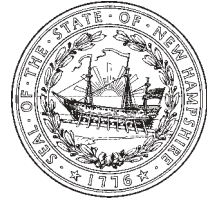


# STATE OF NEW HAMPSHIRE

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## SENATE JOURNAL 16 (Cont.)



*May 15, 2003*

### Out of Recess.

**May 16, 2003**  
**2003-1670-EBA**  
**03/10**

#### Enrolled Bill Amendment to HB 225

The Committee on Enrolled Bills to which was referred HB 225

AN ACT extending the task force on deafness and hearing loss and changing the task force's membership and duties.

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 225

This enrolled bill amendment corrects certain references in the bill, indicates language added to existing law by the bill, and makes a typographical correction.

#### Enrolled Bill Amendment to HB 225

Amend 2000, 234:4, II(a) as inserted by section 3 of the bill by replacing it with the following:

(a) The governor's commission on disability.

Amend 2000, 234:4, II(c) as inserted by section 3 of the bill by replacing it with the following:

(c) Northeast Deaf and Hard of Hearing Services, Inc.

Amend 2000, 234:5-a as inserted by section 4 of the bill by replacing lines 3-5 with the following:

November 1, [~~2004~~] **2005. *The task force shall submit interim reports on its activities and progress to the governor and council, the speaker of the house of representatives, and the president of the senate on November 1, 2003 and November 1, 2004.*** The task force shall submit its final report and

Senator Eaton moved adoption.

### **Adopted.**

**May 13, 2003**  
**2003-1599-EBA**  
**06/09**

#### Enrolled Bill Amendment to SB 79-FN-LOCAL

The Committee on Enrolled Bills to which was referred SB 79-FN-LOCAL

AN ACT relative to penalties for the exhibition of fighting animals.

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 79-FN-LOCAL

This enrolled bill amendment makes a technical correction to the bill.

Enrolled Bill Amendment to SB 79-FN-LOCAL

Amend RSA 644:8-a, III, as inserted by section 1 of the bill by replacing line 2 with the following: paragraph I may be seized by the arresting officer, ***pursuant to RSA 595-A:6 and RSA 644:8***. Upon Senator Eaton moved adoption.

**Adopted.**

**May 13, 2003**  
**2003-1600-EBA**  
**06/09**

## Enrolled Bill Amendment to SB 34

The Committee on Enrolled Bills to which was referred SB 34

AN ACT relative to independent living retirement communities.

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 34

This enrolled bill amendment makes a technical correction.

Enrolled Bill Amendment to SB 34

Amend RSA 161-J:5, II as inserted by section 6 of the bill by replacing line 1 with the following:

***II. A copy of the residential services agreement shall be given to prospective residents***

Senator Eaton moved adoption.

**Adopted.**

**May 15, 2003**  
**2003-1658-EBA**  
**04/09**

## Enrolled Bill Amendment to HB 808

The Committee on Enrolled Bills to which was referred HB 808

AN ACT relative to proof of residency and resident tax payment for receiving resident fish and game licenses.

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 808

This enrolled bill amendment makes technical corrections to the bill.

Enrolled Bill Amendment to HB 808

Amend RSA 72:1-c, I as inserted by section 1 of the bill by replacing line 4 with the following: to it. The provisions of RSA [~~214:11-a, 214:12, 215-A:1, XII,~~] 261:71[-] and 261:72 shall not apply to

Amend RSA 80:3 as inserted by section 2 of the bill by replacing line 18 with the following: the director [~~or executive director~~] when the registration [~~or license, or both,~~] may be restored.

Senator Eaton moved adoption.

**Adopted.**

**May 15, 2003**  
**2003-1659-EBA**  
**10/01**

Enrolled Bill Amendment to HB 529

The Committee on Enrolled Bills to which was referred HB 529

AN ACT relative to the New Hampshire seed law.

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 529

This enrolled bill amendment makes technical corrections to the bill.

Enrolled Bill Amendment to HB 529

Amend RSA 433:2, III(b)(3) as inserted by section 5 of the bill by replacing line 2 with the following:

component in excess of 5 percent of the whole, and the percentage by weight of pure seed in order

Amend RSA 433:2, VII(a)(2) as inserted by section 8 of the bill by replacing line 5 with the following:

completed within 12 months exclusive of the month of test.

Amend RSA 433:2, VIII(c) as inserted by section 9 of the bill by replacing line 1 with the following:

(c) For wildflower seed only with a pure seed percentage of less than 90 percent:

Amend RSA 433:2, XI as inserted by section 10 of the bill by replacing line 1 with the following:

XI. For combination mulch, seed, and fertilizer products:

Senator Eaton moved adoption.

**Adopted.**

**May 15, 2003**  
**2003-1655-EBA**  
**06/09**

Enrolled Bill Amendment to HB 211

The Committee on Enrolled Bills to which was referred HB 211

AN ACT relative to town clerk fee deposit requirements.

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 211

This enrolled bill amendment makes a technical correction to the bill.

Enrolled Bill Amendment to HB 211

Amend RSA 41:25, I as inserted by section 1 of the bill by replacing line 7 with the following:

his or her services.

Senator Eaton moved adoption.

**Adopted.**

**May 13, 2003**  
**2003-1597-EBA**  
**04/09**

Enrolled Bill Amendment to SB 36-FN

The Committee on Enrolled Bills to which was referred SB 36-FN

AN ACT relative to protective custody of a person impaired by drugs and establishing a committee to study the issue of the applicability of the administrative license suspension laws to driving while under the influence of controlled drugs and ways to address the speed with which such cases are adjudicated in the district court.

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 36-FN

This enrolled bill amendment makes a technical correction.

Enrolled Bill Amendment to SB 36-FN

Amend RSA 172:15, II(a) as inserted by section 3 of the bill by replacing line 5 with the following: protective custody shall end when the person is released to a designated drug counselor, a clinical  
Senator Eaton moved adoption.

**Adopted.**

**HOUSE MESSAGE**

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

**SB 32**, relative to municipal budget recommendations.

**SB 43**, relative to archives and records management.

**SB 53**, establishing an advisory board to the labor commissioner and relative to the terms of the members of the compensation appeals board.

**SB 82-FN**, relative to awards of fees and interest under workers' compensation.

**SB 101-FN**, relative to unemployment compensation.

**SCR 4**, a resolution urging the New Hampshire congressional delegation to take appropriate action against modification of the Clean Air Act if the result jeopardizes New Hampshire's ability to safeguard public health and protect environmental quality.

**SJR 1**, a resolution approving certain uses of Weeks state park.

**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 215**, relative to expungement of records contained in the DNA database.

**HB 320**, relative to permitting additional contributions in the city of Manchester employees contributory retirement system.

**HB 343**, establishing a boundary commission to determine the boundary between New Hampshire and Maine.

**HB 379**, relative to penalties for OHRV violations by underage operators.

**HB 402**, relative to child passenger restraints.

**HB 434-L**, relative to junkyards and motor vehicle recycling yards.

**HB 477**, establishing certain speed limits.

**HB 593-FN-L**, relative to solid waste facilities in small towns.

**HB 699-FN**, relative to abandoned vehicles.

**HB 711-FN**, relative to the regulation of retail installment sales of motor vehicles.

**HB 770-FN-A**, establishing a committee to study using tax policy to create incentives to encourage employers to hire disabled persons.

**HCR 3**, calling on the President and the Congress to fully fund the federal government's share of special education services in public elementary and secondary schools in the United States under the Individuals with Disabilities Education Act.

**HOUSE MESSAGE**

The House of Representatives has voted to Lay On The Table the following entitled Bill(s) sent down from the Senate:

**SB 59-FN**, relative to administrative license suspension hearings.

**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 71-FN-A**, establishing a committee to study improving access, affordability, and alternatives in health insurance for New Hampshire consumers.

**SB 122**, relative to the regulation of first mortgage brokers.

**SB 131**, establishing a committee to study the system of health care safety net providers in New Hampshire, and options for improving access to primary and preventive care for the uninsured and underinsured.

**SB 143**, establishing a commission to study and review the regulation of the building trades.

**SB 146**, relative to eligible costs for training grants in the job training program for economic growth.

**SB 210**, relative to the administrative procedures of the real estate commission.

**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 153**, relative to grounds for termination of parental rights.

**HB 192**, relative to disposal of controlled drugs in possession of law enforcement officers.

**HB 208**, relative to name changes for inmates and parolees.

**HB 218**, relative to the definition of beneficially interested person.

**HB 231**, requiring the department of education to develop a plan to address and reduce the number of persons awaiting vocational rehabilitation transition services.

**HB 269**, relative to claims arising from clinical services provided to the department of health and human services.

**HB 394**, relative to incompatible offices.

**HB 423**, relative to safe deposit boxes.

**HB 497**, relative to inactive status licenses.

**HB 506**, relative to health club membership initiation fees and renewal practices.

**HB 515**, excluding certain agreements between fish and game licensees and landowners from the right-to-know law.

**HB 561**, repealing the Uniform Aircraft Financial Responsibility Act.

**HB 658**, relative to impersonation of candidates.

**HB 661**, relative to Westport Village Road in the town of Swanzey.

**HB 766**, relative to the information required for a license to carry a pistol or revolver.

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 402**, relative to child passenger restraints.

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 77**, establishing a committee to study the process of de novo appeals from the district courts.

**HB 179**, establishing a committee to study enhancement of laws relating to vehicle pursuits.

**HB 244**, establishing a committee to study landowner liability for owners providing public access to snow-mobile trails.

**SB 166**, establishing a committee to study methods for the state to create incentives for school districts to provide mentoring for beginning teachers.

**SB 198**, relative to a certain highway sign in Concord.

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 212**, defining "terrorize" for the purpose of criminal threatening.

**HB 253**, relative to the design build concept for certain projects.

**HB 436**, relative to the acquisition of Connecticut Valley Electric Company and electric utility restructuring and relative to the real estate and personal property tax exemption.

**HB 831**, adding duties to the oversight committee on health and human services.

**SB 39**, relative to the results of a preliminary breath test as evidence in court.

**SB 48**, exempting housing for older persons from certain age discrimination laws.

**SB 52**, relative to a voluntary certification program for police dogs and handlers.

**SB 56-FN**, relative to parking for persons with disabilities.

**SB 57-FN**, relative to certain accounts within the fish and game fund.

**SB 66-FN-A-L**, limiting the exemption from the meals and rooms tax for sales of alcoholic beverages by voluntary nonprofit organizations operating under one-day licenses from the liquor commission.

**SB 91**, extending the committee to study eminent domain proceedings and adding certain duties.

**SB 129**, relative to the board of tax and land appeals and eminent domain cases.

**SB 138-FN**, clarifying the exemption from the interest and dividends tax for distributions from qualified tuition savings programs.

**SB 145-FN-A**, relative to the duties of the board of trustees of the department of regional community technical colleges.

**SB 165**, relative to the voluntary dissolution of nondepository trust companies.

**SB 171**, regulating non-agricultural activities which may cause the introduction and spread of infectious wildlife diseases.

**SB 173**, relative to certain historical and recreational facilities.

**SB 190**, relative to community living facilities.

**SB 219**, relative to superior court notice to health care regulatory boards of felony convictions of health care providers.

Senator D'Allesandro moved adoption.

**Adopted.**

**LATE SESSION**

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

**Adopted.**

**Adjournment.**

# SENATE JOURNAL 17

*May 22, 2003*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend Canon Gene Robinson, Episcopal Diocese of New Hampshire, Guest Chaplain to the Senate, offered the prayer.

*Good and great God, give the wisdom of Solomon to these Senators today as they consider how best to serve the people of New Hampshire, its parents and families, and especially its vulnerable, teenaged young women. May they seek the best ways to protect these young people who've made poor choices. May they trust the parents of this state, but not be blind to those parents who would betray that trust. And in all things, give them wisdom as they craft legislation which will affect so many young lives. Amen.*

Senator Sapareto led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS

### HOUSE MESSAGE

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

**SB 44**, relative to penalties for vehicle dealers.

### SENATE NONCONCURS AND REQUESTS A COMMITTEE OF CONFERENCE

**SB 44**, relative to penalties for vehicle dealers.

Senator Kenney 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: FLANDERS, MORSE, BELOW**

### HOUSE MESSAGE

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

**SB 142-FN**, relative to advertisements on utility poles and highway signs.

### SENATE CONCURS WITH HOUSE AMENDMENT

**SB 142-FN**, relative to advertisements on utility poles and highway signs.

Senator Kenney moved concurrence.

**Adopted.**

### HOUSE MESSAGE

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

**SB 206-FN**, relative to the registration of OHRVs used as grooming equipment for cross country ski trails.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 206-FN**, relative to the registration of OHRVs used as grooming equipment for cross country ski trails.

Senator Gallus moved to concur.

**Adopted.**

**HOUSE MESSAGE**

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

**SCR 2**, urging the United States Congress to act to rectify the science, research funding, and restrictions governing the Northeast multispecies fishing industry and its impact on New Hampshire fishermen.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SCR 2**, urging the United States Congress to act to rectify the science, research funding, and restrictions governing the Northeast multispecies fishing industry and its impact on New Hampshire fishermen.

Senator Gallus moved to concur.

**Adopted.**

**COMMITTEE REPORTS**

**HB 763-FN**, requiring parental notification before abortions may be performed on unemancipated minors. Judiciary Committee. Ought to pass with amendment, Vote 3-2. Senator Peterson for the committee.

**Senate Judiciary**

**May 12, 2003**

**2003-1585s**

**01/09**

**Amendment to HB 763-FN**

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

AN ACT relative to information and counseling to minors seeking abortion.

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

1 New Subdivision; Prior to Abortion. Amend RSA 132 by inserting after section 24 the following new subdivision:

**Information and Counseling to Minors Seeking Abortion**

132:25 Definitions. In this subdivision:

I. "Counselor" means a psychiatrist licensed under RSA 329:12, a psychologist licensed under RSA 330-A:16, a clinical social worker licensed under RSA 330-A:18, a marriage and family therapist licensed under RSA 330-A:21, a registered nurse or practical nurse licensed under RSA 326-B:6, or 326-B:7, or a guidance counselor certified under RSA 21-N:9, II(s).

II. "Minor" means any person under the age of 18 years.

III. "Provider" means a physician licensed under RSA 329:12, a physician's assistant licensed under RSA 328-D:3, or an advanced registered nurse practitioner licensed under RSA 326-B:10.

132:26 Information and Counseling Required.

I. Prior to the performance of an abortion upon a minor, a provider or counselor shall provide pregnancy information and counseling in accordance with this subdivision in a manner and language that will be understood by the minor. The provider or counselor shall:

(a) Explain that the information being given to the minor is being given objectively and is not intended to coerce, persuade, or induce the minor to choose to have an abortion or to carry the pregnancy to term.

(b) Explain that the minor may withdraw a decision to have an abortion at any time before the abortion is performed or may reconsider a decision not to have an abortion at any time within the time period during which an abortion may legally be performed.



- (c) Explain to the minor the alternative choices available for managing the pregnancy, including:
- (1) Carrying the pregnancy to term and keeping the child;
  - (2) Carrying the pregnancy to term and placing the child for adoption, placing the child with a relative, or obtaining voluntary foster care for the child; and
  - (3) Having an abortion, and explain that public and private agencies are available to assist the minor with whichever alternative she chooses and that a list of these agencies and the services available from each will be provided if the minor requests.
- (d) Explain that public and private agencies are available to provide birth control information and that a list of these agencies and the services available from each will be provided if the minor requests.
- (e) Discuss the possibility of involving the minor's parents, guardian, or other adult family members in the minor's decision making concerning the pregnancy and whether the minor believes that involvement would be in the minor's best interests.
- (f) Provide adequate opportunity for the minor to ask any questions concerning the pregnancy, abortion, child care, and adoption, and provide information the minor seeks or, if the person cannot provide the information, indicate where the minor can access the information.

II. After the counselor or provider provides the information and counseling to a minor as required by this subdivision, such counselor or provider shall have the minor sign and date a form stating that:

- (a) The minor has received information relative to alternatives to abortion, that there are agencies that will provide assistance, and a list of these agencies and the services available from each shall be provided if the minor requests.
- (b) The minor has received an explanation that the minor may withdraw an abortion decision or reconsider a decision to carry a pregnancy to term.
- (c) The alternatives available for managing the pregnancy have been explained to the minor.
- (d) The minor has received an explanation about agencies available to provide birth control information and that a list of these agencies and the services available from each will be provided if the minor requests.
- (e) The minor has discussed with the person providing the information and counseling the possibility of involving the minor's parents, guardian, or other adult family members in the minor's decision making about the pregnancy.
- (f) If applicable, the minor has determined that not involving the minor's parents, guardian, or other adult family members is in the minor's best interests.
- (g) The minor has been given an adequate opportunity to ask questions.

III. The counselor or provider shall also sign and date the form and shall include his or her business address and business telephone number. The counselor or provider shall keep a copy for the minor's medical record and shall give the form to the minor or, if the minor requests and if such person is not the attending provider, transmit the form to the minor's attending provider. Such medical record shall be maintained as otherwise provided by law.

IV. The provision of pregnancy information and counseling by a provider or counselor which is evidenced in writing containing the information and statements provided in this subdivision and which is signed by the minor shall be presumed to be evidence of compliance with the requirements of this subdivision.

V. The requirements of this subdivision shall not apply when, in the best medical judgment of the provider based on the facts of the case before the provider, a medical emergency exists which so complicates the pregnancy or the health, safety, or well-being of the minor as to require an immediate abortion. A provider who does not comply with the requirements of this subdivision because of this exception shall state in the minor's medical record the medical indications on which the provider's judgment was based.

132:27 Rulemaking. The commissioner of the department of health and human services shall adopt rules, under RSA 541-A, relative to the forms required under this subdivision.

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

**2003-1585s****AMENDED ANALYSIS**

This bill requires a counselor or health care provider to provide a pregnant minor, under the age of 18 years, with counseling and information before such minor has an abortion.

**Question is on the adoption of the committee amendment.**

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

**Seconded by Senator Cohen.**

**The following Senators voted Yes: Gallus, Below, Odell, Peterson, O'Hearn, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 10 - Nays: 13**

**Amendment failed.**

Senator Prescott offered a floor amendment.

**Sen. Prescott, Dist.23**

**May 21, 2003**

**2003-1769s**

**01/09**

**Floor Amendment to HB 763-FN**

Amend RSA 132:25, I as inserted by section 2 of the bill by replacing it with the following:

I. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove an ectopic pregnancy or the products from a spontaneous miscarriage.

**Question is on the adoption of the floor amendment.**

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

**Seconded by Senator Prescott.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Martel, Morse, Prescott.**

**The following Senators voted No: Below, Foster, Larsen, Barnes, Sapareto, D'Allesandro, Estabrook, Cohen.**

**Yeas: 15 - Nays: 8**

**Floor amendment adopted.**

Senator Sapareto offered a floor amendment.

**Sen. Sapareto, Dist. 19**

**May 20, 2003**

**2003-1715s**

**01/09**

**Floor Amendment to HB 763-FN**

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

AN ACT requiring parental notification before abortions may be performed on unemancipated minors under the age of 16 years.

Amend RSA 132:25 as inserted by section 2 of the bill by replacing it with the following:

132:25 Definitions. In this subdivision:

I. "Abortion" means the use of any means to terminate the pregnancy of a female known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the fetus.

II. "Abuse" means any type of harm a minor may have been subjected to or may incur as a result of notification.

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

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

V. "Emancipated minor" means any minor female who is or has been married or has by court order otherwise been freed from the care, custody, and control of her parents.

VI. "Guardian" means the guardian or conservator appointed under RSA 464-A, for pregnant females.

VII. "Minor" means any person under the age of 16 years.

VIII. "Parent" means one parent of the pregnant girl if one is living or the guardian or conservator if the pregnant girl has one.

Amend RSA 132:27, I(a) as inserted by section 2 of the bill by replacing it with the following:

(a) The attending abortion provider certifies in the pregnant minor's medical record that the abortion is necessary to prevent the minor's death and there is insufficient time to provide the required notice, or the attending abortion provider certifies in the minor's medical record that the minor is a victim of alleged incest, rape, or abuse; or

**2003-1715s**

#### AMENDED ANALYSIS

This bill prohibits any abortion provider from performing an abortion on certain minors under the age of 16 years or incompetent females without giving 48 hours' written notice, in person or by certified mail, to a parent or guardian. The bill provides a procedure for alternate notice in certain circumstances.

This bill also establishes a procedure for waiver of the notice in certain circumstances.

**Question is on the adoption of the floor amendment.**

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

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Gallus, Below, Odell, Peterson, O'Hearn, Foster, Larsen, Gatsas, Sapareto, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Clegg, Barnes, Martel, Morse, Prescott.**

**Yeas: 12 - Nays: 11**

**Floor amendment adopted.**

Senator O'Hearn offered a floor amendment.

**Sen. O'Hearn, Dist. 12**

**May 21, 2003**

**2003-1767s**

**01/09**

#### **Floor Amendment to HB 763-FN**

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

AN ACT relative to consent before abortions may be performed on minors.

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

1 New Subdivision; Consent Prior to Abortion. Amend RSA 132 by inserting after section 24 the following new subdivision:

Consent Prior to Abortion

132:25 Definitions. In this subdivision:

I. "Abortion" means the intentional interruption of a pregnancy by the application of external agents, whether chemical or physical, or the ingestion of chemical agents.

II. "Counselor" means a person who is:

- (a) A psychiatrist.
- (b) A psychologist licensed under RSA 330-A:16.
- (c) A clinical social worker licensed under RSA 330-A:18.
- (d) An ordained member of the clergy.
- (e) A physician's assistant licensed under RSA 328-D.
- (f) A nurse practitioner licensed under RSA 326-B.
- (g) A guidance counselor certified under RSA 21-N:9, II(s).
- (h) A registered or practical nurse licensed under RSA 326-B:6 or 326-B:7.

III. "Minor" means a person under the age of 18 years.

132:26 Prohibitions; Exceptions. No person shall knowingly perform an abortion upon a pregnant minor unless:

I. The attending physician has received and will make part of the medical record the informed written consent of the minor and one parent, guardian, or adult family member;

II. The attending physician has secured the informed written consent of the minor in accordance with RSA 132:27 and the minor, under all the surrounding circumstances, is mentally and physically competent to give consent;

III. The minor has received the information and counseling required under RSA 132:28, has secured written verification of receiving the information and counseling, and the attending physician has received and will make part of the medical record the informed written consent of the minor and the written verification of receiving the information and counseling required under RSA 132:28; or

IV. Any court of competent jurisdiction issues an order under RSA 132:30 on petition of the minor or the next friend of the minor for purposes of filing a petition for the minor, granting:

(a) To the minor majority rights for the sole purpose of consenting to the abortion and the attending physician has received the informed written consent of the minor; or

(b) To the minor consent to the abortion, when the court has given its informed written consent and the minor is having the abortion willingly, in compliance with RSA 132:31.

132:27 Informed Consent; Disallowance of Recovery.

I. No physician may perform an abortion upon a minor unless, prior to performing the abortion, the attending physician received the informed written consent of the minor.

II. To ensure that the consent for an abortion is informed consent, the attending physician shall:

(a) Inform the minor in a manner which, in the physician's professional judgment, is not misleading and which will be understood by the minor, of at least the following:

- (1) According to the physician's best judgment the minor is pregnant;
- (2) The number of weeks of duration of the pregnancy; and

(3) The particular risks associated with the minor's pregnancy, the abortion technique that may be performed and the risks involved for both;

(b) Provide the information and counseling described in RSA 132:28 or refer the minor to a counselor who will provide the information and counseling described in RSA 132:28; and

(c) Determine whether the minor is, under all the surrounding circumstances, mentally and physically competent to give consent.

III. No recovery may be allowed against any physician upon the grounds that the abortion was rendered without the informed consent of the minor when:

(a) The physician, in obtaining the minor's consent, acted in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; or

(b) The physician has received and acted in good faith on the informed written consent to the abortion given by the minor to a counselor.

132:28 Information and Counseling for Minors.

I. The provision of information and counseling by any physician or counselor for any pregnant minor for decision making regarding pregnancy shall be in accordance with this section.

(a) Any physician or counselor providing pregnancy information and counseling under this section shall, in a manner that will be understood by the minor:

(1) Explain that the information being given to the minor is being given objectively and is not intended to coerce, persuade, or induce the minor to choose either to have an abortion or to carry the pregnancy to term;

(2) Explain that the minor may withdraw a decision to have an abortion at any time before the abortion is performed or may reconsider a decision not to have an abortion at any time within the time period during which an abortion may legally be performed;

(3) Clearly and fully explore with the minor the alternative choices available for managing the pregnancy, including:

(A) Carrying the pregnancy to term and keeping the child;

(B) Carrying the pregnancy to term and placing the child with a relative or with another family through foster care or adoption;

(C) The elements of prenatal and postnatal care; and

(D) Having an abortion;

(4) Explain that public and private agencies are available to provide birth control information and that a list of these agencies and the services available from each will be provided if the minor requests;

(5) Discuss the possibility of involving the minor's parents, guardian, or other adult family members in the minor's decision making concerning the pregnancy and explore whether the minor believes that involvement would be in the minor's best interests; and

(6) Provide adequate opportunity for the minor to ask any questions concerning the pregnancy, abortion, child care and adoption, and provide the information the minor seeks or, if the person cannot provide the information, indicate where the minor can receive the information.

(b) After the person provides the information and counseling to a minor as required by this section, such person shall have the minor sign and date a form stating that:

(1) The minor has received information on prenatal care and alternatives to abortion and that there are agencies that will provide assistance;

(2) The minor has received an explanation that the minor may withdraw an abortion decision or reconsider a decision to carry a pregnancy to term;

(3) The alternatives available for managing the pregnancy have been clearly and fully explored with the minor;

(4) The minor has received an explanation about agencies available to provide birth control information;

(5) The minor has discussed with the person providing the information and counseling the possibility of involving the minor's parents, guardian, or other adult family members in the minor's decision making about the pregnancy;

(6) The reasons for not involving the minor's parents, guardian or other adult family members are put in writing on the form by the minor or the person providing the information and counseling; and

(7) The minor has been given an adequate opportunity to ask questions.

II. The person providing the information and counseling shall also sign and date the form, and include his or her address and telephone number. The person shall keep a copy for his or her files and shall give the form to the minor or, if the minor requests and if the person providing the information is not the attending physician, transmit the form to the minor's attending physician.

132:29 Presumption of Validity of Informed Written Consent; Rebuttal. An informed consent which is evidenced in writing containing information and statements provided in RSA 132:28 and which is signed by the minor shall be presumed to be a valid informed consent. This presumption may be subject to rebuttal only upon proof that the informed consent was obtained through fraud, deception, or misrepresentation of material fact.

132:30 Court Order Concerning Consent to Abortion. The court may issue an order for the purpose of consenting to the abortion by the minor under the following circumstances and procedures:

I.(a) The minor or next friend of the minor for the purposes of filing a petition may make an application to a court of competent jurisdiction which shall assist the minor or next friend in preparing the petition. The minor or the next friend of the minor shall file a petition setting forth:

- (1) The initials of the minor;
  - (2) The age of the minor;
  - (3) That the minor has been fully informed of the risks and consequences of the abortion;
  - (4) That the minor is of sound mind and has sufficient intellectual capacity to consent to the abortion;
  - (5) That, if the court does not grant the minor majority rights for the purpose of consent to the abortion, the court should find that the abortion is in the best interest of the minor and give judicial consent to the abortion;
  - (6) That, if the minor does not have private counsel, that the court may appoint counsel.
- (b) The minor or the next friend shall sign the petition.

II. The petition is a confidential record and the court files on the petition shall be impounded.

III.(a) A hearing on the merits of the petition shall be held as soon as possible within 5 days of the filing of the petition. If any party is unable to afford counsel, the court shall appoint counsel at least 24 hours before the time of the hearing. At the hearing, the court shall hear evidence relating to:

- (1) The emotional development, maturity, intellect and understanding of the minor.
- (2) The nature, possible consequences and alternatives to the abortion.
- (3) Any other evidence that the court may find useful in determining whether the minor should be granted majority rights for the purpose of consenting to the abortion or whether the abortion is in the best interest of the minor.

(b) The hearing on the petition shall be held as soon as possible within 5 days of the filing of the petition. The court shall conduct the hearing in private with only the minor, interested parties as determined by the court, and necessary court officers or personnel present. The record of the hearing is not a public record.

IV. In the decree, the court shall for good cause:

- (a) Grant the petition for majority rights for the sole purpose of consenting to the abortion;
- (b) Find the abortion to be in the best interest of the minor and give judicial consent to the abortion, setting forth the grounds for the finding; or
- (c) Deny the petition only if the court finds that the minor is not mature enough to make her own decision and that the abortion is not in her best interest.

V. If the petition is allowed, the informed consent of the minor, pursuant to a court grant of majority rights or the judicial consent, shall bar an action by the parent or guardian of the minor on the grounds of battery of the minor by those performing the abortion. The immunity granted shall only extend to the performance of the abortion and any necessary accompanying services which are performed in a competent manner.

