **business** post office address of the **directors, managers, and** officers of the [~~corporation~~] **trust company**.

II. The date of the first meeting and the successive adjournments thereof, if any.

III. A copy of the records.

25 Trust Companies; Approval of. Amend RSA 392:16 to read as follows:

392:16 Approval of. Such certificate shall be submitted to [~~said board of incorporation~~] **the commissioner**, who shall examine the same, and who may require such amendment thereof or such additional information as [~~they~~] **he or she** may consider necessary. If [~~they~~] **he or she** [~~find~~] **finds** that the [~~public convenience and advantage will be promoted by~~]

~~the establishment of such corporation]~~ ***certificate is consistent with the decision of the board pursuant to RSA 392:8*** and that the proceedings in other respects conform to the provisions of this chapter, ~~[they]~~ ***he or she*** shall so certify and indorse ~~[their]~~ ***his or her*** approval upon said certificate ***and the organizational instrument.***

26 Trust Companies; Record of. Amend RSA 392:17 to read as follows:

392:17 Record of. Thereupon ~~[said certificate]~~ ***the organizational instrument of the trust company*** shall be filed in the office of the secretary of state, who, upon payment of a fee equal to the fee charged by the secretary of state to business corporations under RSA 293-A, shall cause the same, with the indorsement thereon, to be recorded.

27 RSA 392:18 is repealed and reenacted to read as follows:

392:18 Certificate of Organization. The secretary shall thereupon issue a certificate of organization in the following form:

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Be it known, that whereas (the names of the organizers of the trust company) have associated themselves with the intention of forming a trust company under the name of (the name of the trust company), for the purpose (the purpose declared in the organizational instrument), with capital of (the amount fixed in the organizational instrument), and have complied with the provisions of the statutes of this state as duly approved by the board of trust company incorporation and recorded in this office: Now, therefore, I (the name of the secretary), secretary of state, do hereby certify that said (the names of the organizers of the trust company), their associates and successors, are legally organized and established as, and are hereby made, an existing trust company under the name of (name of trust company), with the powers, rights and privileges, and subject to the limitations, duties, and restrictions, which by law appertain thereto.

Witness my official signature hereunto subscribed, and the seal of the state hereunto affixed, this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ (the date of the filing of the organizational instrument).

The secretary of state shall sign the certificate of organization and cause the seal of the state to be thereto affixed, and such certificate shall have the force and effect of a special charter.

28 Trust Companies; Certificate or Record as Evidence. Amend RSA 392:19 to read as follows:

392:19 Certificate or Record as Evidence. The secretary of state shall also cause a record of the certificate of ~~[incorporation]~~ ***organization*** to be made, and such certificate, or such record or a certified copy thereof, shall be conclusive evidence of the existence of such ~~[corporation]~~ ***trust company.***

29 Trust Companies; When Organized; Beginning Business. RSA 392:20 is repealed and reenacted to read as follows:

392:20 When Organized; Beginning Business. Within 90 days after a favorable decision pursuant to RSA 392:8, petitioners shall file with the secretary of state the organizational instrument required pursuant to RSA 392:15. The existence of such trust company shall begin upon the filing of the organizational instrument with the secretary of state. Any trust company organized under this chapter shall begin business within 2 years from the date of its organization; otherwise its charter shall be void, unless the board of trust company incorporation, for good cause shown, shall grant one extension for not more than one year.

30 Trust Companies; List of Owners. Amend RSA 392:22 to read as follows:

392:22 List of [~~Stockholders~~] **Owners**. When [~~the whole capital stock has been issued~~] **all of the initial investment in the capital of the trust company has been paid**, a complete list of the [~~stockholders~~] **investors**, with the name[~~, residence~~] and post office address of each, and the number of shares **or interests** held by each, shall be filed with the bank commissioner, which list shall be verified by the president and clerk **or secretary** of the [~~corporation~~] **trust company**.

31 Trust Companies; Authorizing Business. Amend RSA 392:23 to read as follows:

392:23 Authorizing Business. Upon receipt of such list, the commissioner shall cause an examination to be made; and if, upon such examination, it appears that [~~the whole capital stock and surplus fund have~~] **the required capital has been paid [in] to the trust company** in cash, and that all requirements of law have been complied with, the commissioner shall issue a certificate authorizing such [~~corporation~~] **trust company** to begin the transaction of business. The cost of such examination shall be paid by the [~~corporation~~] **trust company** and shall be limited to a per diem charge for overall compensation costs, including the benefits portion thereof, and expenses as determined by the commissioner, provided, however, that no such [~~institution~~] **trust company** shall be charged or pay for less than one full day. Sums collected under this section shall be payable and credited in accordance with the procedure established under RSA 383:11, I.

32 Trust Companies; Unauthorized Acts. RSA 392:24 is repealed and reenacted to read as follows:

392:24 Unauthorized Acts. The transaction of a banking or trust business by such trust company prior to the issuance of a certificate of authority to engage in business issued by the commissioner as required by RSA 392:23 shall make the organization void; and in such case the organizers shall be liable as partners for the contracts, debts, and engagements of the company.

33 Trust Companies; Minimum Capital Requirement. RSA 392:25 is repealed and reenacted to read as follows:

392:25 Minimum Capital Requirements; Investment of Capital.

I. The initial capital required to organize a trust company shall be not less than \$500,000. The board of trust company incorporation may require, in the exercise of its discretion based on safety and soundness factors, as set forth in paragraph IV, additional capital at such levels as it determines is necessary to protect against the risks inherent in the business of the trust company. Once organized, a nondepository trust company shall maintain a minimum level of capital required by the commissioner to operate in a safe and sound manner based upon his or her examination of the company, provided that the level of capital shall not be less than \$500,000.

II. In addition to the minimum capital requirements, a trust company being organized as a nondepository trust company shall pledge to the commissioner securities or a surety bond for the benefit of the commissioner to defray the costs of a liquidation of the trust company by the commissioner in the event it should fail. The amount of the securities or the surety bond shall be determined by the commissioner in an amount that the he or she deems appropriate to defray such costs, but in no event shall exceed \$1,000,000. In the event of a receivership of a nondepository trust company, the commissioner may, without regard to any priorities, preferences, or adverse claims, reduce the pledged securities or the surety bond to cash and, as soon as practicable, utilize the cash to defray the costs

associated with the receivership. If the nondepository trust company chooses to pledge securities to satisfy this provision, the securities shall be held at a depository institution or a Federal Reserve Bank approved by the commissioner. The commissioner may specify the types of securities that may be pledged. Any fees associated with holding such securities shall be the responsibility of the nondepository trust company. If the nondepository trust company chooses to purchase a surety bond to satisfy this provision, the surety bond shall be issued by a bonding company, approved by the commissioner, that is authorized to do business in this state and that has a rating in one of the 3 highest grades as determined by a national rating service. The surety bond shall be in a form approved by the commissioner. The nondepository trust company may not obtain a surety bond from any entity in which the trust company has a financial interest. The commissioner may require any trust company to increase its capital funds from time to time as may be necessary to comply with reasonable banking and trust standards, as applicable, not inconsistent with law.

III. Nondepository trust companies organized prior to January 1, 2007, shall be required to increase and maintain their level of capital to \$500,000. Any nondepository trust company that has less than \$500,000 in capital on January 1, 2007, shall comply with the minimum capital requirement by January 1, 2010. At a minimum, such nondepository trust company shall increase and maintain its existing capital level by at least \$50,000 per year until January 1, 2010. In addition, a nondepository trust company shall pledge to the commissioner securities or a surety bond for the benefit of the commissioner in the same manner as specified in paragraph II to defray the costs associated with a receivership.

IV. The safety and soundness factors to be considered by the board in the exercise of the board's discretion include:

(1) The nature and type of business proposed to be conducted including, without limitation, whether the company will accept deposits or make loans.

(2) The nature and liquidity of assets proposed to be held in its own account.

(3) The amount of fiduciary assets projected to be under management.

(4) The type of fiduciary assets proposed to be held and the proposed depository of the assets.

(5) The complexity of fiduciary duties and degree of discretion proposed to be undertaken.

(6) The competence and experience of proposed management.

(7) The extent and adequacy of proposed internal controls.

(8) The proposed presence or absence of annual unqualified audits by an independent certified public accountant.

(9) The reasonableness of business plans for retaining or acquiring additional equity capital.

(10) The existence and adequacy of insurance proposed to be obtained by the trust company for the purpose of protecting its clients, beneficiaries, and grantors.

V. Based on the factors in paragraph IV, the commissioner may require any trust company to increase its capital funds from time to time as may be necessary for its safe and sound operation.

VI. Notwithstanding any other provisions of law to the contrary, a nondepository trust company may invest its funds for its own account in any type or character of equity securities or debt securities

subject to the limitations provided by this section, which investments shall otherwise comply with the prudent investor standard described in RSA 564-B:9-902.

VII. Subject to paragraphs VIII and IX, the total investment in equity and investment securities of any one issuer, obligor, or maker held by a nondepository trust company for its own account shall not exceed an amount equal to 15 percent of the nondepository trust company's equity capital. The commissioner may authorize investments in excess of this limitation if the commissioner concludes that the safe and sound operation of a nondepository trust company would not be adversely affected by a proposed investment exceeding this limitation.

VIII. In calculating compliance with the investment limits set forth in paragraph V, a nondepository trust company shall not be required to combine:

(a) The nondepository trust company's pro rata share of the securities of an issuer in the portfolio of a collective investment vehicle with the nondepository trust company's pro rata share of the securities of that issuer held by another collective investment vehicle in which the nondepository trust company has invested; or

(b) The nondepository trust company's own direct investment in the securities of an issuer with the nondepository trust company's pro rata share of the securities of that issuer held by collective investment vehicles in which the nondepository trust company has invested under the provisions of this section.

IX. Notwithstanding paragraph VII, a nondepository trust company may purchase for its own account, without limitation and subject only to the exercise of prudent judgment:

(a) Bonds and other general obligations of a state, an agency, or political subdivision of a state, the United States, or an agency or instrumentality of the United States.

(b) A debt security that this state, an agency or political subdivision of this state, the United States, or an agency or instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee.

(c) Securities that are offered and sold under 15 U.S.C. section 77d(5).

(d) Mortgage-related securities as defined in 15 U.S.C. section 78c(a).

(e) Investment securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, Fannie Mae, the Government National Mortgage Association, the Federal Agricultural Mortgage Association, or the Federal Farm Credit Banks Funding Corporation; and

(f) Investment securities issued or guaranteed by the North American Development Bank.

X. The commissioner may allow a nondepository trust company to make other investments of its corporate funds not specified in this chapter by rules, orders, or declaratory rulings.

34 Trust Companies; Par Value. RSA 392:26, relative to change in par value, is repealed.

35 Trust Companies; Petition. RSA 392:27 is repealed and reenacted to read as follows:

392:27 Petition. Any trust company organized under this chapter or chartered prior to the passage thereof may file with said board of incorporation a petition setting forth an amendment to its organizational in-



strument, within the provisions of this chapter, and praying for approval of the amended organizational instrument based on the considerations set forth in RSA 392:5, II.

36 Trust Companies; Procedure; Effect. Amend RSA 392:28 to read as follows:

392:28 Procedure; Effect. If the decision is favorable to the petition a copy of the said [~~amended certificate or charter~~] **organizational instrument**, certified by the clerk **or secretary** of the [~~corporation~~] **trust company**, with the approval of said board indorsed thereon, shall be filed in the office of the secretary of state, accompanied by a fee equal to the fee charged by the secretary of state to business corporations under RSA 293-A, and thereupon the secretary of state shall cause the same, with the endorsement thereon, to be recorded as provided in RSA 392:17, and shall issue a certificate of such amended [~~incorporation~~] **organizational instrument**, which shall conform as nearly as may be to the form prescribed in RSA 392:18 and shall have the same force and effect, and thereafter such [~~corporation~~] **trust company** shall have all the powers and privileges provided for by such amended certificate or charter and shall be subject to all the provisions of this chapter.

37 Trust Companies; Fees for Recording. Amend RSA 392:29 to read as follows:

392:29 Fees for Recording. The fee for recording with the secretary of state any amended [~~certificate~~] **organizational instrument**, which does not embody an increase of the authorized capital stock, shall be \$35.

38 Trust Companies; Election. Amend RSA 392:30 to read as follows:

392:30 Election. The [~~officers~~] **management** of [~~such corporation~~] **a trust company** shall [~~be~~] **include** a president, a clerk **or secretary**, a board of not less than 5 directors **or managers**, a treasurer, and such other officers as may be prescribed in its [~~bylaws~~] **organizational instrument or other organizational documents** and the laws of the state. Such officers, except the treasurer, shall be chosen annually.

39 Trust Companies; Treasurer. Amend RSA 392:31 is repealed and reenacted to read as follows:

392:31 Treasurer. The treasurer shall be elected by the board of directors or managers and shall hold office during their pleasure.

40 Trust Companies; In General. RSA 392:33 is repealed and reenacted to read as follows:

392:33 In General.

I. A trust company may be authorized and empowered to receive on deposit, storage or otherwise, money, securities, jewelry, documents, evidences of debt, and other personal property of a similar character, for safekeeping, upon such terms or conditions as may be agreed upon, which said deposits may be made by corporations and persons acting individually or in any fiduciary capacity; to collect and disburse the income and principal of said property when due; to negotiate, purchase, and sell stocks, bonds, and other evidences of debt; to do a general banking business; and to conduct a savings bank business, provided a non-depository trust company may not accept deposits.

II. In addition to the foregoing, and not limited to, a trust company may act as a fiduciary within or outside this state or in similar capacities generally performed by corporate trustees, and in so acting to possess, purchase, sell, invest, reinvest, safekeep, or otherwise manage or administer real or personal property of other persons, and exercise the powers of a business corporation or limited liability company organized under New Hampshire law and any incidental powers that are reason-

ably necessary to enable it to fully exercise, in accordance with commonly accepted banking and fiduciary customs and usages, a power conferred in this chapter or RSA 390.

III. Notwithstanding any other provision of law to the contrary, a trust company shall be authorized to make any type of secured or unsecured loan to any person, including without limitation any business or governmental entity. With respect to secured loans, a trust company shall adopt prudent policies establishing loan-to-value ratios suitable for the type of property securing the loans. With respect to all loans, a trust company shall adopt prudent policies establishing the creditworthiness of borrowers.

41 Trust Companies; Pledge of Assets. Amend RSA 392:34 to read as follows:

392:34 Pledge of Assets. Such [corporation] *trust company* may be authorized, by vote of its board of directors *or managers*, to pledge the assets of its commercial department to the United States when such action is necessary or desirable to secure deposits in said department by the United States government in connection with war loan deposit accounts or other similar accounts.

42 Trust Companies; Transfer Agent. Amend RSA 392:35 to read as follows:

392:35 Transfer Agent, Acting As. Such [corporation] *trust company* may be authorized and empowered to act as agent for the purpose of issuing, registering, or countersigning certificates of stock, bonds, or other evidence of indebtedness of any corporation, association, municipal corporation, county or state government, on such terms as may be agreed upon.

43 Trust Companies; Real Estate. Amend RSA 392:37 to read as follows:

392:37 Real Estate. Every such [corporation] *trust company* may acquire and hold real estate for its own use, in whole or in part, but its investment in such real estate, exclusive of any real estate which may be taken in good faith for debt or held as collateral security, shall not exceed an amount equal to 50 percent of the sum of its capital and surplus, except with the approval of the commissioner.

44 Trust Companies; Prohibited Loans and Purchases. Amend RSA 392:38 to read as follows:

392:38 Prohibited Loans and Purchases. No such [corporation] *trust company* shall make a loan or discount on the security of the shares [~~of its own capital stock~~] *or interests*, nor be the purchaser or holder of such shares *or interests* unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock *or interests* so purchased or acquired shall within 6 months after its purchase be sold or disposed of at public or private sale, unless such time is extended by the commissioner.

45 Trust Companies; Redemptions. Amend RSA 392:38-a to read as follows:

392:38-a Redemption of Shares *or Interests*. Notwithstanding the provisions of RSA 392:38, any such [corporation] *trust company* which then has more than 500 holders of the shares *or interests* of its own capital stock shall be entitled, with the express written approval of the bank commissioner, to redeem any and all of such shares *or interests* from holders thereof who own in the aggregate 10 shares or less of such stock. Such redemption shall be pursuant to a tender offer, the form of which shall have been approved by the bank commissioner, and all shares *or interests* so redeemed shall be retired within 60 days of the expiration

of the tender offer, thereby reducing the authorized capital stock of the [corporation] **trust company**. Within said 60 day period the [corporation] **trust company** shall file with the board of trust company incorporation, as required under RSA 392:27, an appropriate amendment reciting the change in outstanding shares **or interests**.

46 New Subdivision; Family Fiduciary Services Companies. Amend RSA 392:39 by inserting after section 392:39 the following new subdivision:

Family Fiduciary Services Companies

392:39-a Definitions; Exemption From Certain Laws.

I. For purposes of this subdivision:

(a) "Designated relative" means the individual required to be named in the application under RSA 392:39-b, I(e) requesting an exemption from certain provisions of this chapter pursuant to RSA 392:39-a, III.

(b)(1) "Family member" means the designated relative and:

(A) Any individual within the fifth degree of lineal kinship to the designated relative;

(B) Any individual within the ninth degree of collateral kinship to the designated relative;

(C) The spouse of the designated relative and of any individual qualifying as a family member under subparagraphs (a) and (b);

(D) A company controlled by one or more family members, who shall possess, directly or indirectly, the power to direct or cause the direction of the management and policies of such company, whether through the ownership of voting securities, by contract, or otherwise;

(E) A trust established by a family member or by an individual who is not a family member if non-charitable beneficiaries who are family members represent a majority of interest in the trust;

(F) The estate of a family member; or

(G) A charitable foundation or other charitable entity created by a family member.

(2) For purposes of this subparagraph, a legally adopted individual shall be treated as a natural child of the adoptive parents.

(3) For purposes of this subparagraph, lineal kinship shall mean a family member who is in the direct line of ascent or descent from the designated relative. Collateral kinship shall mean a relationship that is not lineal, but stems from a common ancestor. Degrees are calculated by adding the number of steps from the designated relative through each person to the family member either directly in the case of lineal kinship or through the common ancestor in the case of collateral kinship.

(4) For purposes of this subparagraph, no company, trust, charitable foundation, or other charitable entity shall qualify as a family member if the commissioner determines such entity was organized or operated for the purpose of evading the limitations of RSA 392:39-a, I.

(c) "Transact business with the general public" means engaging in any sales, solicitations, arrangements, agreements, or transactions to provide trust business services, whether or not for a fee, commission, or other type of remuneration, to more than 15 natural persons who are not family members. In order for a person to be eligible to receive such trust business services, the person shall be:

(1) An employee of the family fiduciary services company or of a trust or company that is a family member; and

(2) Engaged principally in providing services to the family fiduciary services company or its fiduciary accounts.

II. A family fiduciary services company engaging in trust business in this state shall comply with all provisions of this chapter applicable to a nondepository trust company, unless expressly exempted from this chapter by the commissioner pursuant to this section.

III. A family fiduciary services company or proposed family fiduciary services company may request in writing that it be exempted from specified provisions of title 35, including without limitation RSA 383:9, RSA 383:13-a, RSA 384:3, RSA 384:4, RSA 384:7, RSA 384:7-b, RSA 384:43, RSA 390:8, RSA 390:14, RSA 392:6-a, and RSA 392:30. The commissioner may grant or deny the exemption request in whole or in part. The commissioner also may issue rules, orders, or declaratory rulings granting exemptions to all family fiduciary services companies, or to family fiduciary services companies that meet specified conditions.

IV. The commissioner may examine or investigate the family fiduciary services company or proposed family fiduciary services company in connection with the application for exemption. Unless the application presents novel or unusual questions, the commissioner shall approve or deny the application for exemption no later than the 61st day after the date the commissioner considers the application complete and accepted for filing. The commissioner may require the submission of additional information in order to make an informed decision to approve or reject the proposed exemption.

V. Any exemption granted under the provisions of this section may be made subject to conditions or limitations imposed by the commissioner consistent with this subdivision, and those conditions or limitations shall be included in an order.

VI. If an application under this section is approved by the commissioner, the petition of the organizers for a charter for the proposed trust company shall be exempt from the notice, objection, and hearing provisions of RSA 392:6 and RSA 392:6-a, and any petition by a family fiduciary services company under RSA 392:27 shall be decided by the commissioner and exempt from any notice or hearing requirement, except as otherwise ordered in the particular case by the board.

VII. Rules, orders, or declaratory rulings of the commissioner may provide for other circumstances that justify exemption from specific provisions of this chapter or RSA 383, RSA 384, RSA 390 or RSA 392-A, specifying the provisions that are subject to the exemption request, and establishing procedures and requirements for obtaining, maintaining, or revoking exemptions.

392:39-b Requirements to Apply for and Maintain Status as a Family Fiduciary Services Company.

I. A family fiduciary services company or a proposed family fiduciary services company requesting an exemption from the provisions of this chapter pursuant to RSA 392:39-a shall file an application with the commissioner, in the form required by the commissioner, containing, preceded, or accompanied by:

(a) An application fee of \$1,500;

(b) A statement under oath of the reasons for requesting the exemption;

(c) A statement under oath showing that the family fiduciary services company is not currently transacting business with the general public and that the company will not transact business with the general public without the approval of the commissioner;

(d) A listing of the specific provisions of this chapter or RSA 383, RSA 384, RSA 390 or RSA 392-A from which exemption is requested; and

(e) The name of the designated relative whose relationship to other individuals determines whether the individuals are family members under RSA 392:39-a, I(b). The designated relative must be living and 18 years of age or older at the time the application is made.

II. The commissioner may make further inquiry and investigation as the commissioner deems appropriate. Notwithstanding any other law to the contrary, information bearing on actual or proposed accounts of the family fiduciary services company or proposed family fiduciary services company applying for the exemption or the identity or residence address of the designated relative or any other family member is confidential and not subject to public disclosure.

III. To maintain its status as a family fiduciary services company and to maintain any exemptions from the provisions of this title granted by the commissioner, a family fiduciary services company shall file with the commissioner an annual certification that it is in compliance with the provisions of this subdivision and the conditions and limitations of all exemptions granted. This annual certification shall be filed in the form required by the commissioner and accompanied by a fee of \$100. The annual certification shall be filed on or before December 31 of each year. The commissioner may examine or investigate the family fiduciary services company periodically as necessary to verify the certification.

IV. In any transaction involving a family fiduciary services company for which an application is required under RSA 383, RSA 388, RSA 389 or RSA 389-A, any exemption from the provisions of this chapter granted to the family fiduciary services company shall automatically terminate upon the consummation of the transaction unless the commissioner approves the continuation of the exemption.

V. The commissioner may revoke any exemption from the provisions of this chapter granted to a family fiduciary services company in the following circumstances:

(a) An officer or director of the family fiduciary services company makes a false statement under oath on any document required to be filed by this chapter or by any rules or orders of the commissioner;

(b) The family fiduciary services company fails to submit to an examination by the commissioner as required by law;

(c) An officer or director of the family fiduciary services company withholds requested information from the commissioner;

(d) The family fiduciary services company violates any provision of this subdivision or fails to meet any condition on which the exemption is based; or

(e) The family fiduciary services company refuses to comply with any rule or order of the commissioner.

VI. If the commissioner determines from examination or other credible evidence that a family fiduciary services company has violated any of the requirements of RSA 392:39-a through RSA 392:39-c or fails to meet any condition or limitation on which an exemption from the provisions of this chapter is based, the commissioner may by personal delivery or registered or certified mail, return receipt requested, notify the family fiduciary services company that the family fiduciary services company's exemptions from the provisions of this chapter will be revoked unless the family fiduciary services company corrects the violation or failure or shows cause why any exemptions should not be revoked. The notification shall state grounds for the revocation with reasonable certainty and shall advise of an opportunity for a hearing. The notice shall state the date upon which the revocation shall become effective absent a correction or showing of cause why the exemption should not be revoked, which shall not

be before the 30th day after the date the notification is mailed or delivered, except as provided in paragraph VII. The revocation shall take effect for the family fiduciary services company on the date stated in the notice if the family fiduciary services company does not request a hearing in writing before the effective date. After the revocation takes effect, the family fiduciary services company shall be subject to all of the requirements and provisions of this chapter applicable to a nondepository trust company.

VII. If the commissioner determines from examination or other credible evidence that a family fiduciary services company appears to be engaging or attempting to engage in acts intended, designed, or likely to deceive or defraud the public, the commissioner may shorten or eliminate the 30-day notice period specified in paragraph VI, but shall promptly afford a subsequent hearing upon request to rescind the action taken.

VIII. If the family fiduciary services company does not comply with all of the provisions of this chapter or correct any failure to meet any condition or limitation on which an exemption is based within the notice period specified in paragraph VI, the commissioner may institute any action or remedy prescribed by this chapter or any applicable rule.

392:39-c Conversion to Nondepository Public Trust Company Transacting Business With the General Public.

I. Before transacting business with the general public, a family fiduciary services company shall file a notice on a form prescribed by the commissioner, which shall set forth the name of the family fiduciary services company and an acknowledgment that any exemption granted or otherwise applicable to the family fiduciary services company pursuant to RSA 392:39-a shall cease to apply once the commissioner terminates family fiduciary services company status. The family fiduciary services company shall furnish a copy of the resolution adopted by its board of directors authorizing the family fiduciary services company to commence transacting business with the general public, and shall pay the filing fee, if any, prescribed by rule of the commissioner.

II. The family fiduciary services company may commence transacting business with the general public on the 31st day after the date the commissioner receives the notice, unless the commissioner:

(a) Establishes an earlier or later date;

(b) Notifies the family fiduciary services company that the notice raises issues that require additional information or additional time for analysis; or

(c) Disapproves the termination of family fiduciary services company status.

III. If the commissioner gives a notification described in subparagraph II(b), the family fiduciary services company status may be terminated only on approval by the commissioner.

IV. The commissioner may deny approval of the proposed termination of family fiduciary services company status if the commissioner finds that the family fiduciary services company lacks sufficient resources to undertake the proposed conversion without adversely affecting its safety or soundness or if the commissioner determines that the family fiduciary services company could not within a reasonable period be in compliance with any provision of this chapter from which it previously had been exempted pursuant to RSA 392:39-a. Such determination shall be based on the factors set forth in RSA 392:5, II to the extent applicable.

47 Uniform Transfer on Death; Definitions. Amend RSA 563-C:2, V to read as follows:

V. "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker, ***a bank defined in RSA 384-B:1, I, or a national bank or federal savings bank authorized to conduct business in this state*** maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

48 New Paragraphs; Uniform Trust Code; Definitions. Amend RSA 564-B:1-103 by inserting after paragraph (21) the following new paragraphs:

(22) "Ascertainable standard" means a standard to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter, or as later amended.

(23) "Directed trust" means a trust where either through the terms of the trust, an agreement of the qualified beneficiaries, or a court order, one or more persons is given the authority to direct, consent to, or disapprove a fiduciary's actual or proposed investment decision, distribution decision, or any other noninvestment decision of the fiduciary.

(24) "Excluded fiduciary" means any fiduciary excluded from exercising certain powers under the trust instrument which powers may be exercised by the settler, trust advisor, trust protector, or other persons designated by the instrument.

(25) "Investment company" means an investment company as defined under the federal Investment Company Act of 1940.

(26) "Trust advisor" means the settlor of a trust instrument and other parties whose appointment is provided in the trust instrument and whose powers are defined in RSA 564-B:7-713.

(27) "Trust protector" means any disinterested party whose appointment is provided for in the trust instrument and whose powers are defined in RSA 564-B:7-711.

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

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

(1) the requirements for creating a trust;

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

(3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) the power of the court to modify or terminate a trust under RSA 564-B:4-410, ***RSA 564-B:4-411 (but only if, in addition to the requirements of such section, the court determines that continuance of the trust is not necessary to achieve any material purpose of the trust), and RSA 564-B:4-412*** through RSA 564-B:4-416;

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

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

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

(8) [~~the duty under RSA 564-B:8-813 (c) and (d) to provide specified information to certain qualified beneficiaries and others who are treated as qualified beneficiaries of certain irrevocable trusts;~~]

~~[(9)]~~ the effect of an exculpatory term under RSA 564-B:10-1008; ~~[(10)]~~ **(9)** the rights under RSA 564-B:10-1010 through RSA 564-B:10-1013 of a person other than a trustee or beneficiary;

~~[(11)]~~ **(10)** statutory periods of limitation for commencing a judicial proceeding;

~~[(12)]~~ **(11)** the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

~~[(13)]~~ **(12)** the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in RSA 564-B:2-203 and RSA 564-B:2-204.

50 New Paragraph; Uniform Trust Code; Authority of Director of Charitable Trusts. Amend RSA 564-B:1-110 by inserting after paragraph (c) the following new paragraph:

(d) No provision of this section shall limit the authority of the director of charitable trusts to supervise and control charitable organizations.

51 Uniform Trust Code; Nonjudicial Settlement Agreements. Amend RSA 564-B:1-111 to read as follows:

564-B:1-111 Nonjudicial Settlement Agreements.

(a) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by a court.

(b) Except as otherwise provided in subsection (c) *and* (f), interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(c) *Except as provided in RSA 564-B:4-411(a) with respect to the termination or modification of a trust*, a nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by a court under this chapter or other applicable law.

(d) Matters that may be resolved by a nonjudicial settlement agreement include:

(1) the interpretation or construction of the terms of the trust;

(2) the approval of a trustee's report or accounting;

(3) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

(4) the resignation or appointment of a trustee and the determination of a trustee's compensation;

(5) transfer of a trust's principal place of administration; ~~[and]~~

(6) liability of a trustee for an action relating to the trust~~[-];~~ *and*

**(7) the termination or modification of a trust.**

(e) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in article 3 was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

(f) A nonjudicial settlement agreement may not be used to terminate or modify a trust under circumstances that would require a court to terminate or modify the trust under RSA 564-B:4-411.

52 Uniform Trust Code; Enforcement by Director of Charitable Trusts. Amend RSA 564-B:4-405(c) to read as follows:

(c) The settlor of a charitable trust *or the director of charitable trusts*, among others, may maintain a proceeding to enforce the trust. In any such proceeding *where the director of charitable trusts is not a party*, the director of charitable trusts shall be joined as a necessary party.



53 Uniform Trust Code; Noncharitable Trust Without Ascertainable Beneficiary. Amend RSA 564-B:4-409(1) and (2) to read as follows:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. ~~[The trust may not be enforced for more than 21 years.]~~

(2) A trust authorized by this section may be enforced by a **trust advisor; trust protector**; person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

54 Uniform Trust Code; Modification or Termination of Noncharitable Irrevocable Trust by Consent. Amend RSA 564-B:4-411 to read as follows: 564-B:4-411 Modification or Termination of Noncharitable Irrevocable Trust by Consent.

(a) A noncharitable irrevocable trust may be **modified or** terminated upon consent of all of the **qualified** beneficiaries ~~[if the]~~ **provided that during the lifetime of the settlor** the court ~~[concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust]~~ **must consent, in its sole discretion, to the modification or termination of the trust considering such factors and circumstances that the court, in its sole discretion, deems relevant.**

(b) Upon termination of a trust under subsection (a), the trustee shall distribute the trust property as agreed by the **qualified** beneficiaries.

(c) If not all of the **qualified** beneficiaries consent to a proposed modification or termination of the trust under subsection (a), the modification or termination may be approved by the court if the court is satisfied that:

(1) if all of the **qualified** beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) the interests of a beneficiary who does not consent will be adequately protected.

55 Uniform Trust Code; Modification or Termination Because of Unanticipated Circumstances or Inability to Administer Trust Effectively. Amend RSA 564-B:4-412(a) to read as follows:

(a) Upon petition by the trustee or trustees, the director of charitable trusts (**in the case of a charitable trust**) or an interested party other than the settlor, the court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

56 Uniform Trust Code; Discretionary Trusts. Amend RSA 564-B:5-504(b) to read as follows:

(b) Except as otherwise provided in subsection (c) ~~[and (d)]~~, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

(1) the discretion is expressed in the form of a standard of distribution; or

(2) the trustee has abused the discretion.

57 Uniform Trust Code; Cotrustees. RSA 564-B:5-504(e) is repealed and reenacted to read as follows:

(e) A creditor or assignee of a beneficiary may not compel a distribution to the beneficiary solely because the beneficiary is a trustee if the beneficiary-trustee does not have the discretion to make or participate in making distributions to himself or herself, if the beneficiary-trustee's discretion to make or participate in making distributions to himself or herself is limited by an ascertainable standard, or if the beneficiary-trustee's discretion to make or participate in making distributions to himself or herself is exercisable only with the consent of a cotrustee or another person holding an adverse interest. Under such circumstances, the creditor or assignee may compel a distribution only to the extent the creditor or assignee otherwise may compel a distribution were the beneficiary not acting as trustee or cotrustee.

58 New Paragraph; Uniform Trust Code; Creditor's Claim Against Settlor. Amend RSA 564-B:5-505 by inserting after paragraph (b) the following new paragraph:

(c) Nothing in this section shall limit the application of the Qualified Dispositions in Trust Act set forth in RSA 564-D.

59 New Paragraph; Uniform Trust Code; Cotrustees. Amend RSA 564-B:7-703 by inserting after paragraph (h) the following new paragraph:

(i) A trustee shall keep each cotrustee and any other fiduciary designated in the trust instrument reasonably informed about the administration of the trust to the extent such trustee has knowledge that the other cotrustee or other fiduciary designated in the trust instrument does not have of its actions as trustee or regarding other material information (or the availability of such information) related to the administration of the trust that would be reasonably necessary for the other cotrustee or other fiduciary designated in the trust instrument to perform its duties as a trustee or other fiduciary of the trust.

60 Uniform Trust Code; Vacancy in Trusteeship; Appointment of Successor. Amend RSA 564-B:7-704(c)(2) to read as follows:

(2) by a person appointed by **[unanimous]** *the agreement of a majority of interest of* the qualified beneficiaries; or

61 Uniform Trust Code; Compensation of Trustee. Amend RSA 564-B:7-708 to read as follows:

564-B:7-708 Compensation of Trustee.

(a) If the terms of a trust do not specify the trustee's, *trust advisor's, or trust protector's* compensation, **[a trustee]** *each such fiduciary* is entitled to compensation that is reasonable under the circumstances, *including the exclusion of certain powers of an excluded fiduciary.*

(b) If the terms of a trust specify the trustee's, *trust advisor's, or trust protector's* compensation, **[the trustee]** *each such fiduciary* is entitled to be compensated as specified, but the court may allow more or less compensation if:

(1) the duties of the trustee, *trust advisor, or trust protector* are substantially different from those contemplated when the trust was created; or

(2) the compensation specified by the terms of the trust would be unreasonably low or high.

62 Uniform Trust Code; Reimbursement of Expenses. Amend RSA 564-B:7-709 to read as follows:

564-B:7-709 Reimbursement of Expenses.

(a) A trustee, *trust advisor, or trust protector* is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(1) expenses that were properly incurred in the administration of the trust; and

(2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance by the trustee, *trust advisor, or trust protector* of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

63 Uniform Trust Code; New Sections; Powers of Trust Protectors, Trust Advisors, Directed Trusts. Amend RSA 564-B by inserting after section 7-710 the following new sections:

564-B:7-711 Trust Protector. The powers and discretions of a trust protector shall be provided in the trust instrument and may, in the best interests of the trust, be exercised or not exercised in the sole and absolute discretion of the trust protector and shall be binding on all other persons. The powers and discretions may include, but are not limited to the following:

(a) To modify or amend the trust instrument to achieve favorable tax status or because of changes in the Internal Revenue Code, state law, or the rulings and regulations implementing such changes.

(b) To amend or modify the trust instrument to take advantage of changes in the rule against perpetuities, laws governing restraints on alienation, or other state laws restricting the terms of the trust, the distribution of trust property, or the administration of the trust.

(c) To appoint a successor trust protector.

(d) To review and approve the accountings of a trustee.

(e) To change the governing law or principal place of administration of the trust.

(f) To remove and replace any trust advisor for the reasons stated in the trust instrument.

(g) To remove a trustee, cotrustee, or successor trustee, for the reasons stated in the trust instrument, and appoint a replacement.

(h) To interpret terms of the trust instrument at the request of the trustee.

(i) To advise the trustee or cotrustee on matters concerning any beneficiary.

(j) To direct, consent, or disapprove a trustee's or cotrustee's action or inaction in making distributions to beneficiaries.

(k) To increase or decrease any interest of the beneficiaries to the trust, to grant a power of appointment to one or more trust beneficiaries, or to terminate or amend any power of appointment granted by the trust; however, a modification, amendment or grant of a power of appointment may not grant a beneficial interest to any person or class of persons not specifically provided for under the trust instrument or to the trust protector, the trust protector's estate, or for the benefit of the creditors of the trust protector.

564-B:7-712 Trust Protector as a Fiduciary. Except as otherwise provided by the trust instrument, trust protectors are fiduciaries and the provisions of this chapter applicable to trustees shall be applicable to the trust protectors, but only to the extent of the powers, duties and discretions granted to them under the terms of the trust instrument.

564-B:7-713 Trust Advisor. The powers and discretions of a trust advisor shall be provided in the trust instrument and may, in the best interests of the trust, be exercised or not exercised in the sole and absolute discretion of the trust advisor and shall be binding on all other persons. Such powers and discretions may include, but are not limited to the following:

(a) To perform a specific duty or function that would normally be performed by the trustee, cotrustee, or trust protector.

(b) To advise the trustee or cotrustee on matters concerning any beneficiary.

(c) To direct, consent to, or disapprove of a trustee's or cotrustee's action or inaction relating to investments of trust assets.

(d) To direct the acquisition, disposition, or retention of any trust investment.

(e) To direct, consent to, or disapprove a trustee's or cotrustee's action or inaction in making distributions to beneficiaries.

564-B:7-714 Trust Advisor as a Fiduciary. Except as otherwise provided by the trust instrument, trust advisors are fiduciaries and the provisions of this chapter applicable to trustees shall be applicable to the trust advisors but only to the extent of the powers, duties, and discretions granted to them under the terms of the trust instrument.

564-B:7-715 Trust Advisor and Trust Protector Subject to Court Jurisdiction. By accepting appointment to serve as a trust advisor or trust protector of a trust that is subject to the laws of this state, the trust advisor or the trust protector submits to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding if issues relate to a decision, action, or inaction of the trust advisor or trust protector.

564-B:7-716 No Duty to Review Actions of Trust Advisor or Trust Protector. Unless the trust instrument appointing, designating, or providing for a method for appointing a trust protector or trust advisor states otherwise, an excluded fiduciary is relieved of any duty or responsibility to review the actions of a duly named and appointed trust protector or trust advisor including, without limitation, any duty or responsibility to perform investment reviews and make recommendations with respect to any investments to the extent the trust advisor or trust protector had authority to direct the acquisition, disposition, or retention of any such investment.

564-B:7-717 Power of Trust Advisor and Trust Protector to Act After Death or Incapacity of Grantor. Unless the trust instrument states otherwise, the power and authority of a trust advisor or trust protector shall not lapse at the death or incapacity of the grantor.

564-B:7-718 Fiduciary's Liability for Action or Inaction of Trust Advisor and Trust Protector. Unless the trust instrument appointing, designating, or providing for a method for appointing a trust protector or trust advisor states otherwise, the excluded fiduciary is not liable for any loss resulting from any action or inaction of the trust advisor or trust protector and any loss that results from a failure to take any action proposed by an excluded fiduciary that requires a prior authorization of the trust advisor or trust protector if that excluded fiduciary timely sought but failed to obtain that authorization.

564-B:7-719 Directed Trusts.

(a) If a trust instrument provides that a fiduciary is to follow the direction of a trust protector or trust advisor and the fiduciary acts in accordance with such direction, the fiduciary shall be treated as an excluded fiduciary under the provisions of RSA 564-B:7-716 and RSA 564-B:7-718.

(b) Where one or more persons are given authority by a trust instrument or court order to either appoint a trust protector or to direct, consent to, or disapprove of a fiduciary's actual or proposed distribution decisions or other noninvestment decisions of the fiduciary, the persons or the persons appointed by them shall be considered to be trust protectors under RSA 564-B:1-103(27).

(c) Where one or more persons are given authority by a trust instrument or court order to either appoint a trust advisor or to direct, consent to, or disapprove of a fiduciary's actual or proposed investment decisions, the persons or the persons appointed by them shall be considered to be trust advisors under RSA 564-B:1-103(26).

(d) If a court order provides that a fiduciary is to follow the direction of a trust protector or trust advisor and the fiduciary acts in accordance with the direction, the fiduciary shall be treated as an excluded fiduciary under the provisions of RSA 564-B:7-716 and RSA 564-B:7-718.

(e) Unless expressly prohibited by the trust instrument, the qualified beneficiaries of a trust may unanimously agree to designate in writing a trust advisor with the power to direct the fiduciary's investment decisions, provided the trust does not have a serving trust advisor with the power. If the written designation is furnished to the fiduciary and the fiduciary acts in accordance with the direction from the designated trust advisor, the fiduciary shall be treated as an excluded fiduciary under the provisions of RSA 564-B:7-716 and RSA 564-B:7-718. The designation of a trust advisor with power to direct the fiduciary's investment decisions may be revoked by unanimous written consent of the qualified beneficiaries and once the revocation has been delivered to the excluded fiduciary, the fiduciary is relieved of any responsibility to act upon any outstanding or future directions from such trust advisor.

(f) For purposes of this section, "investment decision" means, with respect to any property, the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership thereof or rights therein.

#### 564-B:7-720 Vacancy; Directed Trusts.

(a) Except as otherwise provided in the trust instrument, if the terms of the trust appoint a trust advisor and no trust advisor is acting in such capacity, then the trustee upon obtaining knowledge of such vacancy shall have the authority and the duty to exercise any fiduciary power that was vested in the trust advisor by the terms of the trust that would otherwise be held by the trustee if no trust advisor was appointed until such time that a trust advisor is appointed pursuant to the terms of the trust, a court upon the petition of any interested person or the provisions of RSA 564-B:7-719(e).

(b) Except as otherwise provided in the trust instrument, if the terms of the trust appoint a trust protector and no trust protector is acting in such capacity, then after the trustee obtains knowledge of such vacancy, the trustee shall petition the court to fill the vacancy in the office of trust protector if the trustee determines that the terms of the trust clearly require the vacancy to be filled or upon the written request of any interested person unless it is clear to the trustee that the terms of the trust do not require the vacancy to be filled.

(c) Notwithstanding the provisions of subsection (a), a trustee shall not be liable for failing to exercise or assume any power or duty held by a trust advisor and conferred upon the trustee by subsection (a) for the 60 day period immediately following the date the trustee obtains knowledge of such vacancy.

64 Uniform Trust Code; Duty of Loyalty. RSA 564-B:8-802(f)-(h) are repealed and reenacted to read as follows:

(f) The following transactions, if fair to the beneficiaries, are not presumed to be affected by a conflict between the trustee's personal and fiduciary interest provided that any investment made pursuant to the transaction otherwise complies with the prudent investor rule of article 9:

(1) an investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee;

(2) the placing of securities transactions by a trustee through a securities broker that is a part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee;

(3) any loan from the trustee or its affiliate;

(4) an investment in an insurance contract purchased from an insurance agency owned by, or affiliated with, the trustee, or any of its affiliates;

(5) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee, or any of its affiliates;

(6) payment of reasonable compensation to the trustee, or any of its affiliates;

(7) a transaction between a trust and another trust, decedent's estate, guardianship or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(8) a deposit of trust money in a financial institution operated by the trustee or an affiliate;

(9) a delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee, provided that notice of any compensation paid pursuant to the delegation over and above the trustee's fee is provided in the manner set forth in subsection (f)(11);

(10) an advance by the trustee of money for the protection of the trust; or

(11) the payment of compensation, in addition to the trustee's fees charged to the trust, to the trustee, its affiliate, or associated entity for any transaction or for the provision of services described in this subsection; provided, however, that with respect to any investment in securities of an investment company or investment trust to which the trustee or its affiliate provides investment advisory or investment management services or any services described in this subsection (f), the trustee shall at least annually notify the persons that would be entitled under RSA 564-B:8-813 to receive a copy of the trustee's annual report of the rate or method by which the compensation was determined if such compensation is paid directly by the trust and is in addition to the trustee's fee.

(g) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(h) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

65 Uniform Trust Code; Delegation by Trustee. Amend the introductory paragraph of RSA 564-B:8-807(a) to read as follows:

(a) A trustee may delegate duties, powers and investment and management functions *to any person, even if such person is associated with the trustee*, that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

66 Uniform Trust Code; Powers to Direct. Amend RSA 564-B:8-808(c) to read as follows:

(c) The terms of a trust may confer upon a trustee or other person, *as provided in article 7 of this chapter*, a power to direct the modification or termination of the trust.

67 New Paragraphs; Uniform Trust Code; Duty to Inform and Report. Amend RSA 564-B:8-813 by inserting after paragraph (i) the following new paragraphs:

(j) If the trustee is bound by any confidentiality restrictions with respect to an asset of a trust, any beneficiary who is eligible to receive information pursuant to this section about such asset shall agree to be bound by the confidentiality restrictions that bind the trustee before receiving such information from the trustee.

(k) A trust advisor, trust protector, or other fiduciary designated in the trust instrument shall keep each excluded fiduciary reasonably informed about (1) the administration of the trust with respect to any specific duty or function being performed by such trust advisor, such trust protector, or such other fiduciary designated in the trust instrument to the extent that such duty or function would normally be performed by the excluded fiduciary or the provision of which to the excluded fiduciary is reasonably necessary for it to perform its duties and (2) any other material fact that the excluded fiduciary would be required to disclose to the qualified beneficiaries under subsection (b) assuming that the trust instrument did not relieve the excluded fiduciary from providing such information to qualified beneficiaries; provided, that nothing in this section requires the excluded fiduciary to disclose such information to the beneficiaries of the trust to the extent the trust instrument provides otherwise. Neither the performance nor the failure to perform of a trust advisor, trust protector, or other fiduciary designated in the trust instrument as provided in this subsection shall affect the limitation on the liability of the excluded fiduciary provided by RSA 564-B:7-716 and RSA 564-B:7-718.

68 Uniform Trust Code; Discretionary Powers; Tax Savings. Amend RSA 564-B:8-814(b)(1) to read as follows:

(1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard [~~relating to the trustee's individual health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter, or as later amended~~]; and

69 Uniform Trust Code; Diversification. RSA 564-B:9-903 is repealed and reenacted to read as follows:

564-B:9-903 Diversification. A trustee shall diversify the investments of the trust unless, under the circumstances, the trustee reasonably believes that it is in the best interest of the beneficiaries and furthers the purposes of the trust not to diversify.

70 New Chapter; Uniform Principal and Income Act. Amend RSA by inserting after chapter 564-B the following new chapter:

## CHAPTER 564-C

### UNIFORM PRINCIPAL AND INCOME ACT

#### Article 1

#### Definitions and Fiduciary Duties

564-C:1-101 Short Title. This chapter may be cited as the Uniform Principal and Income Act.

564-C:1-102 Definitions. In this chapter:

(1) "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

(2) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(3) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator and a person performing substantially the same function.

(4) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in article 4.

(5) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(6) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

(7) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(8) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period. During any period in which the trust is being administered as a unitrust, either pursuant to the powers conferred by RSA 564-A:3-c or pursuant to the terms of the will or the trust, "net income" means the unitrust amount, if the unitrust amount is no less than 2 percent and no more than 8 percent of the fair market value of the trust assets whether determined annually or averaged on a multiple year basis.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(10) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(11) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

(12) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(13) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as then amended and in effect.

564-C:1-103 Fiduciary Duties; General Principles.

(a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of articles 2 and 3, a fiduciary:



(1) shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter;

(2) may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter and no inference that the fiduciary has improperly exercised the discretion arises from the fact that the fiduciary has made an allocation contrary to the provisions of this chapter;

(3) shall administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under RSA 564-C:1-104(a), the power to convert into a unitrust or reconvert or change the unitrust payout percentage pursuant to RSA 564-A:3-c or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, this chapter or other applicable law, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will express an intention that the fiduciary shall or may favor one or more of the beneficiaries. The exercise of discretion by a fiduciary in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

#### 564-C:1-104 Trustee's Power to Adjust.

(a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in RSA 564-C:1-103(a), that the trustee is unable to comply with RSA 564-C:1-103(b).

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a), a trustee may consider factors to the extent they are relevant to the trust and its beneficiaries, including, but not limited to, the following factors:

(1) the nature, purpose, and expected duration of the trust;

(2) the intent of the settlor;

(3) the identity and circumstances of the beneficiaries;

(4) the needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) the net amount allocated to income under the other sections of this chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;

(9) the anticipated tax consequences of an adjustment; and

(10) the investment return under current economic conditions from other portfolios meeting similar fiduciary requirements.

(c) A trustee may not make an adjustment between principal and income:

(1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(7) if the trustee is a beneficiary of the trust; or

(8) if the trust is being administered as a unitrust pursuant to the trustee's exercise of the power to convert to a unitrust provided in RSA 564-A:3-c or pursuant to the terms of the will or the terms of the trust.

(d) If subsection (c)(5), (6), (7), or (8) applies to a trustee and there is more than one trustee, the other cotrustee (if there is only one) or a majority of the other cotrustees (if there is more than one) to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by subsection (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (c)(1) through (6) or (c)(8) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c). The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application

of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a).

(g) Nothing in this section or chapter is intended to create or imply a duty to make an adjustment, and a fiduciary is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment.

(h) A trustee may give notice of a proposed action regarding a matter governed by this section as provided in this subsection. For purposes of this subsection, a proposed action includes a course of action and a determination not to take action.

(1) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given. Notice may be given to any other beneficiary. Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(2) The notice of proposed action must state that it is given pursuant to this paragraph and must state the following:

(A) the name and mailing address of the trustee;

(B) the name and telephone number of a person who may be contacted for additional information;

(C) a description of the action proposed to be taken and an explanation of the reasons for the action;

(D) the time within which objections to the proposed action can be made, which must be at least 30 days from the mailing of the notice of proposed action;

(E) the date on or after which the proposed action may be taken or is effective;

(F) a statement that the recipient may petition for a judicial determination of the proposed action; and

(G) a form on which consent or objection to the proposed action may be indicated.

(3) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(4) If a trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period, the trustee is not liable for an action regarding a matter governed by this chapter to a beneficiary if:

(A) the beneficiary is an adult (or is a minor with a duly appointed guardian or conservator of the estate) and the notice is mailed to the adult beneficiary, guardian or conservator at the address determined by the trustee after reasonable diligence;

(B) the beneficiary is an adult (or is a minor with a duly appointed guardian or conservator of the estate) and the adult beneficiary, guardian or conservator receives actual notice;

(C) the beneficiary is not an adult and has no duly appointed guardian or conservator of the estate and an adult having a substantially identical interest and having no conflicting interest receives actual notice;

(D) the beneficiary (or the guardian or conservator of the estate of a minor beneficiary) consents in writing to the proposed action either before or after the action is taken; or

(E) the beneficiary is not an adult and has no duly appointed guardian or conservator of the estate and an adult having a substantially identical interest and having no conflicting interest consents in writing to the proposed action either before or after the action is taken.

(5) If the trustee receives a written objection within the applicable time period, either the trustee or a beneficiary may petition the court to have the proposed action performed as proposed, performed with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proof as to whether the trustee's proposed action should not be performed. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action performed and has the burden of proof as to whether it should be performed.

(6) Nothing in this subsection limits the right of a trustee or beneficiary to petition the court pursuant to RSA 564-C:1-105 for instructions as to any action, failure to act, or determination not to act regarding a matter governed by this section in the absence of notice as provided in this subsection. In any such proceeding, any beneficiary filing such a petition or objecting to a petition of the trustee has the burden of proof as to any action taken, any failure to act, or determination not to act, by the trustee.

(i) Following the exercise of the power conferred by subsection (a) to adjust from principal to income, the trustee shall consider in the following order:

(1) the amount so adjusted as paid from ordinary income for federal income tax purposes to the extent not allocable to net accounting income;

(2) the amount so adjusted, after calculating the trust's capital gain net income described in section 1222(9) of the Internal Revenue Code, as paid from net short-term capital gain described in section 1222(5) of the Internal Revenue Code, and then from net long-term capital gain described in section 1222(7) of the Internal Revenue Code; and

(3) any remaining amount so adjusted as coming from the principal of the trust.

#### 564-C:1-105 Judicial Control of Discretionary Power.

(a) The court may not order a fiduciary to change a decision to exercise or not to exercise a discretionary power conferred by this chapter unless it determines that the decision was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(b) The decisions to which subsection (a) applies include:

(1) a decision under RSA 564-C:1-104(a) as to whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) A decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors, in deciding whether and to what extent to exercise the discretionary power conferred by RSA 564-C:1-104(a).

(c) If the court determines that a fiduciary has abused the fiduciary's discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the discretion had not been abused as equity requires, according to the following guidelines:

(1) to the extent that the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court may order the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position.

(2) to the extent that the abuse of discretion has resulted in a distribution to a beneficiary which is too large, the court may place the beneficiaries, the trust, or both, in whole or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust.

(3) to the extent that the court is unable, after applying subsection (c)(1) and (2), to place the beneficiaries, the trust, or both, in the positions they would have occupied if the discretion had not been abused, the court may order the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both the court finds that the fiduciary did not exercise its discretion in good faith and with honest judgment.

(d) A fiduciary may petition the court having jurisdiction over a trust or estate for a determination by the court whether a proposed exercise or nonexercise of discretion of a discretionary power conferred by this chapter will result in an abuse of discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

(e) A fiduciary shall be reimbursed for any and all costs, including without limitation all attorneys' fees and costs of defense, and all liabilities that the fiduciary may incur in connection with any claim or action relating in any way to the fiduciary's exercise of its discretion under this chapter, except to the extent that the beneficiary establishes that the fiduciary did not exercise its discretion in good faith and with honest judgment. All attorneys' fees and costs shall be advanced to the fiduciary as incurred and shall only be collected from the fiduciary after it has been determined that the fiduciary did not exercise its discretion in good faith and with honest judgment.

## Article 2

### Decedent's Estate or Terminating Income Interest

564-C:2-201 Determination and Distribution of Net Income. After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in articles 3 through 5 which apply to trustees and the rules in subsection (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in articles 3 through 5 which apply to trustees and by:

(A) including in net income all income from property used to discharge liabilities;

(B) paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(C) paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under subsection (2) or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(4) A fiduciary shall distribute the net income remaining after distributions required by subsection (3) in the manner described in RSA 564-C:2-202 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subsection (1) because of a payment described in RSA 564-C:5-501 or RSA 564-C:5-502 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

564-C:2-202 Distribution to Residuary and Remainder Beneficiaries.

(a) Each beneficiary described in RSA 564-C:2-201(4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of

each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each beneficiary as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

### Article 3

#### Apportionment at Beginning and End Of Income Interest

##### 564-C:3-301 When Right to Income Begins and Ends.

(a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:

(1) on the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) on the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) on the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d), even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

564-C:3-302 Apportionment of Receipts and Disbursements when Decedent Dies or Income Interest Begins.

(a) A trustee shall allocate an income receipt or disbursement other than one to which RSA 564-C:2-201(1) applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which RSA 564-C:4-401 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

#### 564-C:3-303 Apportionment when Income Interest Ends.

(a) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) Except as provided in subsection (c), when a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust.

(c) If immediately before the income interest ends the beneficiary described in subsection (b) has an unqualified power to revoke more than 5 percent of the trust, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(d) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

### Article 4

#### Allocation of Receipts During Administration of Trust

##### Part 1

##### Receipts from Entities

#### 564-C:4-401 Character of Receipts.

(a) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which RSA 564-C:4-402 applies, a business or activity to which RSA 564-C:4-403 applies, or an asset-backed security to which RSA 564-C:4-415 applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.



(c) A trustee shall allocate the following receipts from an entity to principal:

- (1) property other than money;
- (2) money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;
- (3) money received in total or partial liquidation of the entity; and
- (4) money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) For purposes of subsection (c)(3), money is received in partial liquidation:

(1)(A) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(B) if the total amount of money and property received in a distribution or series of related distributions is greater than 20 percent of the entity's gross assets, as shown by the entity's year end financial statements immediately preceding the initial receipt.

(2) money is not received in partial liquidation, nor may it be taken into account under subsection (d)(1)(B), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(e) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

564-C:4-402 Distribution from Trust or Estate. A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, RSA 564 C:4 401 or RSA 564-C:4-415 applies to a receipt from the trust.

564-C:4-403 Business and Other Activities Conducted by Trustee.

(a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

- (1) retail, manufacturing, service, and other traditional business activities;

- (2) farming;
- (3) raising and selling livestock and other animals;
- (4) management of rental properties;
- (5) extraction of minerals and other natural resources;
- (6) timber operations; and
- (7) activities to which RSA 564-C:4-414 applies.

#### Part 2

#### Receipts not Normally Apportioned

564-C:4-404 Principal Receipts. A trustee shall allocate to principal:

(1) To the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

(2) Subject to any contrary rules set forth in articles 4 or 5 of this chapter, money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this article;

(3) Amounts recovered from third parties to reimburse the trust because of disbursements described in RSA 564-C:5-502(a)(7) or for other reasons to the extent not based on the loss of income;

(4) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(5) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

(6) Other receipts as provided in part 3.

564-C:4-405 Rental Property. To the extent that a trustee accounts for receipts from rental property pursuant to this section and not as provided in RSA 564 C:4 403, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

564-C:4-406 Obligation to Pay Money.

(a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(b) An amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity, must be allocated to principal. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) This section does not apply to an obligation to which RSA 564-C:4-409, 410, 411, 412, 414, or 415 applies.

564-C:4-407 Insurance Policies and Similar Contracts.

(a) Except as otherwise provided in subsection (b), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to RSA 564-C:4-403, loss of profits from a business.

(c) This section does not apply to a contract to which RSA 564-C:4-409 applies.

### Part 3

#### Receipts Normally Apportioned

##### 564-C:4-408 Insubstantial Allocations Not Required.

(a) If a trustee determines that an allocation between principal and income required by RSA 564-C:4-409, 410, 411, 412, or 415 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in RSA 564-C:1-104(c) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in RSA 564-C:1-104(d) and may be released for the reasons and in the manner described in RSA 564-C:1-104(e).

(b) An allocation is presumed to be insubstantial if:

(1) the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; or

(2) the value of the asset producing the receipt for which the allocation would be made is less than 10 percent of the total value of the trust's assets at the beginning of the accounting period.

