Bill as Introduced

SB 101-FN – AS AMENDED BY THE SENATE

04/10/03 0922s

2003 SESSION

03-1065
08/09

SENATE BILL ***101-FN***

AN ACT relative to unemployment compensation.

SPONSORS: Sen. Flanders, Dist 7; Rep. Bishop, Rock 74

COMMITTEE: Executive Departments and Administration

AMENDED ANALYSIS

This bill adds Indian tribes to the definition of employer for the purposes of unemployment compensation and makes various other changes.

This bill is a request from the department of employment security.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 101-FN – AS AMENDED BY THE SENATE

04/10/03 0922s

03-1065
08/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to unemployment compensation.

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

1 New Paragraph; Unemployment Compensation; Employer Defined. Amend RSA 282-A:8 by inserting after paragraph VII the following new paragraph:

VIII. An Indian tribe as defined by 26 U.S.C. section 3306(u) of the Federal Unemployment Tax Act for which services in employment are performed within this state unless such services are otherwise excluded from employment under 26 U.S.C. section 3306 (c) of the Federal Unemployment Tax Act or under RSA 282-A:9. Indian tribes shall also include wholly owned subdivisions, subsidiaries, or business enterprises of Indian tribes.

2 Unemployment Compensation. Amend RSA 282-A:9, IV(s)(1)(B) to read as follows:

(B) Is engaged in the trade or business of selling, or soliciting the sale of, consumer products in the home or otherwise than in a permanent retail establishment; ***or***

3 New Subparagraph; Unemployment Compensation. Amend RSA 282-A:9, IV(s)(1) by inserting after subparagraph (B) the following new paragraph:

(C) Is engaged in the trade or business of the delivering or distribution of newspapers or shopping news, including any services directly related to such trade or business;

4 Unemployment Compensation. Amend RSA 282-A:31, III to read as follows:

III. Subparagraph I(c) shall be waived for any week with respect to any individual who is otherwise entitled to unemployment compensation benefits and is selected by the department of employment security and enrolled in a vocational training program [~~under the auspices of the New Hampshire department of education~~] ***approved by the commissioner of the department of employment security*** and is as to such week in good standing in the training program, and has not failed without good cause to attend all scheduled sessions. Remuneration for services in connection with the training program paid to any such individual shall be wages for the purposes of RSA 282-A:14.

5 New Paragraph; Benefit Eligibility Conditions. Amend RSA 282-A:31 by inserting after paragraph III the following new paragraph:

IV. Subparagraphs II(b) and II(c) shall apply only to services in the employ of the state or any political subdivision thereof, to Indian tribes, and to organizations defined in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code.

6 New Paragraph; Unemployment Compensation. Amend RSA 282-A:32 by inserting after paragraph III the following new paragraph:

IV. For any week during which the individual resides other than in New Hampshire, another state, the District of Columbia, Puerto Rico, the Virgin Islands or a contiguous country with which the United States has an agreement with respect to unemployment compensation.

7 Unemployment Compensation. Amend RSA 282-A:36 to read as follows:

282-A:36 Labor Dispute. [~~An individual~~] ***A person*** shall be disqualified for benefits for any week with respect to which the commissioner finds that his ***or her*** total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he ***or she*** is or was last employed; provided that this section shall not apply if it is shown to the satisfaction of the commissioner that:

I.(a) [~~He~~] ***The person*** is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(b) [~~He~~] ***The person*** does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute; provided that, if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises; or

II. [~~He~~] ***The person*** has become unemployed and entitled to unemployment compensation before the commencement of the labor dispute and his connection with the employer has been totally severed, including the absence of recall rights, seniority rights and other fringe benefits and indicia of employment; or

II-a. The stoppage of work was due solely to a lockout or the failure of the employer to live up to the provision of any agreement or contract of employment entered into between the employer and his employees; or

III. The stoppage of work has continued for a period of 2 weeks after the termination of the labor dispute; or

IV. [~~He~~] ***The person*** has, since becoming unemployed for the reasons set forth in the introductory paragraph worked in 5 or more [~~consecutive~~] weeks in employment [~~for an employer~~] ***as defined in RSA 282-A:9, except RSA 282-A:9, IV(f), or wages earned in a like manner in another state***, earning in each week an amount at least equal to [~~his~~] ***such person's*** maximum benefit rate plus 20 percent thereof, and then becomes unemployed from said employer due to a lack of work.

8 Unemployment Compensation. Amend RSA 282-A:58 to read as follows:

282-A:58 Decision. In every appeal, except those withdrawn, the chairman shall prepare a written decision which shall be sent by certified mail, return receipt requested, ***or first class mail, whichever the commissioner determines to be most appropriate,*** to each interested party at

the last address of each according to the records of the department of employment security. The decision, except one on an appeal dismissed for lack of prosecution or defaulted for failure to attend, among other necessary things as determined by the commissioner, shall: set forth all the material findings and specific provisions of law necessary to support the conclusions; identify the interested parties and the account, whether fund or employer, to which benefits will be charged, if allowed; identify the week or period during which benefits are denied; identify the first week and subsequent period with respect to which benefits will be paid, if allowed; determine all things necessary to finally dispose of the case; and identify the members of the tribunal.

9 Unemployment Compensation. Amend RSA 282-A:69, II to read as follows:

II. Notwithstanding this section, any organization or group of organizations, described in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code ***or Indian tribe as defined in RSA 282-A:8, VIII***, which becomes an employer under this act, may elect to change its status either to reimburse in the manner provided for the state in RSA 282-A:70 or to pay contributions as hereinabove provided. The change in status shall be irrevocable for 3 calendar years. Thereafter the employer may elect to change its status no later than January 1, for any year, but such new change in status shall be irrevocable for 3 calendar years. Any 2 or more of such employers or any 2 or more cities, towns, counties or other political subdivisions of this state may elect, for a period of not less than 3 years, to pool their separate accounts under such rules as may be adopted by the commissioner, including appropriate bonding and fiscal safeguard requirements, and each unit shall be jointly and severally liable for payments due.

10 Unemployment Compensation. Amend RSA 282-A:152, I to read as follows:

282-A:152 Collection of State Contributions.