VI. The minor may appeal an order issued in accordance with this section to the superior court. The notice of appeal shall be filed within 24 hours from the date of issuance of the order. Any record on appeal shall be completed and the appeal shall be perfected within 5 days from the filing of notice to appeal. The supreme judicial court shall, by court rule, provide for expedited appellate review of cases appealed under this section.

132:31 Abortion Performed Against the Minor's Will. No abortion may be performed on any minor against her will, except that an abortion may be performed against the will of a minor pursuant to a court order described in RSA 132:30 that the abortion is necessary to preserve the life of the minor.

132:32 Violation; Penalties. Any person who knowingly performs or aids in the performance of an abortion in violation of this subdivision shall be guilty of a misdemeanor. Any attending physician or counselor who knowingly fails to perform any action required by this subdivision commits a civil violation for which a forfeiture of not more than \$1,000 may be assessed for each violation.

132:33 Severability. If any provision of this subdivision or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or applications of this subdivision which can be given effect without the invalid provisions or applications, and to this end, the provisions of this subdivision are severable.

2 Effective Date. This act shall take effect January 1, 2004.

**2003-1767s**

#### AMENDED ANALYSIS

This bill requires the informed consent of the pregnant minor before an abortion may be performed on such minor under certain circumstances. This bill encompasses a court procedure for the purpose of consenting to the abortion under certain circumstances.

**Question is on the adoption of the floor amendment.**

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

**Seconded by Senator Clegg.**

**The following Senators voted Yes: Gallus, Below, Odell, Peterson, O'Hearn, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 10 - Nays: 13**

**Floor amendment failed.**

Senator Prescott offered a floor amendment.

**Sen. Prescott, Dist. 23**

**May 22, 2003**

**2003-1780s**

**01/09**

#### Floor Amendment to HB 763-FN

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

AN ACT requiring parental notification before abortions may be performed on unemancipated minors.

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

1 Legislative Purpose and Findings.

I. It is the intent of the legislature in enacting this parental notification provision to further the important and compelling state interests of protecting minors against their own immaturity, fostering the family structure and preserving it as a viable social unit, and protecting the rights of parents to rear children who are members of their household:

II. The legislature finds as fact that:

(a) Immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences.

(b) The medical, emotional, and psychological consequences of abortion are serious and can be lasting, particularly when the patient is immature.

(c) The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of abortion are not necessarily related.

(d) Parents ordinarily possess information essential to a physician's exercise of best medical judgment concerning the child.

(e) Parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention after the abortion.

III. The legislature further finds that parental consultation is usually desirable and in the best interest of the minor.

2 New Subdivision; Parental Notification Prior to Abortion. Amend RSA 132 by inserting after section 24 the following new subdivision:

Parental Notification Prior to Abortion

132:25 Definitions. In this subdivision:

I. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove an ectopic pregnancy or the products from a spontaneous miscarriage.

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

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

IV. "Emancipated minor" means any minor female who is or has been married or has by court order otherwise been freed from the care, custody, and control of her parents.

V. "Guardian" means the guardian or conservator appointed under RSA 464-A, for pregnant females.

VI. "Minor" means any person under the age of 18 years.

VII. "Parent" means one parent of the pregnant girl if one is living or the guardian or conservator if the pregnant girl has one.

132:26 Notification Required.

I. No abortion shall be performed upon an unemancipated minor or upon a female for whom a guardian or conservator has been appointed pursuant to RSA 464-A because of a finding of incompetency, until at least 48 hours after written notice of the pending abortion has been delivered in the manner specified in paragraphs II and III.

II. The written notice shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent.

III. In lieu of the delivery required by paragraph II, notice shall be made by certified mail addressed to the parent at the usual place of abode of the parent with return receipt requested and with restricted delivery to the addressee, which means the postal employee shall only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

132:27 Waiver of Notice.

I. No notice shall be required under RSA 132:26 if:

(a) The attending abortion provider certifies in the pregnant minor's medical record that the abortion is necessary to prevent the minor's death and there is insufficient time to provide the required notice; or

(b) The person or persons who are entitled to notice certify in writing that they have been notified.

II. If such a pregnant minor elects not to allow the notification of her parent or guardian or conservator, any judge of a court of competent jurisdiction shall, upon petition, or motion, and after an appropriate hearing, authorize an abortion provider to perform the abortion if said judge determines that the pregnant minor is mature and capable of giving informed consent to the proposed abortion. If said judge determines that the pregnant minor is not mature, or if the pregnant minor does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without notification of her parent, guardian, or conservator would be in her best interests and shall authorize an abortion provider to perform the abortion without such notification if said judge concludes that the pregnant minor's best interests would be served thereby.



(a) Such a pregnant minor may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court-appointed counsel, and shall, upon her request, provide her with such counsel.

(b) Proceedings in the court under this section shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interest of the pregnant minor. In no case shall the court fail to rule within 7 calendar days from the time the petition is filed. A judge of the court who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

(c) An expedited confidential appeal shall be available to any such pregnant minor for whom the court denies an order authorizing an abortion without notification. The court shall make a ruling within 7 calendar days from the time of the docketing of the appeal. An order authorizing an abortion without notification shall not be subject to appeal. No filing fees shall be required of any such pregnant minor at either the trial or the appellate level. Access to the trial court for the purposes of such a petition or motion, and access to the appellate courts for purposes of making an appeal from denial of the same, shall be afforded such a pregnant minor 24 hours a day, 7 days a week.

132:28 Penalty. Performance of an abortion in violation of this subdivision shall be a misdemeanor and shall be grounds for a civil action by a person wrongfully denied notification. A person shall not be held liable under this section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant minor regarding information necessary to comply with this section are bone fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

132:29 Severability. If any provision of this subdivision or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or applications of this subdivision which can be given effect without the invalid provisions or applications, and to this end, the provisions of this subdivision are severable.

3 Effective Date. This act shall take effect December 31, 2003.

#### **2003-1780s**

#### **AMENDED ANALYSIS**

This bill prohibits any abortion provider from performing an abortion on certain minors or incompetent females without giving 48 hours' written notice, in person or by certified mail, to a parent or guardian. The bill provides a procedure for alternate notice in certain circumstances.

This bill also establishes a procedure for waiver of the notice in certain circumstances.

**Senator Below moved to divide the question.**

**The Chair ruled the floor amendment non divisible.**

**Question is on the adoption of the floor amendment.**

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

**Seconded by Senator Sapareto.**

**The following Senators voted Yes: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Clegg, Gatsas, Barnes, Martel, Morse, Prescott.**

**The following Senators voted No: Gallus, Below, Odell, Peterson, O'Hearn, Foster, Larsen, Sapareto, D'Allesandro, Estabrook, Cohen.**

**Yeas: 12 - Nays: 11**

**Floor amendment adopted.**

**Senator Boyce moved the question.**

**Adopted.**

**Question is on the adoption of the bill as amended.**

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

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Clegg, Gatsas, Barnes, Martel, Morse, Prescott.**

**The following Senators voted No: Gallus, Below, Odell, Peterson, O'Hearn, Foster, Larsen, Sapareto, D'Allesandro, Estabrook, Cohen.**

**Yeas: 12 - Nays: 11**

**Adopted.**

**Ordered to third reading.**

**HB 131**, relative to enforcement of negotiable instruments under Article 3 of the Uniform Commercial Code. Banks Committee. Ought to Pass, Vote 2-0. Senator Odell for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 159**, relative to meetings of the directors of nondepository trust companies. Banks Committee. Ought to Pass, Vote 2-0. Senator Barnes for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 160**, relative to removal or replacement of trustees. Banks Committee. Ought to Pass, Vote 2-0. Senator Barnes for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 404**, relative to common trust funds. Banks Committee. Ought to Pass, Vote 2-0. Senator Flanders for the committee.

**Adopted.**

**Ordered to third reading.**

**Senator Foster Rule #42 on HB 404.**

**HB 798**, relative to gifts by fiduciaries. Banks Committee. Ought to pass with amendment, Vote 2-0. Senator Barnes for the committee.

**Banks**

**May 14, 2003**

**2003-1629s**

**01/09**

Amendment to HB 798

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

1 Estate Planning by Guardian. Amend RSA 464-A:26-a, III(b) through (g) to read as follows:

(b) The anticipated results including any income, estate, or inheritance tax savings, ***and, if the gift is being made in order to qualify the ward for Medicaid, any resulting period of Medicaid disqualification;***

(c) The ward's wishes, if known;

(d) The ward's financial condition, including present and anticipated future expenses for maintenance, support, and medical care, debts, and support obligations;

(e) The ward's medical condition;

(f) The ward's prior estate planning action, including significant life-time gifts, will, beneficiary designations, joint ownership, or trusts; **[and]**

(g) The ward's family situation, including the family members who would inherit from the ward if the ward dies intestate;

*(h) Whether the gift is intended to reduce the ward's assets or income in order to qualify the ward for Medicaid or other governmental benefits;*

*(i) The ward's housing situation during the 12 months prior to the filing of the petition; and*

*(j) A description of the care and services that the ward requires and is currently receiving.*

2 Estate Planning by Guardian. Amend RSA 464-A:26-a, V to read as follows:

V. Before authorizing the guardian to make lifetime gifts or to plan for the testamentary distribution of the ward's estate, the probate court must find, by a preponderance of the evidence, that[:

~~(a)~~ the proposed gifts and/or testamentary plan are consistent with the ward's wishes[;] or, **based on the circumstances as they then exist, that:**

~~(b)~~ **(a)** The testamentary distribution of the ward's estate will minimize taxation and/or facilitate distribution of the ward's estate to family, friends, or charities who would be likely recipients of gifts from the ward;

**(b)** *The proposed gift is not likely to adversely affect the ward's housing options, access to care and services, or general welfare;*

**(c)** *The proposed gift does not create a foreseeable risk that the ward will be deprived of sufficient assets to cover his or her needs during any period of medicaid ineligibility that would result from the proposed gift; and*

**(d)** *The proposed gift is not likely to result in premature or unnecessary nursing home placement or institutionalization of the ward, or compromise the ward's access to care or services in the least restrictive setting in which his or her needs can be met.*

**VI.** *The probate court, prior to authorizing a lifetime gift, shall appoint a guardian ad litem if the proposed gift benefits the guardian personally or otherwise creates a potential conflict of interest between the ward's interests and the guardian's personal interests.*

**VII.** *The department of health and human services, county attorney, and the department of justice shall be notified and shall have the opportunity to address the court in any proceeding under this section if the court has concerns relative to:*

**(a)** *The impact on the ward of any period of Medicaid ineligibility that would result from the proposed gift; or*

**(b)** *Whether the ward has been the victim of a crime or has been or is at risk of being abused, neglected, or exploited within the meaning of RSA 161-F:43.*

3 Powers of Attorney; Disability or Incompetence of Principal. Amend RSA 506:6, V to read as follows:

V. **(a)** An attorney in fact is not authorized to make gifts, **pursuant to the durable power of attorney**, to the attorney in fact or to others unless:

**(1)** The durable power of attorney explicitly authorizes ~~such~~ gifts; **and**

**(2)** *The proposed gift will not leave the principal without sufficient assets or income to provide for the principal's care without relying on Medicaid, other public assistance or charity, unless the authority to make such a gift is expressly conferred, or the gift is approved in advance by the court upon a determination that the gift is authorized in accordance with RSA 506:7, III(e).*

**(b)** *No attorney in fact may make a gift to him or herself of property belonging to the principal unless the terms of the power of attorney explicitly provide for the authority to make gifts to the attorney in fact, or the gift is approved in advance by the court upon a determination that the gift is authorized in accordance with RSA 506:7, III(e).*

**(c)** *This paragraph shall not in any way impair the right or power of the principal, by express words in the power of attorney, to further authorize, expand, or limit the authority of any agent to make gifts of the principal's property.*

4 Powers of Attorney. Amend RSA 506:6, VI-VIII to read as follows:

VI. **(a)** ~~[The following]~~ A disclosure statement, signed by the principal, ~~[may accompany]~~ **in substantially the following form, shall be affixed to** a durable power of attorney:

INFORMATION CONCERNING THE DURABLE POWER OF ATTORNEY  
THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT YOU SHOULD  
KNOW THESE IMPORTANT FACTS:

Notice to the Principal: As the "Principal," you are using this Durable Power of Attorney to grant power to another person (called the "Agent" or "Attorney in Fact") to make decisions, including, but not limited to, decisions concerning your money, property, or both, and to use your money, property, or both on your behalf. If this written Durable Power of Attorney does not limit the powers that you give to your Agent, your Agent will have broad and sweeping powers to sell or otherwise dispose of your property, and to spend your money without advance notice to you or approval by you. Under this document, your agent will continue to have these powers after you become incapacitated, and unless otherwise indicated your Agent will have these powers before you become incapacitated. You have the right to retain this Power and not to release this Power until you instruct your attorney or any other person who may hold this Power of Attorney to so release it to your Agent pursuant to written instructions. You have the right to revoke or take back this Durable Power of Attorney at any time, so long as you are of sound mind. If there is anything about this Durable Power of Attorney that you do not understand, you should seek professional advice.

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Principal

**(b)** The language required by this paragraph shall not confer any powers to the agent that are not otherwise contained in the durable power of attorney.

VII. ~~(a) An agent[, prior to acting in the capacity of agent, may execute and affix]~~ **shall have no authority to act as agent under the power of attorney unless the agent has first executed and affixed** to the power of attorney an acknowledgment in substantially the following form:

I, \_\_\_\_\_, have read the attached power of attorney and am the person identified as the Agent for the Principal. I hereby acknowledge that when I act as Agent or "attorney in fact," I am given power under this Durable Power of Attorney to make decisions about money, property, or both belonging to the Principal, and to spend the Principal's money, property, or both on the Principal's behalf, in accordance with the terms of this Durable Power of Attorney. This Durable Power of Attorney is valid only if the Principal is of sound mind when the Principal signs it. When acting in the capacity of Agent, I am under a duty (called a "fiduciary duty") to observe the standards observed by a prudent person, which means the use of those powers that is reasonable in view of the interests of the Principal and in view of the way in which a person of ordinary judgment would act in carrying out that person's own affairs. If the exercise of my acts is called into question, the burden will be upon me to prove that I acted under the standards of a fiduciary. As the Agent, I am not entitled to use the money or property for my own benefit or to make gifts to myself or others unless the Durable Power of Attorney specifically gives me the authority to do so. As the Agent, my authority under this Durable Power of Attorney will end when the Principal dies and I will not have authority to manage or dispose of any property or administer the estate unless I am authorized to do so by a New Hampshire Probate Court. If I violate my fiduciary duty under this Durable Power of Attorney, I may be liable for damages and may be subject to criminal prosecution. If there is anything about this Durable Power of Attorney, or my duties under it, that I do not understand, I understand that I should seek professional advice.

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Agent

**(b) The acknowledgement by the agent need not be signed when the durable power of attorney is executed as long as it is executed prior to the agent exercising the power granted under the durable power of attorney.**

VIII. ~~[Nothing in paragraphs V-VII of this section shall render ineffective a durable power of attorney validly executed under New Hampshire law]~~

**(a) A power of attorney shall be valid if it:**

**(1) Is valid under common law or statute existing at the time of execution; or**

**(2) Has been determined by the court to be valid upon the filing of a petition pursuant to RSA 506:7.**

**(b) Failure to comply with paragraph VI shall not invalidate an otherwise valid durable power of attorney, subject to the provisions of RSA 506:7, IV(b).**

5 Powers of Attorney; Limitations on Agent. Amend RSA 506:7, I(g) to read as follows:

(g) **The department of justice**, the department of health and human services, **or the county attorney**.

6 New Subparagraph; Powers of Attorney; Limitations on the Agent. Amend RSA 506:7, III by inserting after subparagraph (d) the following new subparagraph to read as follows:

(e) To determine that particular gifts or other transactions are authorized. In determining the authority of an agent to make a gift, the court shall consider:

(1) Evidence of the principal's intent;

(2) The principal's personal history of making or joining in the making of lifetime gifts;

(3) The principal's estate plan;

(4) The principal's foreseeable obligations and maintenance needs and the impact of the proposed gift on the principal's housing options, access to care and services, and general welfare;

(5) The income, gift, estate or inheritance tax consequences of the transaction;

(6) Whether the proposed gift creates a foreseeable risk that the principal will be deprived of sufficient assets to cover his or her needs during any period of Medicaid ineligibility that would result from the proposed gift; and

(7) Whether the proposed gift is likely to result in premature or unnecessary nursing home placement or institutionalization of the principal, or compromise the principal's access to care or services in the least restrictive setting in which his or her needs can be met.

7 Powers of Attorney; Limitations on the Agent. Amend RSA 506:7, IV to read as follows:

IV.(a) The court may hold hearings, **issue injunctions**, make orders and decrees, and take other actions that are necessary or proper in making determinations **and providing relief** on matters presented by a petition filed under paragraph III.

(b) When a gift or transfer made by an agent is challenged in a petition filed under paragraph III of this section, the gift or transfer shall be presumed to be lawful if the durable power of attorney is accompanied by the disclosure statement and acknowledgement drafted in accordance with RSA 506:6, VI and VII, and explicitly authorizes such gifts or transfers **as set forth in RSA 506:6, V**. However, if the petitioner establishes that the agent made a transfer for less than adequate consideration, and the transfer is not explicitly authorized by a durable power of attorney drafted in accordance with RSA 506:6, VI and VII, the agent shall be required to prove by a preponderance of evidence that the transfer was authorized and was not a result of undue influence, fraud, or misrepresentation.

8 New Paragraphs; Powers of Attorney; Limitations on the Agent. Amend RSA 506:7 by inserting after paragraph VI the following new paragraphs:

VII. The probate court, prior to authorizing a lifetime gift in a proceeding under this section, shall appoint a guardian ad litem if the proposed gift would benefit the agent personally or otherwise create a potential conflict of interest between the principal's interests and the agent's personal interests.

VIII. The department of health and human services, county attorney, and the department of justice shall be notified and shall have the opportunity to address the court in any proceeding under this section if the court has concerns relative to:

(a) The impact on the principal of any period of Medicaid ineligibility that would result from the proposed gift; or

(b) Whether the principal has been the victim of a crime or has been or is at risk of being abused, neglected, or exploited within the meaning of RSA 161-F:43.

9 Effective Date. This act shall take effect January 1, 2004.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 807-FN**, increasing the filing fees for a fund raising counsel and a paid solicitor of a charitable trust. Banks Committee. Ought to Pass, Vote 2-0. Senator Barnes for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 816**, making technical corrections to the securities laws. Banks Committee. Ought to Pass, Vote 2-0. Senator Flanders for the committee.

**Adopted.**

**Ordered to third reading.**

**Senator Sapareto Rule #42 on HB 816.**

**HB 817**, relative to the regulation of first and second mortgage brokers and mortgage servicers. Banks Committee. Ought to Pass, Vote 2-0. Senator Flanders for the committee.

Senator Flanders offered a floor amendment.

**Sen. Flanders, Dist. 7**

**May 21, 2003**

**2003-1736s**

**06/09**

#### **Floor Amendment to HB 817**

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

AN ACT relative to the regulation of first and second mortgage brokers and mortgage servicers and to the regulation of small loans, title loans, and payday loans.

Amend the bill by replacing all after section 40 with the following:

41 Regulation of Small Loans, Title Loans, and Payday Loans. RSA 399-A is repealed and reenacted to read as follows:

#### CHAPTER 399-A

#### REGULATION OF SMALL LOANS, TITLE LOANS, AND PAYDAY LOANS

399-A:1 Definitions. In this chapter:

- I. "Check" means a draft drawn on the account of an individual or individuals at a depository institution.
- II. "Closed-end loan" means a loan other than an open-end loan.
- III. "Commissioner" means the bank commissioner.
- IV. "Engaged in the business of making title loans" means that at least 10 percent of all loans made by the lender are title loans.
- V. "Financial institution" means a bank, savings institution, credit union, or trust company.
- VI. "License" means the authority to do business issued by the commissioner under the provisions of this chapter.
- VII. "Licensee" means a person to whom one or more licenses have been issued under this chapter.
- VIII. "Lender" means individuals, corporations, associations, firms, partnerships, limited liability companies, and joint stock companies or other forms of organizations that lend money or give credit temporarily on condition that the amount borrowed be returned, usually with an interest fee. "Lender" shall not include a financial institution.
- IX. "Open-end loan" means an open-end credit arrangement pursuant to which a creditor may permit a borrower from time to time to obtain loans from the creditor pursuant to RSA 358-K:1, XI.
- X. "Payday loan" means a small, short-maturity loan on the security of:
  - (a) A check;
  - (b) Any form of assignment of an interest in the account of an individual or individuals at a depository institution; or
  - (c) Any form of assignment of income payable to an individual or individuals.

XI. "Payday loan lender" means a person engaged in the business of making payday loans.

XII. "Person" means any individual, firm, voluntary association, joint-stock company, incorporated society, partnership, association, trust, corporation, limited liability company or legal or commercial entity or group of individuals however organized.

XIII. "Principal" means any person who, directly or indirectly, owns or controls:

(a) Ten percent or more of the outstanding stock of a stock corporation; or

(b) Ten percent or greater interest in a nonstock corporation or a limited liability company.

XIV. "Small loan" means a closed-end loan in the amount of \$10,000 or less or an open-end loan with a line of credit of \$10,000 or less, and where the lender contracts for, exacts or receives, directly or indirectly, in connection with any such loan any charges, whether for interest, compensation, brokerage, endorsement fees, consideration, expense or otherwise, which in the aggregate are greater than 10 percent per annum.

XV. "Small loan lender" means any person engaged in the business of making small loans.

XVI. "Title loan" means a loan, other than a purchase money loan:

(a)(1) Secured by the title to a motor vehicle;

(2) Made for a period of 60 days or less;

(3) With a single payment payback; and

(4) Made by a lender in the business of making title loans; or

(b) That is secured, substantially equivalent to a title loan, and designated as a title loan by rule or order of the commissioner.

XVII. "Title loan lender" means a person engaged in the business of making title loans.

#### 399-A:2 License Required.

I. No person shall engage in the business of making small loans, title loans or payday loans, without first obtaining a license from the commissioner as provided in this chapter.

II. Each such license shall terminate on December 31st. Each license shall remain in full force and effect until surrendered, revoked, suspended, or terminated.

III. This chapter shall not apply to any person lawfully engaged in business as permitted by the laws of this state or of the United States relative to banks, trust companies, insurance companies, savings or building and loan associations, credit unions or to loans made by them, nor shall this chapter apply to any person engaged solely in the business of making loans for educational purposes or to the loans made by such persons, nor shall it apply to any person engaged in the business of second mortgage loans in accordance with the provisions of RSA 398-A, as amended, or to loans made by such persons.

IV. Any person not exempt under paragraph III, and the several members, officers, directors, agents and employees thereof, who shall willfully violate or participate in the violation of any provisions of paragraph I shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. If in the making or collection of a loan the licensee violates paragraph I of this section, the loan contract shall be void and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever.

#### 399-A:3 Application and Fees.

I. Every applicant for licensing under this chapter shall file with the commissioner a written application, under oath and penalty of perjury, and in the form prescribed by the commissioner. The application shall contain the name of the applicant; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees and principal officers; names of any branch managers, the trade name, if any, under which the applicant proposes to conduct such business; the articles of incorporation or organization or partnership agreement; the name and address of the New Hampshire resident agent if the applicant is a foreign entity; and such other pertinent information as the commissioner may require. Each initial and renewal license application shall be accompanied by a nonrefundable application fee of \$450 for the principal place of business of the licensee within this state and the sum of \$450 for each branch of such licensee maintained in this state.

II. Every applicant for licensing shall be required to submit to the banking department detailed financial information sufficient for the commissioner to determine the applicant's ability to conduct the business of a small loan lender, payday lender, or title loan lender with financial integrity. The application shall include a balance sheet or a statement of net worth prepared in accordance with generally accepted accounting principles. Net worth statements provided in connection with a license application under this section shall be subject to review and verification during the course of any examination or investigation conducted under this chapter. Each applicant shall demonstrate that it has available for use in such business at each location specified in the application, at least \$25,000, or in the case of a licensee, has such amount available or actually invested in loans made under this chapter at each location.

III. Every applicant for licensing under this chapter shall file with the commissioner, in such form as the commissioner prescribes by rule, irrevocable consent appointing the commissioner to receive service of any lawful process in any non-criminal suit, action or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order under this chapter, and such person has not filed a consent to service of process under this section and personal jurisdiction over such person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to such person's appointment of the commissioner to receive service of any lawful process. Service may be made by leaving a copy of the process in the office of the commissioner along with \$5, but is not effective unless:

(a) The plaintiff, who may be the attorney general in a suit, action or proceeding instituted by him or her, forthwith sends a notice of the service and a copy of the process by registered mail to the defendant or respondent at such person's last address on file with the commissioner, and

(b) The plaintiff's affidavit of compliance with this paragraph is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

#### 399-A:4 Investigation of Application; License Requirements.

I. Upon the filing of the complete application for a small loan lender license, a payday loan lender license or a title loan lender license and payment of the required application fee, if the commissioner determines that the applicant's financial resources and responsibility, experience, character and general fitness, personnel, and record of past or proposed conduct warrant the public's confidence and that the business will be operated lawfully, honestly, and fairly within the purposes of this chapter, the commissioner shall enter an order approving such application and shall issue a license to the applicant and shall issue licenses to the applicant's branches to engage in the business of a small loan lender, payday loan lender, or title loan lender under and in accordance with the provisions of this chapter.

II. If a person holds a valid license under this section and is in compliance with this chapter and the rules adopted pursuant to this chapter, such licensee may renew the license by paying the required annual fee of \$450 for the principal license and \$450 for each branch office to the banking department on or before December 1st for the ensuing year that begins on January 1st. Failure to renew the license shall result in the license terminating on December 31st.

III. Each license shall specify the name and address of the licensee, the location of the office or branch, and shall be conspicuously displayed there in a public area of the location. In case such location is changed, the commissioner shall endorse the change of location on the license without charge.

IV. No licensee shall transact any business provided for by this chapter under a trade name or any other name different from the name stated in its license or branch office license without immediately notifying the commissioner, who shall then amend the license accordingly. Before the corporate, organization, or trade name under which the licensed business is conducted is changed, the lender shall give notice to the commissioner who shall amend the license accordingly without cost. The name or trade name of the licensee shall not be confusing to the public or conflict with any existing licensed lender's name.

V. No license shall be issued to any person whose principal place of business is located outside of this state unless that person designates an agent residing within this state for service of process. Licensees shall be required to post their license at the agent's New Hampshire business location.



VI. Persons licensed under this chapter are under a continuing obligation to update information on file with the commissioner. If any information filed with the commissioner becomes materially inaccurate, the licensee shall promptly submit to the commissioner an amendment to its application records that will correct the information on file with the commissioner. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

VII. A licensee who ceases to engage in the business of a small loan lender, payday loan lender, or title loan lender at any time during a license year for any cause, including but not limited to bankruptcy, license revocation, or voluntary dissolution, shall surrender such license in person or by registered or certified mail to the commissioner within 15 calendar days of such cessation.

VIII. Any licensee may surrender any license by delivering it to the commissioner with written notice of a surrender, but such surrender shall not affect administrative, civil, or criminal liability for acts committed prior thereto.

399-A:5 Consumer Credit Administration License Fund. The bank commissioner shall keep a separate account, in the state treasurer's office, to be known as the consumer credit administration license fund. Moneys received from payment of fees under this chapter shall be credited to the consumer credit administration license fund. This fund may be expended by the commissioner with the approval of the governor and council for the purpose of supervising persons subject to supervision and licensing by the consumer credit administration division of the banking department.

399-A:6 Reporting and Recordkeeping Requirements.

I.(a) Each licensee shall file, under oath, an annual report with the commissioner on or before February 1st each year concerning its business and operations for the preceding calendar year or license period ending December 31st in the form prescribed by the commissioner. A separate annual report shall be filed for each type of license held by the licensee.

(b) Each licensee shall also file, under oath, its financial statement with the commissioner within 60 days from the date of its fiscal year end. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall include a balance sheet, income statement, statement of changes in owners' equity, a cash flow statement and note disclosures. If the financial statement is not audited, a certification statement shall be attached and signed by a duly authorized officer of the sales licensee. The certification statement shall state that the financial statement is true and accurate to the best of the officer's belief and knowledge.

II. The commissioner shall publish an analysis of the information required in the licensee's annual report as part of the commissioner's annual report.

III. Any licensee failing to file either the annual report or the financial statement required by this section within the time prescribed shall pay to the commissioner a penalty of \$25 for each calendar day the annual report or financial statement is overdue.

IV. In addition to the annual report and financial statement required by this section, the commissioner may require such regular or special reports as the commissioner deems necessary to the proper supervision of licensees under this chapter.

V. A licensee who files an annual report under this section which fails to disclose or materially misstates loan contracts made during the reporting year may, in addition to any other penalty provided by law and after notice and opportunity for hearing pursuant to RSA 541-A, be subject to a fine of not more than \$1,000 and to license revocation or suspension.