(3) nothing in this section imposes a duty on the trustee to make an allocation under this section, and the trustee is not liable for failing to make an allocation under this section regardless of whether or not the trustee has made allocations under this section in the past.

##### 564-C:4-409 Deferred Compensation, Annuities, and Similar Payments.

(a) In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee

shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(e) This section does not apply to payments to which RSA 564-C:4-410 applies.

#### 564-C:4-410 Liquidating Asset.

(a) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to RSA 564-C:4-409, resources subject to RSA 564-C:4-411, timber subject to RSA 564-C:4-412, an activity subject to RSA 564-C:4-414, an asset subject to RSA 564-C:4-415, or any asset for which the trustee establishes a reserve for depreciation under RSA 564-C:5-503.

(b) A trustee shall allocate to income 10 percent of the receipts from a liquidating asset and the balance to principal.

#### 564-C:4-411 Minerals, Water, and Other Natural Resources.

(a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(1) if received as a nominal bonus, nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

(2) if received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(3) if an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90 percent must be allocated to principal and the balance to income.

(4) if an amount is received from a working interest or any other interest not provided for in subsection (1), (2), or (3), 90 percent of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90 percent of the amount must be allocated to principal and the balance to income.

(c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on the effective date of this chapter, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before the effective date of this chapter. If the trust acquires an interest in minerals, water, or other natural resources after the effective date of this chapter, the trustee shall allocate receipts from the interest as provided in this chapter.

#### 564-C:4-412 Timber.

(a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(1) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in subsections (a)(1) and (2); or

(4) To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to subsections (a)(1), (2), or (3).

(b) In determining net receipts to be allocated pursuant to subsection (a), a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timber land on the effective date of this chapter, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before the effective date of this chapter. If the trust acquires an interest in timber land after the effective date of this chapter, the trustee shall allocate net receipts from the sale of timber and related products as provided in this chapter.

#### 564-C:4-413 Property Not Productive of Income.

(a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under RSA 564-C:1-104 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee within a reasonable time from being notified by the spouse to make property productive of income, convert property within a reasonable time or exercise the power conferred by RSA 564-C:1-104(a). The trustee may decide which action or combination of actions set forth above to take without regard to the specific action or actions requested by the spouse, if any.

(b) In cases not governed by subsection (a), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

#### 564-C:4-414 Derivatives and Options.

(a) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under RSA 564-C:4-403 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted,

grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

#### 564-C:4-415 Asset-Backed Securities.

(a) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which RSA 564-C:4-401 or RSA 564 C:4-409 applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 10 percent of the payment to income and the balance to principal.

### Article 5

#### Allocation of Disbursements During Administration of Trust

564-C:5-501 Disbursements from Income. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which RSA 564-C:2-201(2)(B) or (C) applies:

(a) Except as otherwise ordered by court,  $\frac{1}{2}$  of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(b) Except as otherwise ordered by court,  $\frac{1}{2}$  of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(c) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(d) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

#### 564-C:5-502 Disbursements from Principal.

(a) A trustee shall make the following disbursements from principal:

(1) the remaining  $\frac{1}{2}$  of the disbursements described in RSA 564 C:5-501(1) and (2) except as otherwise ordered by court;

(2) all of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

(3) payments on the principal of a trust debt;

(4) expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(5) premiums paid on a policy of insurance not described in RSA 564 C:5 501(4) of which the trust is the owner and beneficiary;

(6) estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

(7) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

#### 564-C:5-503 Transfers from Income to Principal for Depreciation.

(a) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(2) during the administration of a decedent's estate; or

(3) under this section if the trustee is accounting under RSA 564-C:4-403 for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund.

#### 564-C:5-504 Transfers from Income to Reimburse Principal.

(a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) an amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(4) periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(5) disbursements described in RSA 564-C:5-502(a)(7).

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a).

564-C:5-505 Income Taxes.

(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately:

(1) from income to the extent that receipts from the entity are allocated to income; and

(2) from principal to the extent that:

(A) receipts from the entity are allocated to principal; and

(B) the trust's share of the entity's taxable income exceeds the total receipts described in subsections (c)(1) and (2)(A).

(d) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

564-C:5-506 Adjustments between Principal and Income Because of Taxes.

(a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(1) elections and decisions, other than those described in subsection (b), that the fiduciary makes from time to time regarding tax matters;

(2) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) the ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

Article 6

Miscellaneous Provisions

564-C:6-601 Severability Clause. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity



does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

564-C:6-602 Application of Chapter to Trusts and Estates.

(a) The effective date of this chapter shall be January 1, 2007.

(b) Except as otherwise provided in this chapter, on the effective date of this chapter, the chapter shall apply:

(1) to every inter vivos trust created on or after the effective date of this chapter except as otherwise expressly provided in the terms of the trust or in this chapter;

(2) to any inter vivos trust created before the effective date of this chapter upon the election of the trustee to apply this chapter made in writing and delivered to the beneficiaries then entitled to receive income and principal from the trust;

(3) To any estate existing or testamentary trust after the effective date of this chapter upon the approval by a court of competent jurisdiction, in the court's sole and absolute discretion, upon either (A) a petition filed by an interested person or (B) the court on its own motion.

(c) Nothing in this section imposes a duty on the trustee or any other fiduciary to make an election under this section, and the trustee or any other fiduciary is not liable for failing to make an election under this section.

(d) Nothing in this chapter shall be construed to affect or change the form of accounting required under the rules of the probate court.

71 Board of Trust Company Incorporation; Membership. Amend RSA 392:1 to read as follows:

392:1 Incorporation Board. The bank commissioner, the state treasurer, or a deputy treasurer, *the secretary of state, or a designee from the office of the secretary of state*, and the attorney general, or a designee from the office of the attorney general, shall constitute a board for the incorporation of trust companies and other corporations of a similar character, shall be known as the board of trust company incorporation, and shall receive no compensation for services on this board. The deputy bank commissioner shall serve as clerk of the board. Provided, that if on May 31, 1985 there shall be pending any matter before the board as constituted prior to May 31, 1985, the board as so constituted shall remain in existence with respect to such matter and shall retain jurisdiction thereof until final decision shall have been rendered thereon.

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

2006-1377s

#### AMENDED ANALYSIS

This bill makes various changes to the law regarding trusts and trust companies in New Hampshire.

The bill makes revisions to the Uniform Trust Code and adopts the Uniform Principal and Income Act.

SENATOR FOSTER: **TAPE CHANGE** The bill would be consistent with our past efforts to attract these good clean jobs to our state. Finally, I do want to say that there are a group of trust and estate attorneys who continue to review this legislation and are working hard, and they couldn't get to us all of their comments prior to this cross-over date that we find ourselves here today. They will be taking those comments over to the House, and I suspect many of those comments will be addressed and accepted by the House, and we may well have

a Committee of Conference to review those further. I urge the Senate to support the committee's recommendation of ought to pass with amendment. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 385**, establishing a committee to study the adequacy of current substance abuse treatment available in the state prison system. Public and Municipal Affairs Committee. Ought to pass, Vote 6-0. Senator Barnes for the committee.

### **MOTION TO TABLE**

Senator Barnes moved to have HB 385 laid on the table.

**Adopted.**

### **LAID ON THE TABLE**

**HB 385**, establishing a committee to study the adequacy of current substance abuse treatment available in the state prison system.

**HB 410**, relative to the confidentiality of documents submitted with an application for a property tax credit, exemption, or deferral. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Kenney for the committee.

**SENATOR KENNEY:** Thank you, Mr. President. I move House Bill 410 ought to pass. This legislation will mandate that all documents used to verify eligibility for property tax credit, exemption or deferral may be treated as confidential documents. All documents used to verify eligibility will be returned to the applicant once a decision is made to his or her application. This will decrease chances of identify theft occurring. The State Veterans' Council spoke in support of this bill, and the Public and Municipal Affairs Committee asks for your support on the motion of ought to pass. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 341**, extending by one year the advisory-only period for OBD II testing. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 6-0. Senator Letourneau for the committee.

**SENATOR LETOURNEAU:** Thank you, Mr. President. I move Senate Bill 341 ought to pass. This bill extends by one year the advisory-only period for OBD II testing. The committee held this bill as long as possible to allow for the OBD II Testing Advisory Committee to complete its work. The committee is still concerned about the way that it would be or how it's going to be structured, and that isn't in place yet for repairs. For those who are economically disadvantaged, we need additional one-year advisory-only period to address these issues. Please join the Transportation Committee and vote ought to pass. Thank you.

**SENATOR KENNEY:** I have a question for Senator Letourneau if I may. My Volkswagen has the engine light on. Would I be exempt for another year?

**SENATOR LETOURNEAU:** Yes.

SENATOR KENNEY: Thank you. From OBD II testing, okay. Does anyone want to buy it after a year?

SENATOR LETOURNEAU: I keep bringing up your Volkswagon every time we talk about it, because that's one that I definitely know about that can't seem to find the problem. Thank you.

SENATOR KENNEY: It's a computer chip.

**Adopted.**

**Ordered to third reading.**

Senators Barnes, Gatsas and Green are in opposition to SB 341.

**HB 1152**, naming a certain bridge over the Merrimack River. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 5-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I move House Bill 1152 ought to pass. This bill names the bridge over the Merrimack River between the towns of Canterbury and Boscawen and Hoyt Road as the New Hampshire Veterans' Memorial Bridge. The purpose for requesting this bill is that it is the last bridge you cross after you leave 93, which is a primary route to the New Hampshire Veterans' Cemetery in Boscawen. The committee feels that this would be appropriate for those going to visit loved ones at the cemetery to see this bridge dedicated in their memories. Please join the Transportation Committee and vote ought to pass on this bill, and I thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. Of perhaps Senator Martel.

SENATOR MARTEL: Yes.

SENATOR BARNES: How long before the sign goes up on the bridge?

SENATOR MARTEL: I think...if I'm not mistaken, hold on, let me look at the report here. I believe it was upon passage. Yes, okay. It is sixty days upon passage, after passage.

SENATOR BARNES: The sign will be up sixty days upon passage?

SENATOR MARTEL: After passage. It already went through the House, and now it's here. So it says sixty days.

SENATOR BARNES: I appreciate that. So sixty days from now I'll be looking forward to seeing that sign over the bridge.

SENATOR MARTEL: I hope it's there, Senator. That's what it says.

**Adopted.**

**Ordered to third reading.**

**HB 1279**, establishing a commission to study state medicaid reimbursement. Ways and Means Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

**Senate Ways and Means**

**March 15, 2006**

**2006-1391s**

**05/10**

**Amendment to HB 1279**

Amend paragraph II as inserted by section 2 of the bill by inserting after subparagraph (f) the following new subparagraph:

(g) A representative of the New Hampshire Association of Counties, appointed by the association.

**MOTION TO TABLE**

Senator Clegg moved to have HB 1279 laid on the table.

**Adopted.**

**LAIID ON THE TABLE**

**HB 1279**, establishing a commission to study state medicaid reimbursement.

**HB 1418-FN**, relative to road toll refunds. Ways and Means Committee. Ought to pass, Vote 5-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move House Bill 1418 ought to pass. This bill will allow individuals applying for road toll refunds to direct the money to either the navigation safety fund or the lake restoration and preservation fund. These additional funds will better enable Marine Patrol to accomplish all that they need to do and it will also help Environmental Services to better protect our lakes and ponds from exotic plants. Both the Department of Safety and the Department of Environmental Services testified in support of this bill. The Ways and Means Committee recommends that this legislation be adopted and asks for your support. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SPECIAL ORDER**

**SB 367-FN**, imposing a penalty on Medicaid providers who receive overpayments of state Medicaid funds.

Senator Clegg offered a floor amendment.

Sen. Clegg, Dist. 14

**March 22, 2006**

**2006-1518s**

**03/09**

**Floor Amendment to SB 367-FN**

Amend RSA 167:60-a, II as inserted by section 1 of the bill by replacing it with the following:

II. In conducting the review under paragraph I, the department may impose the following administrative penalty upon any Medicaid provider who, after notice of overpayments and identification of claims resulting in the overpayments, has violated the requirements of the Medicaid rules because the provider lacks proof or records that the goods or services were provided for covered goods or services: a penalty of up to 100 percent of Medicaid payments for goods or services, if the provider fails to demonstrate that the disputed goods or services were medically necessary, were covered goods or services, and were actually provided to eligible recipients.

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

2 Appropriation; Supplemental Pharmacy Assistance. Amend 2006, 2:2 to read as follows:

2:2 Appropriation; Supplemental Pharmacy Assistance. Up to the sum of \$500,000 for the [fiscal year] **biennium** ending June 30, [2006] **2007** is hereby appropriated to the department of health and human services, for the purpose of providing supplemental pharmacy assistance. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated. If the commissioner deter-

mines additional funds are needed to provide the supplemental pharmacy assistance the commissioner, with the approval of the legislative fiscal committee, may expend other funds appropriated to the department for this purpose.

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

2006-1518s

### AMENDED ANALYSIS

This bill:

I. Permits the department of health and human services to impose an administrative penalty on Medicaid providers for overpayments.

II. Extends the appropriation to the department of health and human services for supplemental pharmacy assistance during the period of transition to the new federal pharmacy benefit under Part D of the Medicare program.

This bill is a request of the department of health and human services.

SENATOR CLEGG: Thank you, Mr. President. I would like to offer amendment 1518.

SENATOR GATSAS (In the Chair): Floor amendment 1518 has been proposed. Senator Clegg?

SENATOR CLEGG: Thank you. What we've done is, in the section on the appropriation, we have cleared up any confusion. It now says that we can appropriate \$500,000 for the biennium. In the original legislation, we had the legislation repealed as of March. We've taken out the repeal and have now made it June 30, 2007. It's a much cleaner way of doing it, and every body feels much more comfortable, from a legal standpoint, that we can continue with the program.

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

### MOTION TO REMOVE FROM THE TABLE

Senator Johnson moved to have SB 107-FN removed from the table.

**Adopted.**

SENATOR JOHNSON: Mr. President, I have a floor amendment which is 1508s.

SENATOR GATSAS (In the Chair): Can you hold on one second, Senator?

SENATOR JOHNSON: Thank you. And the amendment will deal with tax on tobacco products.

SENATOR GATSAS (In the Chair): Hold on one second, Senator. We just want to get to the right spot.

SENATOR JOHNSON: Alrighty.

SENATOR GATSAS (In the Chair): Senator, the first order of business is the committee amendment. The committee amendment has not been adopted as of yet, so the first order of business is the committee amendment. Okay?

**SB 107-FN, relative to the sale of tobacco products.**

**The question is on the adoption of the committee amendment (0496).**

SENATOR CLEGG: Thank you, Mr. President. I urge my colleagues to vote down the committee amendment so that Senator Johnson may bring a further amendment to the body.

**Amendment failed.**

Senator Johnson offered a floor amendment.

Sen. Johnson, Dist. 2

**March 22, 2006**

**2006-1508s**

**09/01**

**Floor Amendment to SB 107-FN**

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

AN ACT relative to the tax on tobacco products other than cigarettes.

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

1 New Paragraph; Tobacco Tax; Definitions. Amend RSA 78:1 by inserting after paragraph XX the following new paragraph:

XXI. "Loose tobacco" means granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco but does not include cigarettes or tobacco purchased for the manufacture of cigarettes by cigarette manufacturers; cavendish; plug and twist tobacco; loose leaf chewing tobacco; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco.

2 Tobacco Tax; Tax Imposed on Tobacco Products Other Than Cigarettes. Amend RSA 78:7-c to read as follows:

78:7-c Tax Imposed on Tobacco Products Other Than Cigarettes. A tax upon the retail consumer is hereby imposed on tobacco products other than cigarettes at a rate of 19 percent of the wholesale sales price *on loose tobacco products and at the rate of 48 cents per ounce, or fractional part thereof, on all other smokeless products. Such tax shall be assessed on the net weight as listed by the manufacturer; provided, however, that for any product with a listed net weight of less than one ounce, the tax for such product shall be 48 cents.*

The tax under this section may be rounded to the nearest cent if the commissioner determines that the amount of tax would not thereby be made materially disproportionate. No such tax is imposed on any transactions, the taxation of which by this state is prohibited by the Constitution of the United States.

3 Effective Date. This act shall take effect July 1, 2006.

**2006-1508s**

**AMENDED ANALYSIS**

This bill clarifies and establishes tax rates for loose tobacco products and other smokeless tobacco products.

SENATOR JOHNSON: Thank you, Mr. President. I'm bringing forward amendment 1508s.

SENATOR GATSAS (In the Chair): Floor amendment 1508 has been proposed. Senator Johnson, can you speak to your amendment, please?

SENATOR JOHNSON: And this amendment is going to deal with tobacco products other than cigarettes. Thank you, Mr. President. I want to start off by saying that this bill is not about tobacco use; it's about revenue. My floor amendment deals with only moist smokeless tobacco, which is categorized as "MST". This is what you buy in the round cans.

“MST” has accounted for an average of 92 percent of the other tobacco products, known as “OPT” tax collections in the last three years. The “MST” category is the only growing tobacco category in New Hampshire. There were more than 600,000 additional cans sold in New Hampshire in 2004 than in 2003. The problem is that, even though we have been selling more cans, we are losing around 16 percent of our revenue in this area. I’ll try to explain how that has happened. New Hampshire first enacted an “OTP” tax in 1991 and currently levies a tax of 19 percent of the wholesale sales price. When first enacted, all moist smokeless tobacco, no matter what the brand, were all priced at the same wholesale price. In the late 1990s, some companies started offering a less expensive product which, because of the ad valorem nature of the tax, also generated less excise tax revenue. Recognizing this disparity, companies began producing even less expensive “MST” products. Within the past four to five years, the “Moist Smokeless” category has seen an emergence and virtual explosion of discount products largely driven by exploitation of the excise tax methodology. This is where we are losing revenue. There are three tiers of this product. Tier one is the premium quality, which is the most expensive. The wholesale price is \$3.01 per can. The state received 19 percent of that, which equates to 57 cents a can. Tier two is known as price value. It’s wholesale price is \$1.97 a can. The state received 19 percent of that, which equates to 37 cents a can. Then there is tier three, which is known as the sub-price value. Its wholesale price is \$1.10 per can. The state’s receiving 19 percent of that, which equates to only 21 cents a can. And since 2001, the tier three product has gone from a zero market share to 23 percent of the market share. There will always be a market for less expensive product, but the choice should be based on the quality of the product and the consumers’ choice without influence by the taxing methodology. Products should compete on their own merits and not based on unequal taxes. And because of this market shift to low end products, the state can and will begin to collect less revenues than it should, even though the market for “MST” is actually growing. This amendment is an attempt to stabilize this revenue stream by changing the criteria to weight base. A weight base tax on “MST” is easy to administered by the wholesalers as well as the Department of Revenue Administration. And currently, both must track the product based on the wholesale price which fluctuates as companies adjust their prices and offer promotional incentives. On a two-for-one promotion, a consumer received twice the tobacco and the state receives a tax based only on the one can. This is not done with cigarettes or any other products subject to an excise tax. Why should it be done with “MST”? In sum, an ad valorem tax was the right thing to do in 1991, but needs fixing to close the loophole that is being exploited. And I believe the amendment does the following. It provides a level playing field among all the “MST” products; allows products to compete in the market place based on their quality and not based on the tax subsidy that attached to it. It is easier to administer by DRA than the wholesalers to remit the tax that will provide a stable and predictable revenue stream. So I ask for your support on my amendment. Thank you, Mr. President.

**Recess.**

**Out of recess.**

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

SENATOR GREEN: Thank you. Thank you, Mr. President. I know that Senator Johnson has worked hard on this and I appreciate his efforts, but for Senators like myself, it puts us in an awful bind to have a tax bill here...and again, let me tell you, I've asked a question three or four times in a different way and I got the same answer. No matter what you do here, increasing these taxes the consumer's going to pay. You can't have it so that you increase these taxes on these tobacco products without the consumer paying. I just have a hard time voting on a bill that I know is going to have a direct influence on the price of these products. And the one group who's going to pay the most are the ones who can afford it the least, who are buying the cheapest kind of tobacco. That raises a problem for me on this bill. I can't support it. I want to go on record as being opposed to it. I'm going to ask for a roll call just to make sure that that is clear to the voters.

SENATOR CLEGG: Thank you, Mr. President. Let's talk about fairness. This is one of the only places where we decide to put a sales tax on and I don't think that's right. I think that if you've got something and you're selling it, the tax on it ought to be the same for everybody. And that's all this does. It says that, if you're selling an ounce of tobacco, and the tax for Joe is 48 cents, the tax for Phil ought to be 48 cents. And that's the way we should do it. I'm not embarrassed to stand up and say that I'm for fairness. And we pass all kinds of money bills out of here and we don't talk about how it affects the consumer and the taxpayer because we do what is right. The House the other day passed a no-smoking bill. Every time we turn around, we nail tobacco. We say you can't use it. All this does is level the playing field. Everybody pays the same amount on their tobacco.

SENATOR MORSE: Question of Senator D'Allesandro.

SENATOR D'ALLESANDRO: God bless you. God Bless you. I can do that. Call upon the Lord to bless her.

SENATOR MORSE: Senator D'Allesandro, will you take a question?

SENATOR D'ALLESANDRO: I will. Certainly, Senator Morse.

SENATOR MORSE: Senator D'Allesandro, it was my understanding that this legislation creates no new taxes. It's the same dollar amount when we're done voting on it.

SENATOR D'ALLESANDRO: That's correct.

**Adopted.**

**Ordered to third reading.**

Senator Barnes is in opposition to the floor amendment on SB 107-FN. Senators Green and Odell are in opposition to SB 107-FN.

### **MOTION TO REMOVE FROM THE TABLE**

Senator Estabrook moved to have SB 345 removed from the table.

SENATOR ESTABROOK: Thank you, Mr. President. I would like to remove Senate Bill 345 from the table so that Senator Clegg and I can introduce a floor amendment.

**Adopted.**

**SB 345**, establishing a lobbying commission and relative to lobbyist registration and financial disclosure requirements.



SENATOR GATSAS (In the Chair): Right now, where we're at, the motion is refer to interim study. At that point, Senator, I would assume that you're looking to overturn the interim study and bring on an amendment.

SENATOR ESTABROOK: Yes, Mr. President. At any point you think it's appropriate, I'd like to explain what the amendment does.

**The question is on the committee report of interim study.**

**Motion failed.**

Senator Estabrook moved ought to pass.

Senator Estabrook offered a floor amendment.

Sen. Estabrook, Dist. 21

Sen. Clegg, Dist. 14

**March 22, 2006**

**2006-1496s**

**05/10**

### **Floor Amendment to SB 345**

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

AN ACT relative to lobbyist registration requirements.

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

1 Lobbyists; Penalty; Civil Fine for Late Filing. Amend RSA 15:5 to read as follows:

15:5 Penalty. Whoever violates any provision of this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. ***The attorney general may impose a civil penalty of \$25 per day, per client, for late filing of the statement required under RSA 15:3.*** Whoever shall make and file any statement under this chapter which is to his knowledge false shall be deemed guilty of perjury and punished accordingly.

2 Lobbyists; Penalty; Civil Fine for Late Filing. Amend RSA 15:8 to read as follows:

15:8 Penalty. Whoever violates any provision of this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. ***The attorney general may impose a civil penalty of \$25 per day, per client, for late filing of the statement required under RSA 15:6.*** Whoever shall make and file any statement under this chapter which is to his or her knowledge false shall be deemed guilty of perjury and punished accordingly.

3 Contingency. If SB 206-FN of the 2006 general session becomes law, section 1 of this act shall not take effect and section 2 of this act shall take effect on June 2, 2006 at 12:01 a.m. If SB 206-FN of the 2006 general session does not become law, section 1 of this act shall take effect upon its passage and section 2 of this act shall not take effect.

4 Effective Date.

I. Sections 1 and 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.

**2006-1496s**

### **AMENDED ANALYSIS**

This bill permits the attorney general to impose a civil penalty on lobbyists who file late financial statements under RSA 15.

SENATOR ESTABROOK: Thank you, Mr. President. You should be receiving floor amendment 1488s [sic]. The bill as you receive the original bill, this was filed sort of as back up legislation as we waited the outcome of the Committee of Conference deliberations on the ethics bill, which the House has inserted quite a bit of regulation around lobbying. Now that we know what the outcome is, we can take another look at this bill and think about whether there is anything here that still merited our support. And what Senator Clegg and I discovered is that, among all of the ethics and lobbying legislation that we have dealt with this year, there's one small issue that was contained in 345 that has still not been dealt with. And that is that we seem to have a problem with a few of our lobbyists avoiding filing their reports on time. And what that does is, it allows them to avoid public scrutiny. So this bill, this amendment, would impose a \$25 per day, per client fine on lobbyists who file late. And that was one of the very elementary things that I believe we should be doing right away. So I would ask for Senate support. The reason the amendment is worded this way, is that Senate Bill 260 [sic] will change the RSA 15:5 so, if it passes, we need it inserted one place. If it doesn't pass, we need it inserted in another place, and that's why there...it's inserted in two different places here, and why there is this contingency. It will go into one statute if SB 206 passes, and another statute if it doesn't. But the idea remains the same, which is to fine lobbyists \$25 per day, per client for filing late reports. Thank you, Mr. President.

SENATOR BARNES: Thank you. I have two questions, Senator.

SENATOR ESTABROOK. Yeah.

SENATOR BARNES: Number one, my questions are on nine...line nine and line 15. The word "may" is in there. If they don't want to do it, they don't have to do it. This is something that maybe as feel good, but it doesn't have to happen?

SENATOR ESTABROOK: Well, my understanding why the word "may" would be there, it would be in case there was some extenuating circumstance that the AG could recognize.

SENATOR BARNES: My second question.

SENATOR ESTABROOK: Yes.

SENATOR BARNES: I read the papers occasionally during reporting time, and I see there are some Senators that don't report. How come we're not included on this for a \$25 fine? Why did you exclude the legislature?

SENATOR ESTABROOK: I think that would be a great idea. We should have included that in your campaign contribution bill. Maybe we can take that to the House and get that put in there.

SENATOR BARNES: We have it right here, Senator. I would suggest you do it here if you like it.

SENATOR ESTABROOK: I would like to, if we had talked about it before right now. But unfortunately, this is the very last minute at which we can do any action on tabled bills. No?

SENATOR BARNES: Yes. Would you believe that I have a problem? You know I don't have a problem with the lobbyists situation as of last week, we heard the conversation. But would you believe I have a problem imposing this on them and not on us?

SENATOR ESTABROOK: I understand that, and as I said, the goose and the gander again.

SENATOR BARNES: The goose and the geosess deserve the same thing.

SENATOR ESTABROOK: I understand, and actually, in the last election, my opponent was one of those who filed late. I think it would be great if we all had to file on time. Thank you.

SENATOR BARNES: Thank you, Senator.

SENATOR GREEN: Thank you. I don't have a strong feeling about this amendment one way or the other. I'll probably vote for it only because of accountability. But let me just tell you, as candidates, we have accountability and it doesn't take \$25 to charge us for that accountability. It's called an election. And our bills, statement of disclosure, if we're not filing on time, we get noticed publicly that we didn't file on time. Secondly, we have an Ethics Committee which, if we don't do what we're supposed to do, someone files a complaint against us ethically. So we have accountability built into our system if we're elected. People who are...the gentlemen with the orange badges, and the ladies, thank you, those individuals, they don't have that accountability model that we have. So I think we're doing apples and oranges here. I don't have a problem with this, Senator, but you know how I feel about the other, and I'm being consistent I hope. Thank you very much.

SENATOR BOYCE: Of Senator Green if I may?

SENATOR GREEN: Yes.

SENATOR BOYCE: If we want to impose a penalty on Senators for filing late, should we make it proportional to the annual salary? In other words, if a lobbyist is making \$100,000 a year and we're making \$100 a year, maybe 1/1000 of...

SENATOR GREEN: I think, if I was forced into that debate, I would agree with you, but I'd prefer not to have that debate at all. Thank you.

SENATOR BOYCE: Thank you.

SENATOR FLANDERS: If you're a candidate, can you be brought before the Ethics Committee? I have a candidate running against me. I filed my report and I want to know how much money that candidate...can you go in front of the Ethics Committee? Thank you.

SENATOR FOSTER: I think he asked a question. Yes, this committee deals with people who are legislators. So I do think there is an issue that I think is out there where candidates who don't get elected or legislators who lose when they seek re-election, I don't believe the Ethics Committee has any control over them, and I do think there is an issue there that perhaps this body wants to look at, at the appropriate time.

SENATOR LETOURNEAU: Thank you, Senator Estabrook. I noticed that you put in here a \$25 per day, per client. Some lobbyists have one client, which they just happen to be the lobbyist for whatever organization. Other lobbyists have maybe twenty or thirty clients. Some may have twenty clients, their fine would be \$500 a day. Is that what you intend?

SENATOR ESTABROOK: If they are late filing for every single client, yes.

SENATOR LETOURNEAU: Well when they make a filing, don't they make a filing on...follow up? When they make a filing, do they file for all of the clients at the same time?

SENATOR ESTABROOK: I cannot actually answer that. Perhaps someone else can. I've never lobbied. I don't know. Maybe Senator Clegg knows.

SENATOR LETOURNEAU: I guess the point I'm trying to ask is, they may have some clients that may not have any bills in the legislature that year and they may not have any dealings with the legislature with that particular client that year, but they may be held in retainer. That's the question I'm trying to ask.

SENATOR ESTABROOK: Okay.

SENATOR LETOURNEAU: And, I don't know if that's a fair assessment or not to say that they have to pay a fine for every single one of them and they're not even dealing with them that year.

SENATOR ESTABROOK: Well, the way that I respond to that is, this doesn't change what they're required to report. So, if their account is dormant and they're not required to report it, I don't know, maybe they're not. But for anything that they are required to report, I think they should do it on time.

SENATOR LETOURNEAU: Thank you.

SENATOR CLEGG: Thank you, Mr. President. First off, the way we did 206, if they've got clients that they lobby for, and they haven't done much lobbying, they still have to report. We report in the aggregate now, and they tell us how much they actually spent for lobbying. So there's always going to be a report on who their clients are. The second answer...the second issue is, what do we do about legislators who don't file and what do we do about candidates who don't file? Being one of the persons that helps assign bills, I can assure you that Senator Boyce's committee has at least five bills where you can attach something about candidates and those who are successful, and fine them for not filing. I agree. You have someone who runs against you, they don't win, and that last report never materializes. You go to the Secretary of State and he says, "There's nothing I can do about it because I can go yell at him. But there's no penalty." So we have plenty of possibilities sitting in the Senate now on House Bills, and I suggest that we pass this part so we take care of the lobbyists, and then we debate another issue with a bill that talks about us. Thank you.

**A division vote was requested.**

**Yeas: 12 – Nays: 10**

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**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 Bill(s):

**HB 1296**, relative to the voluntary scrapie flock certification program.

**SB 206-FN**, establishing an executive branch ethics committee and re-codifying RSA 15 relative to lobbyists, RSA 15-A relative to financial statements, and RSA 15-B relative to gifts, honorariums and expense reimbursements.

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 Bill(s):

**HB 581**, relative to approval and review of municipal charters.

**HB 1118**, requiring paper ballots at all elections.

**HB 1156**, changing the notification for public hearings on ski area passenger tramway rules from registered mail to first class mail.

**HB 1225**, relative to the judicial branch family division for the Henniker and Hillsborough District Courts.

**HB 1471-FN**, repealing the statutes relative to regional highway conferences.

**HB 1503**, relative to financial programs administered by the postsecondary education commission.

**HB 1654-FN**, relative to the probate court mediation fund and fee.

Senator D'Allesandro moved adoption.

**Adopted.**

**RESOLUTION**

Senator Clegg 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 all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

**LATE SESSION****Third Reading and Final Passage**

**SB 107-FN**, relative to the tax on tobacco products other than cigarettes.

**SB 230**, relative to the qualifications and liability of the medical director responsible for utilization review under the managed care law.

**SB 232-FN-A**, making a capital appropriation to the department of health and human services for a dental facility in the town of Tamworth.

**SB 267**, relative to the definition of employee and clarifying the criteria for exempting workers from employee status.

**SB 268**, raising the age of required attendance of children in school and establishing a 2-year pilot program for increasing vocational education opportunities in the Manchester and Nashua school districts and making an appropriation therefor.

**SB 273**, relative to reasonable accommodations for employees with disabilities.

**SB 298-FN**, relative to motor vehicle fines.

**SB 304**, relative to provider payments negotiated by the commissioner of the department of health and human services.

**SB 306-FN-A**, establishing a quality early learning opportunity initiative and making an appropriation therefor.

**SB 314-FN-L**, establishing minimum renewable standards for energy portfolios.

**SB 317-FN**, establishing a screening panel to review complaints to occupational and professional regulatory boards and establishing an appeals board to review decisions by occupational and professional regulatory boards.

**SB 324**, requiring notification concerning certain offenders against children.

**SB 339**, changing certain job titles and responsibilities in the department of transportation.

**SB 341**, extending by one year the advisory-only period for OBD II testing.

**SB 342**, relative to the treatment of glaucoma by optometrists.

**SB 345**, relative to lobbyist registration requirements.

**SB 352-FN**, relative to the regulation of real estate appraisers.

**SB 354-FN**, requiring security officers of the New Hampshire hospital security force to be fully certified as police officers and including such security officers in group II of the New Hampshire retirement system.

**SB 364-FN-A**, relative to funding of the fish and game search and rescue fund and making an appropriation therefor.

**SB 367-FN**, imposing a penalty on Medicaid providers who receive overpayments of state Medicaid funds.

**SB 369**, relative to portability, availability, and renewability of health coverage.

**SB 373-FN-A**, relative to a public health response to arbovirus.

**SB 374-FN**, relative to the state children's health insurance program.

**SB 380-FN-A**, establishing a research and development credit against business taxes.

**SB 384-FN-A-L**, establishing a temporary one-time exemption from the real estate transfer tax for certain transfer of family farm or open space land.

**SB 391-FN**, relative to insurance third party administrators.

**SB 394**, establishing the Trust Modernization and Competitiveness Act.

**SB 395**, relative to the number of children in a licensed foster home.

**SB 397-FN-A**, establishing a temporary energy tax credit against the business enterprise tax.

**SB 403**, relative to verification of identity when a person registers or attempts to vote.

**SB 407-FN-A**, relative to enforcement of labor statutes under current federal immigration laws.

**CACR 44**, relating to limits on the taking of private property. Providing that a person's property shall not be taken by the eminent domain if the taking is for private use.

**HB 410**, relative to the confidentiality of documents submitted with an application for a property tax credit, exemption, or deferral.

**HB 1114**, relative to regulation by the board of licensure of interpreters for the deaf and hard of hearing.

**HB 1122**, relative to special elections.

**HB 1147**, relative to the conduct of recounts.

**HB 1152**, naming a certain bridge over the Merrimack River.

**HB 1226-FN**, relative to the New Hampshire Humanities Council.

**HB 1370**, transferring certain surplus moneys to the revenue stabilization reserve account.

**HJR 23**, a resolution designating a Purple Heart Trail spur to the New Hampshire state veterans cemetery and providing additional signs for the Purple Heart Trail.

### ANNOUNCEMENTS

SENATOR GATSAS (In the Chair): I want to thank the Clerk's Office for the great job today, and also the rest of the staff that's worked very hard.

SENATOR CLEGG: Mr. President, I'd also like to offer the thanks from the Senate to the Office of Legislative Services for the nights that they stayed out with us and Finance, and also they're sitting down stairs now in case we needed more floor amendments.

### RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, processing enrolled bill reports and amendments.

**Adopted.**

**In recess to the Call of the Chair.**

### HOUSE MESSAGE

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

**SB 110-FN-A**, establishing the New Hampshire Rx plus program for prescription drugs.

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

### HOUSE MESSAGE

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

**HB 1126**, relative to licenses for first mortgage bankers, brokers, pawnbrokers, and money lenders.

**HB 1289**, relative to Pennichuck Brook and its watershed.

**HB 1474-FN**, relative to unemployment compensation contribution rates and benefits.

**HB 1590-FN**, relative to the pari-mutuel commission.

**HB 1612-FN**, relative to the use of lottery revenue as purses for horse and dog racing.

**HB 1687**, extending certain studies and adding a certain duty relative to pharmacy reimbursement.

**HB 1749-FN**, relative to access to motor vehicle records by certain defense contractors.

**HB 1752**, requiring notice regarding the classifications of employee and independent contractor.

**HJR 20**, supporting stem cell research.

### INTRODUCTION OF HOUSE BILL(S)

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 1126 to HJR 20**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

**Adopted.**

#### First and Second Reading and Referral

**HB 1126**, relative to licenses for first mortgage bankers, brokers, pawn-brokers, and money lenders. (Banks and Insurance)

**HB 1289**, relative to Pennichuck Brook and its watershed. (Energy and Economic Development)

**HB 1474-FN**, relative to unemployment compensation contribution rates and benefits. (Finance)

**HB 1590-FN**, relative to the pari-mutuel commission. (Executive Departments and Administration)

**HB 1612-FN**, relative to the use of lottery revenue as purses for horse and dog racing. (Ways and Means)

**HB 1687**, extending certain studies and adding a certain duty relative to pharmacy reimbursement. (Health and Human Services)

**HB 1749-FN**, relative to access to motor vehicle records by certain defense contractors. (Judiciary)

**HB 1752**, requiring notice regarding the classifications of employee and independent contractor. (Banks and Insurance)

**HJR 20**, supporting stem cell research. (Health and Human Services)

#### HOUSE MESSAGE

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

**HB 317-FN**, relative to mooring fees.

**HB 627-FN**, relative to including persons 17 years old in the juvenile justice system.

**HB 678-FN**, relative to the insurance premium tax.

**HB 1167-FN-A**, making an appropriation to the land and community heritage investment program.

**HB 1177**, prohibiting smoking in restaurants, cocktail lounges, and certain enclosed public places.

**HB 1189**, relative to audits by the legislative budget assistant.

**HB 1227-FN**, relative to late fees and reinstatement fees paid by business entities.

**HB 1241-FN-L**, extending the kindergarten construction aid program.

**HB 1249-FN-A-L**, relative to state reimbursement for school breakfasts and making an appropriation therefor.

**HB 1311-FN-A**, relative to the electronic filing of reports and applications with the secretary of state.

**HB 1331**, relative to the New Hampshire Temporary Assistance to Needy Families (TANF) program.



**HB 1366**, relative to a planning board's authority to require public access to open space as a condition of subdivision approval.

**HB 1459-FN-A**, relative to the department of regional community-technical colleges and making an appropriation therefor.

**HB 1464-FN-A-L**, relative to mosquito control, establishing a mosquito control fund and making an appropriation therefor.

**HB 1470**, relative to overweight vehicle permit fees.

**HB 1495**, relative to setback requirements for landfills located near rivers.

**HB 1523**, relative to certain rulemaking authority of the commissioner of environmental services.

**HB 1567**, relative to removing names from the checklist.

**HB 1593-FN-L**, relative to the construction of high school athletic fields in the town of Bedford.

**HB 1608-FN-A**, making appropriations to reimburse certain health and human services providers for the increased cost of utilities, heating, and mileage.

**HB 1611-FN**, relative to reimbursement for personal care services.

**HB 1626-FN-A**, relative to appropriations for the expenses of certain departments of the state.

**HB 1673-FN**, relative to the reduction of mercury emissions.

**HB 1692-FN**, establishing the New Hampshire sexual predators act.

**HB 1697-FN**, relative to certain state salaries.

**HB 1710-FN-A**, relative to appropriations to the department of health and human services for home care providers and community mental centers and making an appropriation to increase the hourly rate of pay for direct care providers for persons with developmental and acquired disabilities and extending the provision of supplemental pharmacy assistance.

**HB 1735-FN**, relative to awarding the state employees' health insurance plan.

**HB 1738-FN**, prohibiting the use of surveillance devices to identify motor vehicles.

**HB 1741-FN**, relative to reporting requirements concerning infections in hospitals.

**HB 1744-FN-A**, authorizing the pari-mutuel commission to regulate games of chance conducted by charitable organizations and relative to tournaments conducted by charitable organizations where chips have no monetary face value.

**HB 1767-FN-A**, authorizing the state acquisition of real estate destroyed in the October 2005 floods, establishing a commission to determine the appropriate use of the property, and making an appropriation therefor.

**CACR 30**, relating to limits on the taking of private property. Providing that a person's property shall not be taken by eminent domain if the taking is for private use.

**INTRODUCTION OF HOUSE BILL(S)**

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 317-FN to CACR 30**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

**Adopted.**

**First and Second Reading and Referral**

**HB 317-FN**, relative to mooring fees. (Ways and Means)

**HB 627-FN**, relative to including persons 17 years old in the juvenile justice system. (Judiciary)

**HB 678-FN**, relative to the insurance premium tax. (Banks and Insurance)

**HB 1167-FN-A**, making an appropriation to the land and community heritage investment program. (Finance)

**HB 1177**, prohibiting smoking in restaurants, cocktail lounges, and certain enclosed public places. (Finance)

**HB 1189**, relative to audits by the legislative budget assistant. (Finance)

**HB 1227-FN**, relative to late fees and reinstatement fees paid by business entities. (Finance)

**HB 1241-FN-L**, extending the kindergarten construction aid program. (Education)

**HB 1249-FN-A-L**, relative to state reimbursement for school breakfasts and making an appropriation therefor. (Education)

**HB 1311-FN-A**, relative to the electronic filing of reports and applications with the secretary of state. (Internal Affairs)

**HB 1331**, relative to the New Hampshire Temporary Assistance to Needy Families (TANF) program. (Finance)

**HB 1366**, relative to a planning board's authority to require public access to open space as a condition of subdivision approval. (Public and Municipal Affairs)

**HB 1459-FN-A**, relative to the department of regional community-technical colleges and making an appropriation therefor. (Finance)

**HB 1464-FN-A-L**, relative to mosquito control, establishing a mosquito control fund and making an appropriation therefor. (Environment and Wildlife)

**HB 1470**, relative to overweight vehicle permit fees. (Transportation and Interstate Cooperation)

**HB 1495**, relative to setback requirements for landfills located near rivers. (Environment and Wildlife)

**HB 1523**, relative to certain rulemaking authority of the commissioner of environmental services. (Executive Departments and Administration)

**HB 1567**, relative to removing names from the checklist. (Internal Affairs)

**HB 1593-FN-L**, relative to the construction of high school athletic fields in the town of Bedford. (Education)

**HB 1608-FN-A**, making appropriations to reimburse certain health and human services providers for the increased cost of utilities, heating, and mileage. (Finance)

**HB 1611-FN**, relative to reimbursement for personal care services. (Health and Human Services)

**HB 1626-FN-A**, relative to appropriations for the expenses of certain departments of the state. (Energy and Economic Development)

**HB 1673-FN**, relative to the reduction of mercury emissions. (Energy and Economic Development)

**HB 1692-FN**, establishing the New Hampshire sexual predators act. (Judiciary)

**HB 1697-FN**, relative to certain state salaries. (Executive Departments and Administration)

**HB 1710-FN-A**, relative to appropriations to the department of health and human services for home care providers and community mental centers and making an appropriation to increase the hourly rate of pay for direct care providers for persons with developmental and acquired disabilities and extending the provision of supplemental pharmacy assistance. (Finance)

**HB 1735-FN**, relative to awarding the state employees' health insurance plan. (Executive Departments and Administration)

**HB 1738-FN**, prohibiting the use of surveillance devices to identify motor vehicles. (Transportation and Interstate Cooperation)

**HB 1741-FN**, relative to reporting requirements concerning infections in hospitals. (Health and Human Services)

**HB 1744-FN-A**, authorizing the pari-mutuel commission to regulate games of chance conducted by charitable organizations and relative to tournaments conducted by charitable organizations where chips have no monetary face value. (Ways and Means)

**HB 1767-FN-A**, authorizing the state acquisition of real estate destroyed in the October 2005 floods, establishing a commission to determine the appropriate use of the property, and making an appropriation therefor. (Finance)

**CACR 30**, relating to limits on the taking of private property. Providing that a person's property shall not be taken by eminent domain if the taking is for private use. (Finance)

### **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(s):

**HB 410**, relative to the confidentiality of documents submitted with an application for a property tax credit, exemption, or deferral.

**HB 1114**, relative to regulation by the board of licensure of interpreters for the deaf and hard of hearing.

**HB 1122**, relative to special elections.

**HB 1152**, naming a certain bridge over the Merrimack River.

**HB 1226-FN**, relative to the New Hampshire Humanities Council.

**HB 1370**, transferring certain surplus moneys to the revenue stabilization reserve account.

**HJR 23**, a resolution designating a Purple Heart Trail spur to the New Hampshire state veterans cemetery and providing additional signs for the Purple Heart Trail.

Senator D'Allesandro moved adoption.

**Adopted.**

**Out of recess.**

### LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*April 6, 2006*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good Morning. The famous English explorer and bon vivant, Sir Walter Raleigh, who said, in beautiful Elizabethan English, "Fain would I climb, yet fear I to fall". In other words, "damned if you do and damned if you don't." This brave hearted coward is the guy that you have to thank for all the attention you have been receiving over the past few days. Raleigh is the one who came to these shores, a little bit to the south of here, and began in earnest the tobacco cultivation industry. There's a wonderful story that upon his return to his home one evening, he was walking in his garden, and enjoying a bit of tobacco, when one of his servants, never having seen tobacco before, threw water over him fearing that he had set himself on fire. Because you get to decide this morning about the competing interests of popular opinion, public health, economic independence, personal responsibility, minority rights, and a whole range of very intense feelings and sentiments, I would remind you that "fain I would climb, yet fear I to fall" is not going to get you off the hook this morning. There are folks up there and folks out there who have buckets of cold water ready to douse you no matter how you vote – so just vote your deepest values. Let us pray:

*Lord of fire and brimstone, smoke and thunder, You care for each of us in ways of tender gentleness. Guide these good men and women as they discern the delicate balance between public and private, personal and corporate, prosperity and wellness, for You have given us one another to care for and You have gathered us into this community that we may learn how to live together in ways that please You. Amen*

Senator Bragdon led the Pledge of Allegiance.

Senator Green is excused for the day.

### INTRODUCTION OF GUESTS

SENATOR GATSAS (In the Chair): Let's go over the order of the bills. We will start with the Special Order Bill 713. We will then do House Bill 1177. We will then go to Banks and do House Bill 37-FN. We will then go to Internal Affairs and do the three bills that are in Internal Affairs in that order, and then we will start at the beginning of the calendar.

**HB 713-FN**, relative to a process for the request and disclosure of social security numbers. Internal Affairs Committee. Interim Study, Vote 4-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. Senate [sic] Bill 713 would make it unlawful for a government agency or entity to obtain an individual's social security number unless required by state or federal law. Although the committee felt this was a laudable purpose, we had a number of agencies come to us saying they needed specific exemptions. In fact, so many that the committee feels this bill really needs a little more work. We're supportive of it, so we're not recommending ITL, but we do recommend interim study. Therefore, that's that I move. Thank you.

**Committee report of interim study is adopted.**

**HB 1177**, prohibiting smoking in restaurants, cocktail lounges, and certain enclosed public places. Finance Committee. Inexpedient to legislate, Vote 3-3. Senator Morse for the committee.

SENATOR GATSAS (In the Chair): Senator Morse, if you'd just give me one second. I know that this is going to be a very spirited debate and I know that the Senators understand the decorum in the Senate Chamber. I just hope the Gallery will extend the same decorum to the Senate Chamber. Thank you. Senator Morse?

SENATOR MORSE: Thank you, Mr. President. I move House Bill 1177 inexpedient to legislate. The Finance Committee sat through a very long hearing and heard very moving testimony about the detrimental effects of smoking. Anyone listening was impacted by the hearing and the effect on people's lives. Business owners, not the government, know best how to satisfy their customers and the business owners should be allowed to decide whether to allow, restrict or ban smoking. The proposed statewide smoking ban is meant to fix a problem that simply does not exist. Approximately 60 percent of New Hampshire restaurants have voluntarily chosen to be smoke free, indicating that the marketplace is working. It is not the proper role of government to be in the business of trying to control competition between some restaurant owners who are afraid to go smoke free unless or until their competition is told by the government to go smoke free. The Finance Committee asks for your support of the motion of inexpedient to legislate. This is a state that has traditionally not supported government mandates, and I ask you to please continue that tradition.

SENATOR KENNEY: Thank you, Mr. President. To speak. I didn't know I'd be the first speaker, but I'm ready. I should caveat that...Well, first of all, I'm in support of the motion of ITL. I should first caveat that I'm a son of a restaurant owner who worked as a young kid in a restaurant, at a very young age from eight to fifteen, and that I understand the issue of secondhand smoke because, in the first Gulf War, I was subjected to a lot of smoke in Kuwait City where there were hundreds of gas lines and towers that were uncapped and exposed me to various smoke, and to some extent, gases, compliments of Saddam Hussein. I understand today why the issue is so important to many members...many citizens in the state of New Hampshire. But I have to say I served two terms on the Commerce Committee in the House, and each time that this ban came up to ban smoking in restaurants, it was overwhelmingly defeated. It was defeated in 2000. It was defeated in 2002. And, in 1990, the legislature came up with a compromise and that compromise was to create segregation language within the restaurants. That language today

sits in RSA 155:65, which basically lets...sets up the ground rules for segregation. One of the points in that RSA "is in buildings where existing ventilation systems are in place, areas designated as smoking areas are located, where reasonably possible, approximate to exhaust vents." So there's the non-smoking and there's the smoking areas within restaurants who chose to do that. That was the compromise we had back in the early 1990s. I'm not sure where the debate has changed. Some people will speak today and suggest that the data on secondhand smoke brings forward more evidence and data to suggest that it's overwhelmingly harmful, but there's never been a case, that I'm aware of in the state of New Hampshire, where...that secondhand smoke has been prosecuted, and found in favor of the person who brought forward that charge. So I think what we were trying to do back in the early '90s and up until this moment in time, was to really say to the small business owner, "You know, you have the option to allow for smoking or non-smoking facility, or you can go by what's in the statute 155:65 and set up your non-smoking and your smoking areas, making sure that the appropriate buffer is in place to allow for the customer to come in one way or the other." Now, I stated in the paper that I would go out into my district and I would try to survey some of my restaurants. Well predominately, most of my restaurants have gone smoke free, and the ones that haven't, want to remain where they have the right as the owner, to have a smoking restaurant. I went to Farmington the other day and I spoke to a restaurant owner, Marie, and she said adamantly, "I'm opposed to this bill to be passed." And she said, "My customers are 40 percent of that restaurant, consistent smokers, and the other folks, you know, 60 percent, come there and they go into the non-smoking area. However, if no one wants to come into my restaurant that is a non-smoker, they have other options. They can go down street to Johnsons, which is completely non-smoking or they can go down to the steak house in the opposite direction which is also non-smoking." That to me, is the spirit of New Hampshire. Here we are in the state, in the legislature, this term, that we are asking to resurrect the "Live Free or Die" signs on our borders, but at the same time, when we continue to have this type of legislation that is brought forward, I think that we are limiting some of our freedoms and our liberties. I think that this bill, although it's well intended, I think the market forces are going to dictate that smoking or non-smoking in restaurants will probably...you know, probably phase in, in the future, and therefore...but at the same time, people who smoke should have a right to go to a restaurant and be able to go to a section that is designated for them. So with that, Mr. President, I again, wholeheartedly support the ITL motion.

SENATOR ODELL: Thank you, Mr. President. Mr. President, as you recall last evening when I left, I said that I didn't think there was any need for me to speak today. I felt that we knew where the votes were and we knew what the inevitable outcome was going to be. But last night, driving home up 89, I said to myself, "Odell, you care too much about this not to let your colleagues know how and why you feel the way you do." Possibly I also have personal experience over the last few years that enlightened me on this issue that I would like to share with my colleagues. Understanding I was a heavy smoker in my youth, the only smoker that I know of in my family, and my family is cancer free, going back generations. I would ask my colleagues, what President campaigned on a platform that included doubling the research budget for cancer in the United States? I'll give you the answer. It was George W. Bush. What President is the only the second one in our time, this last century, to

leave office as President and to become the active chairman of a major not for profit in the United States? George Herbert Walker Bush. The only other person that did that was Herbert Hoover. He was the chairman of the Boys Club of America. President Bush, former President Bush, became chairman of an institution called M.D. Anderson Cancer Center. In the summer of 1998 I received a telephone call from a woman at M.D. Anderson who had worked at our company in years past, and she said, would you take a Saturday and come up to Maine to a residence on the coast up there that some of you may be familiar with. And I asked what it was about and it's about M.D. Anderson. I said, "I don't know a thing about it." And she "Well come on up and listen." So I went up to this residence in Maine and there were some philanthropists there, there was some political leaders and there were a number of others. The first speaker that day was a man named John Mendelson, the president of M.D. Anderson. A billion dollar a year entity, more than 10,000 employees dedicated to ending cancer in our time. He's a scientist, M.D. Brilliant. He gave a very engaging talk. When it was over, the first question was, "John, if you had one thing you could do to end cancer, what would it be?" "Stop smoking." "Stop putting people in the face of smoke. One out of three cancers in America caused by smoking. Secondhand smoke and those that smoke directly." After the meetings there were other scientist that made presentations about addiction and all kinds of things. I'm no scientist. That's other people understand that far better than I do. They asked me if I'd take on a project. I said, I'm out of doing projects. I'm doing other things. They said, "Well President Bush is going to be seventy-five years old in June of 1999 and we'd like to raise some money. We'd like to raise some money for cancer research." And I thought about it. It was one of those things that you got to do it, you got to do it. So there's a little cocktail party later on and the man himself said, "Bob, you going to do it or not?" And I said, I guess you want it done. He said, "I want it done." At that time, he was vice chairman of M.D. Anderson. He worked his way up the ladder at M.D. Anderson to become chairman. He's been associated with the institution since 1977. The goal was \$10 million to have a birthday party. And we had a heck of a birthday party. And most of you or some of you will remember a man jumping out of an airplane, parachuting. That's what most people remember about it. I remember raising \$12 million for that. How did we get there? We had a little story to tell people. We used this brochure. Here's the man for a time was the most popular man in the world, his wife one of the most beloved woman in America. This brochure reads, "Two of their children are governors. One is a civic leader and a mother. Two are business men." If I get emotional, I hope you'll understand. "And one is inspiring one of the greatest quests in the history of modern science." With a picture of Robin Bush dated December 20, 1949, October 11, 1953. Died at Memorial Sloan Kettering, New York, cancer. Not smoking related. She'd be fifty-six years old today. I've heard President George W. Bush speak of his sister that he never really got to know 'cause she was lost to cancer. But I've heard a man almost twenty years older than me talk about a death of a child many, many years ago. Six decades ago. Why do I tell that story? Because there are people in this country who are deeply committed to this, who care so much about doing the right thing. And the principle involved here is that if you know that smoke causes cancer, wouldn't you do something about it? We don't let drunks run up and down the highways without doing something, 'cause we're worried they're going to hurt somebody. They might hurt a child or your grandfather or

your grandmother or yourself. But we will allow restaurants to have smoking going on around them. Don't worry about this isolation, that's a specious argument I believe. And children, as pediatrics...as the pediatrician told us the other day, the heart beat, the respiratory system goes so much faster in a child that they inhale that smoke, it does more damage to them than it does to adults. Adults can make choices. I just use the children as an example. There are those that...and I was appalled at this. It came before the committee the other day and talked about "junk science". Let me tell you, Senator Clegg, Senator Burling and I were, I think, honored to be part of the first group of nine to go through the Medical Education Program at Dartmouth Hitchcock. Dartmouth Hitchcock and its research facility is a major economic generator in our region. To see those scientists working every day, every day to prevent cancer. Working at it hour after hour, investing their whole lives. And to have somebody come in and say "That's junk science." Not a scientist, but a politician telling those people that it's junk science! One of the people's a constituent of mine. Within the last forty-five minutes I talked to her. I said, "Doctor Brinckerhoff, tell me one thing. Just give me the summary. You've traveled all over the world. You're an expert in cancer. You tell me, is there any doubt that secondhand smoke doesn't cause and abet cancer? She said, "No. Who's saying that? It's understood that smoking and smoke causes cancer. A one-to-one relationship. One does something to the other. That's fundamental." You take a person like Doctor von Eschenbach, prostate cancer expert. Operated on some friends of mine. One of the top five people in the nation. Who's one of the first appointments of President Bush? Doctor von Eschenbach to run the National Cancer Institute. I know how he feels about these things. Here he is...now he's the head of the FDA, an expert in the state. These are people that now. There's a whole constituency out there of people who spend their lives at this, and we call it "junk science". You tell me about a prostate cancer victim who was saved by Doctor von Eschenbach and tell me he operates with "junk science". That is bad news. It's bad for politicians to base their decision making on accusations of junk science. And what kind of message are you sending to a young lady named Jennifer Hicks, who sat right there in that chair during two of our debates here on the floor? She went to Brandeis and then went to Boston University. I was there for her graduation. I literally didn't know what she was graduating in. Molecular biology. She worked for a while, went to the University of Massachusetts. Got her degree in December in public health, and that was running clinical trials in Boston, and has applied for medical school. Think of that young woman who is so inspired and so enthusiastic and wants to do the right thing in cancer research, and she works at it, and somebody says, "You're in the business of junk science?" What are we saying to people? We know one thing that is important to this debate today, and that is cancer is caused by secondhand smoke and people smoking. That's a fundamental. Why, why, why, don't we want to do things to protect ourselves? I grew up in a battle over tobacco, although I was a smoker, I've seen it come and go. We all know. I'm simply asking you today to think of all the people that we endanger now and in the future if we don't take action. Quite frankly, if the votes aren't there today and I've made mistakes before and I couldn't count to thirteen, but the votes aren't there, I will make a prediction. That today is just a simple step in the march of history that this body will do the right thing. We will come to the crossroads. We're public held, in the health of the people around us. And most importantly, the young people



and the generations to come, that we do the right thing. And we do whatever we can to eliminate the possibility of enhancing the opportunity for people to get cancer. We should be working the other way. It's not just about freedom of choice, it is Live Free or Die. I subscribe to that, but to the context of the fact that we want to do whatever we can to prevent death. Thank you very much.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I, too, rise in opposition to the inexpedient to legislate motion. I must say this. In the gallery is Senator...Representative Sheila Francoeur. I admire the courage that she manifested in bringing this piece of legislation forward and was honored to be asked to be a co-sponsor, because that's what public policy's all about. Doing the right thing for the right reasons. If I had a gift for everyone in this hall, one gift, I would ask that good health be yours for the duration of your life and I would do everything in my power to grant that wish. I've been to two funerals in the last month. A young man from Hollis, in my opinion a young man. Spent fifty years of his life working for kids, died of cancer. Lou Korcoulis was just a wonderful American. A great American. He said to me that the one thing in his life that meant the most was to prove to children that he was teaching, that he cared as much about them as he wanted them to care about him. I spoke last evening in Goffstown at a memorial service for a former selectmen who died of lung cancer. If we can do one thing, just one thing to prevent any other human being from dying of lung cancer, shouldn't we do it? I mean, we are given a wonderful opportunity to serve the public. When we run for office we say we're here to do the best that we can for the people that we serve. I've heard Senators here say if one life is at stake, I will do anything to prevent that. How many lives are at stake? How many in a restaurant, in a bar, where smoking is pervasive, are in danger of losing their lives? How many? How many of the people who work for \$2 an hour who serve? How many of the musicians who play? How many of the others who are there? How many of their lives could we save by passing this legislation? We don't let anybody smoke in the State House because we know it's bad. It's a public building! No one can smoke in this building! Why is this building better than a restaurant? Why? Are the people who come here any different than the people who will go into that restaurant? The restaurant across the street? That restaurant in Salem? That restaurant in Manchester? That restaurant in Keene? That restaurant in Berlin? Why aren't we willing to protect those people? We're about public policy. We're about people above politics. That's why we come here. We say, people are first! And that's why we come and serve. And I mean serve. We serve people. We try to do what's in their best interest. And with regard to the science, a brilliant iteration by Senator Odell. Junk Science. Which one of us has gone through the process of a baccalaureate degree in microbiology, or maybe a medical degree? And which one of us has the audacity to say that people who have spent their lives investigating the source of a problem are junk scientists? I find that totally unacceptable and incomprehensible, that we, as politicians, stake out that we know more about science than the scientists. That's not good public policy. That's not good manners. We ought to have good manners. If an individual has spent their life investigating a situation that is a positive on the health and wellbeing of people in this country, we shouldn't call them junk scientists. We are here to do the right thing. We're doing the right thing, what we believe is in the best interest of the people we represent. We fight to keep hospitals open. We fight for access. We fight for affordability. Why don't we fight for the

thing that drives that person to that hospital? If I can prevent the death, the premature death of one human being, and, boy, that's a magnificent thing. If I can do that, then I've done the right thing for humanity. And if, in the course of my lifetime, I can affect in a positive fashion, the life of one person, then I've done my job while here on earth. I hope that in good conscience, and I believe all of us vote in good conscience, we can see our way clear to voting against inexpedient, voting ought to pass, and doing what all of us want to do for every human being that we represent - prolong their life. Thank you, Mr. President.