I. Whenever used in this subdivision, unless the context shall otherwise require, or unless otherwise specifically provided, the word "contribution" shall include not only the principal of any contribution but also all interest, penalties, fees and other charges added thereto by law; and the term "serving officer" shall include any sheriff, deputy sheriff, constable or other officer authorized to serve any civil process. ***Delivery of written notice by an authorized representative of the commissioner shall be deemed proper service of process.***

11 Unemployment Compensation. Amend RSA 282-A:155 to read as follows:

282-A:155 Interstate Collections. The courts of this state shall[~~, in the manner provided in RSA 282-A:143 and 153,~~] entertain actions ***in the name of the commissioner*** to collect ***benefits,*** contributions or interest thereon for which liability has accrued under the employment security law of any other state or of the federal government. ***The commissioner shall have the authority to collect any such debt by civil action in any manner provided for the collection of contributions in RSA 282-A:141-156.***

12 Agreement Authorized. Amend RSA 282-A:178, I to read as follows:

I. The department of employment security, through its commissioner, is hereby authorized

to enter into an agreement, effective April 3, 1975, with the secretary of labor of the United States to become an agent of the United States in order to carry out the provisions of Chapter 2 of Title II of the Trade Act of 1974, ***as amended*** (P.L. 93-618, ***as amended***), and to perform such acts and do all those things necessary to fully carry out such agreement.

13 Agreement Authorized. Amend the introductory paragraph of RSA 282-A:178, II(a) to read as follows:

(a) Solely for the purposes of carrying out the agreement authorized in [~~paragraph~~] ***paragraphs*** I ***and I-a***, and notwithstanding other provisions of this chapter to the contrary, the provisions of this section permit:

14 New Paragraph; Agreement Authorized. Amend RSA 282-A:178 by inserting after paragraph I the following new paragraph:

I-a. The department of employment security, through its commissioner, is hereby authorized to enter into an agreement, effective November 4, 2002, with the Secretary of Labor of the United States to become an agent of the United States in order to carry out the provisions of the Trade Adjustment Assistance Reform Act of 2002, as amended, (P.L. 107-210, as amended), and to perform such acts and do all those things necessary to fully carry out such agreement.

15 New Paragraph; Exclusions. Amend RSA 282-A:9 by inserting after paragraph VI the following new paragraph:

VII. For the purposes of paragraph I, the exclusions under paragraphs IV (o)(2), IV (o)(5), and IV (p)(4) shall apply to Indian tribes.

16 New Paragraph; Payments in Lieu of Contributions. Amend RSA 282-A:69 by inserting after paragraph IV the following new paragraph:

V. The following provisions shall apply to Indian tribes electing to make payments in lieu of contributions:

(a) At the discretion of the commissioner, any Indian tribe that elects to become liable for payments in lieu of contributions shall be required within 30 days after the effective date of its election, to:

(1) execute and file with the commissioner a surety bond approved by the commissioner; or

(2) deposit with the commissioner money or securities on the same basis as other employers with the same election option.

(b) Failure of the Indian tribe to make required payments, including assessments of interest and penalty, within 90 days of receipt of the bill will cause the Indian tribe to lose the option to make payments in lieu of contributions for the following tax year unless payment in full is received before the contribution rate for the next tax year is computed.

(c) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment shall have such option reinstated if, after a period of one year, all

contributions have been made timely, provided no contributions, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.

(d) Failure of the Indian tribe to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the commissioner have been exhausted, will cause services performed for such tribe to not be treated as employment for purposes of this section.

(e) The commissioner may determine that any Indian tribe that loses coverage under subparagraph (d) may have services performed for such tribe again included as employment for purposes of RSA 282-A:9 if all contributions, payments in lieu of contributions, penalties and interest have been paid.

(f) The commissioner shall notify the United States Internal Revenue Service and the United States Department of Labor of any termination or reinstatement of coverage made under subparagraphs (d) and (e).

(g) Notices of payment and reporting delinquency to Indian tribes shall include information that failure to make full payment within the prescribed time frame:

(1) shall cause the Indian tribe to be liable for federal unemployment tax;

(2) shall cause the Indian tribe to lose the option to make payments in lieu of contributions; and

(3) could cause the Indian tribe to be excepted from the definition of employer, as provided in RSA 282-A:8, and services in the employ of the Indian tribe to be excepted from employment.

(h) Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe.

17 Waiver of Costs. Amend RSA 282-A:29 to read as follows:

282-A:29 Adjustment of Overpaid Benefit Account by Compromise.

I. The commissioner may, with the approval of the attorney general, effect by written stipulation such settlement of any overpaid benefit account due under the provisions of this chapter as he ***or she*** may deem to be for the best interests of the state; and the payment of the sum so agreed upon shall be a full satisfaction of such overpaid benefit account.

II. Payment by a debtor of interest, penalties, fees, and legal costs due under the provisions of this chapter totaling $50 or less may be waived by the commissioner of the department of employment security as he or she may deem to be for the best interests of the state.

18 Waiver of Costs. Amend RSA 282-A:148 to read as follows:

282-A:148 Adjustment of Contribution by Compromise.

I. The commissioner of the department of employment security may, with the approval of

the attorney general, effect by written stipulation such settlement of the contribution or interest due under the provisions of this chapter as he ***or she*** may deem to be for the best interests of the state, and the payment of the sum so agreed upon shall be a full satisfaction of such contribution and interest.

II. Payment by a debtor of interest, penalties, fees, and legal costs due under the provisions of this chapter totaling $50 or less may be waived by the commissioner of the department of employment security as he or she may deem to be for the best interests of the state.

19 Effective Date.

I. Section 5 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

LBAO

03-1065
Revised 2/10/03

SB 101 FISCAL NOTE

AN ACT relative to unemployment compensation.

FISCAL IMPACT:

The Legislative Budget Assistant has determined that this legislation has a total fiscal impact of less than $10,000 in each of the fiscal years 2003 through 2007.

Hearing Minutes

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON SB 101

BILL TITLE: relative to unemployment compensation.

DATE: April 23, 2003

LOB ROOM: 306 **Time Public Hearing Called to Order:** 11:05am

Time Adjourned: 11:47am

(please circle if present)

Committee Members: Reps Gilman, Bridle, Bishop, Putnam, Corbin, Kelley, L. Christiansen, Adams, J. Carter, P. Harrington, Newton, Ober, H. Richardson, Slocum, Giuda, Mears, Baroody, Palangas, Gorman, Hofemann and Kudalis.

Bill Sponsors: Sen. Flanders, Rep. Bishop

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen. Flanders, prime sponsor, spoke briefly in support.

* **Carolyn Angle, representing NH Employment Security,** spoke in support and provided written testimony. She noted that this bill is for housekeeping purposes. Ms. Angle responded to questions from Reps. Putnam, Newton, Baroody, and Slocum.

* **Doug Patch, representing Laidlaw Transit Inc.,** spoke in support and provided written testimony. Mr. Patch responded to questions from Reps. Newton, Christiansen and Carter, Harrington and Ober.

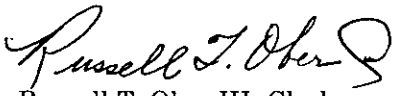
* **Richard Lente, representing Transportation Rentals Inc.,** spoke in support and provided written testimony regarding bus drivers. Mr. Lente responded to questions from Reps. Newton, Slocum, and Kudalis.