VI. Each licensee shall keep and use such books and accounting records as are in accord with sound and accepted accounting practices and enable the commissioner to determine whether the licensee is complying with this chapter.

399-A:7 Denial, Suspension or Revocation of Licenses.

I. The commissioner may by order deny, suspend or revoke any license or application if the commissioner finds that the order is in the public interest and the applicant or licensee, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant or licensee:

(a) Has filed an application for licensing which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) Has made a false or misleading statement to the commissioner or in any reports to the commissioner;

(c) Has made fraudulent misrepresentations, has circumvented or concealed, through whatever subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to a borrower under the provisions of this chapter;

(d) Has failed to supervise its agents, managers or employees;

(e) Is the subject of an order entered within the past 5 years by this state, any other state or federal regulator denying, suspending or revoking licenses or registration;

(f) Is permanently, preliminarily, or temporarily enjoined by any court of competent jurisdiction from in engaging in or continuing any conduct or practice involving any aspect of lending or collection activities;

(g) Is not qualified on the basis of such factors as experience, knowledge, and financial integrity;

(h) Has engaged in dishonest or unethical practices in the conduct of the business of making or collecting small loans, payday loans, or title loans;

(i) Has violated this chapter or any rule or order thereunder or has violated applicable federal laws or rules thereunder; or

(j) For other good cause shown.

II. The commissioner may issue an order requiring the person to whom any license has been granted to show cause why the license should not be suspended or revoked. The order shall be calculated to give reasonable notice of the opportunity for hearing, and shall state the reasons for the issuance of the order.

III. If a licensee is a partnership, association, corporation, or entity however organized, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed association or corporation or any member of a licensed partnership has so acted or failed to act on behalf of said licensee as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for supervision of its branch offices and for the acts of any or all of his or her employees while acting as his or her agent if such licensee, after actual knowledge of such acts, retained the benefits, proceeds, profits or advantages accruing from such acts or otherwise ratified such acts.

IV. Any license revocation, suspension, or unfavorable action by the department on a license shall comply with the provisions of RSA 541-A. An aggrieved licensee may, pursuant to RSA 541-A and RSA 541, appeal an unfavorable action by the department. The department may take action for immediate suspension of a license, pursuant to RSA 541-A.

V. If the commissioner finds that any licensee or applicant for license is no longer in existence or has ceased to do business as a small loan lender, payday loan lender, or title loan lender, or cannot be located after reasonable search, the commissioner may by order revoke the license or deny the application. The commissioner may deem abandoned and withdraw any application for licensure made pursuant to this chapter, if any applicant fails to respond in writing within 180 days to a written request from the commissioner requesting a response. Such request shall be sent via certified mail to the last known address of the applicant that is on file with the commissioner.

VI. No revocation, suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any obligors, and such contracts and all lawful charges thereon may be collected by the licensee, its successors and assigns.

399-A:8 Cease and Desist Orders. The banking department may issue a cease and desist order against any licensee or person who it has reasonable cause to believe has violated or is about to violate the provisions of this chapter or any rule or order under this chapter. Delivery of such order shall be by hand or registered mail at the principal office of the licensee or other person. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. A hearing shall be held not later than 10 days after the request for such hearing is received by

the commissioner after which and within 20 days of the date of the hearing the commissioner shall issue a further order vacating the cease and desist order or making it permanent as the facts require. All hearings shall comply with 541-A. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him or her upon consideration of the cease and desist order, the allegations of which may be deemed to be true. If the person to whom a cease and desist order is issued fails to request a hearing within 30 calendar days of receipt of such order, then such person shall likewise be deemed in default, and the order shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown.

#### 399-A:9 Consumer Inquiries.

I. Consumer complaints naming licensees under this chapter, which are filed in writing with the office of the bank commissioner, shall be forwarded via certified or registered mail to the licensee for response within 10 days of receipt by the department. Licensees shall, within 30 days after receipt of such complaint, send a written acknowledgement thereof to the consumer and the banking department. Not later than 60 days following receipt of such complaint, the licensee shall conduct an investigation of the complaint and either:

(a) Make appropriate corrections in the account of the consumer and transmit to the consumer and the banking department written notification of such corrections, including documentary evidence thereof; or

(b) Transmit a written explanation or clarification to the consumer and the banking department which sets forth, to the extent applicable, the reasons why the licensee believes its actions are correct, including copies of documentary evidence thereof.

II. A licensee who fails to respond to consumer complaints as required by this section within the time prescribed shall pay to the commissioner the sum of \$50 for each day such response is overdue. For purposes of this section, the date of transmission shall be the date such response is received by the commissioner.

III.(a) Licensees who because of extenuating circumstances beyond the control of the licensee, are unable to comply with the time frames prescribed in this section, may make written request to the commissioner for a waiver of such time frames. Waivers shall not be granted or considered unless the request for the waiver:

(1) Is received by the banking department within 50 days following the licensee's receipt of the complaint;

(2) Specifies the reason for the request; and

(3) Specifies a date certain by which the licensee shall comply with the provisions of this section.

(b) Requests for waivers shall be either granted or denied within 5 days of receipt by the banking department.

#### 399-A:10 Examinations and Investigations.

I. The commissioner or the commissioner's duly authorized representative may at any time, and shall periodically, with or without notice to the licensee or person, examine the business affairs of any licensee or any other person subject to this chapter, whether licensed or not, as the commissioner deems necessary to determine compliance with this chapter and the rules adopted pursuant to it. In determining compliance, the commissioner or the duly authorized representative may examine the books, accounts, records, files, and other documents, whether electronically stored or otherwise, and any other matters of any licensee or person. The commissioner or the duly authorized representative shall have and be given free access to the office and places of business, files, safes, and vaults of all such persons, and shall have authority to require the attendance of any person and to examine him or her under oath relative to such loans or such business or to the subject matter of any examination or investigation and shall have authority to require the production of books, accounts, papers, and records of such persons.

II. Every person being examined, and all of the officers, directors, employees, agents, and representatives of such person shall make freely available to the commissioner or the commissioner's examiners the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination and shall facilitate the examination. The expense of such examination shall be chargeable to and paid by the licensee or person being examined. The procedure for such payment shall be the same as for payments by institutions for cost of examinations under RSA 383:11.

III. Those licensees or persons that maintain their files and business documents in another state shall appoint a New Hampshire agent and shall return such files and documents to their principal New Hampshire office or the office of their New Hampshire agent for examination no later than 21 calendar days after being requested to do so by the banking department. Failure to provide files and documents within the time established by this paragraph shall subject a licensee or person to a fine of \$50 per day for each day after 21 days the files and documents are not produced. Failure to provide files and documents within 60 days after being requested to do so by the banking department shall be sufficient cause for license revocation, suspension, or denial or other penalties under this chapter.

IV. The commissioner or the commissioner's duly authorized representative may investigate at any time any person that the commissioner reasonably believes is engaged in the business of making small loans, payday loans, or title loans, or participating in such business as principal, agent, broker, or otherwise; or any person who the commissioner has reasonable cause to believe is violating or is about to violate any provision of this chapter, or any rule or order under this chapter, whether such person shall claim to be within the authority or beyond the scope of this chapter. Any person not exempt hereunder who shall advertise for, solicit or hold himself or herself out as willing to make or procure small loans, payday loans, or title loans shall be presumed to be engaged in the business of making such loans.

V. In any investigation to determine whether any person has violated or is about to violate this chapter or any rule or order under this chapter, upon the commissioner's finding that the person violated this chapter or a rule or order under this chapter, or the person charged with the violation being found in default, the commissioner shall be entitled to recover the cost of the investigation, in addition to any other penalty provided for under this chapter.

VI. If the commissioner or examiner finds any accounts or records to be inadequate, or kept or posted in a manner not in accordance with generally accepted accounting principles, the commissioner may employ experts to reconstruct, rewrite, post or balance them at the expense of the person being examined if such person has failed to maintain, complete or correct such records or accounting after the commissioner or examiner has given him or her written notice and a reasonable opportunity to do so.

VII. Any individual who refuses without just cause to be examined under oath or who willfully obstructs or interferes with the examiners in the exercise of their authority pursuant to this section shall be guilty of a misdemeanor.

VIII.(a) Upon receipt of a written report of examination, the licensee shall have 30 days or such additional reasonable period as the commissioner for good cause may allow, within which to review the report, recommend any changes and set forth in writing the remedial course of action the licensee will pursue to correct any reported deficiencies outlined in the report.

(b) If so requested by the person examined, within the period allowed in subparagraph (a), or if deemed advisable by the commissioner without such request, the commissioner shall hold a closed hearing relative to the report and shall not file the report in the department until after such closed hearing and issuance of his or her order thereon. If no such closed hearing has been requested or held, the examination report, with such modifications, if any, thereto as the commissioner deems proper, shall be accepted by the commissioner and filed upon expiration of the review period provided for in subparagraph (a). The report shall in any event be so accepted and filed within 6 months after final hearing thereon.

(c) All reports pursuant to this section shall be absolutely privileged and although filed in the department as provided in subparagraph (b) shall nevertheless not be for public inspection. The comments and recommendations of the examiner shall also be deemed confidential information and shall not be available for public inspection.

399-A:11 Provisions Applicable to all Persons under this Chapter.

I. Any loan made outside this state, as permitted by the laws of the state in which the loan was made, may be collected in this state in accordance with its terms.

II. No person making small loans, payday loans, or title loans, shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever, any statement or representation with regard to the rates, terms, or conditions which is false, misleading or deceptive.

III. This chapter, or any part thereof may be modified, amended, or repealed so as to effect a cancellation or alteration of any license, or right of a licensee hereunder, provided that such modification, amendment or repeal shall not impair or affect the obligation of any pre-existing lawful contracts between any licensee and any borrowers.

IV. No interest shall be paid, deducted, or received in advance. Interest shall not be compounded and interest shall be computed only on unpaid principal balances. For the purpose of computing interest, whether at the maximum rate or less, a month shall be considered a calendar month and, where a fraction of a month is involved, a day shall be considered 1/30 of a month. However, if all or any part of the consideration for a loan contract is the unpaid principal balance of the prior loan with the same licensee then the loan contract may include unpaid interest of such prior loan which has accrued within 60 days of the making of the loan contract.

V. If charges in excess of those permitted by this chapter shall be charged, contracted for or received except as a result of an accidental or bona fide error the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, charges or recompense whatsoever.

VI. No person shall take any confession of judgment or any power of attorney running to himself, herself, or any third person to confess judgment or to appear for the borrower in a judicial proceeding; nor take any note, agreement, or promise to pay which does not disclose the date and amount or maximum credit line of the note or agreement, a schedule or description of the payments to be made thereon, and the agreed charges or rates of charge; nor take any instrument in which blanks are left to be filled in after the loan is made.

VII. No person shall include any of the following provisions in a small loan, payday loan, or title loan contract:

- (a) A hold-harmless clause;
- (b) A confession of judgment or other waiver of the right to notice and the opportunity to be heard in an action;
- (c) An agreement by the consumer not to assert any claim or defense arising out of the contract against the lender or any holder in due course;
- (d) An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held by, owned by or due to the consumer, unless the waiver or limitation applies only to property subject to security interest executed in connection with the loan; or
- (e) A clause permitting the continuation of interest after repossession of the consumer's motor vehicle.

VIII. No person shall be permitted to accept as collateral on a loan under this chapter:

- (a) Real estate; or
- (b) Household furniture presently in use on loans of \$2,000 or less.

IX. Any agreement purporting to convey to a licensee a security interest in the property listed in paragraph VII shall be null and void.

X. If a borrower desires to renew an existing closed-end loan, payday loan, or title loan for the purpose of obtaining additional cash a new contract shall be drawn up in its entirety and such prior loan shall be paid in full from such proceeds of the new loan. All legal papers in connection with such prior loan shall be stamped "PAID IN FULL" and returned to such borrower.

XI. No charge for any examination, service, brokerage, commission, or other fee shall be directly or indirectly made or contracted for on closed-end loans, payday loans, or title loans except the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer, for filing or recording in any public office any instrument securing such loan, which fees may be collected when such loan is made, or at any time thereafter and except the reasonable costs, charges, and expenses, including court costs actually incurred in connection with a repossession of the security or an actual sale of the security in foreclosure proceedings or upon entry of judgment.

XII. Credit life insurance, credit accident and health insurance, and credit involuntary unemployment insurance may be issued in connection with a loan or other credit transaction authorized by this chapter in compliance with the provisions of RSA 408:15, II and the cost of such insurance and any commission, benefit or return to the licensee therefrom shall not be deemed a violation of any provision of this chapter; provided, however, that if there is more than one borrower or obligor on any such loan or credit transaction, credit life insurance providing a single benefit may cover both borrowers or obligors.

XIII. The licensee may require a borrower to insure tangible personal property given to secure the loan against any substantial risk of loss, damage, or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is less, and for the customary insurance term

approximating the term of the loan. The borrower shall not be required to insure against unusual or exceptional risks not ordinarily insured against in policies issued to nonborrowers. The premium for such insurance may be included in the principal amount of the loan. Such insurance shall be written by or through a duly licensed insurance agent or broker with a company qualified to do business in New Hampshire. Such insurance shall name the borrower as insured but may include the licensee as co-insured or protect the interest of the licensee under a loss-payable clause. No licensee shall require a borrower to duplicate or cancel existing insurance or to purchase insurance from a licensee or any employee, affiliate, or associate of the licensee or from any agent, broker, or insurance company designated by the licensee, as a condition precedent to the making of the loan.

XIV. A lender in the business of making small loans, payday loans, or title loans shall include in every loan contract a notice, printed in type size equal to at least 12-point type, stating that the consumer or the consumer's attorney may file a complaint with the commissioner.

#### 399-A:12 Provisions Applicable to Loans.

I. For any closed-end loan of \$10,000 or less, excluding charges, a licensee may lend in money, goods or things of value upon such security not forbidden by RSA 399-A:12, VIII as may be agreed upon and may charge, contract for and receive charges on the entire principal of the loan, at rates agreed to in writing by the borrower and licensee.

II. For any open-end loan with a line of credit of \$10,000 or less, excluding charges, a licensee may charge, contract for and receive charges on the unpaid balances of the account at rates agreed to in writing by the borrower and the licensee.

III. No small loan lender shall permit any person to be obligated to him or her on one or more contracts of loan the total principal balance of which is more than \$10,000.

IV. For the purpose of applying paragraphs II and III of this section only, small loan lender licensee shall mean any single small loan lender, except that in the event any person or affiliated group of persons holds more than one small loan lender license, such person or affiliated group of persons shall be considered a single small loan lender licensee.

V. No small loan lender shall induce any potential borrower who is not a loan customer of the licensee to enter into a closed-end loan agreement, by delivering in the first instance a negotiable check for such loan to such potential borrower, without including the following information clearly printed on the endorsement side of the check:

(a) A statement which reads, "By endorsing this check, you become legally liable for repaying all moneys, including interest, as specified in the following loan agreement/disclosure statement;"

(b) The amount financed;

(c) The annual percentage rate;

(d) The number of installments; and

(e) The amount of each installment payment.

VI. Every small loan lender shall:

(a) Mail or deliver to the borrower, or if more than one, to one of them, at the time of making a loan under this chapter, a payment book in which space shall be provided for the record of all payments showing principal, interest and balance and which shall contain statements showing the date of such loan; the amount of the principal of such loan; the total interest charged for the period of such loan; the nature of the security, if any, for such loan; the name and address of the borrower and of the licensee; and the description of schedule of payments on such loans. The payment book shall also have printed therein the following:

"Interpretation of Interest Charges in the Event Payments are Made when Due.

2% per month = 24% per year or \$13.47 per year on \$100

1 1/2% per month = 18% per year or \$10.01 per year on \$100"

Provided, however, a licensee may provide a borrower with a monthly billing statement in lieu of a payment book and the information required above, if the licensee has previously made a disclosure in accordance with the Federal Truth-in-Lending Act;

(b) Give to the person making any cash payment on account of any closed-end loan a receipt at the time such payment is made;

(c) Permit payment in advance in an amount equal to one or more full installments at any time during the regular business hours of the licensee;

(d) Upon repayment of a closed-end loan in full, mark plainly every note or other evidence of the indebtedness or assignment signed by an obligor or a copy of any of the foregoing documents with the words "PAID IN FULL" or "CANCELLED" and release or provide the borrower evidence to release any mortgage or security instrument no longer securing any indebtedness to the licensee. If the original is retained by the lender, the original shall be returned within a reasonable period of time upon the written request of the borrower;

(e) Upon repayment of an open-end loan in full, written notice from the borrower to the licensee of termination of such loan and surrender to the licensee of any checks or other device used to obtain credit; mark plainly every note, agreement or assignment signed by an obligor, with the words "PAID IN FULL" or "CANCELLED" and release or provide the borrower evidence to release any mortgage or security instrument no longer securing any indebtedness to the licensee.

VII. No lender shall conduct the business of making loans under this chapter at any office, suite, room, or place of business where liquor or lottery tickets are sold.

#### 399-A:13 Provisions Applicable to Payday Loan Lenders.

I. Each licensee shall conspicuously post in its licensed location a schedule of fees and interest charges, with examples using a \$300 loan payable in 14 days and 30 days.

II. Each payday loan shall be evidenced by a written loan agreement, which shall be signed by the borrower and a person authorized by the licensee to sign such agreements and dated the same day the loan is made and disbursed. The loan agreement shall set forth, at a minimum:

(a) The principal amount of the loan;

(b) The fee charged;

(c) The annual percentage rate, which shall be stated using that term, applicable to the transaction calculated in accordance with Federal Reserve Board Regulation Z;

(d) Evidence of receipt from the borrower of a check, dated the same date, as security for the loan, stating the amount of the check;

(e) An agreement by the licensee not to present the check for payment or deposit until a specified maturity date, which date shall be at least 7 days after the date the loan is made and after which date interest shall not accrue at a greater rate than 6 percent per year;

(f) An agreement by the licensee that the borrower shall have the right to cancel the loan transaction at any time before the close of business of the next business day following the date of the transaction by paying to the licensee, in the form of cash or other funds instrument, the amount advanced to the borrower; and

(g) An agreement that the borrower shall have the right to prepay the loan prior to maturity by paying the licensee the principal amount advanced and any accrued and unpaid fees.

III. The lender shall give a duplicate original of the loan agreement to the borrower at the time of the transaction.

IV. A lender shall not obtain any agreement from the borrower:

(a) Giving the lender or any third person power of attorney or authority to confess judgment for the borrower;

(b) Authorizing the lender or any third party to bring suit against the borrower in a court outside the state; or

(c) Waiving any right the borrower has under this chapter.

V. A lender shall not require, or accept, more than one check from the borrower as security for any loan at any one time.

VI. A licensee shall not cause any person to be obligated to the licensee in any capacity at any time in the principal amount of more than \$500.

VII. A lender shall not refinance, renew, or extend any loan.

VIII. A lender shall not cause a borrower to be obligated upon more than one loan at any time for the purpose of increasing charges payable by the borrower.

IX. A lender shall not require or accept a post-dated check as security for, or in payment of, a loan.

X. A lender shall not threaten, or cause to be instigated, criminal proceedings against a borrower if a check given as security for a loan is dishonored.

XI. A lender shall not take an interest in any property other than a check payable to the licensee as security for a loan.

XII. A lender shall not make a loan to a borrower to enable the borrower to pay for any other product or service sold at the licensee's business location.

XIII. Loan proceeds shall be disbursed in cash or by the lender's business check. No fee shall be charged by the lender or an affiliated check cashier for cashing a loan proceeds check.

XIV. A check given as security for a loan shall not be negotiated to a third party.

XV. Upon receipt of a check given as security for a loan, the lender shall stamp the check with an endorsement stating "This check is being negotiated as part of a payday loan pursuant to RSA 399-A, and any holder of this check takes it subject to all claims and defenses of the maker."

XVI. Before entering into a payday loan, the lender shall provide each borrower with a pamphlet, in form consistent with regulations promulgated by the commissioner, explaining in plain language the rights and responsibilities of the borrower and providing a toll-free number in the banking department for assistance with complaints.

XVII. Before disbursing funds pursuant to a payday loan, a lender shall provide a clear and conspicuous printed notice to the borrower indicating that a payday loan is not intended to meet long-term financial needs and that the borrower should use a payday loan only to meet short-term cash needs.

XVIII. A borrower shall be permitted to make partial payments, in increments of not less than \$50 on the loan at any time prior to maturity without charge. The licensee shall give the borrower signed, dated receipts for each payment made, which shall state the balance due on the loan.

399-A:14 Provisions Applicable to Title Loan Lenders. A title loan lender shall not:

I. Charge the consumer more than one fee for dishonored checks when the consumer issues more than one check to the lender. However, the title loan lender may recover from the consumer any fee charged to the lender by an unaffiliated financial institution for each dishonored check;

II. Make more than one outstanding loan that is secured by one title;

III. Make a title loan without providing the borrower within the title loan agreement the right to cancel the title loan at any time before the close of business of the next business day following the date of the transaction by repaying to the licensee in cash the amount advanced to the borrower.

IV. Offer, advertise, or make a loan with a rate of interest that is lower in the original period than in subsequent renewals.

399-A:15 Title Loan Renewals. A title loan shall be for an original term of no more than 60 days. A title loan lender may allow such loan to be renewed no more than 9 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. No accrued interest shall be capitalized or added to the principal of the loan at the time of any renewal.



**399-A:16 Powers of the Commissioner.**

I. The commissioner shall have the power to subpoena witnesses and administer oaths in any adjudicative proceeding and to compel, by subpoena duces tecum, the production of documents, papers, books, records, files and other evidence, whether electronically stored or otherwise, before the commissioner in any matter over which the commissioner has jurisdiction, control or supervision pertaining to the provisions of this chapter. The commissioner shall have the power to administer oaths and affirmation to any person whose testimony is required. If any person shall refuse to obey any such subpoena or to give testimony or to produce evidence as required thereby, any justice of the superior court may, upon application and proof of such refusal, order the issuance of a subpoena, or subpoena duces tecum, out of the superior court, for the witness to appear before the superior court to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the superior court, the clerk shall issue such subpoena, as directed, requiring the person to whom it is directed to appear at the time and place therein designated. If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the commissioner may apply to any justice of the superior court who, after proof of such refusal, shall issue such citation, directed to any sheriff, for the arrest of such person, and, upon such person's being brought before such justice, proceed to a hearing of the case. The court shall have power to enforce obedience to such subpoena, and the answering of any question and the production of any evidence that may be proper, by a fine not exceeding \$10,000 or by imprisonment, or by both.

II. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the administration and enforcement of this chapter.

III. The commissioner may prepare, alter, or withdraw such forms as are necessary to comply with the provisions of this title.

IV. The commissioner may issue, amend, or rescind such orders as are reasonably necessary to carry out the provisions of this chapter.

V. The commissioner may, for good cause shown, abate all or a portion of delinquency penalties assessed under this chapter.

VI. All actions taken by the commissioner pursuant to this chapter shall be taken only when the commissioner finds such action necessary or appropriate to the public interest or for the protection of consumers and consistent with the purposes fairly intended by the policy and provisions of this title.

**399-A:17 Records and Filings.**

I. A document is filed when it is received by the commissioner. If any filing deadline date falls on a weekend or on a New Hampshire state or federal legal holiday, the due date shall be automatically extended to the next business day following such weekend or holiday.

II. Electronic filings, when received by the commissioner, are deemed filed, and are prima facie evidence that a filing has been duly authorized and made by the signatory on the application or document, are admissible in any civil or administrative proceeding under this chapter, and are admissible in evidence in accordance with the rules of superior court in any action brought by the attorney general under this chapter.

III. A licensee may maintain its records in electronic format if, upon request, the licensee provides the commissioner with:

(a) A full explanation of the programming of any data storage or communications systems in use; and

(b) Information from any books, records, electronic data processing systems, computers, or any other information storage system in the form requested by the commissioner.

**399-A:18 Penalties.**

I. Any person and the several members, officers, directors, agents, and employees thereof who shall knowingly violate any provision of this chapter, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

II. Any person violating the provisions of RSA 399-A:12 through RSA 399-A:15 or engaging in the business of a small loan lender, payday loan lender, or title loan lender without first obtaining a license if a license is required under this chapter shall be barred from recovering any finance charge, delinquency, or collection charge on the contract.

III. Any person who knowingly violates any rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to such suspension or revocation of any registration or license, or administrative fine not to exceed \$2,500 for each violation in lieu of or in addition to such suspension or revocation as may be applicable under this title for violation of the provision to which such rule or order relates. Each of the acts specified shall constitute a separate violation.

IV. Any person who negligently violates any rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to such suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or administrative fine not to exceed \$1,500 for each violation in lieu of or in addition to such suspension or revocation as may be applicable under this title for violation of the provision to which such rule or order relates. Each of the acts specified shall constitute a separate violation.

V. Any person who, either knowingly or negligently, violates any provision of this chapter may, upon notice and opportunity for hearing, and in addition to any such other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, including forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and each such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed.

VI. Every person who directly or indirectly controls a person liable under this section, every partner, principal executive officer or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act constituting the violation, and every licensee or person acting as a common law agent who materially aids in the acts constituting the violation, either knowingly or negligently, may, upon notice and opportunity for hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed. No person shall be liable under this paragraph who shall sustain the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist.

399-A:19 Review. In addition to any other available remedy, any person considering himself or herself aggrieved by any act or omission of the commissioner may, within 30 days from the date of such act, or failure to act, bring an action in the superior court to review such act, or failure to act. The hearing before the court shall be based on the record before the commissioner and his or her findings and on such new evidence as may be introduced.

42 Effective Date. This act shall take effect 30 days after its passage.

**2003-1736s**

#### AMENDED ANALYSIS

This bill makes various changes to the laws governing first and second mortgage brokers and providers of mortgage services.

This bill also defines and regulates small loans, title loans, and payday loans.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 135-FN-L**, relative to charter schools. Education Committee. Ought to pass with amendment, Vote 3-2. Senator O'Hearn for the committee.

**Senate Education**

**May 15, 2003**

**2003-1664s**

**04/10**

#### **Amendment to HB 135-FN-LOCAL**

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

1 New Section; Pilot Program; Charter Schools and Open Enrollment Schools; Alternative Procedure for Approval of Charter Schools. Amend RSA 194-B by inserting after section 3 the following new section:

194-B:3-a Charter School Approval by State Board of Education; Pilot Program.

I. There is established a 10-year pilot program which authorizes the state board of education to grant charter status under this section. Beginning July 1, 2003, the state board of education shall be authorized to grant no more than 20 state charter school applications during the 10-year pilot program.

II. The proposed charter school application shall be presented for approval directly to the state board of education by the applicant for the prospective charter school no later than June 15 annually. The content of such application shall conform to the requirements set forth in RSA 194-B:3, II(a)-(bb). The department of education shall notify an applicant of any missing information within 10 days of the initial filing or by June 30, whichever is earlier. The applicant shall have until July 15 to refile an application.

III. The department of education may forward the proposed application to the applicant, along with a written statement detailing any suggested amendments or modifications.

IV. By September 30 of the given year, the state board of education shall either approve or deny an application based on the criteria set forth in RSA 194-B:1-a. Approval of an application constitutes the granting of charter status and the right to operate as a charter school. The state board of education shall notify all applicants of its decision, and shall include in any notice of denial a statement that the applicant may reapply under RSA 194-B:3, RSA 194-B:4, or under this section in a subsequent year.

V.(a) The following provisions of law shall not apply to charter school applications proposed under this section, or to charter schools granted approval for operation under this section:

- (1) RSA 194-B:3, II(cc).
- (2) RSA 194-B:3, III-IV.
- (3) RSA 194-B:3, XI.
- (4) RSA 194-B:4.
- (5) RSA 194-B:15, II.

(b) Except as provided in this paragraph, the provisions of RSA 194-B shall apply to charter schools approved for operation by the state board of education under this section.

(c) Not more than 10 percent of the resident pupils in any grade shall be eligible to transfer to a charter school in any school year without the approval of the local school board.

2 Charter School Funding. Amend RSA 194-B:11, I to read as follows:

I. There shall be no tuition charge for any pupil attending an open enrollment or charter conversion school located in that pupil's resident district. Funding limitations in this chapter shall not be applicable to charter conversion or open enrollment schools located in a pupil's resident district. For any other charter or open enrollment school **authorized by the school district**, the pupil's resident district shall pay to such school an amount equal to not less than 80 percent of that district's average cost per pupil as determined by the department of education using the most recent available data as reported by the district to the department. **For any charter school authorized by the state board of education, the pupil's resident district shall pay tuition in an amount not less than the base cost per pupil as determined in RSA 198:40, as adjusted for grade level weights set forth in RSA 198:38, VII.** Tuition amounts shall be prorated on a per diem basis for pupils attending a school for less than a full school year. To the extent permitted by law, ~~[funding for a pupil attending a charter or open enrollment school shall be paid on the same time schedule as the resident district,]~~ **tuition payments shall coincide with the distribution of adequacy grants under RSA 198:42** or on such other terms as ~~[the school and the funding source may find]~~ **are** mutually acceptable.