SENATOR GALLUS: Thank you very much, Mr. President, members of the Senate. I rise to support the committee report of ITL. I'd like to thank the many people on both sides of the issue who took time to contact us with their opinions and thoughts. If this debate today was about healthcare, we'd be discussing banning tobacco sales. It's not. As a reformed smoker, I certainly enjoy and appreciate the ability to dine in a smoke free environment. It's quite easy to find many of these restaurants, whether you're in the north country or throughout the state of New Hampshire. But I really believe in limited government, and these types of decisions should really be made by local business and their patrons. This email, and I received numerous emails, as you all did on both sides of the issue, perhaps sums up my thoughts best. And it comes from outside of the state of New Hampshire. It's self-explanatory. "Senator Gallus, thanks for taking the time to read the comments of a future constituent. I plan to transfer to Berlin as part of my job with the Bureau of Prisons. We are excited about the move. The very thing that draws us to New Hampshire, the state spirit of liberty and independence is at stake with House Bill 1177. I despise smoking, but needless government restrictions on personal freedom are far worse. Please vote against House Bill 1177. Freedom must never be restricted by popular sentiment. Freedom that can be outlawed by the majority is no freedom at all. The only vote that should be taken on smoking in restaurants is the vote made by patrons who choose to dine in restaurants with smoke or without. Please help keep New Hampshire what it is and not a mini Massachusetts. I ask you to keep liberty alive in New Hampshire and ITL this bill." Thank you.

SENATOR GOTTESMAN: Thank you, Mr. President. I rise in opposition to the ITL. Where do we begin to turn the page? So many of you have history here. So many of you have heard arguments before and feel that you have to draw back on everything you did years ago. Why don't we start anew? I am a new Senator; this is my second session. I have a clean slate. I don't have the institutional knowledge, but I have my life's experience of knowledge. And with that comes reports from all different sections of our society. I heard from the leaders at the Norris Cotton Cancer Center. I heard from hospitals across the state. I heard from the head cardiologists at Dartmouth Hitchcock Medical Center. I ask you, if tomorrow, your diagnosis was cancer, and it was secondhand smoking, wouldn't you turn to the very same experts for their opinion on how you could get well? I don't understand why this has become somehow partisan. And I'm not criticizing anyone for their politics in this. This is not a Republican issue. This is not a Democratic issue. This is a health issue. I have spent my career trying to help people in their workplace, to have a healthier place to go every day they go to work. I don't understand why it would be okay to ban asbestos, because we found out that people got cancer from it twenty or thirty years later, and then not care about the fact that we can allow people to work in an atmosphere that

causes them potential health problems. I have talked to so many of you about this bill, and I know that you come with history in business, in life, and you all bring your own experiences. I am asking you to look at this science that is available today. Look at where we are today. Look at what the poll from the UNH survey told you. That says that 79 percent of our citizens want our restaurants and bars to be smoke free. I can tell you that the emails and telephone calls and letters that I have received, some of which on both sides, have been extreme, but I can tell you that more than 90 percent of them in my constituency have asked me to support this ban. We are here as legislators at the whim of our constituents. If our constituents voice their opinion, as they have done with this piece of legislation, and we don't listen to them, then why are we even here? We owe a duty to them to provide a safe workplace. We owe a duty to the restaurateurs who take a different position than I hear today, that are begging me, please, help us here. Most of the small businesses in the state care about this. Restaurateurs are primarily small businesses. Yes, we have chains and they make corporate decisions. But we have small businesses who care about what happens in the future. Do we regulate everything they do? We tell them how clean their food has to be. We tell them what the situation has to be in inspections, and yet, when it comes to workers, we don't really care if they have to inhale eight hours of smoke every single day they go to the work place. I ask you and, as Senator Odell has said, sometimes we miscount, when we try to get to thirteen. I have tried very hard to solicit support of this bill. I congratulate Representative Francoeur, who for years opposed this kind of legislation, but has seen the light, and has brought you a new light for a new day. I ask you to defeat the ITL and move ought to pass.

SENATOR JOHNSON: Thank you, Mr. President. I feel strongly compelled to make a statement relative to House Bill 1177. I rise today because, in all my years here in the legislature, I have never been subject to the kind of lobbying that has taken place in regards to this particular bill. Take out of the equation whether or not you agree with the premise of the bill. At this point, that's not what I wish to discuss. For those of you who agree with this bill, I truly hope that you were not subject to email, the letters and the phone calls I have received on this issue. Yesterday alone, I received ninety-seven emails. That's yesterday. If I take the past week of emails, I'm sure that I've had over five hundred. Like most of us, it's difficult to read word for word over a thousand emails, but I do browse through them, and clearly some of them are canned emails, and I can accept that. The lobbyists are paid to write these messages and of these, they need to prove they're earning their hard earned money. But many emails have crossed the line. I've been told I'm promoting cancer. And I'm sorry to say, that's not the worst of it. When does this stop? In many respects, I believe that this movement or whatever you'd like to call it, has done nothing to further its cause with this state Senate. In my opinion, they crossed the line and have taken a giant step backwards. And I'm not alone in this, and I know that I'm not alone in this. I look around this room at many of my colleagues and they've told me the very same story, and they agree that it's gone too far. This is all about respect for us as people and our families. As an elected official, I have a deep respect for my constituents and the right to their opinion, but when I'm told that I'm promoting cancer, that's downright disrespectful. When a member's wife receives a phone call at two in the afternoon, when he more than likely is not home, and she's told that if he doesn't change his vote, he's going to have to deal with the health consequences and questioning how he can

live with himself, and she with him, that's deplorable and disrespectful. I wish I could tell you this is an insulated incident, but unfortunately, it's not. It's happened more than once to more than one of us, and that's one time too many. So again, I ask you when does this stop? And, Mr. President, to follow up on Senator Kenney's comments about the restaurant, I have a press release here about a Laconia restaurant and I won't read the thing, but they said at the end, "We believe that this business decision to go smoke free is in everybody's interest." Thank you, Mr. President.

SENATOR LARSEN: I rise to support making New Hampshire's bars and restaurants smoke free. I rise to support those who have lost ones to lung cancer. I rise to support those who've lost their voices too early. I rise to speak as the daughter of a tobacco addicted father, whose lungs collapsed, who spent his last year with oxygen tubes in his nose, who died too early. I rise to speak as the sister of a fifty-five-year-old tobacco addicted brother-in-law, who grew up asthmatic in a two-parent household of chain smokers, who left his children too early, just two weeks ago. I speak as one who saw smoking as glamorous. I speak as one who, until recently, thought that smoking sections worked. I speak as one who still has lingering childhood memories of newly lit cigarettes smelling good like my father. I do not hate the smell. I speak as one who smoked in my twenties because it was so familiar. Like some of you, I've held the view of live and let live when it came to smoking bans. When I heard of this House Bill for smoke free restaurants and bars, I did not sign on. I did not think it was necessary. When I first heard of this bill, I figured smokers could be in their space and non-smokers could be in theirs. In the weeks and months since then, I've done some serious thinking. In the weeks and months since then, I've learned that secondhand smoke should really be called, "second lung smoke." In the weeks and months since then, I have seen and heard even more about the heartbreaking effects of first and secondhand smoke. I have learned that 1,698 New Hampshire citizens die each year from smoking related deaths. Senator D'Allesandro asked how many in New Hampshire. Every year, 1,698. I've learned that secondhand smoke is a group A carcinogen known cause of lung cancer, containing 4,000 chemicals. I have learned that secondhand smoke is associated with an estimated 8,000 to 26,000 new asthma cases in children across the country. And New Hampshire was recently reported to have the highest percentage of adult asthma in the country. I've learned that an estimated 3,000 non-smokers die annually from lung cancer, while another 35,000 non-smokers die of heart disease, all as a result of secondhand smoke. We heard cardiologists come tell us that being in the room with a cigarette smoker leads to, in fact, hardening of the arteries in the immediate way. We learned that in an eight hour shift, the wait staff in a restaurant inhales secondhand smoke equivalent to that of smoking one or two packs of cigarettes. That's just in one of their eight hour days. I had a conversation last night with one of my restaurateurs who said that he has high school kids working in his restaurant who are non-smokers. They're smoking. They're smoking about a pack to two packs a day just by showing up for work. I learned that sitting in a non-smoking section of a restaurant for two hours is equal to smoking one and a half cigarettes, while a non-smoker sitting in a smoker...sitting behind a smoker in a bar for two hours, breathes the equivalent of four cigarettes. In answer to fears that restaurants will be adversely affected, I learned that a 2004 study conducted by the Harvard School of Public Health found that sales and employment at Massachusetts restaurants and bars, actually increased slightly during the first

six months of that statewide smoking ban. And, after 2003 smoking ban went into effect in New York City, I learned that the city saw business tax receipts increase from bars and restaurants 8.7 percent from the year before and, in addition, 23 percent of city residents claimed that they dined out more often. Finally, I learned that 79 percent of New Hampshire residents overwhelmingly favor a smoking ban. So, like many of you, I've done my homework, perhaps in a more personal way than some, and I have come to the conclusion that it's time we pass a smoking ban in New Hampshire for bars and restaurants statewide. Restaurateurs for the most part, support and beg for it to be statewide to level the field. Employees plead with us to make their workplace a safe place to work. And if you believe in live and let live, then perhaps its time we encourage people to let live, those who choose to breathe fresh air while they work and eat. And when you consider the personal freedom and liberty that we all cherish, keep this quote by John Steward Mill in mind, "The only purpose for which power can rightfully be exercised over any member of a civilized community, even against his will, is to prevent harm to others." Cigarette smoke causes harm to others. I urge you to overturn the ITL for the good of New Hampshire's residents. New Hampshire's health depends upon it. Our constituents depend upon us to live free and breathe.

SENATOR LETOURNEAU: Thank you Mr. President. This is obviously a very emotional issue on both sides of this issue and I don't think that anything that's said in this chamber today will change the opinion of either side. However, I feel compelled to at least address why I am going to support the ITL motion. We heard a lot about hardships this morning. And, as I was driving back and forth to the State House this week, I was thinking about this particular bill and this particular debate. So last night, I took and put my thoughts on paper so I wouldn't get lost in this debate today. During these times I think about our forefathers. They left their homes, their families, all the comfort in Europe to travel to a new world. A trip that many never completed because their ships were floundered, sickness and rats, disease, and poor essentials, but they kept on coming, only to arrive in a new land without shelter, food, unfriendly weather, and warring natives. Later, their descendents, men like George Washington, Thomas Jefferson, John Adams, and yes, George **TAPE CHANGE** It's freedom. Freedom from a government who rules every aspect of their lives. Freedom from a government that thought that they knew better how to...how they should run their lives. Freedom from a government that took too much. Freedom from a government that had no respect for property rights. They made slaves through a state bureaucracy. Mr. President, our liberties are being stripped away from us one at a time and Americans are permitting it. And in some cases, Americans not only permit it, they encourage it. They are asking for government to become more and more involved in their personal lives, and in the hopes that the government will protect them from themselves and relieve them of personal responsibility. They either do not understand or do not care what they are asking for and receiving is a direct conflict of what our founding fathers envisioned for our country, and what is so carefully and it's basically spelled out in our Constitution. This is a business decision. This is a private property decision. I'm going to close my comments here with a quote from the movie "Brave Heart". As William Wallace lay on the stone, he was disemboweled by the same people from whom our ancestors escaped. He shouted for all to hear. "Freedom. Freedom. They can take my life, but that they can't my freedom." Thank you, Mr. President.

SENATOR HASSAN: Thank you, Mr. President. I rise in opposition to the ITL and hope that this body will overturn that and support an ought to pass motion. I rise though very simply as a co-sponsor of this bill to apologize to my fellow Senators if they have received communications from constituents or advocates on either side of this issue that are offensive or threatening. It is certainly not the intent of the sponsors of this bill that their fellow Senators or fellow House members would receive such communications. I will remind this body, however, this is not the only issue that arises passion among our constituents. Many of us have received other communications on other bills that are difficult, that are troubling, that at times suggest threats. Having said that, and knowing how disturbing they are, I apologize again if the emotions on this issue have been inappropriately expressed to this body. But I hope that we will put our own personal reactions to those kind of communications aside and make sure that we are voting on the policy issue here, on protecting the health and safety of the citizens of New Hampshire, and in particular, on protecting the employees in restaurants who do not have the same kind of choices that patrons and consumers do when they have to choose how to support their families. Thank you very much.

SENATOR FULLER CLARK: Thank you very much, Mr. Speaker. I rise in opposition, too, to the committee recommendation of ITL, and I rise as a co-sponsor and a long-term advocate for the ban on smoking in restaurants and bars. And right now, we are having to make a very difficult decision, a decision that has been taken up by the House and this legislative body many times since I've been here in the 1990s. And I, too, would like to recognize Representative Francoeur for realizing that today what we are addressing is not a business issue, but it is a health issue. It is a health issue that has to do with those individuals who choose to work or have no other choice but to work in our bars and our restaurants, to provide the entertainment in our bars and our restaurants, to be doing the clean-up after we've all gone home from having a very good time, while the secondhand smoke lingers in those establishments. Many of those people who work there are our youth and they believe that they are invincible and they don't believe that they can be impacted by secondhand smoke. But as you have heard all ready today, that that is not the case. And what has changed over the last ten to twelve years is the documentation, both nationally, statewide, and internationally, that shows, as you've heard so eloquently from Senator Larsen's testimony, the true dangers of secondhand smoke. My husband is a physician, and he drew it to my attention that it's not only the issue that smoke is carcinogenetic, but also the fact that smoke causes cardiovascular disease and heart attacks. There was a community in this country that banned smoking throughout that entire community. And within three years, they had seen a marked reduction in cardiovascular disease and heart attacks. And every year, in every session of this legislature, we are asked to address major public policy issues, and many of them have focused around the issue of healthcare, as the cost of healthcare continues to go out of sight. And we have turned ourselves inside out to address disasters and disease, and the threat of such things as Avian Flu where numerous individuals' lives might and have been at risk. Yet, we have the opportunity today to make a difference in the lives of those workers, and in the lives of our young people, and in the lives of anyone who is exposed to secondhand smoke. And we know now from testimony, we know now from reports that have been made to us, that all the efforts that we tried to do in this state to protect patrons and workers in restaurants and bars from secondhand smoke have failed. The only choice that we have is to now pass good public

policy and ban smoke from these establishments and to look at what else we might do to reduce the risk of this terribly, terribly disastrous product known as tobacco. But just because we can't right now, end all tobacco smoking, we can certainly do that in places where people do not have a choice and they are exposed. I think this issue of, you know, our sense of business, our sense of you know, we're going to let this incredible spirit that we have in New Hampshire of independence, really color our decision making around what we should be doing in terms of protecting our citizens and protecting the health of our state, and preventing ever-increasing healthcare costs. Right now, the future health and well-being of our citizens, the future health and well-being of our economy, and our reputation as a business friendly and family friendly state, lie in the hands of just three Senators. I urge everyone here to think carefully one more time before you cast your vote. We have oftentimes are in positions where it is difficult to make decisions, but in this case, we should be able to, you know, look at the long-term implications and pass the good public policy that this state and our citizens deserve. Thank you.

SENATOR FLANDERS: I'm going to be very brief. I'm a reformed smoker. I don't like smoking. I go to restaurants that are non-smoking. I wish I could vote for this, but I don't believe that twenty-four of us should tell businesses what to do. I feel very strongly that, if we start telling businesses what to do, in two or three years from now, we'll be saying that "You can't serve eggs because of cholesterol". And I think...as I let it be known, that I would support and look at legislation to take this back to the towns. Colebrook voted no smoking. Keene has voted no smoking. And it's not legal because we haven't given them the authority. I offered this yesterday and it wasn't taken up. It was a compromise, it wasn't accepted. But let's take it back to the towns. Rather than the twenty-four of us deciding what business will do, let's go back to the towns and put the issue on a ballot, let the people decide whether they want their town to be smoking or non-smoking. I just feel that we've gone beyond the ability of twenty-four to make this decision. I think it should be a local decision. We should allow it to be an enhancement to go back to the towns. And we do have that to the point where the restaurants have a right to make up their own mind. I believe, even though I despise smoking, I think it's wrong. I think everything you said about smoking is correct. If I own a business, I should be able to be allowed to bring whatever I want for customers into my business. Thank you.

SENATOR BRAGDON: I move the question, Mr. President.

SENATOR GATSAS (In the Chair): I have two more speakers.

SENATOR BOYCE: Thank you, Mr. President. I rise in favor of the ITL motion, and had I not had a prior commitment the other day, it would have been 4-3 out of committee. We've heard this morning several arguments on both sides. I have been listening to several, and one of the things that comes to my mind in all of this is that many of the people that smoke are addicted to it, but they are also addicted to other things. Alcohol in many cases, to gambling in many cases. And some of the places where it is still legal in this state to exercise your smoking addiction, is where you can also exercise your alcohol addiction or your gambling addiction, bingo halls. And one of the things that I have seen firsthand, and one of these is in a bingo halls. I used to run a bingo for a major charity in the state that raised their major portion of funds from bingo, and the hall that they used was owned by another nonprofit. And, several years ago they divided the hall, not down the middle, closer to 60/40. Sixty percent of the area is the smoking area and 40 percent is

the non-smoking. There's a glass wall, solid doors, no ventilation between the two, totally separate air conditioning and heating systems for both halves of the building. Totally segregated. The smokers are in their area and the non-smokers in the other. And it is glass so they can see the board up there and see what the caller's doing. But what I became aware of in the last week on that, is that many of the people that play bingo in New Hampshire today, are doing that when they park their Massachusetts car in the parking lot, particularly down in Hudson, the one that I'm familiar with, in Senator Clegg's district. The Kiwanis Hall down there does a land office business in bingo, which the state participates in because we tax it. And their business increased noticeably, when Massachusetts banned smoking in the bingo halls. People voted with their feet. I heard just a few minutes ago about this statistic which I've seen on many of the emails, about the CDC, I think in the email it called it a study. I've got a question about that. That 30 percent increase...or decrease in heart attacks within three years of the city banning smoking within that city. Well, we were told that we shouldn't rely on junk science; however, that statistic is being presented as if it were science. However, if it was indeed a study, all they're looking at is gross numbers. How many heart attacks in that population. Well I know the way smokers are. They're addicted to it. They have feet. They vote with their feet. I suspect that if there was indeed a 30 percent decrease in heart attacks in that city after the ban of smoking, that it was because the smokers left, and they took their tax money with them. Now, I heard earlier, that if we can do one thing, we should save every life. If one life is at stake; we were told 16,098 lives are at stake. But I didn't hear those same speakers say that we should ban the sale and use of tobacco in this state. And I believe there are around 100 million reasons for that. One hundred million dollars a year, I think, is somewhere around the amount of money that we get from smokers. We get \$40 million from the tobacco companies, which comes from the smokers because the tobacco companies aren't simply printing up the dollar bills. They sell the tobacco products; they send us \$40 million. We tax the cigarettes themselves, here. The cigarette smokers themselves, pay the other, I think, \$60 million. So \$100 million a year, that's the reason why you don't hear a ban on smoking. I, myself, have never smoked. Never will. Never smoked anything. And I never inhaled it either. But, if we're going to do this, you know, if we want to save every life, we should ban smoking. If we also want to save every life, we should ban alcohol. Now it seems to me somebody tried that seventy years ago, it didn't go quite as well as they thought it would. Maybe we should also ban the wheel. While we're here talking today, the likelihood, at least somebody will be seriously injured on the highways of this state. So if we're trying to save every life, gosh, we could go a long ways to save lots and lots of lives. Now, somebody mentioned that we could be Little Massachusetts. It's interesting today on the front page of the paper, they're talking about adding Boston to the name of the airport in Manchester. Bad idea. But there's probably a lot of people think it's a good idea. And as far as lots of people thinking things are good ideas, we see a lot of buttons that say "79 percent", referring, I guess, to the poll that was taken somewhere, that says that 79 percent of the people in the state want to ban smoking in restaurants. Well, 21 percent don't. Know what? Last I heard, that's about the population of the state that does smoke. About 20 percent of the people in this state smoke. I think 20 percent of the people have a minority opinion there. Well, I think back in history. There was a time when probably well over half of the people in the state, maybe 79 percent of the state or in



the country, 79 percent of the people in this country might have at one point, thought that it was okay for someone to own another person. Slavery was a majority opinion at one time. This is a representative democracy, not a true democracy. That's why we don't govern by polls. If we governed by polls, we would still have a lot of things happening that are tyranny of the majority. We don't do that. It's a representative democracy. We're supposed to think about what we do and not simply listen to the polls. Now I had two grandfathers. One smoked; one didn't. One died of heart failure and emphysema. He never smoked. I don't think it was secondhand smoke either, because he never worked indoors. He worked outdoors his whole life. He lived to be sixty-nine years old. The doctors determined late in life, that his probable reason for his having had asthma his whole adult life and emphysema at the later stages was because he survived tuberculosis at about age eighteen. It was not diagnosed. They didn't know it. He didn't have healthcare back then. They didn't have the x-rays, so he didn't know what he'd had, but he had a hard time breathing, but he never smoked. The grandfather that smoked died at about eighty years of age and he died of complications of something that they traced back to when he was a soldier in World War I and was gassed by the Germans with mustard gas. He didn't die of heart disease, he didn't die of cancer. He never had any of the smoking related problems. I just went to a funeral of an eighty-seven-year-old friend. A dear friend, about two weeks ago. He smoked until the day he went into the nursing home for the last time. He would take off his oxygen can to do that. But he didn't die of smoking related causes, unless Alzheimer's is sometimes traced to that. They will probably decide sometime, but the strongest evidence that I've heard is that aluminum, the Pepsis that he drank every day might have killed him, but not the cigarettes. So, yeah, we've heard a lot of things about why we should and shouldn't do things, but if we're really going to do this, why stop at half measures? Why not ban smoking totally? Ban the sale of cigarettes. Ban the sale of pipe tobacco. Ban the sale of alcohol. And take us back to the horse and do away with the wheel. Thank you very much.

SENATOR BARNES: Thank you, Mr. President. We've been discussing this subject for the last hour and three minutes. I am the fourteenth speaker on this subject. I took a few notes as we went along. Bob Odell. Senator Odell, Senator D'Allesandro, both brought up "junk science". That's the first time I've heard that and I'm glad I didn't hear it after they made mention of it, because I certainly don't think any of us in here think it's junk science when you have all of these reputable people coming up with the reports. To anyone that thinks it's junk science, I think they have a problem. I agree with Senator D'Allesandro and Senator Odell. Senator Larsen made a comment about liking the smoke of her father's cigarette. It touched a tender spot with me, Senator. My dad was on the road making a living. Dad smoked a couple of packs of cigarettes a day, Camels, which I guess is one of the tough cigarettes. My mother smoked. I'd come home Friday, eight, nine, ten-year-old kid. The best smell in the world to me was not the brownies my mother was baking, but the smoke that I smelled from my father's cigarettes, because I knew my dad was home and we were going to have a great weekend. Senator Boyce brought back a point to me. His grandfather was gassed in World War I. My father was also gassed in World War I. Heavy smoker. Died at eighty-eight. Now this isn't trying to repudiate the science, because I believe everything that I have heard on the science end of things is true, but I think different people have different affects on different

things. When my sister passed away at seventy, she smoked. She didn't die of smoking. My mom and dad both died. Dad at eighty-eight, mom at eighty-one. And that wasn't from smoking. But that doesn't mean that secondhand smoke isn't bad. I know secondhand smoke is bad. I'm not too bright, but I know that. I also heard Senator Letourneau say that all the speeches on this floor are not going to change anybody's mind. I've been around here long enough to know that that's pretty true. I think most of us come in here knowing pretty well what we're going to say, how we're going to vote, but we all like to have a little bit of a say. I want to give you a little history. I'm not going to go back, Senator D'Allesandro, to 1972; I'm going to go back to 1990. That was supposed to be a little humor for us. 1990 and it was mentioned by Senator Kenny. I believe it was Senator Kenney that talked about the smoking ban that we in the state of New Hampshire, this legislature, put in effect, separating smokers from non-smokers in restaurants in this state. I sat in the House at that time. I believe the sponsor of that bill was Senator....Representative Shawn Jasper. I believe Shawn was the sponsor. I think I remember him being up there on the floor giving the speech. I voted against it. At that time, I owned some restaurants. McDonald Restaurants. I thought it was a silly bill for the simple reason that it didn't say that it would have to be a segregated area. For gosh sake, if you don't segregate it, I mean, it's a feel good deal. Some of us have fundraisers in a restaurant here in Concord, and the bar is full of smoke, but we go in there and the smoke is drifting into where the fundraiser is. I mean, come on, let's wake up everybody. We all know where I'm talking about. So, I voted against that because I didn't think it was right. But seeing I thought I was a pretty law abiding citizen, I obviously did that in my restaurants. I put the no-smoking section in and the non no-smoking. And as I ran the businesses I could see the smoke creep in the ceiling, and I said "Gee, I think I'll put segregated rooms in." I called the contractor. About \$20,000 a piece; that would have been about \$60,000. I thought that \$60,000 would do better in the community than it would putting in a room for smokers and non-smokers, so I didn't do it. So now we come into probably about 1994. I am now over here in this body. We had a piece of legislation that was very contentious. The Restaurant Association, which I was a member of, fought it very hard. It was called lowering the alcohol level from .1 to .08. I sat right here in this chair. I led the charge for that bill. I was accused by the restaurant industry, in the newspaper and on the street, that I was going to kill the restaurant business. We had a heck of a nerve here in this Concord to tell the restaurant business that they had to do that. The nerve of us to do that. Funny how times change and all of a sudden, some restaurateurs out there want us to do it for them. I wish they'd make up their minds. Either they want us to do something for them or don't they want us to do something for them? Okay, after that debate on the .08, I drove home and into my restaurant in Raymond. And I saw that smoke once again going across the ceiling, and I said to myself, "I'm not being a very responsible person by allowing that to happen in my restaurant, because I was accusing the restaurant people of not being responsible, making sure that the drunks aren't going out of there and killing people on the way home. So we talk about responsibility. I took responsibility. I called my two boys who had two of the other restaurants. I said, "Guys, tomorrow morning the sign goes in the window. The first of the month they'll be no smoking in this restaurant. You guys can do it or you don't have to do it. It's up to you." They did it. Senator Jack Barnes had the first three...the first three smoke free McDonald's Restaurant in the state of New Hampshire, and I was threat-

ened by some of my colleagues in this state for doing it. They went to Chicago to complain. They went to the wrong guy, because we let them know which end the hamburger was flipped on. Those restaurants remain non-smoking, but it was my decision. It was not the corporation McDonald's telling me I had to do it. It wasn't you guys up here in Concord telling me. I did the right thing in my mind. Now the rest of those restaurant people out there, that are affecting these people with the smoke, let them belly up to the bar and do the responsible thing. Don't let your Senators and Representatives tell you to do it. We tell you enough what to do. Do it on your own. And you folks, God bless ya, that are on the other side of this issue, put the pressure on those restaurants. Tell the people, hey, you don't want to do it, don't go into the darn place. There are plenty of places you can go that are smoke and non-smoke. You have a choice to do that. I'd like to see the groups do that. Now, some people have said that it's political suicide what we're doing here today for some Senators. I'm going to show you something here. I'm going to show you two piles. Guess which pile I'm voting with? This one. There's two here and there's forty-one here. We've all received emails. You heard about Senator Johnson talking about the emails. You've all received them. I try to sort mine out. My constituents are the ones that I answer back. I get them from all over the state, all over the country. But these came in yesterday, so I have to do a "Dear Constituent. Ninety-five percent of the time, Dear Constituent, I listen to you, that's why I'm here, but there's sometimes that I have to step up and do what I think is the right thing. And I apologize to you if your Senator let you down today, but put your effort out there on these restaurants and these bars, and get the other 40 percent to do the right thing." And I've heard all this testimony and it's all legitimate things that I'm hearing from both sides. But put the pressure on those folks and don't go into those restaurants. And you know what? A smart businessman or woman, when they see their business going down the tubes, they step back and they say, "What's wrong? did the traffic change? Is it the weather? What's the reason my business is off?" Well a light bulb might go on. "Gee, if I had no smoking in here, maybe my business would be okay." And I forgot to tell you because I don't write things down very well, that when I cut the smoking out in my restaurant and my two boys did, we didn't lose a damn penny. Okay? We didn't lose a nickel. So you restaurant owners that are concerned about losing money, it won't happen. Do the right thing. Get rid of the damn smoking in your restaurants and bars, and don't let us have to do it for you, 'cause I'm not going to help you. Help yourself. I did it. You do it. Thank you, Mr. President.

**The question is on adoption of the committee report of inexpedient to legislate.**

**A roll call was requested by Senator Gottesman.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Roberge, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**The following Senators voted No: Burling, Odell, Eaton, Bragdon, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 12 - Nays: 11**

**Committee report of inexpedient to legislate is adopted.**

**HB 37-FN**, relative to health insurance coverage for full-time students on medical leaves of absence. Banks and Insurance Committee. Ought to pass with amendment, Vote 5-0. Senator Gottesman for the committee.

**Banks and Insurance**

**March 21, 2006**

**2006-1481s**

01/09

**Amendment to HB 37-FN**

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

1 Name of Act. This act shall be known as “Michelle’s Law” in honor of Michelle Morse, the young Manchester woman who died recently and who battled both cancer and insurance company rules that threatened her health care coverage.

2 Individual Insurance Policies; Dependent Children. Amend RSA 415:5, I(3-a) to read as follows:

(3-a)(a) The coverage of any family member insured by such policy, pursuant to subparagraph (3), who is mentally or physically incapable of earning his *or her* own living on the date as of which such dependent’s status as a covered family member would otherwise expire because of age, shall continue under such policy while such policy remains in force or is replaced by another policy as long as such incapacity continues and as long as said dependent remains chiefly financially dependent on the policyholder or the employee or his *or her* estate is chargeable for the care of said dependent, provided that due proof of such incapacity is received by the insurer within 31 days of such expiration date. If such coverage is continued in accordance with this subparagraph, such dependent shall be entitled upon the termination of such incapacity to a converted policy in accordance with and subject to the terms and conditions of the conversion privilege clause if such privilege is afforded by the policy, provided that such dependent has not attained the limiting age, if any, for coverage of adults specified in the policy;

*(b) If the coverage for dependent children under subparagraph (3) includes coverage for dependent children who are full-time students, as defined by the appropriate educational institution, beyond the age of 18, such dependent coverage shall include coverage for a dependent’s medically necessary leave of absence from school for a period not to exceed 12 months or the date on which coverage would otherwise end pursuant to the terms and conditions of the policy, whichever comes last. Any breaks in the school semester shall not disqualify the dependent child from coverage under this subparagraph. Documentation and certification of the medical necessity of a leave of absence shall be submitted to the insurer by the student’s attending physician and shall be considered prima facie evidence of entitlement to coverage under this subparagraph. For the purposes of this subparagraph, “medically necessary” shall mean an acute illness. The date of the documentation and certification of the medical necessity of a leave of absence shall be the date the insurance coverage under this subparagraph commences; and*

3 Group Insurance Policies; Dependent Children. Amend RSA 415:18, V to read as follows:

V.(a) The coverage of any dependent of any employee or member of the group insured by such policy, pursuant to paragraph IV, who is mentally or physically incapable of earning his *or her* own living on the date

as of which such dependent's status as a covered family member would otherwise expire because of age, shall continue under such policy while such policy remains in force or is replaced by another group or blanket policy as long as such incapacity continues and as long as said dependent remains chiefly financially dependent on the employee or member of the group or the employee or his *or her* estate is chargeable for the care of said dependent, provided that due proof of such incapacity is received by the insurer within 31 days of such expiration date. If such coverage is continued in accordance with this paragraph, such dependent shall be entitled upon the termination of such incapacity to a converted policy in accordance with and subject to the terms and conditions of the conversion privilege clause if such privilege is afforded by the policy, provided that such dependent has not attained the limiting age if any for coverage of adults specified in the policy.

***(b) If the coverage for dependent children under subparagraph (3) includes coverage for dependent children who are full-time students, as defined by the appropriate educational institution, beyond the age of 18, such dependent coverage shall include coverage for a dependent's medically necessary leave of absence from school for a period not to exceed 12 months or the date on which coverage would otherwise end pursuant to the terms and conditions of the policy, whichever comes last. Any breaks in the school semester shall not disqualify the dependent child from coverage under this subparagraph. Documentation and certification of the medical necessity of a leave of absence shall be submitted to the insurer by the student's attending physician and shall be considered prima facie evidence of entitlement to coverage under this subparagraph. For the purposes of this subparagraph, "medically necessary" shall mean an acute illness. The date of the documentation and certification of the medical necessity of a leave of absence shall be the date the insurance coverage under this subparagraph commences; and***

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

2006-1481s

#### AMENDED ANALYSIS

This bill extends health insurance coverage to full-time students on medical leaves of absence. This bill shall be known as "Michelle's Law."

SENATOR GOTTESMAN: Thank you, Mr. President. Mr. President, I move House Bill 37 ought to pass as amended. This bill will extend health insurance coverage to full-time college students on medical leaves of absence. The amendment includes coverage for a period not to exceed twelve months or the date on which coverage would otherwise end pursuant to the terms of the policy, whichever comes first. I apologize, whichever comes last. This provision was added so that if a student were to contract an acute illness three months prior to their graduation date, they would still be guaranteed twelve months of coverage from the date their illness, and from the date that it was documented. The amendment also officially names the act "Michelle's Law", in honor of Michelle Morse, the Plymouth State College student who recently lost a very courageous battle with cancer, during which she was forced to remain a full-time college student, against the advice of her doctors, or lose her health coverage. While this bill may only affect a few students each year, the positive way in which it will affect them is of far more significance. College students should not lose the

health coverage they have paid for just when they may need it the most. The Banks and Insurance Committee unanimously recommends that this legislation be adopted as amended and asks for your support. Thank you. Mr. President, may I speak also, briefly? We have with us Ann Marie Morse, who is the mother of Michelle Morse. She was introduced earlier to you. In the face of this horrible loss of her daughter, Ann Marie has taken on the system. And she has proceeded through every course of legislative process that is necessary to bring this bill to us today. We did not have any Senate sponsors on this bill. I have no idea why, but we didn't. But the Representatives in the House, particularly Will Infantine and John DeJoie, did a great job of moving it through the system. When the bill came to our committee, Banks and Insurance Committee embraced this bill. We changed it to make it stronger, last longer, and to give the kind of result that we want for our college students in the state of New Hampshire. We believe that this is the right thing to do. We believe it's the only thing to do when children are faced with whether or not they have to stay in college to keep their healthcare or whether they can have a medical leave, which is sanctioned by a doctor, so that they can get the healthcare they need, and then continue after they recover, back to college. I thank Mrs. Morse who patiently waited during the prior debate, knowing full well that it was on the schedule in advance, but she was more than willing to wait and stay with us. I ask for your unanimous support and I would ask for a division, Mr. President.

SENATOR MARTEL: Thank you very much, Mr. President. Mrs. Morse, thank you for being here today. This is Michelle's day. It's finally here. I heard about this. I found out that Michelle was actually one of my own constituents, a constituent that didn't use her real name. It took a couple of years before I could find out what the real name of Michelle was. For that delay, I apologize Mrs. Morse, 'cause this **TAPE INAUDIBLE** legislation could have been passed sooner. Michelle was a very valiant, strong individual, who fought not only her illness, but the right to be covered by insurance because she was in school. Her dream was to become a teacher just like her mother. Before she attempted to make sure that her cancer did not take over control of her life. She fought the battle better than probably I, I am sure I would, and many others who are here. Although that her doctors recommended that she reduce her course load, Michelle maintained her full-time schedule in order to keep the health insurance that she was receiving from her mother's policy, her mother's plan. This was required of her to be a full-time student or to pay about \$500 a month for premiums to be covered. This is a real shame. Her statement about how she felt about this really says it all. I quote, this is Michelle herself, "I'm scared for my mom and dad." She wrote on December...in December 2003 just after she was diagnosed, "I want this to be easier on them." Michelle's mother, as Senator Gottesman just noted a few minutes ago, has become a driving force to enact this law. And she's now running a nationwide organization, which she's asked me to help with, and I probably will help to do whatever I can for anyone, so that we don't have any more Michelle's or any one of the males' names that you want to think of, or anybody else's names, but Michelle is the key. Mr. President, I just want to end by saying I think this tells it all. This is statement from Mrs. Morse herself about Michelle, "That she is an angel on my shoulder." Thank you, Mrs. Morse, for being here. And I urge all my fellow Senators to please pass this unanimously. Thank you, Mr. President.

SENATOR FLANDERS: Thank you Mr. President. I want to congratulate Mrs. Morse, because I've been on the Banks and Insurance Committee for six years, and I've been chairman of it for four years, and this is the first time that a mandate has come out of that committee 6-0. So you did an excellent job and congratulations.

**Amendment adopted.**

SENATOR GOTTESMAN: Mr. President, I am informed that we are able to take a roll call vote and have each of the Senators sign it. That is something that would be very important to Mrs. Morse, if that is acceptable to the Senate.

SENATOR GATSAS (In the Chair): We can do that. Without objection, can we include Senator Green when he comes back?

SENATOR GOTTESMAN: Absolutely.

**The question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Foster.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

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

**Yeas: 23 - Nays: 0**

**Adopted.**

**Ordered to third reading.**

**HB 1125**, relative to the filing period for candidates in the presidential primary. Internal Affairs Committee. Ought to pass, Vote 4-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move HB 1125 ought to pass. This bill simply permits the Secretary of State to change the filing period for the Presidential Primary. The current law gives the Secretary of State flexibility to change the date of the primary itself, but not the flexibility to change the filing period. Clearly, as the date moves backwards, the filing period may also need to move as well. As we all know, our cherished first-in-the-nation primary is under attack. It is critical to the survival of the New Hampshire primary, that the legislature take the lead on protecting our primary by giving the Secretary of State the flexibility he needs. The Internal Affairs Committee urges your support for the ought to pass motion.

SENATOR BOYCE: I rise in favor of this bill. It is a very simple bill, and...but the reason for it is very complex and very necessary. There is a move by some other states to try and impede us from having the first-in-the-nation status on our primary, which we all consider to be very important. And I simply want to...I simply want to make the point that this gives the Secretary of State that one last little arrow in his quiver to make sure that somebody can't pull a stunt that would be too far out of line. If somebody decided to schedule their primary for instance, the first week in December of 2007, and he's required by our state law to move it to, in advance of that, well, that would mean that he would have to have the primary held immediately after the closing of the nomina-

tion, the filing of nomination papers. So this simply allows him the ability to adjust the filing date to match the primary as he needs to set it up. So this gives him that opportunity to act in our defense. Thank you.

**The question is on adoption of the committee report of ought to pass.**

**A roll call was requested by Senator Kenney.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

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

**Yeas: 23 - Nays: 0**

**Adopted.**

**Ordered to third reading.**

**HB 1217**, requiring the secretary of state to publish certain information on campaign contributions. Internal Affairs Committee. Ought to pass, Vote 3-0. Senator Flanders for the committee.

**SENATOR FLANDERS:** Thank you, Mr. President. I move House Bill 1217 ought to pass. This bill requires the Secretary of State **TAPE CHANGE** to publish on the Internet certain information on campaign contributions. Under this bill, any contribution of \$25 and higher would be reported. Currently, this type of information is not available for members of the House of Representatives. Please join the Internal Affairs Committee and vote House Bill 1217 ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1222-FN**, relative to unlawful voting. Internal Affairs Committee. Ought to pass, Vote 4-0. Senator Boyce for the committee.

**SENATOR BOYCE:** Thank you, Mr. President. I move that House Bill 1222 ought to pass. This bill makes it a Class B felony to vote in more than one state at the same election or to vote more than once for any office or any measure. This bill was requested by the Attorney General's Office in an effort to close a loophole in the current election fraud statutes. This bill clarifies current statute as it relates to the voting for President of the United States and by making it a Class B felony to vote in more than one state at the same election or to vote more than once for any office or measure, and gives the Attorney General's Office an additional six years to find, investigate, and prosecute these cases. Please join the Internal Affairs Committee and vote House Bill 1222 ought to pass. Thank you.

**SENATOR D'ALLESANDRO:** Thank you, Mr. President. Did you have a question? I'll accede to the question and then speak.

**SENATOR FOSTER:** As chair of the Judiciary Committee, my antennas always go up when we're imposing Class B felonies on folks. Those kind of crimes generally are...that kind of situation's put in place generally for very serious crimes like negligent homicide, aiding and abating suicide, felonious sexual assault, and clearly the right to vote is a very important vote, but I was wondering whether the committee considered a



misdeemeanor. And so, Senator Boyce, I thought that was...I should have said so, but he's the only one that's spoken. Did the committee consider a misdemeanor which could bring a year's incarceration, a fairly serious penalty?

SENATOR BOYCE: We did consider that it was a serious penalty, and we did consider that it was a serious crime. As you probably realize, the...one of the penalties for wrongful voting is actually in the Constitution. The framers of the Constitution felt that it was such an important crime, that the penalty, which is to prevent someone from voting or holding office if they have committed such a crime, they felt that was important enough to include it in the Constitution and we felt it was important enough to be a Class B felony.

SENATOR FOSTER: One follow up if I may? Do you know what the penalty is if somebody on the checklist or who's in the voting process checking people in, wrongfully refuses to allow somebody to vote? Is that also a Class B felony?

SENATOR BOYCE: I don't...I haven't looked into that. No, I don't know.

SENATOR FOSTER: Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise with great concern about this piece of legislation. In 1964, we passed the Civil Rights Act. In 1965, we passed the Voting Rights Act, because people had been denied the right to vote repeatedly across this country. Large blocks of people had been denied the right to vote. And, as I've mentioned in other conversations before this legislature, in certain towns in New Hampshire, if you didn't present your birth certificate or your passport, you were denied the right to register. This Class B felony, I mean, is everyone aware of what a Class B felony is? That's up to seven years in prison. Up to seven years in prison and a fine of over \$2,000. Now, (a) how is the Attorney General going to track these people down is the first question? How are you going to find out if a person voted one place and then voted in another place? So I think there is a cost related to that, and I think the number of occurrences that take place has to be de minimus. We've heard of one problem in New Hampshire in the last election. So my concern is about (a) the cost of following up on this, and b) we have worked hard to get people to vote. I mean one of the things that we take pride in, in New Hampshire, is voter participation. That's something that we have worked on for a number of years. We passed uniform polling hours in New Hampshire so that everybody would have an opportunity to vote. And now it seems to me, what we've done in these last couple of sessions is put a number of restrictions on people voting. Now a Class B felony is a very serious situation. A very serious situation. So think hard on this one. Thank you, Mr. President.

SENATOR FULLER CLARK: Yes, I have a question of Senator Boyce. Senator Boyce, could you tell me what the current situation is in statute for unlawful voting?

SENATOR BOYCE: I'm not sure exactly what you mean by the current statute. What about the statute did you...

SENATOR FULLER CLARK: Well, I guess what I would like to know is, is there not already a lesser penalty on the books for unlawful voting?

SENATOR BOYCE: What we were told by the Attorney General, Bud Fitch from the Attorney General's Office, was that there is a problem with the current statute in that it's not specific enough and it doesn't

spell out what voting in the same election means. And, in some cases that they looked at, they couldn't prosecute even though they thought that there was a problem. They couldn't prosecute because the determination was that, because they voted in that state for a Governor named Smith, and in this state for a Governor named Jones, because those were not the same person, they weren't sure that the statute clearly said that they had voted twice in the same election. There were other situations that were similar to that. So that is why this new section that they asked for is in here, the first part of this bill. And, that's at the Attorney General's request to make it so that, if someone has done this, and they believe that people have in the state, have done this, but they couldn't prosecute it. And one of the reasons was, the specific...the statute was not specific enough as to how you define "voting in the same election." So that section is clarifying the...clarifying that. The other part of this, part II, was also at the Attorney General's request. And that's...oh, the statute of limitations part. It gives them a longer period of time. I'm missing exactly where that is now. But it gives him a longer period of time to pursue someone. They hadn't...they were not able to pursue some of these cases because the statute of limitations had run out by the time it came to their attention that someone had done this. So he told us that it was his belief that these things had happened, but because of these loopholes, they were unable to prosecute and these are...these changes are to close those loopholes.

SENATOR FULLER CLARK: Follow up? Was there any discussion on a lesser penalty, for instance, a misdemeanor, and if not, why not?

SENATOR BOYCE: I don't believe that in the Senate there was any talk of changing it to a lesser penalty. The statement from the Attorney General's Office was that they did ask for this bill. This bill would close a loophole in current election fraud statutes. Currently, when you vote for the office of the President of the United States, you are in reality voting...this was his point, "You're in reality voting for an elector in the electoral college. This bill clarifies that you may not vote twice for the same office." The second part of the bill comes from the Election Law Committee. And it's an amendment that the Attorney General's Office supports. It would make it a felony to vote twice in New Hampshire. This is a statute of limitations issue. Currently, there is only one year available to investigate and prosecute these election law, election fraud cases. By changing it to a Class B felony, we would have seven years to find, investigate and prosecute. That's what the Attorney General's Office told us in the meeting, so.

SENATOR FULLER CLARK: Thank you.

SENATOR FOSTER: Thank you, Mr. President. In just a few minutes I decided to take a look and see what we're currently meting out as penalties. If we pass this bill today, what we're essentially saying is voting in two states, which is a bad thing, is worse than interfering with people who are trying to vote. That's a misdemeanor. By voting in New Hampshire and going back and trying to get another ballot in another place, that's also a misdemeanor. I don't know what it is that the Attorney General thinks is going on here, but it would seem to me that we ought to have some consistency, and that's why I always get concerned when we're applying criminal statutes. There ought to be some consistency with what we're doing here. I would think that interfering with somebody's right to vote is maybe worse than this. This crime is going to affect it if we have, I guess, they must be thinking about our campaign workers

who happen to live in another state and are here, and somehow I guess, we're all thinking they're voting in New Hampshire, and voting in Ohio, I guess last time. I guess that's what we're trying to stop. And that's a felony. But if somebody comes here and interferes with a voter, it's just a misdemeanor. We ought to have some consistency here, folks. I think this is not ready for prime time. And I think we ought to take another look at it. Thank you very much, Mr. President.

SENATOR HASSAN: Just a question of Senator Foster. That question is, I'm reviewing the hearing report and I am on Internal Affairs, but I wasn't here for the testimony during this bill. Are you aware that it appears that the Attorney General's Office did not request that the penalty be a Class B felony, just requested that we define the crime of voting twice? Are you aware of that?

SENATOR FOSTER: I was unaware of that and I therefore incorrectly criticized the Attorney General. I withdraw that. I do agree with what Senator Boyce said, it doesn't appear to be clear here that that would be a penalty. And if we want to make that a penalty at the misdemeanor level, I think that makes some good sense. Thank you.

**Recess.**

**Out of recess.**

SENATOR LARSEN: We have concerns about this bill, as you've heard, in that we believe that the penalty section was not adequately discussed. The Judiciary Committee that oftentimes hears the issues of...and tries to make sense of what is Class A/Class B felonies and misdemeanors, has the Judiciary Committee has just become aware of this in recent times, and we wanted to prepare a floor amendment that would address the serious concerns of, if there were to be a person who did unlawful voting by voting twice in different states, we believe that is a serious concern, not that we've seen any evidence of it, but certainly it is one which people have concerns about. But we believe that the idea that it is a Class B felony is one which we don't think is consistent with some of the other levels of Class B felonies. We would like time to prepare that floor amendment and would ask for some of that time. The only way to get that time is for a subsequent motion, which I believe someone in this group will make. We will ask for a roll call on gaining us a little time to prepare that floor amendment.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I want to speak just very, very briefly. Senator Larsen has given an iteration of why we have a concern. But let me tell you what my other concern is. We have a hundred unsolved murders in the state of New Hampshire. The Attorney General's Office is responsible for investigating major crimes. A hundred unsolved murders. If indeed we pass this with the Class B felony, we extend the time to seven years by which the investigation can take place, and we move resources from the direction of trying to chase killers to people who have a perception of voter fraud. Now, there is an inconsistency there. If we want to come forth with an amendment that makes it a misdemeanor, and I recognize that it's a problem, I mean it's a crime, the misdemeanor handles it without any question and the resources can be put in the proper direction to solving the murder cases that are out there that haven't been solved. I'd like to see some of those solved. Thank you, Mr. President.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I recognize that my concerns may be answered by someone, but I've read this

several times. I'm trying to read the language of the bill as presented to us. On line 26 and 27, it says "a person is guilty of a Class B felony if at any election such person purposely or knowingly commits an act specified in subparagraph 1-B." There is no 1-B. I don't know... There is a 1-B? May I ask a question of?

SENATOR GATSAS (In the Chair): You just spoke, Senator, so, maybe Senator Foster would like to speak for a second time or do you want to continue, Senator?

SENATOR BURLING: Well I'd just like to ask, 'cause he's got the book. Maybe that's the advantage he has over me.

SENATOR GATSAS (In the Chair): You're moving me into a position that I can't get to. But I hear the question, and I'm sure that somebody will answer the question.

SENATOR BURLING: I'll state my problem again more specifically. As I read the statute before us, independent of the background current legislation, the reference is to subparagraph I-B. In the statute before us, there is no 1-B. I cannot, therefore, as an ordinary human being, read this and understand what is intended by it.

SENATOR FOSTER: I think that I had Senator Burling's confusion, which is why I went out and got the statute. To be specific, what we're doing here is there's currently on the books, it's a misdemeanor to vote more than once for any office or measure. I think what the Attorney General's Office, in section one of the bill, is telling us. Well, that wasn't clear that that covered voting in multiple states. So what the House apparently did was adopted that language in one, and in two, section two, they have said in their wisdom, I'm talking about the House here, that if you vote more than once for any office or measure, that would be a Class B felony. But in the statutes today, it's a misdemeanor. But it would be a misdemeanor to apply for a ballot in a name other than your own. Boy, that seems kind of about the same sort of thing. Apply for a ballot in his or her name after he or she has voted. So I guess you could go vote in Nashua, go off to Manchester and apply for a ballot and vote again. And not sure that the crime there would be. I guess it might only be a misdemeanor. Vote for any office or measure at an election if such measure is not qualified to vote. So if you're not qualified to vote, and you vote, that's a misdemeanor, not a felony. But I guess if you vote here and vote in Ohio, it'll be a felony. I don't understand the rationality of that. That's my concern here. I think we ought to be consistent when we are applying penalties. I fail to see how voting in two states, if that's what we're trying to do here, is somehow worse than committing voter fraud right here in New Hampshire. I guess I'm more concerned about voter fraud here in New Hampshire than I am about how it might affect some other state's election. Thank you, Mr. President.

**The question is on the committee report of ought to pass.**

**Senator Burling moved to have HB 1222-FN laid on the table.**

**The question is on the motion to lay on the table.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**Yeas: 8 - Nays: 15**

**Motion failed.**

SENATOR BURLING: I'm sorry for that last vote, because it has been my expectation that, when one party or the other wanted to just take a period of time to try to get a better version together, we would offer each other that benefit. I am very puzzled by the issues raised by Senator Foster. I don't get why we would move, in terms of penalty, this particular crime, which is extremely serious. You all know I've been an election official for thirty-two years. I take it seriously. But why would this be more serious than using somebody else's identity to falsely get a ballot? If I remember the facts of the last two years correctly, the only verified criminal case that the Department of Justice has handled in this state, is a state in which a person wrongfully used the identity of another to get a ballot so that ballot could be cast. Why is this important than that misdemeanor, or are we just starting now a process in which we're going to upgrade the penalties for all of this? I would be much more at ease voting for this, which is an important bill, if its penalty provisions were consistent with what's in the rest of law, and that is Class A misdemeanors. For that reason, since I cannot persuade you, apparently, to give us the time to get an amendment together so we can have this vote following a competent debate, I guess I'm going to have to vote no, 'cause, though I think this is very serious, it is messing about with the criminal laws relative to election.

SENATOR CLEGG: Thank you, Mr. President. I stand here to tell the other party that I will join them in an amendment in the committee to make the rest of those crimes you just described also felonies. There is no reason to go for an amendment to make this a misdemeanor when we all know it was discussed as a felony. So if we have other provisions, such as applying for a ballot in another person's name, let's make that a felony, too. This is a serious crime. I heard how we said we worked hard for years to get people to vote. Well some people are working hard to get people to vote twice, and that should be a crime. It should be a crime to cross the state line and vote in my election. You talk about the cost. What's my vote worth? You think that I should sit here and allow someone else to come in and vote when they shouldn't be voting because my vote's not worth anything? It's not worth the time and effort it would take the Attorney General's Office to stop illegal voting? Is that what I'm hearing? Because the crime of murder is more important than my right to govern myself. I submit that they're worth equal. They're the same. We want to solve all the crimes, but that doesn't mean that you should take away my right to vote, and for my vote to be counted. And if we talk about interfering with voters, let's make that a Class B felony. Let's make sure that everybody's vote counts. Everybody has the right to vote. And those who try to cross lines to vote twice, and those who try to go from community to community to vote twice, let them be punished. And let them be punished severely, because it's not a joke. It's not taking a pack of gum. It's a very serious and very costly to the system. Thank you, Mr. President.

SENATOR HASSAN: Senator Clegg just answered the question. I withdraw it.

SENATOR BURLING: To speak a second time.

SENATOR GATSAS (In the Chair): To speak a third time. Do you have a question?

SENATOR BURLING: No.

SENATOR GATSAS (In the Chair): To speak? Go ahead.

SENATOR BURLING: I'm going to say this because I think it's very important that the record reflect what we're doing here. This is about party politics, it's not about the value of our law. Our law should be consistent. Our law should evaluate the bad acts that people do and apply the appropriate penalty. That's not just Gilbert and Sullivan. That is the value of our criminal law. Everybody in this room believes that crossing state line and voting twice is a very serious illegal act and should be properly punished, but there is some value to the consistency of penalties in our election law statutes. And one of my dear friends, close by me just said, give it up, sit down, and sort of shut up. Well, I think it's important for the record to show that some of us have concerns. I will join my colleague, Senator Clegg, the minute he's prepared to sit down and do a complete review of criminal acts affecting election law, and do a rational assessment of penalties for every criminal violation. I believe it is a serious crime to cross the state line and try to vote twice. I believe it is a very serious crime for an election officer to abuse his or her power to deter a person from voting. That's not a Class A felony or a Class B felony under this statute. Why are we doing one without the other? Well, it's about partisan politics and that's too bad.

**The question is on the committee report of ought to pass.**

**A roll call was requested by Senator Clegg.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**The following Senators voted No: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 15 - Nays: 8**

**Adopted.**

**Ordered to third reading.**

**Recess.**

**Out of recess.**

**HB 1128-FN**, relative to definition of teacher in the New Hampshire retirement system, and relative to approval of supplemental allowances. Banks and Insurance Committee. Ought to pass, Vote 5-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President. I move House Bill 1128 ought to pass. This bill will require employers of teachers in the retirement system to maintain the appropriate proof of either certification or license of their teachers. This legislation was a request of the Retirement System's Board of Trustees as a safety measure. They want to insure that only certified teachers are being enrolled under the teacher category in Group 1 of the Retirement System. This requirement will impact only the System's administration. It will have no fiscal impact

on state, county, or local revenue expenditures. The bill also changes the date for approval of cost of living adjustments by the Fiscal Committee from February 1<sup>st</sup> to no later than May 31<sup>st</sup> of each year. The Banks and Insurance Committee recommends passage of this legislation. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1334**, establishing a committee to study the effect on the unemployment compensation trust fund of employers with negative balance separate accounts. Banks and Insurance Committee. Ought to pass with amendment, Vote 4-0. Senator Barnes for the committee.

**Banks and Insurance**

**March 21, 2006**

**2006-1480s**

**09/03**

**Amendment to HB 1334**

Amend subparagraph I(b) of section 2 of the bill by replacing it with the following:

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

Senator Barnes moved to have HB 1334 laid on the table.