Deb McCallum, representing First Student Transportation, spoke in support. She explained that she provides student transportation and would like unemployment compensation benefits for drivers during school vacations. Ms. McCallum responded to questions from Rep. Slocum.

Pete Chamberlin, representing New Hampshire School Transportation Association, spoke in support and related how difficult it is to get and retain school bus drivers. Mr. Chamberlin responded to questions from Reps. Newton, Adams, Kudalis, Christiansen, Bishop, Gilman, Harrington, and Kudalis.

Carolyn Angle, representing NH Employment Security, responded to additional questions from Reps. Hofemann and Slocum.

Respectfully submitted,



Russell T. Ober III, Clerk

Testimony

We conclude that the plaintiffs' remaining arguments are without merit and do not warrant further discussion. *See Vogel v. Vogel*, 137 N.H. 321, 322 (1993).

Reversed and remanded.

BRODERICK, J., concurred; BATCHELDER and HORTON, JJ., retired, specially assigned under RSA 490:3, concurred.

Department of Employment Security
No. 98-730

APPEAL OF MANCHESTER TRANSIT AUTHORITY

(New Hampshire Department of Employment Security)

June 1, 2001

1. **Administrative Law—Judicial Review—Statutory Provisions**
   City transit authority's appeal under RSA chapter 541 was improper because judicial review of department of employment security decisions is provided for in RSA 282-A:67, which specifies the procedure for appealing a final decision of the appeal tribunal, and such review is exclusive of other methods of judicial review of unemployment compensation decisions. RSA ch. 541; RSA 282-A:67, :68.

2. **Unemployment Compensation—Practice and Procedure—Judicial Review**
   Department's decision will be upheld unless its findings or conclusions were unauthorized, affected by an error of law, or clearly erroneous in view of all the evidence presented. RSA 282-A:67.

3. **Unemployment Compensation—Employee Eligibility—Particular Cases**
   Disallowance of benefits to employees of educational institutions who were hired with the understanding that they would not work between semesters applies to employees of other entities who provide services to an educational institution and who are hired with the express understanding that their expected work schedule is dictated by whether the school is open. RSA 282-A:31, II(c).

4. **Unemployment Compensation—Employee Eligibility—Particular Cases**
   Part-time school bus drivers who, pursuant to a collective bargaining agreement were not expected to work when school was not in session and were not required to be "on call" during such times, were ineligible for unemployment benefits for an established and customary annual vacation period. RSA 282-A:31, II(c).

5. **Judgments—Res Judicata—Particular Cases**
   Res judicata was inapplicable where claimants' claim for unemployment compensation benefits for a particular vacation period was a different cause of action than that of another claimant's similar claim for benefits for the prior year's vacation period.

6. Judgments—Collateral Estoppel— Particular Cases

Collateral estoppel did not apply where the only issue actually litigated in a prior action was whether the appeal tribunal erred in determining whether a city transit authority met the definition of a service organization for an educational institution pursuant to statute, and that question was irrelevant to the issue to be determined in the current case.

Devine, Millimet & Branch, P.A., of Manchester (*Mark T. Broth* and *Diane Murphy Quinlan* on the brief, and *Ms. Quinlan* orally), for the petitioner.

Craig, Wenners & Craig, P.A., of Manchester (*Vincent A. Wenners, Jr.* and *Stephanie Stergiou Ferro* on the brief, and *Mr. Wenners* orally), for the respondents.

Philip T. McLaughlin, attorney general (*Daniel J. Mullen*, senior assistant attorney general, on the brief, and *Andrew B. Livernois* orally), for the State, as *amicus curiae*.

HORTON, J., retired, specially assigned under RSA 490:3. The petitioner, Manchester Transit Authority (MTA), appeals a decision of the appellate board of the New Hampshire Department of Employment Security (appellate board) finding the respondent school bus drivers (claimants) eligible for unemployment benefits for the week ending February 28, 1998. We reverse.

The following facts were either found by the New Hampshire Department of Employment Security Appeal Tribunal (appeal tribunal) and are not challenged here, or appear on the record before us. MTA is a public authority incorporated by the City of Manchester, pursuant to RSA 38-A:1 (2000), for the purposes of acquiring, owning, and operating a mass transportation system in Manchester. MTA has contracted with the City of Manchester School Department (school department) to provide buses and drivers to transport Manchester students in grades one through eight over specified school routes. In accordance with a collective bargaining agreement with the Amalgamated Transit Union, Local 717, MTA employs part-time operators to transport students pursuant to its contract with the school department.

The claimants were employed by MTA as part-time school bus drivers. Each filed a claim for unemployment compensation benefits for the week ending February 28, 1998, during which Manchester schools were closed for the annual February vacation. The department of employment security initially denied the claims and the appeal tribunal ruled that each of the claimants was ineligible to receive benefits based upon the claimants' employment with MTA. On further appeal, the appellate board reversed the appeal tribu-

nal's decisions and found the claimants eligible for unemployment compensation benefits based upon their MTA employment. Following the denial of motions to reconsider, MTA appealed to this court, purportedly pursuant to RSA chapter 541 (1997).

[1] We note initially that MTA's appeal under RSA chapter 541 is improper. Judicial review of department of employment security decisions is provided for in RSA 282-A:67 (1999), which specifies the procedure for appealing "a final decision of the appeal tribunal as reversed, modified, or affirmed by the appellate board." Such review is "exclusive of all other methods of judicial review of unemployment compensation decisions." RSA 282-A:68 (1999). Nevertheless, the appeal was timely filed and complied with the substantive requirements of RSA 282-A:67. Accordingly, we will treat this appeal as having been brought pursuant to that statute.

[2] In reviewing decisions under RSA 282-A:67, we must not "substitute [our] judgment for that of the appeal tribunal as to the weight of the evidence on questions of fact." RSA 282-A:67, V. "Furthermore, we will uphold the department's decision unless its findings or conclusions were unauthorized, affected by an error of law, or clearly erroneous in view of all the evidence presented." *Appeal of Work-A-Day of Nashua*, 132 N.H. 289, 291 (1989) (quotation omitted).

At issue here is the interpretation of RSA 282-A:31, II (1999), which provides:

> An unemployed individual shall not be eligible to receive benefits:
>
> (a) Based on services in an instructional, research, or principal administrative capacity for an educational institution . . . .
>
> (b) Based on services in any other capacity for an educational institution, including services for a service organization for any educational institution for any week which commences during a period between 2 successive academic years or terms to any individual if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms;
>
> . . . .

