Bill as Introduced

HB 1338 – AS INTRODUCED

2001 SESSION

01-2278
09/01

HOUSE BILL ***1338***

AN ACT clarifying that the judicial council is responsible for payment of indigent defense expenses.

SPONSORS: Rep. Mock, Carr 3

COMMITTEE: Judiciary

ANALYSIS

This bill clarifies that the judicial council is responsible for payment of indigent defense expenses.

This bill was requested by the judicial council.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

01-2278
09/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand One

AN ACT clarifying that the judicial council is responsible for payment of indigent defense expenses.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Payment of Expenses. Amend RSA 604-A:8 to read as follows:

604-A:8 Payment of Expenses.

I. Each claim and written statement in support thereof when approved by the court shall be forwarded to the [~~commissioner of administrative services~~] ***judicial council*** for payment. [~~The commissioner of administrative services may adopt rules, under RSA 541-A, in addition to the requirements of paragraph II, to carry out the provisions of this section.~~] ***The judicial council shall pay bills in accordance with supreme court rules regarding indigent defense, as well as any rules adopted by the commissioner of administrative services under RSA 604-A:10, IV.***

II. Statements submitted by counsel for payments of fees shall in each case be examined by the trial and appellate judges and certified by them as to the reasonableness of the fee requested and whether the defendant continued to be eligible for assignment of counsel during the duration of the trial. Such certificates shall be attached to the request for payment of counsel fees. Counsel must submit bills to the appropriate court for payment within 60 days of the disposition of a case unless the trial judge finds that there are extenuating circumstances. Courts shall, within 30 days of receipt, certify statements as outlined above and forward the certified statements to the [~~commissioner of administrative services~~] ***judicial council*** for payment.

2 Records Required. Amend RSA 604-A:10 to read as follows:

604-A:10 Rulemaking; Records Required; ***Judicial Council;*** Commissioner of Administrative Services.

I. The [~~commissioner of administrative services~~] ***judicial council*** shall keep records of the notification of eligibility and assignment of counsel as submitted by the courts of the state pursuant to supreme court order 81-5A and subsequent related orders. In addition to any other use the [~~commissioner of administrative services~~] ***judicial council*** shall make of these records, the [~~commissioner of administrative services~~] ***judicial council*** shall keep records including the following information and compile such information on a monthly basis:

(a) The name of the courts, including the location and the type of the court.

(b) The type of the case as defined by the most serious offense charged in the case, according to the following categories:

(1) Homicide

(2) Other felony

(3) Misdemeanor

(4) Juvenile

(5) Other

(c) Whether the case was assigned to a private attorney or a public defender.

II. When a final bill has been approved for payment to a private attorney, the [~~commissioner of administrative services~~] ***judicial council*** shall record the following information:

(a) The type of case as defined in RSA 604-A:10, I(b).

(b) The amount of the attorney's fee.

III. The [~~commissioner of administrative services~~] ***judicial council*** shall also compile the gross monthly cost for bills approved for payment for expenses other than counsel, including those pursuant to RSA 604-A:6.

IV. The commissioner of administrative services shall, with the approval of the attorney general, adopt rules pursuant to RSA 541-A, governing determinations of eligibility for payment of indigent defense expenditures, determinations of repayment schedules, financial and credit investigations and any other matters [~~he~~] ***the commissioner*** deems necessary or advisable for the performance of [~~his~~] duties under this chapter.

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

Amendments

Sen. Barnes, Dist. 17
March 21, 2002
2002-3060s
09/01

Amendment to HB 1338

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

AN ACT clarifying that the judicial council is responsible for payment of indigent defense expenses and relative to the Auburn District Court.

Amend the bill by replacing section 3 with the following:

3 Auburn District Court. RSA 502-A:1, IV is repealed and reenacted to read as follows:

IV. Auburn, Candia, Raymond District. The Auburn, Candia, Raymond district shall consist of the towns of Auburn, Candia, Deerfield, Nottingham, Raymond, and Northwood. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district. The court shall hold sessions regularly at the principal court location and elsewhere in the district as justice may require. ~~The court shall bear the name of the city or town in which it is located.~~

4 Effective Date.

I. Section 3 of this act shall take effect January 1, 2003.

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

2002-3060s

AMENDED ANALYSIS

This bill clarifies that the judicial council is responsible for payment of indigent defense expenses.