**Adopted.**

**LAI D ON THE TABLE**

**HB 1334**, establishing a committee to study the effect on the unemployment compensation trust fund of employers with negative balance separate accounts.

**HB 278**, relative to the alternative budget procedure in school administrative units. Education Committee. Inexpedient to legislate, Vote 4-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move HB 278 inexpedient to legislate. The bill attempts to revise the voting method to allow school districts to put their SAU budget on the school ballot on the second Tuesday in March, even if the school district is not an SB 2 district, thus still votes on the main school budget at the traditional school district meeting. Although the bill may have good intentions, the legislation could become confusing to the average voter because it establishes different types of voting systems. The Education Committee felt that the current town voting system is not a pressing problem and this bill is unnecessary at this time. Please join the Senate Education Committee and vote this bill inexpedient to legislate. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**HB 1362**, relative to permitting audio and video recording on school buses. Education Committee. Ought to pass, Vote 4-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. HB 1367 [sic] permits audio recording on school buses. Right now, school districts can videotape things on the school buses, but not authorized for audio recording. Before audio recordings can be made under this bill, the school board must approve it and the school district must hold a public hearing as well as notify parents of the recording device. Additionally, signs would be posted on the buses as warnings that recording was taking place, and finally, the

school board must put into place, policies with respect to custody of, or attention of, and access to, the tapes. The use of audio and video recording is an important tool to protect the safety of everyone on the school bus. By allowing audio recording on school buses, it will provide the school administrators accurate evidence of an incident that helps resolve disciplinary issues quickly and fairly while avoiding he said/she said disputes. The use of audio as well as video is consistent with existing state law. The people's safety and violence prevention act of 2000, which requires all people have the right to attend safe, secure and peaceful public schools. Please join the Senate Education Committee and vote this bill ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

Senator Boyce is in opposition to the motion of ought to pass on HB 1362.

**HB 1489**, relative to school emergency response plans. Education Committee. Ought to pass with amendment, Vote 3-1. Senator Eaton for the committee.

**Senate Education**

**March 28, 2006**

**2006-1540s**

**04/10**

**Amendment to HB 1489**

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect July 1, 2006.

SENATOR EATON: Thank you. House Bill 1489 encourages school districts to use the state office of Emergency Planning to develop and implement a site specific emergency response plan. The state office of Emergency Planning is skilled at helping school districts to coordinate with their local officials an appropriate plan to deal with an entire spectrum of potential disasters. The committee changes the effective date to July 1<sup>st</sup> so that the school districts can start fresh with this procedure in the fall.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 1497-L**, relative to certification by a superintendent regarding statistical reports. Education Committee. Ought to pass, Vote 4-0. Senator Eaton for the committee.

SENATOR EATON: Thank you. House Bill 1497 is relative to certification by a superintendent regarding statistical reports. Currently, the law requires that the superintendent and the chairman of the school board certify that the information in the statistical report that is sent to the Department of Education is correct to "the best of their knowledge". This bill would delete the requirement for the school board chairman and just require that the superintendent give the chairman a copy of the statistical report. Thank you.

**Adopted.**

**Ordered to third reading.**



**HB 1146**, establishing a committee to study renewable portfolio standards. Energy and Economic Development Committee. Ought to pass, Vote 3-1. Senator Burling for the committee.

### MOTION TO TABLE

Senator Burling moved to have HB 1146 laid on the table.

**Adopted.**

### LAIID ON THE TABLE

**HB 1146**, establishing a committee to study renewable portfolio standards.

**HB 1376**, relative to the duties of the legislative oversight committee on electric utility restructuring. Energy and Economic Development Committee. Ought to pass with amendment, Vote 3-1. Senator Odell for the committee.

### Energy and Economic Development

March 29, 2006

2006-1554s

06/09

### Amendment to HB 1376

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

AN ACT changing the legislative oversight committee on electric utility restructuring to the state energy policy oversight committee.

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

1 State Energy Policy Oversight Committee. Amend the introductory paragraph of RSA 374-F:5, I by replacing it with the following:

I. There is established a [~~legislative oversight committee on electric utility restructuring~~] **state energy policy oversight committee** consisting of 14 members as follows:

2 Annual Report. Amend RSA 374-F:5, III as follows:

III. The committee shall provide an annual report on or before November 1 to the governor, the speaker of the house, the senate president, the state library, and the public utilities commission [~~on the status of electric utility restructuring~~].

3 Duties. RSA 374-F:6 is repealed and reenacted to read as follows:

374-F:6 Duties. The committee shall have oversight on all matters related to energy policy and planning for the state of New Hampshire. It shall review the state's energy policies and make recommendations that address the changing energy environment in New Hampshire in a coordinated fashion. The committee shall:

I. Review the adequacy of electricity supplies to meet demand including, but not limited to, consideration of the following issues:

(a) Diversity of fuel supplies and availability.

(b) Reliability of service.

(c) Price to end-use customers.

(d) Divestiture of PSNH generation assets.

(e) Structure, effectiveness, and competitiveness of wholesale and retail markets.

(f) Protection of public health and the environment.

(g) Initiatives before the Federal Energy Regulatory Commission (FERC), such as the forward capacity market initiative.

II. Review energy efficiency opportunities and programs, in all forms of energy usage, including those funded by the system benefits charge.

III. Review issues related to low-income energy assistance programs.

IV. Monitor the regional greenhouse gas initiative.

V. Work on the promotion of renewable energy, both for electrical production and as a heat and transportation fuel source, and monitor the implementation of renewable portfolio standards in New England.

VI. Review the adequacy of natural gas supplies and fuel diversity within the state and region.

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

## 2006-1554s

### AMENDED ANALYSIS

This bill changes the committee on electric utility restructuring to the state energy policy oversight committee.

This bill requires the state energy policy oversight committee to review electricity supplies, energy efficiency opportunities, energy assistance programs, and the adequacy of natural gas supplies. This bill also requires the committee to monitor the greenhouse gas initiative and work to promote renewable energy.

### MOTION TO TABLE

Senator Odell moved to have HB 1376 laid on the table.

**Adopted.**

### LAIID ON THE TABLE

**HB 1376**, relative to the duties of the legislative oversight committee on electric utility restructuring.

**HB 1609-FN**, requiring a pilot project to estimate future water needs and availability. Energy and Economic Development Committee. Ought to pass, Vote 3-1. Senator Bragdon for the committee.

**SENATOR BRAGDON:** Thank you, Mr. President. I move HB 1609 ought to pass. The bill requires the Department of Environmental Services to conduct a pilot project to devise methods of estimating future water needs and availability. Currently, state laws do not adequately take into account our state's future water supply needs. This piece of legislation has potential to contribute to the management of water in New Hampshire and prepare for our future needs. Please join the Energy and Economic Development Committee in voting ought to pass. Thank you.

**SENATOR MARTEL:** Thank you very much, Mr. President. Senator Bragdon. Isn't it true, Senator Bragdon, that the licensing fees have come back to us regarding this piece of legislation, that there is no issue with that anymore?

**SENATOR BRAGDON:** I am not aware of anything about fees, at least...the bill that we have before us, as amended by the House, has nothing in it about fees.

**SENATOR MARTEL:** Okay. Thank you very much.

**SENATOR JOHNSON:** Question of Senator Bragdon. Senator Bragdon, in the discussion on this bill, was there any mention of the three commissions that we already have dealing with water issues and did the Department of Environmental Services weigh in on this bill?

**SENATOR BRAGDON:** I believe the DES did... Thank you for the question. I believe DES did weigh in on the bill, and they were supportive of it as I recall, feeling they already had the information that would be

needed to do this, and that it wouldn't be terribly difficult. That mostly ongoing work focused on current situations and this was really focusing on future issues. That's my recollection.

SENATOR JOHNSON: Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1663-FN-L**, relative to the licensing fee for motor vehicle recycling yards. Energy and Economic Development Committee. Ought to pass, Vote 3-1. Senator Odell for the committee.

SENATOR ODELL: Thank you, Mr. President. I move House Bill 1663-FN ought to pass. This bill allows a local governing body to charge an annual licensing fee of not more than \$250 for automobile recycling yards. The current fee, in place for forty years, does not provide enough incentive for towns to inspect new recycling yards or to enforce current licenses. This legislation enables a town to decide on a fee that will allow them the ability to inspect. Please join the Energy and Economic Development Committee in voting ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 254-FN**, establishing lifetime licenses for bow and arrow, muzzle loading firearm, and crossbow licenses. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Eaton for the committee.

SENATOR EATON: Thank you. House Bill 254 will establish lifetime licenses for bow and arrow, muzzle loading firearm, and crossbow licenses. The fees will be determined by an actuary. Fish and Game Department already offers lifetime hunting, fishing, or combination hunting and fishing licenses so there is no reason additional lifetime licenses cannot be added. House Bill 254 mirrors the existing statute for lifetime licenses and gives the Department another tool to make license sales attractive. Thank you.

SENATOR FULLER CLARK: I have a question of Senator Eaton. Senator Eaton, do you have a sense to what degree life time licenses might actually be losing the state money because people only get those license once rather than every year?

SENATOR EATON: Director Perry spoke about that specifically. There's more chance that the person has a license might opt to not do an annual license a number of times, and the lifetime license will more than make up for what they opt not to buy. So he said, in the long run, the money that they put into a special account will collect interest and they do much better that way.

SENATOR FULLER CLARK: Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1140**, establishing a committee to study the establishment and enforcement of protection zones for nesting loons. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Johnson for the committee.

**Environment and Wildlife****March 22, 2006****2006-1515s****10/04****Amendment to HB 1140**

Amend subparagraph I(b) of section 2 of the bill by replacing it with the following:

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

**MOTION TO TABLE**

Senator Johnson moved to have HB 1140 laid on the table.

**Adopted.**

**LAIID ON THE TABLE**

**HB 1140**, establishing a committee to study the establishment and enforcement of protection zones for nesting loons.

**HB 1182-FN**, relative to the limited commercial lobster license fees. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Hassan for the committee.

**Environment and Wildlife****March 22, 2006****2006-1510s****10/05****Amendment to HB 1182-FN**

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect January 1, 2007.

SENATOR HASSAN: Thank you, Mr. President. I move House Bill 1182 ought to pass with amendment. This legislation will restructure the commercial lobster license in New Hampshire. New lobster licenses will be limited to a hundred traps and cost \$103. The cost of a limited permit for six hundred traps will be raised to \$175. The full commercial license for 1,200 traps remains the same at a cost of \$300. HB 1182 will help to protect existing New Hampshire lobstermen by preventing people from establishing residency in New Hampshire and immediately beginning to fish six hundred traps. The new fees and language are universally agreed to by the lobstermen. The committee amendment changes the effective date of the legislation to January 1, 2007. The Environment and Wildlife Committee asks for your support on the motion of ought to pass with amendment. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 1294**, relative to antique snowmobiles. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Eaton for the committee.

**Environment and Wildlife**  
**March 22, 2006**  
**2006-1516s**  
**10/03**

**Amendment to HB 1294**

Amend RSA 215-C:1, II as inserted by section 1 of the bill by replacing it with the following:

(c) An antique motor vehicle converted to travel over snow, manufactured prior to 1940.

SENATOR EATON: Thank you. I move House Bill 1294 ought to pass with amendment. Legislation was passed last year that changed the definition of a snowmobile to a vehicle that is not wider than fifty-four inches and does not weigh more than 1,200 pounds. This definition excludes original snowmobiles made from Model T Fords. This type of snowmobile was first patented in New Hampshire, so it should be recognized as an antique. The new criteria for an antique snowmobile will include a snowmobile manufactured prior to 1969, a snowmobile twenty-five years old or more, or an antique vehicle converted to travel over snow manufactured prior to 1940. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 1420-FN**, prohibiting remote control and Internet hunting and relative to exceptions to the prohibitions on the sale of firearms to minors and the furnishing of arms to persons under 16. Environment and Wildlife Committee. Ought to pass with amendment, Vote 4-0. Senator Eaton for the committee.

**Environment and Wildlife**  
**March 29, 2006**  
**2006-1551s**  
**10/01**

**Amendment to HB 1420-FN**

Amend the bill by replacing section 4 with the following:

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

SENATOR EATON: Thank you. I move House Bill 1420 ought to pass with amendment. This legislation will ban the practice known as internet hunting. Many of the states have banned or in the process of banning this activity. And for those of you that were not in committee hearing, it's where someone could be in Europe looking at their computer screen and there could be a weapon set up in a field out in Utah, and that person can guide that gun, whomever makes a sale in Utah, guide the gun, point at an animal, push a button and it would be shot. Current law prohibits people from supplying minors with firearms, and this would be an amendment to this bill. However, this has stopped them from participating in hunting education programs, 4-H events, Boy Scout events, and other firearms instructions programs for minors. House Bill 1420 will exempt instructors of training programs and individuals supervising minors using firearms during a lawful event or activity from this law. The committee amendment changes the effective date upon passage so that hunter and firearm education classes can resume as soon as possible.

SENATOR BOYCE: Actually, I wanted to offer a floor amendment which apparently isn't here yet somehow. I'll wait and we can discuss this and I'll see if I can find where the amendment is.

### MOTION TO TABLE

Senator Eaton moved to have HB 1420-FN laid on the table.

**Adopted.**

### LAIID ON THE TABLE

**HB 1420-FN**, prohibiting remote control and Internet hunting and relative to exceptions to the prohibitions on the sale of firearms to minors and the furnishing of arms to persons under 16.

**HB 1455-FN-A**, relative to the disposal of video display devices. Environment and Wildlife Committee. Ought to pass, Vote 4-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Mr. President. I move House Bill 1455 ought to pass. This legislation will prohibit the disposal of video display devices in solid waste landfills or incinerators after July 1, 2007. Hundreds of thousands of televisions and computer monitors are thrown away each year. These video display devices contain lead and mercury which threaten public health. The average computer monitor or television takes up 2.5 cubic feet of space and contains eight or more pounds of lead. Removing these devices from the waste stream will reduce groundwater, surface water and air pollution. In addition, there are sixteen **TAPE CHANGE** New Hampshire companies that will accept these devices. The Environment and Wildlife Committee asks for your support on the motion of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

Senator Letourneau (Rule #42) on HB 1455-FN-A.

Senator Barnes is in favor of HB 1455-FN-A.

**HB 1646-FN**, relative to the use of a leashed tracking dog in the recovery of a wounded deer, moose, or bear. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 1715 [sic] ought to pass. House Bill 1715 (sic) would increase... Wait a minute. Excuse me. Yup, thanks a lot. We'll try it again if I may, Mr. President? Thank you very much for giving me a second chance. I don't get that too often. I move House Bill 1646 ought to pass. This legislation will allow hunters to use a leashed hunting dog to recover wounded game such as deer, moose or bear. Leashed dog tracking has become more acceptable in the United States over the years. Maine, Vermont, and New York allow leashed dogs to be used to recover game. The Fish and Game Department will regulate this activity with licensing, notification, reporting and leashing requirements that will assure the dogs are being used responsibly. The Environment and Wildlife Committee asks for your support on the motion of ought to pass, and remember this is a humane deal for those poor animals that are wounded out there. This helps take care of them so they aren't suffering after they're wounded and wander off. The committee would like you to support the vote of ought to pass.

**Adopted.**

**Ordered to third reading.**

**MOTION TO REMOVE FROM THE TABLE**

Senator Boyce moved to have HB 1420-FN removed from the table.

**Adopted.**

**HB 1420-FN**, prohibiting remote control and Internet hunting and relative to exceptions to the prohibitions on the sale of firearms to minors and the furnishing of arms to persons under 16.

**The question is on the adoption of the committee amendment (1551).**

**Amendment adopted.**

Senator Boyce offered a floor amendment.

Sen. Boyce, Dist. 4

**April 6, 2006**

**2006-1674s**

**10/04**

**Floor Amendment to HB 1420-FN**

Amend RSA 159:12, II(a) as inserted by section 2 of the bill by replacing it with the following:

(a) Fathers, mothers, *grandparents*, guardians, administrators or executors who give a revolver to their children or wards or to heirs to an estate.

Amend RSA 644:15, II(a) as inserted by section 3 of the bill by replacing it with the following:

(a) Fathers, mothers, *grandparents*, or guardians of such children.

SENATOR BOYCE: Thank you. I now have the floor amendment, which my secretary was literally running through the halls with as I was spilling my water on the table. This is a very simple amendment. We currently allow fathers, mothers, guardians, administrators or executors to give guns or ammunition to children. And I was thinking back and my grandfather was the one that gave me my guns. And I just thought that, in his honor, if nothing else, I wanted to add grandparents to the list of people who are exempted from the prohibition of giving firearms. So if you'd please vote with me on this amendment, I'd be happy.

SENATOR ESTABROOK: Thank you. A question of Senator Boyce. I noticed in other places in the bill, you have used the words "provided the minor's parent or legal guardian who's granted permission." Would your floor amendment allow a grandparent to give a weapon to a child against the wishes of the parents? It certainly reads that way.

SENATOR BOYCE: All I've done in this amendment is simply add in the word grandparents to the same list that has guardians and administrators and executors of estates. So I figure...my thinking is that, if a grandparent can...a grandparent should have the same standing as the administrator of an estate. I assume that, if a parent doesn't want it to happen, it won't happen, so I'm not...I just don't want it to be a violation for a grandparent to do it.

SENATOR ESTABROOK: Thank you, Mr. President. I'm unfortunately aware of situations where grandparents and parents are not in a cooperative relationship, and it does concern me that in such a case, a grandparent might be doing something without the permission or even the knowl-

edge of the parent. And I think this body, if anything, has always stood for parents' informed consent, and it seems a little strange to me that in this instance we would ignore that issue. Thank you, Mr. President.

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 1747-FN**, establishing a New Hampshire healthy tidal waters and shellfish protection program and making an appropriation therefor. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Mr. President. I move House Bill 1747 ought to pass. The intent of this legislation is to help continue in effect the New Hampshire Healthy Tidal Waters and Shellfish Protection Program. Since its creation in 1999, this program has been funded with federal money. However, federal funds for the program will decrease by about \$100,000 next year. This legislation appropriates \$175,000 to the program. The program promotes healthy seafood and helps maintain a healthy seashore. In doing so, it benefits the public's health and the tourism economy on the seacoast. The Environment and Wildlife Committee asks for your support on the motion of ought to pass. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 489-FN**, relative to disclosing an ownership interest in certain health care facilities and businesses. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 4-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 489 inexpedient to legislate. In committee, the testimony revealed that another House Bill, House Bill 1274, addresses the same issue, and that bill will be heard on April 25<sup>th</sup>, in the Senate Health and Human Services Committee. The only differences between the two bills is that House Bill 1274 allows the licensing board to consider a range of penalty options consistent with that particular board's guide lines, while the bill we are considering now, House Bill 489, only allows for the suspension of the license. Testimony demonstrated that the penalty language in House Bill 1274 is preferable and that the committee recommends House Bill 489 inexpedient to legislate. Thank you, Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**HB 1185**, relative to Volunteer NH. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 1185 ought to pass. Under House Bill 1185, all board members of Volunteer New Hampshire will serve three-year terms. The bill also changes the executive director's status from a four-year term to that of an employee at will, and eliminates the Advisory Council to Volunteer New Hampshire because the board is already represented by a broad group of organizations and constituencies. The bill also repeals a section of law specifying that the executive director shall receive no state compensation.



While there are no plans to ask for compensation, the board would like that option if future opportunities arise. The committee recommends ought to pass on House Bill 1185. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 1264**, establishing an advisory committee to study the information practices act and establishing a temporary moratorium on reports filed under the information practices act. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Flanders for the committee.

#### **MOTION TO TABLE**

Senator Flanders moved to have HB 1264 laid on the table.

**Adopted.**

#### **LAID ON THE TABLE**

**HB 1264**, establishing an advisory committee to study the information practices act and establishing a temporary moratorium on reports filed under the information practices act.

**HB 1298**, establishing a study committee to evaluate disciplinary procedures of the board of medicine. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 4-0. Senator Barnes for the committee.

#### **Senate Executive Departments and Administration**

**March 30, 2006**

**2006-1592s**

**10/05**

#### **Amendment to HB 1298**

Amend paragraph I(b) of section 2 of the bill by replacing it with the following:

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

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 house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

#### **MOTION TO TABLE**

Senator Barnes moved to have HB 1298 laid on the table.

**Adopted.**

#### **LAID ON THE TABLE**

**HB 1298**, establishing a study committee to evaluate disciplinary procedures of the board of medicine.

**HB 1498**, establishing a risk management unit within the department of administrative services and relative to the rulemaking authority of the department of administrative services. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that House Bill 1498 be ought to pass. And, since I don't have any floor remarks, I'll keep it short. Please join the committee in voting ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1517-FN**, relative to membership on the board of medicine and the medical review subcommittee. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 1517 ought to pass. Currently, there are two public members on the Board of Medicine and one on the sub-committee. House Bill 1517 will make it so that there are three public members on the Board, increasing the likelihood that at least one public member will be present at the meetings. The sub-committee, which fulfills a disciplinary role for the Board, would see its public membership increased from one member to three. The public members will add a commonsense consumer oriented viewpoint as well as open up the process just a bit. The bill was supported by the New Hampshire Medical Society, and the committee recommends ought to pass on House Bill 1517. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 1579**, relative to membership of the air resources council. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 1579 ought to pass. The bill will help address a problem Air Resources Council has relative to filling a position on the Council that is currently designated for a physician. Historically, the Council has had great difficulty finding a physician who is willing to fill this volunteer position. House Bill 1579 permits a healthcare professional with the necessary expertise to serve on the Air Resources Council instead of a licensed practicing physician. While the Council was actually able to fill the position since the bill was filed last fall, the bill is still needed, as the Council expects the position to be difficult to fill when it becomes vacant again. The committee unanimously recommends ought to pass on 1579, and we thank you for your support.

**Adopted.**

**Ordered to third reading.**

**HB 1633-FN**, relative to membership, eligibility, and financing of the New Hampshire retirement system. Executive Departments and Administration Committee. Ought to pass, Vote 3-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President. House Bill 1633 is a result of recommendations produced by an audit of the retirement system. This bill makes various technical changes to the New Hampshire Retirement System, including the date of which the Fiscal Committee may approve COLAs from February 1<sup>st</sup> to May 31<sup>st</sup> of each year. This change will allow four more months to better analyze the returns

of the system as attained. This bill is needed also in order to stay in compliance with the IRS code and tax purposes. The committee recommends ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1715-FN**, relative to funding of the professional assistance program for dentists. Executive Departments and Administration Committee. Ought to pass, Vote 3-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 1715 ought to pass. House Bill 1715 would increase the fees paid for dentist license applications and renewals by \$30 or \$15 per year. The funds would be used to support a professional assistance program for dentists and hygienists with substance abuse or psychological problems. Current statutes permit the Board of Dental Examiners to require a dentist with a substance abuse or a psychological problem to participate in a professional assistance program. While the New Hampshire Medical Society currently offers a similar program that is open to New Hampshire dentists, and the New Hampshire Dental Society has allocated funds so that dentists could assess the program, now is a good time to establish a program specifically for dentists and hygienists. The committee unanimously recommends ought to pass, and we thank you for your support.

**Adopted.**

**Ordered to third reading.**

**HB 1768-FN**, establishing a committee to study the effects of rescinding the charter of the New Hampshire Bar Association, and relative to the regulation of attorneys by the supreme court. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 4-0. Senator Flanders for the committee.

**Senate Executive Departments and Administration**

**March 30, 2006**

**2006-1581s**

**10/05**

**Amendment to HB 1768-FN**

Amend subparagraph II(b) of section 1 by replacing it with the following:

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

**MOTION TO TABLE**

Senator Flanders moved to have HB 1768-FN laid on the table.

**Adopted.**

**LAID ON THE TABLE**

**HB 1768-FN**, establishing a committee to study the effects of rescinding the charter of the New Hampshire Bar Association, and relative to the regulation of attorneys by the supreme court.

**HB 349**, relative to placement and removal of political advertising. Finance Committee. Ought to pass with amendment, Vote 5-0. Senator Morse for the committee.

Senate Finance  
 March 30, 2006  
 2006-1584s  
 03/05

### Amendment to HB 349

Amend the bill by replacing section 1 with the following:

1 Placement and Removal of Political Advertising. Amend RSA 664:17 to read as follows:

664:17 Placement and Removal of Political Advertising. No political advertising shall be placed on or affixed to any public property including highway rights-of-way or private property without the owner's consent. ~~[The earliest date on which political advertising may be placed or affixed shall be the last Friday in July prior to a state primary.]~~ All political advertising shall be removed by the candidate no later than the second Friday following the election unless the election is a primary and the advertising concerns a candidate who is a winner in the primary. ***Signs shall not be placed on or affixed to utility poles or highway signs. Political advertising may be placed within state-owned rights-of-way as long as the advertising does not obstruct the safe flow of traffic and the advertising is placed with the consent of the owner of the land over which the right-of-way passes.*** No ***unauthorized*** person shall remove, deface, or knowingly destroy any political advertising which is placed on or affixed to ***public property*** or any private property except the owner of the property or a law enforcement officer removing improper advertising~~;~~ ~~provided, however, that, before a law enforcement officer removes any advertisement, he shall notify the candidate that it is improper, and allow the candidate 24 hours to remove the advertisement himself].~~ ***Political advertising placed on or affixed to any public property may be removed by state, city, or town maintenance or law enforcement personnel. Political advertising removed prior to election day by state, city, or town maintenance or law enforcement personnel shall be kept for one week at a place designated by the state, city, or town so that the candidate may retrieve the items.***

SENATOR MORSE: Thank you, Mr. President. I move HB 349 ought to pass with amendment. This bill addresses the removal of political advertising placed on public property and allows for the placement of signs on state-owned property within certain specifications. The bill, as sent to the Finance Committee, had a fairly large fiscal impact: \$120 million in '07 through '09, with a smaller impact in 2010. The fiscal impact was a direct result of the bill striking language that allows the candidate to remove political signs following the election. The committee amendment restored that language, which eliminated the burden on the Department of Transportation to remove the signs, which effectively eliminated the fiscal impact.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 718-FN-A**, relative to a state active duty death benefit for activated members of the New Hampshire national guard and making an appropriation therefor. Finance Committee. Ought to pass with amendment, Vote 6-0. Senator Clegg for the committee.

**Senate Finance**  
**March 30, 2006**  
**2006-1582s**  
**08/03**

**Amendment to HB 718-FN-A**

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

1 Findings. The general court finds that:

I. Members of the New Hampshire army national guard and the New Hampshire air national guard should have the same life insurance protection when called to state active duty as they are provided when called to federal active duty.

II. Reimbursement for voluntary Serviceman's Group Life Insurance (SGLI) has proven difficult to administrate, and costs could reach millions of dollars per month.

III. Only members of the New Hampshire army national guard and New Hampshire air national guard take an oath to the governor of New Hampshire, and are on call for state protection and disaster assistance to the people of our state.

IV. The state shall establish a \$100,000 death benefit, payable upon approval of the joint legislative fiscal committee, for members of the New Hampshire army national guard and New Hampshire air national guard when called to state active duty, which is equal to the death benefit when called to federal active duty.

2 Subdivision Heading. Amend the subdivision heading preceding RSA 110-B:37 to read as follows:

Pay and Allowances; *State Active Duty Death Benefit*

3 New Section; State Active Duty Death Benefit. Amend RSA 110-B by inserting after section 37 the following new section:

110-B:37-a State Active Duty Death Benefit. There is established a death benefit in the amount of \$100,000 for each activated New Hampshire army national guard or New Hampshire air national guard member who dies while on state active duty or as the result of injuries incurred on state active duty. This death benefit shall be paid by the adjutant general, with the approval of the fiscal committee of the general court, on the warrant of the governor, out of any money in the treasury not otherwise appropriated.

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

**2006-1582s**

**AMENDED ANALYSIS**

This bill requires the state to fund a \$100,000 active duty death benefit, payable upon approval of the joint legislative fiscal committee, for each New Hampshire citizen serving in the New Hampshire national guard and activated.

SENATOR CLEGG: Thank you, Mr. President. I move House Bill 718 ought to pass with amendment. Legislation would pay a \$100,000 death benefit to New Hampshire citizens serving in the New Hampshire National Guard when they're activated. Currently, if a Guard member dies while serving after being called to duty from the Governor, the family members would receive workers' comp benefits. This bill will allow the family to receive an additional \$100,000 benefit. This happens so few times that the committee felt it would be prudent to have the funds appropriated by the legislature for each occurrence. The original bill had requested a \$1 million fund, but there's no sense in leaving the money

sitting there when we, as a legislature, can approve each individual case. Does not change policy, still provides a family of a national guardsman killed when called to duty a \$100,000 death benefit. In recognition of the great service of the New Hampshire that National Guardsmen provide, please join me in supporting the committee amendment and the bill.

SENATOR BARNES: Not a question, Mr. President. Just a quick comment. I want to thank the Finance Committee. This is something that is needed in the times that we are in right now, and thank you for the support of the whole body. This is very important to the Guard families throughout the state of New Hampshire. Thank you, committee.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 1108**, relative to the transfer of funds among PAU's within a department. Finance Committee. Ought to pass, Vote 6-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move House Bill 1108 ought to pass. This bill allows department heads to make a transfer of funds up to \$2,500 without the approval of the Fiscal Committee. The Business Administrator at the Department of Administrative Services monitors these actions, to ensure this is not abused by several transfers occurring within close proximity. A transfer for the Veterans' Council in the amount of \$50 required the signatures of the department head, the business supervisor, the Governor, and the chairman of the Fiscal Committee. This legislation is designed to eliminate bureaucracy and streamline the process so situations like these can be avoided.

Senator Clegg offered a floor amendment.

Sen. Clegg, Dist. 14

Sen. Larsen, Dist. 15

**April 6, 2006**

**2006-1668s**

**05/10**

### **Floor Amendment to HB 1108**

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

**AN ACT** relative to the transfer of funds among PAUs within a department and relative to the temporary provision of assistance to persons eligible for both Medicaid and Medicare services and extending the appropriation therefor.

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

2 Supplemental Pharmacy Assistance; Appropriation Extended. Amend 2006, 2:2 to read as follows:

2:2 Appropriation; Supplemental Pharmacy Assistance. Up to the sum of \$500,000 for the [fiscal year] *biennium* ending June 30, [2006] **2007** is hereby appropriated to the department of health and human services, for the purpose of providing supplemental pharmacy assistance. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated. If the commissioner determines additional funds are needed to provide the supplemental phar-

macy assistance the commissioner, with the approval of the legislative fiscal committee, may expend other funds appropriated to the department for this purpose.

3 Supplemental Pharmacy Program Extended; Prospective Repeal Extended. Amend 2006, 2:4, I to read as follows:

I. Section 3 of this act shall take effect [~~March 1, 2006~~] **July 1, 2007**.

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

**2006-1668s**

#### AMENDED ANALYSIS

This bill permits departments to transfer up to \$2,500 among the department's PAUs without prior approval of the fiscal committee and the governor and council.

The bill also extends the authority and appropriation for the supplemental pharmacy assistance program providing temporary assistance in the purchase of pharmaceuticals by persons eligible for services under both Medicaid and Medicare.

SENATOR CLEGG: I move a floor amendment.

SENATOR GATSAS (In the Chair): Floor amendment 1668. You may speak to the amendment as it's being passed out.

SENATOR CLEGG: Thank you, Mr. President. For the record, this is an amendment by both Senator Larsen and myself to represent that it's a bipartisan effort. The amendment extends the action that the Senate took in January of 2006 under Senate Bill 393, which provides for the financial assistance to dual eligible beneficiaries in New Hampshire. There are no new funds. This is what we all know as the Medicaid Part D and we are still seeking reimbursement from the federal government. But this has worked well, we haven't used all the money, and there are still folks out there who need the assistance. So this amendment would allow Health and Human Services to continue with the original amount of money and continue to assist anyone who got caught up in Medicare Part D, and hasn't had a resolution yet. Thank you.

SENATOR MARTEL: Senator Clegg. Thank you, Mr. President. Recently, I had a discussion with Congressman Bradley regarding this matter. He was under the impression that the state had received some of the money from the federal government to cover some of these, you know, the program that we extended to protect the people who were receiving Medicare Part D. Did I just hear you right when you said that the federal funds have not come in yet to cover that?

SENATOR CLEGG: As far as I know, Senator, we have not yet been accounted for any funds coming from the federal government. Whether there is a check on its way. I do not doubt anything Congressman Bradley says. He's probably one of the best people we have down in Washington. But what I know is that this continues an existing appropriation, so that regardless of what the federal government does, we can continue to assist the seniors and those who need the assistance here in New Hampshire.

SENATOR MARTEL: Okay. Thank you.

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 1154-FN**, relative to eligibility for special number plates for veterans. Finance Committee. Ought to pass, Vote 6-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move House Bill 1154 ought to pass. This bill clarifies eligibility for special number plates for veterans. The only additional cost would be in the creation of a new form. There are no funds appropriated and the costs will be absorbed by the Department of Safety. The Finance Committee asks for your support for the motion of ought to pass.

SENATOR BARNES: Thank you, Mr. President. Senator Morse, this piece of legislation doesn't change the position that a veteran to get this plate has to be an honorable discharge?

SENATOR MORSE: Not that I know of, Senator.

SENATOR BARNES: I'm sorry I didn't bring that up earlier, but all of a sudden I woke up.

SENATOR MORSE: I just looked at it for the money coming in to be honest. So you may want to.

SENATOR BARNES: Could we go on...could we table this for just a minute and let me look at this? I want to make sure that this is still honorably discharged veterans get this. Thank you.

### **MOTION TO TABLE**

Senator Boyce moved to have HB 1154-FN laid on the table.

**Adopted.**

### **LAIID ON THE TABLE**

**HB 1154-FN**, relative to eligibility for special number plates for veterans.

**HB 1179**, repealing a requirement that the department of transportation spend a certain amount for litter removal that is determined based on fees paid to the liquor commission. Finance Committee. Ought to pass, Vote 6-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I think we could have moved Finance as a consent calendar, but I'll do them individually. I move House Bill 1179 ought to pass. The Department of Transportation recently learned of the provision requiring the Department to spend a certain amount of money on litter removal. It requires the Department to spend \$800,000 for litter removal. This is no longer necessary because they have implemented the Adopt-A-Highway Program and they already spend \$1 million per year on the litter removal. The Finance Committee asks for your support for ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 1228-FN**, relative to the sale or lease of state-owned real estate. Finance Committee. Ought to pass, Vote 6-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move House Bill 1228 ought to pass. The legislation increases the administrative fee associated with selling property to \$1,100. The current administrative fee of \$500 does not cover the actual administrative cost of transferring or selling property. The Long Range Capital Planning Committee completed a study



that showed administrative costs ranging between \$1,000 and \$1,100 for the disposal of property. This bill does not address leasing; only the disposal of property. The Finance Committee asks for your support for the motion of ought to pass.

Senator Gallus offered a floor amendment.

Sen. Gallus, Dist. 1

**April 3, 2006**

**2006-1601s**

**05/10**

### **Floor Amendment to HB 1228-FN**

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

AN ACT relative to the sale or lease of state-owned real estate and relative to penalties under the real estate practice act.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 Real Estate Practice Act; Penalty for Practicing Without a License.

Amend RSA 331-A:34 to read as follows:

331-A:34 Penalty. Any person acting as a real estate broker or real estate salesperson, without a license [~~or violating any of the provisions of this chapter~~], shall be guilty of a class A misdemeanor if a natural person, or guilty of a felony if any other person.

**2006-1601s**

### **AMENDED ANALYSIS**

This bill requires state agencies to charge an administrative fee for costs incurred by the agency in preparing to sell or lease real property.

The bill also limits the misdemeanor penalty under the real estate practice act to cases in which a person is acting as a real estate broker or salesperson without a license.

SENATOR GALLUS: Mr. President, I'd like to offer a floor amendment.

SENATOR GATSAS (In the Chair): 1601s has been proposed. Is there any discussion on the amendment? Senator Gallus.

SENATOR GALLUS: I'd like to speak to it. Mr. President, basically this floor amendment is a correction to the Real Estate Practices Act. When we changed section 30...331-A:34, we accidentally added the words "in violating any provision of this chapter." Those are the words we're removing with this particular amendment. It'll eliminate the major penalties for minor offenses or minor errors and disclosures or other similar minor paperwork. Both the Real Estate Commission and the real estate industry are in agreement on this change. Thank you.

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

### **MOTION TO REMOVE FROM THE TABLE**

Senator Barnes moved to have HB 1154 removed from the table.

**Adopted.**

**HB 1154-FN**, relative to eligibility for special number plates for veterans.

**The question is on the committee report of ought to pass.**

SENATOR BARNES: My concern has been addressed, and I appreciate the opportunity to take a look at it.

**Adopted.**

**Ordered to third reading.**

**HB 1418-FN**, relative to road toll refunds. Finance Committee. Ought to pass, Vote 5-1. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move House Bill 1418 ought to pass. This bill will allow individuals applying for road toll refunds to direct the money to either the Navigation Safety Fund or the Lake Restoration and Preservation Fund. These additional funds will better enable Marine Patrol to accomplish all that they need to do and will also help Environmental Services to better protect our lakes and ponds from exotic plants. Both the Department of Safety and the Department of Environmental Services are in support of this bill. The Finance Committee asks your support of the motion of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1724-FN**, relative to compensation and benefits for reserve and national guard members who are state employees. Finance Committee. Ought to pass with amendment, Vote 6-0. Senator D'Allesandro for the committee.

**Senate Finance**

**March 30, 2006**

**2006-1585s**

**09/01**

**Amendment to HB 1724-FN**

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

AN ACT relative to compensation and benefits for reserve and national guard members who are state employees and amending certain capital appropriations to the adjutant general.

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

2 Capital Appropriations; Adjutant General. Amend 2003, 240:1, I, A and B, as extended by 2005, 259:25 to read as follows:

A. Armory Renovations, <i>Disposals, or Land Acquisition</i>	\$ <del>[300,000]</del> <b>1,800,000</b>
B. STARC Army - Concord	9,033,100
Less Federal	<del>[-6,774,825]</del> <b>8,274,825</b>
Net state appropriation	
subparagraph B	<del>[2,258,275]</del> <b>758,275</b>

3 Capital Appropriations; Land Acquisition. Amend 2003, 240:5 to read as follows:

240:5 Land Acquisition. Any land acquired under the appropriations made in sections 1, 2 and 3 of this act, if any, as may be acquired under the appropriation except such land if any as may be acquired for the water resources board *or the adjutant general*, shall be purchased by the commissioner of the department of transportation with the approval of governor and council.

4 Effective Date.

- I. Sections 2-3 of this act shall take effect July 1, 2006.
- II. The remainder of this act shall take effect upon its passage.

**2006-1585s**

### AMENDED ANALYSIS

This bill requires the state to pay the difference between the military pay and state salary for a New Hampshire state employee who is a member of a reserve or the national guard and is called to active duty. The bill also continues the state benefit package and retirement system contributions for such state employees during the period of their military leave.

The bill also changes certain capital appropriations to the adjutant general.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move House Bill 1724 ought to pass with amendment. This bill requires the state to pay the difference between the military pay and the state salary for a New Hampshire state employee who is a member of the Reserves or National Guard and is called to duty. This has been done in the past by executive order from the last two governors. The committee amendment also changes certain appropriations to the Adjutant General, at their request. The importance of maintaining a viable force of citizen soldiers has been show in recent history. This will set an example for civil employees to show our appreciation for the volunteers that make up the Reserves or National Guard and their valuable service. The Finance Committee asks your support of the motion of ought to pass. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. Once again, I want to thank the committee. This is something that is very important to the Guard and I want to thank all of you on the committee for your work on this, and appreciate the support of everyone here in the chamber.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 1765-FN-A-L**, relative to funding for disaster relief efforts in response to the October 2005 floods and making an appropriation therefor. Finance Committee. Ought to pass, Vote 6-0. Senator Odell for the committee.

SENATOR ODELL: Thank you, Mr. President. I move House Bill 1765 ought to pass. This bill appropriates \$2.9 million from the general fund to the Department of Safety in fiscal year '06 for the purpose of providing state matching funds for federal disaster grants. This is in response to the devastating effects of the Alstead Floods of 2005. During that storm, some towns received as much as twelve inches of rain in ten hours, resulting in extensive damage with main thoroughfares and roads and bridges being washed away. Many towns were forced to dip into their budgets, which has created large deficits for financial planning to address their more immediate needs. It is my pleasure to support this legislation, which will keep communities at a \$5,000 cap or 12.5 percent of total eligible costs, whichever is less. Having seen the devastation firsthand, I can tell you that the funds will be put to good use. And, Mr. President, I'd like to express my appreciation to all of you that supported the various efforts to help the people of that region during the disaster and

afterward, and up to this day. It's all been recognized and appreciated. I also want to thank the Senate President for being there the day after the floods, for being on the ground and in the air with us, to actually see firsthand what was going on. The same with Senator Clegg, who was up on the plane and saw the damage for the first time on the Sunday following the floods. To Tom Eaton, whose area suffered severely from this, and those communities will also benefit, who has been a partner in trying to do the right thing on this. To Senator Barnes, who chaired the committee for the legislature to participate in the telethon and all of the things that were done. To all of you, I can just tell you that you will be remembered forever for what was done, and for this bill today, in the minds and in the hearts of the people who are going to benefit from this. So thank you all. I ask you to join me in supporting the motion of ought to pass.

Senator Burling offered a floor amendment.

Sen. Burling, Dist. 5

**April 6, 2006**

**2006-1684s**

**09/03**

**Floor Amendment to HB 1765-FN-A-LOCAL**

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

AN ACT relative to funding for disaster relief efforts in response to the October 2005 floods and for storm-related damages incurred on June 10, 2005 and making appropriations therefor.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 Appropriation for Storm Losses Sustained on June 10, 2005. The state shall pay 25 percent of unreimbursed storm losses incurred as a result of storm damage on June 10, 2005 in the towns of Canaan, Grafton, Dorchester, Lyme, Alexandria, Hanover, Groton, and Enfield. The sum of \$750,000 is hereby appropriated to the department of safety, bureau of emergency management, for the fiscal year ending June 30, 2006, for distribution to the affected municipalities. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated. In this section, "unreimbursed storm loss" means losses that are unpaid by the Federal Emergency Management Agency or any other state or federal program.

**2006-1684s**

**AMENDED ANALYSIS**

This bill appropriates state matching funds to the department of safety, bureau of emergency management, for disaster assistance to the communities that sustained flood damage in October 2005.

The bill also makes an appropriation to certain towns for unreimbursed, storm-related damages that occurred on June 10, 2005.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I rise to move the adoption of floor amendment, and unfortunately, I don't have the number, but it's...

SENATOR GATSAS (In the Chair): Floor amendment 1684 has been proposed. Senator Burling, would you like to speak to that motion?

SENATOR BURLING: I would. Just for a moment, I would like you to go in your mind's eye to a moment a year ago when the warm winds of summer blew across the upper valley and, as so rarely happens, a truly

horrific storm blew up from the West. In the space of a very short number of minutes, a crashing, drenching, terrifying rain storm broke across eight towns of the upper valley on June 10, 2005. In the space of little over two hours, more than four inches of rain fell, culverts clogged, stream beds jumped out of their banks and incredible damage, given the size of these towns, was inflicted on the eight towns, six of them represented by Senator Johnson, two by myself. A total of \$3.7 million was done to these eight towns, just in road and municipal improvements. Many millions more were done to state highways and to private citizens. This amendment, if adopted, would appropriate \$750,000 and would call for the 25 percent reimbursement of these towns for their otherwise unreimbursed storm losses. As near as I can tell, the one reason yet brought forward for not doing this, is the premise that FEMA did not declare a disaster area for the June 10<sup>th</sup> storm. Aside from the fact that I have strong disagreement with the notion that FEMA should decide when or when we do not try to take care of our local towns, this is an issue of real concern and importance. I am going to vote for the underlying bill. And I'm going to do it because I believe passionately in Senator Odell's clearly wrought notion that we have an obligation to care for our communities when something extraordinary happens. The June 10<sup>th</sup> storm was a five hundred year storm in terms of the folks on the weather channel and the folks in the U.S. Department of, I've forgotten what. This was a weather event as unique in its own form as what later came in October. Thank God for the people of my New Hampshire...my part of New Hampshire, it was not as devastating, and thank goodness no lives were lost. But the impact on some of our constituents is extraordinary. In the little town of Groton, just to pay for the road repairs, the tax bill for the average house's got to go up \$525, just to pay for road repairs. In the towns in my district, the only way those towns have of raising the revenue necessary to repair the municipal storm damage is to reduce their other budget line, whether it's police or fire, they're going to have to make big cuts. These are eight towns that need our help. I acknowledge the fact that we do not have a bright line test yet defined clearly for when we will act and when we will not act. But I have a case to be made and, Mr. President, I hope the Senate will support the people of these eight towns by giving them some small share of reimbursement for their storm loss. Thank you.

### **Recess.**

### **Out of recess.**

SENATOR JOHNSON: Thank you, Mr. President. I just want to comment that Senator Burling, a little earlier in the day, indicated that he tried to contact me so I could join him on the amendment. I was not able to do that, but he is correct. The towns in Grafton County that I represent, they're all small towns, and it will have a big effect on their budget. So I appreciate the amendment coming forward and I will be voting for the amendment. Thank you.

SENATOR EATON: Thank you. I echo the comments that Senator Odell made earlier about the district and the severe, dire need there. But I also want to acknowledge in our gallery is Representative Deb Hogancamp who represents Chesterfield and Salem, Winchester, that were already also severely damaged in those floods, sitting here and watching this vote along with a couple of the others.

SENATOR MORSE: Thank you, Mr. President. I respectfully rise to ask the body to vote against this amendment. The Finance Committee thor-

oughly debated a very similar bill, although the similar bill which is on the table had more money in it, I believe, Senate Bill 402, and after the debate, and truly based on the policy that we were going to be putting in place, and we voted 6-2 not in favor of funding that. I ask you to support what we've already done our work on and vote against this amendment. Thank you.

**Recess.**

**Out of recess.**

**The question is on adoption of the floor amendment.**

**A roll call was requested by Senator Clegg.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Johnson, Burling, Odell, Eaton, Gottesman, Foster, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**The following Senators voted No: Gallus, Kenney, Boyce, Flanders, Roberge, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**Yeas: 10 - Nays: 12**

**Floor amendment failed.**

Senator Larsen was excused for this vote.

**The question is on the adoption of the committee report of ought to pass.**

**A roll call was requested by Senator Burling.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

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

**Yeas: 22 - Nays: 0**

**Adopted.**

**Ordered to third reading.**

Senator Larsen was excused for this vote.

SENATOR BARNES: Question of Senator Morse, the previous speaker. Senator Morse, I think you know what I'm going to ask you, so I'm sure you have the answer. My question is, how much money have we spent today?

SENATOR MORSE: Approximately \$2.911 million.

SENATOR BARNES: How much?

SENATOR MORSE: \$2.911 million.

SENATOR BARNES: Is that accumulative or that just today?

SENATOR MORSE: That's what you spent today.

SENATOR BARNES: We spent \$2.9 million today?

SENATOR MORSE: Yes.

SENATOR BARNES: Thank you, Senator.

**HB 1121-L**, establishing a committee to study rulemaking and licensure issues relative to assisted living and residential care. Health and Human Services Committee. Ought to pass with amendment, Vote 3-0. Senator Bragdon for the committee.

**Health and Human Services**

**March 29, 2006**

**2006-1565s**

**01/04**

**Amendment to HB 1121-LOCAL**

Amend the bill by inserting before section 1 the following and renumbering the original sections 1-6 to read as 2-7, respectively:

1 Statement of Purpose. The general court recognizes that New Hampshire's population is aging resulting in an increased need for quality residential care and that in order to better provide such care under a statutory and regulatory framework that makes sense, the general court hereby determines that a thorough study of RSA 151 and other statutes that pertain to residential care and assisted living and the rulemaking associated with such statutes is necessary. It is not the intent of the general court that any current rulemaking efforts relative to residential care or assisted living be suspended or delayed by this act.

**MOTION TO TABLE**

Senator Bragdon moved to have HB 1121-L laid on the table.

**Adopted.**

**LAID ON THE TABLE**

**HB 1121-L**, establishing a committee to study rulemaking and licensure issues relative to assisted living and residential care.

**HB 1409-FN**, relative to organ and tissue donation. Health and Human Services Committee. Ought to pass, Vote 3-0. Senator Martel for the committee.

**MOTION TO TABLE**

Senator Martel moved to have HB 1409-FN laid on the table.

**Adopted.**

**LAID ON THE TABLE**

**HB 1409-FN**, relative to organ and tissue donation.

**HB 1636-FN**, relative to appeals from class A misdemeanor sentences imposed by the district courts. Judiciary Committee. Ought to pass, Vote 6-0. Senator Gottesman for the committee.

**SENATOR GOTTESMAN:** Thank you, Mr. President. I move House Bill 1636-FN ought to pass. The provisions of House Bill 1636 establish that appeals from Class A misdemeanor sentences imposed by the District Courts shall be made directly to the Supreme Court if no appeal is made for a jury trial in the Superior Court. If someone is convicted of a Class A misdemeanor in the District Court and they appeal to the Superior Court for a trial, if at any time they waive their right to jury trial, then the sentence from the District Court judge is immediately imposed. Testimony at the public hearing indicated that Superior Court judges should not be second-guessing District Court rulings. An appeal should not be used as a means of obtaining a second opportunity to negotiate with the

prosecutor and a different judge or in order to delay the sentence. The Judiciary Committee recommends that this legislation be adopted and asks your support. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 121**, relative to local land use approval for facilities requiring certain pollution control permits. Public and Municipal Affairs Committee. Inexpedient to legislate, Vote 6-0. Senator Martel for the committee.

SENATOR MARTEL: I'm still straightening out, Mr. Chairman. Mr. President, I mean, excuse me. I move House Bill 121 inexpedient to legislate. The intent of this legislation was to clarify that the issuance of an air pollution permit does not affect the obligation to obtain local approval under zoning ordinances. Supreme Court rulings have stated that municipalities are preempted from imposing regulations, including zoning, that attempt to regulate air pollution. The committee feels that this legislation does not further clarify the relationship between state environmental regulation and local land use authority. It creates further confusion and could lead to additional litigation. The Public and Municipal Affairs Committee asks for your support on the motion of inexpedient to legislate, and I thank you, Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**HB 621-FN**, requiring disclosure of gifts and campaign contributions by lobbyists. Public and Municipal Affairs Committee. Inexpedient to legislate, Vote 4-1. Senator Martel for the committee.

#### **MOTION TO TABLE**

Senator Martel moved to have HB 621-FN laid on the table.

**Adopted.**

#### **LAI D ON THE TABLE**

**HB 621-FN**, requiring disclosure of gifts and campaign contributions by lobbyists.

**HB 657-FN-L**, relative to promoting community revitalization. Public and Municipal Affairs Committee. Ought to pass, Vote 6-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 657 ought to pass. This legislation will allow municipalities to provide property tax relief to owners who renovate structures in downtown areas. This will promote downtown revitalization and discourage sprawl by preserving and developing new uses in older buildings. This legislation will empower communities to encourage the redevelopment of historical buildings and promote economic activity in their downtowns. House Bill 657 is enabling legislation. It will be up to communities to decide whether or not they are interested in offering this program and what projects they decide to pursue. The Public and Municipal Affairs Committee asks for your support on the motion of ought to pass. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**



**HB 1132**, relative to qualifications for the Global War on Terrorism operations service bonus payment. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you once again, Mr. President. I move House Bill 1132 ought to pass. This is housekeeping legislation that will update the qualifications for the global war on terrorism operations service bonus payment. The Department of Defense recently created the Iraqi Campaign Medal, which I have one, and the Afghanistan Campaign Medal. Earning one of these medals will now qualify someone for the service bonus payment. The Public and Municipal Affairs Committee asks for your support on the motion of ought to pass. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 1188**, relative to notice before entry into a condominium unit. Public and Municipal Affairs Committee. Ought to pass, Vote 4-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move House Bill 1188 ought to pass. Current statute does not require notice to be given to a condominium owner before someone enters their property to conduct regular maintenance. House Bill 1188 will give condominium owners the right prior to notice, prior notice before entry. This legislation is modeled after the landlord tenant law that requires tenants to be notified before prior entry. The notice will not be required if emergency repairs need to be made. This legislation is beneficial to both the condominium association and its owners.

**Adopted.**

**Ordered to third reading.**

**HB 1349**, relative to costs of personnel and rates for equipment use in hazardous waste incidents. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Burling for the committee.

**Public and Municipal Affairs**

**March 30, 2006**

**2006-1568s**

**06/03**

### **Amendment to HB 1349**

Amend the bill by replacing section 1 with the following:

1 Liability Concerning Hazardous Materials Incidents; Rates for Equipment and Costs of Personnel. RSA 154:8-a, II-a(g) is repealed and reenacted to read as follows:

(g) The commissioner of safety shall establish rates for equipment use, supplies, and costs of personnel that shall be the maximum amount that may be charged by any municipality, organization, or mutual aid district in accordance with this section. The rates and costs, and guidelines for establishing them, shall be adopted pursuant to RSA 541-A. To the extent possible, the rates and costs shall reflect the actual expenses, including overhead costs, for emergency response to hazardous materials incidents for municipalities throughout the state.

SENATOR BURLING: Thank you, Mr. President. I move House Bill 1349 ought to pass with amendment, I believe. This legislation will require the Commissioner of the Department of Safety to adopt rates for the

equipment use and costs of personnel used in hazardous materials incidents. HB 1349 will permit the establishment of statewide rates that will be fair and reasonable. The committee amendment clarifies that supplies and overhead costs will be reflected in the rates and costs. The Public and Municipal Affairs Committee asks for your support on the motion of ought to pass with amendment. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 1429**, relative to municipal exemptions for hazardous waste cleanup liability. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 1429 ought to pass.

The committee heard testimony that some New Hampshire communities do not hold household hazardous waste collection days because they are concerned about the liability of transporting the waste to a waste collection center. House Bill 1429 will remove the strict liability from the municipalities self-transporting the waste, and the Department of Environmental Services will undertake the liability. Should there be a spill, DES will be responsible for the containment of hazardous waste, necessary cleanup and restoration of the site and surrounding environment, and the removal of the waste. Personal liability will not be affected by this legislation. Household hazardous waste accounts for 90 percent of the toxicity found in landfills. This legislation will encourage communities to dispose of household hazardous waste in a cost efficient and environmentally responsible manner. The Public and Municipal Affairs Committee asks for your support on the motion of ought to pass. And, a little P.S. on here. The town of Raymond has been doing this for over ten years and we have never had an incident that this would bother. So, please vote for this and move it on so we can help the towns that have a concern.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 1487**, relative to marriage licenses. Public and Municipal Affairs Committee. Ought to pass, Vote 6-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move House Bill 1487 ought to pass. This legislation will remove the three-day waiting period for a marriage license. The three-day waiting period goes back to the days when blood tests were required prior to obtaining a marriage license. Blood tests have not been required in New Hampshire for many years. Our neighboring states, Massachusetts, Maine and Vermont, do not have waiting periods on marriage licenses. As a result, some New Hampshire residents have gone to these states to get married. Removing the waiting period could result in increased revenues as people will not have to leave the state in order to get a marriage license. The bill also makes terms gender neutral when referring to those officiating at the weddings. The Public and Municipal Affairs Committee asks for your support and ought to pass.

SENATOR BOYCE: For a question. I'm just surprised it actually says in here that marriage licenses expire ninety days from their issuance?

SENATOR ROBERGE: I didn't read that.

SENATOR BOYCE: I believe that's current statute. I didn't know that.

SENATOR ROBERGE: Well now you won't need a license. Now you don't need to wait, Senator Boyce.

SENATOR BOYCE: Thank you.

SENATOR FLANDERS: Is there any way you can make the waiting period ten years?

SENATOR GATSAS (In the Chair): Senator, Senator, we're on audio streaming.

SENATOR FLANDERS: When I get home, my dog...

**Adopted.**

**Ordered to third reading.**

**HB 1613-FN-L**, relative to polling place arrangement and accessibility. Public and Municipal Affairs Committee. Ought to pass, Vote 6-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Mr. President. I move House Bill 1613 ought to pass. This legislation will ensure that polling places use the New Hampshire State Building Code for handicapped accessibility and are in compliance with the American Disabilities Act. House Bill 1613 will change the physical measurements of ramps, handrails, booths, and similar physical elements in the polling place. Most polling places go to great lengths to accommodate everyone and these new requirements will reduce hardships and confusion. Polling places will also be required to have table top voting screens. The minimum number of accessible booths and table top voting stations required will depend on the type of election being held. The Secretary of State will be responsible for providing each polling place with one booth and two voting screens. The Public and Municipal Affairs Committee asks for your support on the motion of ought to pass. Thank you.

SENATOR MORSE: For Senator Hassan. Senator Hassan, about two years ago the Sheriff's Department went through all the polling places and gave a report back to the moderators and the town clerks. Is this changing anything that came out of those reports?

SENATOR HASSAN: What I believe this is changing...it isn't changing what came out of the reports, what I do believe it is changing is that some polling places actually were using more, if you will, more generous physical standards for their polling places than are required under the ADA and the New Hampshire State Building Code. It was creating burdens on the municipalities and inconsistencies and difficulties in renovating some of our older buildings. So the notion here is to make clear what the rules are for everybody, so there isn't confusion on the municipal level, and then also to provide the voting screen for table top voting so people can sit or move a wheelchair under the table while they're voting.

SENATOR MORSE: Thank you.

SENATOR MARTEL: Thank you. I want to ask a question of Senator Morse, please. Oh, that's right, excuse me, he didn't testify. Senator Hassan. Senator, I just wanted to find out how...did we spend a lot of money when we, you know, made all of the voting booths universal in

most locations around the state? The Secretary of State wants this bill to be passed and I'm all for it. I just want to know if they spent a large sum of money in doing that.

SENATOR HASSAN: Senator Martel, thank you for your question. I honestly don't remember any testimony in committee about that. And this is my first term, so our past efforts are something I'm not familiar with.

SENATOR MARTEL: Okay. It was just something that you could just follow up, or probably had heard during testimony, Senator Hassan.

SENATOR HASSAN: Not that I recall, Senator.

SENATOR MARTEL: Alright. Now may I ask Senator Morse?

SENATOR GATSAS (In the Chair): Senator Morse, will you yield?

SENATOR MORSE: I'm no expert. Yes.

SENATOR MARTEL: Senator Morse, I'll ask the same question.