> (c) Based on services for an educational institution for any week which commences during an established and customary vacation period or holiday recess if such individual performs services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

The appeal tribunal framed the legal issue before it as "whether or not the claimant[s] performed services as . . . bus driver[s] for a service organization for an educational institution, and if so, did the claimant[s] have reasonable assurance to return to work following the February 1998 school vacation." The appeal tribunal ruled that MTA was such a service organization and that the claimants had reasonable assurance that they would return to work. The appellate board disagreed, finding that under *Appeal of Locke*, 127 N.H. 403 (1985), MTA was not a service organization.

Both the appeal tribunal and the appellate board erroneously imported the "service organization" language of RSA 282-A:31, II(b) into RSA 282-A:31, II(c). Subparagraph (b), however, applies to unemployment in any week between successive academic years or terms, whereas the week of February 28, 1998 was, as found by the appeal tribunal, "an established and customary vacation . . . period." Thus, RSA 282-A:31, II(c) is the applicable provision. Because subparagraph (c) does not refer to service organizations, we need not decide whether MTA is such an organization.

The claimants first argue that they were not providing services for an educational institution, but rather were providing services for MTA. They argue that the statute must be read to apply only to employees of educational institutions, or it would have the absurd effect of rendering ineligible for unemployment benefits any person who provides any service for a school, such as a police officer who gives a presentation to the schoolchildren or the manufacturer of the school's desks. The petitioner, on the other hand, argues that the statute is clear on its face and that the claimants provide services for the Manchester schools.

Similar statutes in other jurisdictions have been interpreted both ways. *Compare, e.g., Borough of Pleasant Hills v. Com., Etc.*, 440 A.2d 679, 681 (Pa. Commw. Ct. 1982) (eligibility exclusion did not apply to school crossing guards employed by the borough rather than by the school district) *with Fisher v. Bureau of Indian Affairs*,

318 S.E.2d 322, 323 (N.C. Ct. App. 1984) (claimants employed by Bureau of Indian Affairs but serving secondary school fell within eligibility exclusion). We conclude that the statute is ambiguous. We therefore "review legislative history to aid in our analysis." *Appeal of Routhier*, 143 N.H. 404, 406 (1999) (quotation omitted). "[O]ur goal is to apply statutes in light of the legislature's intent in enacting them, and in light of the policy sought to be advanced by the entire statutory scheme." *Appeal of N.H. Dep't of Transportation*, 143 N.H. 358, 360 (1999) (quotation omitted).

Prior to 1983, the applicable provision denied eligibility as follows:

> (d) With respect to weeks of unemployment beginning after December 31, 1977, benefits for any week which commences during an established and customary vacation period or holiday recess if he performs services *in the employ of* a public or other non-profit educational institution described in subparagraphs (b) or (c) in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that he will perform any such services *in the employ of* such an educational institution in the period immediately following such vacation period or holiday recess.

RSA 282-A:31, II(d) (Supp. 1981) (emphasis added). In 1983, section II was amended to its present form, which contains the "services for" rather than the "in the employ of" language.

"Ordinarily, any material change in the language of the original act . . . is presumed to indicate a change in legal rights." *Snyder v. N.H. Savings Bank*, 134 N.H. 32, 36 (1991) (quotation omitted). Thus, we presume that the "services for" language in the amended statute means something different from "in the employ of" and therefore reject the claimants' argument that the statute applies only to employees of educational institutions.

The legislative history reveals that the amendment was introduced at the request of the University of New Hampshire to deal with employees that it hired on a percentage basis. *See* N.H.S. JOUR. 554-59 (1983). We explained the amendment's context in *Appeal of Locke*, 127 N.H. at 405:

> Employees of educational institutions, such as the university system, were hired on a percentage basis. They worked "82% time" and accepted positions fully aware that the

> institutions did not expect them to work between academic semesters, and they were reasonably assured that jobs would be waiting at the end of the semester break. Some of these individuals began to file for unemployment benefits during the summer months. Since the employees were hired with the understanding that they would not work between semesters, and their positions were so defined, the legislature amended the statute with the purpose of disallowing unemployment benefits to this group.

[3] We conclude that application of this purpose is not limited to employees of educational institutions, for employees of other entities who provide services to an educational institution may be hired with the express understanding that their expected work schedule is dictated by whether the school is open. Thus, in determining whether a claimant is covered by the eligibility exclusion of RSA 282-A:31, II(c), we look to whether the claimant was hired to work only when school is in session.

MTA's job description for part-time school bus operators states: "Part-time operators are employed during the time that school is in session within the City of Manchester." The collective bargaining agreement provides that "[w]ork [for part-time operators] shall be on school days unless performing charter work." The claimants argue, however, that MTA school buses are used for charter work during school vacations and that "there is a penalty for the drivers for refusing to do charter work."

In its decision in the instant case, the board stated:

> Throughout the periods when the claimant[s] w[ere] not working the record reflects that they were available and "on call" during the "slack time" which existed as a result of the school vacation period. Despite the claimant[s'] availability there was no work available that week. In accordance with the holding in the *Locke* decision the claimant was required to be available during the "slack time" in order to be assured that her job would still be available to her when business returned to normal at the end of school vacation. These and other facts in the instant case outlined herein and in the record are similar to those in the *Locke* decision.

We conclude that the appellate board's characterization of the facts in this case as analogous to those in *Appeal of Locke* is clearly erroneous.

The appellate board is required to defer to the appeal tribunal's factual findings. *See* RSA 282-A:65 (1999). The appeal tribunal found that "in accordance with the [union] contract, part-time school bus drivers will be utilized to perform all school related charter work in yellow school buses." It also found that "[i]f a charter is refused there is no threat of loss of employment, however the refusing driver is placed at the bottom of the seniority list." These facts are not analogous to those in *Appeal of Locke*, where the petitioner's employer "required its employees to be on-call during [semester breaks]" and the petitioner was "fearful that if she were not available during the slow business times, her job would not be assured when business in the area returned to its normal pace during the academic year." *Appeal of Locke*, 127 N.H. at 405-06.

The collective bargaining agreement provides:

> i. A list shall be made available at the beginning of each contract pick, allowing each school bus operator the opportunity to sign yes or no to performing additional school related work.
>
> j. An operator who refuses when asked to perform additional work, shall go to the bottom of the additional work list as worked and shall not be asked again until all other school bus operators that have signed yes to the additional work list have had the opportunity to accept or refuse.

Thus, part-time operators voluntarily decide whether to take on charter work at all. There is no evidence of any penalty for signing "no" to the charter work list. Once on the list, part-time operators are offered charter work "by seniority and on a rotating basis." When an operator's name is at the top of the list and the operator is offered a charter, the operator may still refuse, but the operator's name then goes to the bottom of the charter list. We disagree with the characterization of this consequence as a penalty, however, as the operator's name also goes to bottom of the list if the operator accepts and performs the work. While the collective bargaining agreement could have implemented a different rotation system, we do not view its failure to allow an operator to remain at the top of the list until work is accepted as a penalty on par with the feared loss of employment in *Appeal of Locke*.