3 New Paragraphs; Charter School Funding. Amend RSA 194-B:11 by inserting after paragraph VIII the following new paragraphs:

IX.(a) The pupil's resident school district or department of education shall pay tuition in cash or may issue reimbursement anticipation notes as set forth in RSA 198:20-d for each year in which a resident pupil attends a charter school. Unless otherwise agreed upon, cash payment shall coincide with the schedule for grant payment set forth in RSA 198:42. The reimbursement anticipation note shall be in the amount specified for the year of attendance at the charter school, and shall be issued to the charter school prior to the beginning of the school year of the charter school. Each reimbursement anticipation note issued shall be for a term of 3 years from the date of issue or may be redeemable by the charter school at such time as the charter school or the pupil's resident school district receives adequate education grant amounts pursuant to RSA 198:42.

(b) Upon receipt of such reimbursement anticipation notes, the charter school may elect to borrow funds for the purpose of meeting general operating and maintenance expenses for charter school operations.

X. A charter school may operate as a separate local educational agency for the purposes of federal law.

XI. There shall be an appropriation in the fiscal year beginning on July 1, 2003 for the establishment of charter schools under this section. Charter schools which are eligible for grants under this program shall match funds provided by the state through private contributions in order to receive funding that exceeds the state's average per pupil cost for the grade level weight of the pupil. State funds shall be provided in addition to any other sums provided by the state. Grants under this section shall be administered and determined by the state board of education who shall have the authority to develop a grant application, written procedures and criteria used to determine eligibility for grants, and procedures for the administration of grants by recipients, including reporting requirements. The total grants provided under this program shall not exceed the amount of money appropriated in the budget, or transferred, or provided by gift or grant to the state for this purpose.

XII. Any money appropriated in the budget for matching charter school grants that remains unused after the department of education issues matching grants to eligible recipients under paragraph XI shall be used to provide a one-year transitional grant to public school districts that have lost pupils as a result of the establishment of a charter school, and have paid tuition to the charter school in cash pursuant to subparagraph IX(a). For the first year in which a public school pupil leaves the public school and enrolls in a charter school, the school district that loses the pupil shall be eligible for a charter school transitional grant of up to \$3,390 per pupil. Such transitional grants shall be administered by the state board of education which shall have the authority to determine eligibility and the amount of money to be awarded to school districts under this section, subject to the amount appropriated in the budget.

4 New Paragraph; Charter and Open Enrollment Schools; Duties of the Board of Trustees. Amend RSA 194-B:5 by inserting after paragraph V the following new paragraph:

VI. The meetings and proceedings of the board of trustees shall be held in public session pursuant to RSA 91-A:2, except for those meetings or proceedings designated as nonpublic sessions as defined in RSA 91-A:3, II.

5 New Paragraph; Charter Schools; Grievance Procedures. Amend RSA 194-B:15 by inserting after paragraph II the following new paragraph:

III. An individual or group aggrieved by a decision of the board of trustees of a charter school authorized under RSA 194-B:3-a shall first present their complaint to the board of trustees. If the board's decision remains unfavorable, an individual or group may appeal such decision in accordance with the same procedure for adjudicating disputes between an individual and a local school board.

6 New Paragraph; Charter Schools; Authority and Duties of Board of Trustees. Amend RSA 194-B:5 by inserting after paragraph IV the following new paragraph:

IV-a. For charter schools authorized under RSA 194-B:3-a, the board of trustees shall report to the state board of education, or their designee, on a quarterly basis regarding the charter school's progress in achieving its stated goals. The charter school may request technical assistance or advice from the department of education. The department of education shall assist the charter school in developing a quarterly report that is mutually acceptable, provided that each quarterly report shall include a financial statement. A copy of the quarterly report shall be available to participating school districts and parents of children attending the charter school.

7 Repeal. The following are repealed:

I. RSA 194-B:3-a, relative to direct approval of charter schools by the state board of education.

II. RSA 194-B:15, III, relative to a grievance procedure for charter schools authorized by the state board of education.

III. RSA 194-B:5, IV-a, relative to the reporting requirement for charter schools authorized by the state board of education.

8 Effective Date.

I. Section 7 of this act shall take effect July 1, 2013.

II. The remainder of this act shall take effect July 1, 2003.

**2003-1664s**

## AMENDED ANALYSIS

This bill establishes a 10-year pilot program for the approval of up to 20 charter schools by the state board of education and creates certain exemptions from existing law relative to the approval process, while subjecting charter schools approved by the state board of education to the same oversight and reporting requirements found in the existing charter school laws. The bill provides that funding for charter schools shall be through reimbursement anticipation notes or cash tuition payments directly payable to the charter school, and establishes a state matching grant program for charter schools. The bill also provides that a charter school shall be considered to be a public charter school and a separate local educational agency for the purposes of federal law and federal funding.

**Amendment adopted.**

Senator Larsen offered a floor amendment.

**Sen. Larsen, Dist. 15**

**May 21, 2003**

**2003-1760s**

**04/10**

**Floor Amendment to HB 135-FN-LOCAL**

Amend RSA 194-B:11, I as inserted by section 2 of the bill by replacing it with the following:

I. There shall be no tuition charge for any pupil attending an open enrollment or charter conversion school located in that pupil's resident district. Funding limitations in this chapter shall not be applicable to charter conversion or open enrollment schools located in a pupil's resident district. For any other charter or open enrollment school *authorized by the school district*, the pupil's resident district shall pay to such school an amount equal to not less than 80 percent of that district's average cost per pupil as determined by the department of education using the most recent available data as reported by the district to the department. *For any charter school authorized by the state board of education, the state shall pay tuition, from funds appropriated under paragraph XI of this section, in an amount not less than the base cost per pupil as determined in RSA 198:40, as adjusted for grade level weights set forth in RSA 198:38, VII.* Tuition amounts shall be prorated on a per diem basis for pupils attending a school for less than a full school year. To the extent permitted by law, ~~funding for a pupil attending a charter or open enrollment school shall be paid on the same time schedule as the resident district,~~ *tuition payments shall coincide with the distribution of adequacy grants under RSA 198:42* or on such other terms as ~~the school and the funding source may find~~ *are* mutually acceptable.

2003-1760s

## AMENDED ANALYSIS

This bill establishes a 10-year pilot program for the approval of up to 20 charter schools by the state board of education and creates certain exemptions from existing law relative to the approval process, while subjecting charter schools approved by the state board of education to the same oversight and reporting requirements found in the existing charter school laws. The bill provides that funding for charter schools shall be through reimbursement anticipation notes, cash tuition payments directly payable to the charter school, or state funds if the charter school is authorized by the state board of education, and establishes a state matching grant program for charter schools. The bill also provides that a charter school shall be considered to be a public charter school and a separate local educational agency for the purposes of federal law and federal funding.

**Question is on the adoption of the floor amendment.**

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

**Seconded by Senator D'Allesandro.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 6 - Nays: 17**

**Floor amendment failed.**

**Question is on the adoption of the bill as amended.**

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

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**The following Senators voted No: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 17 - Nays: 6**

**Adopted.**

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

**HB 608-FN-L**, reducing the education property tax rate and relative to the calculation of adequate education grants. Education Committee. Ought to pass with amendment, Vote 3-2. Senator O'Hearn for the committee.

### **Senate Education**

**May 15, 2003**

**2003-1656s**

**04/05**

#### **Amendment to HB 608-FN-LOCAL**

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

AN ACT relative to the funding of public education.

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

1 Education Property Tax; Rate Reduced. Amend RSA 76:3 to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate of [~~\$5.80~~] **\$4.87** on each \$1000 of the value of taxable property is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F.

2 State Enhanced Education Tax. RSA 76:3 is repealed and reenacted to read as follows:

76:3 State Enhanced Education Tax. An annual state enhanced education tax at the uniform rate of \$3.50 on each \$1,000 of the value of taxable property is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F.

3 State Enhanced Education Tax. RSA 76:3 is repealed and reenacted to read as follows:

76:3 State Enhanced Education Tax. Beginning July 1, 2005, and every fiscal year thereafter, the state enhanced education tax rate shall be determined in accordance with the calculation set forth in RSA 198:40-b, and such rate shall be imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F. The commissioner of the department of revenue administration shall set the rate which shall be effective for the fiscal year in which the calculation is made.

4 Assessment; Commissioner's Warrant; Commissioner's Report. Amend RSA 76:8 and 76:9 to read as follows:

76:8 Commissioner's Warrant.

I. The commissioner of revenue administration shall annually calculate the proportion of **state enhanced** education [~~property~~] tax to be raised by each municipality by multiplying the uniform education property tax rate by the total equalized value of all property in the municipality as determined under RSA 21-J:3, XIII for the preceding year, except property taxable under RSA 82 or RSA 83-F.

II. The commissioner shall issue a warrant under the commissioner's hand and official seal for the amount computed in paragraph I to the selectmen or assessors of each municipality by December 15 directing them to assess such sum and pay it to the municipality for the use of the school district or districts and, if there is an excess **state enhanced** education tax payment due pursuant to RSA 198:46, directing them to assess the amount of the excess payment and pay it to the department of revenue administration for deposit in the education trust fund. Such sums shall be assessed at such times as may be prescribed for other taxes assessed by such selectmen or assessors of the municipality.

III. Municipalities are authorized to assess local property taxes necessary to fund school district appropriations not funded by the *state enhanced* education [property] tax, by distributions from the education trust fund under RSA 198:39, or by other revenue sources.

76:9 Commissioner's Report. The commissioner of revenue administration shall report to the governor, the speaker of the house of representatives, the president of the senate, and the commissioner of education each year on or before October 1, a statement of the *state enhanced* education [property] tax warrants to be issued for the tax year commencing April 1 of the succeeding year.

5 Utility Property Tax; Exemption. Amend RSA 83-F:9 to read as follows:

83-F:9 Exemption From State *Enhanced* Education [Property] Tax. Persons and property subject to taxation under this chapter shall not be subject to tax under RSA 76:3; provided, however, that nothing in this chapter shall be construed to exempt such persons or property from local school, municipal, district, or county taxation under RSA 76.

6 School Money; Education Trust Fund. Amend the introductory paragraph of RSA 198:39, I to read as follows:

I. The state treasurer shall establish an education trust fund in the treasury. Moneys in such fund shall not be used for any purpose other than to distribute adequate education grants to municipalities' school districts pursuant to RSA 198:42, and to provide *state enhanced* education [property] tax hardship relief under RSA 198:55. The state treasurer shall deposit into this fund immediately upon receipt:

7 School Money; Education Trust Fund. Amend RSA 198:39, I(g) to read as follows:

(g) The full amount of excess *state enhanced* education [property] tax payments from the department of revenue administration pursuant to RSA 198:46.

8 State Aid for Educational Adequacy; Definitions. RSA 198:38 is repealed and reenacted to read as follows:

198:38 Definitions. In this subdivision:

I. "Municipality" means a city, town, or unincorporated place.

II. "School district" means school district as defined in RSA 194:1 or RSA 195:1.

III. "Elementary school" means a school with any of the grades kindergarten through 8.

IV. "High school" means a school with any of the grades 9 through 12.

V. "Department" means the department of education.

VI. "Educationally disabled child" or "educationally disabled pupil" means an educationally disabled child as defined in RSA 186-C:2, I.

VII. "Average daily membership in attendance" means average daily membership in attendance as defined in RSA 189:1-d, III.

VIII. "Average daily membership in residence" and "resident pupils" mean the average daily membership in residence as defined in RSA 189:1-d, IV, except that no kindergarten pupil shall count as more than 1/2 day attendance per calendar day. Children who are home schooled pursuant to a home education program approved by the department in accordance with RSA 193-A shall not be included in this definition.

IX. "Transportation cost" means the cost of transporting pupils in grades kindergarten through grade 8 to and from school as reported by school districts on the DOE-25 form.

X. "Free or reduced-price meal" means the number of pupils in a school district in grades 1 through 12 who are eligible to receive a free or reduced-priced meal shall be calculated by multiplying each municipality's elementary average daily membership in residence by the percentage of elementary pupils eligible to receive a free or reduced-price meal in the district of residence.

9 State Aid for Educational Adequacy; Local Equalization Aid; Per Pupil Valuation. RSA 198:40 is repealed and reenacted to read as follows:

198:40 Local Equalization Aid. Beginning July 1, 2004, and every fiscal year thereafter, local equalization aid shall be calculated by the department as follows:

I. The total statewide equalized valuation of all municipalities including utilities, as determined by the department of revenue administration, shall be divided by the total statewide average daily membership in residence. The result shall be the statewide average equalized valuation per pupil.

II. The equalized valuation of all property in a municipality including utilities, as determined by the department of revenue administration, shall be divided by the average daily membership in residence in the municipality. The result shall be the local equalized valuation per pupil.

III. Eligibility for local equalization aid under this paragraph shall be determined as follows:

(a) If a municipality's local equalized valuation per pupil as calculated in paragraph II is equal to, or greater than, the statewide average equalized valuation per pupil as calculated in paragraph I, no local equalization aid shall be available.

(b) If a municipality's local equalized valuation per pupil as calculated in paragraph II is less than the statewide average equalized valuation per pupil as calculated in paragraph I, the municipality shall be entitled to receive local equalization aid in an amount equal to the following: subtract the local equalized valuation per pupil as calculated in paragraph II from the statewide average equalized valuation per pupil as calculated in paragraph I. This amount shall be multiplied by the average local education tax rate imposed statewide in the fiscal year in which this calculation is made, and the product shall be divided by 1,000. The result shall be multiplied by the average daily membership in residence in such municipality and shall be available to a municipality as local equalization aid.

10 New Sections; Targeted Per Pupil Aid; State Enhanced Education Aid. Amend RSA 198 by inserting after section 40 the following new sections:

198:40-a Targeted Per Pupil Aid.

I. A municipality with a local equalized valuation per pupil as calculated in RSA 198:40, II, which is less than or equal to 200 percent of the statewide average equalized valuation per pupil, as calculated in RSA 198:40, I, shall be eligible to receive targeted per pupil aid for such municipality's educationally disabled pupils, pupils eligible for free or reduced-price meals, English for speakers of other languages, and for such municipality's transportation costs which shall be determined by multiplying the statewide average equalized valuation per pupil, as calculated in RSA 198:40, I, by the average local education tax rate imposed statewide in the fiscal year in which this calculation is made. The product shall be divided by 1,000 resulting in a per pupil amount which shall be available to a municipality as follows:

(a) The per pupil amount calculated in paragraph I shall be multiplied by the average daily membership in residence of educationally disabled pupils in the municipality. This amount shall be available as targeted aid for educationally disabled pupils in the municipality.

(b) The per pupil amount calculated in paragraph I shall be multiplied by the average daily membership in residence eligible to receive a free or reduced-price meal in kindergarten through grade 12 in the school district. This amount shall be available as targeted aid for pupils eligible to receive a free or reduced-price meal in the municipality.

(c) The per pupil amount calculated in paragraph I shall be multiplied by the average daily membership in attendance receiving English for speakers of other languages services in the municipality. This amount shall be available as targeted aid for pupils in the municipality receiving English for speakers of other languages. In this subparagraph "average daily membership in attendance" shall be as defined in RSA 189:1-d, III.

(d) A municipality eligible to receive targeted per pupil aid under this paragraph shall also receive 100 percent of transportation costs in such municipality.

II. A municipality with a local equalized valuation per pupil, as calculated in RSA 198:40, II, which is greater than 200 percent of the statewide average equalized valuation per pupil as calculated in RSA 198:40, I shall not receive targeted per pupil aid under this section.

198:40-b State Enhanced Education Aid. Beginning July 1, 2005, and every fiscal year thereafter, state enhanced education aid shall be calculated by the department as follows:

I. Divide the total statewide equalized valuation of all municipalities excluding utilities, as determined by the department of revenue administration, by the total statewide average daily membership in residence. The result shall be the statewide average equalized valuation per pupil.

II. Divide the equalized valuation of all property in a municipality excluding utilities, as determined by the department of revenue administration, by the average daily membership in residence in the municipality. Multiply the result by the state enhanced education tax rate imposed in the fiscal year in which this calculation is made, and divide the product by 1,000. The result shall be the local equalized valuation per pupil.



III. Eligibility for state enhanced education aid under this paragraph shall be determined as follows:

(a) If a municipality's local equalized valuation per pupil as calculated in paragraph II is greater than or equal to the statewide average equalized valuation per pupil as calculated in paragraph I, no state enhanced aid shall be available.

(b) If a municipality's local equalized valuation per pupil as calculated in paragraph II is less than the statewide average equalized valuation per pupil as calculated in paragraph I, the municipality shall be entitled to receive state enhanced education aid in an amount equal to the following: subtract the local equalized valuation per pupil as calculated in paragraph II from the statewide average equalized valuation per pupil as calculated in paragraph I. This amount shall be multiplied by the state enhanced education tax imposed statewide in the fiscal year in which this calculation is made, and the product shall be divided by 1,000. The result shall be multiplied by the average daily membership in residence in such municipality and shall be available to a municipality as state enhanced education aid.

IV.(a) In any fiscal year, if the amount raised by the state enhanced education property tax in any municipality, except an unincorporated place or a town with an average daily membership in residence of one or less, exceeds the amount necessary to fund all local education costs as determined in such municipality's duly adopted school district budget, the excess shall be remitted to the department of revenue administration on or before March 15 of the tax year in which the excess occurs.

(b) The amount of such excess to be remitted shall not include any income derived from the investment of funds by the municipal treasurers under RSA 41:29 and RSA 48:16. Any funds remaining after full payment of the excess tax required in paragraph I shall become available for unrestricted use by the municipality.

(c) The commissioner of the department of revenue administration shall collect from the municipality the excess tax and pay the excess tax over to the state treasurer for deposit in the education trust fund established in RSA 198:39.

(d) The commissioner of the department of revenue administration shall calculate the excess amount owed by each municipality pursuant to paragraph I.

V. In any fiscal year, a municipality shall appropriate all state enhanced education aid funds received under this section to pay for local education costs before raising any additional local education tax revenues locally.

#### 198:40-c Total State Aid for Education.

I. Beginning July 1, 2004, and every fiscal year thereafter, the total state aid for education shall be determined as follows:

(a) The sum total of all local equalization aid as calculated under RSA 198:40 paid to all municipalities statewide; plus

(b) The sum total of all targeted aid as calculated under RSA 198:40-a paid to all municipalities statewide; plus

(c) The sum total of all state enhanced education aid as calculated under RSA 198:40-b.

II. In each fiscal year, the total aid calculated in paragraph I shall be adjusted by adding the average annual rate of inflation, as measured by the most recent available northeast region consumer price index for all urban consumers as published by the Bureau of Labor Statistics, United States Department of Labor. The resulting sum, expressed as a percentage, shall be added to 100 percent to yield an adjustment factor. The total state aid for education from the immediately preceding year shall be multiplied by the adjustment factor and the product shall be the adjusted total state aid for education.

III. In each fiscal year, the commissioner of the department of revenue administration shall determine, to the nearest cent, the state enhanced education tax rate that will match, as nearly as possible without exceeding, the amount raised statewide by the state enhanced education tax in fiscal year 2005.

IV. In any fiscal year in which the total state aid for education as calculated under this section would exceed the total state aid for education distributed to municipalities in the immediately preceding fiscal year as adjusted pursuant to paragraph II of this section, the total state aid for education shall be reduced to the amount distributed to municipalities in the immediately preceding fiscal year, as adjusted pursuant to paragraph II of this section, and the amount of the excess shall be deducted from each municipality's total state aid on a pro rata basis.

11 Determination of Adequate Education Grants. RSA 198:41 is repealed and reenacted to read as follows:

198:41 Determination of Adequate Education Grants.

I. Except for municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of education shall determine the amount of the adequate education grant for the municipality adding the all sums received by a municipality under RSA 198:40, RSA 198:40-a, and RSA 198:40-b, and subtracting from the sum the amount of the tax warrant issued by the commissioner of the department of revenue administration pursuant to RSA 76:9 for the next tax year.

II. For municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of education shall determine the amount of the adequate education grant for each municipality as the lesser of the two following calculations:

(a) The amount calculated in accordance with paragraph I of this section; or

(b) The total amount paid for items of current education expense as determined by the department of education minus the amount of the warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:9 for the next tax year.

12 School Money; Distribution of Adequate Education Grants. Amend RSA 198:42, II to read as follows:

II. For the fiscal year beginning July 1, 1999, and every fiscal year thereafter the amount necessary to fund the grants under RSA ~~[198:41]~~ **198:40-c** is hereby appropriated from the education trust fund created under RSA 198:39 to the department of education according to the following formula: from the amount calculated in accordance with RSA ~~[198:40, III]~~ **198:40-c**, subtract the aggregate amount of the *state enhanced* education ~~[property]~~ tax warrants to be issued by the commissioner of revenue administration for municipalities reported pursuant to RSA 76:9 for the next tax year. The governor is authorized to draw a warrant from the education trust fund to satisfy the state's obligation under this section. Such warrant for payment shall be issued regardless of the balance of funds available in the education trust fund. If the balance in the education trust fund, after the issuance of any such warrant, is less than zero, the commissioner of the department of administrative services shall inform the fiscal committee and the governor and council of such balance. This reporting shall not in any way prohibit or delay the distribution of adequate education grants.

13 Low and Moderate Income Homeowners Property Tax Relief. Amend RSA 198:57, III(a) to read as follows:

(a) Owns a homestead or interest in a homestead subject to the *state enhanced* education ~~[property]~~ tax;

14 Low and Moderate Income Homeowners Property Tax Relief. Amend RSA 198:57, IV(c) to read as follows:

(c) Multiply the lesser of the amount determined in subparagraph (a) or (b) by the ~~[current]~~ *state enhanced* education ~~[property]~~ tax rate as shown on the tax bill under RSA 76:11-a;

15 Excess Education Property Tax Payment; Subdivision Heading Amended. Amend the subdivision heading immediately preceding RSA 198:46 to read as follows:

Excess *State Enhanced* Education ~~[Property]~~ Tax Payment

16 Excess Education Property Tax Payment. Amend RSA 198:46, I to read as follows:

I. Municipalities for which the *state enhanced* education ~~[property]~~ tax exceeds the amount necessary to fund an adequate education determined by RSA 198:40 shall assess and remit such excess amount to the department of revenue administration on or before March 15 of the tax year in which the excess occurs.

17 Excess Education Property Tax Payment; Forms. Amend RSA 198:47 to read as follows:

198:47 Forms. The commissioner shall approve and provide forms relative to the reporting and remitting of excess *state enhanced* education ~~[property]~~ tax by the municipalities.

18 Alternative Kindergarten Programs. Amend RSA 198:48-a, VII-VIII to read as follows:

VII.(a) ~~[Upon the effective date of this paragraph, and for]~~ **For** each fiscal year through June 30, 2003, an adequate education grant of \$1200 per pupil shall be distributed to school districts, from the education trust fund created in RSA 198:39, for the education of its resident kindergarten pupils enrolled in an approved alternative kindergarten program established under this section.

(b) Once pupils enrolled in an approved alternative kindergarten program have been counted in the average daily membership in residence, school districts shall receive, for each such pupil, an adequate education grant calculated in accordance with ~~[RSA 198:40 through RSA 198:42]~~ **RSA 198:41**.

VIII. Notwithstanding the provisions of this section, alternative kindergarten programs which were approved and in effect prior to April 29, 1999 may continue to operate and shall continue to receive per pupil adequate education grant amounts in accordance with RSA ~~[198:40 through RSA 198:42]~~ **198:41**.

19 School Boards, Teachers; Definitions Amended. RSA 189:1-d is repealed and reenacted to read as follows:

189:1-d Definitions. In this chapter:

I. "Attendance" means full-time participation in a program of instruction under the direction of a teacher employed by the school district. Educationally disabled home educated pupils educated at school district expense under the direction of a teacher employed by the school district shall be included.

II. "Membership" means pupils of whom attendance is expected, whether a pupil is present or absent on any given day.

III. "Average daily membership in attendance" means the aggregate half-day membership of pupils attending schools operated by a school district divided by the number of half-days of instruction offered. The average daily membership in attendance for preschool and kindergarten pupils shall be divided by the number of instructional days offered to higher level elementary grades.

IV. "Average daily membership in residence" means the average daily membership in attendance of pupils who are legal residents of the school district pursuant to RSA 193:12 or RSA 193:27, IV and are attending any public school, or who are attending any charter school or private school program approved by the department of education at the expense of the school district.

20 Procedure for Formation of Cooperative School Districts; Apportioning Operating Expenses; Exclusion of Home Education Pupils Deleted. Amend RSA 195:18, III(e) to read as follows:

(e) The method of apportioning the operating expenses of the cooperative school district among the several preexisting districts and the time and manner of payment of such shares. ~~[Home education pupils who do not receive services from the cooperative school district, except an evaluation pursuant to RSA 193-A:6, II shall not be included in the average daily membership relative to apportionment formulas.]~~

21 Procedure for Formation of Cooperative School Districts; Apportioning Capital Expenses; Exclusion of Home Education Pupils Deleted. Amend RSA 195:18, III(g) to read as follows:

(g) The method of apportioning the capital expenses of the cooperative school district among the several preexisting districts, which need not be the same as the method for apportioning operating expenses, and the time and manner of payment of such shares. Capital expenses shall include the costs of acquiring land and buildings for school purposes, including property owned by a preexisting district; the construction, furnishing, and equipping of school buildings and facilities; and the payment of the principal and interest of any indebtedness which is incurred to pay for the same or which is assumed by the cooperative school district. ~~[Home education pupils who do not receive services from the cooperative school district, except an evaluation pursuant to RSA 193-A:6, II, shall not be included in the average daily membership relative to apportionment formulas.]~~

22 Effective Date.

I. Section 2 of this act shall take effect July 1, 2004.

II. Sections 4-7 and 11-18 of this act shall take effect July 1, 2004.

III. Section 3 of this act shall take effect July 1, 2005.

IV. RSA 198:40-b and RSA 198:40-c, I(c), as inserted by section 10 of this act shall take effect July 1, 2004.

V. The remainder of this act shall take effect July 1, 2003.

**2003-1656s**

#### AMENDED ANALYSIS

This bill:

I. Reduces the education property tax rate from \$5.80 to \$4.87 for the 2004 fiscal year and to \$3.50 for the 2005 fiscal year.

II. Beginning July 1, 2005, establishes a new education funding formula for municipalities and sets forth criteria whereby municipalities may receive local equalized aid, targeted per pupil aid, and state enhanced education aid for pupils in the public schools.

III. Establishes a new procedure for determining the statewide cost of an adequate education.

**Question is on the adoption of committee amendment.**

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

**Seconded by Senator Prescott.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Below, Green, Flanders, Odell, Roberge, Eaton, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Morse, Prescott.**

**The following Senators voted No: Peterson, Foster, Larsen, Estabrook, Cohen.**

**Yeas: 19 - Nays: 5**

**Amendment adopted.**

Senator Below offered a floor amendment.

**Sen. Below, Dist. 5**

**Sen. Estabrook, Dist. 21**

**Sen. Larsen, Dist. 15**

**May 21, 2003**

**2003-1763s**

**04/10**

**Floor Amendment to HB 608-FN-LOCAL**

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

AN ACT reducing the education property tax rate.

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

1 Education Property Tax; Fiscal Year 2004 Rate Reduced. Amend RSA 76:3 to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate of [~~\$5.80~~] **\$4.92** on each \$1000 of the value of taxable property is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F.

2 Education Property Tax; Fiscal Year 2005 Rate Reduced. Amend RSA 76:3 to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate of [~~\$4.92~~] **\$4.72** on each \$1000 of the value of taxable property is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F.

3 Education Property Tax; Fiscal Year 2006 Rate Reduced. Amend RSA 76:3 to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate of [~~\$4.72~~] **\$4.52** on each \$1000 of the value of taxable property is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F.

4 Education Property Tax; Fiscal Year 2007 Rate Reduced. Amend RSA 76:3 to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate of [~~\$4.52~~] **\$4.32** on each \$1000 of the value of taxable property is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F.

5 Education Property Tax; Fiscal Year 2008 Rate Reduced. Amend RSA 76:3 to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate of [~~\$4.32~~] **\$4.12** on each \$1000 of the value of taxable property is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F.

6 Education Property Tax; Fiscal Year 2009 Rate Reduced. Amend RSA 76:3 to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate of [~~\$4.12~~] **\$3.92** on each \$1000 of the value of taxable property is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F.

7 Effective Date.

I. Section 1 of this act shall take effect and shall apply to education property taxes due for the tax year beginning April 1, 2004.

II. Section 2 of this act shall take effect and shall apply to education property taxes due for the tax year beginning April 1, 2005.

III. Section 3 of this act shall take effect and shall apply to education property taxes due for the tax year beginning April 1, 2006.

IV. Section 4 of this act shall take effect and shall apply to education property taxes due for the tax year beginning April 1, 2007.

V. Section 5 of this act shall take effect and shall apply to education property taxes due for the tax year beginning April 1, 2008.

VI. The remainder of this act shall take effect and shall apply to education property taxes due for the tax year beginning April 1, 2009.