SENATOR GATSAS (In the Chair): Senator, just so you know, this bill is going to the Committee on Finance.

SENATOR MARTEL: Okay. I'll ask my question then. Thank you.

SENATOR FLANDERS: I hate to show my ignorance, but what are the table top voting stations you were talking about?

SENATOR HASSAN: Thank you for your question, Senator Flanders. I was unfamiliar with it as well. Instead of an aluminum framed voting booth with a curtain and the shelf that we're all familiar with, this allows any table of regular height or a little bit higher for a wheelchair, to have a screen that is simply pieces of foam board or something like that, that forms a screen around the voter so that the voter has privacy. But we can essentially, as numbers demand, create accessible voting booths for people. And the testimony that we did receive in committee was that we believe our prison system can make these screens for about \$6 a screen, maximum, and it should just provide much more flexibility, not only for people with disabilities, but for people who might have difficulty standing through a long ballot, you know, to mark a long ballot at a shelf.

SENATOR FLANDERS: Follow up. This would be something that would be there to use if you need it?

SENATOR HASSAN: Exactly.

SENATOR FLANDERS: Thank you.

SENATOR BOYCE: Senator Hassan, I know that in Internal Affairs we heard a bill that dealt with the parking places at polls and I can't remember what we did with that bill. But I'm curious, in this one it says that "where parking is provided it shall have one van accessible and...". I'm curious if we've really gotten into it all the way there because I know that some polling places may be otherwise available for public buildings, and is this saying that, if they're going to allow parking there, they have to designate it, go out and remark their lots? I'm just concerned that some towns may not be set up to do this. It seems to me that we didn't do that bill in Internal Affairs. We didn't do what it wanted because it would have required polling places to be in places that cities couldn't do it. I mean... so I'm just curious if you got into that.

SENATOR HASSAN: Thank you for your question, Senator Boyce. I do not recall that at the hearing we did. I am informed by my colleagues

that when the Secretary of State's Office did an accessibility inspection in the past, we did look at the issue of parking. I'm also aware that all the public buildings that I'm aware of, schools, town halls, and similar municipal places, have at least one accessible parking space, and I think comply with these requirements. So my memory is that the requirement in that bill that you're referring to is not a new requirement for us. That's the best I can do.

SENATOR BOYCE: Thank you.

SENATOR BARNES: Thank you, Mr. President. I don't want to prolong this, but Senator Boyce, it's only for this parking, it's put in there for the day of the election. It's not a permanent thing. We just went through this in the town of Raymond. We had to mark out a couple of spots for the vans this talks about so that the handicap will have a chance to get in there. It was strictly a twelve-hour situation.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 1631-FN-L**, relative to property taxation of certain property of the Appalachian Mountain Club. Public and Municipal Affairs Committee. Inexpedient to legislate, Vote 6-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I rise in support of the committee's recommendation of inexpedient to legislate on House Bill 1631. Our committee voted to recommend ITL on House Bill 1631 for three primary reasons, namely because one, the bill singled out one charitable organization for treatment under tax laws. Two, it attempts to insert the New Hampshire legislature into an ongoing dispute that is currently pending in the courts. And lastly, it attempts to circumvent the well-established procedural process for a resolution of property tax disputes, namely the appeal to the Board of Tax and Land Appeals or the Superior Court. Following the two hours of testimony on the legislation, the Senate Executive Departments and Administrative Committee unanimously agreed that House Bill 1631 raises serious constitutional questions and is contrary to longstanding public policy in the state of New Hampshire regarding appropriate appeals procedure for the resolution of property tax disputes, including the scope of charitable tax exemption. On behalf of the charitable and educational organizations throughout the state of New Hampshire, I strongly urge you to join the unanimous recommendation of the Executive Departments and Administration Committee in voting inexpedient to legislate on House Bill 1631. Thank you, Mr. President.

SENATOR BOYCE: Thank you, Mr. President. I rise in opposition to the committee's report, primarily in that I believe we do have a situation where the state needs to get involved in this, and other situations like this, where supposedly nonprofit charitable organizations get into businesses that are actually in competition with private industry or doing something that private industry would otherwise do, and acting as a profit making organization in the guise of being nonprofit. In this case, what's happening is they are operating what amount to hotels on public property, which is tax exempt, and we're not charging them...they're not paying the tax that an otherwise, operating motel would pay. I think that that's wrong. We had a bill in Finance the other day where we're looking to do the same thing with the New Hampshire University System. That if the University System chooses to allow a business, a for profit business, to operate on their property, then that business would

have to pay the property tax just as if it was renting the property from some other entity other than the university. I think that this is no different. This is a situation where a group is saying that, because they are nonprofit, they're not taxable. I think that we have to think very carefully about the whole situation, about whether or not nonprofits really do deserve nontaxable status. There are some nonprofits that may not have the public benefit that we would hope they would have. And, in one case here, I think that it would be very appropriate to impose a tax, particularly on this situation, in that we have a situation where most of the people in the state who have to be found by the search units, which are primarily paid for by hunters and fishermen, most of the people that have to be found are hikers who don't have fishing and hunting licenses. They are staying at these Appalachian Mountain Club hotels and getting lost, and we're not taxing anybody to pay for that. I think this is a situation where it would be totally appropriate to impose a tax upon this organization in order to pay for the people that use their facilities. Thank you.

SENATOR BARNES: Thank you, Mr. President. Of Senator Boyce. Senator Boyce, would you believe that I sit on the committee and I was one of those six votes and I have a lot of the same concerns that you do on this? One of their places that we're talking about serves liquor, has a liquor license which is in competition with the towns. You've been here long enough to know that I hate the state or anybody else getting...messing in with the private sector. I think that's horrible. But also would you believe that if you and I are re-elected, I would like to join you in a piece of legislation that will once again open up this situation that you are talking about on the nonprofits? I think it's something that needs to be done, but there is this case in court, and that's what swayed me. I don't think we should be messing with that. I think we should wait until that court case finishes. But if you and I are both back, I would be happy to join with you and have a thorough study of it.

SENATOR BOYCE: Thank you.

SENATOR GALLUS: Thank you, Mr. President, members of the Senate. Basically this bill was put in by former Senator Fred King over in the House, because of a situation in the town of Carroll with the Appalachian Mountain Club. With that said, it's in my district, and I'm also a twenty-five-year member or so of the AMC. I think this is an issue that we have to revisit somewhere along the line, perhaps next year. I discussed this with the chairman of the committee at length, and also had talked to the selectmen in the town of Carroll about the situation. The bill was originally brought about because of many of the businesses in Carroll that actually are now competing with AMC. And this particular building in Carroll, is some \$9 million facility, supposedly was labeled as an educational facility. But in truth, it's a hotel, a restaurant, serving beer and wine. Many other things are going on at this facility, but basically, it's competing against the Mount Washington Hotel. It's competing against some of the smaller hotels and restaurants in the town of Carroll, and yet paying minimal kinds of money in lieu of taxes. And since this argument between the facility and the town, I guess basically, stopped paying this in lieu of tax payment money. So that's basically what they're doing in court. Some kind of violation with this contract. So I think it's something we have to go back and look at. The particular bill that came out of the House was really unacceptable to the town of Carroll with the

amendment, and they basically, at this particular time, would just as soon see the bill die, 'cause it doesn't help them. But I think, you know, we have to go back somewhere along the line and seriously take a look at these types of nonprofits. Are they operating a real business or are they in a nonprofit situation? Thank you, Mr. President.

SENATOR HASSAN: Thank you, Mr. President. I rise as a member of the committee in support of the committee's report. And I just think it is important to recount a little bit of the actual testimony that we heard in committee, because I think it is easy for the specifics, which are incredibly important in cases in which tax exempt status is determined to know. First of all, the AMC does, for instance, help fund search and rescue in that area of the state, along with a number of other services that it participates in that are appropriate to its mission and consistent with that. The building that we are talking about, the Highland Center is a lead certified building, meaning its a green building, one of the two or three, I think, in the state. The testimony we received is that it was assessed about \$3 million. It does provide about a hundred and twenty rooms. Most of them are shared rooms, with shared baths, no televisions, no internet access. Meals are served, but it is a single meal; there is no menu. You eat at six o'clock during a presentation by a naturalist. You do not have a choice about what to eat or where to eat. So, in that way, it certainly is not competing with the Mount Washington Hotel. Moreover, in an attempt not to compete with some of the local businesses, it priced its rooms at a higher rate than you would expect to find a room with no television, no internet, a shared bath, and a shared room so that it would not be unduly competing. That being said, I agree, and I think all members of this body agree, that there are times when nonprofits do take on functions that are more like a profit business than a nonprofit. In fact, the other testimony we received is that AMC is operating essentially at a deficit. It is not making any money. Be that as it may, what we have in this country and in this state, is a process by which a locality can challenge the tax exempt nature of the function of the nonprofit, which is what the town of Carroll chose to do. It sent a bill for partial taxes to the AMC, despite the pilot agreement they already had with the town. At that point, the AMC suspended payment of taxes because of the bill they received, and it is in litigation, which I believe is where the appropriate place for it to be, so that all of these specific facts can be looked at closely under the appropriate tax law. So, for that reason, I think that it would be unwise for this legislature to interfere with an established practice, and an established court dispute at this time. And I ask the body's support for the inexpedient to legislate motion. Thank you.

SENATOR BARNES: Thank you, Mr. President. Senator Hassan?

SENATOR HASSAN: Yes, sir?

SENATOR BARNES: Senator Hassan, I sat on that committee with you, and I agree with everything that you say, but there is something that you said twice that I would like you to clear up, because I don't want to go home tonight wondering what you said.

SENATOR HASSAN: Yes, sir?

SENATOR BARNES: Could you define for this body, what a shared room is? Shared bath I understand, but the shared room reminds me of some soap operas that are on TV.

SENATOR HASSAN: Well, it certainly could remind me of the same thing and thank you for your question, Senator. I believe that, in most cases, if you sign up for a room at the Highland Center in Carroll, you will have roommate, unless there is enough capacity so that you don't have to have one.

SENATOR BARNES: Are they taking reservations?

SENATOR HASSAN: No follow ups.

SENATOR FLANDERS: I'm looking at the hearing report and it appears to me that the amendment that was done in the House completely changed this to the point where the...most of the sponsors testified against it. And, in reading the notes, Bernie Waugh, who is the attorney for the town of Carroll, who is town counsel, told the committee that the amended bill leaves Carroll in the worse position than it is now. What it basically says, I think, is that the amended bill encourages payment, but does not give any standards on how it will be determined, and also declares that the AMC is exempt from property taxes. No other nonprofit organization enjoys this status. Usually nonprofits have to show why they're exempt. So, I agree with the ITL. I think it was a good bill, which turned into a bad bill. Thank you.

SENATOR BRAGDON: Move the question.

SENATOR GATSAS (In the Chair): I have one more speaker. Senator Kenney.

SENATOR KENNEY: First of all, for the record, I just want to make sure that this was heard in the Public and Municipal Affairs Committee. A couple points I just want to make. There is...there is some...the age old question of what is a nonprofit and should it be exempt, you know, when it comes to competing against local businesses. I'm on a nonprofit board, and we have senior congregate meal site, and there's a restaurant two buildings down from us, and you know, that restaurant could argue that we're competing against them because we have senior meals on a daily basis. So you know, I respect that. But there is a vehicle that nonprofits always...to maintain their exemption, which is the IRS code. If the IRS doesn't think that particular nonprofit is acting as a nonprofit, it's going to pull its status as a nonprofit. So that's one thing. I do understand what Senator Gallus is saying when it comes to the AMC facility. They serve alcohol. They have a retail gift shop there. And they also allow non-members to come in and stay in this lodging area where he has a local motel that has had to change its business arrangement in order to compete against AMC, and is that right? But that's really up to the courts to resolve that. And I know that our nonexemption laws for nonprofits are very complicated. And, as I read down the statutes, there's a lot of case law when it comes to nonprofits and when it comes to the municipal services and whether or not they are competing against private businesses. But this bill is not a good bill, so I encourage everyone to ITL it. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**HB 1754**, relative to canteen privileges at veterans' clubs licensed by the liquor commission. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 4-1. Senator Barnes for the committee.



**Public and Municipal Affairs**  
**March 30, 2006**  
**2006-1580s**  
**03/05**

**Amendment to HB 1754**

Amend the bill by replacing section 2 with the following:

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

SENATOR BARNES: Thank you, Mr. President. I move House Bill 1754 ought to pass with amendment. This legislation authorizes veterans' clubs licensed by the Liquor Commission to extend canteen privileges to members of veterans' nonprofit groups. Many veterans groups gather together to do charity work and this legislation is intended to assist smaller, co-joined organizations and promote camaraderie. However, it will be up to each individual organization to decide whether or not it wants to participate in this. Going a little further, a lot of clubs, veterans' club and a lot of other clubs, too, out there, are having problem with enrollment. The VFW Clubs and the American Legion Clubs who are getting together now so they can stay alive. The American Legion Posts are losing members, the VFW members are losing, so they're joining together. They did that in Raymond. And as this bill is put together, as you can see, I'm a co-sponsor of this bill. I'm a member of the American Legion Post in Raymond, and also the VFW. We got the Liquor Commissioner involved with this. We went over to see him. And after he listened to us, he said, "Oh my golly, the post that I'm a member of", and he lives up north a way, "is also in violation of what the current law says" and he was very adamant. He came to the House hearing and he also came to the Senate hearing to back this piece of legislation. So, having said that, the committee, on a 4-1 vote, moved that it ought to pass.

SENATOR KENNEY: Mr. President, I was the dissenting vote in the committee on HB 1754. My primary reason for voting against it was that I want to make sure the State Veterans' Advisory Council took a position on it because, up until that hearing, they had not taken a position on it. As of Tuesday evening, they did take a position on this bill and they unanimously supported HB 1754. In the hearing on HB 1754, a well-known veteran in the state of New Hampshire, Paul Chevalier, was against the bill because he thought it would reduce membership for certain veterans' organizations. But, it is, with this legislation, it is enabling, and it is up to the membership if they want to co-mingle with another veterans' group in order to be a part of that canteen. So, I just would encourage the body to support this.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 1201**, relative to child passenger restraints. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 2-0. Senator Letourneau for the committee.

**Senator Letourneau moved to recommit.**

**Adopted.**

**HB 1201 is recommitted to the Transportation and Interstate Cooperation Committee.**

**HB 1484**, relative to including motorcycle and tractor-trailer safety in driver education courses. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 6-0. Senator Letourneau for the committee.

**SENATOR LETOURNEAU:** Thank you, Mr. President. Oops. I've got the wrong one. Sorry about that. I move House Bill 1484 ought to pass. This bill would require an educational module with regard to motorcycle operation in the drivers' education course. This module is nationally recognized and state approved. This curriculum consists of an 8.5 minute video with a question and answer session following the presentation; time consumed is perhaps thirty minutes. For new drivers, motorcycles and large trucks present new and different challenges; however, the difference between them is like night and day. When a mistake is made between a car and a motorcycle, the motorcyclist is usually the injured party. If the mistake is made between a large truck and a vehicle, it is usually the driver of the car that is at greater risk. These are important life decisions that must be made by all those who share a common road. Please join the Transportation Committee and vote ought to pass. I would like to comment that Representative Packard and myself attended the driver education seminars up here in Concord two weeks ago and made a presentation before the state's driver education people and they supported us. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1512**, establishing a committee to study volunteer activity related to transportation. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 6-0. Senator Flanders for the committee.

#### **MOTION TO TABLE**

Senator Flanders moved to have HB 1512 laid on the table.

**Adopted.**

#### **LAI D ON THE TABLE**

**HB 1512**, establishing a committee to study volunteer activity related to transportation.

#### **RESOLUTION**

Senator Clegg 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 all bills and resolutions ordered to a third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

#### **LATE SESSION**

##### **Third Reading and Final Passage**

**HB 37-FN**, relative to health insurance coverage for full-time students on medical leaves of absence.

**HB 254-FN**, establishing lifetime licenses for bow and arrow, muzzle loading firearm, and crossbow licenses.

**HB 349**, relative to placement and removal of political advertising.

**HB 657-FN-L**, relative to promoting community revitalization.

**HB 718-FN-A**, relative to a state active duty death benefit for activated members of the New Hampshire national guard and making an appropriation therefor.

**HB 1108**, relative to the transfer of funds among PAU's within a department.

**HB 1125**, relative to the filing period for candidates in the presidential primary.

**HB 1128-FN**, relative to definition of teacher in the New Hampshire retirement system, and relative to approval of supplemental allowances.

**HB 1132**, relative to qualifications for the Global War on Terrorism operations service bonus payment.

**HB 1154-FN**, relative to eligibility for special number plates for veterans.

**HB 1179**, repealing a requirement that the department of transportation spend a certain amount for litter removal that is determined based on fees paid to the liquor commission.

**HB 1185**, relative to Volunteer NH.

**HB 1188**, relative to notice before entry into a condominium unit.

**HB 1217**, requiring the secretary of state to publish certain information on campaign contributions.

**HB 1222-FN**, relative to unlawful voting.

**HB 1228-FN**, relative to the sale or lease of state-owned real estate.

**HB 1294**, relative to antique snowmobiles.

**HB 1349**, relative to costs of personnel and rates for equipment use in hazardous waste incidents.

**HB 1362**, relative to permitting audio and video recording on school buses.

**HB 1418-FN**, relative to road toll refunds.

**HB 1420-FN**, prohibiting remote control and Internet hunting and relative to exceptions to the prohibitions on the sale of firearms to minors and the furnishing of arms to persons under 16

**HB 1455-FN-A**, relative to the disposal of video display devices.

**HB 1484**, relative to including motorcycle and tractor-trailer safety in driver education courses.

**HB 1487**, relative to marriage licenses.

**HB 1497-L**, relative to certification by a superintendent regarding statistical reports.

**HB 1498**, establishing a risk management unit within the department of administrative services and relative to the rulemaking authority of the department of administrative services.

**HB 1517-FN**, relative to membership on the board of medicine and the medical review subcommittee.

**HB 1579**, relative to membership of the air resources council.

**HB 1609-FN**, requiring a pilot project to estimate future water needs and availability.

**HB 1633-FN**, relative to membership, eligibility, and financing of the New Hampshire retirement system.

**HB 1636-FN**, relative to appeals from class A misdemeanor sentences imposed by the district courts.

**HB 1646-FN**, relative to the use of a leashed tracking dog in the recovery of a wounded deer, moose, or bear.

**HB 1663-FN-L**, relative to the licensing fee for motor vehicle recycling yards.

**HB 1715-FN**, relative to funding of the professional assistance program for dentists.

**HB 1724-FN**, relative to compensation and benefits for reserve and national guard members who are state employees.

**HB 1754**, relative to canteen privileges at veterans' clubs licensed by the liquor commission.

**HB 1765-FN-A-L**, relative to funding for disaster relief efforts in response to the October 2005 floods and making an appropriation therefor.

### ANNOUNCEMENTS

#### RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, processing enrolled bill reports and amendments.

**Adopted.**

**In recess to the Call of the Chair.**

#### HOUSE MESSAGE

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

**SB 256**, relative to the definition of "harm" for purposes of the crime of improper influence.

**SB 274**, adding court security to the duties of the New Hampshire court accreditation commission.

**SB 289-FN**, relative to the brain and spinal cord advisory council.

**SB 296-FN**, relative to recovery of public assistance.

**SB 349**, relative to the HIV/AIDS service delivery system.

**SB 379-FN**, relative to harm or threats to certain government officials.

**SB 396**, repealing the rulemaking authority of the New Hampshire children's trust fund board.

#### HOUSE MESSAGE

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

**SB 350-FN**, relative to boarding kennels.

#### 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 1147**, relative to the conduct of recounts.

#### 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 334**, relative to the type of notice provided in court proceedings.

**HB 413**, relative to the appointment of the chief justice of the superior court and the number of superior court associate justices.

**HB 460-FN**, relative to the reimbursement to certain providers by the bureau of emergency communications.

**HB 544**, relative to the land and community heritage program.

**HB 649-FN-A-L**, establishing a commission to study the costs and funding of medicolegal investigations and autopsies.

**HB 1657**, establishing a wildlife legacy initiative for gifts and donations for fish and wildlife conservation programs.

**Out of Recess.**

### LATE SESSION

Senator Clegg moved that we adjourn from the late session.

**Adopted.**

**Adjournment.**

*April 13, 2006*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer. Good Morning. For Christians who observe the liturgical calendar, today is the day of the Great Betrayal. This is the day on which Judas, one of Jesus' intimates, turned on him and turned him in to the authorities, which began a chain of events, which led to Jesus' brutal execution. So today's question is, how do you respond when you are betrayed by someone? Because there is no one around here to whom that has not happened. As a matter of fact, it happens every day in the chambers, in the hallways and the offices of this building. I'll have you know it also happens right across the street every day in that building, and buildings just like that. So what do you do when you have the kind of experience that Jesus had today? Is it payback time? That's one option. Do you sulk and give in to bitterness? That's another option. Does it neutralize your dreams so you become paralyzed? Here's the other question of today. When it is you who are the betrayer, when you act like Judas' twin – and there is nobody here or anywhere else who hasn't done that too, how do you respond to that? By elaborate rationalization? That's one option. Everybody does it. With cold hearted cynicism? That's politics, or with a dead conscience? What? All of us need to remember today, whether Christian people, or of other faith traditions or of no faith traditional at all, that Judas' betrayal of Jesus led to not only the death of Jesus, but also to the death of Judas. Today's called "Maundy Thursday" in the Christian Calendar because of how Jesus responded to his betrayal. And make no mistake, this guy is not an easy role model to follow. Jesus' response to Judas' treachery was to wash the man's feet – an act of humility and service. I wonder what this place would be like, and places like this, if we actually took Jesus' example to heart. I think we better pray.

*Lord of endless, uncompromising, unconditional forgiveness, in the midst of our sometimes flailing brokenness, give us a few Maundy moments to remind us of those better angels that lie within us all. Amen*

Senator Foster led the Pledge of Allegiance.

### INTRODUCTION OF GUESTS

SENATOR MARTEL: Thank you very much. I don't know if everyone has heard about this, but yesterday, young private first class George Roehl, Jr. passed away, was killed in Iraq by a roadside bomb. This young man was a proud soldier who was the oldest child in his family. And, according to this statement to his mother...and statement by his mother, I should say, she said, "When he told me he was going to be a cavalry scout, I just knew", said Mrs. Vezina. "I just knew", from a styrofoam cup outside her Manchester home last night, "I just knew." Her son, a twenty-one-year-old, was one of the two soldiers killed Monday outside Baghdad while on patrol for roadside bomb explosions. She said, "I saw a picture of the vehicle in the news, and there was nothing left. At least I know George didn't suffer", Mrs. Vezina said. I just wanted to bring this up because he was born and brought up in Manchester. He just recently moved to Bristol with his father and the rest of his family. And my son, being in the same division, not on overseas duty yet, but serving in Fort Hood, Texas, in preparation of going overseas to Iraq or Afghanistan in the next two or three months. Even though things are getting better in Iraq, there are still those incoherent dangers, okay, of roadside bombs, which are the biggest killer of our soldiers at this point in time. So I ask that everybody stand and have a silent moment and say a prayer for this young private first class, and also for his family. He's a real hero and I'll present the family with a certificate soon as they get over their grief of losing their son right now. Thank you.

### MOTION TO VACATE

Senator Odell moved to vacate **HB 1626-FN-A**, relative to appropriations for the expenses of certain departments of the state, from the Energy and Economic Development Committee to the Finance Committee.

**Adopted.**

**HB 1626-FN-A**, relative to appropriations for the expenses of certain departments of the state is vacated to the Finance Committee.

SENATOR GATSAS (In the Chair): In the Calendar, we will move to the Addendum Calendar and we will do House Bill 1692-FN first, and then follow with the regular calendar as we go through.

### COMMITTEE REPORTS

**HB 1692-FN**, establishing the New Hampshire sexual predators act. Judiciary Committee. Ought to pass with amendment, Vote 4-1. Senator Foster for the committee.

**Senate Judiciary**

**April 7, 2006**

**2006-1700s**

**04/05**

### Amendment to HB 1692-FN

Amend the bill by replacing section 13 with the following:

13 New Sections; Registration of Criminal Offenders; Registration Fee; Application. Amend RSA 651-B by inserting after section 10 the following new sections:

651-B:11 Registration Fee.

I. A sexual offender or offender against children shall pay a fee of \$15 at the time of the offender's initial registration and semi-annually at the time of the offender's re-registration. The department shall use

all fees collected under this paragraph to defray the costs of maintaining the sex offender registry. Such funds shall be nonlapsing and shall be continually appropriated to the department for such use.

II. Anyone required to pay the registration fee who cannot afford to pay the fee shall, within 10 days of registration, request a waiver of the fee and a hearing on the matter before the commissioner. If such a request is made, the commission shall promptly schedule and conduct a hearing pursuant to rules adopted under RSA 541-A. At the hearing the offender shall have the burden to prove that the offender cannot afford to pay the fee because the offender is indigent. After hearing, the decision of the commission shall be final, and the offender shall have a right to appeal the decision in the superior court. Under no circumstances shall the offender's request for a hearing or indigency relieve the offender of the obligation to register pursuant to the time-frames required by this chapter.

651-B:12 Application. Whenever possible, the provisions of this chapter shall be interpreted and applied consistent with the provisions of the federal Jacob Wetterling Act, as amended.

Amend the introductory paragraph to RSA 651:6, IV and RSA 651:6 IV(a) as inserted by section 20 of the bill by replacing them with the following:

IV. If authorized by subparagraphs I(l), (m), or (n) and if notice of the possible application of this section is given to the defendant prior to the commencement of trial, a person shall be sentenced to an extended term of imprisonment as follows:

(a) A minimum to be fixed by the court of not less than 25 years and a maximum of life imprisonment; and

Amend RSA 135-E:10 as inserted by section 21 of the bill by replacing it with the following:

135-E:10 Rules of Procedure and Evidence. In all civil commitment proceedings for sexually violent predators under this chapter:

I. The doctor-patient privilege under RSA 329:26, privileged communications pursuant to RSA 330-A:32, or other similar statutes or rules shall not apply in proceedings under this chapter.

II. The court may consider evidence of the person's prior conduct if such evidence is relevant to the issue of whether the person is a sexually violent predator.

III. Reports by a member of the multidisciplinary team or reports provided on behalf of the multidisciplinary team shall be inadmissible in proceedings under this chapter unless the court finds the report's probative value substantially outweighs its prejudicial effect.

Amend RSA 135-E:11, II as inserted by section 21 of the bill by replacing it with the following:

II. If the court or jury determines that the person is a sexually violent predator, upon the expiration of the incarcerative portion of all criminal sentences and disposition of any detainers other than detainers for deportation by the United States Bureau of Citizenship and Immigration Services, the person shall be committed to the custody of the department of corrections for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person no longer poses a potentially serious likelihood of danger to others. Persons who are detained or committed under this chapter shall be held at the secure psychiatric unit of the New Hampshire state prison or other appropriate facility controlled or contracted by the department of corrections if available. An order committing a person shall be valid for up to 5 years.

SENATOR FOSTER: Thank you, Mr. President. I move House Bill 1692-FN ought to pass with amendment. The provisions of this bill establish what I refer to as the New Hampshire Child Protection Act of 2006. The bill is a comprehensive re-write and re-write of the laws involving felonious sexual assault, particularly against young children. It toughens our registration system, provides enhanced powers to civilly commit those who have a disease or defect making them likely to re-offend, sets of study and sets up studies to examine tracking systems that are becoming available. The point of this legislation is to protect children. We, as parents, and as a community, have the obligation to educate our children, provide food and shelter, an instill in them, good morals and values so they become good citizens and perhaps most importantly, we as parents, and as a society, have an obligation to protect our children from those who would harm them. To make sure this happens, the Judiciary Committee's amendment restores a provision in the bill that was there when it was filed. A minimum mandatory sentence of twenty-five years to life, when the worst of these crimes are committed against children under the age of thirteen by those eighteen years of age or older. To me, this is a very important provision of the bill. It ensures that if our children are attacked and the perpetrator is caught and convicted, he will be off the streets for a very, very long time. That person will not be given the opportunity to re-offend. This is not about trusting judges to hand out proper sentences. To me, it's about sending the message that this is a very serious crime, one for which we, our community of New Hampshire, have zero tolerance. This is a crime that attacks the most vulnerable members of our society, and stays with them for years. The sentences we give should punish the perpetrator for the harm they've caused and, as important, make sure another young child is not harmed again. These children cannot be given...these people cannot be given the chance to re-offend. The amendment modifies the bill in other ways, in the civil commitment areas. As drafted, and as it came over to the House, the House would have allowed hearsay evidence to be used for civil commitments when a person is coming out of incarceration. As drafted, the amendment prohibits hearsay evidence from being used except in very limited circumstances. Multidisciplinary team reports shall be inadmissible unless the court finds the report's value substantially outweighs its prejudicial effect. The committee felt it was important to preserve the rules of evidence, which have been established over many, many years. While the House version allowed all hearsay evidence to come in, the Senate amendment provides a small window of opportunity. If hearsay evidence came in and there is no mechanism for cross examination, which is a fundamental right of fairness and due process. The committee amendment makes one last important change from the House version. This bill, this provides that certain offenders shall be held at the secure psychiatric unit of the New Hampshire State Prison or other appropriate facilities controlled or contracted by the Department of Corrections, if available. This is important should the secure psychiatric unit be full. The Department of Corrections can place these most violent offenders in other units meeting the standards of the secure psychiatric unit. The Judiciary Committee recommends that the legislation be adopted with the amendment and asks your support. Thank you, Mr. President.

**Amendment adopted.**

Senator Barnes offered a floor amendment.

Sen. Barnes, Dist. 17



**April 12, 2006**  
**2006-1769s**  
**04/10**

**Floor Amendment to HB 1692-FN**

Amend RSA 651:6, I (l) as inserted by section 18 of the bill by replacing it with the following:

(l) Has committed or attempted to commit aggravated felonious sexual assault in violation of RSA 632-A:2, II where the defendant was 18 years of age or older at the time of the offense;

Amend the introductory paragraph to RSA 651:6, IV as inserted by section 20 of the bill by replacing it with the following:

IV. If authorized by subparagraphs I(m) or (n) and if notice of the possible application of this section is given to the defendant prior to the commencement of trial, a person may be sentenced to an extended term of imprisonment as follows:

Amend the bill by inserting after section 20 the following and renumbering the original sections 21-29 to read as 22-30, respectively:

21 New Chapter; Surgical Castration. Amend RSA by inserting after chapter 651-D the following new chapter:

**CHAPTER 651-E**

**SURGICAL CASTRATION**

**651-E:1 Surgical Castration for Offenders Against Children.**

I. In lieu of incarceration, or confinement under RSA 135-E, the court shall order a defendant convicted under RSA 632-A:2, I(l) to be surgically castrated. The department of corrections shall provide the medical services required under this section through a licensed physician employed or retained by the department.

II. The surgery shall be performed no more than 5 days after the exhaustion of all available legal appeals. The defendant shall be incarcerated while awaiting appeal and shall be released immediately upon completion of the surgical castration procedure.

III. No physician shall be subject to civil or criminal liability for providing medical services as required under this section, unless such actions constituted gross negligence or recklessness.

IV. Any cost associated with the medical procedure required under this chapter shall be borne by the state.

Amend the bill by replacing section 30 with the following:

**30 Effective Date.**

I. Sections 27, 28, and 30 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect January 1, 2007.

SENATOR BARNES: Thank you, Mr. President. I rise with amendment 1769, which I believe is being passed out. Would you like me to wait or would you like me to continue?

SENATOR GATSAS (In the Chair): Floor amendment 1769s has been proposed. Senator Barnes you may speak to the amendment as it's being passed out.

SENATOR BARNES: Thank you very much. I want all my colleagues to know that I am in full support of what came out of the committee that Senator Foster has just put out on the floor and which we have voted for. I voted for that. I have stood here on the floor of this Senate for a number of years. Two weeks ago, I heard my good friend, Senator D'Allesandro, reinforce the fact that our children are the most impor-

tant thing that we have in this state. This is why I'm bringing this amendment forward. Not only for the children of the state, but also for the parents who have to suffer what has happened. I understand a comment has been brought up, "What about the females?" The research that I've been able to do and come up with, it's about 90 percent male. This amendment that I have does not talk about the female. I was in error not to do that. Eight states in this country of ours have some sort of castration legislation. A ninth state, which is one of our sister states, Vermont, listen to this: "1982, created a program for sexual aggressors. There is no statute, but the program administratively allows treatment by chemical castration." That's the great state of Vermont, which is next door to us. The state of Georgia, in their legislation, does talk about females. I have a copy of it here. And the females are taken care of on a chemical situation. I feel that we owe the children of this state and the parents of this state safety from these people who commit probably the most gross crime that can be committed. I think that we owe it to the citizens of this state to join with our sister state, and the other eight states in this country, with some form of castration to put these people away so they won't be able to harm our children again. From a financial standpoint, I've made several phone calls and I've heard that it is anywhere from \$1,500 to \$2,000. I don't have it in writing; that's strictly phone conversations. To put someone in jail, it costs the state for twenty-five years, roughly \$1 million. But we're not talking financial, we're talking the safety of our children, who Senator D'Allesandro and I don't agree often, but I certainly agree with him on that one, our children are very precious to us. And people are going to say, "Oh, that is cruel and unusual punishment". Well I ask you, colleagues, isn't it cruel and unusual punishment to do that to a child? If you don't think so, I don't know what to think. To me, it's certainly cruel and unusual to do that. I will close. I know that there are some folks here that have a real problem with this, and I understand that. Everyone in this chamber has a right to their own feelings and where they feel we should come from, and we all get elected by the people. It was mentioned earlier today, "what am I trying to prove?" Well folks, those of you who know me, for the sixteen years that I've been up here, I'm not trying to prove a damn thing. I'm trying to do what's right for the people in the state of New Hampshire and my constituents. I took a little offense at that comment, but I'll leave it there. I am not here trying to prove anything. I'm here because my heart and my soul tells me it's the right way to go, and I certainly wouldn't have brought this forward if I didn't think I was correct on it. Now, there is a person in very high places that I respect greatly, who told me recently that he would like to hang these people from the lamp post out here on the main street of Concord. Well I want you to know that I am low level than he is, because I'm doing this instead of hanging 'em. Just so you'll know. Thank you very much, Mr. President.

SENATOR LARSEN: Some of us heard this amendment might be coming, and certainly I believe everyone in this room believes that the crime of felonious sexual assault against a minor is despicable and heinous, and deserves long, long, long incarceration. But I do not believe that this, that we as a government, we as a people of this country, should advocate for the removal of body parts in such cases. We have a perfectly strong bill before us without this. We know of other governments that remove arms, legs, other body parts, but I do not support, and will not vote to stoop to removal of body parts in such cases, and I don't believe that we, as a government or as a nation, want to move to that.

**A division vote was requested.**

**Yeas: 8 – Nays: 16**

**Floor amendment failed.**

SENATOR MARTEL: Thank you, Mr. President. May I ask, I don't know who to ask now, could be anyone who...it's Senator Foster, I guess. Question of Senator Foster? Senator Foster, would this piece of legislation look at victims...are they male and females both, being considered equally as possible victims or predators in this case?

SENATOR FOSTER: Absolutely. I know of no difference in the bill treating males or females either as victims or offenders differently. The same rules would apply, as I think they must.

SENATOR MARTEL: Thank you, sir. Follow up, please? I forget, what is the age that we are looking at with this piece of legislation?

SENATOR FOSTER: The enhanced penalties that the bill puts into effect are for children under the age of thirteen and offenders eighteen years of age or older.

SENATOR MARTEL: Thank you.

SENATOR LETOURNEAU: I just...Mr. President, I wanted to rise in support of this bill. I think it's an important bill that we should speak about it. I want to rise in support of the amended version. As a body, I think we've got to restore mandatory minimums to this bill. As a parent and a grandparent, and now a great grandparent, I feel this is the most unsociable crime that can be committed. Our children, as Senator Barnes would say, are our "most precious resource and our most precious commodities that we have." We just have to do this. I'm going to cut this short because it's very emotional. I've looked into the eyes of mothers in my district whose children have been molested, and I have given my oath to them that I would do whatever I could to right the wrongs and prevent this from happening in the future. I urge this entire body to support this piece of legislation. Thank you.

SENATOR BARNES: Thank you, Mr. President. I rise to speak in favor of establishing the New Hampshire Sexual Predator Act or what should be more aptly described as the "Keeping Kids Safe Act." I'm doing this because I don't want anyone to think that I have other thoughts because of my amendment failing. I have strong feelings on this issue, as you probably can imagine. This bill is vital to send a clear message to those who prey on our children, our most precious commodity, Senator D'Allesandro and the rest of us. These children need protection and parents need our help in protecting them. I am in strong support of the amendment to restore mandatory minimum sentencing to the bill. There is no question that a mandatory minimum is the appropriate sentence to these perpetrators and the prosecutors should have the discretion to pursue these sentences. Further, I applaud the hard work of the House and Senate on this important issue. It's time New Hampshire addresses these heinous crimes and put these criminals where they belong. And I also at this time, want to thank our Governor Lynch for his effort in getting this piece of legislation passed. I take my hat off to him. Thank you very much.

**The question is on the motion of ought to pass as amended.**

**A roll call was requested by Senator Clegg.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, Morse, Hassan, Fuller Clark.**

**The following Senators voted No: Gottesman, D'Allesandro, Estabrook.**

**Yeas: 21 - Nays: 3**

**Adopted.**

**Ordered to third reading.**

**HB 1452-FN**, requiring insurance coverage for the cost of testing for bone marrow donation. Banks and Insurance Committee. Ought to pass, Vote 6-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move House Bill 1452 ought to pass. This bill will require insurance companies to cover the costs associated with bone marrow testing. Currently, this burden is placed on the family of the individual in need of the bone marrow transplant. The committee heard testimony that the most difficult and time consuming aspect of planning a bone marrow drive is the fundraising. Families should not have to fundraise to save the life of a loved one. Insurance companies already cover the cost of testing for family members of the patient. However, 70 percent of patients do not have a match in their family. This bill will extend coverage for anyone willing to be tested. The insurance company will also stand to benefit from having more potential donors, as they will pay more trying to keep a sick person alive long enough to find a match than they will for this relatively simple blood test. The benefit of saving a life far outweighs the cost. The Banks and Insurance Committee recommends that this legislation be adopted and asks your support. Thank you.

SENATOR EATON: Thank you. One of the worst things a family can ever hear is that their child has a terminal illness, and without a bone marrow transplant, that child will soon die. That's what Mark and Lisa Lanoue had gone through a very, very short while ago. And their world came tumbling down on them as they were driving up to Dartmouth to hear this news. They were ones not to sit back, and they were looking at "how do we get a bone marrow transplant" and they found out how difficult it was going to be. Their whole church, Saint George Greek Orthodox Church that they belong to in Keene, got behind them. The community then got behind them, and they had testing done in the Keene area. People waited in the snowstorm for four hours, a line going outside the church, in order to donate. Very, very compelling. While they knew it was going to be very, very difficult to get a match, they had a church down in Florida, a Greek Church down in Florida, that was putting together the same type of testing, and then a group over in Chicago was going to do the same thing. They got behind this and pushed it and made it happen. Fortunately, before the testing was done down in Florida, a donor came in. Now most people would say thank God, my daughter is saved. This family said, "I don't want any other family to go through what I went through, we went through, and do fundraising" and the work and countless hours that they put in, having to tend with their family, but also having to make this happen. Mark is a dealer in vehicles and goes all over New England and buys and sells vehicles. And Mark is not a wealthy man; he has put considerable expense into...from his own family where he has donated cars to other groups that are doing

these bone marrow transplants, which is a way of trying to get people to come in to be tested, which is a very, very simple test, a blood test. So he's not only talked the talk, he's walked the walk, and has made this happen. I also want to recognize Nancy Johnson, Representative Nancy Johnson up here, who is the prime sponsor of this bill, who has walked with them, hand-in-hand through this whole piece. Thank you, Nancy. And so I'm here today to support this. Mark is on the floor to watch this bill go through. And we lovingly call it "Hristianna's bill" which is his daughter's first name. I hope everybody will join me in voting for this. Thank you.

SENATOR FLANDERS: Thank you, Mr. President. Just briefly. As chairman of Banks and Insurance, you know the history of the committee has been opposed to mandates. And again, this is the second time I've been able to say that we've passed out a mandate 6-0. I would remind that there...no one appeared opposed to this bill, which I think we ought to give some credit to the insurance companies that they saw this, and saw it was a good idea, did not oppose it. I don't think any of you got any calls from anybody opposing this bill. So I'm sure we'll support it. Thank you.

SENATOR FOSTER: Thank you, Mr. President. I'm a co-sponsor of this bill and I'm very happy to see that it passed today. I co-sponsored it because we lost a community leader to a disease which might have been helped had she been able to have a perfect match. She was at the time, diagnosed, was looking to be sitting to my right, when she was diagnosed and had to pull out of a Senate race. I want to thank Representative Johnson as well, and Representative Rosenwald, who worked the bill very, very hard in the House. I think the people on the Banks and Insurance Committee would agree with me. I may have come in with sort of my mind made up, but I think probably at least three of the four members didn't. And the presentation was terrific, and I think convinced everybody that, not only was this type of mandate that ought to be adopted, but actually would save money in the long run as people had better matches. Thank you very much, Mr. President.

**The question is on the adoption of the committee report of ought to pass.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Kenney.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

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

**Yeas: 23 - Nays: 0**

**Adopted.**

**Ordered to third reading.**

**Senator Green is in favor of HB 1452-FN.**

**HB 1209**, relative to notification requirements for criminal offenders. Education Committee. Ought to pass, Vote 2-0. Senator Eaton for the committee.

SENATOR EATON: Thank you. House Bill 1209 might have some connection to the bill that we just passed, the sexual predators bill. And, for that reason, until legal counsel can look at it to make sure they don't conflict, I move to table.

**MOTION TO TABLE**

Senator Clegg moved to have HB 1209 laid on the table.

**Adopted.**

**LAIID ON THE TABLE**

**HB 1209**, relative to notification requirements for criminal offenders.

**HB 1214**, establishing a study committee to identify and assess community-based, educational and social/human services programs that serve families with children 8 years old and younger. Education Committee. Ought to pass, Vote 4-0. Senator Estabrook for the committee.

**MOTION TO TABLE**

Senator Estabrook moved to have HB 1214 laid on the table.

**Adopted.**

**LAIID ON THE TABLE**

**HB 1214**, establishing a study committee to identify and assess community-based, educational and social/human services programs that serve families with children 8 years old and younger.

**HJR 21**, urging the university of New Hampshire to restore intercollegiate baseball and softball. Education Committee. Ought to pass, 4-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you, Mr. President. HJR 21 urges the university system of New Hampshire to restore their baseball and softball programs at UNH. In 1997, UNH cut their baseball and softball program which has encouraged many New Hampshire students in the last nine years to attend other universities that offer these sports. Currently, there is at least \$1 million set aside for the establishment of a baseball program at the university. If UNH never had a baseball team, Carlton Fisk or Bob Tewksbury probably would have never attended the university system. Think about how many players we may have already missed with this program for the last few years. Please join the Education Committee in voting this bill ought to pass. And, although I will always be a Boston Braves fan, our beloved Red Sox last night, lost. Thank you, Mr. President.

SENATOR GREEN: Thank you, Mr. President. I would like to speak to the bill, please. I would like to speak in favor of the bill, but I also have some comments that I would like to make. Myself and some colleagues in this room, basically Senator D'Allesandro and Senator Barnes, I won't take your names in vain, but we spent a considerable amount of time dealing with the UNH officials regarding this issue of baseball and softball over the least year and a half. We not only had some discussions with them about the programs, we actually, as you all remember two years ago, put money in the budget. We encouraged them to raise private funds and to use state funds in the budget. They were, in my opinion, did not want to do it. Made every possible excuse that they could come up with, not to do it. And I feel bad that we have to keep sending them the message **TAPE CHANGE** those activities. I also want to say that I am also very upset with the most recent reduction in athletic programs, swimming, golf and tennis. The reason I'm upset is, if anybody who has any sense of knowledge about how the university budget works, to think that they're going to save a half a million dollars by cutting those sports, they've got to think that we are not very bright. This is not about money. This is about politics. And I hate to see the young people

getting involved in that process. It is all about Title Nine, NCAA rules and those kinds of things. Well, the parents and the children are not interested in that aspect. They understand that there are rules. But they don't see the connection between the rules and the university not providing those programs. I, as an individual Senator, and many of you know, strongly support my alumni, the institution, the University of New Hampshire. That's not going to change. But I think they're making some major, major administrative errors in their judgment as public relations, bad public relations, that these kinds of actions bring about. And I'm very saddened that they are doing these kinds of things. I believe if they came to this body, that we would work with them to help them continue these athletic programs for these kids. I just don't think that they have the will or the desire to do that. And I feel bad for the university and its student body that we have to stand up here and make these kinds of observations, which I believe are valid. And I would ask all my colleagues to support this bill. And I would also say to you that I will work with whoever Senators would like work on an additional resolution, on those other sports that have been reduced or changed recently. So I just think that it's a sad day for me, as an alumnus of the university, to have to get up here and say this, but I think it needs to be said publicly. We've done as much as we could privately, we've tried hard privately. You've all been very supportive in the past, and I would ask that we continue to support it, but continue to work hard to turn the attitude around of the university athletic program and the administration of the university. Thank you very much.

SENATOR D'ALLESANRO: Thank you, Mr. President, I, too, rise to support the resolution, and give a further iteration of what Senator Green said. Senator Barnes, myself and Senator Green spent countless hours at the university talking to people about the restoration of the baseball program. Baseball has a hundred and twenty-five-year tradition at the University of New Hampshire. I was part of the baseball program when I was a student at the University. But I think the real issue is providing an opportunity for New Hampshire student athletes to participate in a program that really has a tremendous number of benefits. We've talked about Carlton Fisk who went on to great fame in the major leagues, but look at from Manchester. Michael Flanagan, who went to Manchester High School Memorial. Michael Flanagan was an outstanding baseball and basketball player. Went on with the Baltimore Orioles and the Toronto Blue Jays, Cy Young Award winner, and is currently assistant general manager of the Baltimore Orioles. Opportunity was provided for Michael in the Manchester system where we have an active baseball program. When you talk about rescinding a program that people have been supportive of, and there was great support, great alumni support, people willing to step up to the plate and provide the financial resources, and when you talk about this and you get a stone wall, I think that really isn't a very good situation for us to address. This gives, again, an opportunity for the university to do something. Dartmouth College has baseball. St. Anselm College has baseball. Keene State has baseball. Plymouth State has baseball. Southern New Hampshire University has baseball. So certainly baseball is played throughout our state and it is the national pastime, and it just seems to me that we have a hundred and twenty-five years of tradition at the university, and someone should take notice of that at the university. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. I appreciate the comments of my two colleagues, Senator Green and Senator D'Allesandro,

but I'm going to take them back a little bit further than that. I'm going to take them back to the day I was driving to Concord several years ago and the announcement came over the radio and I almost went off the road, that baseball had been scratched from the University of New Hampshire's program. I sped up a little bit, got up here and ran into an office that one of my favorite Senators occupied. His name was Junie Blaisdell. I said, "Junie, do you know what the heck they've done?" And I didn't use that word, but I'll use it here because I don't want to get gaveled down by the President. Read between the lines. Junie grabbed the telephone. He called the university. Forty-five minutes later Junie Blaisdell and I were in the President's office. Put it this way, the former president. She's left the university. It's not the president that we have today. When this debate started with Junie Blaisdell involved with it. I don't want to leave Junie's name out of it because he was a real sport fan, and I don't want people thinking that it's just underway. It's been a while since this thing started. And I'm not going to tell you about the conversation because that would bore you and probably embarrass some of you. It was an embarrassing conversation that Junie and I had with the former, and I say former, president of the University of New Hampshire. It's a disgrace. I have received...well before I go there, we talked about...you heard about Carlton Fisk, you heard about Tewksbury, you heard Flanagan. I'm going to mention a name that's closer to home. A young man who had to go and play baseball down at St. John's University. The former Senator President's nephew, Arthur Klemm. Arthur and I went down to a couple of games. We drove down to New York to take in a couple of the games with this young man. He was an outstanding young man. We had dinner with him a couple of times. And you know who was there at every game? And they went all over the country. They went up to Notre Dame, etcetera, etcetera. His mom and dad. They traveled all over the country watching their kid play ball. And he wanted to come to the University of New Hampshire, but he couldn't. So he ended up at St. Johns down in New York, of all places. So we are short stopping our kids. And you know, we talk about drop out rates in this room, we heard it last week. I'm going to tell you something. There are kids, young men, and some young ladies, because the softball program also doesn't exist at UNH. We're not going to leave that out because that has been talked about being reinstated also. I feel strongly on that issue also. But today we're talking about the drop out rate. A lot of our students stay in school to play sports. They maybe perhaps drop out if they didn't have sports programs in their school. And now they can't go to the state university. Their parents can't afford to send them someplace else, because everybody's not a hall of famer like our Carlton Fisk, who lived in Raymond for a number of years, just to throw that commercial in. It must have been the water that got him there. But I have in my hand something that was apparently read in the Education Committee. It's from the University of New Hampshire, and in it, it states some of the findings. The Division I men's baseball team is unlikely to achieve success in the northeast and the return of baseball, blah, blah, blah. Well I want to tell you, the University of Maine in Orono is certainly more northeast than we are and, for years, they have had a very successful program, and two of their students have gone on to the major league. Billy Swift is one and I forgot the name of the other young man. So I don't understand where that finding came from. I'm sure the university spent some good money on this research, but it tells me that it is an intercollegiate athletic consultant, whatever that is. They say that the northeast, we can't be successful. It also says, "the NCAA requires that



all fifty-six division I games be played in the spring semester prior to commencement. UNH athletics prides itself on doing as well, if not better in the classrooms as on the playing field." That's a very admirable statement. "UNH student athletes are nationally recognized for their consistently high grade point averages. Because of the rigorous spring schedule of baseball, baseball players throughout the region have the lowest GPA." Now I take offense to that. In 1955, I was the classmate of Freddy Dauten. Freddy Dauten was on this baseball team that went to Omaha, Nebraska the last time UNH went to the college world series, and we won a game out there. We beat Mississippi 13-12, the Cinderella team of the tournament. And this is saying that the GPA of our baseball players is below everybody else. Why don't they put the GPA to the basketball team that sure isn't making any money at UNH? I don't see the GPA of the football team. I don't see the GPA of the hockey team. They're singling out the baseball. They're saying that baseball players are stupider than the rest of them. I am insulted by that. My friend Freddy Dauten went on to become a Lieutenant Colonel in the United States Air Force and, on his third tour of duty in Vietnam, was shot down and killed. Freddy was no dummy, he was a patriot and I am offended by that statement that came over here from the University of New Hampshire. And with that I'll sit down and shut up, but boy, I'm embarrassed by the University sending this garbage over here.

SENATOR KENNEY: I don't know if I can top that, Mr. President. I am in support of HJR 21. And I like to speak from my personal experience and would really like to speak to the topic of the student athlete at the University of New Hampshire. I'll be the first one to say it. When I went to the University of New Hampshire I was an athlete student. The only reason really I went to college was because I wanted to play sports. I had the ability to get scholarships to play Division II basketball and other sports, but I wanted to play Division I. I really didn't think a lot about academics earlier on. I went to the University of New Hampshire. I was able to participate in their soccer program where that program, in the late '70s was really a very kind of rag-tag program, but we had a lot of spirit. There were high school teams in the state of New Hampshire, soccer teams, that had better uniforms than we did. But we had a bus, we had the ability to put on uniforms and play in the right field of the baseball field at the University of New Hampshire, and we had that experience of being student athletes, the ability to compete against other New England schools. And what I'm fearful of today is that the programs like the baseball team, the softball team, the swimming team, the lacrosse team, is that we're sending the wrong signal to a group of kids, and we saw this group of kids this morning, who came in, who won the state championships for their perspective sports. That they can't go to the University of New Hampshire and perhaps play the same sport if they want to continue on in their athletic dreams. My dream was to play Division I athletics. It didn't matter what sport it was, but I wanted to play. I had that experience. And I had a chance to go to some wonderful out-of-state colleges and some trips that I can never forget, and some of the bonds and some of the relationships that I made were are just incredible and I have those relationships today. But when you look at it, the student athlete, and particularly the male athlete in this state, you would expect that your state university would have those sports in place so that you could compete as a student athlete. And if you look at...you hear the argument, it was Title 9. It's because we don't have the funding. It's because we're not meeting the NCA rules and regulation. How

about the trustees going to the NCA and saying, "Time out here, we want or student athletes in New Hampshire to be able to compete, to be able to have that college experience, and to be able to carry on in life, learn a little bit about leadership and team work, but let's lower some of the standards here so that we don't have to have all of these standards that we need to follow and have this ungodly amount of money." Because the soccer team back in 1978 and '79, we had some basic uniforms, we had a field, we had a ball, and we basically paid for our own shin pads, and we went ahead and competed. And I remember my first year of being red shirted, and we won the Yankee Conference. Gordie Tuttle was in goal and we had a wonderful season, and I'll never forget that season. But if we were not going to continue to support the university system in the athletic programs, you're going to see a lot of our people migrate or leaving the state and joining other university athletic programs, and we're not going to have the Carlton Fisks, we're not going to have the Matt Bonners, you know, we're not going to have people like that. And Jenny Thompson said it best, when she refused the Petty Award, the highest award to the University Alumni Association. "These are the pools, the University of New Hampshire pool and the Dover pool, that made me become an Olympic athlete. I owe it to them. I owe it to the program to support swimming." And I didn't blame her for making that statement because, if I were in her position, Olympian, the most decorated female athlete, I probably would have done the same thing. We, at the University of New Hampshire, need to start supporting its student athletes. In the case of Joe Kenney, I was an athlete student, but I learned later that it's about academics, and then it's onto athletic programs. But I make that statement as a personal experience, and I agree with my colleagues who spoke before us. We need to get back on track in supporting the dreams and aspirations of young athletes in the state of New Hampshire by supporting a state university who will support those programs.

**The question is on the adoption of the committee report of ought to pass.**

**A roll call was requested by Senator Green.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

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

**Yeas: 24 - Nays: 0**

**Adopted.**

**Ordered to third reading.**

**HB 1433**, establishing a committee to study secured landfills and establishing a moratorium on the incineration of construction and demolition waste. Energy and Economic Development Committee. Ought to pass, Vote 3-0. Senator Bragdon for the committee.

**SENATOR BRAGDON:** Thank you, Mr. President. Although this bill originally deals with the dreaded study committee, I'm going to move that it be found ought to pass, and I believe there's an amendment coming up from another Senator to change a few things.

Senator Odell offered a floor amendment.

Sen. Odell, Dist. 8

Sen. Larsen, Dist. 15

**April 12, 2006**

**2006-1790s**

**08/09**

### **Floor Amendment to HB 1433**

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

AN ACT establishing a moratorium on the incineration of construction and demolition waste.

Amend the bill by deleting sections 1-5 and renumbering the original sections 6-7 to read as 1-2, respectively.

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect June 30, 2006.

**2006-1790s**

### AMENDED ANALYSIS

This bill establishes a moratorium on the incineration of construction and demolition waste.

SENATOR ODELL: Thank you, Mr. President. I move Senate amendment 1790, and may I speak to it while it's being distributed?

SENATOR GATSAS (In the Chair): Amendment 1790 has been proposed. Senator Odell to speak to the amendment while it's being passed out.

SENATOR ODELL: Thank you, Mr. President. This amendment that is being brought to you now with Senator Larsen's name and my name on it, is very simple. Basically it strips away the study committee and retains the moratorium on the incineration of construction and demolition debris through December 31, 2007. When you vote for this amendment, you're basically making a commitment that, like the bills that are on the table, we will take up and try to incorporate in the study committees that will be forthcoming, the issue dealing with these landfills. So I encourage you to vote for the amendment and then vote for the bill. Thank you.

SENATOR LARSEN: I appreciate all the work that the Senate Energy Committee and the Senate Energy chair worked on this and support for what is, as we know, a very important issue that we didn't want to be tabled as we went to a House...or as we went to discuss other studies. The issue of construction and demolition and incineration in this state is one which many people in this state are concerned with. We need to continue the moratorium until we find technology, or if there is such thing, to deal with the elimination of construction and demolition waste in a way that is safe for our communities and keeps our clean air here in New Hampshire. Thank you.

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 1491**, establishing a committee to study the publicly owned treatment plant needs of New Hampshire. Energy and Economic Development Committee. Ought to pass with amendment, Vote 3-0. Senator Burling for the committee.

**Energy and Economic Development****April 5, 2006****2006-1636s****08/01****Amendment to HB 1491**

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

AN ACT establishing a committee to study the publicly owned treatment plant needs of New Hampshire and extending certain deadlines relating to the Great Bay Estuary Commission.

Amend the bill by inserting after section 5 the following and renumbering the original section 6 to read as 8:

6 Great Bay Estuary Commission; Reporting Date Extended. Amend 2003, 236:5 as amended by 2004, 20:11 and 2005, 104:4 to read as follows:

236:5 Report. The commission 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, 2006~~] **June 1, 2008**.

7 EAST; First Meeting Deadline, Extended. Amend 2004, 258:2 to read as follows:

258:2 First Meeting. The chairperson of the Great Bay Estuary commission, established by 2003, 236, shall call the first meeting of EAST prior to [~~November 1, 2005~~] **June 1, 2008**.

**2006-1636s****AMENDED ANALYSIS**

This bill establishes a committee to study the publicly owned treatment plant needs of New Hampshire.

This bill also extends the reporting deadline of the Great Bay Estuary Commission and extends the first meeting deadline of the Estuary Alliance for Sewage Treatment.

**MOTION TO TABLE**

Senator Burling moved to have HB 1491 laid on the table.

**Adopted.****LAI D ON THE TABLE**

**HB 1491**, establishing a committee to study the publicly owned treatment plant needs of New Hampshire.

**HB 1568**, establishing a committee to study the siting and construction of commercial wind energy facilities. Energy and Economic Development Committee. Ought to pass, Vote 3-0. Senator Odell for the committee.

**MOTION TO TABLE**

Senator Odell moved to have HB 1568 laid on the table.

**Adopted.****LAI D ON THE TABLE**

**HB 1568**, establishing a committee to study the siting and construction of commercial wind energy facilities.

**HB 1269**, relative to the taking of red deer or elk. Environment and Wildlife Committee. Inexpedient to legislate, Vote 3-2. Senator Barnes for the committee.