[4] We conclude that the claimants were not expected to work when school was not in session and were not required to be "on call"

during such times. We therefore hold that the claimants are ineligible for unemployment benefits for the "established and customary" 1998 February vacation. RSA 282-A:31, II(c).

The claimants nevertheless argue that MTA is precluded, under the doctrines of res judicata and collateral estoppel, from challenging their eligibility because it did not appeal a board decision granting one of the claimants, Gwyn Furtado, unemployment benefits for the 1997 February vacation. MTA argues that to give preclusive effect to the 1997 decision "would be unfair, inequitable and contrary to the interests of judicial economy." We find it unnecessary to address MTA's policy arguments, however, because we conclude that neither res judicata nor collateral estoppel applies.

[5] "Res judicata is a doctrine judicial in origin which applies to repetitious suits involving the same cause of action." *Christian Camps & Conferences v. Town of Alton*, 118 N.H. 351, 353 (1978). It is inapplicable here because the claimants' claim for benefits for the February 1998 vacation is a different cause of action than Gwyn Furtado's claim for benefits for the February 1997 vacation. *See id.* at 353-54.

[6] Collateral estoppel, on the other hand, "precludes the relitigation by a party in a later action of any matter actually litigated in a prior action in which he or someone in privity with him was a party." *In re Alfred P.*, 126 N.H. 628, 629 (1985). The only issue that appears to have been actually litigated in 1997 is whether the appeal tribunal erred in determining that MTA "[met] the definition of a service organization for an educational institution pursuant to RSA 282-A:31 II(b)." We held above, however, that whether MTA is a service organization is irrelevant to the issue to be determined in this case. Thus, we conclude that MTA is not collaterally estopped by the appellate board's 1997 decision.

Finally, the claimants argue that MTA waived the issues appealed because "the questions presented for review were not raised by the MTA in the appeal below, but rather by the State of New Hampshire itself." We conclude, however, that the claimants waived this argument by failing to make more than this passing reference to it in their brief. *See State v. Hermsdorf*, 135 N.H. 360, 365 (1992).

Reversed.

BROCK, C.J., and BRODERICK, J., concurred.

March 11, 2003

Attorney-Client Privilege

BY FACSIMILE
AND FIRST CLASS MAIL
Commissioner John J. Ratoff
New Hampshire Department of Employment Security
32 South Main Street
Concord, NH 03301

Re: Request For An Opinion

Whether the application of RSA 282-A:31, II(b) should be controlled by Appeal of Edna Mae Locke, 127 NH 403 (1985) or Appeal of Manchester Transit Authority, 146 NH 454 (2001)

Dear Commissioner Ratoff:

I am writing to respond to your request for an opinion as to whether the interpretation of RSA 282-A:31, II (b) should be controlled by Appeal of Edna Mae Locke, 127 NH 403 (1985) (hereinafter "Locke") or Appeal of Manchester Transit Authority, 146 NH 454 (2001) (hereinafter "MTA"). Although I have specified that this letter is subject to the attorney-client privilege, because you are the client, and the person with ultimate authority for the Department of Employment Security, you retain the right to waive the privilege at any time.

In brief, Locke continues to control the meaning of "services for a service organization for any educational institution," as that phrase is used in RSA 282-A:31, II (b). However, the Locke Court was not called upon to interpret the phrase, "based on services . . . for an educational institution." The MTA Court did interpret that phrase, and concluded that it applied to employees hired by a private corporation to provide services to an educational institution. As explained in greater detail below, the MTA Court's interpretation applies to the meaning of the phrase "based on services . . . for an education institution," as that phrase appears in RSA 282-A:31 II (a), (b), and (c).

BACKGROUND

As your letter of October 9, 2002 explained, the Federal Unemployment Tax Act (FUTA), 26 U.S.C.A. §§ 3301-3311, permits employers to take a credit against their federal taxes for contributions required to be paid into a state unemployment compensation fund as long as the state's unemployment compensation statute conforms to certain specifications in federal law. See 26 U.S.C.A. § 3302.

Broadly speaking, Locke and MTA concern FUTA's "between and within terms denial" provisions. See 26 U.S.C.A. § 3304(a)(6)(A)(1994). Federal law requires state laws to contain the "between and within terms denial" provisions for institutional, research and principal administrative services for educational institutions. 26 U.S.C.A. §3304(a)(6)(A)(i). Federal law also authorizes, but does not require, state law to adopt provisions which deny unemployment compensation based on services in any other capacity for an educational institution or an educational service agency. 26 U.S.C.A. § 3304(a)(6)(A)(ii-iv). The purpose of the "between and within term denial" provisions is to reserve unemployment compensation for individuals who find themselves subject to unanticipated unemployment through no fault of their own.

In 1983, in order to comply with FUTA's requirement and thereby keep New Hampshire employers eligible to receive FUTA tax credits, the New Hampshire Legislature enacted RSA 282-A:31, II(a), which states in relevant part:

> An unemployed individual shall not be eligible to receive benefits [b]ased on services in an instructional, research or principal administrative capacity for an educational system for any week which commences during a period between 2 successive academic years or terms. if such individual performs such services in the first of such academic years or terms and there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

This provision prevents individuals from collecting unemployment compensation who a) have been compensated by their employer with a yearly salary, notwithstanding that periods of non-activity will occur during the year and/or b) who are aware of the seasonal character of educational systems and anticipate periodic unemployment. This provision is limited in scope; it only applies to individuals who work in "an instructional, research or principal administrative capacity for an educational system." It is also limited in that it applies to "periods between successive academic years or

terms," but does not apply to holidays or vacations within academic years or terms.

In 1983, the New Hampshire Legislature also choose to exercise the discretion afforded it under FUTA and to adopt provisions which deny unemployment compensation "based on services in any other capacity for an educational institution or an educational service agency." 26 U.S.C.A. § 3304(a)(6)(A)(ii-iv). State statute RSA 282-A:31 II(b) states in relevant part:

> An unemployed individual shall not be eligible to receive benefits [b]ased on services in any other capacity for an educational institution, including services for a service organization for any educational institution for any week which commences during a period between 2 successive academic years or terms . . . if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms..

This provision prevents individuals who have provided services to an educational institution in any capacity other than the capacities set forth in RSA 282-A:31, II (a) from receiving benefits for periods of inactivity between successive academic years or terms. Its broad scope includes individuals who have "provided services . . . for an educational institution," including "services for a service organization for any educational institution." This provision does not discuss whether unemployment compensation is available for holidays or vacations within academic years or terms.