**2003-1763s**

**AMENDED ANALYSIS**

This bill reduces the education property tax rate to \$4.92 for fiscal year 2004, and thereafter reduces the fiscal year 2004 rate by an additional 20 cents per fiscal year through fiscal year 2009.

**Recess.**

**Senator Roberge in the Chair.**

**Recess.**

**Senator Eaton in the Chair.**

**Question is on the adoption of the floor amendment.**

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

**Seconded by Senator Below.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 6 - Nays: 17**

**Floor amendment failed.**

Senator Estabrook offered a floor amendment.

**Sen. Estabrook, Dist. 21**

**Sen. Below, Dist. 5**

**Sen. Larsen, Dist. 15**

**May 21, 2003**

**2003-1761s**

**04/10**

**Floor Amendment to HB 608-FN-LOCAL**

Amend RSA 198:40-c as inserted by section 10 of the bill by replacing it with the following:

198:40-c Total State Aid for Education.

I. Beginning July 1, 2004, and every fiscal year thereafter, the total state aid for education shall be determined as follows:

(a) The sum total of all local equalization aid as calculated under RSA 198:40 paid to all municipalities statewide; plus

(b) The sum total of all targeted aid as calculated under RSA 198:40-a paid to all municipalities statewide; plus

(c) The sum total of all state enhanced education aid as calculated under RSA 198:40-b.

II. In each fiscal year, the commissioner of the department of revenue administration shall determine, to the nearest cent, the state enhanced education tax rate that will match, as nearly as possible without exceeding, the amount raised statewide by the state enhanced education tax in fiscal year 2005.

**Question is on the adoption of the floor amendment.**

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

**Seconded by Senator Gatsas.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 6 - Nays: 17**

**Floor amendment failed.**

Senator Foster offered a floor amendment.

**Sen. Foster, Dist. 13**

**May 21, 2003**

**2003-1765s**

**04/10**

**Floor Amendment to HB 608-FN-LOCAL**

Amend RSA 198:40-c, II as inserted by section 10 of the bill by replacing it with the following:

II. In each fiscal year, the total aid calculated in paragraph I shall be adjusted by adding the average annual rate of inflation, as measured by the most recent available northeast region consumer price index for all urban consumers as published by the Bureau of Labor Statistics, United States Department of Labor, and the percentage increase in the average daily membership in residence, if any, over the most recent available fiscal year. The resulting sum, expressed as a percentage, shall be added to 100 percent to yield an adjustment factor. The total state aid for education from the immediately preceding year shall be multiplied by the adjustment factor and the product shall be the adjusted total state aid for education.

**Question is on the adoption of the floor amendment.**

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

**Seconded by Senator Estabrook.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 6 - Nays: 17**

**Floor amendment failed.**

**Question is on the adoption of the bill as amended.**

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

**Seconded by Senator Prescott.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Morse, Prescott, Cohen.**

**The following Senators voted No: Below, Peterson, Foster, Larsen, Estabrook.**

**Yeas: 19 - Nays: 5**

**Adopted.**

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

**HB 621-FN-A-L**, establishing an early childhood literacy program. Education Committee. Ought to pass with amendment, Vote 5-0. Senator Larsen for the committee.

**Senate Education**  
**May 15, 2003**  
**2003-1660s**  
**04/05**

**Amendment to HB 621-FN-A-LOCAL**

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

AN ACT extending the Parents as Teachers program in Sullivan county and making an appropriation therefor.

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

1 Appropriation. There is hereby appropriated the sum of \$65,000 for the fiscal year ending June 30, 2004, and the sum of \$65,000 for the fiscal year ending June 30, 2005, to the department of health and human services to continue the Parents as Teachers program in Sullivan county pursuant to RSA 193:35. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

2 Parents As Teachers Program; Reference to Department of Health and Human Services Replaced with Department of Education. Amend the introductory paragraph of RSA 193:35, I to read as follows:

I. The department of [~~health and human services~~] **education** shall establish the school district based Parents as Teachers Program for a rural community in Sullivan county in cooperation with School Administrative Unit 6 and the Parent Information Center. Sullivan county will be the rural site for the program because of its unique demographic profile, including the high number of risk factors affecting its children, the demonstrated interest of its public officials in the program, and the capacity to link the program to existing programs within the county including Good Beginnings, the Parent Information Center, and department of [~~health and human services~~] **education** programs in Sullivan county. The department shall use the following criteria to measure the effectiveness of the program:

3 Parents As Teachers Program; Rulemaking; Reference to Department of Health and Human Services Replaced with Department of Education. Amend RSA 193:36 to read as follows:

193:36 Rulemaking. The commissioner of [~~health and human services~~] **the department of education** shall adopt rules, pursuant to RSA 541-A, necessary to carry out the provisions of this subdivision.

4 Parents as Teachers; Report and Recommendation; Information from Department of Education. Amend RSA 193:37 to read as follows:

193:37 Report and Recommendation. On or before October 1, 2004, the department of health and human services shall prepare and submit to the speaker of the house of representatives, the president of the senate, and the chairpersons of the house and senate education committees an evaluation and report of the school district based Parents as Teachers Programs established pursuant to this subdivision, and recommendations for the expansion of the program statewide. The evaluation and report shall incorporate the criteria set forth in RSA 193:35, I and shall include an assessment of the program's effectiveness based on those criteria. **The department of education shall provide the department of health and human services with information on the Parents as Teachers Program from the date of transfer of the program through September 30, 2004, for the purposes of preparing the report.**

5 Effective Date. This act shall take effect July 1, 2003.

**2003-1660s**

**AMENDED ANALYSIS**

This bill extends the Parents as Teachers Program through the fiscal year ending June 30, 2005 and makes an appropriation for the program.

The bill also transfers responsibility for the Parents as Teachers Program from the department of health and human services to the department of education.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

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

**HB 717-FN-L**, relative to targeted aid to education. Education Committee. Inexpedient to Legislate, Vote 4-1. Senator Green for the committee.

**Question is on the adoption of inexpedient to legislate.**

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

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Johnson, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Sapareto, Estabrook, Prescott.**

**The following Senators voted No: Gallus, Kenney, Boyce, Below, Foster, Larsen, D'Allesandro, Morse, Cohen.**

**Yeas: 13 - Nays: 9**

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

#### **MOTION OF RECONSIDERATION**

Senator Below, having voted with the prevailing side, moved reconsideration of **HB 717-FN-L**, relative to targeted aid to education, whereby it was voted inexpedient to legislate.

**Adopted.**

**HB 717-FN-L**, relative to targeted aid to education.

**Question is on the adoption of inexpedient to legislate.**

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

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Johnson, Below, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Larsen, Gatsas, Barnes, Sapareto, Estabrook, Prescott.**

**The following Senators voted No: Gallus, Kenney, Boyce, Foster, D'Allesandro, Morse, Cohen.**

**Yeas: 15 - Nays: 7**

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

**HB 751-FN-L**, implementing an alternative school building aid grant formula, establishing size and cost standards for the construction of new school facilities, and permitting high school vocational technical education programs which lease space to be eligible for school building aid grants. Education Committee. Ought to pass with amendment, Vote 5-0. Senator Johnson for the committee.

#### **Senate Education**

**May 15, 2003**

**2003-1657s**

**04/05**

#### **Amendment to HB 751-FN-LOCAL**

Amend RSA 198:15-hh, III as inserted by section 5 of the bill by replacing it with the following:

III. A school district, city, cooperative school district, joint maintenance agreement, or receiving district operating an area school as defined in RSA 195-A:1, shall submit details of the lease arrangement, including a copy of the proposed lease agreement, in writing to the state board of education on such forms as the state board may prescribe. Grant applications for leased space shall be submitted before January 1 of each year in order to be eligible for grants in the fiscal year following the year of submittal. The state board of education shall, no later than March 1, 2004, adopt rules pursuant to RSA 541-A, relative to procedures for grant applications for leased space.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

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

**HB 786-FN-L**, relative to the participation of the state and its political subdivisions in the federal No Child Left Behind Act of 2001. Education Committee. Ought to pass with amendment, Vote 5-0. Senator Foster for the committee.



**Senate Education**  
**May 15, 2003**  
**2003-1661s**  
**04/05**

**Amendment to HB 786-FN-LOCAL**

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

1 New Subdivision; State Compliance with the No Child Left Behind Act of 2001; General Funds Prohibited. Amend RSA 21-N by inserting after section 11 the following new subdivision:

**Compliance with the No Child Left Behind Act**

21-N:12 Compliance with No Child Left Behind. Notwithstanding any provision of law to the contrary:

I. Section 9527 of the No Child Left Behind Act of 2001 provides that nothing in this act shall be construed to mandate a state or any subdivision thereof to spend any funds or incur any costs not paid for under this act.

II. The state board of education and the commissioner of the department of education are hereby prohibited from adopting any new administrative rules or regulations, or amending existing administrative rules or regulations for the purpose of complying with the No Child Left Behind Act of 2001 that will require funding from general funds.

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

**2003-1661s**

**AMENDED ANALYSIS**

This bill prohibits the state board of education and the department of education from adopting any new administrative rules or regulations or amending any existing administrative rule or regulation for the purpose of complying with the No Child Left Behind Act of 2001 if such compliance would require funding from general funds.

**Amendment adopted.**

**MOTION TO TABLE**

Senator O'Hearn moved to have **HB 786-FN-L** laid on the table.

**Adopted.**

**LAI D ON THE TABLE**

**HB 786-FN-L**, relative to the participation of the state and its political subdivisions in the federal No Child Left Behind Act of 2001.

**HB 75**, relative to timber harvesting. Energy and Economic Development Committee. Ought to pass with amendment, Vote 3-0. Senator Gallus for the committee.

**Energy and Economic Development**

**May 14, 2003**

**2003-1618s**

**08/01**

**Amendment to HB 75**

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

7 Conditional Deed. Amend RSA 477:35-a to read as follows:

477:35-a Conditional Deed.

*I. After August 29, 1969, any conveyance of standing trees which includes therein a stipulation requiring that the trees be removed within a certain time or by a certain date shall render the deed conditional, and failure by the purchaser to remove said trees within the stipulated time shall result in the forfeiture of the purchaser's rights in the trees unless the deed specifically provides otherwise.*

*II. After the effective date of this paragraph, any conveyance of standing trees which does not include therein a stipulation requiring that such trees be removed within a certain time or by a*

***certain date shall render the deed conditional, and failure by the purchaser to so remove said trees within 7 years from the date of conveyance shall result in the forfeiture of the purchaser's rights in the trees unless the deed specifically provides otherwise.***

8 Previous Conveyances. Amend RSA 477:35-b to read as follows:

477:35-b Previous Conveyances.

***I.*** Any conveyance of standing trees made prior to August 29, 1969, which includes therein a stipulation requiring that the trees be removed within a certain time or by a certain date, but which does not include therein any terms to the effect that the right to the trees shall revert to the grantor upon the passage of the stated time or stated date, shall be presumed as having intended to grant an absolute property interest in the trees to the purchaser even though the trees remain uncut beyond the stipulated time or date; provided, however, that any such right to said trees on the part of the purchaser or his heirs or assigns must be asserted and any litigation begun within 7 years after August 29, 1969, or within 7 years of the stipulated time of removal of the trees, whichever occurs last, or otherwise all such rights to said trees shall revert to the grantor or his heirs or assigns. Nothing in this section shall be construed as precluding the introduction of any evidence in any action to rebut the presumption of the granting of ownership of trees as provided by this section.

***II.*** Any conveyance of standing trees prior to the effective date of this paragraph which does not include therein a stipulation requiring that such trees be removed within a certain time or by a certain date, shall be presumed as having intended to grant to the purchaser an absolute property interest in the trees standing at the date of the conveyance even though the trees remain uncut beyond a reasonable time for their removal after said date; provided, however, that any such right to said trees on the part of the purchaser or his heirs or assigns must be asserted and litigation begun with 7 years after the effective date of this paragraph or otherwise all such rights to said trees shall revert to the grantor or his or her heirs or assigns. Nothing in this section shall be construed as precluding the introduction of any evidence in any action to rebut the presumption of the granting of ownership of trees as provided by this paragraph.

9 Effective Date.

I. Sections 7 and 8 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect January 1, 2004.

**2003-1618s**

#### AMENDED ANALYSIS

This bill requires that a copy of the signed notice of intent to cut be posted in public view at a wood cutting job site.

This bill also statutorily stipulates when trees must be removed if a conditional deed or conveyance does not specify a time.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 446**, relative to building permits. Energy and Economic Development Committee. Ought to Pass, Vote 3-0. Senator Odell for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 547**, relative to the duties of the oversight committee on telecommunications and relative to the membership of the Mount Washington Commission. Energy and Economic Development Committee. Inexpedient to Legislate, Vote 3-0. Senator Gallus for the committee.

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

**HB 562**, relative to an additional duty of the air pollution advisory committee. Energy and Economic Development Committee. Inexpedient to Legislate, Vote 3-0. Senator Prescott for the committee.

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

**HB 565-FN-A**, establishing a commission to implement the Hampton Beach Master Plan. Energy and Economic Development Committee. Ought to Pass, Vote 3-0. Senator Prescott for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 705**, establishing a committee to study the application of the communications services tax to the provision of Internet services and relative to the rate of the communications services tax and the property tax exemption for wooden poles and conduits. Energy and Economic Development Committee. Ought to Pass, Vote 2-0. Senator Prescott for the committee.

**Adopted.**

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

**Senator Foster Rule #42 on HB 705.**

**HB 787-FN-A**, relative to forest products promotion, establishing a forest products utilization charge, and requiring the department of resources and economic development to convene a task force. Energy and Economic Development Committee. Ought to Pass, Vote 3-0. Senator Gallus for the committee.

**Adopted.**

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

**Senator Roberge is in opposition to the motion of ought to pass on HB 787-FN-A.**

**HB 810-FN-A**, relative to processing excavating and dredging and terrain alteration permits, changing the fees for permits, establishing 2 new positions, and making an appropriation therefor. Energy and Economic Development Committee. Ought to Pass, Vote 2-1. Senator Prescott for the committee.

**Adopted.**

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

**HCR 15**, relative to relaxing air quality standards by the United States Environmental Protection Agency. Energy and Economic Development Committee. Ought to pass with amendment, Vote 2-1. Senator Prescott for the committee.

**Energy and Economic Development**

**May 14, 2003**

**2003-1617s**

**08/01**

**Amendment to HCR 15**

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

A RESOLUTION relative to air quality standards by the United States Environmental Protection Agency.

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

Whereas, New Hampshire has long suffered from power plant emissions migrating from the west; and

Whereas, these emissions negatively effect New Hampshire's air quality, forests, lakes, and streams; and

Whereas, the industry made a social contract with the American public 30 years ago to install state-of-the-art pollution controls; and

Whereas, New Hampshire has been a leader in reducing power plant emissions by enacting the multiple pollutant reduction program; now, therefore, be it

Resolved by the House of Representatives, the Senate concurring:

That the general court hereby urges Congress to adopt aggressive multiple pollutant reduction legislation to reduce power plant emissions similar to the legislation adopted by the state of New Hampshire; and

That copies of this resolution be forwarded by the house clerk to the President of the United States; the Speaker of the United States House of Representatives; the President of the United States Senate; The Justices of the United States Supreme Court; and the members of the New Hampshire congressional delegation.

**2003-1617s**

AMENDED ANALYSIS

This house concurrent resolution urges Congress to adopt multiple pollutant reduction legislation similar to legislation adopted by the state of New Hampshire.

**Question is on the adoption of committee amendment.**

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

**Seconded by Senator Green.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Sapareto, Morse, Prescott.**

**The following Senators voted No: Boyce, Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 15 - Nays: 7**

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 66-FN**, relative to executive agency rulemaking authority. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 5-0. Senator Peterson for the committee.

**Senate Executive Departments and Administration**

**May 15, 2003**

**2003-1663s**

**05/04**

**Amendment to HB 66-FN**

Amend RSA 541-A:3-b as inserted by section 1 of the bill by replacing it with the following:

541-A:3-b Restriction on Rules Incorporating Documents by Reference. No agency may propose or adopt a rule under RSA 541-A:3 or RSA 541-A:19 that incorporates by reference any code, rule, or document from another state government without specific authority in the authorizing legislation or specific legislative approval for such a rule.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 New Paragraph; Air Pollution Control; Rulemaking Relative to Vapor Recovery; Incorporation by Reference Permitted. Amend RSA 125-C:4 by inserting after paragraph I the following new paragraph:

I-a. In adopting rules under paragraph I, the department may incorporate by reference standards issued by the California air resources board relative to certification and testing of vapor recovery equipment.

**2003-1663s**

AMENDED ANALYSIS

This bill prohibits administrative agencies from adopting rules that incorporate by reference any code, rule, or document from another state without specific legislative approval.

The bill allows the department of environmental services to adopt rules relative to vapor recovery equipment by incorporating by reference standards issued by the California air resources board.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 213**, relative to reporting requirements for dedicated funds. Executive Departments and Administration Committee. Inexpedient to Legislate, Vote 5-0. Senator Kenney for the committee

**MOTION TO TABLE**

Senator Kenney moved to have **HB 213** laid on the table.

**Adopted.**

**LAIID ON THE TABLE**

**HB 213**, relative to reporting requirements for dedicated funds.

**HB 410**, relative to disclosure of information for purposes of background investigations by criminal justice agencies of applicants for police, corrections, and security employment. Executive Departments and Administration Committee. Inexpedient to Legislate, Vote 5-0. Senator Kenney for the committee.

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

**HB 646-FN**, relative to liquor licenses and fees. Executive Departments and Administration Committee. Ought to Pass, Vote 4-0. Senator Prescott for the committee.

Senator Prescott offered a floor amendment.

**Sen. Prescott, Dist. 23**  
**May 20, 2003**  
**2003-1701s**  
**03/09**

**Floor Amendment to HB 646-FN**

Amend the bill by replacing section 5 with the following:

5 Caterer-Off Site; Reference Changed. Amend RSA 175:1, XV(b) to read as follows:

(b) An off-site catering service which is a business held out and advertised to the public which has a permanent non-residential business office with securable beverage and liquor storage areas. With the approval of the commission, an off-site catering service without a kitchen may subcontract for cooking services or the preparing of food. ~~[Notwithstanding RSA 178:20, V(e)(2), catering services under this paragraph shall sell liquor and beverages only with full course meals.]~~

Amend RSA 178:22, V(e)(4)(B) as inserted by section 13 of the bill by replacing it with the following:

(B) On-site caterers and off-site caterers shall file, between January 15 and February 15 of each year, a certificate form with the commission covering food and beverage and liquor sales for the previous calendar year. All catered sales shall be noted on the certificate form which shall be furnished by the commission.

**Floor amendment adopted.**

Senator Prescott offered a floor amendment.

**Sen. Prescott, Dist. 23**  
**May 22, 2003**  
**2003-1788s**  
**03/09**

**Floor Amendment to HB 646-FN**

Amend RSA 175:6, II as inserted by section 10 of the bill by replacing it with the following:

II. Upon written authorization from the commission it shall be lawful for any out-of-state wholesaler of liquor or any licensed liquor vendor, ~~[table]~~ wine vendor, liquor manufacturer *rectifier*, or domestic wine manufacturer to pick up from, transport, and deliver liquor or table wines, as applicable, to any commission warehouse, to any other licensed warehouse, to the state line, or to their place of business.

Amend the bill by replacing section 38 with the following:

38 Beverage Distributor Agreements; Definitions. Amend RSA 180:1 to read as follows:

180:1 Definitions. In this chapter:

I. "Beverage distributors agreement" means a commercial relationship, not necessarily in writing, of definite or indefinite duration, between a beverage manufacturer license holder, brew pub, *or* beverage

vendor, ~~[or beverage vendor importer,]~~ and a wholesale distributor, pursuant to which the wholesale distributor has been authorized to distribute one or more of the brewer's brands of beverages. A beverage distributor's agreement shall not be considered to be a franchise relationship. The performance or accomplishment of any of the following acts shall constitute prima facie evidence of an agreement:

(a) The shipment or preparation for shipment of fermented malt beverages by any beverage manufacturer, beverage vendor, ~~[beverage vendor importer]~~ or its agents to a wholesale distributor within this state;

(b) The acceptance of any order for fermented malt beverages by any brew pub, beverage manufacturer, beverage vendor, ~~[beverage vendor importer]~~ or its agents to a wholesale distributor within this state; or

(c) The payment by a wholesale distributor and the acceptance of payment by any beverage manufacturer, brew pub, beverage vendor, ~~[beverage vendor importer]~~ or its agent or the shipment of an order for beverages intended for sale within this state.

II. "Beverage sales territory" means the area of primary sales responsibility expressly or impliedly designated by any agreement between a wholesale distributor and a brew pub, beverage manufacturer, **or** beverage vendor~~[-, or beverage vendor importer]~~ for the brand or label of a beverage manufacturer or brew pub, or an area designated in a filing with the state liquor commission for self-distribution by a brew pub or beverage manufacturer.

III. "Good cause" means the failure by any party to an agreement, without reasonable excuse or justification, to comply substantially with an essential and reasonable requirement imposed by either party.

IV. ~~["Goodwill," unless otherwise agreed, means earnings before taxes resulting from the wholesale distributor's sale of the beverage manufacturer's, beverage vendor's, or beverage vendor importer's brand or brands of beverages averaged over the wholesale distributor's last 3 fiscal years, or averaged over the wholesale distributor's recent fiscal years in which the wholesaler has had such earnings if fewer than 3 fiscal years.~~

~~V.] "Wholesale distributor licensee" means any person offering beverages for sale or resale to retailers without regard to whether the business of the person is conducted under the terms of an agreement with a beverage manufacturer, brew pub, **or** beverage vendor[-, or beverage vendor importer].~~

Amend the bill by replacing all after section 41 with the following:

42 Cancellation. RSA 180:3 is repealed and reenacted to read as follows:

180:3 Cancellation.

I. Notwithstanding the terms, provisions, or conditions of any agreement, no beverage manufacturer, brew pub, or beverage vendor shall amend, cancel, terminate, or refuse to continue or renew any agreement, or cause a wholesale distributor to resign from an agreement, unless good cause can be established or proven for amendment, termination, cancellation, nonrenewal, noncontinuation, or resignation. Good cause shall include:

(a) Revocation of the wholesale distributor's license to do business in the state, or suspension of the wholesale distributor's license when such suspension adversely affects the wholesale distributor's ability to sell beverages.

(b) Bankruptcy or insolvency of the wholesale distributor.

(c) Assignment for the benefit of creditors or similar disposition of the assets of the wholesale distributor.

(d) Failure by the wholesale distributor to comply substantially, without reasonable excuse or justification, with any reasonable and material requirement, including but not limited to those specified in RSA 180:11, imposed upon the wholesale distributor by the beverage manufacturer, brew pub, or beverage vendor.

(e) Fraudulent conduct of the wholesale distributor in its dealing with the beverage manufacturer, brew pub, or beverage vendor or the products of the beverage manufacturer, brew pub, or beverage vendor.

II. The mere sale or purchase of a beverage manufacturer, brew pub, or beverage vendor shall not constitute good cause under paragraph I, unless the wholesale distributor declines to execute an agreement with the successor beverage manufacturer, brew pub, or beverage vendor within 30 days after receipt via certified mail return receipt requested. Such agreement must assign the same brand or brands and territory as previously held by the wholesaler distributor in its agreement with the prior beverage manufacturer, brew pub, or beverage vendor, but may impose different obligations upon the parties, which are commercially

reasonable and attainable. The successor beverage manufacturer, brew pub, or beverage vendor shall have 60 days after purchase to provide the wholesale distributor with such an agreement or it shall waive its right to present a new agreement, in which case the agreement with the prior beverage manufacturer, brew pub, or beverage vendor shall continue in full force and effect.

43 Notice of Intent to Terminate; References Deleted. Amend the introductory paragraph RSA 180:4 to read as follows:

Prior to any termination procedure initiated by the beverage manufacturer, brew pub, **or** beverage vendor [~~or beverage vendor importer~~], a wholesale distributor shall be informed in writing of any claimed deficiency existing in [his] **the** sales territory and shall be given reasonable time to make requested corrections. After this reasonable time has elapsed, a beverage manufacturer, brew pub, **or** beverage vendor [~~or beverage vendor importer~~] shall provide a wholesale distributor at least 90 days' prior written notice of any intent to amend, terminate, cancel, or not renew any agreement. The notice shall state all the reasons for the intended amendment, termination, cancellation, or nonrenewal. [~~The notice provisions of~~] This section shall not apply if the reason for the amendment, termination, cancellation, or nonrenewal is:

44 Notice of Intent to Terminate; References Deleted. Amend RSA 180:4, V-VI to read as follows:

V. Willful breach of any material provision of a written agreement between a beverage manufacturer, brew pub, **or** beverage vendor [~~or beverage vendor importer~~] and a wholesale distributor.

VI. Any attempted transfer of business assets of the wholesale distributor, voting stock of the wholesaler, voting stock of any parent corporation of the wholesale distributor, any change in the beneficial ownership or control of any entity other than a parent corporation owning or controlling voting stock of the wholesale distributor, or any attempted or actual transfer or assignment of the beneficial interest of membership in a limited liability company, when the wholesale distributor has failed to give reasonable prior written notice to the beverage manufacturer, brew pub, **or** beverage vendor [~~or beverage vendor importer~~] of the proposed transfer.

45 New Paragraph; Notice of Intent to Terminate. Amend RSA 180:4 by inserting after paragraph VII the following new paragraph:

VIII. Fraudulent conduct of the wholesale distributor in its dealings with the beverage manufacturer, brew pub, or beverage vendor or the products of the beverage manufacturer, brew pub, or beverage vendor.

46 Compensation. RSA 180:5, I is repealed and reenacted to read as follows:

I. Any beverage manufacturer, brew pub, or beverage vendor which amends, cancels, terminates, or refuses to continue or renew any agreement, or causes a wholesale distributor to resign from an agreement, without good cause in violation of RSA 180:3, or unreasonably withholds consent to any assignment, transfer, or sale of all or any part of a wholesale distributor's business or assets, shall pay the wholesale distributor reasonable compensation for the value of the wholesaler distributor's business or assets that have been lost or diminished as a result of the amendment, cancellation, termination, refusal to deal or renew, or withholding of consent. Reasonable compensation for the value of the wholesale distributor's business or assets that are so lost or diminished shall include the fair market value of the distribution rights that will be so lost or diminished. If a wholesale distributor has been paid a consideration by a successor wholesaler with respect to the sale, transfer, or assignment of the wholesale distributor's interest in the sale or distribution of a brand or brands, the beverage manufacturer, brew pub, or beverage vendor shall be liable only for compensatory damages in an amount reflecting the difference in the amount already paid to the wholesale distributor and the fair market value of the wholesale distributor's beverage business and assets, excluding its tangible assets. If, following an amendment, cancellation, termination, refusal to deal, or forced resignation in violation of RSA 180:3, or an unreasonable withholding of consent to an assignment, transfer, or sale of all or any part of the wholesale distributor business or assets in violation of RSA 180:2, a wholesale distributor remains in business as a wholesale distributor of the affected brand or brands by permanent injunction or otherwise, the wholesale distributor shall be entitled to no compensation under this section, but may recover actual damages, if any, as provided in RSA 180:6.

47 Compensation; References Deleted. Amend RSA 180:5, II to read as follows:

II. In the event that the beverage manufacturer, brew pub, **or** beverage vendor [~~or beverage vendor importer~~] and the wholesale distributor are unable to agree on the reasonable compensation to be paid under paragraph I, the matter may, by agreement of the parties, be submitted to a neutral arbitrator to be selected

by the parties; or, if having agreed to arbitration the parties cannot agree on an arbitrator, the arbitrator shall be selected in accordance with RSA 542:4. The costs of arbitration shall be paid in equal shares by the wholesale distributor and the beverage manufacturer, brew pub, **or** beverage vendor [~~or beverage vendor importer~~]. In all other regards, arbitration proceedings shall be governed by RSA 542.

48 Judicial Remedies. Amend RSA 180:6 to read as follows:

180:6 Judicial Remedies.

I. If the brewer or wholesale distributor fails to comply with this chapter, the affected party may maintain a civil action in a court of competent jurisdiction, provided, however, that to the extent the parties by agreement specify that disputes arising out of the brewer-wholesale distributor relationship shall be resolved by arbitration, such procedure shall be exclusive and may be compelled by either party upon proper application. ***Any agreement to resolve a dispute by arbitration may only be entered after a bona fide dispute has arisen out of the brewer-wholesaler relationship, and no beverage manufacturer, brew pub, or beverage vendor may impose binding arbitration of any issue as a term or condition of its beverage distributor's agreement with a wholesaler distributor or require that the arbitration be conducted outside of this state or be governed by other than the law of this state, except with respect to conflict of laws.***

II. In any action brought pursuant to paragraph I the court may grant such relief as the court determines is necessary or appropriate considering the purposes of this chapter.

III. The prevailing party in any action under paragraph I shall be entitled to actual damages ***as provided in this chapter***, including reasonable attorneys' fees and [~~also including the value of the wholesale distributor's business;~~] as specified in RSA 180:5, I.