This bill also changes the name of the Auburn district to the Auburn, Candia, Raymond district and allows the court location within the district to be determined by the department of administrative services, upon recommendation of the supreme court. The court shall bear the name of the town in which it is located.

Senate Judiciary
April 17, 2002
2002-3562s
09/01

Amendment to HB 1338

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

AN ACT clarifying that the judicial council is responsible for payment of indigent defense expenses and relative to the Auburn District Court.

Amend the bill by replacing section 3 with the following:

3 Auburn District Court. RSA 502-A:1, IV is repealed and reenacted to read as follows:

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4 Effective Date.

I. Section 3 of this act shall take effect January 1, 2003.

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

2002-3562s

AMENDED ANALYSIS

This bill clarifies that the judicial council is responsible for payment of indigent defense expenses.

This bill also changes the name of the Auburn district to the Auburn, Candia, Raymond district and allows the court location within the district to be determined by the department of administrative services, upon recommendation of the supreme court.

Committee Minutes

Judiciary Committee

Hearing Report

TO: Members of the Senate

FROM: Susan Duncan
Senior Legislative Aide

RE: Hearing report on **HB 1338 – AN ACT clarifying that the judicial council is responsible for payment of indigent defense expenses.**

HEARING DATE: March 27, 2002

Sponsor: Representative Henry Mock, PRIME

What the bill does: This bill clarifies that the Judicial Council is responsible for payment of indigent defense expenses. The bill was requested by the Judicial Council as a result of a Legislative Performance Audit recommendation.

Who supports the bill: Nina Gardner, Executive Director
The Judicial Council

Who opposes the bill: No one testified in opposition

Summary of testimony received:

- This legislation was requested by the Judicial Council as the result of a Legislative Performance Audit recommendation that the statute be clarified regarding payment of indigent defense expenses by the Council.
  - The Judicial Council had their appropriations listed in the Administrative Services budget.
  - This legislation places this responsibility into the Judicial Council and removes it from Administrative Services.

- Senator Barnes offered amendment #3060s, relative to the Auburn District Court.
    - Senator Gordon asked Senator Barnes to please clarify with Representative Mock that it is okay to amend this bill.
    - Senator Barnes stated that while Senator O'Neil did have concerns with this policy, the language does not necessarily put the court out of Auburn.
    - Representative Wall was concerned with the original Senate Bill.
- Senator Gordon had a question regarding the last line (#14) of the Barnes amendment – *"the court shall bear the name of the city or town in which it is located."* He asked Senator Barnes if he would have a problem if this were removed.
    - Senator Barnes responded that he did not.

Funding: Not applicable.

Future Action: The Committee took the bill under advisement.

sfd
[file: HB 1338 report]

Date: March 27, 2002
Time: 10:15 a.m.
Room: Room 102 LOB

The Senate Committee on Judiciary held a hearing on the following:

HB 1338 clarifying that the judicial council is responsible for payment of indigent defense expenses.

Members of Committee present: Senator Gordon
Senator Pignatelli

The Chair, Senator Gordon, opened the hearing on HB 1338, and called upon Nina Gardner to testify.

Nina Gardner: Senator Gordon and Senator Pignatelli, let me pass these out to you and hopefully a piece of paper is worth a thousand words on my part. **(please see "State of New Hampshire, Judicial Council, Financial and Compliance Audit Report for the Year Ended June 30, 2000", attached hereto and referred to as Attachment #1 and "RSA Chapter 525-A, Civil Legal Assistance", attached hereto and referred to as Attachment #2).**

Good morning, Senator Gordon and Senator Pignatelli and members of the Committee who are not here. For the record, my name is Nina Gardner and I am the Executive Director of the Judicial Council.

I asked Representative Mock to introduce this legislation for me. He is not going to be able to be here today, so I told him I thought I could handle this.