Finally, RSA 282-A:31,II (c) address whether unemployment compensation shall be made available during customary vacation periods or holiday recess. That statute states in relevant part:

> An unemployed individual shall not be eligible to receive unemployment benefits [b]ased on services for an educational institution for any week which commences during an established and customary vacation period or holiday recess if such individual performs services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

ANALYSIS

In Locke, the New Hampshire Supreme Court interpreted the term "service organization" as used in RSA 282-a:31, II(b) to be equivalent to the federal definition of "educational service agency." The later term is defined as "a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions." 26 U.S.C.A. § 3304(a)(6)(A)(iv). The Court also examined the legislative history of the addition of the phrase "service organization" into the state statute. The Court concluded that the phrase "including services for a service organization for any educational institution" was added to prevent employees from collecting unemployment benefits when those employees: a) were hired on a percentage basis by educational institutions, b) accepted their positions while fully aware that the institutions did not expect them to work between academic semesters; and c) were reasonably assured that jobs would be waiting at the end of the semester break. See Locke 127 N.H. at 405-06.

The Locke Court concluded that a food-service employee of a "for-profit" corporation was eligible for unemployment compensation benefits during a temporary lay-off during the summer months of 1983 even though the "for profit" corporation had hired the employee to provide food services at an educational institution because: a) the employee did not work for a "service organization;" b) the private corporation required its employees to be "on-call" during the seasonal "slack time;" and c) the employee was fearful that if she were not available "on-call" her job would not be assured when business in the area returned to its normal pace during the academic year. See id. at 406.

Nothing in MTA changes the Court's analysis of the meaning of "service organization" in RSA 282-A;31 II(b). The MTA Court did interpret a different part of RSA 282-A:31, II(b) however, in a manner that is significant because the phrase at issue appears in subsections a, b, and c of the statute.

In the MTA case, bus drivers employed by the Manchester Transit Authority to transport Manchester students in grades one through eight over specified school routes sought unemployment compensation for the period of time Manchester schools were closed for the annual February vacation, a period of approximately one week. See 146 NH at 455. The MTA Court noted that the period at issue was a vacation period, and that RSA 282-A:31 II(c) (1983) applied. The Court then noted that in 1983 that statute was amended to replace the phrase "in the employ of such an educational institution" with the phrase "based on services for an educational institution." Id. at 457-58. Based upon standard rules of statutory construction, the Court reasoned that the "services for" language meant something different from the

'in the employ of' language. The Court concluded that the meaning of the phrase was 'not limited to employees of educational institutions, for employees of other entities who provide services to an educational institution may be hired with the express understanding that their expected work schedule is dictated by whether the school is open.' MTA 146 N.H. at 459.

Applying both the expanded meaning of 'services for' and the Locke criteria (stemming from the purpose of the 'between and within terms denial' provisions, see supra), the Court concluded that the MTA bus drivers: a) provided services for an educational institution; b) understood that they were employed only while school was in session; and c) were not expected to be 'on-call.' Accordingly, the Court held that the MTA bus drivers were not entitled to unemployment compensation benefits for the one week February vacation.

Turning to the larger question at issue, the MTA decision as to the meaning of 'services for' as used in RSA 282-A:31(a)(b) and (c) is not limited to employees of educational institutions. Accordingly, under state law, employees of private entities who hire individuals to provide services for an educational institution shall be ineligible for benefits if reasonable employees would understand that they were employed only while school was in session and if the employer does not require the employee to be 'on-call.'

Just as Locke is distinguishable (see above), other state cases are distinguishable. The Supreme Court of Wisconsin has held that where school crossing guards were employed by a city rather than a school, they were eligible for unemployment benefits. See City of Milwaukee v. Dept of Industry, Labor and Human Relations, 316 N.W. 2d 367, 371 (Wis. 1982). The Wisconsin statute, however, described individuals exempt from benefits as 'employees.' The New Hampshire statute describes them as 'unemployed individuals.' The Wisconsin decision also gave great weight to their state agency's interpretation of the statute as permitting payment to city crossing guards. See also Milton v. Director of the Division of Employment Security, 438 N.E. 2d 71 (1982) (equivalent Massachusetts statute speaks of 'service in employment' and the Unemployment Compensation Act defines employment as 'service performed for wages by an employee for his employer').

Please do not hesitate to contact me if you would like to discuss this issue further. I may be reached at 271-1216.

Sincerely,

Mary E. Schwarzer
Assistant Attorney General

cc: Lon Siel, General Counsel, NHES
Charles Bradley, Counsel NHES

doc. 206982

Testimony in Support of SB 101

Good morning Mr. Chairman and members of the Committee. My name is Doug Patch; I am an attorney with the Concord law firm of Orr & Reno. I am testifying here this afternoon on behalf of Laidlaw Transit, Inc., a company which contracts with a number of school districts in NH to provide transportation services. We are here to ask your support for SB 101, and in particular for section 5 of the bill. This section addresses a fairly narrow, but very important, unemployment compensation issue that relates to school bus drivers.

For years school bus drivers who provide transportation services to an educational institution but who are employees of a private company were able to collect unemployment compensation benefits during vacation/holiday periods, such as school vacation weeks during the school year and the summer, as long as they otherwise qualified for those benefits. That all changed as a result of a NH Supreme Court decision in 2001. That opinion, Appeal of Manchester Transit Authority, 146 N.H 454 (2001), overturned an earlier opinion of the Court and interpreted the law in such a way that school bus drivers who are employed by a private contractor are no longer entitled to collect benefits for a school vacation week. In light of this decision the Department of Employment Security has had to deny requests for unemployment compensation by school bus drivers who are unemployed during a school vacation or holiday week.

The Department also asked the Attorney General for an opinion on whether, in light of the MTA decision, it must interpret the law in a similar fashion for summer vacation periods. The Attorney General's opinion indicates that as a result of the MTA decision the Department is required to interpret the law in such a way as to deny unemployment compensation benefits to school bus drivers during the summer vacation periods as well. While the decision on vacation weeks in and of itself was a negative development for school bus drivers and transportation companies, the decision by the AG's Office that the law should be interpreted to deny school bus drivers who would otherwise be eligible for unemployment compensation benefits during the summer vacation will have a devastating effect on the ability to retain and attract qualified school bus drivers.

We are therefore here to ask your support for section 5 of SB 101 in order to restore unemployment compensation benefits to these school bus drivers for holiday and vacation periods and summer vacation periods as well.

If the decision to eliminate these unemployment benefits is allowed to stand, it will have a significant negative impact on school bus safety. Not only will it make it more difficult to retain qualified, experienced school bus drivers, it will also make it more difficult to hire qualified individuals to be school bus drivers. This will of course lead to greater turnover in school bus drivers and the need for more training. Less experienced drivers means a reduction in safety for school children. Ultimately, in order to retain drivers, the private contractors will have to raise wages and thus between increased

wages and increased training costs, they will have no choice but to pass these additional costs on to school districts.