49 Settlement of Disputes. Amend RSA 180:7 to read as follows:

180:7 Settlement of Disputes. ***Subject to the provisions of RSA 180:6***, nothing in this chapter shall be construed to limit or prohibit voluntary good faith settlements of disputes entered into between the parties.

50 Beverage Distributor Agreements; References Deleted. Amend RSA 180:8-11 to read as follows:

180:8 Sale of Beverage Manufacturer, Brew Pub, **or** Beverage Vendor [~~or Beverage Vendor Importer~~]. The purchaser of a beverage manufacturer, brew pub, **or** beverage vendor [~~or beverage vendor importer~~] shall become obligated to all terms and conditions of the agreement in effect on the date of purchase unless subsequently terminated by the beverage manufacturer, brew pub, **or** beverage vendor [~~or beverage vendor importer~~] for good cause. "Purchase" shall include, but not be limited to, the sale of stock, sale of assets, merger, lease, transfer, or consolidation.

180:9 Exclusive Wholesale Distributor Territorial Agreements. It shall be unlawful for a wholesale distributor, brew pub, or beverage manufacturer to sell any brand of beverage in this state except in the territory described in a distribution agreement authorizing sale of that brand or label within a designated area, and within that designated area the wholesale distributor, brew pub, or beverage manufacturer shall service all dealer and retailer licensees without discrimination. The distribution agreement shall be in writing and shall specify the brand or label it covers. When a beverage manufacturer[;] **or** beverage vendor [~~or beverage vendor importer~~] sells several brands, the agreement need not apply to all brands sold by the beverage manufacturer[;] **or** beverage vendor [~~or beverage vendor importer~~] and may apply only to one brand. No beverage manufacturer, brew pub, beverage vendor, [~~beverage vendor importer;~~] or other supplier shall provide by the written distribution agreement for the distribution of a brand or label to more than one distributor for all or any part of the designated territory.

180:10 Filing. A copy of each distribution agreement and any amendment to it shall be filed with the commission by the beverage manufacturer, brew pub, **or** beverage vendor [~~or beverage vendor importer~~] and wholesale distributor, promptly following January 1, 1982, for any distribution agreement in effect on that date, or promptly following its execution for an agreement, renewal, or amendment made after that date.

180:11 Quality Control Services. Every beverage wholesale distributor shall service, for the purpose of quality control, all of the beverages it sells to its retailers. Each such wholesale distributor shall provide such additional quality control services and comply with such additional quality control standards as are from time to time specified in writing by the owner of the trademark of the brand or label of beverage, provided that such activities or standards are reasonable and are reasonably related to the maintenance of quality control. An exclusive territorial designation in any distribution agreement shall be changed only upon the written consent



of the beverage manufacturer, beverage vendor, *or* brew pub, [~~or beverage vendor importer,~~] as applicable, and the wholesale distributor, and shall be filed pursuant to RSA 180:10, and the commission shall require each party to verify that the level of service within the designated territory shall not be affected by such change.

51 Sunday Dancing Permitted; References Changed. Amend RSA 332-D:6 to read as follows:

332-D:6 Sunday Dancing Permitted. Notwithstanding the provisions of RSA 332-D:4, public dancing shall be permitted after 2 p.m. on Sundays in hotels and restaurants licensed under RSA [~~178:19~~], **178:21**, II(a) and (b), and in ballrooms licensed under RSA [~~178:20, V(c)~~] **178:22, V(c)**, provided that such dancing shall have the approval of the state liquor commission.

52 Repeal. The following are repealed:

- I. RSA 175:1, IX, relative to beverage representatives.
- II. RSA 175:1, XI, relative to beverage vendor importers.
- III. RSA 175:1, XLIII, relative to liquor and wine import warehouse.
- IV. RSA 175:1, XLV, relative to liquor and wine salespersons.
- V. RSA 175:1, LXIII, relative to service bars-portable.
- VI. RSA 179:19, IV, relative to entertainers under 15 years of age.
- VII. RSA 179:46, relative to sales of holders of wine vendor licenses.

53 Severability. If any clause, sentence, paragraph, or section contained in this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or section contained in this act directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if the invalid provisions had not been included therein.

54 Applicability. The provisions of this act relating to beverage distributor agreements shall apply to all beverage distributor agreements in existence on or after May 8, 2003.

55 Effective Date.

- I. Section 54 of this act shall take effect upon its passage.
- II. The remainder of this act shall take effect July 1, 2003.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

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

**HB 719-FN-A**, relative to the duties, function, and operation of the Pease development authority. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 5-0. Senator Cohen for the committee.

**Senate Executive Departments and Administration**

**May 15, 2003**

**2003-1666S**

**05/10**

**Amendment to HB 719-FN-A**

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

4 New Paragraph; Pease Development Authority; Definition of State Tidal Waters Added. Amend RSA 12-G:2 by inserting after paragraph XXIII the following new paragraph:

XXIII-a. "State tidal waters" means any harbor or other tidal waters within the state.

5 New Paragraph; Pease Development Authority; Definition of Tidal Waters Added. Amend RSA 12-G:2 by inserting after paragraph XXIV the following new paragraph:

XXIV-a. "Tidal waters" means any waters, including rivers, that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

Amend the introductory paragraph of RSA 12-G:42, XI as inserted by section 10 of the bill by replacing it with the following:

***XI. Adopt rules, after obtaining prior approval by the fiscal committee of the general court and the board, relative to the setting and collecting of fees authorized under RSA 12-G:38 relating to foreign trade zones; RSA 12-G:42, IV and V, relating to wharfage, dockage, and other marine terminal operations; RSA 12-G:42, VI, relating to moorings, slips, and wait lists; RSA 12-G:42, IX, relating to commercial piers identified in paragraph IX and other division property; RSA 12-G:49-a relating to pilotage; and any other matter necessary for the proper administration of the division with respect to the setting and collecting of fees. The rules adopted under this paragraph shall not be subject to the provisions of RSA 541-A, so as to provide the authority with the ability to maximize revenues and to adjust fees according to market conditions and trends as is the common practice in private industry. Fees established pursuant to this paragraph shall be consistent with the following criteria:***

Amend RSA 12-G:42, XI(e) as inserted by section 10 of the bill by replacing it with the following:

***(e) Fees relating to commercial piers and use of other division property shall be established giving due consideration to the fees for use of similar privately-owned facilities.***

Amend RSA 12-G:42 as inserted by section 10 of the bill by inserting after paragraph XII the following new paragraph:

***XIII. Have the authority to create and maintain a special account within the Pease Development Authority Ports and Harbors Fund established in RSA 12-G:37 for the purpose of providing funds for capital improvements, equipment, maintenance, and repair of division property. The authority shall deposit in the special account up to 50 percent of any rent revenue generated by the lease or license of division property for bulk or container cargo storage, pursuant to RSA 12-G:8, V, which exceeds the operating expenses of the division, as determined under RSA 12-G:37. The special account shall be nonlapsing and continually appropriated to the division for the purpose of initiating and implementing capital improvements, equipment purchases, maintenance projects, and repair of division property.***

Amend the bill by inserting after section 19 the following and renumbering the original section 20 to read as 21:

20 Pease Development Authority Ports and Harbors Fund; Reference to Special Account for Division Property. Amend RSA 12-G:37, III to read as follows:

III. This fund shall constitute a continuing appropriation for the benefit of the authority. ***Except as provided in RSA 12-G:42, XIII***, all division revenues associated with operations and responsibilities assigned by the authority to the division in excess of the operating expenditures required for the activities of the division shall be deposited in the general fund until such time as any bonds authorized and issued relating to division property or division projects have been retired. After such bonds have been retired, any amount remaining to the credit of the authority in this fund at the close of any fiscal year in excess of the amounts required under paragraph II shall lapse and shall be returned to the general fund of the state.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 825**, establishing a committee to study methods of safely reducing the prison population in the state. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 5-0. Senator Estabrook for the committee.

**Senate Executive Departments and Administration**  
**May 16, 2003**  
**2003-1668s**  
**04/05**

**Amendment to HB 825**

Amend subparagraph I(a) as inserted by section with the following:

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

**Amendment failed.**

Senator Estabrook offered a floor amendment.

**Sen. Estabrook, Dist. 21**  
**May 21, 2003**  
**2003-1762s**  
**04/10**

**Floor Amendment to HB 825**

Amend paragraph I of section 2 of the bill by replacing it with the following:

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

- (a) Three members of the house of representatives, appointed by the speaker of the house.
- (b) Two members of the senate, appointed by the president of the senate.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 112-FN**, establishing a point system for the annual moose permit lottery. Finance Committee. Ought to Pass, Vote 6-0. Senator Gatsas for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 166**, relative to employees of the New Hampshire retirement system. Finance Committee. Ought to Pass, Vote 6-0. Senator Gatsas for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 356-FN**, relative to including medical benefits costs in the purchase of creditable service in the retirement system. Finance Committee. Ought to Pass, Vote 6-0. Senator Boyce for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 387-FN**, allowing free admission to the state park system for certain members of the New Hampshire national guard. Finance Committee. Ought to Pass, Vote 6-0. Senator Boyce for the committee.

Senator Kenney offered a floor amendment.

**Sen. Kenney, Dist. 3**  
**May 21, 2003**  
**2003-1742s**  
**04/10**

**Floor Amendment to HB 387-FN**

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

AN ACT allowing free day-use admission to the state park system for certain active and retired members of the New Hampshire national guard.

Amend RSA 216-A:3-g, IV(a) as inserted by section 1 of the bill by replacing it with the following:

IV.(a) Any active member of a federally recognized unit of the New Hampshire national guard who is a legal resident of this state, and who meets the minimum requirements for satisfactory membership, as defined in the United States Department of the Army and the United States Department of the Air Force regulations, and is serving in pay grades E1 through E6 shall not be charged a fee for day-use admission to the state park system. Any retired member of the New Hampshire national guard who served in pay grade E6 or below shall not be charged a fee for day-use admission to the state park system. This section shall apply to members of the Active Guard and Reserve program in the New Hampshire national guard.

**2003-1742s**

**AMENDED ANALYSIS**

This bill provides that certain active and retired members of the New Hampshire national guard who are legal residents of this state, shall not be charged a fee for day-use admission to the state park system.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 521-FN**, relative to requiring treatment for persons convicted of DWI offenses. Finance Committee. Ought to Pass, Vote 6-0. Senator Below for the committee.

Senator Clegg offered a floor amendment.

**Sen. Clegg, Dist. 14**

**May 22, 2003**

**2003-1773s**

**03/04**

**Floor Amendment to HB 521-FN**

Amend the bill by inserting after section 7 the following and renumbering the original section 8 to read as 10:

8 New Paragraph; Attendance at Impaired Driver Intervention Program Required; Proof. Amend RSA 263:65-a by inserting after paragraph IV the following new paragraph:

V. A person shall be presumed to have furnished proof of successful completion an impaired driver intervention program if the person furnishes a report indicating that he or she has completed attendance at the I.D.I.P., the M.O.P., or an equivalent program. The presumption may be overcome by a hearing requested by the department, with notice to and an opportunity to be heard by the person, where the department shall have the burden of proving that the person has not successfully completed an impaired driver intervention program.

9 New Subparagraph; Penalties for Intoxication or Under Influence of Drugs Offenses; Proof of Successful Completion of Program. Amend RSA 265:82-b, IV by inserting after subparagraph (c) the following new subparagraph:

(d) A person shall be presumed to have furnished proof of successful completion an impaired driver intervention program if the person furnishes a report indicating that he or she has completed attendance at the I.D.I.P., the M.O.P., or an equivalent program. The presumption may be overcome by a hearing requested by the department, with notice to and an opportunity to be heard by the person, where the department shall have the burden of proving that the person has not successfully completed an impaired driver intervention program.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 533**, relative to health carrier disclosure for medical child support enforcement. Finance Committee. Ought to Pass, Vote 6-0. Senator Boyce for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 543**, relative to increasing the membership of the board of accountancy and relative to appeals of board decisions. Finance Committee. Ought to Pass, Vote 6-0. Senator Green for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 571-FN-L**, relative to Old Newport Road and the end of Main Street in the town of Marlow. Finance Committee. Ought to Pass, Vote 6-0. Senator Odell for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 578-FN-A**, establishing a program for self-certification by small quantity hazardous waste generators and making an appropriation therefor. Finance Committee. Ought to Pass, Vote 6-0. Senator Below for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 598-FN-A**, relative to the agriculture nutrient management program and making an appropriation therefor. Finance Committee. Ought to Pass, Vote 6-0. Senator D'Allesandro for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 617-FN**, relative to the licensure of dentists and regulation by the board of dental examiners. Finance Committee. Ought to Pass, Vote 6-0. Senator Green for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 659-FN**, relative to penalties for failure to obey a subpoena or summons. Finance Committee. Ought to Pass, Vote 6-0. Senator Boyce for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 703-FN**, permitting free admission to the state park system for disabled veterans. Finance Committee. Ought to Pass, Vote 6-0. Senator Green for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 728-FN-A**, establishing a dedicated fund for organic certification inspections. Finance Committee. Ought to Pass, Vote 6-0. Senator D'Allesandro for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 802-FN-A**, encouraging the department of transportation to retrofit a highway rest stop to be a solar powered facility. Finance Committee. Ought to Pass, Vote 6-0. Senator Below for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 834-L**, relative to River Road and Nimble Hill Road in the town of Newington. Finance Committee. Ought to Pass, Vote 6-0. Senator Green for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 302-FN**, relative to the funding and use of the retirement system special account. Insurance Committee. Ought to pass with amendment, Vote 5-0. Senator Flanders for the committee.

**Senate Insurance**  
**May 14, 2003**  
**2003-1642s**  
**10/01**

**Amendment to HB 302-FN**

Amend the unnumbered concluding paragraph following 100-A:16, II(h) (7) as inserted by section 1 of the bill by replacing it with the following:

The special account shall be used only to fund or partially fund additional benefits as follows: first, to provide supplemental allowances, or COLAs, pursuant to RSA 100-A:41-a and, second, to the extent that funds may be available in the special account ***in excess of a 3-year 5 percent COLA reserve***, to provide additional benefits to retired members and beneficiaries of the retirement system ***with the specific approval of the appropriate policy committees and approval of the general court. Nothing in this section shall preclude the appropriate legislative policy committees and the general court from adopting legislation that provides additional benefits in the event that the special account does not contain a 3-year, 5 percent COLA reserve.***

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

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

**HB 316-FN**, relative to insurance coverage for anesthesia for child dental care. Insurance Committee. Ought to pass with amendment, Vote 5-0. Senator Prescott for the committee.

**Insurance**  
**May 15, 2003**  
**2003-1649s**  
**01/09**

**Amendment to HB 316-FN**

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

AN ACT relative to insurance coverage for anesthesia for child dental care and establishing an advisory council on mandated health insurance benefits.

Amend the bill by replacing section 5 with the following:

5 New Sections; Advisory Council on Mandated Health Insurance Benefits. Amend RSA 400-A by inserting after section 11 the following new sections:

400-A:11-a Advisory Council on Mandated Health Insurance Benefits.

I. There is hereby established an advisory council on mandated health insurance benefits. The purpose of the council shall be to advise the governor and the general court on the social and financial impact of current and proposed mandated benefits, in the manner set forth in this section and RSA 400-A:11-b – 400-A:11-c.

II. The council shall consist of 16 members:

(a) Ten members shall be appointed by the governor, with the consent of the executive council, including:

- (1) A physician.
- (2) A chief executive officer of a general acute care hospital.
- (3) An allied health professional.
- (4) A representative of small business.
- (5) A representative of a major industry.
- (6) An expert in the field of medical ethics.
- (7) Two representatives of the accident and health insurance industry.
- (8) Two public members.

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

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

(d) The commissioner of insurance and the commissioner of the department of health and human services shall serve as nonvoting members.

III. All members shall be appointed for terms of 4 years each, except that appointments to fill vacancies shall be made for the unexpired terms. No person shall be eligible to serve for or during more than 2 successive 4-year terms; provided, however, that a person appointed to fill a vacancy when less than 2 years remain in the term may serve 2 additional 4-year terms.

IV. The council shall meet regularly, at least once each quarter, and at the request of the governor. A majority of the members shall constitute a quorum.

V. The council shall select a chair and a vice chair from among its members.

VI. Members of the council shall be reimbursed for their necessary expense of travel and subsistence. These expenses shall be a charge upon available funds and the appropriation of the insurance department.

VII. The insurance department and the department of health and human services shall provide staff assistance to the council.

400-A:11-b Duties of the Advisory Council on Mandated Health Insurance Benefits. The advisory council on mandated health insurance benefits shall:

I. Develop and maintain, with the insurance department, a system and program of data collection to assess the impact of mandated benefits, including costs to employers and insurers, impact of treatment, cost savings in the health care system, number of providers and other data as may be appropriate.

II. Advise and assist the insurance department on matters relating to mandated insurance benefits and provider regulations.

III. Prescribe the format, content, and timing of information to be submitted to it in its evaluation and analysis of proposed and existing mandated benefits and providers. Such format, content, and timing requirements shall be binding upon all parties submitting information to the council in its assessment of proposed and existing mandated benefits and providers.

IV. Provide evaluations and analyses of proposed and existing mandated benefits and providers and other studies of mandated benefits and provider issues in accordance with RSA 400-A:11-c.

V. Provide additional information and recommendations, relating to any system of mandated health insurance benefits.

VI. Report annually on its activities to the standing committees of the general court having jurisdiction over insurance by December 1 of each year.

VII. Review and evaluate as necessary the benefits and other provisions of the essential and standard health benefits plans made available in the state, and submit to the insurance department any proposed modifications needed to maintain or enhance the affordability and marketability of the plans.

400-A:11-c Study of Proposed Mandated Benefits and Providers.

I. Except as provided in paragraph II, every bill introduced in the general court containing a mandated health insurance benefit shall be referred by the speaker of the house of representatives or the president of the senate, as the case may be, to the council created in RSA 400-A:11-a. The council shall prepare and forward to the governor, the speaker of the house of representatives, and the president of the senate a study that assesses the social and financial impact and the medical efficacy of the proposed mandate. The council shall submit its assessment within 12 months of receiving the referral from the general court. The general court shall not pass any bill containing a new or increased mandated health insurance benefit until the 12-month period has passed.

II. Whenever a bill, as described in paragraph I, is identical or substantially similar to a bill previously reviewed by the council within the 3-year period immediately preceding the then current session of the general court, the speaker of the house of representatives or the president of the senate, as the case may be, may refer the bill to the council to determine whether the council's study needs to be updated or revised.

Within 30 days of receiving such a referral, the council shall notify the person who made the referral whether its study needs to be updated or revised. If updates or revisions are necessary, the council shall submit its updated or revised assessment within 6 months of receiving the referral.

III. The council shall also assess the social and financial effects and the medical efficacy of mandated benefits as they exist as of July 1, 2003. The standing committees of the general court having jurisdiction over health insurance matters shall submit a schedule of evaluations to the council setting forth the dates by which particular mandates shall be evaluated by the council with all such evaluations to be completed by December 1, 2004.

6 Effective Date.

I. Section 5 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect January 1, 2004.

**2003-1649s**

#### AMENDED ANALYSIS

This bill requires insurers to cover anesthesia provided in conjunction with certain dental procedures for children under 8 years of age. Current law mandates such coverage for children under 4 years of age.

This bill also establishes an advisory council to study and advise relative to mandated insurance benefits.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 596-FN**, relative to health plan loss information. Insurance Committee. Ought to Pass, Vote 4-0. Senator Flanders for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 671-FN-A**, establishing a contributory defined benefit judicial retirement plan. Insurance Committee. Ought to Pass, Vote 5-0. Senator Flanders for the committee.

**Adopted.**

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

**HB 684-FN**, relative to the insurance rating law. Insurance Committee. Ought to Pass, Vote 4-0. Senator Roberge for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 702-FN**, relative to payment of medical benefits costs for disabled group II members of the retirement system. Insurance Committee. Ought to pass with amendment, Vote 5-0. Senator Prescott for the committee.

**Insurance**

**May 15, 2003**

**2003-1643s**

**10/03**

#### **Amendment to HB 702-FN**

Amend the bill by replacing section 1 with the following:

1 Group II Disabled Members; Permanent Firemen; Medical Benefits; Application. Amend RSA 100-A:55, I to read as follows:

I. The additional benefits provided under RSA 100-A:52 shall apply to persons who are active or retired members of group II as of June 30, 2000; to persons who prior to July 1, 1988, had completed no less than 20 years of group II creditable service, but who for reasons other than retirement or death ceased to be a group II member prior to attaining the age of 45, and who, as of July 1, 1993, are eligible for vested deferred retirement benefits; and to persons who are group II permanent policemen or permanent firemen members on dis-



ability retirement as the natural and proximate result of injuries suffered while in the performance of duty who become permanent policemen members of group II before July 1, 2003 or permanent firemen members of group II before July 1, [2003] **2004**. Such additional benefits shall not apply to other persons who become members of group II after the dates stated in this paragraph, without future legislation to include them. It is the intent of the legislature that future group II members shall be included only if the total cost of such inclusion can be funded by reimbursement from the special account established under RSA 100-A:16, II(h).

**2003-1643s**

**AMENDED ANALYSIS**

This bill extends the year of eligibility of group II disabled permanent firemen members for the payment of medical benefits costs by the retirement system.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 788-FN-A**, transferring the duties of the health services planning and review board. Insurance Committee. Inexpedient to Legislate, Vote 3-2. Senator Prescott for the committee.

**MOTION TO TABLE**

Senator Sapareto moved to have **HB 788-FN-A** laid on the table.

**Motion failed.**

**Question is on the committee report of inexpedient to legislate.**

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

**Senators Martel and Roberge are in opposition to the motion of inexpedient to legislate on HB 788-FN-A.**

**HB 364-FN**, relative to the use of automatic telephone dialing systems for political advocacy. Internal Affairs Committee. Ought to Pass, Vote 2-1. Senator O'Hearn for the committee.

**MOTION TO TABLE**

Senator O'Hearn moved to have **HB 364-FN** laid on the table.

**Adopted.**

**LAI D ON THE TABLE**

**HB 364-FN**, relative to the use of automatic telephone dialing systems for political advocacy.

**HB 577-FN-A-L**, relative to implementing the Help America Vote Act of 2002 and relative to rulemaking by the secretary of state. Internal Affairs Committee. Ought to pass with amendment, Vote 3-0. Senator Boyce for the committee.

**Internal Affairs**

**May 15, 2003**

**2003-1638s**

**03/09**

**Amendment to HB 577-FN-A-LOCAL**

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

AN ACT relative to implementing the Help America Vote Act of 2002.

Amend the bill by deleting section 3 and renumbering the original sections 4-12 to read as 3-11, respectively.

Amend RSA 654:45, II as inserted by section 3 of the bill by replacing it with the following:

II. Any election official in the state authorized by this chapter to have direct access to the voter database may obtain immediate electronic access to the information contained in the voter database related to individuals registered or registering to vote in the election official's jurisdiction. The office of the clerk is hereby designated as a database access point for each town or city. The secretary of state may authorize additional database access points in a town or city, including election day access points at polling places.

Amend RSA 654:45, IV(b) as inserted by section 3 of the bill by replacing it with the following:

(b) Voter database record data shall be verified by matching the records with those of the department of safety and the federal social security administration as are required by law, and with the records of the state agency or division charged with maintaining vital records. For this purpose the voter registration record database may be linked to the state agency or division charged with maintaining vital records and the department of safety, provided that no linked agency or division may save or retain voter information or use it for purposes other than verifying the accuracy of the information contained in the voter database. The link authorized by this subparagraph shall not allow the department of state or election officials direct access to the motor vehicle registration or driver's license records maintained by the division of motor vehicles. The commissioner of safety may authorize the release of information from motor vehicle registration and driver's license records to the extent that the information is necessary to department of state and department of safety cooperation in a joint notification to individuals of apparent discrepancies in their records and to the extent that the information is necessary to resolve those discrepancies. The commissioner of safety and the secretary of state are authorized to enter into an agreement that establishes the services to be provided by the department of safety and the cost for those services. The department of safety shall not be required to provide any services under this subparagraph unless an agreement is in place and there are sufficient funds in the election fund to pay the cost for the services. The system shall facilitate the identification and correction of voter registration records whenever a registered voter has died or has been disenfranchised pursuant to part I, article 11 of the New Hampshire constitution or RSA 654:5 through RSA 654:6, or when the domicile address does not match the address provided by the same individual to the department of safety.

(c) Access by local election officials to the voter database shall be limited to the supervisors of the checklist, city registrars and deputy registrars, and town or city clerks and their deputies, as determined by the secretary of state. Access by local election officials shall be subject to the limitations of paragraph VI, and shall be limited to the records of individuals who are currently registered to vote in the official's jurisdiction and individuals who are applying to register to vote in the official's jurisdiction.

Amend RSA 654:45, V as inserted by section 3 of the bill by replacing it with the following:

V. The secretary of state shall:

(a) Specify the employees of the department of state authorized to access records contained in the voter database, subject to the limitations of paragraph VI.

(b) Provide adequate technological security measures to deter unauthorized access to the records contained in the voter database.

(c) Issue guidelines to implement the voter database.

Amend the bill by replacing all after section 10 with the following:

11 New Section; Ballot Law Commission; Administrative Complaint Resolution. Amend RSA 665 by inserting after section 9 the following new section:

665:9-a Administrative Complaint Resolution. The ballot law commission shall hear and resolve complaints of federal voting law violations, pursuant to the Help America Vote Act of 2002, Public Law 107-252, as provided in RSA 666:14.

12 Contingency. If HB 693-FN of the 2003 regular session becomes law, section 11 of this act shall take effect at 12:01 a.m. on the effective date of HB 693-FN. If HB 693-FN of the 2003 regular session does not become law, section 11 of this act shall not take effect.

13 Effective Date.

I. Section 11 of this act shall take effect as provided in section 12 of this act.

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

**2003-1638s**

#### AMENDED ANALYSIS

This bill:

I. Establishes an election fund for moneys appropriated to the state pursuant to the Help America Vote Act of 2002 and requires that certain fees and fines be deposited in the fund.

II. Authorizes a statewide centralized voter registration database and communications network.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

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

**HB 605-FN**, relative to prohibited election day activity. Internal Affairs Committee. Ought to pass with amendment, Vote 3-0. Senator Boyce for the committee.

**Internal Affairs**

**May 14, 2003**

**2003-1639s**

**03/09**

**Amendment to HB 605-FN**

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

AN ACT relative to prohibited election day activity and relative to electioneering by public employees.

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

1 New Section; Election Procedure; Prohibited Acts; Interference With Communications. Amend RSA 659 by inserting after section 40 the following new section:

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.

2 New Section; Electioneering by Public Employees. Amend RSA 659 by inserting after section 44 the following new section:

659:44-a Electioneering by Public Employees. No public employee, as defined in RSA 273-A:1, IX, shall electioneer while in the performance of his or her official duties or use government property, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering. For the purposes of this section, "electioneer" means to act in any way specifically designed to influence the vote of a voter on any question or office. Any person who violates this section shall be guilty of a misdemeanor.

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

**2003-1639s**

**AMENDED ANALYSIS**

This bill prohibits blocking the access of any candidate or committee to communications equipment or services on election day. This bill also prohibits public employees from electioneering while in the performance of their official duties or using government property for electioneering.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 606**, establishing a right-to-know study commission. Internal Affairs Committee. Ought to pass with amendment, Vote 3-0. Senator Flanders for the committee.

**Internal Affairs**

**May 14, 2003**

**2003-1644s**

**01/09**

**Amendment to HB 606**

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

AN ACT establishing a right-to-know study commission and relative to meetings open to the public.

Amend paragraph I of section 3 of the bill by inserting after subparagraph (g) the following new subparagraph:

(h) The attorney general, or designee.

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

7 Meetings Open to the Public; Certain Caucuses Not Meetings. Amend RSA 91-A:2, I(b) and (c) to read as follows:

(b) Strategy or negotiations with respect to collective bargaining; [or]

(c) Consultation with legal counsel; *or*

*(d) A caucus by the members of a public body whose members were elected on a partisan basis at a state general election or elected on a partisan basis by a town which has adopted a partisan ballot system pursuant to RSA 669:12.*

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

**2003-1644s**

#### AMENDED ANALYSIS

This bill establishes a commission to study the right-to-know law, including the issue of electronic communications.

This bill also declares that certain caucuses by members of a public body are not meetings under the right-to-know law.

#### MOTION TO TABLE

Senator Below moved to have **HB 606** laid on the table.

**Question is on the motion to table.**

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

**Seconded by Senator Estabrook.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Sapareto, Morse, Prescott.**

**Yeas: 6 - Nays: 16**

**Motion failed.**

**Senator Clegg moved the question.**

**Adopted.**

**Senator Below moved to divide the question.**

**The chair ruled that the bill is devisable.**

**Question is on the motion of Section Seven, Lines 11-19.**

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

**Seconded by Senator D'Allesandro.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**The following Senators voted No: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 17 - Nays: 6**

**Adopted.**

**Question is on the adoption of lines 1-10 & line 20.**

**Adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Senator Clegg moved the question.**

**Adopted.**

**Senator Clegg withdrew his motion to move the question.**

**Ordered to third reading.**

#### **MOTION OF RECONSIDERATION**

Senator D'Allesandro, having voted with the prevailing side, moved reconsideration of **HB 606** whereby we ordered it to third reading.

