

State of
New Hampshire
HOUSE RECORD

First Year of the 155th Session of the General Court
Calendar and Journal of the 1997 Session

Vol. 19 Concord N.H. Friday, March 14, 1997 No. 35

Contains: Hearings, Notices, Work Sessions, Reports for March 18 and 19

HOUSE CALENDAR NOTICE

Members of the House:

Thank you for your cooperation Wednesday in acting expeditiously on a record 226 bills. Things go more smoothly when both sides of a debate can agree in advance on a number of speakers and a limit on questions. I would also encourage members who are removing bills from the consent calendar, offering amendments, or asking to speak to notify the clerk as far in advance as possible. It reduces confusion at the rostrum and saves time.

The House will meet on March 18th and 19th at 10:00 a.m. Future sessions are planned for March 26th and April 2nd.

Notice is hereby given that every Session Day shall be a Consent Calendar Day as set out in House Rule 51.

Donna Sytek, Speaker

NOTICE

There will be a Republican Caucus on Tuesday, March 18 at 9:15 a.m. in Representatives Hall.

Rep. Robert L. Wheeler, Majority Leader

NOTICE

There will be a Democratic Caucus on Tuesday, March 18 at 9:00 a.m. in Rooms 305-307 of the Legislative Office Building.

Rep. Peter Hoe Burling, Democratic Leader

NOTICE

LEGISLATIVE FORUM

HOUSE CONTINUING EDUCATION

TOPIC: Parliamentary Procedure II

PRESENTER: Hon. Karen O. Wadsworth, Clerk of the House

DATE: Thursday, March 20 (Rescheduled from March 13)

TIME: Noon to 1:00 p.m.

PLACE: Room 100, State House

All members are encouraged to attend. For the members' convenience the cafeteria will sell sandwiches, snacks and sodas outside the room. Please mark your calendars for the next forum to be held on March 27th. Leon S. Kenison, Commissioner of the Department of Transportation will speak on the Department's Ten Year Highway Plan.

*Please note this session will NOT be a repeat of the Parliamentary Procedure Forum held on January 23rd.

Rep. Carol H. Holden

Legislative Continuing Education Coordinator

TUESDAY, MARCH 18

CONSENT CALENDAR

COMMERCE

HB 327, relative to pledges for loans, finance charge disclosure statements, and debt adjusters. OUGHT TO PASS WITH AMENDMENT

Rep. David T.Mittelman for Commerce: This bill as amended requires pawnbrokers who accept more than four motor vehicle titles to comply with Truth in Lending provisions. The bill also clarifies certain financial disclosure requirements and limits a nonprofit debt collection exemption to charitable entities. Vote 10-0.

HB 334, establishing guidelines for assessing the eligibility of certain providers for third party reimbursement. OUGHT TO PASS

Rep. Keith R. Herman for Commerce: This bill is the result of work done last session by members of the commerce committee. The intent of the legislation is to create some consistency in determining eligibility to receive third party reimbursement. The process to date has been extremely arbitrary. While these guidelines in no way mandate or guarantee third party reimbursement eligibility, it should allow future legislators to better judge the merits. Vote 10-0.

HB 370, updating and making technical corrections in certain banking laws. OUGHT TO PASS WITH AMENDMENT

Rep. David T. Mittelman for Commerce: This bill as amended primarily clarifies existing regulatory authority and updates certain citation references within the banking statutes. These technical changes reflect the modern needs and practices of both the industry and the Banking Department. Vote 16-0.

HB 376, relative to prescription drug copayments required by insurance companies and relative to filling prescription drug prescriptions. INEXPEDIENT TO LEGISLATE

Rep. Tim S. McGough for Commerce: This bill would have prohibited insurance companies from recovering the additional cost of brand name medication when many prescriptions are not available in generic equivalents, which is clearly unfair. Vote 11-0.

HB 404, establishing a committee to study providing universal catastrophic health coverage by establishing a statewide catastrophic risk pool. OUGHT TO PASS

Rep. Anthony Syracuse for Commerce: The full commerce committee discussed this bill as a committee of the whole. No one spoke in opposition. The Commissioner of Health and Human Services and the NH Insurance Department are in support of the bill. The concept of a statewide catastrophic risk pool may provide an opportunity to keep rates down. Vote 9-2.