We are asking your support for an amendment to the law that will restore the situation to the way it was before the NH Supreme Court issued the Appeal of the Manchester Transit Authority decision. It worked well then; everyone, including the drivers, employers, and school districts, and so far as I know the Department as well, was happy with the situation. We are not asking you to provide any additional or new benefit that the school bus drivers didn't already have, we are only asking you to correct an unfortunate situation that has arisen. We urge your support for this important provision.

Thank you for the opportunity to speak in favor of this bill. I will leave you with copies of the NH Supreme Court decision and the AG's opinion on this issue, as well as a copy of my testimony. Please let me know if you have any questions.

Department of Employment Security Testimony before the House Labor Committee on Senate Bill 101-FN, as amended by the Senate Provided by Carolyn Angle Director, Unemployment Compensation Bureau April 23, 2003

The NH Department of Employment Security Supports SB 101-FN as amended for the following reasons. This bill has the unanimous approval of the UI Advisory Council with the exception of Section 5, which the Council has not yet reviewed. The Department does not oppose the amendment.

Sections 1, 9, 15 and 16

In December 2000, the Federal Unemployment Tax Act (FUTA) was amended to require that American Indian Tribes be treated similarly to state and local governments. This means that services performed in the employ of tribes are no longer subject to FUTA tax. In order to conform to Federal law, state laws are required to include as base period earnings the services performed in the employ of tribes, with some exceptions, and tribes must be offered a reimbursement option, meaning that instead of paying quarterly contributions on the first $8000 of wages paid to each employee, the tribes would be permitted to reimburse the department on a dollar for dollar basis for unemployment benefits paid to their former employees, if the unemployed individual's benefit rate is based on wages paid by the tribe.

These sections also allow for a tribe to change its election after a period of three years, and defines the consequences if an Indian Tribe fails to fulfill its obligations as a reimbursable employer and the subsequent actions the state may take to make the organization taxable.

Although at present there are no "Indian Tribes" within our state boundaries, the US Department of Labor has recommended that our law be amended so that it conforms in the event that there is a petition to the federal government to

recognize a tribe within our borders or an out of state tribe has one or more employees in New Hampshire in the future.

Section 2 and 3

These sections amend RSA 282-A: 9 so that the term employment will not include service by a direct seller that is engaged in the trade or business of distribution or delivery of newspapers, etc. This change brings RSA 282-A in line with federal law, which also excludes these services. As a result the services provided by these workers would not be covered under RSA 282-A and therefore monies earned providing these services could not be used to establish a claim for unemployment benefits.

Section 4

This section updates the statute to allow the Commissioner to approve vocational training programs. Currently, an individual must be enrolled in a training program under the auspices of the NH Department of Education, among other criteria, in order for NH Employment Security to waive certain availability requirements while the individual is in training. It has come to the Department's attention that many vocational programs are provided through apprenticeship councils, licensing boards and vendors who are certified to train individuals. Allowing these programs to be approved by the Commissioner of the Department of Employment Security will broaden the Department's authority to allow benefits to individuals while in training.

Section 5-

This section is an amendment proposed at the hearing before the Senate ED&A Committee hearing on 3/12/03. It was subsequently incorporated into the Bill. The Department does not oppose the amendment however there has not been sufficient time for the Department to bring this amendment before the Unemployment Insurance Advisory Council.

In June 2002 the Appeal of Manchester Transit Authority (2001) 146 N.H.454 changed the application of RSA 282-A: 31 II (c) to mean that individuals would not be eligible for benefits based on services for an educational institution for any week which commenced during an established and customary vacation period if the individual performed services immediately before such period (Christmas Vacation for example) and had reasonable assurance of returning to perform those services immediately following such period. The office of the Attorney General issued an opinion in March 2003 that this case was also applicable to RSA 282-A 31 II (b) meaning that individuals would also not be eligible for benefits based on services for an educational institution for any week during a period between two successive years or terms (typically summertime). Section 5 amends the statute so that subparagraph II (b) and II(c) will only apply to services for an educational institution by individuals in the employ of the state, political subdivisions, Indian Tribes and non-profit organizations.
It should be noted here that the department has historically applied the terms "state" and "political subdivision" as including instrumentalities of the state or a political subdivision. The legislation will therefore not change the application of RSA 282 A: 31, II (b) and II(c) to the Manchester Transit Authority as interpreted by the NH Supreme Court in Appeal of Manchester Transit Authority (2001) 146 N.H.454.

Section 6

FUTA requires that states pay benefits to eligible individuals in the United States, its possessions and to individuals in contiguous countries such as Canada which has executed an agreement and Mexico if it should enter into such an agreement. Currently, there are no provisions in NH Unemployment Compensation Law to prohibit claims being filed and benefits paid to claimants who live outside the United States or are not in countries which have an agreement with the United States with respect to unemployment compensation. With the advent of telephone and Internet claims, the potential for fraud is

enormous, as filing from outside the country becomes easier. Section 6 provides the statutory authority to implement this requirement.

Section 7

An individual is disqualified from receiving benefits if the individual leaves their job voluntarily without good cause attributable to the employer, is discharged for misconduct connected with the work, refuses an offer of suitable work or is unemployed due to a work stoppage that exists because of a labor dispute until the individual meets the re-qualification provisions in RSA 282-A. Prior to 1998 both RSA 282-A: 32, I and RSA 282-A: 36, IV provided that an individual must work in 5 or more consecutive weeks in employment earning in each week an amount at least equal to his maximum benefits rate plus 20% and then become unemployed from said employer due to lack of work. In 1998 RSA 282-A: 32, I was amended by removing the requirement that the 5 weeks be consecutive. Section 7 applies this same approach to RSA 282- A: 36, IV. It also inserts gender neutral language.

Section 8

This section allows appeal determinations to be mailed via first class mail rather than certified mail. This was a recommendation made by the U.S. Department of Labor following a review of this department's appeal unit activities in August 2002. This would significantly reduce the staff time and the cost of processing mail. The department will put procedures in place to assure that any party, who does not receive their appeal decision via regular mail, will have a second copy sent by certified mail so their appeal rights are preserved.

Section 10

This section clarifies that department tax agents may be designated by the commissioner as "serving officers" for the purpose of serving liens and tax warrants.

Section 11

This section clarifies the authority of the commissioner to collect debts via civil action on behalf of other states and the federal government. The re-codification of the statute in 1981 made the previously existing authority less clear.