**Adopted.**

**HB 606**, establishing a right-to-know study commission.

Senator Larsen offered a floor amendment.

**Sen. Larsen, Dist. 15**

**Sen. Below, Dist. 5**

**Sen. D'Allesandro, Dist. 20**

**Sen. Cohen, Dist. 24**

**Sen. Estabrook, Dist. 21**

**Sen. Foster, Dist. 13**

**May 22, 2003**

**2003-1774s**

**01/09**

#### **Floor Amendment to HB 606**

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

AN ACT establishing a right-to-know study commission.

Amend the bill by replacing section 2 with the following:

2 Commission Established. There is established a commission to study the right-to-know law in light of the supreme court's decision in *Hawkins v. N.H. Department of Health and Human Services* and increasing use of electronic communications in the transaction of governmental business. The commission shall also study when certain caucuses are not meetings within the context of the right-to-know law.

Amend paragraphs VIII and IX of section 4 of the bill by replacing them with the following:

VIII. The extent to which the public will be provided access to stored computer data under the right-to-know law.

IX. If, when, and under what circumstances a partisan caucus by the members of a public body, consisting of a quorum of that body, should be exempt from the provisions of the right-to-know law.

X. Any other matter deemed relevant by the commission.

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

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

**2003-1774s**

#### **AMENDED ANALYSIS**

This bill establishes a commission to study the right-to-know law, including the issue of electronic communications and when certain caucuses by members of a public body are not meetings under the right-to-know law.

**Question is on the adoption of the floor amendment.**

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

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 6 - Nays: 17**

**Floor amendment failed.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 627-FN**, relative to domicile for voting purposes and penalties for voter fraud. Internal Affairs Committee. Ought to pass with amendment, Vote 3-0. Senator Boyce for the committee.

**Internal Affairs**  
**May 14, 2003**  
**2003-1640s**  
**03/09**

**Amendment to HB 627-FN**

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

AN ACT relative to domicile for voting purposes, penalties for voter fraud, and access to preserved ballots.

Amend the bill by replacing section 1 with the following:

1 County Attorneys; Election, Temporary Appointments. Amend RSA 7:33 to read as follows:

7:33 Election; ~~[Vacancies]~~ **Temporary Appointments**. There shall be a county attorney for each county, who shall be a member of the New Hampshire bar, elected biennially by the ~~[inhabitants]~~ **voters** of the county. If the county attorney is absent at any term of court or unable to discharge the duties of the office, the superior court, acting as a body, shall appoint a county attorney, who shall be a member of the New Hampshire bar, for the time being and allow said appointee such compensation for his **or her** services as they think reasonable.

Amend RSA 654:12, II(b)(3) as inserted by section 29 of the bill by replacing it with the following:

**(3) Photo identification issued by local or state government.**

Amend RSA 654:17, I as inserted by section 30 of the bill by replacing it with the following:

I. The absentee registration affidavit shall be prepared by the secretary of state and shall be in substantially the following form:

Affidavit (Absence from town)

I, \_\_\_\_\_ do hereby swear or affirm, under ~~[penalty of perjury]~~ **the penalties for voting fraud set forth below**, the following:

1) ~~[(a)]~~ That my legal domicile is in the town of \_\_\_\_\_, New Hampshire, I will be of the age of 18 years or over on election day and am entitled to vote in the election to be held in said town on \_\_\_\_\_, [19] \_\_\_\_\_ **(date)**, except for the fact that my name does not appear on the checklist to be used in said town at such election;

~~[(b) That if I were personally to appear before the supervisors of the checklist of said town in their regular session for the correction of the checklist for said election, I would present the following as proof of domicile \_\_\_\_\_ (including but not limited to a drivers license, electric bill, passport, or cancelled check);~~

2) That I do not intend to be present within said town at such time prior to said election as shall enable me personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;

3) That I am temporarily residing in \_\_\_\_\_ (city and state or city, province, and country);

**4) That I hereby enclose one of the following as proof of identity and domicile:**

**(a) A copy of a current and valid New Hampshire driver's license or an armed services identification or other photo identification issued by the United States government that shows the name and address of the voter; or**

**(b) A copy of a current and valid photo identification and a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter;**

**5) That I acknowledge that if I do not provide a copy of proof of identity and domicile as required by section 4) above, this application may not be approved; and**

[4] **6)** That I hereby make application for the addition of my name to the checklist of said town to be used at said election.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

Affidavit (Physical Disability)

I, \_\_\_\_\_ do hereby swear or affirm, under [penalty of perjury] **the penalties for voting fraud set forth below**, the following:

1) [~~(a)~~] That my legal domicile is in the town of \_\_\_\_\_, New Hampshire, I will be of the age of 18 years or over on election day, and am entitled to vote in the election to be held in said town on \_\_\_\_\_, [19]\_\_\_\_ (**date**), except for the fact that my name does not appear on the checklist to be used in said town at such election;

~~[(b) That if I were personally to appear before the supervisors of the checklist of said town in their regular session for the correction of the checklist for said election, I would present the following as proof of domicile \_\_\_\_\_ (including but not limited to a drivers license, electric bill, passport, or cancelled check);]~~

2) That I am unable by reason of physical disability personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;

**3) That I hereby enclose one of the following as proof of identity and domicile:**

**(a) A copy of a current and valid New Hampshire driver's license or an armed services identification or other photo identification issued by the United States government that shows the name and address of the voter; or**

**(b) A copy of a current and valid photo identification and a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter;**

**4) That I acknowledge that if I do not provide a copy of proof of identity and domicile as required by section 3) above, this application may not be approved; and**

[3] **5)** That I hereby make application for the addition of my name to the checklist of said town to be used at said election.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

Amend the bill by deleting section 41 and renumbering the original sections 42-62 to read as 41-61, respectively.

Amend the bill by replacing section 42 with the following:

42 Vacancies Among County Officers; County Commissioner. Amend RSA 661:9, II(a) to read as follows:

(a) If a vacancy occurs in the office of a county commissioner, the members of the county convention shall fill the vacancy by majority vote until the next biennial election of county officers. If the term filled is less than the unexpired term, then notwithstanding any provisions of RSA 653:1, VI, the commissioner district filled pursuant to this paragraph shall be added to the next biennial election ballot to be chosen by the [inhabitants] **domiciliaries** of the county for a 2-year term.

Amend the bill by replacing section 48 with the following:

48 Election Officer. Amend RSA 652:14 to read as follows:

652:14 Election Officer. "Election officer" shall mean any moderator, **deputy moderator, assistant moderator**, town clerk, **deputy town clerk, city clerk, deputy city clerk**, selectman, supervisor of the check-list, **registrar, or deputy registrar** [~~or inspector of election~~].

Amend the bill by inserting after section 60 the following and renumbering the original section 61 to read as 64:

61 Sealing and Certifying Ballots; Exemption from Right-to-Know Law. Amend RSA 659:95 to read as follows:

659:95 Sealing and Certifying Ballots.

**I.** Immediately after the ballots cast at a state election have been tabulated and the result has been announced and the return has been made, the moderator or [his] **the moderator's** designee, in the presence of the selectmen or their designee, shall place the cast, cancelled, and uncast ballots, including such ballots from any additional polling places, and further including the successfully challenged absentee ballots still contained in their envelopes, in the containers provided by the secretary of state as required by RSA 659:97 and shall seal such container with the sealer provided by the secretary of state as required by RSA 659:97. The moderator or [his] **the moderator's** designee shall then enter in the appropriate blanks on such sealer on each container the number of cast, cancelled, and uncast ballots in such container and shall endorse in the appropriate place on such sealer a certificate in substance as follows: Enclosed are the ballots from the state election in the town of \_\_\_\_\_ (or in ward \_\_\_\_\_ in the city of \_\_\_\_\_) held on \_\_\_\_\_, 19\_\_\_\_\_, required by law to be preserved. The moderator and the selectmen or their designee shall sign their names in the appropriate blanks on the sealer.

**II. Ballots, including cast, cancelled, and uncast ballots and successfully challenged absentee ballots still contained in their envelopes, prepared or preserved in accordance with the election laws shall be exempt from the provisions of RSA 91-A. This exemption shall apply to any ballots or absentee voter affidavit envelopes prepared for or used in any election conducted by the state or any political subdivision, including federal elections.**

62 General Provisions for Recounts; Disposal of Ballots; Exemption from Right-to-Know Law. Amend RSA 660:16 to read as follows:

660:16 Disposal of Ballots.

**I.** Upon the conclusion of every recount, the secretary of state shall replace the unprotested ballots and absentee voter envelopes in a suitable container for storage. The secretary of state shall retain the ballots and the absentee envelopes for at least 60 days following the recount. Upon an order of the ballot law commission, the secretary of state shall produce the ballots for the inspection of the commission. Following the commission's inspection, the secretary of state shall replace the ballots and envelopes, seal them, and certify the contents and the date when they were examined by the commission. The envelopes and ballots shall be subject to the order of the body to which such person claims to be elected or of the officers required by law to examine the records and to issue certificates of election to such office or of any court having jurisdiction over them.

**II. Ballots, including cast, cancelled, and uncast ballots and successfully challenged absentee ballots still contained in their envelopes, prepared or preserved in accordance with the election laws shall be exempt from the provisions of RSA 91-A. This exemption shall apply to any ballots or absentee voter affidavit envelopes prepared for or used in any election conducted by the state or any political subdivision, including federal elections.**

63 Town Elections; Preservation of Ballots after Recount; Exemption from Right-to-Know Law. Amend RSA 669:33 to read as follows:

669:33 Preservation of Ballots after Recount.



*I. Upon the conclusion of the recount, the clerk shall place the ballots and all envelopes or wrappers which had previously contained them in a suitable container showing the contents and the date when and the reason why it was opened; and said clerk shall retain said ballots until the expiration of 60 days from the date of the recount unless some action is pending which makes their further preservation necessary or unless enjoined by action brought before the superior court.*

*II. Ballots, including cast, cancelled, and uncast ballots and successfully challenged absentee ballots still contained in their envelopes, prepared or preserved in accordance with the election laws shall be exempt from the provisions of RSA 91-A. This exemption shall apply to any ballots or absentee voter affidavit envelopes prepared for or used in any election conducted by the state or any political subdivision, including federal elections.*

**2003-1640s**

AMENDED ANALYSIS

This bill:

- I. Establishes civil penalties for wrongful voting.
- II. Modifies procedures for voter registration and absentee voting.
- III. Modifies the laws concerning domicile as it relates to voting and eligibility for office.
- IV. Exempts preserved ballots from RSA 91-A, the right-to-know law.

This bill is a request of committee established by 2002, 15.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

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

**Seconded by Senator Estabrook.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**The following Senators voted No: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 17 - Nays: 6**

**Adopted.**

**Ordered to third reading.**

**HB 670-FN**, establishing a procedure for release by a state agency of statistical information for research purposes. Internal Affairs Committee. Ought to pass with amendment, Vote 3-0. Senator O'Hearn for the committee.

**Internal Affairs**

**May 14, 2003**

**2003-1647s**

**01/05**

**Amendment to HB 670-FN**

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

AN ACT establishing a procedure for release by a state agency of statistical information for research purposes and relative to health care data.

Amend the bill by replacing section 1 with the following:

1 Statement of Purpose.

I. The general court recognizes that:

(a) Preserving the confidentiality of individually identifiable information in the possession of the state is of great importance to our citizens;

(b) Openness in the conduct of public business is essential to a democratic society;

(c) Information and data collected or maintained with public funds is held for the collective benefit of the citizenry;

(d) Public policy can be improved and program administration can be made more efficient and effective through analysis of information and data; and

(e) The collection and maintenance of reliable and comprehensive health care data is necessary to promote informed decision-making, increase accountability in the health care system, and improve health care planning.

II. Therefore, the general court hereby determines that there is a need to collect encrypted insurance claims data and to clarify the conditions under which limited data sets and health care data and information that may relate to individual citizens may be released.

Amend the introductory paragraph of RSA 91-A:10, II as inserted by section 2 of the bill by replacing it with the following:

II. Except as otherwise provided by law, upon request an agency shall release limited data sets and statistical tables with any cell size more than 0 and less than 5 contained in agency files to requestors for the purposes of research under the following conditions:

Amend RSA 91-A:10, VI as inserted by section 2 of the bill by replacing it with the following:

VI. Nothing in this section shall exempt any requestor from paying fees otherwise established by law for obtaining copies of limited data sets or statistical tables. Such fees shall be based on the cost of providing the copy in the format requested. The agency head shall provide the requestor with a written description of the basis for the fee.

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

3 Disclosure. RSA 420-G:11, II is repealed and reenacted to read as follows:

II.(a) All health carriers shall electronically provide:

(1) Their encrypted claims data to the department and to the department of health and human services in accordance with rules approved by the commissioner of health and human services and adopted by the insurance commissioner under RSA 420-G:14.

(2) To the department of health and human services, cross-matched claims data on requested policyholders, and subscriber information necessary for third party liability for benefits provided under RSA 167, filed in accordance with rules adopted under RSA 167:3-c.

(b) Notwithstanding RSA 91-A:10, the collection, storage and release of health care data and statistical information that is subject to the federal requirements of the Health Information Privacy and Accountability Act (HIPAA) shall be governed exclusively by the rules adopted thereunder in 45 CFR Parts 160 and 164.

4 New Paragraph; Disclosure. Amend RSA 420-G:11 by inserting after paragraph II the following new paragraph:

II-a. All health carriers and other health plans that collect the Health Employer Data and Information Set (HEDIS) shall annually submit the HEDIS information to the department.

5 Rulemaking. Amend RSA 420-G:14 to read as follows:

420-G:14 Rulemaking Authority.

*I.* The commissioner may adopt rules, under RSA 541-A, necessary to the proper administration of this chapter.

***II. The commissioner, with the approval of the commissioner of the department of health and human services, shall adopt rules, under RSA 541-A, defining the content, format, and schedule for the filing of encrypted claims data and HEDIS information under RSA 420-G:11.***

6 New Section; Health Care Information System. Amend RSA 420-G by inserting after section 11 the following new section:

420-G:11-a Development of a Comprehensive Health Care Information System. The department and the department of health and human services shall enter into a memorandum of understanding for collaboration in the development of a comprehensive health care information system. The memorandum of understanding shall include a description of the data sets that will be included in the comprehensive health care

information system, the criteria and procedures for the development of limited use data sets, the criteria and procedures to ensure that Health Information Privacy and Accountability Act (HIPAA) compliant limited use data sets are accessible, and a proposed time frame for the creation of a comprehensive health care information system. To the extent allowed by HIPAA, the data shall be available as a resource for insurers, employers, providers, purchasers of health care, and state agencies to continuously review health care utilization, expenditures, and performance in New Hampshire and to enhance the ability of New Hampshire consumers and employers to make informed and cost-effective health care choices. In presenting data for public access, comparative considerations shall be made regarding geography, demographics, general economic factors, and institutional size.

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

**2003-1647s**

#### AMENDED ANALYSIS

This bill establishes a procedure for the release by a state agency of statistical information for research purposes. Under this bill, a requestor of such information shall sign a data use agreement specifying certain limitations for the use of the information.

This bill also requires the department of health and human services and the insurance department to collect encrypted health insurance claims data and to collaboratively develop a comprehensive health care information system.

#### **Amendment adopted.**

Senator O'Hearn offered a floor amendment.

**Sen. O'Hearn, Dist. 12**

**May 21, 2003**

**2003-1749s**

**01/09**

#### **Floor Amendment to HB 670-FN**

Amend the bill by replacing section 6 with the following:

6 New Section; Health Care Information System. Amend RSA 420-G by inserting after section 11 the following new section:

420-G:11-a Development of a Comprehensive Health Care Information System. The department and the department of health and human services shall enter into a memorandum of understanding for collaboration in the development of a comprehensive health care information system. The memorandum of understanding shall include a description of the data sets that will be included in the comprehensive health care information system, the criteria and procedures for the development of limited use data sets, the criteria and procedures to ensure that Health Information Privacy and Accountability Act (HIPAA) compliant limited use data sets are accessible, and a proposed time frame for the creation of a comprehensive health care information system. To the extent allowed by HIPAA, the data shall be available as a resource for insurers, employers, providers, purchasers of health care, and state agencies to continuously review health care utilization, expenditures, and performance in New Hampshire and to enhance the ability of New Hampshire consumers and employers to make informed and cost-effective health care choices. In presenting data for public access, comparative considerations shall be made regarding geography, demographics, general economic factors, and institutional size. Notwithstanding HIPAA or any other provision of law, the comprehensive health care information system shall not include or disclose any data that contains direct personal identifiers. For the purposes of this section, "direct personal identifiers" include information relating to an individual that contains primary or obvious identifiers, such as the individual's name, street address, e-mail address, telephone number, and social security number.

#### **Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 693-FN**, relative to the jurisdiction and constitution of the ballot law commission. Internal Affairs Committee. Ought to pass with amendment, Vote 2-1. Senator Boyce for the committee.

**Internal Affairs**  
**May 15, 2003**  
**2003-1641s**  
**03/01**

**Amendment to HB 693-FN**

Amend the bill by replacing section 2 with the following:

2 Election Day Morning Procedures; Statutes Posted. Amend RSA 658:29 to read as follows:

658:29 Statutes Posted. The secretary of state shall prepare and distribute copies of the following RSA sections which the selectmen shall post or cause to be posted outside the guardrail in the polling place: RSA 654:7-a, RSA 654:7-b, RSA 654:38, RSA 654:39; RSA 658:29; RSA 659:27, RSA 659:30, RSA 659:31, RSA 659:32, RSA 659:103; **RSA 665:17**; RSA 666:4, RSA 666:5, RSA 666:8, RSA 666:12. In addition, the secretary of state shall include any other statutes or regulations that are required to be posted by state or federal law. The secretary of state may also include statutes or regulations that, in the secretary of state's judgment, would aid a voter in casting a vote or in contacting the appropriate official if the voter believes that his or her voting rights are being violated.

**Amendment adopted.**

**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, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**The following Senators voted No: Below, Flanders, Odell, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 15 - Nays: 8**

**Adopted.**

**Ordered to third reading.**

**HB 134-FN**, relative to recommendations, appointments, and qualifications of marital masters and procedures for cases heard by marital masters. Judiciary Committee.

Re-refer to committee, Vote 4-1. Senator Foster for the committee.

**Committee report of re-referred is adopted.**

**HB 288-FN**, imposing a criminal penalty for the dissemination of certain materials without consent. Judiciary Committee. Ought to pass with amendment, Vote 4-1. Senator Clegg for the committee.

**Senate Judiciary**  
**May 14, 2003**  
**2003-1621s**  
**04/05**

**Amendment to HB 288-FN**

Amend RSA 644:9, III as inserted by section 1 of the bill by replacing it with the following:

III. A person is guilty of a class A misdemeanor if that person knowingly disseminates or causes the dissemination of any photograph or video recording of himself or herself engaging in sexual activity with another person without the express consent of the other person or persons who appear in the photograph or videotape. In this paragraph, "disseminate" and "sexual activity" shall have the same meaning as in RSA 649-A:2. This paragraph shall not be construed to impair or limit any otherwise lawful activities of law enforcement personnel, or employees of governmental agencies or other entities, public or private, who, in the course and scope of their employment and supported by articulable suspicion, attempt to capture any type of visual image, sound recording, or other physical impression of a person during an investigation, surveillance, or monitoring of conduct to obtain evidence of suspected illegal activity, the suspected violation of any administrative rule or regulation, a suspected fraudulent insurance claim, or any other suspected fraudulent conduct or activity involving a violation of law, or pattern of business practices adversely affecting the public health or safety.

**2003-1621s**

## AMENDED ANALYSIS

This bill establishes a class A misdemeanor offense for any person who knowingly disseminates or causes the dissemination of any photograph or video recording of himself or herself engaging in sexual activity with another person without the express consent of the other person or persons who appear in the photograph or videotape. This bill also provides an exception for the lawful activities of law enforcement personnel.

**Amendment adopted.****Question is on the adoption of the bill as amended.****Adopted.****Ordered to third reading.**

**HB 357-FN**, relative to child support insurance settlement intercept. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Sapareto for the committee.

**Senate Judiciary****May 9, 2003****2003-1564s****05/01****Amendment to HB 357-FN**

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

1 New Section; Alternative Method of Support Enforcement for Dependent Children; Child Support Insurance Settlement Intercept. Amend RSA 161-C by inserting after section 3-d the following new section:

161-C:3-e Child Support Insurance Settlement Intercept. The department may provide certain information to public agencies or its contracted agents in order to intercept insurance settlement payments or judgments claimed by individuals who are subject to a child support lien pursuant to RSA 161-C and who owe past-due support. The department may identify such individuals by name, last 4 digits of the individual's social security number or other taxpayer identification number, date of birth, last known address, employer, or any combination thereof. Any information provided by the department in accordance with this section shall remain the property of the state of New Hampshire and shall be purged by any public agency or contracted agent receiving said information upon completion of the data match exchange. The department may perform an audit to insure that any public agency or contracted agent has purged said information. The specific penalty for failure to purge the information shall be set forth in any contract or agreement between the department and any public agency or contracted agent made pursuant to this section. Any transaction cost incurred by the department related to the data match exchange shall be directly recovered by the department from any insurance settlement or judgment proceeds. Insurance settlement payments for casualty loss to personal or real property and past or future medical treatment shall be exempt from this section. Reasonable attorney fees and expenses shall be exempt from this section pursuant to RSA 311:13. Any settlement, payment, or judgment received under the provision of this section shall be held by the department for 60 days prior to its release or distribution unless otherwise agreed to by the parties.

2 Alternative Method of Support Enforcement for Dependent Children; Exemptions; Certain Payments for Casualty Loss Exempt. Amend RSA 161-C:11, I to read as follows:

I. Except as provided in paragraph II of this section, any property otherwise exempt from trustee process, attachment and execution shall be exempt from an order to withhold and deliver, administrative seizure and disposition, and lien and foreclosure. ***Insurance settlement payments for casualty loss to personal or real property and past or future medical treatment shall be exempt from this section. Reasonable attorney fees and expenses shall be exempt from this section pursuant to RSA 311:13.***

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

**Amendment adopted.****Question is on the adoption of the bill as amended.****Adopted.****Referred to the Finance Committee (Rule #26).**

**HB 615-FN**, relative to the requirements for registration of sexual offenders. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

**Senate Judiciary**

**May 9, 2003**

**2003-1569s**

**04/10**

**Amendment to HB 615-FN**

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

3 Registration of Criminal Offenders; Availability of Information. RSA 651-B:7, II is repealed and reenacted to read as follows:

II.(a) The division shall maintain a separate list of all individuals registered pursuant to this chapter who have been convicted of any violation or attempted violation of one of the following offenses, or of any law of another state or the federal government reasonably equivalent to one of the following offenses:

(1) RSA 632-A:2, I(l).

(2) RSA 632-A:2, II-III

(3) RSA 632-A:3, II, provided that the age difference between the convicted individual and the victim was more than 4 years at the time of the offense.

(4) RSA 645:1, II-III.

(5) Any offense described in RSA 651-B:1, V.

(b)(1) The list described in subparagraph (a) shall include:

(A) The name, address, and date of birth of the registered individual.

(B) The offense for which the individual was convicted.

(C) The date and court of the conviction for which the individual is registered.

(D) Outstanding arrest warrants, and the information listed in subparagraphs (b)(1)(A)-(C), for any sexual offender or offender against children who has not complied with the obligation to register under this chapter.

(2) Where such information is available, the list may also include:

(A) A photograph or physical description of the individual.

(B) The date and court of the individual's other convictions, if any.

(C) Information on the profile of the victim or victims of the individual's offense or offenses.

(D) The method of approach utilized by the individual.

(3) In no event shall the list include the identity of any victim.

4 New Paragraph; Registration of Criminal Offenders; Availability of Information. Amend RSA 651-B:7 by inserting after paragraph V the following new paragraph:

VI.(a) Notwithstanding the provisions of this section, any individual required to be registered whose name and information is contained on the list described in paragraph II(b) may file with the clerk of the superior court for the county in which the judgment was rendered an application for review of the public registration requirement contained in RSA 651-B:7. This application shall not be filed prior to the completion of all the terms and conditions of the sentence and in no case earlier than 10 years after the date of release following conviction. After review of the application, the court may schedule a hearing.

(b) The court shall provide notice of the application for review under this section to the victim within 30 days of any hearing. Prior to any decision granting the application, the court shall provide the victim with the opportunity to address the court. The victim may appear personally or by counsel and may reasonably express his or her views concerning the offense, the person responsible, and the need for maintaining the public registry requirement. The judge shall consider the statements of the victim pursuant to this section when making a decision regarding the application. The judge shall grant the application, after a hearing,

only where, in the opinion of the court, removal from the public registry requirement under this section will assist the individual in the individual's rehabilitation and will be consistent with the public welfare. If an application for review is denied, any subsequent application may be filed only where good cause is shown, consistent with the provisions of this section. A decision granting an application for review under this section shall not remove any of the registration requirements contained in RSA 651-B:6.

5 New Section; Registration of Criminal Offenders; Hearing. Amend RSA 651-B by inserting after section 6 the following new section:

651-B:10 Hearing. Any offender who wishes to appeal a decision of the division regarding the duty to report and the duration of the duty to report may, within 10 days of notification, request a hearing on the matter before the commissioner. If such a request is made, the commissioner shall promptly schedule and conduct a hearing pursuant to rules adopted under RSA 541-A. After hearing, the decision of the commissioner shall be final, and the offender shall have a right to appeal the decision in superior court.

6 Applicability. The provisions of this act shall apply to any person required to be registered pursuant to RSA 651-B:2 as of the effective date of this act.

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

**2003-1569s**

#### AMENDED ANALYSIS

This bill requires certain information to be included in the sexual offender database and provides that other information such as a photograph or physical description of the offender may be included, if available. The bill also provides a procedure for an individual required to be registered to review such requirement. The bill prohibits the department of safety from maintaining records of individuals who access or attempt to access the LENS system database.

#### **Amendment adopted.**

Senator Peterson offered a floor amendment.

**Sen. Clegg, Dist. 14**

**May 22, 2003**

**2003-1790s**

**01/09**

#### **Floor Amendment to HB 615-FN**

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

3 Registration of Criminal Offenders; Availability of Information. RSA 651-B:7, II is repealed and reenacted to read as follows:

II.(a) The division shall maintain a separate list of all individuals registered pursuant to this chapter who have been convicted of any violation or attempted violation of one of the following offenses, or of any law of another state or the federal government reasonably equivalent to one of the following offenses:

(1) RSA 632-A:2, I(l).

(2) RSA 632-A:2, II-III.

(3) RSA 632-A:3, II, provided that the age difference between the convicted individual and the victim was more than 4 years at the time of the offense.

(4) RSA 632-A:3, III.

(5) RSA 645:1, II-III.

(6) Any offense described in RSA 651-B:1, V.

(b)(1) The list described in subparagraph (a) shall include:

(A) The name, address, and date of birth of the registered individual.

(B) The offense for which the individual was convicted.

(C) The date and court of the conviction for which the individual is registered.

(D) Outstanding arrest warrants, and the information listed in subparagraphs (b)(1)(A)-(C), for any sexual offender or offender against children who has not complied with the obligation to register under this chapter.

(2) Where such information is available, the list may also include:

- (A) A photograph or physical description of the individual.
- (B) The date and court of the individual's other convictions, if any.
- (C) Information on the profile of the victim or victims of the individual's offense or offenses.
- (D) The method of approach utilized by the individual.

(3) In no event shall the list include the identity of any victim.

4 New Paragraph; Registration of Criminal Offenders; Availability of Information. Amend RSA 651-B:7 by inserting after paragraph V the following new paragraph:

VI.(a) Notwithstanding the provisions of this section, any individual required to be registered whose name and information is contained on the list described in subparagraph II(a) and who has been convicted of any violation or attempted violation of RSA 632-A:2, III or RSA 632-A:3, II, provided that the age difference between the convicted individual and the victim was more than 4 years at the time of the offense, may file with the clerk of the superior court for the county in which the judgment was rendered an application for review of the public registration requirement contained in RSA 651-B:7. This application shall not be filed prior to the completion of all the terms and conditions of the sentence and in no case earlier than 10 years after the date of release following conviction. After review of the application, the court may schedule a hearing.

(b) The court shall provide notice of the application for review under this section to the victim within 30 days of any hearing. Prior to any decision granting the application, the court shall provide the victim with the opportunity to address the court. The victim may appear personally or by counsel and may reasonably express his or her views concerning the offense, the person responsible, and the need for maintaining the public registry requirement. The judge shall consider the statements of the victim pursuant to this section when making a decision regarding the application. The judge shall grant the application, after a hearing, only where, in the opinion of the court, removal from the public registry requirement under this section will assist the individual in the individual's rehabilitation and will be consistent with the public welfare. If an application for review is denied, any subsequent application may be filed only where good cause is shown, consistent with the provisions of this section. A decision granting an application for review under this section shall not remove any of the registration requirements contained in RSA 651-B:6.