HB 409, requiring nonprofit educational organizations and certain hospitals to file certain forms with the director of charitable trusts. RE-REFER TO COMMITTEE

Rep. David T. Mittelman for Commerce: The committee addressed the subject matter of this bill in HB 161. Re-referral will allow study of lingering issues relative to charitable trusts. Vote 9-2.

HB 410, allowing mental health counselors and marriage and family therapists to obtain third party payments for services rendered which would otherwise qualify for such payments. RE-REFER TO COMMITTEE

Rep. Keith R. Herman for Commerce: The committee has dealt with this issue many times over the past few years. Each time, it has denied the request for mental health counselors and marriage & family therapists from receiving third part reimbursement. The committee has received no new information regarding the merits of mandating reimbursement. This year the committee feels it is important to look into the process by which the legislators license health providers and grant third party reimbursement eligibility to those providers. Currently, two house committees deal with these issues separately. The intent of the committee is to look into this process over the summer. Vote 8-3.

HB 449, regulating the self storage industry INEXPEDIENT TO LEGISLATE

Rep. Eric N. Lindblade for Commerce: The Uniform Commercial Code in our statutes already provides adequate remedy, as well as other sections of law referring to the rights of landlords and abandoned property. Vote 13-1.

HB 451, providing that health care providers shall determine the appropriate course of patient treatment RE-REFER TO COMMITTEE

Rep. Keith R. Herman for Commerce: While the subcommittee did not feel that HB 451 should pass in its current form, it did recognize the growing concerns over how NH citizens are receiving medical care. This bill provides a mechanism in which practical and philosophical discussion can take place on the merits and problems of our current health care delivery mechanism. The committee unanimously feels that these issues need further work. Vote 13-0.

HB 453, relative to the bank commissioner's regulation of sales finance companies and retail sellers. OUGHT TO PASS WITH AMENDMENT

Rep. David T. Mittelman for Commerce: This bill as amended makes technical changes to laws relative to retail sellers (i.e., automobile dealers) and sales finance companies (i.e., automobile financiers). In essence, HB 453 prohibits certain fraudulent activities and provides the Banking Department with greater power and flexibility to enforce existing laws. Vote 14-1.

HB 483, relative to regulation of securities OUGHT TO PASS WITH AMENDMENT

Rep. David T. Mittelman for Commerce: The bill as amended makes certain technical changes to New Hampshire securities laws. Its more significant provisions include 1) a limited exemption for Canadian broker-dealers doing business with resident Canadian citizens, and 2) allowing the Bureau of Securities Regulation to deny, suspend, or revoke the license of any individual who has violated securities laws. Vote 13-0.

HB 487, relative to the distribution of tobacco products. INEXPEDIENT TO LEGISLATE

Rep. Keith R. Herman for Commerce: This is another one in a series of smoking related bills. Although the committee recommends this bill ITL, the committee has committed to take up the issue of tobacco coupon distribution in one of the re-referred smoking bills. This recommendation had unanimous, bi-partisan support. Vote 12-0.

HB 492, relative to the refund of unused insurance premiums for insurance policies sold by motor vehicle dealers. INEXPEDIENT TO LEGISLATE

Rep. Richard H. Krueger for Commerce: Under current law, the lien holder must return the unused portion of credit life and disability insurance within 30 days from date of notification. The problem that a constituent had is not at all common in the industry. The individual for whom this bill was proposed might well be advised to review his administrative procedures with the NH Insurance Department. Vote 14-0.

HB 505, revising provisions relative to smoking in indoor public places RE-REFER TO COMMITTEE

Rep. Richard H. Krueger for Commerce: This bill has brought up many valid new issues including changes upon existing statutes, and it is felt further investigation and study is warranted. In addition, there are issues on several other bills that the committee voted ITL which will be incorporated in our discussion of this bill. Vote 13-1.