The bill is put in as a result of the LBA audit observations regarding the Judicial Council's operation, in which they suggested that we get the statutes clarified because they were not clear. What happened is, in 1997, through the budget process, the payment of indigent defense bills was transferred back to the Judicial Council. Historically, this process was passed back and forth from the Judicial Council to Administrative Services, at least on more than one occasion.

In the 80s, bill paying went to Administrative Services because the Judicial Council didn't have the staff to handle the volume. When I came on board in 1989, I was always invited to share in the budget process with Administrative Services because, statutorily, the Judicial Council has responsibility for contracting with public defenders, and also ran the contract program. So, we would be spending money in the Administrative Services budget and would have to go testify. We were sort of the experts on indigent defense.

When Don Hill became Commissioner, he came to me and said, "You know, why don't you just take it all over? You know what is going on. It is better for you to manage it than for me. I am not familiar with this stuff". We decided to do that through the budget process with the concurrence of House and Senate Finance.

The material you have from the chapter laws shows the transitional language that was there. The one piece that we did not do was amend some of the statutes that are cited in the audit. Quite frankly, I think it was both oversight and some convenience on Don Hill's part. By holding onto those references, he was able to oversee the transition with me. He had money in their budget for a computer conversion that needed to be done because all of the data was, at one point, on the Honeywell computer at Health & Human Services, and it took a lot of money, which the Judicial Council didn't have, and more money than was appropriated to convert that bill payment system. Don Hill's office bore all that expense for us.

It is now time, however, to clarify the statutes and make it clear that those of us who are paying the bills are the people cited in the statute.

I would be very glad to answer any questions you have.

Senator Edward M. Gordon, D. 2: Any questions for Ms. Gardner? Seeing none, thank you for your testimony.

Ms. Gardner: Thank you very much. It is always a pleasure to come to Senate Judiciary.

Senator Edward M. Gordon, D. 2: Is there anyone else who would like to testify on HB 1338? Senator Barnes?

Senator John S. Barnes, Jr., D. 17: Thank you, Mr. Chairman. I have an amendment (**please see "Sen. Barnes, Dist. 17, March 21, 2002 Amendment 2002-3060s", attached hereto and referred to as Attachment #3**).

For the record, I am John Barnes, Jr., representing Senate District #17.

My understanding is that the sponsor has been shown this amendment and my understanding is, and again, I have not talked with Representative Mock. I have talked with Representative Sloan from Raymond, who has talked to him. The understanding that I have third hand is that there is no problem. But, I have not talked with him personally.

Senator Edward M. Gordon, D. 2: Would you make an effort to confirm that with the sponsor? Why don't you, just for the record, so that we will have it in the record, what does the amendment do, Senator Barnes?

Senator John S. Barnes, Jr., D. 17: Let me see. What it does is add:

"3 Auburn District Court. RSA 502-A:1, IV is repealed and reenacted to read as follows:

IV. Auburn, Candia, Raymond District. The Auburn, Candia, Raymond district shall consist of the towns of Auburn, Candia, Deerfield, Nottingham, Raymond, and Northwood. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district. The court shall hold sessions regularly at the principal court location and elsewhere in the district as justice may require. The court shall bear the name of the city or town in which it is located."

I want to make it perfectly clear, because I know Senator O'Neil, representing Auburn, has had some concerns about this whole situation. This does not put this courthouse necessarily out of Auburn. As I think you will remember from earlier testimony, there have been some problems with the landlady. In spite of what was said by some other people, that is not what Don Hill's people have been told and they are the ones that are trying to negotiate the contract. So, I guess they are the ones that have a real good, firm handle on it. If the town of Auburn can come up with a site that is agreeable and beneficial to Don Hill's people, that is where the court will be. That is all this does. There is the possibility of that court being located in the towns that are mentioned in this deal.

You folks had this bill originally and you folks generated an amendment. That amendment caused quite a stir over in the House. When I went over to the committee, I was dumbfounded with the conversation. The bottom line, Representative Wall had some concerns, legitimate concerns. If I were her, I would have also. There was quite a write-up in the *Foster's Daily Democrat* a

couple of days ago about it. Her fear was that the courthouse would be moved out of Durham, over to Dover and they fought a long time to get the court facility in Durham. That is the way she read that bill with all those additions that were put into it.