5 New Section; Registration of Criminal Offenders; Hearing. Amend RSA 651-B by inserting after section 9 the following new section:

651-B:10 Hearing. Any offender convicted of an offense in another state or under federal law who wishes to appeal a decision of the division regarding the division's determination that the offense is reasonably equivalent to an offense requiring registration under this chapter, including the duration of the duty to report may, within 10 days of notification, request a hearing on the matter before the commissioner. If such a request is made, the commissioner shall promptly schedule and conduct a hearing pursuant to rules adopted under RSA 541-A. After hearing, the decision of the commissioner shall be final, and the offender shall have a right to appeal the decision in superior court.

6 Applicability. The provisions of this act shall apply to any person required to be registered pursuant to RSA 651-B:2 as of the effective date of this act.

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

## **2003-1790s**

### **AMENDED ANALYSIS**

This bill requires certain information to be included in the sexual offender database and provides that other information such as a photograph or physical description of the offender may be included, if available. The bill also provides a procedure for an individual required to be registered to review such requirement. The bill prohibits the department of safety from maintaining records of individuals who access or attempt to access the LENS system database.

**Floor amendment adopted.**



**Question is on the adoption of the bill as amended.**

**Adopted.**

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

**HB 674-FN**, relative to legal representation for indigent parties and notification requirements under the Child Protection Act. Judiciary Committee. Ought to pass with amendment, Vote 4-1. Senator Clegg for the committee.

**Senate Judiciary**

**May 14, 2003**

**2003-1626s**

**09/10**

**Amendment to HB 674-FN**

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

AN ACT relative to notification requirements under the Child Protection Act.

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

1 Child Abuse and Neglect Proceedings; Protective Custody; Notification of Non-custodial Parent. Amend RSA 169-C:6, II-V to read as follows:

II. If a police or juvenile probation and parole officer removes a child under paragraph I above, the officer:

(a) Shall inform the court forthwith whereupon continued protective custody pending a hearing may be ordered by the court;

(b) May take the child to a child protection services worker of the department; or

(c) May place the child in a foster home; if a child is placed directly in a foster home, the department shall be notified of the incident and where the child is placed within 24 hours, unless there is a physician involved and treating the child and the child is or will be taken to and admitted to a hospital; and

(d) Shall, when the child is removed from an individual other than a parent or a person legally responsible for the child, make every reasonable effort to inform ~~[the parent]~~ **both parents** or other ~~[person]~~ **persons** legally responsible for the child's care where the child has been taken.

III. Any police or juvenile probation and parole officer or other individual acting in good faith pursuant to this section, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of such removal or placement.

IV. The court shall hold a hearing on the matter within 24 hours of taking the child into protective custody, Sundays and holidays excluded. Notice shall be given to **both parents and** all parties designated by the petitioner or the court.

V. If a child is found by a child protection services worker of the department to be in imminent danger in such circumstances or surroundings and where immediate removal appears necessary to protect the child from such imminent danger, the department's child protection services worker shall contact a judge or clerk immediately for an order to remove the child. ***Prior to any order authorizing foster placement, the child protective service worker shall inform the judge of efforts to locate any non-custodial parent or other relatives for temporary placement.***

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

**2003-1626s**

AMENDED ANALYSIS

This bill establishes new requirements for notice of protective custody hearings.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 680-FN**, establishing a committee to study service contracts and repealing the law regarding legal services insurance. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Clegg for the committee.

**Senate Judiciary**

**May 14, 2003**

**2003-1625s**

**01/10**

**Amendment to HB 680-FN**

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

AN ACT establishing a committee to study service contracts and relative to prepaid legal services contracts.

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

7 Insurance; Prepaid Legal Services Contracts. RSA 415-C is repealed and reenacted to read as follows:

CHAPTER 415-C

PREPAID LEGAL SERVICES CONTRACTS

415-C:1 Scope and Purpose. The purpose of this chapter is to create a legal framework within which prepaid legal services contracts, may be sold in this state.

415-C:2 Definitions. In this chapter:

I. "Commissioner" means the commissioner of insurance.

II. "Consumer" means a natural person who buys other than for purposes of resale any tangible personal property that is distributed in commerce and that is normally used for personal, family or household purposes and not for business or research purposes.

III. "Department" means the insurance department.

IV.(a) "Prepaid legal services contract" means the assumption of a contractual obligation to reimburse the beneficiary against or pay on behalf of the beneficiary, or to provide specified legal services or reimbursement for all or a portion of legal fees, costs, and expenses related to or arising out of services provided by or under the supervision of an individual licensed or admitted to practice law in the state of New Hampshire, in which the services are to be rendered, in consideration of a specified payment for an interval of time, regardless of whether the payment is made by the beneficiaries individually or by a third person for them, in such a manner that the total cost incurred by assuming the obligation is to be spread directly or indirectly among a group of persons. "Contractual obligation" includes an arrangement in which those persons for whom services are to be provided under the arrangement have reasonable expectations of enforceable rights.

(b) "Prepaid legal services contract" shall not include the provision of or reimbursement for legal services incidental to insurance coverages. The following are not considered prepaid legal services contracts under the laws of this state:

(1) Retainer contracts made with individual clients with the fees based on estimates of the nature and amount of services that will be provided to the specific client, and similar contracts made with a group of clients involved in the same or closely related legal matters, such as class actions.

(2) Plans providing no benefits other than a limited amount of consultation and advice on simple matters either alone or in combination with referral services or on the promise of fee discounts for other matters.

(3) Plans providing limited benefits on simple legal matters on an informal basis, not involving a legally binding promise, in the context of an employment or educational or similar relationship.

(4) Contracts that provide benefits under automobile club membership contracts and automobile liability insurance policies with limited legal services or reimbursement for legal services in automobile-related matters under the certificates of authority issued by the commissioner.

(5) Legal services or other legal services programs for the indigent.

(6) Legal services provided by unions or employee associations to their members in matters relating to employment or occupation.

(7) Legal services provided by an agency of the federal or state government or subdivision thereof to its employees or are otherwise excluded from the provisions of this chapter by the Federal Retirement Income Security Act of 1974, or any amendments thereto.

415-C:3 Requirements For Doing Business. No later than June 14 of each year, each provider of prepaid legal service contracts sold in this state shall file a registration with the commissioner. For the initial registration, the provider shall use a form prescribed by the commissioner and pay to the department an initial registration fee pursuant to RSA 400-A:29, VIII-a. Renewal shall be made by paying an annual renewal fee pursuant to RSA 400-A:29, VIII-a(b) and supplementing the original form to the extent of any material change to the registration.

415-C:4 Exemptions. Prepaid legal service contracts are exempt from this title, except for the provisions of this chapter and RSA 400-A:16 – RSA 400-A:25.

415-C:5 Required Disclosures. Prepaid legal service contracts marketed, sold, or offered for sale, issued, made, proposed to be made or administered in this state shall be written in clear, understandable language, and specify the terms under which the service contract is sold, the specific services to be provided and any limitations, exceptions or exclusions thereon.

415-C:6 Examination. For the purpose of determining the providers financial stability and protecting consumer interests, the commissioner shall have the power to examine and investigate into the affairs of every provider engaged in the business of service contracts in this state in order to determine compliance or noncompliance with this chapter. The expenses of examinations shall be paid to the state by the company or companies examined.

415-C:7 Penalties. The commissioner, after proper notice and opportunity for hearing, may take action to enforce the provisions of this chapter, or rules adopted pursuant to this chapter, and may:

- I. Revoke or suspend the registration of the prepaid legal service provider;
- II. Order the provider to cease and desist from further service contract operations;
- III. Impose a penalty of not more than \$1000 for each violation or \$10,000 for each violation the commissioner finds to be willful; and
- IV. Order the provider make restitution to contract holders.

415-C: 8 Rulemaking Authority. The commissioner may adopt rules, pursuant to RSA 541-A, as may be necessary to administer the provisions of this chapter.

415-C:9 Severability. 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.

8 New Paragraph; Prepaid Legal Services. Amend RSA 400-A:29 by inserting after paragraph VIII the following new paragraph:

VIII-a. Prepaid Legal Services

- |                     |       |
|---------------------|-------|
| (a) Application fee | \$300 |
| (b) Annual renewal  | \$150 |

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

**2003-1625s**

AMENDED ANALYSIS

This bill establishes a committee to study service contracts including prepaid legal services contracts.

The bill also establishes parameters for prepaid legal service contracts to be sold in this state.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**Senator Sapareto Rule #42 on HB 680-FN.**

**HB 718-FN**, relative to endangering the welfare of a minor and relative to criminal responsibility for the commission of certain acts. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Sapareto for the committee.

**Senate Judiciary**

**May 14, 2003**

**2003-1633s**

**04/05**

**Amendment to HB 718-FN**

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

AN ACT relative to judicial proceedings for crimes committed by a minor which are not charged until after the minor reaches the age of majority and relative to the statute of limitations in cases involving destruction or falsification of evidence, witness tampering, or other unlawful conduct.

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

1 New Paragraph; Transfer to Superior Court. Amend RSA 169-B:24 by inserting after paragraph IV the following new paragraph:

V. If an offense contained in RSA 628:1, II is committed by an individual before the age of 17 but not charged until after the individual has reached the age of 17, the district court shall follow the procedures set forth in this section to determine if the individual charged met the criteria of this section at the time the offense was committed.

2 New Subparagraph; Limitations; Destruction or Falsification of Evidence. Amend RSA 625:8, III by inserting after subparagraph (d) the following new subparagraph:

(e) For any offense where destruction or falsification of evidence, witness tampering, or other unlawful conduct delayed discovery of the offense, within one year of the discovery of the offense.

3 Effective Date. This act shall take effect January 1, 2004.

**2003-1633s**

**AMENDED ANALYSIS**

This bill:

I. Specifies the procedure to be followed by the district court in cases where crimes are committed by minors but not charged until after they reach the age of majority.

II. Adds a one-year, discovery rule, statute of limitations for the prosecution of any offense which is delayed as a result of destruction or falsification of evidence or witness tampering.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 360-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 relative to a New Hampshire Legal Assistance pilot project on serving the near-poor. Public Affairs Committee. Inexpedient to Legislate, Vote 4-1. Senator Green for the committee.

**Question is on the committee report of inexpedient to legislate.**

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

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**The following Senators voted No: Below, Peterson, O'Hearn, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 15 - Nays: 8**

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

**HB 413-L**, relative to certain appeals proceedings when the taxpayer prevails. Public Affairs Committee. Ought to Pass, Vote 4-0. Senator Barnes for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 654-FN**, relative to criminal liability for the destruction or disconnection of a smoke detector by a tenant in a rental dwelling. Public Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Larsen for the committee.

**Public Affairs**  
**May 14, 2003**  
**2003-1632s**  
**04/05**

**Amendment to HB 654-FN**

Amend RSA 634:2, IX as inserted by section 1 of the bill by replacing it with the following:

IX. Any person who is found guilty of criminal mischief under this section because such person is a tenant, or a guest of such tenant, in a rental dwelling who has destroyed, disconnected, or otherwise rendered inoperable any smoke detector in the rental dwelling, or who has attempted the same in a rental dwelling, shall be guilty of a misdemeanor. It shall be an affirmative defense under this paragraph if a tenant notifies a landlord that the tenant, for reasonable cause, has disconnected a smoke detector in the rental dwelling, and such notice is given to the landlord within 3 business days of the disconnection.

**2003-1632s**

AMENDED ANALYSIS

This bill makes a tenant or a guest of such tenant criminally liable for destroying, disconnecting, or rendering inoperable a smoke detector in a rental dwelling and provides that the tenant or guest of such tenant shall be guilty of a misdemeanor. The bill also provides an affirmative defense for the tenant under certain circumstances.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 758-FN**, relative to the criteria for medicaid eligibility. Public Affairs Committee. Ought to Pass, Vote 4-0. Senator Roberge for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 778-L**, relative to the city of Manchester school district. Public Affairs Committee. Ought to Pass, Vote 4-0. Senator Morse for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 796-FN-L**, relative to the taxation of manufactured housing. Public Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Morse for the committee.

**Public Affairs**  
**May 14, 2003**  
**2003-1634s**  
**10/05**

**Amendment to HB 796-FN**

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

AN ACT relative to the taxation of manufactured housing and relative to notice required prior to the sale of a recreational campground.

Amend the bill by replacing all after section 7 with the following:

8 New Sections; Recreational Campgrounds; Notice Required Before Sale. Amend RSA 216-I by inserting after section 15 the following new sections:

216-I:16 Notice Required Before Sale of Recreational Campground.

I. No recreational campground owner shall make a final unconditional acceptance of any offer for the sale or transfer of a recreational campground without first giving 60 days' notice to each owner of a recreational trailer, as defined in RSA 216-I:1, VIII(c), who pays property taxes to the municipality in which the recreational campground is located and to each owner of a manufactured home who pays property taxes to the municipality for a home used seasonally in a recreational campground. The notice shall include:

(a) That the owner intends to sell the recreational campground; and

(b) The price, terms, and conditions of an acceptable offer the campground owner has received to sell the campground, or the price, terms, and conditions for which the campground owner intends to sell the recreational campground. This notice shall include a copy of the signed written offer which sets forth a description of the property to be purchased and the price, terms, and conditions of the acceptable offer.

II. During the notice period required under paragraph I, the campground owner shall consider any offer received from the owner of the recreational trailer, owner of a manufactured home, or the owner's association, if any, and the campground owner shall negotiate in good faith with the owner of the recreational trailer, the owner of a manufactured home, or the owner's association concerning a potential purchase. If during the notice period, the owner of a recreational trailer, owner of a manufactured home, or owner's association decides to make an offer to purchase the recreational campground, such offer shall be evidenced by a purchase and sale agreement; however, the owner of the recreational trailer, owner of a manufactured home, or owner's association shall have a reasonable time beyond the 60-day period, if necessary, to obtain financing for the purchase.

III. The notice required by paragraph I shall be served by certified mail, return receipt requested, to each owner of a recreational trailer or owner of a manufactured home at such owner's abode. A receipt from the United States Postal Service that is signed by any adult member of the household to which it was mailed, or a notation on the letter that the letter was refused by any adult member of the owner's household or that the addressee no longer resides there, or a letter which is returned to the post office unclaimed, shall constitute a conclusive presumption that service was made in any court action in this state.

216-I:17 Length of Stay. Notwithstanding any other provision of law to the contrary, any recreational trailer, as defined in RSA 216-I:1, VIII(c), or manufactured home, used seasonally and whose owner pays property taxes to the local municipality, shall be permitted to use such vehicle or home for a minimum of 5 months in a calendar year.

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

**2003-1634s**

AMENDED ANALYSIS

This bill provides that manufactured housing shall be taxed and treated as real estate, and eliminates the separate manufactured housing tax lien system.

The bill makes a change to the definition of security interest in the uniform commercial code.

The bill also requires that notice be given to owners of recreational trailers and manufactured housing prior to the sale of a recreational campground.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

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

**HB 280-FN**, relative to the poison information center. Public Institutions, Health and Human Services Committee. Ought to Pass, Vote 2-0. Senator Martel for the committee.

**Adopted.**

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

**HB 677-FN**, increasing the number of reserved student slots in medical programs, and establishing a loan forgiveness program for physicians who practice in underserved areas, and making an appropriation therefor. Public Institutions, Health and Human Services Committee. Ought to pass with amendment, Vote 4-0. Senator Estabrook for the committee.

**Public Institutions, Health and Human Services**

**May 13, 2003**

**2003-1611s**

**04/05**

**Amendment to HB 677-FN**

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

AN ACT increasing the number of reserved student slots in medical programs, establishing a reduction of medical indebtedness program for physicians who practice in underserved areas, and making an appropriation therefor.

Amend the bill by inserting after section 1 the following and renumbering the original sections 2-6 to read as 3-7, respectively:

2 Veterinary/Medical/Optometric Education Program. Amend RSA 200-J:2, II to read as follows:

II. The governor is authorized to enter into an agreement on behalf of the state with Dartmouth medical school **and other medical schools** for the purpose of providing allopathic **and osteopathic** medical education to qualified New Hampshire residents.

Amend the bill by replacing section 6 with the following

6 Veterinary/Medical Education Loan Program; Reduction of Medical Education Indebtedness. Amend RSA 200-I:5 to read as follows:

200-I:5 Forgiveness of Accounts; **Reduction of Medical Education Indebtedness.**

**I.** The commissioner of administrative services may, in case of hardship, death or other extenuating circumstances, with the approval of the fiscal committee of the general court provided for in RSA 14:30-a, extend or forgive such individual accounts as may be brought to his **or her** attention.

**II.(a) Individuals who have completed their medical education, including internships and residencies, and practice in a medically underserved area of the state, may reduce their medical education loan indebtedness by up to \$20,000 for each year of practice in such area for a maximum of 2 years, except as otherwise provided in this paragraph.**

**(b) Individuals eligible under this paragraph shall submit a certification of practice form, made available by the commissioner of the department of health and human services, for each year of practice in a medically underserved area.**

**(c) The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, relative to application procedures and designating medically underserved areas in this state.**

**(d) Funds available in the department of health and human services, office of community and public health, and any community benefits matching or pooled funds which become available pursuant to RSA 7:32-c through 7:32-l, may be used to extend the reduction of medical education indebtedness program under this paragraph.**

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

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

**HB 735-FN**, relative to prescription drugs and medicaid best practices. Public Institutions, Health and Human Services Committee. Inexpedient to Legislate, Vote 4-0. Senator Martel for the committee.

**MOTION TO TABLE**

Senator Morse moved to have **HB 735-FN** laid on the table.

**Adopted.**

**LAID ON THE TABLE**

**HB 735-FN**, relative to prescription drugs and medicaid best practices.

**HB 638-FN**, increasing the oil import license fee, changing the rate of interest assessed on overdue oil import fees, and repealing underground storage facility permit fees. Transportation Committee. Re-refer to committee, Vote 4-0. Senator Morse for the committee.

**MOTION TO TABLE**

Senator Morse moved to have **HB 638-FN** laid on the table.

**Adopted.**

**LAID ON THE TABLE**

**HB 638-FN**, increasing the oil import license fee, changing the rate of interest assessed on overdue oil import fees, and repealing underground storage facility permit fees.

**HB 519-FN-A**, relative to the conservation number plate trust fund. Ways and Means Committee. Ought to Pass, Vote 2-0. Senator D'Allesandro for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 590-FN**, relative to highway fund budget reporting requirements. Ways and Means Committee. Ought to pass with amendment, Vote 4-0. Senator D'Allesandro for the committee.

**Senate Ways and Means**

**May 16, 2003**

**2003-1679s**

**05/10**

**Amendment to HB 590-FN**

Amend the bill by replacing section 1 with the following:

1 New Sections; Budget and Appropriations; Allocation of Unrestricted Revenue from Highway Fund; Highway Fund Reporting Requirements. Amend RSA 9 by inserting after section 9 the following new sections:

9:9-a Collection of Highway Fund Revenue; Reporting Requirement. Pursuant to part II, article 6-a of the New Hampshire constitution, any costs associated with the collection and administration of highway funds by the department of safety shall be deducted by the department before such funds are credited to the highway fund. On or before January 1, the department shall provide an annual accounting of such administration and collection costs to the president of the senate and the speaker of the house of representatives.

9:9-b Allocation of Unrestricted Revenue from Highway Fund. In each biennium, all unrestricted revenue from the highway fund, including any surplus but excluding any betterment funds or highway block grant aid, as estimated by the commissioner of the department of administrative services in RSA 9:6, and subject to the requirements of RSA 9:4-d, shall be allocated in the operating budget as follows:

I. Department of transportation: Not less than 67 percent of unrestricted revenue.

II. Department of safety: Not to exceed 25 percent of unrestricted revenue.

III. Other projects that comply with part 2, article 6-a of the New Hampshire constitution, relative to the use of highway funds: Not to exceed 3 percent of unrestricted revenue.

9:9-c Reporting Requirement for Special Accounts or Restricted Revenue Within the Highway Fund. Each department that operates a special account within the highway fund or receives restricted revenue from a special account within the highway fund shall file a biennial report with the state treasurer on or before January 15, 2006, and every other year thereafter. The report shall include, but not be limited to:

I. Activities the special account is required or intended to carry out.

II. Identification of all revenue from the special account available to the department.

III. The amount of revenue deposited into the special account and the amount and purpose of all expenditures by the department from the account during the prior 2 fiscal years.

IV. The balance of the special account at the close of the prior 2 fiscal years.



**2003-1679s**

## AMENDED ANALYSIS

This bill establishes a reporting requirement for administration and collection costs associated with highway fund revenue.

This bill allocates unrestricted revenue from the highway fund and requires any department that receives restricted revenue from the highway fund to submit a biennial report of expenditures to the state treasurer.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 694-FN**, relative to tobacco product manufacturers not entering master settlement agreements. Ways and Means Committee. Ought to pass with amendment, Vote 4-0. Senator D'Allesandro for the committee.

**Senate Ways and Means**

**May 15, 2003**

**2003-1665s**

**09/01**

**Amendment to HB 694-FN**

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

AN ACT relative to tobacco product manufacturers not entering master settlement agreements and changing the tax on tobacco products other than cigarettes.

Amend the bill by replacing section 5 with the following:

5 New Paragraph; Definition; Wholesale Sales Price. Amend RSA 78:1 by inserting after paragraph III the following new paragraph:

III-a. "Wholesale sales price" means the established price for which a manufacturer sells tobacco products other than cigarettes to a wholesaler, exclusive of any discount or other reduction.

6 Tax on Cigarettes. Amend RSA 78:7 to read as follows:

78:7 Tax Imposed. A tax upon the retail consumer is hereby imposed at the rate of 52 cents for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all ~~[tobacco products]~~ **cigarettes** sold at retail in this state. The payment of the tax shall be evidenced by affixing stamps to the smallest packages containing the ~~[tobacco products]~~ **cigarettes** in which such products usually are sold at retail. The word "package" as used in this section shall not include individual cigarettes. No tax is imposed on any transactions, the taxation of which by this state is prohibited by the Constitution of the United States.

7 Tax 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 ~~[proportional to the cigarette tax, having such ratio to the usual wholesale price of the tobacco product other than cigarettes as the cigarette tax bears to the usual wholesale price of the cigarettes]~~ **of 19 percent of the wholesale sales price**. 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.

8 Repeal. RSA 78:1, XIV-a, relative to the definition of usual wholesale price, is repealed.

9 Effective Date.

I. Sections 6-8 of this act shall take effect July 1, 2003.

II. The remainder of this act shall take effect January 1, 2004.

**2003-1665s****AMENDED ANALYSIS**

This bill establishes certain requirements for participating and non-participating tobacco product manufacturers to prevent violations of RSA 541-C and the tobacco Master Settlement Agreement.

The bill also changes the tax on tobacco products other than cigarettes.

**Amendment adopted.**

Senator D'Allesandro offered a floor amendment.

**Sen. D'Allesandro, Dist. 20****May 22, 2003****2003-1785s****09/01****Floor Amendment to HB 694-FN**

Amend RSA 541-D:6, I as inserted by section 1 of the bill by replacing it with the following:

I. In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that any person has violated RSA 541-D:3, III or any rule adopted pursuant thereto, the commissioner may revoke or suspend the license of any stamping agent in the manner provided by RSA 78:6. Each stamp affixed and each offer to sell cigarettes in violation of RSA 541-D:3, III shall constitute a separate violation. For each violation hereof, the commissioner may also impose a civil penalty in an amount not to exceed the greater of 500 percent of the retail value of the cigarettes sold or \$5,000 upon a determination of violation of RSA 541-D:3, III or any rules adopted pursuant thereto. Such penalty shall be imposed in the manner provided by RSA 78 or RSA 21-J.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 805**, establishing a consensus revenue estimating panel. Ways and Means Committee. Ought to pass with amendment, Vote 5-0. Senator D'Allesandro for the committee.

**Senate Ways and Means****May 16, 2003****2003-1671s****05/04****Amendment to HB 805**

Amend RSA 17-Q:2, I(f) and (g) as inserted by section 1 of the bill by replacing them with the following:

(f) Three members of the business community with expertise in business and economics, appointed by the governor.

(g) Two members of the academic community, appointed by the governor.

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

2 Repeal. Chapter RSA 17-Q, relative to the consensus revenue estimating panel, is repealed.

3 Effective Date.

I. Section 2 of this act shall take effect May 1, 2005.

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

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 806**, enabling municipalities to adopt a property tax exemption for deaf or severely hearing impaired persons. Ways and Means Committee. Ought to Pass, Vote 2-0. Senator Clegg for the committee.

**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 and 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 66-FN**, relative to executive agency rulemaking authority.

**HB 75**, relative to timber harvesting.

**HB 112-FN**, establishing a point system for the annual moose permit lottery.

**HB 131**, relative to enforcement of negotiable instruments under Article 3 of the Uniform Commercial Code.

**HB 159**, relative to meetings of the directors of nondepository trust companies.

**HB 160**, relative to removal or replacement of trustees.

**HB 166**, relative to employees of the New Hampshire retirement system.

**HB 288-FN**, imposing a criminal penalty for the dissemination of certain materials without consent.

**HB 316-FN**, relative to insurance coverage for anesthesia for child dental care.

**HB 356-FN**, relative to including medical benefits costs in the purchase of creditable service in the retirement system.

**HB 387-FN**, allowing free admission to the state park system for certain members of the New Hampshire national guard.

**HB 404**, relative to common trust funds.

**HB 413-L**, relative to certain appeals proceedings when the taxpayer prevails.

**HB 446**, relative to building permits.

**HB 519-FN-A**, relative to the conservation number plate trust fund.

**HB 521-FN**, relative to requiring treatment for persons convicted of DWI offenses.

**HB 533**, relative to health carrier disclosure for medical child support enforcement.

**HB 543**, relative to increasing the membership of the board of accountancy and relative to appeals of board decisions.

**HB 565-FN-A**, establishing a commission to implement the Hampton Beach Master Plan.

**HB 571-FN-L**, relative to Old Newport Road and the end of Main Street in the town of Marlow.

**HB 578-FN-A**, establishing a program for self-certification by small quantity hazardous waste generators and making an appropriation therefor.

**HB 590-FN**, relative to highway fund budget reporting requirements.

**HB 596-FN**, relative to health plan loss information.

**HB 598-FN-A**, relative to the agriculture nutrient management program and making an appropriation therefor.

**HB 605-FN**, relative to prohibited election day activity.

**HB 606**, establishing a right-to-know study commission.

**HB 617-FN**, relative to the licensure of dentists and regulation by the board of dental examiners.

**HB 627-FN**, relative to domicile for voting purposes and penalties for voter fraud.

**HB 654-FN**, relative to criminal liability for the destruction or disconnection of a smoke detector by a tenant in a rental dwelling.

**HB 659-FN**, relative to penalties for failure to obey a subpoena or summons.

**HB 670-FN**, establishing a procedure for release by a state agency of statistical information for research purposes.

**HB 674-FN**, relative to legal representation for indigent parties and notification requirements under the Child Protection Act.

**HB 680-FN**, establishing a committee to study service contracts and repealing the law regarding legal services insurance.

**HB 684-FN**, relative to the insurance rating law.

**HB 693-FN**, relative to the jurisdiction and constitution of the ballot law commission.

**HB 694-FN**, relative to tobacco product manufacturers not entering master settlement agreements.

**HB 702-FN**, relative to payment of medical benefits costs for disabled group II members of the retirement system.

**HB 703-FN**, permitting free admission to the state park system for disabled veterans.

**HB 718-FN**, relative to endangering the welfare of a minor and relative to criminal responsibility for the commission of certain acts.

**HB 719-FN-A**, relative to the duties, function, and operation of the Pease development authority.

**HB 728-FN-A**, establishing a dedicated fund for organic certification inspections.

**HB 758-FN**, relative to the criteria for medicaid eligibility.

**HB 763-FN**, requiring parental notification before abortions may be performed on unemancipated minors.

**HB 778-L**, relative to the city of Manchester school district.

**HB 798**, relative to gifts by fiduciaries.

**HB 802-FN-A**, encouraging the department of transportation to retrofit a highway rest stop to be a solar powered facility.

**HB 805**, establishing a consensus revenue estimating panel.

**HB 806**, enabling municipalities to adopt a property tax exemption for deaf or severely hearing impaired persons.

**HB 807-FN**, increasing the filing fees for a fund raising counsel and a paid solicitor of a charitable trust.

**HB 816**, making technical corrections to the securities laws.

**HB 817**, relative to the regulation of first and second mortgage brokers and mortgage servicers.

**HB 825**, establishing a committee to study methods of safely reducing the prison population in the state.

**HB 834-L**, relative to River Road and Nimble Hill Road in the town of Newington.

**HCR 15**, relative to relaxing air quality standards by the United States Environmental Protection Agency.

## **ANNOUNCEMENTS**

### **RESOLUTION**

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of receiving House Messages and processing Enrolled Bill Reports and Amendments, and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

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