**MOTION TO TABLE**

Senator Barnes moved to have HB 1269 laid on the table.

**Adopted.**

**LAIID ON THE TABLE**

**HB 1269**, relative to the taking of red deer or elk.

**HB 1324**, relative to the commission to study the state park system. Environment and Wildlife Committee. Ought to pass, Vote 3-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you very much, Mr. President. I move House Bill 1324 ought to pass. This legislation basically adds an additional House member to the existing commission to study the state park system. The additional member will be from the House Resources, Recreation and Development Committee. The Environment and Wildlife Committee asks for your support on the motion of ought to pass, and we thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1407-FN-A**, relative to funding exotic aquatic weeds eradication and control. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you, Mr. President. Mr. President, I have a floor amendment to House Bill 1407, which is 1685, and while that is being passed out... Pardon?

SENATOR GATSAS (In the Chair): There is no amendment here, Senator. You want to speak on the bill, and then we can...we haven't gotten to the floor amendment part yet.

SENATOR JOHNSON: Thank you, Mr. President. I move House Bill 1407 ought to pass. This legislation will make the increase in boat registration fees permanent. This fee increase is currently set to sunset on January 1, 2008. The boat registration fee is used to fund the Milfoil and Other Exotic Aquatic Plants Prevention Program. The spread of milfoil compromises the ecological, recreational, aesthetic and economic value of New Hampshire's lakes and ponds. Keeping the \$3.00 fee will allow for the continued funding of milfoil prevention, eradication, research and education while supporting the progress that DES and the prevention program have already made against the spread of milfoil. The Environment and Wildlife Committee asks for your support on the motion of ought to pass. Thank you.

**Recess.**

**Out of recess.**

Senator Johnson offered a floor amendment.

Sen. Johnson, Dist. 2

**April 6, 2006**

**2006-1685s**

**06/04**

**Floor Amendment to HB 1407-FN-A**

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

AN ACT relative to funding exotic aquatic weeds eradication and control and relative to boat fee agents of the department of safety and increasing the boat registration fee.

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

2 Collection; Agents; Fee Remitted to Department of Safety. Amend RSA 72-A:4, I(a) to read as follows:

(a) An agent of the department of safety duly authorized to issue boat registrations under RSA 270-E. These agents shall furnish a surety bond as required in RSA 41:6 **and except for the collection fee under paragraph III, shall remit all fees collected to the department of safety;**

3 Town Treasurer; Payment by Agents of the Department of Safety Removed. Amend RSA 72-A:5 to read as follows:

72-A:5 [~~Town Treasurer.~~] **Disposition of Fees.**

I. Every clerk[;] **and** tax collector[; ~~and authorized agent~~] shall each week send all boat fees collected to [~~his~~] **the** town or city treasurer. Except as provided in paragraph II, boat fees shall be for the general use of the town or city.

II. When the boat fee is collected by the department of safety **or its agents**, the fee shall **each week** be deposited in the navigation safety fund established under RSA 270-E:6-a.

4 Increase in Boat Registration Fee for Lakes Restoration and Preservation Fund. Amend RSA 270-E:5, II(a) to read as follows:

(a) [~~\$5~~] **\$9** for each registration specified in paragraph I. The fees collected under this subparagraph shall be paid into the lake restoration and preservation fund established under RSA 487:25.

5 Lake Restoration and Preservation Fund; Milfoil and Other Exotic Aquatic Plants Prevention Program. Amend RSA 487:25, I to read as follows:

I. The fee of [~~\$5~~] **\$9** collected under the provisions of RSA 270-E:5, II(a) shall be paid to the director of the division of motor vehicles. The director of the division of motor vehicles shall pay over said fee to the state treasurer who shall keep the fee in a special fund to be expended by the department of environmental services. The department shall use \$.50 of the fee for lake restoration and preservation measures, exclusive of exotic aquatic weed control, [~~\$1.50~~] **\$5.50** of the fee for the control of exotic aquatic weeds, and \$3 of the fee for the milfoil and other exotic aquatic plants prevention program. The department shall deposit the \$3 into a special account within the lake restoration and preservation fund which shall be used to administer the milfoil and other exotic aquatic plants prevention program. The special fund shall be nonlapsing. All funds received under this section are continually appropriated to the department for the purposes of this subdivision.

6 Effective Date. This act shall take effect July 1, 2007.

**2006-1685s**

#### AMENDED ANALYSIS

This bill:

I. Makes permanent the milfoil and other exotic aquatic plants prevention program and the increase in the boat registration fee used to fund the lakes restoration and preservation fund for exotic aquatic weeds prevention and eradication. Currently the increase in the boat registration fee is repealed on January 1, 2008.

II. Requires the agents of the department of safety who collect boat fees to remit the fees to the department of safety.

III. Increases the boat registration fee and applies the increase in the boat registration fee to exotic aquatic weed control.

SENATOR JOHNSON: Thank you, Mr. President. I'm sorry for the confusion. It certainly is my fault. I should have checked it earlier this morning. The amendment that is before you, there may be a little confusion about that, 1658s. I think if you...

SENATOR GATSAS (In the Chair): Floor amendment 1658 has been proposed and being passed out, and you may speak to the amendment, Senator.

SENATOR JOHNSON: Thank you, Mr. President. This maintains the \$3.00 fee for milfoil that we've had right along. And in the amended analysis it says, "Makes permanent the milfoil and other exotic aquatic plants prevention program and the increase in the boat registration fee used to fund the lakes restoration and preservation fund for exotic aquatic weeds prevention and eradication. Currently the increase in the boat registration fee is repealed on January 1, 2008." And then it goes on to where the fee is collected and sent to the Department of Safety, and...so that's what we're doing. We're trying to have a stable financial amount of money available to continue these programs. We have now, I believe it's sixty-five lakes, that we have a concern about on aquatic weeds. So I think that's what my amendment to 1407 is attempting to do. Thank you, Mr. President.

SENATOR EATON: Thank you. This, I feel, is a very important bill. It affects every single one of us here because we all have lakes and streams in our district. Just last year, through a bill where Representative Hogancamp was here, we designated Spofford Lake a Class A lake. They have an incredible volunteer program that is funded through these fees. They had five catches, I believe it was last year, of milfoil coming in on boats from out of that area. And, as well know, when milfoil starts in a lake, it's very, very hard to eradicate it and you're property values go down and it chokes out everything else in that lake. So it's very important to keep those programs going.

SENATOR LETOURNEAU: A question of the chair? Will this bill go to Finance?

SENATOR GATSAS (In the Chair): If this bill passes, it will go to Finance.

SENATOR LETOURNEAU: Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I'd like to speak to the amendment. Thank you, Mr. President. I rise in support of Senator Johnson's amendment. One of the significant problems facing us in terms of our lakes, is the rapid expansion of an aquatic vascular plant called milfoil. Milfoil occurs in Manchester in Lake Massabesic. That's the water supply for the city of Manchester and surrounding areas. In Manchester, we matted the milfoil in an attempt to destroy it. It is a hardy vascular plant, and as a result, very, very difficult to get rid of. By passage of this bill, and by restoring some funds to the fund, we're able to at least work on controlling milfoil. Milfoil can destroy the life of our lakes. We're a tourist attraction, we're a destination attraction, and we need to protect these lakes. This will go a long way towards doing that. Now former Senate President, Stewart Lamprey, very much involved in the protection of the lake. Stewart has spent a great deal of time and effort with regard to the problem of milfoil. And the problem of milfoil began about thirty years ago and it's gotten ever, ever increasing. So this is a way to cope with that, and I support it strongly and hope that the Senate will approve this amendment. Thank you, Mr. President.

**Recess.**

**Out of recess.**

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

Senators Barnes, Clegg, Gatsas and Letourneau are in opposition to HB 1407-FN-A.

**HB 1464-FN-A-L**, relative to mosquito control, establishing a mosquito control fund and making an appropriation therefor. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Mr. President. I move House Bill 1464 ought to pass. This legislation creates a mosquito control fund to help communities threatened by mosquito borne diseases such as Eastern Equine Encephalitis and West Nile Virus. In order to be eligible for money from the fund, a community must have an approved, comprehensive mosquito control plan in place. Communities will have to pay 75 percent of the cost associated with mosquito control during a declared threat to public health. The state will pay up to 25 percent of the cost with money from the mosquito control fund. This legislation appropriates \$158,625 to the mosquito control fund and \$60,000 to continue mosquito surveillance as federal funds for this activity are decreasing. EEE and West Nile Virus tend to occur in cycles. Last year, there were seven human cases of EEE and two deaths in New Hampshire. It is important to be prepared for these diseases ahead of time. Last year, the Department of Health and Human Services had no way to help towns in need of assistance for mosquito control. House Bill 1464 will allow DHHS to be more proactive in their approach to mosquito control. It will also allow the Department of Agriculture to expedite the mosquito spraying permit process if an area needs to be sprayed immediately. The Environment and Wildlife Committee asks for your support on this motion of ought to pass. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 1603-FN**, relative to administration and enforcement by the division of forests and lands over forest resources and timber harvesting. Environment and Wildlife Committee. Ought to pass, Vote 4-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you, Mr. President. I move House Bill 1603 ought to pass. This legislation strengthens and fine tunes existing statutes relative to the Division of Forests and Lands. All forest rangers hired after January 1, 2005 will be required to attend the fulltime police academy. They are currently required to be part time officers, but forest rangers have begun to handle investigations that are increasingly complex. In order to better protect the state from forest pests and diseases, House Bill 1603 also will allow the Director of Forests and Lands to regulate the movement of wood into and around the state if it could cause the spread of insects and diseases. The legislation also defines and regulates wood concentration yards and requires a written contract for the purchase or sale of forestry products. These changes will help the Division of Forests and Lands better serve the businesses, landowners, and citizens of New Hampshire, and the legislation is supported by the



forest industry. The Environment and Wildlife Committee asks for your support on the motion of ought to pass. Today we have with us in the chamber here, Representative Peter Solomon, who has served two terms from the town of Canaan, and serves Grafton District 10. He is a co-sponsor of this legislation. He came down today to listen to the debate. Peter, thank you for coming. Thank you, Mr. President.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**Recess.**

**Out of recess.**

**HB 1688**, prohibiting the use of gasoline-powered watercraft on Head's Pond in Hooksett. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

**Environment and Wildlife**

**April 4, 2006**

**2006-1634s**

**03/04**

### **Amendment to HB 1688**

Amend the bill by replacing section 2 with the following:

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

SENATOR BARNES: Thank you, Mr. President. I move House Bill 1688 ought to pass with amendment. This legislation will prohibit the use of gasoline powered powerboats and watercraft on Head's Pond in Hooksett. Head's Pond is an artificial body of water that is a hundred and twenty acres, approximately, and approximately thirteen feet deep in its deepest part. The pond is difficult to navigate because it is shallow and there are numerous tree limbs and trunks in the water. Gasoline powered powerboats are rarely used on the pond now. Electric powered boats, canoes and kayaks will still be allowed on the pond. The committee amendment changes the effective date to "upon passage" so we don't think that's going to be a problem going back over to the House. The Environment and Wildlife Committee asks for your support on the motion of ought to pass with amendment. And this came forward with Representative Hess, and he represents Hooksett, as does our Senate President, and the town wants this bill very badly. And I know there is a certain member of this body, when he was a young fella, he used to swim in Head's pond, and I won't mention his name. So the committee would please appreciate your support on this piece of legislation.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 115**, allowing pharmacists to establish collaborative practice agreements with medical practitioners. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 115 ought to pass. This bill allows licensed pharmacists to enter into collaborative practice agreements with medical practitioners and adopt standards for such agreements. House Bill 115 does not target community

pharmacies, rather than healthcare facilities such as nursing homes. Under a voluntary agreement with a physician, pharmacists would be allowed to more effectively monitor and control pharmaceutical care in order to reduce the preventable nursing home admissions, reduce medication errors and reduce hospitalization from adverse drug events. House Bill 115 stands to improve patient care by reducing costs, and the committee recommends ought to pass. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 624-FN**, relative to penalties in certain health and health-related professions. Executive Departments and Administration Committee. Ought to pass, Vote 3-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 624 ought to pass. The bill will help make penalties consistent across the health and health-related professions. House Bill 624 does not target those who simply let their license lapse by accident, rather than those who repeatedly refused to comply with the statute. House Bill 624 will clean up and clarify the penalties in health-related professions, and the committee recommends ought to pass and thank you for your vote.

**Adopted.**

**Ordered to third reading.**

**HB 1590-FN**, relative to the pari-mutuel commission. Executive Departments and Administration Committee. Ought to pass, Vote 3-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 1590 ought to pass. The bill would provide the Pari-Mutuel Commission and the Attorney General with the authority to conduct criminal background checks, and or give the Attorney General's Office authority to audit and investigate at the applicant's or licensee's expense. House Bill 1590 also defines the duties and powers of the racing stewards and judges in order to bring them into compliance with common practices in the industry. The committee recommends ought to pass on House Bill 1590 and asks for your support. Thank you, Mr. President.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 1671-FN**, relative to the regulation of dentists and dental hygienists by the board of dental examiners. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 3-0. Senator Kenney for the committee.

**Senate Executive Departments and Administration**

**April 5, 2006**

**2006-1659s**

**10/03**

**Amendment to HB 1671-FN**

Amend RSA 317-A:21-c, II(f) as inserted by section 2 of the bill by replacing it with the following:

(f) The administration of nitrous oxide/oxygen minimal sedation (anxiolysis); provided the dental hygienist is qualified by the board after training and after passing an examination approved by the board.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 1671 ought to pass with amendment. House Bill 1671 broadens the definition of professional misconduct to include dishonesty or administrative and criminal convictions because current language does not always allow the board to sanction licensees who have been convicted of significant crimes. House Bill 1671 also shortens the timeframe dentists are required to maintain records. The current requirement that the dentist maintain records of minor patients for up to twenty-two years is an unnecessary burden. The committee amended the bill to clarify that a qualified rather than certified dental hygienist may monitor nitrous oxide sedation. Dental hygienists are allowed to perform the procedure in at least twenty-three states right now, usually by the rule, and the committee recommends ought to pass with amendment on House Bill 1671. And, I additionally have a...I believe is a floor amendment. Thank you, Mr. President.

SENATOR LARSEN: I'm not...a question of Senator Kenney. I apologize. In one of the hearings, particularly this hearing I was not attending, that I didn't hear or was not able to ask a question on the administration of nitrous oxide by dental hygienists, and we had the question and tried to reach some people in the medical field. I wondered if you, as chairman, heard whether there was any concern with the administration of nitrous oxide by dental hygienists, even though they're trained, that it is fact, a form of anesthesia, and poses some risk to the patient or any kind of harm?

SENATOR KENNEY: Thank you, Senator Larsen, for that question. Nitrous oxide question never came up in testimony. It had a full hearing in the House. There was no one that came in, you know, in opposition from the profession itself. So I put trust in the professional board and to the association to say that this is a practice that occurs in twenty-three other states, that New Hampshire would be in line in passing a similar law in this state. But that's the best answer that I can give to you.

SENATOR LARSEN: Okay. Question? Do we know if this bill is going to Finance? It has an "FN" but I'm not sure...

SENATOR KENNEY: It depends on if Senator Morse wants it.

SENATOR GATSAS (In the Chair): Senate Finance has not requested that it go to Finance.

SENATOR LARSEN: Okay. Thank you. I will hope that the Conference Committee addresses this issue.

### **Amendment adopted.**

Senator Kenney offered a floor amendment.

Sen. Kenney, Dist. 3

**April 13, 2006**

**2006-1802s**

**10/09**

### **Floor Amendment to HB 1671-FN**

Amend RSA 317-A:27-a as inserted by section 3 of the bill by replacing it with the following:

317-A:27-a Dental Records. Dentists and dental hygienists shall make a record of all examinations and treatments performed or recommended. The record shall be in such a manner and in sufficient detail that it may

be used for identification purposes. A dentist shall maintain patients' ***paper, electronic, and radiographic*** records for at least 7 years from the time the dentist or dental hygienist last treated the patient. In the case of a minor patient, a dentist shall maintain a patient's ***paper, electronic, and radiographic*** dental records for at least 7 years past the age of majority.

SENATOR KENNEY: Yes, I would have a floor amendment.

SENATOR GATSAS (In the Chair): 1802s has been proposed, and Senator Kenney, will you speak to it as it's being distributed?

SENATOR KENNEY: Floor amendment 1802, it just includes the language "electronic records". That was a request of the dental community. So it's just a minor correction, because, as you know, we do a lot of records electronically today. So I would just ask the body if they would support that amendment.

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 1697-FN**, relative to certain state salaries. Executive Departments and Administration Committee. Ought to pass, Vote 3-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President. I move House Bill 1697 ought to pass. Evidently, while the state contract was being signed and sealed and delivered, a period of two weeks was left out of the employment contract, and resulted in a big difference between the budget and the contracts. House Bill 1697 will make the contract signed by the state and the SAU whole. The committee recommends ought to pass. Evidently what happened is that, when it was being signed, sealed and so forth, the dates got wrong. The date says July 1<sup>st</sup>. This bill changes it back to June 16<sup>th</sup>. I'll just read this note. "This bill will change the effective date of 2 percent salary increase for state employees from July 7, '06 to June 16<sup>th</sup> '06. This remedy is an oversight that occurred during the collective bargaining process. Bringing the effective date of this salary increase in-line with what was negotiated on behalf of the state employees, will insure them the full benefit that they are entitled to." This is why we urge you to support this bill. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 1722-FN**, relative to the New Hampshire council on developmental disabilities. Executive Departments and Administration Committee. Ought to pass, Vote 3-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President. I move House Bill 1722 ought to pass. This bill will establish a New Hampshire Council for Developmental Disabilities as a stand-alone entity rather than administratively attached to the Department of Health and Human Services. House Bill 1722 does not change current policy, nor does the bill cost the state money or change any PAU. Passing House Bill 1722 will insure federal compliance, safeguard the Council's 100 percent federal funding, as well as increase efficiencies and eliminate the state funding match.

The committee recommends ought to pass on House Bill 1722 and I also have received a new financial note that says that there is no cost. I don't believe this has to go to Finance. Thank you.

**Adopted.**

**Ordered to third reading.**

**Senator Green is in favor of HB 1722-FN.**

**HB 234-FN**, relative to the development of a state and political subdivision information network. Finance Committee. Inexpedient to legislate, Vote 6-0. Senator Odell for the committee.

SENATOR ODELL: Thank you, Mr. President. I move House Bill 234 inexpedient to legislate. This bill requires the Office of Information Technology to develop a plan for the implementation of a state and political subdivision information network. The updated fiscal note carries a cost of \$90,000 in fiscal year '07, while no new funds are appropriated. When the Office of Information Technology was approached about this, they had concerns that the cost would be much greater. We heard numbers up to \$2 million. To adequately implement this legislation, an appropriation would be necessary during the next budget cycle. The Finance Committee asks your support for the motion of inexpedient to legislate. Thank you, Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**HB 690-FN**, relative to aid to the needy blind and relative to undue hardship for public assistance. Finance Committee. Ought to pass with amendment, Vote 6-0. Senator Clegg for the committee.

**Senate Finance**

**April 5, 2006**

**2006-1653s**

**01/09**

**Amendment to HB 690-FN**

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

AN ACT relative to aid to the needy blind to undue hardship for public assistance, and to eligibility for and recovery of public assistance.

Amend the bill by replacing all after section 2 with the following:

3 Eligibility for Assistance. Amend RSA 167:4, IV(b) to read as follows:

(b)(1) Notwithstanding any provision of law to the contrary ***and consistent with section 1917(e) of the Social Security Act as amended by the Deficit Reduction Act of 2005, (DEFRA), Public Law 190-171***, for purposes of medicaid eligibility, investment in annuities shall be limited to those annuities that:

[(1)] (A) Are actuarially sound as measured against the Social Security Administration Life Expectancy tables as amended;

[(2)] (B) Provide equal or nearly equal payments for the duration of the device and which exclude "balloon" style final payments; and

[(3)] (C) Provide state of New Hampshire secondary or contingent beneficiary status ensuring payment if the individual predeceases the duration of the annuity, in an amount equal to the medicaid expenditure made by the state of New Hampshire on the individual's behalf.

(2) ***All such annuities owned by the applicant or the applicant's spouse shall be disclosed to the department at the time of the application.***

4 Eligibility for Assistance. RSA 167:4, IV(d) is repealed and reenacted to read as follows:

(d) Pursuant to section 1917(b)(1) of the Social Security Act as amended by DEFRA, the commissioner shall submit a state plan amendment establishing a long-term care partnership recognizing the investment in long-term care insurance policies by Medicaid applicants by disregarding resources or assets in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy which meets the criteria described in DEFRA and regulations promulgated thereunder. The estates of recipients of medical assistance for institutional level of care for whom the resource ceiling has been adjusted as described in this subparagraph, shall be exempt from recovery pursuant to RSA 167:13 and RSA 167:14 in an amount equal to the insurance benefit payments received.

5 Claims and Liens. Amend RSA 167:14-a, VI to read as follows:

VI. For purposes of recovering the costs of medical assistance, the estate of a recipient shall include all property, real or personal, which at the time of a recipient's death was held by the recipient in joint tenancy with rights of survivorship, tenancy in common, ~~or~~ life estate~~[, or living trust]~~, without regard to the date that such title or interest was established. No sooner than 45 days from the death of the recipient, the department shall provide the other joint owner or owners notice of the department's claim. Within 30 days of the receipt of notification of the department's claim, the joint owner or owners shall acknowledge receipt of the department's claim and, provided that there shall not be undue hardship imposed upon the surviving joint owner or owners, either tender an amount equal to the deceased recipient's interest in the identified property and/or financial instrument to the state of New Hampshire toward the deceased's medical assistance bill, but such amount shall not exceed the total amount of medical assistance provided to the deceased recipient, or enter into a binding agreement to make such payment as soon as is practicable. If the joint owner or owners refuse to acknowledge receipt of the department's claim or to tender payment or fail to fulfill the agreement to pay without good cause, as required by this paragraph, the commissioner may bring an action in superior court to compel such payment. Nothing in this paragraph shall be interpreted or applied so as to violate RSA 167:16-a, IV or 42 U.S.C. section 1396p(b)(2)(A) prohibiting recovery when the recipient is survived by a spouse, minor children, or disabled children.

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

**2006-1653s**

#### AMENDED ANALYSIS

This bill adds the category of aid to the needy blind to a certain provision of law. This bill clarifies undue hardship for purposes of public assistance.

This bill also clarifies eligibility for assistance procedures regarding annuities and recovery of such assistance regarding certain insurance.

SENATOR CLEGG: Thank you, Mr. President. I move House Bill 690 ought to pass with amendment. The bill adds "aid to the needy blind" to the condition of granting assistance, where it was not previously included. It also adds the criteria for when the Department of Health and Human Services will waive a transfer of assets penalty for undue hardship. The Legislature, Governor's office, and the Department have agreed to this

language. It also makes the New Hampshire concept of the long-term care partnership consistent with the provisions in the Deficit Reduction Act. The Finance Committee asks your support for the motion of ought to pass..

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 1189**, relative to audits by the legislative budget assistant. Finance Committee. Ought to pass, Vote 5-2. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move House Bill 1189 ought to pass. This legislation gives the Legislative Budget Assistant the authority to conduct audits for political subdivisions or entities authorized to expend state funds. The audits will be subject to the same process as others that are currently performed, which includes the approval of the Joint Performance Audit and Oversight Committee and the Fiscal Committee. This gives LBA the authority to insure that state funds and grants are expended in the same manner they were intended. The Finance Committee asks for your support of ought to pass.

SENATOR FOSTER: If I might? When the bill talks about expending state funds, is it talking about...what does it mean by that? Would it mean that anybody who has a contract with the state of any kind would be subject to audit or is it not as broad as that?

SENATOR MORSE: The discussions that we had are when communities receive state funds from us, like school districts, we would be able to go audit them. We would be able to do five in five years.

SENATOR FOSTER: Follow up. It would not include, for example, somebody who is building a road on behalf of the state?

SENATOR MORSE: You mean the company that's building a road?

SENATOR FOSTER: Yes.

SENATOR MORSE: I don't believe so.

SENATOR FOSTER: Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1227-FN**, relative to late fees and reinstatement fees paid by business entities. Finance Committee. Ought to pass, Vote 6-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that House Bill 1227 be ought to pass. This is a case of where we were legislatively pennywise and pound foolish a while back. We allowed the Secretary of State's business registration people to notify people that their licenses were due to be renewed by post card to save a few cents on postage. What happened though, is that a lot of people apparently, when they get a post card in the mail, don't give it the same careful treatment that they would a statement in an envelope, and a lot of them never got renewed on time. That put them into a situation where there was an automatic \$50 late fee for filing late, plus a \$25 per month penalty for filing late. So if you didn't notice until a year later, that you hadn't filed for your renewal of your business license, you not only had to pay the \$50 late fee, but also the \$25 per month fee...penalty fee. So you had to pay \$350, plus the

\$100 that you originally had to pay for the business license renewal. This seems a little over the top to a lot of people. So what this bill does is it, first of all, says we're not going to send things out by post card any more and I think that practice was changed already. But we also will give back the \$25 per month penalty that was paid by businesses who did nothing other than not see a post card, which may have been inside the magazine that they got in the mail box. It may have been in the next mail box. Because post cards are not as carefully handled, I don't think, by everyone. So this is simply to allow businesses get back the penalty that they really shouldn't have had to pay. And that's, in a nutshell, what that's about. And I ask you to vote ought to pass.

**Adopted.**

**Ordered to third reading.**

Senator Clegg (Rule #42) on HB 1227-FN.

**HB 1243-FN**, reducing certain fines for motor vehicle violations. Finance Committee. Ought to pass with amendment, Vote 5-1. Senator Morse for the committee.

**Senate Finance**

**April 5, 2006**

**2006-1654s**

**03/09**

#### **Amendment to HB 1243-FN**

Amend the bill by replacing section 30 with the following:

30 Effective Date. This act shall take effect one day after the passage of the state operating budget for the biennium ending June 30, 2009.

SENATOR MORSE: Thank you, Mr. President. I move House Bill 1243 ought to pass with amendment. During the budget last year, the House doubled the motor vehicle fines to make the budget work. The Senate reluctantly agreed to it. Given that revenues have surpassed projections in '06 by \$30 million, this legislation reduces the motor vehicle fines. This also keeps the Victim Witness Fund and the Police Standards and Training Council whole, as they are both dependent on these revenues. This legislation does not take affect this budget cycle. The committee amendment changes the effective date to one day after the passage of the next state operating budget to provide ample time for those relying on the revenue from motor vehicle fines. The Finance Committee asks for your support for the motion of ought to pass with amendment.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise to speak against the ought to pass motion. I was the one vote in committee. I appreciate the fact that the committee was willing to amend the bill so that it would take place after the next budget goes in place. As Senator Morse pointed out, we will lose \$5.1 million in revenue. We'll lose another \$850,000 in restricted revenue, and we'll increase our highway fund expenditures by \$79,000. That's what this bill does. But I want to talk to you about two things – (a) prudent fiscal policy, and (b) safety. Let me give you some numbers. Fatal motor vehicle crashes in the state of New Hampshire in 2002, 127. This is all persons killed. 2002, 127. 2003, 127. 2004, 170. To date, 2005, 166. So the question is, do we need more safety and security on the highways? I think that's an imperative. That's why I introduced a bill to add seven new state troopers that was passed by this body. What's the only thing in the minds of an individual that prohibits a person from violating the law? It's a fine. It's a heavy



fine. It's a significant fine. And if that acts as a deterrent, (a) it's good, and (b), if they commit the offense...and by the way, an individual this morning was metered as driving a hundred and forty-five miles an hour on a motorcycle. A hundred and forty-five miles an hour. Do we expect to see a person driving that inappropriately to be on this list of causalities or fatalities for this year? I would think so. So from a safety standpoint, from the budgetary standpoint, what we're doing in this session is passing significant spending bills and we don't have the money to do that. We're rescinding revenue bills. Now does that make sense? Is that prudent fiscal policy to spend more and take in less? We're on our way to a deficit. In committee, I spoke to this issue because I believe very strongly in the safety issue, I believe in the deterrent issue, and I think you have to create policy that does that. This policy is doing that. It is doing that. We are seeing more and more traffic on our highways. We know that. Anyone who travels the 93 corridor is aware of the fact that accidents are pervasive. The 89 corridor, accidents are pervasive. In order to deter these things, one thing we do is we increase fines. They act as a deterrent. The second thing we haven't done is put more troopers on the road, and that's something that we have to do. But in terms of sound fiscal policy, look at this. We have done some unbelievable things since I've been back in this legislature. We have reduced revenues by almost \$200 million since I've been here. Reduced revenues by \$200 million. If we continue to do this, we're going to have very serious problems. I think this is one issue. And I recognize the fact that fines are high, and I recognize the fact that the person sometimes who gets fined is not in good shape to pay. But, by the same token, that person has violated the law. And safety on our highways is very, very important. And I've given you the fatalities. I have given you the fatalities. Think twice. Just think twice about this. I understand you all want to protect your constituents, as do I, but I think sound fiscal policy, prudent fiscal policy protects people for an extended period of time. Thank you, Mr. President.

SENATOR MORSE: Thank you, Mr. President. I'd just like to remind this body we passed almost the same exact bill. This is the House's version, which I actually think is better. It guarantees that the groups that we were trying to finance still get their financing, but we've already passed a very similar version. And what we wanted to do, when we passed this version, was exactly what I started to hear right now, is have a debate in the next budget. We want that to be. We want to be able to talk about should it have gone up by half of this? Should it have gone up by more? What are other states doing? We didn't have any of that debate; the House didn't have any of that debate, and that's why we want to pass this legislation to ensure that that happens. I agree with Senator D'Allesandro, up and down isn't a great thing to be doing with our revenues. Having said that, I haven't got him to lower the BET yet, so we'll keep working on that.

SENATOR CLEGG: Thank you. I'd like to point out that this doesn't take effect, as Senator Morse said, 'til after the next budget. I'd also like to point out that, because we didn't have a debate when we raised it, because the House handed it to us and spent the money, what we've done is we've actually created fines that take somebody's whole paycheck. There was a young man who worked downstairs in the cafeteria who got stopped for speeding, and after he paid his fine, he had \$17 left in his pocket. I don't think that's what we intended to do. If I had it my way, I would have made this effective immediately. But like Senator D'Allesandro, I, too, am con-

cerned about law enforcement and covering the highways. So we didn't do that. What we've done is we've left an opening for debate which, as Senator Morse said, we seem to be having today. Thank you.

**SENATOR BOYCE:** I would just like to interject that, when we do have this debate on these fines, we also ought to finally once and for all be realistic about our maximum speed limit in this state, because I am looking at this list of fines and as it is today, I'll bet you almost every car that goes by 93 in the next hour, if they were stopped and ticketed and fined at this schedule, I'll bet you almost every one of them would have to pay a \$150 fine for driving the same speed as everybody else on the highway. Because we have this unrealistic notion that sixty-five...actually this section is fifty-five, but we have this unrealistic notion that our speed limit should be no more than sixty-five miles an hour in this state. But I beg to differ with that being anything realistic, because probably 80 to 90 percent of the cars that travel the 93 corridor and the 89 corridor and over on the seacoast, the Spaulding Turnpike, try and find somebody that goes 75 or less. It's pretty tough. So what we're saying here is that, if you're going the same speed as everybody else on the highway, right there it's a \$100 fine. It's simply at the whim of the officer. If the officer decides that they don't like whatever kind of car you're driving, or that you're a young man or an old man or a young woman, old woman, they can simply say, "I'm going to go get that one". They ignore the rest. It allows them to pick and choose who they're going to assess this fine too. And, as I say, it starts at \$100 for what most people do on the highway right now and it goes to \$150 for the next mile an hour. In a sixty-five-mile-an-hour limit area, if you're going seventy-six miles an hour, it is \$150 fine. I think that's unreasonable. I think we should first adjust the speed limits to something more reasonable, and then we should also adjust the fines to be something that's realistic as well. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 1465-FN**, relative to food stamp overpayments. Finance Committee. Ought to pass, Vote 7-0. Senator Larsen for the committee.

**SENATOR LARSEN:** Thank you, Mr. President. If first I might make a motion that the gentlemen are offered or encouraged to take off their coats if they so wish. I also move House Bill 1465-FN ought to pass. This legislation prevents the Department of Health and Human Services from collecting food stamp overpayments if the recipient was without fault for the overpayment, and if he or she lacks the financial resources to repay the Department. There are three possible types of errors that pertain to food stamps: fraud, client error, and agency error. This bill addresses agency error. This fiscal note indicates that the impact is indeterminable. However, the testimony received at the hearing indicates that there were a hundred and thirteen errors by the Department of Health and Human Services on the calculation of food stamp grants, and that had an approximate impact of only \$53,000. The Finance Committee asks your support for the motion of ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 1679-FN-L**, relative to the property tax exemption for university system property. Finance Committee. Ought to pass with amendment, Vote 7-0. Senator D'Allesandro for the committee.

**Senate Finance**  
**April 5, 2006**  
**2006-1656s**  
**10/04**

**Amendment to HB 1679-FN-LOCAL**

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

2 New Subparagraph; Property Taxation; Exempt Property; University System. Amend RSA 72:23, I by inserting after subparagraph (c) the following new subparagraph:

(d) The exemptions provided in subparagraph (a) shall apply to the lands and the buildings and structures thereon and therein and personal property owned by the university system of New Hampshire. The requirements of subparagraph (b) shall apply to all leases and other agreements entered into or renewed on or after April 1, 2006, the terms of which provide for the use or occupation by others of real or personal property owned by the university system of New Hampshire. The remedies set forth in subparagraph (c) shall be available to enforce the payment of real and personal property taxes assessed against the lessees of property owned by the university system of New Hampshire pursuant to this subparagraph.

3 University System; Taxation of Property. Amend RSA 187-A:25 to read as follows:

187-A:25 Tax Exemption. The property of the university system of New Hampshire and each of its constituent institutions and divisions is exempt from taxation, **as provided in RSA 72:23**.

4 Application. This act shall apply to property taxes assessed for the tax year beginning April 1, 2006. No property taxes shall be due with respect to the property of the university system of New Hampshire for any prior tax year.

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

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move House Bill 1679 ought to pass with amendment. This legislation maintains the property exemption that the University System has with the state as the relationship is mutually beneficial. It does clarify, however, that private entities leasing property from the University System are not exempt. There were concerns that private entities were operating on University property with an advantage over local competitors since they were not paying property taxes. This legislation clarifies that and sets forth a date that will avoid back taxes being due. The Finance Committee asks your support for the motion of ought to pass with amendment. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. Of Senator D'Allesandro. Thank you, Senator D'Allesandro.

SENATOR D'ALLESANDRO: You're welcome, Senator Barnes.

SENATOR BARNES: Is this aimed at the New England Center?

SENATOR D'ALLESANDRO: As I understand it, Senator Barnes, this is aimed at any relationship that a private entity has with the University using their property and exercising their tax exempt status.

SENATOR BARNES: Follow up. Have you got some examples of that?

SENATOR D'ALLESANDRO: I think they talked about some relationships that...yes, the best example is this one, I guess. Sodexo is a food service situation at Plymouth State University and they were making announcements and passing them out through the community that they had catering services at the lowest possible price and were competing with local caterers because they were in a building that had tax exempt status at the University. That's the example that was used during the hearing.

SENATOR BARNES: Thank you very much, Senator.

SENATOR D'ALLESANDRO: You're welcome, Senator Barnes.

SENATOR BOYCE: Mr. President, I just rise to ask a rhetorical question, whether we should amend this bill to say that it also removes the exemption from any land that was once the baseball program land and reinstate it whenever the baseball program is reinstated? Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 1563**, establishing a committee to study immigration. Health and Human Services Committee. Inexpedient to legislate, Vote 3-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you, Mr. President. I move House Bill 1563 inexpedient to legislate. While the stated goals of the bill have merit, the duties in the bill are not clearly defined and the scope of the bill appears to be too broad with regard to the objectives the study seeks to accomplish. The committee recommends inexpedient to legislate on House Bill 1563. Thank you, Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**HB 1683-FN**, establishing a homestead food license for residential, non-commercial kitchens. Health and Human Services Committee. Ought to pass, Vote 3-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 1683 ought to pass. The bill establishes a homestead food license for residential, non-commercial kitchens and requires out-of-state residential and non-commercial kitchens to register with the Department of Health and Human Services. House Bill 1683 creates a two-level homestead license based on gross sales, the first, up to \$5,000 in sales, and the second encompasses kitchens that bring up to \$10,000 in sales. This legislation will help out both the new entrepreneur as well as the small, but established kitchen owner while creating a precedent for the food safety standards. The second part of the bill creates a registry of out-of-state home food manufacturers who sell their products in New Hampshire. The bill insures New Hampshire citizens are receiving a high quality products while not giving an advantage to out-of-state producers. The committee recommends ought to pass on House Bill 1683. Thank you, Mr. President.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 1718-FN**, requiring a written disclosure statement be provided to prospective nursing home facility clients. Health and Human Services Committee. Ought to pass, Vote 2-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 1718 ought to pass. House Bill 1718 will require disclosure of medical services offered on-site at a nursing facility prior to a resident being admitted. The bill is consistent with federal requirements and will help make the transition to a nursing home facility more transparent for the prospective resident as well as the family members and care givers. The committee heard that House Bill 1718 will also help the long-term care ombudsman who's in charge of working with facilities to encourage them to do what they say they will do, and the committee recommends ought to pass on House Bill 1718.

**Adopted.**

**Ordered to third reading.**

**HB 221**, relative to eligibility for absentee ballots. Internal Affairs Committee. Ought to pass with amendment, Vote 4-1. Senator Flanders for the committee.

**Internal Affairs**

**April 6, 2006**

**2006-1672s**

**03/10**

**Amendment to HB 221**

Amend RSA 657:4, I as inserted by section 5 of the bill by replacing it with the following:

I. Absence (Excluding Absence Due to Residence Outside the Continental United States), Religious Observance, and Disability:

New Hampshire law requires that you vote in person at the polling place for your town or ward unless you:

a. Plan to be absent on the day of the election from the city, town, or unincorporated place in which you are registered to vote.

b. Cannot appear in public on election day because of observance of a religious commitment.

c. Are unable to vote in person due to a disability.

d. Cannot appear at any time during polling hours at your polling place because an employment obligation requires you to remain physically at work or to be in transit to or from work from the time the polls open until after the time the polls close.

RSA 657:1. Any person who votes or attempts to vote using an absentee ballot who is not entitled to vote by absentee ballot shall be guilty of a misdemeanor. RSA 657:24.

I am requesting an absentee ballot for the following election:

\_\_\_\_\_ State Primary. I am member of the:

\_\_\_\_\_ Republican Party

\_\_\_\_\_ Democratic Party

or I am now declaring my affiliation with that party and am requesting a ballot for that party's primary.

\_\_\_\_\_ General Election

Applicant's Name \_\_\_\_\_ (Last) \_\_\_\_\_ (First) \_\_\_\_\_ (Middle) \_\_\_\_\_ (DOB)

Applicant's Voting Domicile (home address):

\_\_\_\_\_  
(Street) (City/Town) (zip)

Mail the ballot to me at this address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I hereby declare that:

\_\_\_\_\_ I am a duly qualified voter who is currently registered to vote in this town/ward.

\_\_\_\_\_ I am absent from the town/city where I am domiciled and will be until after the next election, or I am unable to register in person due to a disability, and request that the forms necessary for absentee voter registration be sent to me with the absentee ballot.

I will be entitled to vote by absentee ballot at the election designated above because:

\_\_\_\_\_ I plan to be absent on the day of the election from the city, town, or unincorporated place where I am domiciled.

\_\_\_\_\_ I cannot appear in public on election day because of observance of a religious commitment.

\_\_\_\_\_ I am unable to vote in person due to a disability.

\_\_\_\_\_ I cannot appear at any time during polling hours at my polling place because an employment obligation requires me to remain physically at work or to be in transit to or from work from the time the polls open until after the time the polls close.

This application form must be signed by the applicant. The absentee ballot forms you receive will require you to sign an affidavit confirming that you are entitled to vote by absentee ballot due to one of the reasons stated above. The moderator is required to compare the signature on the affidavit to your signature on this form. The absentee ballot will not be counted if the affidavit and this form do not appear to have been signed by the same person. RSA 659:50.

Signature of the Applicant: \_\_\_\_\_

**SENATOR FLANDERS:** Thank you, Mr. President. I move House Bill 221 ought to pass with amendment. This solves the problem that I thought has been unfair for many years as my position as moderator in Antrim. This bill is intended to cover those people who are unable to arrive at the polling place on election day due to a work schedule conflict. In particular, this bill would apply to members of the medical field who often work shifts that last all day and therefore would not be able to leave work to cast a ballot on election day. The committee amendment clarifies the amending language from the House concerning employment obligations by inserting the same language into the second part of the bill as well as into the form from the Secretary of State that will be used. Please join the Internal Affairs Committee and vote House Bill 221 ought to pass with amendment. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**Recess.**

**Out of recess.**

**HB 345**, requiring photo identification to obtain a ballot. Internal Affairs Committee. Ought to pass, Vote 4-2. Senator Boyce for the committee.

**SENATOR BOYCE:** Thank you, Mr. President. I move House Bill 345 ought to pass. This bill requires a voter to present a photo ID or a voter identification affidavit to obtain a ballot. The bill establishes an exception to the ID requirement for persons personally know to certain election officials. Photo IDs currently are needed to board a plane, enter a

federal building, and cash a check. Voting is equally important. House Bill 345 would deter, detect or eliminate several potential avenues of fraud, such as multiple voting or voting with the use of another's identity, and therefore, will enhance confidence in our electoral system. This bill allows for people who have no IDs or recently lost their IDs, to vote by simply filing an affidavit. Please join the Internal Affairs Committee in voting ought to pass on House Bill 345, and I do have a floor amendment that I will be offering.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in opposition to the bill. One of the most precious freedoms that a person has in a democracy is the privilege of voting. The right to vote. It's a constitutional right. It's a constitutional privilege. We in New Hampshire are very proud of that constitutional right and, generally speaking, we take advantage of it. We vote in very high numbers. The recent report from the Attorney General indicates that there isn't voter fraud in the state of New Hampshire, and we have made, and we have passed certain legislation that has done things to protect the process. In the last session, we voted for the affidavit. If you come to vote same-day registration and there's any question, you sign the affidavit and the affidavit says Class A misdemeanor, \$1,000 fine if you're found to be in violation. Pretty stiff penalty. Now, we not only want you to do that, but we want you to have a photo ID. A photo ID. Now most of us have a driver's license. Most of us. But there are those who don't have a driver's license. Many of us on our jobs have an identification, some of us don't. As a result, we're creating duplicity. Because, on the one hand, if you have this mechanism, you can just walk up and vote. If you don't have it, or you've lost it within a fourteen-day period, you walk some place, you go to a special situation, sign the affidavit, and if you don't produce it, in fourteen days, there's a problem. We pride ourselves in this democratic process. This democratic process says to us, we want to make every, create every opportunity for a person to go to the polls and manifest their choice in terms of an election. We shouldn't be doing things to compress that. We should be doing things to expand that. First in the nation primary. What do we base this great event on? The fact that we vote. We participate. We know the issues. We ask questions about the issues and we go to the polls. Why, why would we want to create problems so that people won't go to the polls? Since I've been in this legislature, we have put in uniform polling hours so that more people will vote because we saw a problem years ago, where some polls opened at eleven o'clock in the morning and closed at seven at night. That inhibited working people from voting. We changed that. There were situations where you couldn't go and register to vote unless you had your passport or your birth certificate. We rectified that situation. Now it seems like we're going the other way. Our Secretary of State does as good a job of monitoring voting as any Secretary of State in the United States. Longest serving Secretary of State in the United States. I mean, we're proud of all of these things, and yet we're trying to restrict a person's right to vote. Don't do that. We've seen that in the south. We've seen what happens. We don't want that to happen. The Civil Rights Act. Voting Rights Act. They were passed in the sixties to get more people to participate, more people to exercise their constitutional right. Let's stick with that. Let's be vigilant certainly, but anything, anything that throws a roadblock in a person's right to vote is something I can't support. Thank you, Mr. President.

SENATOR FOSTER: Senator Boyce, I want to make sure I understand how this works because obviously we understand what happens if you

have an ID. If you don't have an ID because you never had one or you lost it in the previous fourteen days, then you have a right to sign an affidavit to say, say that and you can go ahead and vote. Am I correct with that?

SENATOR BOYCE: Yes.

SENATOR FOSTER: But if I do have an affidavit, but I left it...if I have an ID, but I left it at home, I can't vote that day. Is that right? I have to go back and get it?

SENATOR BOYCE: If you left it at home because you misplaced it, it was in your wallet and you misplaced your wallet and you got to the polls without your wallet, I think you're probably covered. I think that this will be interpreted pretty liberally. I can't imagine that it wouldn't be.

SENATOR FOSTER: You can't imagine that it wouldn't be. Okay. Follow up. Finally, but if I have the good luck of knowing the people who are checking me in, no matter what happens, I can vote, but if they don't know me or say they don't know me, then I can't vote. That's what section three says. Is that right?

SENATOR BOYCE: If you're showing up to vote and nobody there knows you, and you don't have an ID, you can fill out the affidavit.

SENATOR FOSTER: If I don't have ID?

SENATOR BOYCE: If you don't ID. If you show up without an ID and the moderator says, "Well, yeah, I know John who lives over there. Yeah, I will vouch for him." Or if one of the other election workers, any of the election officials there that day, the Town Clerk, Moderator or whoever else is there, they have that ability. My experience, especially in small towns, the moderator knows almost everybody in town anyway.

SENATOR FOSTER: Follow up?

SENATOR BOYCE: Sure.

SENATOR FOSTER: But where I live, they don't. And so what we're saying here is, if somebody is unfortunate enough to show up without their ID either 'cause they left it at home or they didn't get it, or they lost it fifteen days ago, because it says that you have to have lost it within fourteen days, you can't vote unless you're lucky that your town moderator or city ward clerk construes this liberally. Is that right?

SENATOR BOYCE: I believe that if someone comes in and says, "I've lost my ID", I don't believe that the moderator's going to ask you was it thirteen days ago or seventeen days ago. I think they will simply give you the affidavit and let you fill it out and you get to vote.

SENATOR FOSTER: Follow up? Why didn't your committee write it that way then, if that's what they intended?

SENATOR BOYCE: We thought this was adequate. Thank you.

SENATOR FOSTER: Thank you.

SENATOR FULLER CLARK: Thank you very much. I'd also like to ask a question of Senator Boyce. Thank you very much. I'd like to follow up on the question that Senator Foster asked with regard to this language "personally known". It's my understanding that we try to pass laws that are objective and that there can be a factual test that's involved. And suddenly we're now injecting an individual's right to discretion. How do



you think that that is fair and appropriate, especially when it impacts on one of our most, as Senator D'Allesandro said, significant and important rights as Americans, and we're going to leave that up to the discretion of someone who is personally known or not known?

SENATOR BOYCE: I believe that the intention of that is that, if the moderator's mother shows up without her purse, he can allow her to vote. If his next door neighbor shows up, and left their wallet at home, they're allowed to vote. Now if it's someone that the moderator or the clerk or somebody doesn't know, then they simply fill out the affidavit. I don't see the problem.

SENATOR BURLING: Thank you, Mr. President. You know, it's a wonderful thing to sit here and look at these panels done by Barry Faulkner because they remind us of our history. For those in this hall who think that history goes in a straight line, this bill and those panels have a lesson for us. People in this room think, well you know, the Democrats who oppose this voter ID, they're just nuts. They think that we're going to lose people's voting rights by doing this. Well, if you look at that panel which is second from the left, you'll see Daniel Webster's mother leaning over talking to him. She had the vote. From about 1760 to about 1800, women in this colony and then state, had the vote. If you look from the panel that is second from the right, you'll see Abbot Thayer's daughter. She did not have the vote, because by 1813 every woman in this state had lost the vote. How did that happen? It happened because people stopped paying attention to the importance of everyone's franchise. For thirty-two years, I've been the moderator in the little town of Cornish, and I know what happens on voting day. I know it just as my friend, the Senator from District 7 knows it. At 5:30 on election day, the light is gone, the people start crowding into the Cornish school yard parking lot, and their rushing home, and they want to vote before the voting period is over. Some significant portion of them will have forgotten their wallet. It may be out in the construction box in the back of the truck, or maybe it's home on the bureau. And those are the people who are going to get their voting rights taken away. And it's going to happen in one of a couple of ways. Maybe they're going to come in and there's going to be a long line of voters, Mr. President, waiting to vote. And they're going to see a town clerk or an election worker who says, "Photo ID, please?" And they're going to say, "I don't have it." And then the election worker is going to turn to me as the moderator and say, "Mr. Moderator, this one doesn't have a photo ID. What do you want to do?" Now there's a pretty good chance that I will know that person because I've been there a while, but if they're people who were born in Claremont and moved up to Cornish because it's a great place to live, maybe I don't know them. So I'm going to be standing there looking puzzled. Maybe I'm going to have the affidavit and understand what it really means, but frankly, it's pretty obscure in its current form. And maybe an election worker next to me is going to say, "Pete, I don't know this person. I can't vouch that they are who they are. I just don't know". So we're going to have that little repartee back and forth. I'll tell you what's going to happen. Half of them are going to go back and get in the truck and go home and say, "Oh, the heck with this. These folks don't care if I cast my ballot." Well, I care. We're talking about people who have registered to vote. They go and register, they provide their ID, they fill out the forms. They're our citizens and our neighbors. They're the lifeblood of this building and this room. We don't take stuff away from them. I've heard my dear friend

from District 19 talk about the passion with which our forebears fought for the right to vote and rule themselves. We're talking about taking away that right. It's not worthy of us. It is not worthy of this place. It's not worthy of the history depicted on those four panels. We should be encouraging people to vote. Thank you for listening to my passion. I do believe in my fellow citizens. I do believe in the Attorney General when he says that there is no evidence of widespread voter fraud in this state, and I do believe we have better things we can do for the people of this state.

SENATOR HASSAN: Thank you, Mr. President. I have been listening to this debate with interest and I was particularly interested in the colloquy between Senator Foster and Senator Boyce. Senator Boyce, the chairman of a Senate Committee, Internal Affairs and Senator Foster, an attorney with one of the state's finest law firms. The colloquy went back and forth for about four or five questions, and as I listened, I found myself thinking in the words of the great TV detective Adrian Monk, "Here's the thing. Here's the thing. You shouldn't need a law degree to vote". You should not have to be able to look at this statute and understand or surmise or speculate about what the intent of the legislature was when it passed this. You shouldn't have to worry about whether you haven't been issued an identification card that has exactly all these items on it or whether you've lost possession fourteen and a half days before or thirteen and a half days before, because if you're signing an affidavit, you're swearing to the truth, and you can be subject to prosecution if you're wrong by half a day. We do not create barriers in this country for voting. We are trying to get people to vote. I went online the other night, looked up our voting statistics from the 2004 Presidential election. We should be proud as a state, that we are better than most states in this country in that regard, that 30 percent of our citizens did not vote in the 2004 election. Thirty percent of eligible voters. And yet, even after getting an exhaustive New Hampshire Attorney General report indicating we do not have a voter fraud problem in this state, we seem to want to create barriers. What was most compelling for me in the hearing on this, as a member of the Internal Affairs Committee, was the testimony from the League of Women Voters. And I read now from a letter they have written, which says that "the New Hampshire League has listened to the testimony of the Attorney General's Office numerous times in House and Senate committee hearings. We have also read the report by the Attorney General's Office on allegations of voting fraud at the November 2004 general election. It is clear that New Hampshire does not have a problem with voter fraud, and that current laws provide reasonable standards to determine if someone is eligible to vote." They go on to say, "For all of its eighty-six-year history, the League of Women Voters", which I will add, is a bipartisan non-partisan organization, "has taken a special interest in issues surrounding the right to vote. If New Hampshire had a problem with voter fraud, the League would be the first to call for reform. By the same token, we cannot let legitimate election systems be undermined by unfounded accusations of fraud." This is in fact, what this bill does. We have had exhaustive, we have deployed our Attorney General's Office to do countless interviews, countless investigations, including interviews with nine people, who I think were referenced in the press recently as possible fraudulent voters and they are not. The Attorney General's Office tells us they are not. We don't have a problem here. This is a bill in search of a problem and we are creating barriers to vote and we should not do that. You don't need a law degree, you don't need a poll tax. All you need is your loyalty to the United States Constitution and citizenship to vote. Thank you.

SENATOR CLEGG: Of Senator Boyce. Senator Boyce, I'm looking at Senate Bill 26, which passed the Senate, and the only difference I see between the bill we've already passed and the bill we have before us is the ability to sign an affidavit if you've lost your ID. So if we do what the previous speakers have suggested and just kill this bill, are we only killing the opportunity for someone to sign an affidavit if they've lost their ID?

SENATOR BOYCE: Correct. The Senate's position already is that you should be able to vote if the moderator recognizes you.

SENATOR CLEGG: So, if I voted to kill this, I'm just taking away somebody's ability to vote because I don't want to accept an affidavit that they've lost their ID?

SENATOR BOYCE: Yes. I believe that'd be true.

SENATOR CLEGG: Thank you.

SENATOR BURLING: Not to get into this too deeply, but are you at all concerned or puzzled about the equal protection problem that is raised by my **TAPE CHANGE** Constitution cause you any pause?

SENATOR BOYCE: It doesn't cause me any pause. I can't say what the U.S. Constitution would say on that because I'm not a U.S. constitutional scholar. But I do know that, in almost every walk of life, if...being recognized by somebody is usually enough identification and that's what we put in the bill.

SENATOR LARSEN: Somehow we are being asked to say that we are being perhaps even more generous with this bill than we were in the former Senate Bill 26 that we passed. We didn't like the idea that you had to present a photo ID to vote in the first instance that the Senate passed that bill. Somehow this affidavit is now supposed to be more magnanimous because it provides some options. Some of the debates we had in the Senate Internal Affairs Committee in fact, were similar to those that we had here today. There is this kind of fast and loose approach that this affidavit will allow someone, an elderly person who comes to vote perhaps, to just sign an affidavit if they left their wallet with their ID on the counter. There's this idea that, oh well, you can just sign an affidavit and, if your ID is somewhere back at the house, you can just sign that. But anyone in their right mind would not sign that, and in fact, it's intimidating to do that, because you acknowledge, after swearing under penalties of voter fraud, that it is complete. What you're swearing is, "I've lost possession or misplaced the identification within the past fourteen days." We know that there are instances where people come to vote and they don't have their ID. We know that will happen. There's a reason why the AARP, the League of Women Voters is opposing this. Imagine an elderly person who gets through an assistant or some other way to the polls, has an ID back at the house, but is told "you have to go home for your ID". The affidavit is not a solution. It is not a kind-hearted approach to allow people their basic fundamental right to vote. We know that when you register to vote, you have to provide all the ID that is necessary, and in fact, we're advised we are more strict than other states. I urge you to consider what this will do to our voting places and the very fundamental right that every person has who is a citizen of this United States, who is already registered through proof of their identity. This is a block, a roadblock to a very primary right of a democracy.

SENATOR FOSTER: This is the first time, Mr. President. I was asking questions before, but from my questions, I'm sure people know that I

oppose this legislation. Senator Clegg's suggestion that somehow by voting against this I'm taking further rights away, I take somewhat offense to. I oppose both of these bills. Neither of them are necessary. Neither of them make any sense. I will say, maybe it was true with the other bill, but I don't think it was, this one at least takes effect on November 1, 2007 unless maybe the floor amendment we're going to get is shorting that up. And I raise that because I hope you're prepared to spend a lot of money educating people that they need to show up for an ID because they are going to be really mad when they are turned away at the door. And you know who they're going to be mad at? I know who they're going to be mad at. Thank you, Mr. President.

SENATOR CLEGG: Thank you. I want to clarify that I didn't say anybody was in favor of the previous bill that didn't already vote for. But the only difference between this bill and the one we've already passed, is whether or not you get to file an affidavit saying you lost your ID. So really, the Senate position is already established in the House. It's already passed once. If you vote this bill down, you don't change anything. There's still a bill over in the House that requires an ID. The difference is, if we concur now with the House, you get to at least sign an affidavit if you don't have your ID, if you lost it. If you don't want that, then I suggest that you do vote no because we've already got a position. We've already voted that you're going to need an ID. Now the difference is, do you want an ID with the ability to sign an affidavit or do you want the ID with no ability to sign the affidavit? That's the only two difference... The only difference between the two bills is the affidavit. Thank you.

SENATOR BOYCE: First, I would like to clarify. I misspoke about the floor amendment. That's for a bill that is following this. But I would like to point out that the whole idea of requiring an ID to vote is not unique with us, and in fact, a federal commission chaired, I believe, by former President Carter, not one of my favorites, but former President Carter, and James Baker, who I forget his cabinet level position, but it may have been Secretary of State. It was co-chaired by them, and one of the main recommendations that came out of that commission was that we ought to be requiring a photo ID to take a ballot and vote. So I think that we have some high level backing. I haven't read the entire HAVA, Help America Vote Act, the federal act, which has mandated some major changes on the way voting is done in this country, but I recall hearing from the Secretary of State that this is one of the requirements that is in HAVA that, at some point, to vote in any U.S. election, you will have to show an ID. I'm pretty sure that that's in HAVA. Thank you.

SENATOR LETOURNEAU: Thank you, Mr. President. I want to remind everybody that when you go to the airport and buy a ticket to get on an airplane, you have to show your ID to get the ticket. Then you've got to show your ID again to get through the security, and then once again to get on the airplane. If you want to buy alcohol in this state, you need to show an ID. If you want to buy cigarettes in the state, you need to show an ID. And soon, when the National ID Act comes into effect, you're going to need show an ID to get into a federal building. That means Medicare or anything else that, that's adopted to this particular plan. This is not something that's outrageous as everybody's making it out to be. Thank you, Mr. President.