This cuts it down clean and takes all that fluff and what have you away from it. But it does give Don Hill's group an opportunity to get that courthouse up and running in whatever community it might be located in.

Here again, this does not guarantee that any of those towns that are mentioned, that the courthouse will be there. It is where Don Hill and his people can put it together, and that is their responsibility and has been for a long time.

Senator Edward M. Gordon, D. 2: Any questions? The only question I have is on the last line, "The court shall bear the name of the city or town in which it is located". The whole idea is to say to a district that is serving many towns, why do we then want to have to name the court after a particular town?

Senator John S. Barnes, Jr., D. 17: Senator Gordon, I flashed through as I am reading this and I would personally have no problem if that was struck out of it, because that is what caused the problem in the first place. You are absolutely right. If that were to come out of there, I would be tickled pink if that were to happen.

Senator Edward M. Gordon, D. 2: Thank you, Senator Barnes. Is there anyone else who would like to testify on HB 1338? Seeing no one, we will declare the hearing closed.

Hearing concluded at 10:30 a.m.

Respectfully submitted,

L. Gail Brown
Senate Secretary

3 Attachments

ATTACHMENT #1 HB 1338

Nina Gardner

STATE OF NEW HAMPSHIRE
JUDICIAL COUNCIL

FINANCIAL AND COMPLIANCE
AUDIT REPORT
FOR THE YEAR ENDED JUNE 30, 2000

Observation No. 8 – Statutes Should Be Amended To Reflect Current Responsibilities

Observation:

When the appropriation and subsequent responsibility for indigent defense payments and other related activities were transferred in fiscal year 1998 from the Department of Administrative Services to the Council, RSAs 604-A:8 and 604-A:10, II, III were not amended to reflect the change in responsibilities.

- RSA 604-A:8 states that the commissioner of administrative services is responsible for the payment of indigent defense expenses.
- RSA 604-A:10, II states that the commissioner of administrative services is responsible for recording the case type and the attorney's fee once a final bill has been approved for payment to a private attorney.
- RSA 604-A:10, III requires the commissioner of administrative services to compile the gross monthly costs for bills approved for services other than counsel.

These activities are now the responsibility of the Council.

Recommendation:

The Council should seek legislation to amend RSA 604-A:8 and RSA 604-A:10, II, III to reflect current responsibilities.

Auditee Response:

We concur. A legislative member of the Judicial Council has sponsored the legislation recommended in this observation. A drafting request was filed for the upcoming 2002 legislative session which must be drafted in concert with the Department of Administrative Services.

ATTACHMENT #2

351:4 New Hampshire Legal Assistance; Civil Legal Assistance to Low-Income Persons. Amend RSA by inserting after chapter 525 the following new chapter:

CHAPTER 525-A
CIVIL LEGAL ASSISTANCE

525-A:1 Civil Legal Assistance. Funds appropriated to New Hampshire Legal Assistance for the purposes of civil legal assistance shall be used only for the provision of civil legal representation to low-income persons in this state. New Hampshire Legal Assistance shall make reports to the judicial council by June 30 and December 31 of each year on its use of state funds.

351:5 Developmentally Disabled Waitlist; Funding. Notwithstanding the provisions of 1995, 310:63, PAU 05, 01, 05, 03, 01, class line 93, as inserted by 1997, HB 1-A shall be funded in part from the appropriation made to the department of health and human services in 1995, 310:63, III(b)(2).

351:6 Route 93 Borrow-a-Lane Project; Appropriation.

I. The department of transportation shall complete the physical improvements to Route 93 in Concord and Bow authorized in 1995, 308:43, including the construction of necessary roadway and signage, to create a temporary southbound lane on Route 93 in Concord and Bow which can be utilized on an as needed basis.

II. The sum of $30,000 is appropriated for the fiscal year ending June 30, 1998, and the sum of $30,000 is appropriated for the fiscal year ending June 30, 1999, to the department of transportation for the purposes of paragraph I of this section. This appropriation shall be a charge against the highway fund.