Section 12, 13 and 14

These sections update the RSA 282-A with regard to changes made over time to Chapter 2 of Title II of the Trade Act of 1974, as amended and include and authorize the department to carry out the provisions of the Trade Adjustment Reform Act of 2002 as amended.

Section 17, 18

These sections provide the authority for the commissioner to waive debts of employers and benefit recipients of interest, penalties, fees or legal costs of up to fifty dollars if it is in the best interests of the state. Currently a benefit recipient or an employer who owes the department money must request a compromise of the debt. This requires that an Administrative Hearing Committee be convened, the debtor and the department execute a settlement agreement, and approval be obtained from the attorney general's office. We had a recent example where an elderly person employed a domestic. The quarterly report was filed late due to a snowstorm. The employer was assessed a late fee of $25 and charged $.08 in interest. The employer's record was otherwise issue free and this was the first time a report had been filed late. To go through the above process to set aside this indebtedness is a waste of limited administrative resources.

Section 19

This section provides for the effective dates of the legislation.

Voting Sheets

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on SB 101-FN

BILL TITLE: **relative to unemployment compensation.**

DATE: May 07, 2003

LOB ROOM: 306

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Giuda

Seconded by Rep. Mears

Vote: 8-5 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Russell T. Ober III, Clerk

OFFICE OF THE HOUSE CLERK

2003 SESSION

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

Bill #: SB-101 Title: relative to unemployment compensation

PH Date: __/__/__ Exec Session Date: 5/7/03

Motion: OTP Amendment #:

MEMBER	YEAS	NAYS
Gilman. G Michael. Chairman		
Bridle. Russell D. V Chairman	✓	
Bishop. Franklin C	✓	
Putnam. Ed M		✓
Corbin. Corev E		
Kellev. Jane P	✓	
Christiansen. Lars T		✓
Giuda. Robert J	✓	
Adams. Jarvis M		✓
Carter. Jeffrev H		
Harrington. Paul J	✓	
Newton. Clifford A		✓
Ober. Russell T		✓
Richardson. Herbert D	✓	
Slocum. Lee G		
Mears. Edgar H	✓	
Baroody. Benjamin C		
Palangas. Eric		
Gorman. Marv J		
Hofemann. Roland P	✓	
Kudalis. Debra A		
	8 - 5	
TOTAL VOTE:		

Printed: 1/6/2003

Committee Report

COMMITTEE REPORT

COMMITTEE: **Labor, Industrial and Rehabilitative Services**

BILL NUMBER: **SB 101-FN**

TITLE: relative to unemployment compensation.

DATE: May 07, 2003 CONSENT CALENDAR YES ☐ NO ☒

☒ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill, a recommendation of the Advisory Council on Unemployment Compensation, brings the Department of Employment Security into conformity with the Federal Unemployment Tax Act regarding the treatment of American Indian tribes, and in restricting the payment of benefits to individuals in the United States, it's possessions and in contiguous countries with an unemployment compensation agreement with the United States. The bill also brings the state in line with federal law regarding the treatment of direct sellers engaged in the trade or business of distribution or delivery of newspapers. It allows the commissioner of employment security to approve vocational training programs for claimants, makes the statute consistent in so far as re-qualification provisions are concerned, and provides for appeals decisions to be mailed via first class mail. Additional provisions in the bill clarify the role of department employees as officers for serving liens and tax warrants, allow the commission to collect debts via civil action on behalf of other states and the federal government, and update the department's responsibility under the Trade Act of 1974 and the Trade Adjustment Reform Act of 2002. This bill also gives the commissioner the authority to waive debts of interest, fees and legal costs of up to $50 for employers and claimants. Finally, the bill includes a provision that will allow school bus drivers who are employees of private contractors to collect unemployment compensation benefits during the school and summer vacations, as they have in the past, something which was put in jeopardy by a recent New Hampshire Supreme Court decision.

Vote 8-5.

Rep. Robert J. Giuda
FOR THE COMMITTEE

Original: House Clerk

cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT
Labor, Industrial and Rehabilitative Services
SB 101-FN, relative to unemployment compensation. **OUGHT TO PASS**
Rep. Robert J. Giuda for Labor, Industrial and Rehabilitative Services: This bill, a recommendation of the Advisory Council on Unemployment Compensation, brings the Department of Employment Security into conformity with the Federal Unemployment Tax Act regarding the treatment of American Indian tribes, and in restricting the payment of benefits to individuals in the United States, it's possessions and in contiguous countries with an unemployment compensation agreement with the United States. The bill also brings the state in line with federal law regarding the treatment of direct sellers engaged in the trade or business of distribution or delivery of newspapers. It allows the commissioner of employment security to approve vocational training programs for claimants, makes the statute consistent in so far as re-qualification provisions are concerned, and provides for appeals decisions to be mailed via first class mail. Additional provisions in the bill clarify the role of department employees as officers for serving liens and tax warrants, allow the commission to collect debts via civil action on behalf of other states and the federal government, and update the department's responsibility under the Trade Act of 1974 and the Trade Adjustment Reform Act of 2002. This bill also gives the commissioner the authority to waive debts of interest, fees and legal costs of up to $50 for employers and claimants. Finally, the bill includes a provision that will allow school bus drivers who are employees of private contractors to collect unemployment compensation benefits during the school and summer vacations, as they have in the past, something which was put in jeopardy by a recent New Hampshire Supreme Court decision.
Vote 8-5.

Robert Giuda

SB 101, relative to unemployment compensation. **OUGHT TO PASS.**

~~Rep. Edgar H. Mears~~ for Labor, Industrial and Rehabilitative Services: This bill, a recommendation of the Advisory Council on Unemployment Compensation, brings the Department of Employment Security into conformity with the Federal Unemployment Tax Act regarding the treatment of American Indian tribes, and in restricting the payment of benefits to individuals in the United States, its possessions and in contiguous countries with an unemployment compensation agreement with the United States. The bill also brings the state in line with federal law regarding the treatment of direct sellers engaged in the trade or business of distribution or delivery of newspapers. It allows the commissioner of employment security to approve vocational training programs for claimants, makes the statute consistent in so far as re-qualification provisions are concerned, and provides for appeals decisions to be mailed via first class mail. Additional provisions in the bill clarify the role of department employees as officers for serving liens and tax warrants, allow the commissioner to collect debts via civil action on behalf of other states and the federal government, and update the department's responsibility under the Trade Act of 1974 and the Trade Adjustment Reform Act of 2002. The bill also gives the commissioner the authority to waive debts of interest, fees and legal costs of up to $50 for employers and claimants. Finally, the bill includes a provision that will allow school bus drivers who are employees of private contractors to collect unemployment compensation benefits during school and summer vacations, as they have in the past, something which was put in jeopardy by a recent NH Supreme Court decision.
Vote 8 - 5.