SENATOR GREEN: Thank you, Mr. President. Obviously, I'm wrestling with a combination of things here, and it is basically that I'm trying to look at the big picture here in terms of all these registration and voter

bills, and how they come together and form something that's understandable by the average person who's going to come in and vote. We did 26, even though the person didn't have an ID, you could not deny that person a right to vote. They will be able to vote. You may, after the fact, tell them they challenge them, and after the fact, determine whether they legally had a right to vote. I've spent some time talking to my moderators in my communities and they're getting very concerned about the process we're establishing here. I don't think any of them are concerned about a person needing to show an ID. They really aren't. They don't have a problem with that. They said that's not an issue. But I want you to know, when we started to go down the road of same day registration, if you're in a community that had to deal with that, we knew the chaos that was created. Now people keep telling me, people get used to it and it won't be a problem. But every election since we've done that, it has been a problem. We, in the Senate, passed 403, which is to register voters and to try to make the process a lot smoother. Have we accomplished that? I don't know yet. We're going to find out this fall. Now I'm concerned that we're going to have, on the same day that the elections are taking place, we're going to have one line for same day registrations with IDs and affidavits, and we're going to have a separate line for people who have lost their IDs and are going to fill out an affidavit. And if we're lucky, we'll have the voters find their way to the poll so they can vote. When I was standing in front of the polls, I actually became a traffic cop. Because I would say to people who I knew, who were going to vote and were registered, "You don't want to go in that line". They'd get in that line and they'd wait there for five minutes. So we keep shuffling them out of that line and get them into the line which would get them into the polls to vote, so they could get in there and vote and go home. So I'm just concerned. I think the intentions are good. I have voted, I voted for Senate Bill 26 and I would still vote for it today. That's voter identification to vote. But you can't stop them from voting. And I'm just concerned that we're putting so many roadblocks, in terms of the process, that we're going to have one heck of a mess on polling day. And I'm concerned that, with our good intentions, we're going to have some unintended consequences. And I'm really wrestling with that. I supported Senate Bill 26. I strongly supported Senate Bill 403. I support the concept of this bill, but I think we're getting so complex in our process that we're really going to create some problems for the people that we really want to be supporting and that is people's opportunity to vote. I'm really wrestling with this issue. I think we've got to be very careful with what we do.

SENATOR HASSAN: Thank you, Mr. President. I rise to respond, first of all, to the comments about the commission, the federal commission, that recommends photo IDs. We do have photo IDs in this state for registering. This state also has a history of much cleaner elections than other states in the country. Again, the League of Women Voters has commented on that, as has our Secretary of State, as has our Attorney General's Office. We don't have a problem in this state. And when we don't have a problem, creating a solution that will create more barriers, seems to me to be fixing something that ain't broke. And just in response to the notion that you need federal IDs to...picture IDs to do certain things in our culture, get on a plane, buy liquor, buy cigarettes, you don't have a constitutional right to get on a plane. You don't have a constitutional right to buy liquor. You don't have a constitutional right to buy cigarettes. You don't have to be able to do those things to vote. You don't have to have a bank account. You don't have to be a lawyer. You don't have to

know the town moderator. You don't have to be recognized by someone else at the polls. All you have to be is an American citizen. And we keep confusing these rights and the nature of these rights, and it is very, very dangerous, because the day when we cannot all show up to vote is the day that we have lost our democracy and our republic. And, as Benjamin Franklin said, "Keep it if you can, ladies and gentlemen", and that's our job. Thank you.

SENATOR BRAGDON: Mr. President, I'd like to move the question.

**The question is on the adoption of the committee report of ought to pass.**

**A roll call was requested by Senator Gottesman.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Morse.**

**The following Senators voted No: Burling, Green, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 14 - Nays: 9**

**Adopted.**

**Ordered to third reading.**

Senator Martel was excused for this vote.

**HB 1166**, relative to electronic ballot counting machines. Internal Affairs Committee. Interim Study, Vote 5-0. Senator Bragdon for the committee.

### **MOTION TO TABLE**

Senator Bragdon moved to have HB 1166 laid on the table.

**Adopted.**

### **LAI D ON THE TABLE**

**HB 1166**, relative to electronic ballot counting machines.

**HB 1238-FN**, relative to centralized voter registration database information. Internal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Bragdon for the committee.

**Internal Affairs**

**April 6, 2006**

**2006-1670s**

**03/04**

### **Amendment to HB 1238-FN**

Amend the bill by deleting section 1 and renumbering the original sections 2-3 to read as 1-2, respectively.

**2006-1670s**

### **AMENDED ANALYSIS**

This bill permits the secretary of state to make voter database record data available to assist in the preparation of jury lists.

SENATOR BRAGDON: Thank you, Mr. President. I move HB 1238 ought to pass with amendment. The bill, with the committee amendment, allows the courts to use the statewide voter checklist in its selection of juries, and we urge your support of ought to pass with amendment. Thank you.

SENATOR BOYCE: Well, actually I want to propose an amendment.

**Amendment adopted.**

Senator Boyce offered a floor amendment.

Sen. Flanders, Dist. 7

Sen. Bragdon, Dist. 11

**April 12, 2006**

**2006-1779s**

**03/10**

**Floor Amendment to HB 1238-FN**

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

1 Availability of Checklist. Amend RSA 654:31 to read as follows:

654:31 Availability of Checklist.

**I. In this section:**

(a) *“Checklist information” means the data, in any form, required to be placed on the public checklist by RSA 654:25, when that data is obtained or derived from a checklist or from the state-wide centralized voter registration database maintained by the secretary of state.*

(b) *“Commercial purposes” means knowingly using, selling, giving, or receiving the checklist information for the purpose of selling or offering for sale any property or service unrelated to an election or political campaign.*

(c) *“Nonpublic checklist” means the checklist bearing the names of voters who by law are entitled to have their status as a voter kept nonpublic.*

(d) *“Public checklist” means the checklist required by RSA 654:25 which contains the names of voters who by law are to be listed on a checklist available to the public in accordance with the restrictions established by this section.*

**II. In towns and cities,** the **public** checklist as corrected by the supervisors shall be open for the examination of any person at all times before the opening of a meeting or election at which the list is to be used. The supervisors **of the checklist** shall furnish one or more copies of the most recent **public** checklist **of their town or city** to any person requesting such copies. [If the supervisors maintain or have access to the checklist or information from which the checklist was derived in more than one form, the person requesting copies shall be furnished copies in any of those forms according to his preference. The supervisors may charge a reasonable fee for copies that is based on the actual costs incurred when reproducing an existing checklist, except that in no event shall the fee for paper copies of any single town or ward checklist be less than \$5 nor more than \$25 per checklist. The fee charged for checklists on computer disk or tape, or in any form other than paper, shall be based solely on the additional costs incurred to provide such checklist to the individual requesting it. The fee shall be for the use of the town or city.] *The supervisors of the checklist may only provide checklist information for their town or city. The supervisors of the checklist may charge a fee of up to \$25 for each copy of the public checklist for a town or ward. For public checklists containing more than 2,500 names, the supervisors of the checklist may charge a fee of up to \$25, plus \$0.50 per thousand names or portion thereof in excess of 2,500, plus any*

*shipping costs. The supervisors of the checklist may provide public checklist information on paper, computer disk, computer tape, electronic transfer, or any other form.*

*III. Any person may view the data that would be available on the public checklist, as corrected by the supervisors of the checklist, on the statewide centralized voter registration database maintained by the secretary of state at the state records and archives center during normal business hours, but the person viewing data at the state records and archives center may not print, duplicate, transmit, or alter the data. The secretary of state may only provide copies of the most recent public checklist to a political committee of a political party as defined in RSA 664:2, V, or to a candidate who has filed for consideration for any office in any primary or general election or who has been nominated for any office in a general election. The secretary of state may not provide public checklists of less than the entire state. The secretary of state may charge a fee of up to \$25 plus \$0.50 per thousand names or portion thereof in excess of 2,500 plus shipping charges for each copy of the statewide public checklist. The secretary of state may provide public checklists as prescribed in this section on paper, computer disk, computer tape, electronic transfer, or any other form.*

*IV. Fees collected by the secretary of state under this section shall be deposited in the election fund established pursuant to RSA 5:6-d. Fees collected by a town or city under this section shall be for the use of the town or city.*

*V. No person shall use or permit the use of checklist information provided by the secretary of state for commercial purposes. Whoever knowingly violates any of the provisions of this section shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.*

*VI. This section shall not be construed to restrict the transfer of checklist information to the state or federal courts as required by RSA 654:45 for any lawful purpose.*

2 Centralized Voter Registration Database; Jury Lists. Amend RSA 654:45, VI to read as follows:

*VI. The voter database shall be private and confidential and shall not be subject to RSA 91-A and RSA 654:31. The secretary of state is authorized to provide voter database record data to the administrative office of the courts to assist in the preparation of master jury lists pursuant to RSA 500-A and to the clerk of the District Court of the United States for the District of New Hampshire to assist in the preparation of federal court jury lists.* The voter checklist for a town or city shall be available pursuant to RSA 654:31. Any person who discloses information from the voter database in any manner not authorized by this section shall be guilty of a misdemeanor.

3 Right to Know Exemption; Public Information; Mailing Address. Amend RSA 654:31-a to read as follows:

*654:31-a Right to Know Exemption. The information contained on the checklist of a town or city, specifically, the name, street address, **mailing address**, town or city, and party affiliation, if any, of registered voters, except as otherwise provided by statute, is public information subject to RSA 91-A. All other information on the voter registration form, absentee registration affidavit, and application for absentee ballot shall be treated as confidential information and the records containing this information shall be exempt from the public disclosure provisions of RSA 91-A, except as provided by statutes other than RSA 91-A. Election officials and law*



enforcement personnel in furtherance of their official duties may access and may disclose information from the voter registration form, absentee registration affidavits, and applications for absentee ballots, if necessary to resolve a challenge to an individual registering to vote or voting, or if necessary to investigate or prosecute election law violations or any crime. Law enforcement access and use of such records for the investigation or prosecution of crimes unrelated to election law violations shall be limited to the records of the specific individuals who are the subject of the investigation or prosecution.

4 Effective Date. This act shall take effect July 1, 2006.

## 2006-1779s

### AMENDED ANALYSIS

This bill:

I. Modifies fees and procedures for obtaining copies of voter checklist information.

II. Prohibits the use of checklist information provided by the secretary of state for commercial purposes.

III. Permits the secretary of state to make voter database record data available to assist in the preparation of jury lists.

IV. Adds the mailing address contained on the checklist to the public information subject to RSA 91-A.

SENATOR BOYCE: Yes, I have a floor amendment and this is the one that has Flanders and Bragdon.

SENATOR GATSAS (In the Chair): Floor amendment 1779s has been proposed. Senator Boyce, will you speak to the amendment while it's being passed out?

SENATOR BOYCE: This amendment does two things. The first is that it puts back in something that the committee amendment stripped from the House Bill. It allows the Secretary of State to be in charge of selling the information on the centralized checklist, which he will be maintaining. And the committee had gone back and forth on this, and we...in the committee amendment, we decided to take it out, and then thought more about it later, and that's why I'm proposing this, that it put it back in. The current situation is that a statewide candidate, somebody wanting to run for President, Congress, well probably not even Congress, but U.S. Senate or Governor, would go to each individual town and buy from each individual town's Supervisor of the Checklist, their list. That's the way it's done now. They compile it into one list and they use it. Now the parties have also done this, and they go in and they buy the list from each town. They compile it into one list, and then they make it available to their candidates, for a fee in the primaries, I guess, and for free after the primaries. But what this does is it puts in the ability for the Secretary of State to take all those town checklists and combine them into one list, which he's going to be doing anyway. That's part of the Help America Vote Act. So he's going to have the statewide list. This simply allows him to sell it. It doesn't let him go into competition with the towns. It says that he cannot sell anything less than the entire state, and there is a fee scheduled for that. And then the other part of this bill, which is actually a bill that we've already passed and sent to the House, but there's question as to whether or not it will stand up over there. And it puts into the right-to-know exemptions on the mailing list, on the checklist, the mailing address. Now we all know that, when you go to vote, your physical address is what you're actually registering to vote at. That's where

you actually live. However, a lot of people don't have that as their mailing address. And for a long time, I had one physical residence, but the post office didn't recognize that residence address because we didn't have the E911 maps done and so my personal mailing address at that time was Alton Mountain Road, no number, just Alton Mountain Road, but my mailing address was, at one point, Star Route West Box 113. At another time, they decided it should be HC 73, Box 113 and they went through some other gyrations. But it was always different from the actual physical address even though my mail was delivered to that address. So this simply puts in mailing address which, as I say, we've already done in a Senate Bill, and this is just to protect our position on that bill so that when the Secretary of State sells this statewide mailing list, that it will be of some use to candidates, because that's what it's really all about, is candidates being able to contact their constituents in a reasonable and economic way. So, by having the mailing address as part of it. Now this also...this does not touch the provision already in law that says that, if you have a reason, for instance, a domestic order that would make you not want to have your address listed, that your address can be concealed. And even the fact that you're on the voter list, can be concealed if you have, for instance, a domestic abuse order, so that you can hide from whoever you are in fear of, and this does not damage that. This simply says for all people whose name and address on the list, it will be part of that list. Thank you. I hope you will vote for the amendment.

**Recess.**

**Out of recess.**

**Floor amendment adopted.**

Senator Burling offered a floor amendment.

Sen. Burling, Dist. 5

**April 13, 2006**

**2006-1803s**

**03/04**

**Floor Amendment to HB 1238-FN**

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

AN ACT relative to centralized voter registration database information and relative to interference with campaign communications.

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

2 Election Procedure; Prohibited Acts; Interference With Communications; Penalty. Amend RSA 659:40-a to read as follows:

659:40-a Interference With Communications. Any person who, on the day of any election, knowingly blocks, or solicits another person to block, the access of any candidate or committee to the candidate's or the committee's communications equipment or services with the intent of interfering with campaign activity shall be guilty of a class [~~A misdemeanor~~] **B felony**.

3 Election Procedure; Prohibited Acts; Tampering with Voting Machines; Software. Amend RSA 659:42 to read as follows:

659:42 Tampering with Voting Machines. Whoever shall tamper with or injure or attempt to injure any voting machine or device for the computerized casting and counting of ballots to be used or being used in an election or whoever shall prevent or attempt to prevent the correct operation of such machine or device **or whoever shall tamper with soft-**

*ware used in the casting or counting of ballots or design such software so as to cause incorrect tabulation of the ballots* or any unauthorized person who shall make or have in his *or her* possession a key to a voting machine to be used or being used in an election shall be guilty of a class B felony if a natural person or guilty of a felony if any other person.

4 Effective Date.

I. Sections 2-3 of this act shall take effect January 1, 2007.

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

## 2006-1803s

### AMENDED ANALYSIS

This bill:

I. Permits the secretary of state to make voter database record data available to assist in the preparation of jury lists.

II. Increases the penalty for interference with campaign communications.

III. Prohibits tampering with voting machine software.

SENATOR BURLING: Mr. President, I offer amendment...

SENATOR GATSAS (In the Chair): 1803 is being proposed and, Senator Burling, will you speak to your amendment as it's being passed out?

SENATOR BURLING: Thank you. Last week before this body, a colloquy ensued about the penalty to be required for persons who might choose to attempt to vote twice and there were positions taken back and forth. They were frankly, partisan positions. The Democrats attempted to make it clear that we thought it was a mistake to break up the existing collection of crimes that are listed as misdemeanors in the existing election law. And our purpose, and several of us said it was, we agree, it is an incredibly important thing to make sure that persons do not vote twice. But we have no experience of that happening. In the course of that debate, I made a representation that there are various kinds of election crime which we felt were more appropriate targets for felony treatment. And I present, in this amendment, two of those. The first, is clearly something with which we do have experience here in New Hampshire. It is called "phone jamming." And guess what? It happened. And three people have gone to jail. One maybe, and goodness knows who else. But the act took place. Under federal law, the act is a felony. Under state law, for reasons I'm not quite sure, it's just a misdemeanor. It ought to be a felony. It ought to be a felony in terms of its seriousness, but also in terms of its continuity with federal law. The second concept here is a concept which each and every one of us has thought about and talked about, but I'm not sure we've directly addressed yet, and that is the whole issue of designing electronic machines and software, purportedly to count ballots, but perhaps to miscount them. And this section makes it clear, as an amendment to the existing section on tampering with voting machines, that anybody who sets out to design software or tamper with software so that that software miscounts or mistabulates the ballots of the voters, so that the actual actions of human beings are misrepresented through a misconstruction of software, that, too, should be a Class A...Class B felony. Sorry. I present those two ideas. They represent my view of serious and potentially real crimes against the voting rights of the people of New Hampshire, and I ask for your support.

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 1509**, relative to campaign expenditure and contribution limitations. Internal Affairs Committee. Ought to pass with amendment, Vote 4-1. Senator Boyce for the committee.

**Internal Affairs**

**April 6, 2006**

**2006-1669s**

**03//01**

**Amendment to HB 1509**

Amend the bill by replacing sections 1-2 with the following:

1 Political Contribution Limitations. Amend RSA 664:4, V to read as follows:

V. By any person (1) if in excess of [~~\$5,000~~] **\$25,000** in value, except for contributions made by a candidate in behalf of his *or her* own candidacy, or if in excess of [~~\$1,000~~] **\$2,500** in value by any person or by any political committee to a candidate or a political committee working on behalf of a candidate who does not voluntarily agree to limit his *or her* campaign expenditures and those expenditures made on his *or her* behalf as provided in RSA 664:5-a, (2) if made anonymously or under a name not that of the donor, (3) if made in the guise of a loan, (4) if any other manner concealed, (5) if made without the knowledge and written consent of the candidate or his *or her* fiscal agent, a political committee or its treasurer, or not to any one of the same.

2 Political Expenditure Limitation Amounts. Amend RSA 664:5-b, I-IV to read as follows:

I. For governor:

(a) [~~\$625,000~~] **\$1,250,000** in a state primary election.

(b) [~~\$625,000~~] **\$1,250,000** in a state general election.

I-a. For United States senator:

(a) [~~\$625,000~~] **\$1,250,000** in a state primary election.

(b) [~~\$625,000~~] **\$1,250,000** in a state general election.

II. For representative to Congress:

(a) [~~\$350,000~~] **\$625,000** in a state primary election.

(b) [~~\$350,000~~] **\$625,000** in a state general election.

III. For executive council:

(a) \$50,000 in a state primary election.

(b) \$50,000 in a state general election.

IV. For state senate:

(a) [~~\$20,000~~] **\$50,000** in a state primary election.

(b) [~~\$20,000~~] **\$50,000** in a state general election.

**2006-1669s**

**AMENDED ANALYSIS**

This bill increases the limitation on campaign expenditures for candidates for the offices of governor, United States senator, representative to Congress, and state senate who agree to limit campaign expenditures. This bill also increases the limitation on the amount that may be contributed to a candidate.

**MOTION TO TABLE**

Senator Boyce moved to have HB 1509 laid on the table.

**Adopted.**

**LAI D ON THE TABLE**

**HB 1509**, relative to campaign expenditure and contribution limitations.

**HB 1662-FN**, establishing the crime of peonage. Internal Affairs Committee. Ought to pass with amendment, Vote 6-0. Senator Bragdon for the committee.

**Internal Affairs****April 6, 2006****2006-1671s****04/03****Amendment to HB 1662-FN**

Amend RSA 633:5, II as inserted by section 1 of the bill by replacing it with the following:

II. The use of the labor of any person incarcerated in a state or county correctional facility or municipal jail shall be exempt from this section.

SENATOR BRAGDON: Thank you, Mr. President. I move HB 1662 ought to pass with amendment. The bill makes peonage, which is a condition of involuntary servitude based on indebtedness, a crime. This will become an additional crime that can be brought forward as a Class A misdemeanor. There have been recent incidents in the news where workers passports, for instance, were confiscated, thus forcing them into servitude. Also the New Hampshire Coalition Against Domestic and Sexual Violence testified that this type of involuntary servitude is common within prostitution as well. The committee amendment strikes the word "forced" in section II where state or county correctional facilities or municipal jails are addressed. Please join the Internal Affairs Committee and vote HB 1662-FN ought to pass with amendment. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HCR 22**, relative to the right to pursue a livelihood in natural resources industries. Internal Affairs Committee. Ought to pass, Vote 6-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Mr. President. I move HCR 22 ought to pass. This House Concurrent Resolution urges the New Hampshire congressional delegation to pursue all measures of ensuring the rights of individuals to pursue a livelihood in the fishing and other natural resource industries. The committee listened to testimony of an ongoing concern of New Hampshire's fishermen's right to earn a living and the hindrances that have burdened the industry through over-regulation. This House Concurrent Resolution will recognize these concerns and highlight to our United States delegation the need for additional assistance in lessening the burdens being caused to New Hampshire's fishermen. Please join the Internal Affairs Committee and vote HCR 22 ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1135**, making a technical correction to the Uniform Interstate Family Support Act. Judiciary Committee. Ought to pass, Vote 5-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move House Bill 1135 ought to pass. The provisions of this bill merely make a minor statutory reference correction to the Uniform Interstate Family Support Act. The Judiciary Committee recommends that this legislation be adopted and asks your support. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1153**, establishing a commission to study the laws and rules relating to subpoenas, summonses and complaints. Judiciary Committee. Inexpedient to legislate, Vote 5-0. Senator Letourneau for the committee.

SENATOR GATSAS (In the Chair): Senator Letourneau, we're going to go through the Addendum Calendar. That's what will be up next, so that everybody will be prepared.

SENATOR LETOURNEAU: Thank you, Mr. President. I move House Bill 1153 inexpedient to legislate. This legislation sought to establish a commission to study laws and rules relative to subpoenas, summonses and complaints. Only one person testified in support of this legislation in the committee. In checking with the courts, they responded that they are unaware of a problem with service of subpoenas, summonses or complaints. The Judiciary Committee therefore recommends that this legislation be found inexpedient to legislate and asks for your support. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**HB 1221-FN**, relative to recovery of medical assistance. Judiciary Committee. Interim Study, Vote 5-0. Senator Clegg for the committee.

#### **MOTION TO TABLE**

Senator Clegg moved to have HB 1221-FN laid on the table.

**Adopted.**

#### **LAID ON THE TABLE**

**HB 1221-FN**, relative to recovery of medical assistance.

**HB 1332**, establishing a commission to study health care in New Hampshire correctional facilities. Judiciary Committee. Ought to pass, Vote 5-0. Senator Roberge for the committee.

#### **MOTION TO TABLE**

Senator Roberge moved to have HB 1332 laid on the table.

**Adopted.**

#### **LAID ON THE TABLE**

**HB 1332**, establishing a commission to study health care in New Hampshire correctional facilities.

**HB 1361**, relative to the penalty for shoplifting. Judiciary Committee. Ought to pass, Vote 4-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move House Bill 1361 ought to pass. The bill increases the amount that a merchant may seek to recover in an out-of-court settlement from a shoplifter from \$200 to up to \$400. The law currently on our books allows a civil negotiated agree-

ment in lieu of a criminal prosecution. The bill increases the amount which may be sought, but also gives the merchant more flexibility to treat victims differently, depending upon the crime involved and the personal circumstances of the offender. The Judiciary Committee recommends that this legislation be adopted and asks for your support. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1620-FN**, relative to hunting restrictions of certain convicted felons. Judiciary Committee. Interim Study, Vote 4-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I move House Bill 1620-FN to be referred to Interim Study. This legislation sought to prohibit certain convicted felons from obtaining a license to hunt and from hunting. The committee has continuing questions regarding the classifications of crossbows as well as the type of felony convictions that would be affected by this legislation. While we are sympathetic to the Fish and Game's frustration with a recent court ruling in this matter, we are not prepared to institute a statute based on the information from the public hearing. Therefore, the Judiciary Committee recommends that this legislation be referred for interim study. We ask for your support. Thank you.

#### MOTION TO TABLE

Senator Foster moved to have HB 1620-FN laid on the table.

**Adopted.**

#### LAI D ON THE TABLE

**HB 1620-FN**, relative to hunting restrictions of certain convicted felons.

**HB 1648-FN**, relative to legal residency and financial liability for children in certain residential placements. Judiciary Committee. Ought to pass, Vote 5-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move House Bill 1648-FN ought to pass. The provisions of this legislation put the James O. consent decree into state statute. The legislation provides the Department of Education, as well as the Department of Health and Human Services, with standing in these court-ordered residential placements. While the Judiciary Committee agrees and acknowledges that someone must be financially responsible for children in these court-ordered placements, we were not comfortable that this bill does not change or impact educational practice in ways unknown to us. The Judiciary Committee recommends that this legislation be adopted and asks that the bill be referred to Senate Finance to look at the financial impact and so that members of Senate Education can check the consistency of the policy. Thank you, Mr. President.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 1660-FN**, regulating identity theft. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Gottesman for the committee.

**Senate Judiciary**  
**April 7, 2006**  
**2006-1698s**  
**04/10**

**Amendment to HB 1660-FN**

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

1 New Subdivision; Right to Privacy; Notice of Security Breach. Amend RSA 359-C by inserting after section 18 the following new subdivision:  
 Notice of Security Breach

359-C:19 Definitions. In this subdivision:

I. "Computerized data" means personal information stored in an electronic format.

II. "Encrypted" means the transformation of data through the use of an algorithmic process into a form for which there is a low probability of assigning meaning without use of a confidential process or key, or securing the information by another method that renders the data elements completely unreadable or unusable. Data shall not be considered to be encrypted for purposes of this subdivision if it is acquired in combination with any required key, security code, access code, or password that would permit access to the encrypted data.

III. "Person" means an individual, corporation, trust, partnership, incorporated or unincorporated association, limited liability company, or other form of entity, or any agency, authority, board, court, department, division, commission, institution, bureau, or other state governmental entity, or any political subdivision of the state.

IV.(a) "Personal information" means an individual's first name or initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(1) Social security number.

(2) Driver's license number or other government identification number.

(3) Account number, credit card number, or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(b) "Personal information" shall not include information that is lawfully made available to the general public from federal, state, or local government records.

V. "Security breach" means unauthorized acquisition of computerized data that compromises the security or confidentiality of personal information maintained by a person doing business in this state. Good faith acquisition of personal information by an employee or agent of a person for the purposes of the person's business shall not be considered a security breach, provided that the personal information is not used or subject to further unauthorized disclosure.

359-C:20 Notification of Security Breach Required.

I.(a) Any person doing business in this state who owns or licenses computerized data that includes personal information shall, when it becomes aware of a security breach, promptly determine the likelihood that the information has been or will be misused. If the determination is that misuse of the information has occurred or is reasonably likely to occur, or if a determination cannot be made, the person shall notify the affected individuals as soon as possible as required under this subdivision.

(b) Any person engaged in trade or commerce that is subject to RSA 358-A:3, I shall also notify the regulator which has primary regulatory



authority over such trade or commerce. All other persons shall notify the New Hampshire attorney general's office. The notice shall include the anticipated date of the notice to the individuals and the approximate number of individuals in this state who will be notified. Nothing in this section shall be construed to require the person to provide to any regulator or the New Hampshire attorney general's office the names of the individuals entitled to receive the notice or any personal information relating to them. The disclosure shall be made to affected individuals as quickly as possible, after the determination required under this section.

(c) Any person or business that maintains computerized data that includes personal information that the person or business does not own shall notify and cooperate with the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was acquired by an unauthorized person. Cooperation includes sharing with the owner or licensee information relevant to the breach; except that such cooperation shall not be deemed to require the disclosure of confidential or business information or trade secrets.

II. Notification pursuant to paragraph I may be delayed if a law enforcement agency, or national or homeland security agency determines that the notification will impede a criminal investigation or jeopardize national or homeland security.

III. The notice required under this section shall be provided by one of the following methods:

(a) Written notice.

(b) Electronic notice, if the agency or business' primary means of communication with affected individuals is by electronic means.

(c) Telephonic notice, provided that a log of each such notification is kept by the person or business who notifies affected persons.

(d) Substitute notice, if the person demonstrates that the cost of providing, notice would exceed \$5,000, that the affected class of subject individuals to be notified exceeds 1,000 or the person does not have sufficient contact information or consent to provide notice pursuant to subparagraphs I(a)-I(c). Substitute notice shall consist of all of the following:

(1) E-mail notice when the person has an e-mail address for the affected individuals.

(2) Conspicuous posting of the notice on the person's business website, if the person maintains one.

(3) Notification to major statewide media.

(e) Notice pursuant to the person's internal notification procedures maintained as part of an information security policy for the treatment of personal information.

IV. Notice under this section shall include at a minimum:

(a) A description of the incident in general terms.

(b) The approximate date of breach.

(c) The type of personal information obtained as a result of the security breach.

(d) The telephonic contact information of the person subject to this section.

V. Any person engaged in trade or commerce that is subject to RSA 358-A:3, I which maintains procedures for security breach notification pursuant to the laws, rules, regulations, guidances, or guidelines issued by a state or federal regulator shall be deemed to be in compliance with this subdivision if it acts in accordance with such laws, rules, regulations, guidances, or guidelines.

VI.(a) If a person is required to notify more than 1,000 consumers of a breach of security pursuant to this section, the person shall also notify, without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined by 15 U.S.C. section 1681a(p), of the anticipated date of the notification to the consumers, the approximate number of consumers who will be notified, and the content of the notice. Nothing in this paragraph shall be construed to require the person to provide to any consumer reporting agency the names of the consumers entitled to receive the notice or any personal information relating to them.

(b) Subparagraph (a) shall not apply to a person who is subject to Title V of the Gramm, Leach-Bliley Act, 15 U.S.C. section 6801 et seq. 359-C:21 Violation.

I. Any person injured by any violation under this subdivision may bring an action for damages and for such equitable relief, including an injunction, as the court deems necessary and proper. If the court finds for the plaintiff, recovery shall be in the amount of actual damages. If the court finds that the act or practice was a willful or knowing violation of this chapter, it shall award as much as 3 times, but not less than 2 times, such amount. In addition, a prevailing plaintiff shall be awarded the costs of the suit and reasonable attorney's fees, as determined by the court. Any attempted waiver of the right to the damages set forth in this paragraph shall be void and unenforceable. Injunctive relief shall be available to private individuals under this chapter without bond, subject to the discretion of the court.

II. The New Hampshire attorney general's office shall enforce the provisions of this subdivision pursuant to RSA 358-A:4.

III. The burden shall be on the person responsible for the determination under RSA 359-C:20, I to demonstrate compliance with this subdivision.

2 Effective Date. This act shall take effect January 1, 2007.

SENATOR GOTTESMAN: Thank you, Mr. President. I move House Bill 1660 ought to pass with amendment. This bill deals with regulation of identify theft and provides guidelines for notification of individuals whose information has possibly been compromised. On the morning of the Senate hearing, numerous parties involved in this legislation met and worked out a compromise amendment which you have before you as the committee amendment. This amendment addressed industry concerns regarding the ability to respond appropriately in a timely manner and agreed upon the language "as quickly as possible". The amendment defines what a security breach is and requires notification to affected individuals who could well be outside the borders of our state. This is the second very important piece of consumer protection legislation dealing with electronic data. The Judiciary Committee recommends that this bill be adopted with amendment and asks your support. Thank you.

**Amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

Senator Foster (Rule #42) on HB 1660.

**HB 1674-FN**, requiring emergency care providers to report information on certain sexual assault crimes to law enforcement officials. Judiciary Committee. Interim Study, Vote 5-0. Senator Clegg for the committee.

**MOTION TO TABLE**

Senator Clegg moved to have HB 1674-FN laid on the table.

**Adopted.**

**LAID ON THE TABLE**

**HB 1674-FN**, requiring emergency care providers to report information on certain sexual assault crimes to law enforcement officials.

**HB 1725-FN**, extending the pilot project relative to abuse and neglect hearings and relative to confidentiality in pilot project abuse and neglect cases. Judiciary Committee. Ought to pass, Vote 3-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I move House Bill 1725-FN ought to pass. This legislation continues the pilot project relative to abuse and neglect hearings for two years and extends the project to Sullivan County. The project is currently in operation in both Grafton and Rockingham Counties and has been very successful. The pilot project merely allows individuals other than specifically involved parties to attend an abuse and neglect hearing, if permitted by the presiding judge. All confidential information remains confidential – the process is opened up. The reason for this is important, a small step in providing additional sunlight into the judicial process that allows someone involved to be able to bring their mother or best friend, just for support. Previously, no one other than the parties specifically named could attend. The Judiciary Committee recommends this legislation be adopted and asks for your support. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 203-FN**, relative to the regulation of tracking devices and establishing a commission on the use of tracking devices. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 4-2. Senator Roberge for the committee.

**Public and Municipal Affairs**

**April 3, 2006**

**2006-1608s**

**03/10**

**Amendment to HB 203-FN**

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

1 New Chapter; Regulation of Tracking Devices. Amend RSA by inserting after chapter 358-R the following new chapter:

**CHAPTER 358-S****REGULATION OF TRACKING DEVICES**

**358-S:1 Definitions.**

I. "Consumer product" means a physical object that is, or is intended to be, used or consumed by a consumer and includes food, alcoholic and nonalcoholic beverages, and prescription and nonprescription drugs; clothing; merchandise; motor vehicles and their component parts; advertising and sales documents and literature; and books, magazines, and greeting and business cards. A "consumer product" does not include an identification document or any product to the extent that unique identifi-

cation via radio waves is an essential part of the consumer's use, including, but not limited to, cellular phones, E-Z Pass transponders, keys, and garage door openers.

II. "Identification document" means any document or object containing personal information that an individual uses alone or in conjunction with any other information to establish his or her identity, to engage in government-regulated activities, or to engage in financial transactions. Identification documents shall include but shall not be limited to:

- (a) Drivers' licenses, identification cards, and license plates issued by the director of the division of motor vehicles, department of safety;
- (b) E-Z Pass transponders;
- (c) Identification cards or badges issued to employees or contractors;
- (d) Insurance benefit cards;
- (e) Identification cards issued by public and private schools and educational institutions;
- (f) Benefit cards issued in conjunction with any government-supported aid program;
- (g) Credit, debit, and financial account cards;
- (h) Licenses, certificates, registrations, or other means to engage in a business or profession regulated by the state or its political subdivisions; and
- (i) Library cards issued by any public library.

III. "Personal information" means information that can be used to identify an individual. Such information includes an individual's name, address, telephone and cellular telephone number, social security number, credit card and financial account numbers, driver's license number, e-mail address, date of birth, race, religion, ethnicity, nationality, political affiliation, photograph and digital image, fingerprint or other biometric identification, and any other unique personal identifier or number.

IV. "RFID" or "radio frequency identification" means technologies that use radio waves to identify individual physical objects.

V. "Tracking device" means any item or application that is passively or actively capable of transmitting unique identification or location information. Tracking devices shall include devices that use radio frequency identification technology; tracking device shall not include bar codes or similar markings that do not transmit information.

VI. "Universally accepted symbol" means a graphical system designed to provide a standard way to show the presence of an RFID transponder, its frequency, and data structure.

VII. "Consumer notice of RFID" means a graphical system designed to provide a standard way to show the presence of an RFID transponder, its frequency, and data structure, or notice given with the following text: "This product is known to the state of New Hampshire to contain a radio frequency identification chip which contains a unique identification number that can be read without your knowledge if it is brought within range of a reader device."

#### 358-S:2 Labels Required; Consumer Products.

I. No consumer product or identification document, to which a tracking device or devices have been affixed or implanted, shall be sold or offered for sale or provided to a consumer without a label containing consumer notice of RFID. Consumer products offered for loan or rental may include the following notice in lieu of a label: "This (specify product type) may contain a radio frequency identification chip or other tracking device which contains a unique identification number that can be read without your knowledge if it is brought within range of a reader device."

II. Identifying labels shall be affixed to the consumer product, identification document, or its packaging, by the entity that implants the tracking device in the product or by the entity that imports products that contain tracking devices.

358-S:3 Human Implantation Prohibited. No person shall implant or attempt to implant a tracking device into any individual without the informed, written consent of the individual, or an individual's legal guardian. No individual shall be offered an incentive, denied an opportunity, or in any way treated differently from any other individual as a consequence of providing or withholding such consent.

358-S:4 Restrictions on State Use of Tracking Devices.

I. The state or a political subdivision, department, or agency shall not issue, or permit others to issue on its behalf, any identification document that contains a tracking device or uses tracking devices to locate an individual, either directly or indirectly through other persons, except in the following circumstances:

(a) To locate a person who is incarcerated in the state prison or county jail, is housed in a mental health facility pursuant to a court order after having been charged with a crime, is subject to court-ordered electronic monitoring, or is a resident of a state or county hospital, nursing facility or assisted living facility; or

(b) When the tracking device is implanted in an identification document that is to be used on a toll road or bridge owned or operated by the state or a political subdivision, department, or agency thereof, but only for the specific purpose of collecting funds for the use of that road or bridge.

II. No identification document issued pursuant to this section shall contain, transmit, or enable the remote reading of any personal information other than a unique personal identifier number issued by the state.

III. This section shall not apply to the court authorized use of tracking devices by law enforcement officials.

358-S:5 Electronic Tracking Prohibited. No person may use any electronic means of tracking another person without a valid court order or other legal authorization or the consent of person being tracked. Any person who violates this section shall be guilty of a violation. This section shall not be construed to apply to locating technology used by the enhanced 911 system or to commercial mobile radio service pursuant to 47 U.S.C. section 332.

358-S:6 Penalties.

I. Any person convicted of violating RSA 358-S:2 shall be guilty of a misdemeanor. Each such act shall constitute a separate offense.

II. Any person convicted of violating RSA 358-S:3 shall be guilty of a felony.

III. The state may bring suit for civil penalties for up to \$10,000, plus court costs and reasonable attorney's fees, for each violation of this chapter.

2 Commission on the Use of Tracking Devices.

I. There is hereby established a commission on the use of tracking devices. The commission shall study the use of radio frequency identification technology in tracking devices and review the implications, positive and negative, of its use for the personal privacy rights of the citizens of New Hampshire.

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

(a) Three members of the house of representatives, including one member from the house commerce committee and one member from the house science, technology, and energy committee, appointed by the speaker of the house of representatives.

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

(c) Two members of the public, appointed by the governor.

(d) The attorney general, or designee.

(e) One member of the New Hampshire High Technology Council, appointed by such council.

(f) One member representing the Retail Merchants Association of New Hampshire, appointed by such association.

(g) One member representing the Business and Industry Association of New Hampshire, appointed by such association.

(h) One member representing the financial services industry, appointed by the New England Financial Services Association.

(i) One member representing consumer or privacy interests, appointed by the governor.

(j) One member representing the university system of New Hampshire, appointed by the governor.

(k) One expert in radio frequency technology, appointed by the speaker of the house of representatives.

(l) One member representing a New Hampshire state agency that is using radio frequency technology, appointed by the president of the senate.

(m) One member representing the New Hampshire Grocers Association, appointed by such association.

(n) One member representing an organization developing standards for use of electronic product code technologies, appointed by the governor.

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

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

V. The commission shall issue a preliminary report of its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before January 2, 2007, and shall submit a final report before dissolving on or before May 15, 2007.

### 3 Effective Date.

I. Section 1 of this act shall take effect July 1, 2007.

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

SENATOR ROBERGE: Thank you, Mr. President. I move House Bill 203 ought to pass with amendment. This legislation addresses the use of tracking devices that use radio frequency identification. House Bill 203 will not allow consumers products that contain tracking devices to be sold to consumers without a label containing a notice that the product may have a tracking device in it. Because this technology is relatively new and extremely complex, House Bill 203 also sets up a commission to study the use of tracking devices. The commission will offer a preliminary report on January of 2007. The committee amendment changes the effective date of the consumer notice requirement to July 1<sup>st</sup> of 2007. This allows the commission to offer its first report and gives the legislature a chance to introduce legislation that may better address the use of tracking devices. The Public and Municipal Affairs Committee asks for your support in ought to pass as amended. Thank you.

**Amendment adopted.**

Senator Kenney offered a floor amendment.

Sen. Kenney, Dist. 3

**April 12, 2006**

**2006-1788s**

**03/04**

**Floor Amendment to HB 203-FN**

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

AN ACT establishing a commission on the use of radio frequency technology.

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

**1 Commission on the Use of Radio Frequency Technology.**

I. There is hereby established a commission on the use of radio frequency technology. The commission shall study the use of radio frequency technology in the private and public sectors, its benefits, and potential privacy implications.

**II. The members of the commission shall be as follows:**

(a) Three members of the house of representatives, including one member from the house commerce committee and one member from the house science, technology, and energy committee, appointed by the speaker of the house of representatives.

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

(c) Two members of the public, appointed by the governor.

(d) The attorney general, or designee.

(e) One member of the New Hampshire High Technology Council, appointed by such council.

(f) One member representing the Retail Merchants Association of New Hampshire, appointed by such association.

(g) One member representing the Business and Industry Association of New Hampshire, appointed by such association.

(h) One member representing the financial services industry, appointed by the New England Financial Services Association.

(i) One member representing consumer or privacy interests, appointed by the governor.

(j) One member representing the university system of New Hampshire, appointed by the governor.

(k) One expert in radio frequency technology, appointed by the speaker of the house of representatives.

(l) One member representing a New Hampshire state agency that is using radio frequency technology, appointed by the president of the senate.

(m) One member representing the New Hampshire Grocers Association, appointed by such association.

(n) One member representing an organization developing standards for use of electronic product code technologies, appointed by the governor.

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

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

V. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representa-

tives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library annually on or before November 1, 2007, and shall submit a final report before dissolving on or before November 1, 2008.

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

**2006-1788s**

#### AMENDED ANALYSIS

This bill establishes a commission on the use of radio frequency technology.

SENATOR KENNEY: Thank you, Mr. President. I'd like to offer a floor amendment, 1788.

SENATOR GATSAS (In the Chair): Floor amendment 1788 has been proposed. Senator Kenney, will you speak to it as it's being passed out?

SENATOR KENNEY: Yes, Mr. President. Basically what this amendment is doing is establishing a commission on the use of radio frequency technology, but it basically sets up a commission to look at this technology in the private and public sectors, its benefits and prudential privacy implications. And you can see before you the types of industry and folks that would be on this commission, including the legislators. One member from the New Hampshire High Technology Council. One member representing the Retail Merchants Association, the BIA, one representing the financial service industry, one member from the privacy industry, a privacy interest group, one from the University of New Hampshire, and you can see that there are several other folks that would be on this commission. My reason for offering this, Mr. President, is simply that through all the testimony that we heard, there seems to be, this is an emerging technology, the RFID technology and it just seemed to be a lot of questions about the technology in how it's going to emerge in the future. Now, one of the concerns that I had was this bill was never heard in the House Science and Technology Committee, which would have taken on the technology aspect of the bill. So I think there was a certain group that was eliminated from really, the initial hearing process, before it got over to the Senate. I do support the idea that we need to protect our citizens against RFID tags. That's not the question. The question is, are we creating legislation with unintended consequences? And I would like to summarize basically what Joe Dumas of the New Hampshire Grocers said. He said, "I'm opposed to this legislation because it is trying to correct the technology before it is fully developed. The legislature should be working to ban potential bad behavior associated with this technology and not the technology itself." We in the state of New Hampshire, or through the PDA, the Portsmouth Development Authority, have encouraged a company from Maine to come to the PDA to set up a business, a high tech business, which their focus would be on RFID technology, which is the Lockware. And there's a potential there for many jobs. And Lockware is a leading independent developer of automated identification solutions focused on enterprise supply chain applications. Its solutions are compatible with leading data bases in compliant with the leading industry standards. Lockware Office Industry First Innovations and Legacy Barcode applications as well as next generation RFID implementations as well as products that bridge an existing investment in barcode technology with users entering the RFID arena. This company was brought to the PDA with a lot of enthusiasm. The director of the PDA, George Bald, was ecstatic when this company came to New Hamp-



shire. I approached the company owners last week and I said, "Did you know anything about this RFID bill in the legislature?" And they said, "No, we know nothing about it." And many of the other RFID folks in the state didn't really know about this legislation in the House, until it got to the Senate, and some didn't know at all. I feel that, if we're going to do the right thing for the business community of our state, that we should probably set up this commission, invite them to the table, look at privacy issues, look at criminal issues, look at consumer issues, look at technology issues, and have people come to the table. And I'll assure this body that I'll make sure that a representative from that company and other companies come to this commission so we can look at this technology and how we can best protect our citizens. But I honestly think that we're a little bit ahead of the game here, 'cause this technology has been out there for thirty years. It hasn't evolved to the point where we're in a science fiction movie, at least I don't think the boogeyman is out there on RFID. Some other folks might have a different opinion, but it's used in the military use for our supply and logistics. It's used in, you know, presently it's used in, I believe shipping of the retail industry. But I also think that we have some issues when it comes to the interstate commerce laws and how we pass this type of legislation to make sure that we cover all those angles as well. I'm a co-sponsor to this bill, and I think I've said enough, Mr. President, so I'd appreciate your support on the floor amendment.

SENATOR LETOURNEAU: Thank you, Mr. President. I rise in opposition to the amendment. And I always have good faith in my good friend over there from Wakefield, that he has good judgment. But I stand here before you today with forty years of electronic technician experience, and I hold a general class radio amateur license. I do have some understanding of RF's. And while I may not understand everything, and I'm not considered to be an expert in this field, I can tell you that we're not ahead of ourselves, or ahead of the game. I think we're behind the curve on this one. These devices of which there's a hundred and fifty floating in this little vial here. They're so small, they're about the size of a period on a page that you're looking at in front of you and they're wafer thin and slipped into different items. I'm going to wait until the ambulance goes by so my good friend Laurie can get this for the record. Thank you, Laurie. This mostly is an antenna. The chip is actually the little dot in the center. You don't even need the antenna anymore, because now they have ping or other materials that will cause to be an antenna. These devices can be read by readers, and these readers are not exactly hard to get ahold of. People can get them. They can read the devices in your wallet. They can read the devices that are planted in your clothes. Women would be surprised to find out their underwear has RFID tags in it and when they walk into a store, they know you're in there. I think you ought to know that they're in there. Now this particular amendment that was put in by the committee excludes quite a bit of information. Excludes easy pass transponders, identification cards, insurance cards and the likes, anything that we use for identification, and it excludes personal information. One of the things that is also in this amendment, it provides an exception to prevent any human implementation of one of these devices. While I understand my good friend from Bedford would like to put one of these things in her animals, so if they get lost, she can find them, us humans are able to pick up a telephone and call somebody. We don't need a tracking device. So this is also in the committee amendment.

**TAPE CHANGE** Thank you very much, Mr. President.

SENATOR BURLING: I rise to offer my congratulations to my chairman. The very first day we heard this, Senator Francoeur looked at me and said, excuse me, Senator Roberge, wrong bill. Senator Roberge turned to me and said, "Anybody for the commission?" and what she intended to do that time was to indicate her early understanding that this was an immensely complex issue which needed further work. I, of course, bulled ahead thinking that I could find an easy solution to half a dozen different issues, and I wrote probably eight different versions of various kinds of bill here. It is, as Senator Kennedy (sic) also knew from the start. It is hot., I'm trying. Senator Kenney had it right, too. He understood this needs study. I'm just here to say they were both right, I didn't have it figured out. The study is the right thing to do, and that's why I intend to vote for Senator Kennedy's...Kenney's amendment.

SENATOR HASSAN: Thank you, Mr. President. I rise also as a member of the committee who voted against the committee amendment that is before you, not because it didn't reflect good and hard work, which it did, but because, as Senator Burling's comments reflect, every time we thought we had done this in a way that would do what we really want to do, which I think we all want to prevent the tracking of individuals by their identity, by invisible and unknown to the wearer or the carrier technology, we found an unintended consequence that we didn't want. Even in the committee amendment, the reference in the first paragraph to cellular phones, we find is incomplete and imprecise reference given the technology at issue, and that it would not exclude certain other kinds of safety devices that we do want to have operating in our state. So the more we got into this, the more we realized, for instance, that we might be preventing rental car companies from tracking thieves that took off with the rental cars. And it is not to say that any of us...that we don't think this needs to be addressed, because we do. But it is to say that, after a long, long hearing, I think it was three or four hours, and multiple meetings with various interested parties, some from the industry, some from consumer groups, it became very clear to me that one of the problems with this bill had been that the consumer groups, the technological experts and the industry, had not been at the same table talking to each other, sharing information, trying to understand each others' perspective and building a law out of that common understanding and work, that we could all vote to support. And that is why I support this commission. I agree with Senator Letourneau in the sense that I don't think we can shrug our shoulders and say, oh, the technology isn't that far along. I think it is not being misused by industry at this point, but I do think, as people are getting more sophisticated, we face, at some point in the not very near future, commercial interests that might try to collect and buy and scan and merge data that would do our privacy interest harm. So I think this is something we should take enormously seriously. I am supporting a commission, not because I want this to go away, and sometimes we pass study committees because that's what we want, but we pass serious commissions with this kind of itemized membership from all aspects of the stakeholders when we want a really good bill that will do what we need it to do to protect the consumers of New Hampshire. Otherwise, we will have unintended consequences and plunge ourselves, I fear, into a fair amount of litigation as we all try to sort out the unintended consequences of this bill. Thank you, Mr. Chair.

SENATOR LETOURNEAU: Thank you. Senator Hassan. Thank you very much for taking the question. This is in no way to try to create a problem here. Isn't it true that this bill is basically is talking about disclousure

sure? We're not talking about banning these things; we're talking about disclosure. So, if you're going to rent a car, you just tell the person, this particular automobile has a tracking device in it?

SENATOR HASSAN: Then if you're a car thief and you see that there is no notice, you now know you can steal the car without a tracking device. There are solutions to this, as we work them through. The issue is, of course, disclosure, but part of the problem we heard is that by insisting on disclosure the way we've categorized it, we would also be requiring labels on devices that can't easily take labels, and that we might in fact, create, because an industry, a nationwide industry, might just pull its product out of the state of New Hampshire rather than have to label the kind of security passes that you use to get into a building after night, for instance. So they might just choose to withdraw their product. The point of this is not to say that we shouldn't disclose; the point of this is to make sure that we have a bill that doesn't have unintended consequences.

SENATOR JOHNSON: I've had my question answered.

SENATOR LARSEN: Over the years, I think that many of us in this room have worked to protect consumer privacy. Over the years, we removed the social security numbers from our drivers' licenses. I worked really hard on that one. Over the years, we worked to protect identity theft and improve our laws relative to identity theft. We've worked on this bill, some, in committee. Certainly worked harder to find that path which will protect our consumer. What I'm hearing and what I'm coming to understand is, as we attempt to work to a law that will in fact protect the consumer, but allow for the use of technology that in fact is helpful to the consumer. The idea that a rental car could be tracked if it was stolen will hold down all our rental costs and our insurance costs. Some of those things are good uses of technology. We need to go carefully on this. I have not heard that by putting this to study for a report in November of '07, will in fact, cause a great loss of privacy or harm to the consumer. I think it's up to us to pass this amendment, to go carefully ahead to protecting the consumer in this area in a way that is most beneficial for the people that we represent.

SENATOR BRAGDON: Thank you, Mr. President. I move the question.

SENATOR GATSAS (In the Chair): I have one question of Senator Barnes and Senator Clegg to speak and we'll move the question.

SENATOR BARNES: Thank you, Mr. President. A question of Senator Kenney.

SENATOR KENNEY: Senator Barnes.

SENATOR BARNES: Thank you for taking the question, Senator.

SENATOR KENNEY: You're welcome.

SENATOR BARNES: It's actually probably a two-parter. Well I can probably do that. What does your amendment do to what we already have here that the committee voted 4 to 2 on? I know why you voted to get it here to the floor and I appreciate that, but you did have some concerns in committee, so let's leave that part out. What does your amendment do to what the committee came out with that's on the floor right now? And my second question is, don't you think if we do what you want to do, the commission isn't going to have anybody pushing them to make something happen? That's my two-parter, and I'll sit down and appreciate your answers.

SENATOR KENNEY: Thank you, Senator Barnes. To answer your question, I think what came out of committee, as I recall, and as I've read here on my table today, is that there was a sense that we were putting in language, of more consumer privacy protection and that you would still have the commission. But I personally believe, and I have been consistent from this from day one, is that I believe that technology is such that you, I, and a lot of other people that served on that committee, are not quite understanding of the breadth of that technological knowledge that is out there, and as such, we are probably, without knowing it, creating unintended consequences for various New Hampshire businesses. And I would echo what Senator Larsen stated is, that there is no other bill or law in the country that has passed in regard to RFID that I am aware of. New Hampshire would be the first, if we were to pass the original bill as it came out of committee. But I think that since there isn't, you know, an Alton dam break that has occurred on this issue, and that we have to create a, you know, emergency evacuation plan because of that dam break, that we have time to look at not only the technology, but probably more importantly, the privacy rights of individuals and the consumer so that we get it right the first time and not the second time. And New Hampshire should be known for getting it right the first time.

SENATOR BARNES: Thank you.

SENATOR KENNEY: Thank you.

SENATOR GATSAS (In the Chair): Senator Burling for the last question and one last speaker, and we'll move the question.

SENATOR BURLING: It is a question for Senator Barnes.

SENATOR GATSAS (In the Chair): Senator Barnes has not spoken.

SENATOR BURLING: Will he yield?

SENATOR BARNES: Well, it depends on what it is.

SENATOR BURLING: The question is posed in the nature of a "would you believe", Senator. Would you believe you've asked exactly the right question. What impels...what impels this commission forward to doing good work? And the answer is, I think the twenty-four members of this Senate, because I can assure you I will be pushing and the members of the committee will be pushing to get some work done.

SENATOR BARNES: How am I supposed to answer that? I guess I could say that I believe you.

SENATOR BURLING: TAPE INAUDIBLE

SENATOR BARNES: If you're saying it, I am sure I'm going to believe it. How's that?

SENATOR CLEGG: Thank you. I'd just like to point out that there will be no reason for the industry to show up. We had, in the original bill, a big stick that said if you don't show up or you don't come out with something other than this, this is what you get period. Now remember, when it was in my car, I didn't care. When it was in my telephone, I didn't care. When it gets into my clothes, I care. That's what brought the bill up. The fact that they're now putting RFID in your clothes. And as one of the lobbyists said to me, "We can walk through the flea market with our reader and we can tell where that sweater came from, where those pants came from, where that CD came from." That's getting too personal. This means that, until November 1, 2007, they don't even have to report, which means once again, in 2008, for those who get to come back, it'll be an

election year, and you'll have before you a piece of legislation that the industry does not want you to pass because the industry wants to be able to tell where you bought your underwear. Thank you, Mr. President.

**The question is on the adoption of the floor amendment.**

**A division vote was requested.**

**Yeas: 17 - Nays: 6**

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

SENATOR KENNEY: Mr. President, would this be going to Finance since it's an "FN" bill?

SENATOR GATSAS (In the Chair): No, it is not going to Finance.

SENATOR KENNEY: Thank you, Mr. President.

**HB 626-FN-L**, relative to the right-to-know law. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

**Public and Municipal Affairs**

**April 3, 2006**

**2006-1610s**

**09/01**

**Amendment to HB 626-FN-LOCAL**

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

1 Statement of Purpose. The purpose of this act is to clarify how the right-to-know law applies to both governmental records kept in electronic form and electronic communications used to transact governmental business. The general court finds that this act fulfills this purpose in a manner that maintains openness in government, while being in accord with the varied types, sizes, and resources of New Hampshire's public bodies.

2 Chapter Heading Amended. Amend the chapter heading of RSA 91-A to read as follows:

ACCESS TO [~~PUBLIC~~] **GOVERNMENTAL RECORDS AND MEETINGS**

3 Definitions Added. RSA 91-A:1-a is repealed and reenacted to read as follows:

91-A:1-a Definitions. In this chapter:

I. "Advisory committee" means any committee, council, commission, or other like body whose primary purpose is to consider an issue or issues designated by the appointing authority so as to provide such authority with advice or recommendations concerning the formulation of any public policy or legislation that may be promoted, modified, or proposed by such authority.

II. "Governmental records" means any information created, accepted, or obtained by, or on behalf of, any public body in furtherance of its official function. The term "governmental records" shall also include the term "public records."

III. "Governmental proceedings" means the transaction of any functions affecting any or all citizens of the state by a public body.

IV. "Information" means knowledge, opinions, facts or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic or other physical form.

V. "Public body" means any of the following:

(a) The general court including executive sessions of committees; and including any advisory committee established by the general court;

(b) The executive council and the governor with the executive council; including any advisory committee established by the governor by executive order or by the executive council;

(c) Any state agency or authority, including any board or commission thereof, the board of trustees of the university system of New Hampshire and any committee, advisory or otherwise, established by such entities;

(d) Any board, commission, agency or authority, of any county, town, municipal corporation, school district, school administrative unit, charter school, or other political subdivision, or any committee, subcommittee or subordinate body thereof, or advisory committee thereto.

VI. "Quorum" means the minimum number of members required to be present when making decisions on behalf of a public body required by law to act only as a group through joint authority. Unless expressly declared otherwise, a majority of the membership of such a body shall constitute a quorum.

4 Meetings; Nonpublic Sessions; Minutes and Records; Exemptions. Amend RSA 91-A:2-5 to read as follows:

91-A:2 Meetings Open to Public.

I. For the purpose of this ~~section~~ **chapter**, a "meeting" ~~[shall mean]~~ **means** the convening of a quorum of the membership of a public body, as ~~[provided]~~ **defined** in RSA 91-A:1-a, ~~[to discuss or act]~~ **whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, for the purpose of discussing or acting** upon a matter or matters over which the public body has supervision, control, jurisdiction or advisory power. **A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters. However, if any such matters are discussed among a quorum of the body, the discussion shall be disclosed at the next meeting of the body.** "Meeting" shall **also** not include:

~~[(a) Any chance meeting or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business and at which no decisions are made; however, no such chance or social meeting shall be used to circumvent the spirit of this chapter;~~

~~(b) (a) Strategy or negotiations with respect to collective bargaining;~~

~~(c) (b) Consultation with legal counsel; [or~~

~~(d) (c) A caucus consisting of elected members of a public body of the same political party who were elected on a partisan basis at a state general election or elected on a partisan basis by a town or city which has adopted a partisan ballot system pursuant to RSA 669:12 or RSA 44:2[-]; or~~

**(d) Circulation of draft documents which, when finalized, are intended only to formalize decisions formerly made in a meeting; provided, that nothing in this subparagraph shall be construed to alter or affect the application of any other section of RSA 91-A to such documents or related communications.**

II. [~~All public proceedings shall be open to the public, and all persons shall be permitted to attend any meetings of those bodies or agencies.~~] ***Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public.*** Except for town meetings, school district meetings and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras and videotape equipment, at such meetings. Minutes of all such meetings, including names of members, persons appearing before the ***public*** bodies [~~or agencies~~], and a brief description of the subject matter discussed and final decisions, shall be promptly recorded and open to public inspection within 144 hours of the [~~public~~] meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any ***public*** body [~~or agency~~], or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places, ***one of which may be the public body's Internet website, if such exists***, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the ***public*** body [~~or agency~~] who shall ***post a notice of the time and place of such meeting, as soon as practicable, and shall*** employ whatever ***further*** means are ***reasonably*** available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or guidelines or rules of order of any ***public*** body [~~or agency~~ ~~described in RSA 91-A:1-a~~] require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter.