351:7 Guardian Ad Litem Services; Reference to Commissioner of Administrative Services Deleted. Amend RSA 490:26-f, V to read as follows:

V. The executive director of the judicial council, the commissioner of the department of health and human services, or the judicial branch, as may be appropriate, may authorize payments to such persons or organizations provided for under this section.

351:8 Contract Attorneys; Reference to Commissioner of Administrative Services Deleted. Amend RSA 604-A:2-b to read as follows:

604-A:2-b Contract Attorneys. The state of New Hampshire, by the judicial council and with the approval of governor and council, may, within the limits of available appropriations, contract with any qualified attorney in the state to provide for the representation of indigents in circumstances where, pursuant to RSA 604-B, the public defender program is unavailable to provide such representation. The executive director of the judicial council shall authorize payments to contract attorneys provided for under this section.

351:9 Contract Services; Reference to Commissioner of Administrative Services Deleted. Amend RSA 604-A:6-a to read as follows:

604-A:6-a Contract Services. The state of New Hampshire, by the judicial council and with the approval of governor and council, may, within the limits of appropriations, contract with qualified firms or individuals in the state to provide stenographic and clerical services where, pursuant to RSA 604-A:6, the defendant has been found to be eligible for such services. The executive director of the judicial council shall authorize payments to such individuals and firms as provided for under this section.

351:10 Indigent Defense; Transfers Within PAU. Notwithstanding RSA 9:16-a, the executive director of the judicial council, after certification to the

commissioner of administrative services that transfers are necessary to carry out the functions of indigent defense, is authorized to transfer funds among classes 90, 92, 93 and 94 within PAU 02, 18, 01, 00, 00.

351:11 Repeal. 1991, 355:105, relative to transfers within PAU for indigent defenders, is repealed.

351:12 New Paragraph; "Package X"; Commissioner of Department of Revenue Administration. Amend RSA 21-J:3 by inserting after paragraph XXIII the following new paragraph:

XXIV. Have the authority subject to appropriation to publish and distribute a "Package X" containing department-administered tax forms and instructions, and to recover reasonable costs for such publication, all of which shall be returned to the general fund as unrestricted revenue.

351:13 Salary Group Change; Executive Director, Governor's Commission on Disability. Amend RSA 94:1-a, I by:

I. Deleting in Group K:
Executive director, governor's commission on disability.

II. Inserting in Group L:
Executive director, governor's commission on disability.

351:14 "Office" to "Division" of Information Technology Management. Amend the section heading and introductory paragraph of RSA 21-I:67 to read as follows:

21-I:67 Division Established; Functions. There is hereby established within the department a division of information technology management, which shall be under the supervision of a director of information technology management, who shall be responsible for the following:

351:15 Funding Requirement Deleted. Amend RSA 21-I:67, III to read as follows:

III. Developing a formal information technology planning process for approving agency information technology plans.

351:16 Function Added. Amend RSA 21-I:67, V to read as follows:

V. Reviewing, assessing, and approving the feasibility of agency plans, including cost estimates and impacts on other agencies.

351:17 Director; Nomination; Qualifications; Compensation. RSA 21-I:68 is repealed and reenacted to read as follows:

21-I:68 Director; Qualifications; Compensation.

I. The commissioner of administrative services shall nominate a director of information technology management as provided in RSA 21-I:2, II.

II. The director of the division shall be qualified by reason of education and experience. The director shall possess a broad working knowledge, with demonstrated expertise and proven organizational skills in the field of information technology management.

III. The salary of the director of the division shall be as specified in RSA 94:1-a.

351:18 Change from "Office" to "Division". Amend the following RSA provisions by replacing "office" with "division": 9:4-b; 21-I:6, VIII; 21-I:14-b; the subdivision heading preceding 21-I:66; 21-I:69, IV; and 21-I:71, I and II(b).