#### 91-A:3 Nonpublic Sessions.

I.(a) ***Public*** bodies [~~or agencies~~] shall not meet in nonpublic session, except for one of the purposes set out in paragraph II. No session at which evidence, information or testimony in any form is received shall be closed to the public, except as provided in paragraph II. No ***public*** body [~~or agency~~] may enter nonpublic session, except pursuant to a motion properly made and seconded.

(b) Any motion to enter nonpublic session shall state on its face the specific exemption under paragraph II which is relied upon as foundation for the nonpublic session. The vote on any such motion shall be by roll call, and shall require the affirmative vote of the majority of members present.

(c) All discussions held and decisions made during nonpublic session shall be confined to the matters set out in the motion.

II. Only the following matters shall be considered or acted upon in nonpublic session:

(a) The dismissal, promotion or compensation of any public employee or the disciplining of such employee, or the investigation of any

charges against him, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted.

(b) The hiring of any person as a public employee.

(c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the **public** body [~~or agency~~] itself, unless such person requests an open meeting. This exemption shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant.

(d) Consideration of the acquisition, sale or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.

(e) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the **public** body [~~or agency~~] or any subdivision thereof, or against any member thereof because of his membership in such **public** body [~~or agency~~], until the claim or litigation has been fully adjudicated or otherwise settled. Any application filed for tax abatement, pursuant to law, with any body or board shall not constitute a threatened or filed litigation against any **public** body [~~board, or agency~~] for the purposes of this subparagraph.

(f) Consideration of applications by the adult parole board under RSA 651-A.

(g) Consideration of security-related issues bearing on the immediate safety of security personnel or inmates at the county correctional facilities by county correctional superintendents or their designees.

(h) Consideration of applications by the business finance authority under RSA 162-A:7-10 and 162-A:13, where consideration of an application in public session would cause harm to the applicant or would inhibit full discussion of the application.

(i) Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.

(j) Consideration of confidential, commercial, or financial information that is exempt from public disclosure under RSA 91-A:5, IV in an adjudicative proceeding pursuant to RSA 541 or RSA 541-A.

III. Minutes of [~~proceedings~~] **meetings** in nonpublic session shall be kept and the record of all actions shall be promptly made available for public inspection, except as provided in this section. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting, unless, by recorded vote of 2/3 of the members present, it is determined that divulgence of the information likely would affect adversely the reputation of any person other than a member of the **public** body [~~or agency~~] itself, or render the proposed action ineffective, or pertain to terrorism, more specifically, to matters relating to the preparation for and the carrying out of all emergency functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life. This shall include training to carry out such functions. In the event of such circumstances, information may be withheld until, in the opinion of a majority of members, the aforesaid circumstances no longer apply.

91-A:4 Minutes and Records Available for Public Inspection.



I. Every citizen during the regular or business hours of all ~~such~~ **public** bodies ~~[or agencies]~~, and on the regular business premises of such **public** bodies ~~[or agencies]~~, has the right to inspect all ~~[public]~~ **governmental** records *in the possession, custody, or control of such public bodies*, including minutes of meetings of the **public** bodies ~~[or agencies]~~, and to **copy and** make memoranda~~;~~ **or** abstracts~~;~~ ~~and photographic or photostatic copies~~ of the records or minutes so inspected, except as otherwise prohibited by statute or RSA 91-A:5. *In this section, "to copy" means the reproduction of original records by whatever method including, but not limited to, photography, photostatic copying, printing, or electronic or tape recording.*

I-a. Records of any payment made to an employee of any public body ~~[or agency listed in RSA 91-A:1-a, 1(a)-(d)]~~, or to the employee's agent or designee, upon the resignation, discharge, or retirement of the employee, paid in addition to regular salary and accrued vacation, sick, or other leave, shall immediately be made available without alteration for public inspection. All records of payments shall be available for public inspection notwithstanding that the matter may have been considered or acted upon in nonpublic session pursuant to RSA 91-A:3.

II. After the completion of a meeting of such **public** bodies ~~[or agencies]~~, every citizen, during the regular or business hours of all such **public** bodies ~~[or agencies]~~, and on the regular business premises of such **public** bodies ~~[or agencies]~~, has the right to inspect all notes, materials, tapes or other sources used for compiling the minutes of such meetings, and to make memoranda, abstracts, ~~[photographic or photostatic copies, or tape record]~~ **or to copy** such notes, materials, tapes or sources inspected, except as otherwise prohibited by statute or RSA 91-A:5.

III. Each **public** body ~~[or agency]~~ shall keep and maintain all ~~[public]~~ **governmental** records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the ~~[public]~~ **governmental** records pertaining to such **public** body ~~[or agency]~~ shall be kept in an office of the political subdivision in which such **public** body ~~[or agency]~~ is located or, in the case of a state agency, in an office designated by the secretary of state.

*III-a. Governmental records created or maintained in electronic form shall remain accessible for the same retention or archival periods as their paper counterparts. Methods that may be used to accomplish this requirement include, but are not limited to, copying to microfilm or paper or to durable electronic media using standard or common file formats.*

*III-b. A governmental record in electronic form shall no longer be subject to disclosure pursuant to this section after it has been initially and legally deleted in the normal course of business or after the expiration of any statutorily required retention period.*

IV. Each public body ~~[or agency]~~ shall, upon request for any ~~[public]~~ **governmental** record reasonably described, make available for inspection and copying any such ~~[public]~~ **governmental** record within its files when such records are immediately available for such release. If a public body ~~[or agency]~~ is unable to make a ~~[public]~~ **governmental** record available for immediate inspection and copying, it shall, within 5 business days of request, make such record available, deny the request in writing with reasons, or furnish written acknowledgment of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied. If a **computer**, photocopying machine or other device maintained for use by a **public** body ~~[or agency]~~ is used by the **public** body ~~[or agency]~~ to copy the ~~[public]~~ **governmental**

record [~~or document~~] requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the **public** body [~~or agency~~]. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of [~~public~~] **governmental** records [~~or documents~~], but if such fee is established for the copy, no additional costs or fees shall be charged.

V. In the same manner as set forth in RSA 91-A:4, IV, any **public** body [~~or agency~~] which maintains [~~its~~] **governmental** records in [~~a computer storage system~~] **electronic form** may, in lieu of providing original [~~documents~~] **records**, [~~provide a printout of any record reasonably described and which the agency has the capacity to produce~~] **copy governmental records requested to electronic media using standard or common file formats** in a manner that does not reveal information which is confidential under this chapter or any other law. ***If copying to electronic media is not reasonably practicable, or if the person or entity requesting access requests a different method, the public body may provide a printout of governmental records requested, or may use any other means reasonably calculated to comply with the request in light of the purpose of this chapter as expressed in RSA 91-A:1.*** Access to work papers, personnel data and other confidential information under RSA 91-A:5, IV shall not be provided.

VI. Every agreement to settle a lawsuit against a governmental unit, threatened lawsuit, or other claim, entered into by any political subdivision or its insurer, shall be kept on file at the municipal clerk's office and made available for public inspection for a period of no less than 10 years from the date of settlement.

***VII. Nothing in this chapter shall be construed to require a public body to compile, cross-reference or assemble information into a form in which it is not already kept or reported by that body.***

91-A:5 Exemptions. The following **governmental** records are exempted from the provisions of this chapter:

I. Records of grand and petit juries.

II. Records of parole and pardon boards.

III. Personal school records of pupils.

IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a **public** body [~~or agency~~] from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected.

V. Teacher certification records [~~, both hard copies and computer files,~~] in the department of education, provided that the department shall make available teacher certification status information.

VI. Records pertaining to matters relating to the preparation for and the carrying out of all emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.

VII. Unique pupil identification information collected in accordance with RSA 193-E:5.

VIII. Any notes or other materials made for personal use that do not have an official purpose, including, **but not limited to**, notes and materials made prior to, during, or after a [public] **governmental** proceeding.

IX. Preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum or a majority of [those entities defined in RSA 91-A:1-a] **the members of a public body**.

5 Remedies. Amend RSA 91-A:8 to read as follows:

91-A:8 Remedies.

I. If any **public** body [~~or agency~~] or employee or member thereof, in violation of the provisions of this chapter, refuses to provide a [public] **governmental** record or refuses access to a [public] **governmental** proceeding to a person who reasonably requests the same, such **public** body[~~agency~~], or person shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under this chapter provided that the court finds that such lawsuit was necessary in order to make the information available or the proceeding open to the public. Fees shall not be awarded unless the court finds that the **public** body[~~agency~~] or person knew or should have known that the conduct engaged in was a violation of this chapter or where the parties, by agreement, provide that no such fees shall be paid. In any case where fees are awarded under this chapter, upon a finding that an officer, employee, or other official of a public body [~~or agency~~] has acted in bad faith in refusing to allow access to a [public] **governmental** proceeding or to provide a [public] **governmental** record, the court may award such fees personally against such officer, employee, or other official.

I-a. The court may award attorneys' fees to a [~~board, agency~~] **public body** or employee or member thereof, for having to defend against a person's lawsuit under the provisions of this chapter, when the court makes an affirmative finding that the lawsuit is in bad faith, frivolous, unjust, vexatious, wanton, or oppressive.

II. The court may invalidate an action of a public body [~~or agency~~] taken at a meeting held in violation of the provisions of this chapter, if the circumstances justify such invalidation.

III. In addition to any other relief awarded pursuant to this chapter, the court may issue an order to enjoin future violations of this chapter.

6 Reference Change. Amend RSA 42:1-a, II (a) and (b) to read as follows:

(a) A public body properly voted to withhold that information from the public by a vote of 2/3, as required by RSA 91-A:3, III, and if divulgence of such information would constitute an invasion of privacy, or would adversely affect the reputation of some person other than a member of the public body [~~or agency~~], or would render proposed municipal action ineffective; or

(b) The officer knew or reasonably should have known that the information was exempt from disclosure pursuant to RSA 91-A:5, and that its divulgence would constitute an invasion of privacy, or would adversely affect the reputation of some person other than a member of the public body [~~or agency~~], or would render proposed municipal action ineffective.

7 New Section; Communications Outside Meetings. Amend RSA 91-A by inserting after section 2 the following new section:

91-A:2-a Communications Outside Meetings.

I. Any communications outside a meeting, in whatever form, among a quorum of the membership of a public body which bear upon matters over which the body has supervision, control, jurisdiction, or advisory power shall be disclosed at the next meeting of the body before any decision may be made, including a decision not to act. If such communica-

tions are in writing, copies or printouts shall be made a part of the public record. Communications among less than a quorum of members need not be disclosed. Communications described in RSA 91-A:2, I(a)-(d) are not subject to the disclosure requirements of this paragraph.

II. Communications outside a meeting, including but not limited to sequential communications among the members of a public body, shall not be used to circumvent the spirit of this chapter.

8 Board of Tax and Land Appeals; Board Meetings; Hearing Procedures. Amend RSA 71-B:7 to read as follows:

71-B:7 **Board Meetings**; Hearing Procedure.

***I. The board shall conduct all hearings and vote on final proposed rules and the adoption of rules in meetings held pursuant to RSA 91-A. Adoption of orders, rulings on motions, internal administrative actions, deliberations and other communications involving a quorum of the board shall be exempt from the meeting, notice, and disclosure provisions of RSA 91-A. Work papers, including, but not limited to, all preliminary drafts, notes, memoranda and other documents not in their final form, created or used by the board, are exempt from the provisions of RSA 91-A. Decisions and orders in adjudicatory proceedings shall be publicly available, but only after they have been reduced to writing, signed by a quorum of the board, and served upon the parties.***

***II.*** Whenever the board shall hold hearings, it shall not be bound by the strict rules of evidence adhered to in the superior courts in this state. The board shall introduce into evidence and may take into consideration in determining any question any information obtained through its own investigation, including information obtained by persons employed under RSA 71-B:14. ~~[In addition to the provisions of RSA 91-A,]~~ The board shall tape record the proceedings of any taxation hearing before it and shall make such tape recording available to the public for inspection and recording from the date of the hearing to a date which is 15 working days after the board has made a final decision on the matter which is the subject of the hearing, or, if an appeal is made from such decision, the date upon which the matter has been finally adjudicated, whichever date is later.

9 New Section; Public Utilities Commission. Amend RSA 363 by inserting after section 17-b the following new section:

363:17-c Meetings of the Commission. The commission shall conduct all hearings and vote on final proposed rules and the adoption of rules in meetings held pursuant to RSA 91-A. Adoption of orders, rulings on motions, internal administrative actions, deliberations and other communications involving a quorum of the commission shall be exempt from the meeting, notice, and disclosure provisions of RSA 91-A; provided, however, that all orders and rulings on motions in adjudicative proceedings shall be disclosed in public meetings or hearings of the commission held pursuant to RSA 91-A.

10 New Paragraph; Public Utilities; Rates and Charges. Amend RSA 378:43 by inserting after paragraph III the following new paragraph:

IV. Work papers, including, but not limited to, all preliminary drafts, notes, memoranda, and other documents not in their final form, created or used by the commission are exempt from the provisions of RSA 91-A.

11 Site Evaluation Committee. Amend RSA 162-H:10, II to read as follows:

II. Except for informational hearings, subsequent hearings shall be in the nature of adversary proceedings and may be held in the county or one of the counties in which the proposed facility is to be located or in Concord, New Hampshire, as determined by the site evaluation com-

mittee. The committee shall give adequate public notice of the time and place of each subsequent session. *Deliberations and other communications involving a quorum of the site evaluation committee and, if a bulk power supply facility application, the commission, shall be exempt from the meeting, notice, and disclosure provisions of RSA 91-A; provided, however, that all orders and rulings on motions in adjudicative proceedings shall be disclosed in public meetings or hearings of the site evaluation committee or commission, as applicable, held pursuant to RSA 91-A or through publication of a written order setting forth findings of fact and conclusions of law. Work papers, including, but not limited to, all preliminary drafts, notes, memoranda, and other documents not in their final form, created or used by the site evaluation committee or the commission are exempt from the provisions of RSA 91-A.*

12 Nuclear Decommissioning Finance Committee. Amend RSA 162-F:21, I to read as follows:

I. Each committee shall hold at least one public hearing to receive information on funding requirements for each fund. The committee shall have the authority to subpoena witnesses and administer oaths and to compel by subpoena duces tecum the production of any accounts, books, contracts, records, documents, memoranda, and papers in order to determine the amount needed for the fund. *Deliberations and other communications involving a quorum of the nuclear decommissioning finance committee shall be exempt from the meeting, notice, and disclosure provisions of RSA 91-A, provided; however, that all orders and rulings on motions in adjudicative proceedings shall be disclosed in public meetings or hearings of the nuclear decommissioning finance committee held pursuant to RSA 91-A or through publication of a written order pursuant to RSA 162-F:21, III and IV. Work papers, including, but not limited to, all preliminary drafts, notes, memoranda, and other documents not in their final form, created or used by the nuclear decommissioning finance committee are exempt from the provisions of RSA 91-A.*

13 Effective Date. This act shall take effect July 1, 2006.

2006-1610s

#### AMENDED ANALYSIS

This bill clarifies the manner in which the right-to-know law applies to both governmental records kept in electronic form and electronic communication used to transact governmental business.

This bill also clarifies certain administrative procedures of the board of tax and land appeals and the public utilities commission with respect to RSA 91-A.

SENATOR BARNES: Thank you, Mr. President. I move to recommit.

**Senator Barnes moved to recommit.**

**Adopted.**

**HB 626-FN-L is recommitted to the Public and Municipal Affairs Committee.**

**HB 1162**, relative to village districts. Public and Municipal Affairs Committee. Inexpedient to legislate, Vote 4-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 1162 inexpedient to legislate. This legislation would have required a town in which a village district is located to vote before the village district is formed so that a small group of people could not form a village district that the entire town opposed. The committee heard an overwhelming amount of opposition to this legislation at the public hearing, and feels House Bill 1162 is unnecessary at this time as current statutes have worked well for many years. Village districts are usually formed to address the water, fire or sewage needs of a small area. Since village districts typically impact a small number of people and are entirely self-funded, only residents that will be directly affected by the village district should be required to vote on this formation. House Bill 1162 would put a burdensome duty on all the citizens, excuse me, on all the town's citizens. The Public and Municipal Affairs Committee asks for your support on the motion of inexpedient to legislate. Thank you, Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**HB 1173**, relative to designating the clerk in cities the chief elections officer for the city. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move HB 1173 ought to pass. This legislation will designate the city clerk as the chief elections officer in municipalities that have multiple voting wards. House Bill 1173 does not change the definition of town moderators in any way. Making the city clerk the chief elections officer will reduce confusion and give him or her the ability to solve problems or controversies between wards. This legislation will also help to establish uniform voting practices around the state. The Public and Municipal Affairs Committee asks for your support of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1231-FN**, relative to the penalty for assaulting a firefighter, licensed emergency medical care provider, or law enforcement officer. Public and Municipal Affairs Committee. Ought to pass, Vote 4-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you very much, Mr. President. I move House Bill 1231 ought to pass. This legislation provides for enhanced penalties for assaulting a paid firefighter, volunteer firefighter, an on-call firefighter, or a licensed emergency medical care provider as defined in RSA 153-A:2,V acting in the line of duty. The Public and Municipal Affairs Committee unanimously asks for your support in passing this piece of legislation.

**Adopted.**

**Ordered to third reading.**

**HB 1313**, naming a bridge between the towns of Newfields and Stratham the United States Submarine Veterans of World War II Memorial Bridge. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Mr. President. I move House Bill 1313 ought to pass. This legislation will name the bridge over the Squamscott River between the towns of Newfields and Stratham the United States Submarine Veterans of World War II Bridge, in memory of the organization and its members that are still on patrol. Submarine veterans in

World War II sank two hundred and one warships and 1,100 enemy merchant ships. The price for this success was the loss of fifty-two submarines and 3,600 casualties. These efforts and these losses often occurred without recognition as they needed to occur literally under the radar screen. There is no other type of recognition in New Hampshire for the submarine veterans of World War II and this will be a fitting tribute to their service. The Public and Municipal Affairs Committee asks for your support on the motion of ought to pass. Thank you.

SENATOR BOYCE: Yes, if I could? There's no money into this to convert it to a tunnel is there?

SENATOR HASSAN: No, sir.

SENATOR BOYCE: Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 1584**, relative to cemetery setbacks and septic systems. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move House Bill 1584 ought to pass. This legislation will require that the location of known burial sites or cemeteries be included on septic system plans submitted to the Department of Environmental Services for review and approval. Old burial sites can easily be missed, and this legislation will insure that reasonable buffers to cemeteries and burial sites are maintained. The Department of Environmental Services supports this legislation. The Public and Municipal Affairs also supports this legislation and asks for ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 1696-FN**, relative to the cremation of human remains. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Barnes for the committee.

**Public and Municipal Affairs**

**April 3, 2006**

**2006-1609s**

**10/04**

**Amendment to HB 1696-FN**

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

1 New Section; Embalmers and Funeral Directors; Duty of Board. Amend RSA 325 by inserting after section 8 the following new section: 325:8-a Board Duty; Crematory Licensing. The board shall be responsible for the administration and enforcement of RSA 325-A relative to the cremation of human remains.

2 Cremation of Human Remains. RSA 325-A is repealed and reenacted to read as follows:

**CHAPTER 325-A**

**CREMATION OF HUMAN REMAINS**

**325-A:1 Definitions.** In this chapter:

I. "Alternative container" means a container in which human remains are placed in a cremation chamber for cremation.

II. "Authorizing agent" means a person vested with the right to control the disposition of human remains pursuant to RSA 290.

III. "Board" means the state board of registration of funeral directors and embalmers established under RSA 325:2.

IV. "Casket" means a rigid container made of wood, metal, or other similar material, ornamented and lined with fabric, which is designed for the encasement of human remains.

V. "Cremated remains" means the residue of human remains recovered after cremation and the processing of such remains by pulverization, leaving only bone fragments reduced to unidentifiable dimensions, and the unrecoverable residue of any foreign matter, such as eyeglasses, bridgework, or other similar material, that was cremated with the human remains.

VI. "Cremated remains receipt form" means a form provided by a crematory authority to an authorizing agent or his or her representative that identifies cremated remains and the person authorized to receive such remains.

VII. "Cremation" means the technical process that uses heat and evaporation to reduce human remains to bone fragments.

VIII. "Cremation chamber" means the enclosed space within which a cremation takes place.

IX. "Crematory" means a building or portion of a building which contains a cremation chamber and holding facility.

X. "Crematory authority" means the legal entity subject to licensure by the board to maintain and operate a crematory and perform cremation.

XI. "Crematory operator" means a person who is responsible for the operation of a crematory.

XII. "Delivery receipt form" means a form provided by a funeral establishment to a crematory authority to document the receipt of human remains by such authority for the purpose of cremation.

XIII. "Funeral director" means funeral director as defined in RSA 325.

XIV. "Holding facility" means the area of a crematory designated for the retention of human remains prior to cremation and includes a refrigerated facility.

XV. "Human remains" means the body of a deceased person, or a human body part, in any stage of decomposition and includes limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research.

XVI. "Permanent container" means a receptacle made of durable material for the long-term placement of cremated remains.

XVII. "Temporary container" means a receptacle made of cardboard, plastic, or other similar material in which cremated remains are placed prior to the placement of such remains in an urn or other permanent container.

325-A:2 Crematory; License Required. A crematory shall not be established, operated, or maintained in this state except by a crematory authority licensed by the board under this chapter. The board shall issue a license to a crematory authority that satisfies the requirements for licensure under the chapter. Human remains shall not be cremated in this state except at a crematory operated by a crematory authority licensed under this chapter.

325-A:3 Building and Location Requirements.

I. A crematory shall conform to all building codes and environmental regulations.



II. A crematory may be constructed at any location consistent with applicable zoning and environmental regulations.

325-A:4 License; Application; Requirements; Fee. An applicant for an initial or renewal license as a crematory authority shall file a written application with the board. The application shall be accompanied by the license fee required under RSA 325-A:7 and a certificate confirming that the crematory operator has attended, prior to issuance of the license, a training course provided by the Cremation Association of North America or by the manufacturer of the cremation chamber maintained and operated by the crematory authority and shall set forth the full name and address of the applicant, the address and location of the crematory, the name of the crematory operator, the name and address of the owner of the crematory, and additional information as required by the board, including affirmative evidence of the applicant's ability to comply with rules adopted under this chapter. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and shall only be used for administrative purposes.

325-A:5 License; Expiration. Except as otherwise provided in this chapter, licenses issued pursuant to this chapter shall expire 5 years after the date of issuance. Licenses shall be issued only for the crematory authority named in the application and shall not be transferable or assignable.

325-A:6 Change in Location, Ownership, or Name.

I. A crematory authority desiring to relocate a crematory shall file a written application with the board at least 30 days prior to the designated date of such relocation. The application shall be accompanied by a fee as determined by the board in rules adopted under RSA 541-A.

II. A crematory authority desiring to change ownership of a crematory shall file a written application with the board at least 30 days prior to the designated date of such change. The application shall be accompanied by a fee as determined by the board in rules adopted under RSA 541-A.

III. A crematory authority desiring to change its name shall file a written application with the board at least 30 days prior to such change. The application shall be accompanied by a fee as determined in rules adopted under RSA 541-A.

325-A:7 Licensure; Fees.

I. The fee for an initial or renewal license as a crematory authority shall include a fee determined in rules adopted under RSA 541-A.

II. If the license application is denied, the license fee shall be returned to the applicant, except that the board may retain an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

III. The board shall collect a fee for reinstatement of a license that has lapsed or has been suspended. The board shall collect a fee for a duplicate original license.

IV. The board shall collect a fee for a certified statement that a crematory authority is licensed in this state and a fee for verification that a crematory authority is licensed in this state.

V. All fees collected by the board under this chapter shall be remitted to the state treasurer for deposit in the general fund of the state.

325-A:8 Inspection; Board; Duties; Authority for Appointments.

I. The board shall at least once every 3 years inspect or provide for the inspection of any crematory operated by a crematory authority licensed under this chapter in such manner and at such times as provided in rules adopted by the board.

II. The board shall issue an inspection report and provide a copy of the report to the crematory authority within 10 working days after the completion of an inspection. The board shall review any findings of non-compliance contained in such report within 20 working days after such inspection.

III. If the board determines, after such review, that the evidence supports a finding of noncompliance by a crematory authority with any applicable provisions of this chapter or rules adopted under this chapter, the board may send a letter to the crematory authority requesting a statement of compliance. The letter shall include a description of each alleged violation, a request that the crematory authority submit a statement of compliance within 10 working days, and a notice that the board may take further action if the statement of compliance is not submitted. The statement of compliance shall indicate any actions by the crematory authority which have been or will be taken and the period of time estimated to be necessary to correct each alleged violation. If the crematory authority fails to submit such statement of compliance or fails to make a good faith effort to correct the alleged violations, the board may take further action as provided in this chapter.

IV.(a) The board may appoint technical advisors or other investigators to assist with any investigation or adjudication, and may, with the approval of the attorney general, appoint legal counsel for such purposes.

(b) To the extent the board lacks budgeted funds to conduct a significant investigation or adjudication, it may, with the approval of the attorney general, petition governor and counsel to receive funds not otherwise appropriated in order to retain professional advisors in the proceeding.

(c) If the governor and counsel approves the use of funds not otherwise appropriated, the governor is authorized to issue a warrant for the approved amount out of any moneys in the treasury not otherwise appropriated. The board shall then promptly increase its licensing fees to the extent necessary to repay the amount advanced to the general fund during the next fiscal year by means of a fee surcharge.

#### 325-A:9 Complaints.

I. Any person may submit a complaint to the board and request investigation of an alleged violation of this chapter or rules adopted under this chapter. The board shall review all complaints and determine whether to conduct an investigation relating to such complaints.

II. A complaint submitted to the board under this section shall be confidential. A person submitting such complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for submitting the complaint or for disclosure of documents, records, or other information to the board relating to such complaint.

#### 325-A:10 Imminent Danger; Board Powers.

I. If the board determines that a crematory authority is operating a crematory so as to create an imminent danger of death or serious physical harm to persons employed at or in proximity to such crematory, the board may order the temporary suspension or temporary limitation of the license of the crematory authority and may order the temporary closure of the crematory pending further action by the board. A hearing shall be held by the board no later than 10 days after the date of such order. The board shall also simultaneously institute proceedings for revocation, suspension, or limitation of the license of the crematory authority.

II. A continuance of the hearing under paragraph I shall be granted by the board upon written request from the crematory authority. Such continuance shall not exceed 30 days.

III. A temporary suspension or temporary limitation order by the board under this section shall take effect when served upon the crematory authority and shall not exceed 90 days. If further action is not taken by the board within such period, the temporary suspension or temporary limitation shall expire.

325-A:11 Deny or Refuse to Renew License; Grounds. The board may deny or refuse to renew a license under this chapter or take disciplinary action against a crematory authority licensed under this chapter as provided in RSA 325-A:12 on any of the following grounds:

I. Violation of this chapter or rules adopted and pursuant to this chapter;

II. Conviction of any crime involving moral turpitude;

III. Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony and which has a rational connection with the fitness or capacity of the crematory authority to operate a crematory;

IV. Conviction of a violation pursuant to RSA 325-A:15;

V. Obtaining a license as a crematory authority by false representation or fraud;

VI. Misrepresentation or fraud in the operation of a crematory; or

VII. Failure to allow access by an agent or employee of the board to a crematory operated by the crematory authority for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the board.

325-A:12 Disciplinary Actions.

I. The board may impose any one or more of the following types of disciplinary action against a crematory authority licensed under this chapter:

(a) A fine not to exceed \$20,000 per violation;

(b) A limitation on the license and upon the right of the crematory authority to operate a crematory to the extent, scope, or type of operation, for such time, and under such conditions as the board finds necessary and proper;

(c) Placement of the license on probation for a period not to exceed 2 years during which the crematory may continue to operate under terms and conditions fixed by the order of probation;

(d) Suspension of the license for a period not to exceed 2 years during which the crematory may not operate; and

(e) Revocation and permanent termination of the license.

II. Any fine imposed and unpaid under this chapter shall constitute a debt to the state of New Hampshire which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the state in the superior court of the county in which the crematory is located. The board shall, within 30 days after receipt, remit any such fines to the state treasurer for deposit in the general fund.

325-A:13 Appeal. Any party to a decision of the board under this chapter may appeal such decision. The appeal shall be in accordance with RSA 541.

325-A:14 License Reinstatement or Relicensure.

I. If the license of a crematory authority has lapsed for nonpayment of fees, such license shall be eligible for reinstatement at any time upon application to the board and payment of the applicable fee as provided in RSA 325-A:7.

II. If the license of a crematory authority has been placed on probation, such license shall be eligible for reinstatement at the end of the period of probation upon successful completion of an inspection if the board determines an inspection is warranted.

III. If the license of a crematory authority has been suspended, such license shall be eligible for reinstatement at the end of the period of suspension upon successful completion of an inspection and payment of the applicable fee as provided in RSA 325-A:7.

IV. If the license of a crematory authority has been suspended, such license may be reinstated by the board prior to the completion of the term of suspension upon petition by the licensee. After reviewing such petition and any material submitted by the licensee with such petition, the board may order an inspection or investigation of the licensee. Based on such review and such inspection or investigation, if any, the board shall grant full reinstatement of the license, modify the suspension, or deny the petition for reinstatement. The board's decision shall become final 30 days after mailing the decision to the licensee unless the licensee requests a hearing within such period. Any requested hearing shall be held according to rules of the board.

V. If the license of a crematory authority has been revoked, such crematory authority shall not be eligible for relicensure until 5 years after the date of such revocation. A reapplication for an initial license may be made by the crematory authority at the end of such 5-year period.

325-A:15 Acts Prohibited; Penalty.

I. Maintaining or operating a crematory in violation of this chapter or any rules of the board is a public nuisance and may be abated as a nuisance as provided by law.

II. It shall be a felony to establish, operate, or maintain a crematory subject to this chapter without being licensed as a crematory authority under this chapter, to hold oneself out to the public as a crematory authority without being licensed, or to perform a cremation without a cremation authorization form signed by the authorizing agent and a completed permit for transit or cremation as provided by the board or a cremation permit.

III. Signing a cremation authorization form with actual knowledge that the form contains false, incorrect, or misleading information is a felony.

IV. A violation of any other provision of this chapter is a misdemeanor.

325-A:16 Injunctions. The board may maintain an action in the name of the state for an injunction against any person for establishing, operating, or maintaining a crematory without first obtaining a license as a crematory authority under this chapter. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, operate, or maintain a crematory without obtaining a license as a crematory authority under this chapter, without alleging any further or more particular facts concerning the same.

325-A:17 Right to Authorize Cremation. The right to authorize the cremation of human remains and the final disposition of the cremated remains, except in the case of a minor and unless other directions have been given by the decedent in the form of a testamentary disposition or a pre-need contract, vests pursuant to RSA 290.

325-A:18 Medical Examiner's Certificate. The body of a deceased person shall not be cremated within 48 hours after his or her decease unless he or she died of a contagious or infectious disease, and, if the death occurred within the state, the body shall not be received or cremated by

the crematory authority until the crematory authority has received the certificate of burial permit required by law before burial, and a certificate from a medical examiner or deputy medical examiner that he or she has viewed the body and made personal inquiry into the cause and manner of death, and is of the opinion that no further examination or judicial inquiry concerning the same is necessary. For said certificate, the medical examiner shall receive a fee of \$35, payable by the crematory authority. If the death occurs without the state, the reception and cremation of the body of a deceased person shall be governed by rules adopted by the board after consultation with the chief medical examiner.

**325-A:19 Crematory Authority.**

I. A crematory authority upon receiving human remains shall sign a delivery receipt form and shall hold the human remains, prior to cremation, as provided in this section. The form shall include the name of the deceased, the time and date of delivery of such remains, and the signatures of the owner of the crematory or his or her representative and the funeral director or his or her representative, or the next-of-kin or designated agent as provided in RSA 290.

II. If a crematory authority is unable to cremate the human remains immediately upon taking receipt thereof, the crematory authority shall place the human remains in a holding facility. A holding facility shall be designed and constructed to comply with all applicable public health laws, provide for the health and safety of persons employed at such facility, and prevent any unauthorized access to such facility.

III. A crematory authority may refuse to accept for holding an alternative container or casket from which there is any evidence of leakage of the body fluids from the human remains in the container.

IV. If human remains received by the crematory authority are not embalmed, such remains shall be held no longer than 24 hours from the time of death unless the human remains are placed within a refrigerated facility in accordance with the laws of this state.

**325-A:20 Crematory Operation; Limitations.**

I. No person shall be permitted in a crematory, unless authorized by the crematory authority, while any human remains are in the crematory awaiting cremation, being cremated, or being removed from the cremation chamber.

II. The human remains of more than one person shall not be simultaneously cremated within the same cremation chamber unless the crematory authority has received specific written authorization from the authorizing agent for the human remains to be so cremated.

**325-A:21 Crematory Authority; Requirements.**

I. A crematory authority shall not accept human remains for cremation without a proper label placed on the exterior of the alternative container or casket indicating the name of the deceased and the name and location of the funeral establishment, or the name of the next-of-kin or designated agent as provided in RSA 290.

II. No crematory authority shall make or enforce any rules requiring that human remains be placed in a casket before cremation or that human remains be cremated in a casket. No crematory authority shall refuse to accept human remains for cremation if the human remains are not in a casket.

III. No crematory authority shall accept human remains for cremation unless the human remains are delivered to the crematory authority in an alternative container or casket or delivered to the crematory authority's holding facility to be placed in an alternative container or

casket. Human remains delivered to a crematory in an alternative container shall not be removed from the alternative container, and the alternative container shall be cremated with the human remains. A crematory authority may refuse a noncombustible casket or any other container that is not an alternative container or a casket or container that is not labeled as required under paragraph I.

IV. An alternative container shall:

(a) Be composed of readily combustible materials suitable for cremation;

(b) Be able to be closed to provide for complete encasement of the human remains;

(c) Be resistant to leakage or spillage;

(d) Be rigid enough for easy handling; and

(e) Provide protection for the health and safety of persons handling such container.

325-A:22 Cremation Authorization Form.

I. A crematory authority shall not cremate human remains until it has received a cremation authorization form as provided in paragraph II, a completed and executed permit for transit or cremation as provided by the board or the appropriate cremation permit from the state from which the human remains were delivered, indicating that the human remains are to be cremated, and a delivery receipt form.

II. A cremation authorization form shall be signed by the authorizing agent and shall include, but not be limited to, the following information:

(a) The name of the deceased;

(b) Date and place of death;

(c) The identity of the funeral director involved in the preparation of the human remains for cremation, if any;

(d) Notification that the death did or did not occur from a disease declared by the board to be infectious, contagious, communicable, or dangerous to the public health;

(e) The name of the authorizing agent and the relationship between the authorizing agent and the deceased;

(f) Authorization by the authorizing agent for the crematory authority to cremate the human remains;

(g) A representation that the authorizing agent is aware of no objection to the human remains being cremated by any person who has a right to control the disposition of the human remains;

(h) A representation that the human remains do not contain any material, implants, or conditions that may be potentially hazardous to equipment or persons performing the cremation;

(i) The name of the person authorized to claim the cremated remains from the crematory authority; and

(j) The intended disposition of the cremated remains.

III. A crematory authority shall retain, for at least 7 years after the cremation, in printed or electronic format with suitable backup, copies of the cremation authorization form, permit for transit or cremation as provided by the board or cremation permit, cremated remains receipt form, delivery receipt form, and any other records required under this chapter.

325-A:23 Signature.

I. Any person signing a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth on such form, including the identity of the deceased whose remains are sought to be cremated

and the authority of the person to authorize such cremation. Any person signing a cremation authorization form is personally liable for all damages resulting from false, incorrect, or misleading information contained on such form.

II. A crematory authority may cremate human remains upon the receipt of a cremation authorization form signed by an authorizing agent and a completed and executed permit for transit or cremation or cremation permit as required by law.

325-A:24 Potentially Hazardous Conditions.

I. No human remains shall be cremated with the knowledge that the human remains contain a pacemaker or defibrillator or other potentially hazardous implant or condition. The authorizing agent shall take all necessary steps to ensure that any such hazardous implant or condition is removed or corrected prior to cremation. If an authorizing agent informs the funeral director and the crematory authority on the cremation authorization form of the presence of such potentially hazardous implant or condition in the human remains, the funeral director shall ensure that all necessary steps have been taken to remove or correct the implant or condition before delivering the human remains to the crematory. A funeral director who knowingly fails to ensure the removal or correction of the hazardous implant or condition prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with hazardous implants or conditions are in the custody of a crematory authority, such authority shall have the hazardous implants or conditions removed or corrected by a licensed funeral director and embalmer or a licensed embalmer at a funeral establishment within an embalming preparation room, or at a medical facility by appropriate medical personnel, or at the crematory by an assistant deputy medical examiner of the department of justice.

II. No human remains shall be cremated with the knowledge that the human remains contain jewelry or other valuables unless authorized by the authorizing agent. The authorizing agent shall take all necessary steps to ensure that any jewelry or other valuables are removed prior to cremation. If the authorizing agent informs the funeral director and the crematory authority on the cremation authorization form of the presence of jewelry or other valuables on the human remains, the funeral director shall ensure that all necessary steps have been taken to remove the jewelry or other valuables before delivering the human remains to the crematory. A funeral director who knowingly fails to ensure the removal of the jewelry or other valuables prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with jewelry or other valuables are in the custody of a crematory authority, such authority shall provide for the removal of such jewelry or other valuables by a licensed funeral director and embalmer or his or her agent.

325-A:25 Disputes.

I. If a crematory authority or funeral establishment is aware of any dispute concerning the cremation of human remains, or has a reasonable basis to believe that such a dispute exists or to question any of the representations made by the authorizing agent with respect to such remains, until the crematory authority receives a court order that a dispute with respect to such remains has been settled, the crematory authority or funeral establishment may refuse to accept such human remains for cremation or to perform a cremation of such remains.

II. If a crematory authority or funeral establishment is aware of any dispute concerning the release or disposition of cremated remains, the crematory authority or funeral establishment may refuse to release cremated remains until the dispute has been resolved or the crematory authority or funeral establishment has been provided with a court order authorizing the release or disposition of the cremated remains.

325-A:26 Cremated Remains; How Treated.

I. In so far as is possible, upon completion of the cremation, all of the recoverable residue of the cremation shall be removed from the cremation chamber and any foreign matter or anything other than bone fragments shall be removed from such residue and shall be disposed of by the crematory authority. The remaining bone fragments shall be processed by pulverization so as to reduce the fragments to unidentifiable particles. This paragraph shall not apply when the commingling of human remains during cremation is otherwise authorized by law. The presence of incidental and unavoidable residue in the cremation chamber from a prior cremation is not a violation of this paragraph.

II. The cremated remains with proper identification shall be placed in a temporary container or permanent container selected or provided by the authorizing agent. The cremated remains shall not be contaminated with any other object unless specific written authorization to the contrary has been received from the authorizing agent.

III. If the entirety of the cremated remains will not fit within a temporary container or permanent container, then the remainder of such remains shall be returned to the authorizing agent or his or her representative in a separate container with proper identification.

IV. If the cremated remains are to be shipped, the temporary container or permanent container shall be packed securely in a suitable shipping container that complies with the requirements of the shipper. Unless otherwise directed in writing by the authorizing agent, cremated remains shall be shipped only by a method which includes an internal tracking system and which provides a receipt signed by the person accepting delivery of such remains.

325-A:27 Cremated Remains; Final Disposition.

I. For purposes of this chapter, the delivery of the cremated remains to the authorizing agent or his or her representative shall constitute final disposition. If, after a period of 60 days after the date of cremation, the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition of the cremated remains or claimed the cremated remains for final disposition as provided in this section, the crematory authority or the funeral establishment in possession of the cremated remains may dispose of the cremated remains after making a reasonable attempt to contact the authorizing agent or his or her representative. This method of disposition may be used by any crematory authority or funeral establishment to dispose of all cremated remains in the possession of a crematory authority or funeral establishment on or after the effective date of this chapter.

II. Cremated remains shall be delivered or released by the crematory authority to the representative specified by the authorizing agent on the cremation authorization form. The owner of the crematory authority or his or her representative and the party receiving the cremated remains shall sign a cremated remains receipt form. The form shall include the name of the deceased, the date, time, and place of receipt of the cremated remains, and the signatures of the owner of the crematory or his or her representative and the authorizing agent or his or her representative. If



the cremated remains are shipped, a form used by the shipper may be used in lieu of a completed cremated remains receipt form if the shipper's form contains the information required for a cremated remains receipt form. Both the party delivering such remains and the party receiving such remains shall retain a copy of the cremated remains receipt form or shipper's form. Upon delivery, the cremated remains may be further transported within this state in any manner without a permit.

325-A:28 Rulemaking. The board shall adopt rules, pursuant to RSA 541-A relative to:

I. Procedures for licensure of crematory authorities.

II. Establishing all required fees.

III. The content of all forms.

IV. Conditions under which human remains of persons whose death was caused by a disease declared by the board to be infectious, contagious, communicable, or dangerous to the public health may be transported in this state to a crematory for the purpose of cremation. The board shall consult with the chief medical examiner on rules adopted under this paragraph.

V. Minimum sanitation standards for all crematories.

VI. Inspection procedures for crematories as required under RSA 325-A:8.

325-A:29 Crematory Authority; Bylaws. A crematory authority may enact reasonable bylaws not inconsistent with this chapter for the management and operation of a crematory operated by such authority. Nothing in this section shall prevent a crematory authority from enacting bylaws which contain more stringent requirements than those provided in the act.

325-A:30 Chapter Construed.

I. This chapter shall be construed and interpreted as a comprehensive cremation law, and the provisions of this chapter shall take precedence over any existing laws or rules that govern human remains that do not specifically address cremation.

II. Nothing in this chapter shall be construed to prohibit the disposal of human remains through a reductive process utilizing alkaline hydrolysis.

3 References Changed. Amend RSA 5-C:68 to read as follows:

5-C:68 Burial Permit Procedures. When a body is to be stored, the burial permit shall be completed by the cemetery sexton where the body is entombed and sent to the clerk of the town or city where the storage vault is located. When the body is to be moved from entombment for final disposition, the funeral director, next of kin, or designated agent shall obtain the permit from the clerk of the town or city to use as the permit for final disposition. When the body is to be cremated, at least 48 hours shall elapse before cremation can take place in accordance with RSA ~~325-A:3~~ **325-A** and a separate cremation certificate shall be obtained from the medical examiner and submitted to the crematory with the burial permit pursuant to RSA ~~325-A:3~~ **325-A**. No separate permit shall be required when transporting a body by common carrier or remains to his or her final disposition.

4 Reference Deleted. Amend RSA 5-C:71, I to read as follows:

I. When the body of a deceased person is to be disposed of by cremation, the funeral director, next of kin, or designated agent in charge of the final disposition arrangements shall present a copy of the death certificate and the burial permit or emergency burial permit with the body to a medical examiner or deputy medical examiner in order to obtain the medical examiner's certificate ~~[required by RSA 325-A:3]~~.

5 Applicability. Crematory authorities, as defined in section 2 of this act, operating crematories on the effective date of this act, which apply for licensure within 60 days after the effective date of this act, shall be presumed to meet requirements for initial licensure under RSA 325-A as inserted by section 2 of this act.

6 Effective Date. This act shall take effect July 1, 2006.

## 2006-1609s

### AMENDED ANALYSIS

This bill requires the board of funeral directors and embalmers to license and regulate facilities engaged in the cremation of human remains.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 1696 ought to pass with amendment. The situation at the Bayview Crematory in Seabrook last year demonstrated that current statute is completely inadequate to address the crematory industry. The amended version of this legislation would give the Board of Funeral Directors regulating authority over crematories in New Hampshire. Licensing and inspections will now be required, and a complaint and penalty process will be established. The industry has been supportive of this legislation. Most crematories in the state already do what is outlined in the legislation so this will not negatively impact them. Although the Bayview Crematory was a rogue operation and does not reflect the actions of other crematories in New Hampshire, we want to be sure this situation never arises again. The Public and Municipal Affairs Committee unanimously asks your support in passing this important piece of legislation.

### Amendment adopted.

Senator Eaton offered a floor amendment.

Sen. Eaton, Dist. 10

Sen. Burling, Dist. 5

**April 13, 2006**

**2006-1825s**

10/05

### Floor Amendment to HB 1696-FN

Amend RSA 325-A:18 as inserted by section 2 of the bill by replacing it with the following:

325-A:18 Medical Examiner's Certificate. The body of a deceased person shall not be cremated within 48 hours after his or her decease unless he or she died of a contagious or infectious disease, and, if the death occurred within the state, the body shall not be cremated by the crematory authority until the crematory authority has received the certificate of burial permit required by law before burial, and a certificate from a medical examiner or deputy medical examiner that he or she has viewed the body and made personal inquiry into the cause and manner of death, and is of the opinion that no further examination or judicial inquiry concerning the same is necessary. For said certificate, the medical examiner shall receive a fee of \$35, payable by the crematory authority. If the death occurs without the state, the reception and cremation of the body of a deceased person shall be governed by rules adopted by the board after consultation with the chief medical examiner.

SENATOR EATON: Thank you. I have amendment 1825s.

SENATOR GATSAS (In the Chair): Floor amendment 1825s has been proposed. Please speak to your amendment as it's being passed out.

SENATOR EATON: Thank you. Senator Burling and myself are both on this amendment. It is a housekeeping measure for taking out two words. On page 25 in your Addendum Calendar, eleven paragraphs down under section 325-A:18, on the third line, we're taking out the words "received or". And, as I said, it's a housekeeping measure. Thank you.

SENATOR BARNES: Senator, what did we do? Did we have a mistake there in the legislation that you had to correct?

SENATOR EATON: It was brought to my attention by our Senate attorney and the New Hampshire Funeral Directors' Association that that word should not be in there.

**Floor amendment adopted.**

**The question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 1168**, establishing a commission to determine how to optimize boating safety on water bodies. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 4-0. Senator Letourneau for the committee.

**Transportation and Interstate Cooperation**

**April 5, 2006**

**2006-1650s**

**03/04**

**Amendment to HB 1168**

Amend paragraph I of section 2 of the bill by replacing it with the following:

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

(a) Two members of the house of representatives, appointed by the speaker of the house of representatives, one of whom shall be a member of the resources, recreation and development committee and one of whom shall be a member of the transportation committee.

(b) Two members of the senate, appointed by the president of the senate, one of whom shall be a member of the transportation and interstate cooperation committee.

(c) Two members appointed by the New Hampshire Marine Trades Association.

(d) The commissioner of environmental services, or designee.

(e) The commissioner of resources and economic development, or designee.

(f) The commissioner of safety, or designee.

(g) The executive director of the fish and game department, or designee.

(h) One member appointed by the public water access advisory board.

(i) One member appointed by the New Hampshire Lakes Association.

(j) The director of the New Hampshire Rivers Council, or designee.

(k) One member appointed by the United States Power Squadron.

(l) One member appointed by the New Hampshire Recreational Boaters Association.

(m) One member appointed by the New Hampshire Bass Federation.

**MOTION TO TABLE**

Senator Letourneau moved to have HB 1168 laid on the table.

**Adopted.**

**LAID ON THE TABLE**

**HB 1168**, establishing a commission to determine how to optimize boating safety on water bodies.

**HB 1356**, relative to on-board diagnostic system inspections. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 4-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I move House Bill 1356 ought to pass. This bill requires that OBD II fees to be charged separately from vehicle inspection fees. This bill makes it clear that official inspection stations clearly post, on the outside of their place of business, the inspection fee, listing the OBD II fee separately from the safety inspection fee, and that they do not charge for OBD testing or inspection for a vehicle that is not subject to those requirements and simply comes in for a safety inspection. Please join the Transportation Committee and vote ought to pass. Thank you.

SENATOR BARNES: Yes, thank you very much, Mr. President. Thank you, Senator Letourneau. Does this bill take care of a problem that one of our Senators had when they brought in a 1956 T-Bird to get inspected and they were charged the inspection fee? Does that take care of people like that?

SENATOR LETOURNEAU: Absolutely. Currently right now, some garages, a lot of garages are charging a separate fee for OBD, but some garages are charging the same fee for everything. That was not this body's intent last year when we passed the bill that we passed concerning OBD. And it does take care of our illustrious Senator from what district?

SENATOR FLANDERS: Seven.

SENATOR LETOURNEAU: Seven, when he brings in his '56 T-Bird for inspection, he will not be charged for OBD fees.

SENATOR BARNES: Thank you very much.

SENATOR GREEN: Thank you, Mr. President. I rise in strong support of this piece of legislation. With all the calls that I got about OBD in my district, I had a rash of them when we first started, and now the only ones that have really continued are those people who have older cars who are going in and having their cars inspected. They don't need to have the OBD test, they are being tested anyway or they're not. Who knows? But the reality is, they're getting one bill and the bill is for inspection and testing, whether you are required to have testing or not. So I think this bill is, what we really want to do is make the people who are providing the service, separate the bill out. If you have a car that needs testing, testing is recorded as to what the bill is for that and automatically you will get a separate bill for the inspection. If you do not need testing, you only get a bill for inspection. And this has really caused a lot of aggravation. I don't think this is over, by the way. When we put this into effect, I know we have an extension of the actual testing, to get your inspection sticker in six months, I guess it's November 1<sup>st</sup>. I'm going to tell you that you're going to get a rash more because people do not really feel and are not convinced that we really need to do this. The state of New Hampshire, and I'm going to say this for the record and people can check it on their, in their own way. My understanding on the New Clean Air Act, New Hampshire qualifies to not have to be tested. Our air is quality that meets current federal standards. The other thing is, if you are even close, our agreement that we made basically was because

we didn't want to do the pipe testing so we had only four counties who were out of compliance, and we gave it to the whole state. So it's causing some real aggravation, and I don't think we've heard the end of this. This will be an on going debate, and I want to thank Senator Letourneau, and the committee for coming in with this. I think it's a real good step in the right direction. Thank you.

**SENATOR LETOURNEAU:** Sorry, Mr. President to speak for a second time, but there is a statement that was just made that I cannot let pass. I agree with Senator Green that, under the old standards of air quality, that we may have been in compliance, but they have adopted new standards which puts us out of compliance and causes us to still be in this particular system. Thank you.

**Adopted.**

**Ordered to third reading.**

Senator Flanders (Rule #42) on HB 1356.

Senators Gallus and Gatsas are in opposition to HB 1356.

**HB 317-FN**, relative to mooring fees. Ways and Means Committee. Ought to pass, Vote 4-0. Senator Boyce for the committee.

**SENATOR BOYCE:** Thank you, Mr. President. I move House Bill 317 ought to pass. This bill addresses a problem that came up that there wasn't enough money to actually administer the mooring program. It increases the initial fee for getting a new mooring to \$125 from the current \$25. This will affect about fifty people per year. The other part of the bill increases on the congregate moorings, where there is more than one boat, more than one in one spot, as for a condo community or something or a marina. Those are doubled from \$25 to \$50. The individual mooring fee stays at \$25. This is to provide enough funding to actually monitor the mooring program. And the Ways and Means Committee recommends that this legislation be adopted. Thank you.

**Adopted.**

**Ordered to third reading.**

## RESOLUTION

Senator Clegg 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 all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

## LATE SESSION

### Third Reading and Final Passage

**HB 115**, allowing pharmacists to establish collaborative practice agreements with medical practitioners.

**HB 203-FN**, relative to the regulation of tracking devices and establishing a commission on the use of tracking devices.

**HB 221**, relative to eligibility for absentee ballots.

**HB 317-FN**, relative to mooring fees.

**HB 345**, requiring photo identification to obtain a ballot.

- HB 624-FN**, relative to penalties in certain health and health-related professions.
- HB 690-FN**, relative to aid to the needy blind and relative to undue hardship for public assistance.
- HB 1135**, making a technical correction to the Uniform Interstate Family Support Act.
- HB 1173**, relative to designating the clerk in cities the chief elections officer for the city.
- HB 1189**, relative to audits by the legislative budget assistant.
- HB 1227-FN**, relative to late fees and reinstatement fees paid by business entities.
- HB 1231-FN**, relative to the penalty for assaulting a firefighter, licensed emergency medical care provider, or law enforcement officer.
- HB 1238-FN**, relative to centralized voter registration database information.
- HB 1243-FN**, reducing certain fines for motor vehicle violations.
- HB 1313**, naming a bridge between the towns of Newfields and Stratham the United States Submarine Veterans of World War II Memorial Bridge.
- HB 1324**, relative to the commission to study the state park system.
- HB 1356**, relative to on-board diagnostic system inspections.
- HB 1361**, relative to the penalty for shoplifting.
- HB 1433**, establishing a committee to study secured landfills and establishing a moratorium on the incineration of construction and demolition waste.
- HB 1452-FN**, requiring insurance coverage for the cost of testing for bone marrow donation.
- HB 1465-FN**, relative to food stamp overpayments.
- HB 1584**, relative to cemetery setbacks and septic systems.
- HB 1660-FN**, regulating identity theft.
- HB 1662-FN**, establishing the crime of peonage.
- HB 1671-FN**, relative to the regulation of dentists and dental hygienists by the board of dental examiners.
- HB 1679-FN-L**, relative to the property tax exemption for university system property.
- HB 1688**, prohibiting the use of gasoline-powered watercraft on Head's Pond in Hooksett.
- HB 1692-FN**, establishing the New Hampshire sexual predators act.
- HB 1718-FN**, requiring a written disclosure statement be provided to prospective nursing home facility clients.
- HB 1722-FN**, relative to the New Hampshire council on developmental disabilities.
- HCR 22**, relative to the right to pursue a livelihood in natural resources industries.
- HJR 21**, urging the university of New Hampshire to restore intercollegiate baseball and softball.

## ANNOUNCEMENTS RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, processing enrolled bill reports and amendments.

**Adopted.**

**In recess to the Call of the Chair.**

## HOUSE MESSAGE

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

**SB 207-FN**, relative to enhanced penalties for certain crimes against the elderly and persons with a physical or mental disability.

**SB 328**, relative to the regulation of snowmobiles and off highway recreational vehicles.

**SB 332**, making technical corrections to the uniform trust code and related statutes.

**SB 344**, establishing a committee to study state benefit programs for national guard members.

**SB 395**, relative to the number of children in a licensed foster home.

**SJR 4**, urging Congress to require the Department of Defense to reinstate the terminology of "POW" or "Prisoner of War" into the classification of military personnel.

## HOUSE MESSAGE

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

**SB 268**, raising the age of required attendance of children in school and establishing a 2-year pilot program for increasing vocational education opportunities in the Manchester and Nashua school districts and making an appropriation therefor.

**SB 407-FN-A**, relative to enforcement of labor statutes under current federal immigration laws.

## HOUSE MESSAGE

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

**SB 264**, relative to the chief financial officer of the department of environmental services.

**SB 330**, relative to outdoor advertising.

**SB 333**, relative to inquiries of DWI defendants regarding establishments serving alcohol to the defendants.

## 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 719-FN**, recodifying the Articles 1 and 7 of the Uniform Commercial Code and relative to lobbyist name tags.

**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(s):

**SB 344**, establishing a committee to study state benefit programs for national guard members.

**SJR 4**, urging Congress to require the Department of Defense to reinstate the terminology of "POW" or "Prisoner of War" into the classification of military personnel.

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 Bill(s):

**HB 254-FN**, establishing lifetime licenses for bow and arrow, muzzle loading firearm, and crossbow licenses.

**HB 1125**, relative to the filing period for candidates in the presidential primary.

**HB 1128-FN**, relative to definition of teacher in the New Hampshire retirement system, and relative to approval of supplemental allowances.

**HB 1132**, relative to qualifications for the Global War on Terrorism operations service bonus payment.

**HB 1154-FN**, relative to eligibility for special number plates for veterans.

**HB 1179**, repealing a requirement that the department of transportation spend a certain amount for litter removal that is determined based on fees paid to the liquor commission.

**HB 1185**, relative to Volunteer NH.

**HB 1188**, relative to notice before entry into a condominium unit.

**HB 1217**, requiring the secretary of state to publish certain information on campaign contributions.

**HB 1222-FN**, relative to unlawful voting.

**HB 1362**, relative to permitting audio and video recording on school buses.

**HB 1418-FN**, relative to road toll refunds.

**HB 1484**, relative to including motorcycle and tractor-trailer safety in driver education courses.

**HB 1497-L**, relative to certification by a superintendent regarding statistical reports.

**HB 1498**, establishing a risk management unit within the department of administrative services and relative to the rulemaking authority of the department of administrative services.

**HB 1517-FN**, relative to membership on the board of medicine and the medical review subcommittee.

**HB 1579**, relative to membership of the air resources council.

**HB 1609-FN**, requiring a pilot project to estimate future water needs and availability.

**HB 1636-FN**, relative to appeals from class A misdemeanor sentences imposed by the district courts.



**HB 1646-FN**, relative to the use of a leashed tracking dog in the recovery of a wounded deer, moose, or bear.

**HB 1663-FN-L**, relative to the licensing fee for motor vehicle recycling yards.

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 Bill(s):

**HB 334**, relative to the type of notice provided in court proceedings.

**HB 413**, relative to the appointment of the chief justice of the superior court and the number of superior court associate justices.

**HB 460-FN**, relative to the reimbursement to certain providers by the bureau of emergency communications.

**HB 544**, relative to the land and community heritage program.

**HB 649-FN-A-L**, establishing a commission to study the costs and funding of medicolegal investigations and autopsies.

**HB 1147**, relative to the conduct of recounts.

**HB 1765-FN-A-L**, relative to funding for disaster relief efforts in response to the October 2005 floods and making an appropriation therefor.

**SB 256**, relative to the definition of "harm" for purposes of the crime of improper influence.

**SB 274**, adding court security to the duties of the New Hampshire court accreditation commission.

**SB 296-FN**, relative to recovery of public assistance.

**SB 349**, relative to the HIV/AIDS service delivery system.

**SB 379-FN**, relative to harm or threats to certain government officials.

**SB 396**, repealing the rulemaking authority of the New Hampshire children's trust fund board.

Senator D'Allesandro moved adoption.

**Adopted.**

### HOUSE MESSAGE

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

**HB 2006**, relative to the state 10-year transportation improvement plan, the exemption of highway projects from eminent domain, improvements on the FE Everett Turnpike/I-293 and certain segments of N.H. 101, and a bridge crossing the Merrimack.

### INTRODUCTION OF HOUSE BILL(S)

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 2006**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

**Adopted.**









