351:19 Name Change; Singular Changed to Plural. Amend RSA 94:1-a, I by:

ATTACHMENT #3

Sen. Barnes, Dist. 17
March 21, 2002
2002-3060s
09/01

Amendment to HB 1338

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

AN ACT clarifying that the judicial council is responsible for payment of indigent defense expenses and relative to the Auburn District Court.

Amend the bill by replacing section 3 with the following:

3 Auburn District Court. RSA 502-A:1, IV is repealed and reenacted to read as follows:

IV. Auburn, Candia, Raymond District. The Auburn, Candia, Raymond district shall consist of the towns of Auburn, Candia, Deerfield, Nottingham, Raymond, and Northwood. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district. The court shall hold sessions regularly at the principal court location and elsewhere in the district as justice may require. The court shall bear the name of the city or town in which it is located.

4 Effective Date.

I. Section 3 of this act shall take effect January 1, 2003.

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

2002-3060s

AMENDED ANALYSIS

This bill clarifies that the judicial council is responsible for payment of indigent defense expenses.

This bill also changes the name of the Auburn district to the Auburn, Candia, Raymond district and allows the court location within the district to be determined by the department of administrative services, upon recommendation of the supreme court. The court shall bear the name of the town in which it is located.

Speakers

HB 1338 An Act clarifying that the judicial council is responsible for payment of indigent defense expenses

SENATE JUDICIARY COMMITTEE

Date 03/27/02 **Time** 10:15 a.m. **Public Hearing on HB 1338**

Appearing in FAVOR: *(Please print)* *Please check box at left to speak.*

Speaking?	*Name*	*Address*	*Representing*
☑	Nina Gardner	25 Capitol St Concord NH	Judicial Council
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Appearing in OPPOSITION: *(Please Print)* *Please check box at left to speak.*

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Voting Sheets

3/27/02

Senate Judiciary Committee

EXECUTIVE SESSION

Bill # HB 1338

Hearing date: 4/17/02 **Room:** LOB 102

Motion of: _____

OTP/A

2 - 1

Made by Senator:	Gordon	☑	***Seconded by Senator:***	Gordon	☐
	Pignatelli	☐		Pignatelli	☐
	Prescott	☐		Prescott	☐
	Roberge	☐		Roberge	☑
	Fernald	☐		Fernald	☐

Committee Member	*Present*	*Vote*	*Reported out by*
Senator N. Gordon, Chairman	☑		✓
Senator D. Pignatelli, Vice-Chair	☑		
Senator R. Prescott	☐		
Senator S. Roberge	☑		
Senator M. Fernald	☐		

***Amendments:** _____

NOTES: _____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: {Type FLOOR DATE}

THE COMMITTEE ON Judiciary

to which was referred House Bill 1338

AN ACT clarifying that the judicial council is responsible for payment of indigent defense expenses.

VOTE: 2-1

2002-3562s

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Edward M. Gordon
For the Committee

|HB1338 Docket

Next|Prev|Results List|Main|Bill Status

Bill Title: clarifying that the judicial council is responsible for payment of indigent defense expenses.

Date	Body	Description
6/26/2001	**H**	Introduced and ref to Judiciary; HJ78, p1998
12/14/2001	**H**	Copy to Chairman on 12/18/2001 Report due on 2/21/2002
12/14/2001	**H**	Hearing Jan 23 11:00 RM208,LOB
2/6/2002	**H**	Maj Report OTP for Feb 14 (vote 15-3;CC)
2/14/2002	**H**	Passed; HJ20, p762 + 821
2/20/2002	**S**	Introduced and Ref. to Judiciary; SJ 6, Pg.172
3/12/2002	**S**	Hearing; March 27, 2002, Room 102, LOB, 10:15 a.m.; SC16
4/17/2002	**S**	Committee Report; Ought to Pass with Amendment {3562},(New Title) [04/18/02]
4/18/2002	**S**	Ought to Pass with Amendment {3562},(New Title), AA,VV
4/18/2002	**S**	OT3rdg, MA, VV
4/25/2002	**H**	House Nonconcurred with Sen Am, Rep Mock MA DIV(181-89);

Next|Prev|Results List|Main|Bill Status

Docket Abbreviations