HB 508, relative to mandatory automobile insurance INEXPEDIENT TO LEGISLATE

Rep. Richard H. Krueger for Commerce: New Hampshire consistently remained among the top five states with the lowest number of uninsured motorists. We have achieved this record without the increased cost of a bureaucracy which would be passed on to the consumer and not reduce the number of uninsured motorists on the road in any measurable way. A large percentage of uninsured motorists involved in accidents are from other states which have their own forms of mandatory insurance. There is a small segment within the uninsured who are the working poor for whom mandatory insurance would severely impact their ability to survive in the job market until they can improve their lot. That the number of uninsured motorists would be reduced is statistically doubtful, but that the cost of auto insurance will rise as it has in other states is a surety. Vote 13-1.

HB 511-FN-LOCAL, requiring health insurers to provide coverage for certain supplies and services necessary in the treatment of diabetes. OUGHT TO PASS WITH AMENDMENT

Rep. Toni M. Crosby for Commerce: This bill, as amended, provides coverage for diabetes supplies, services and education to aid in the diabetes self-treatment. Additionally, the committee wants to send a clear message to the insurance industry regarding coverage for those New Hampshire citizens with diabetes. It has long been recognized that training diabetics to correctly monitor the disease and providing them with the necessary supplies greatly reduces the costs of diabetes treatment. Vote 13-0.

HB 580-FN, requiring that loans for purposes of purchasing manufactured housing be considered mortgages OUGHT TO PASS WITH AMENDMENT

Rep. Dennis P. Vachon for Commerce: The bill is intended to provide local tax collectors with the information they need to properly lien and foreclose on tax liens when the real estate involves manufactured housing. The amended bill accomplishes this without unnecessarily interfering with current options available to financial institutions in securing loans with manufactured housing units. Vote 11-2.

HB 594-FN-LOCAL, exempting towns and cities from paying condominium fees when condominium units are taken for nonpayment of taxes. RE-REFER TO COMMITTEE

Rep. Tara G. Reardon for Commerce: The subcommittee felt that more time is necessary to consider the variations among timeshares, commercial and residential condominiums, overlapping of issues with HB 701 and a review of RSA 356-B requirements. Vote 13-0.

HB 611-FN, making state securities laws comply with the National Securities Market Improvement Act. OUGHT TO PASS WITH AMENDMENT

Rep. David T. Mittelman for Commerce: This bill as amended represents New Hampshire's response to the National Securities Markets Improvement Act (NSMIA), enacted by congress last October. Among its significant provisions, NSMIA pre-empted most state laws regulating investment companies (i.e., mutual funds) and investment company advisers (i.e., mutual fund managers). The goal of HB 611 is to conform New Hampshire's statutes to federal law where necessary and retain state oversight of the mutual fund industry where possible. In so doing, this bill not only protects New Hampshire investors from fraudulent activity, but is also protects the more than \$8,000,000 in revenue that flows to the New Hampshire general fund by way of licensing fees and penalty assessments. Vote 15-0.

HB 640, establishing a committee to examine the feasibility of establishing a state of the art meteorological center at the former Pease Air Force Base. INEXPEDIENT TO LEGISLATE

Rep. Eric N. Lindblade for Commerce: In view of the present financial restraints, the committee felt it was not the right time to study this problem. Vote 12-0.

HB 691, requiring large employers to offer their employees long-term care insurance. RE-REFER TO COMMITTEE

Rep. George Hurt for Commerce: The committee felt it would be prudent to study this piece of legislation and give serious consideration to long term care issues. Vote 12-2.

HB 713, establishing a penalty for failure to file certain financial statements and quarterly reports, relative to the names of foreign limited partnerships, and replacing an annual notice requirement for limited liability partnerships with an annual fee. OUGHT TO PASS WITH AMENDMENT

Rep. David T. Mittelman for Commerce: This bill eliminates an unnecessary requirement that limited liability partnerships (LLPs) file an annual

notice with Secretary of State's Corporate Division. The bill also allows foreign LLPs to contain the name of a limited partner, as is common practice elsewhere. The amendment removes a penalty provision that would be better dealt with in other legislation. Vote 15-0.

HB 772-FN-A, establishing the position of industrial, commercial, and tourism agent for Coos County and making an appropriation therefor. RE-REFER TO COMMITTEE

Rep. Gregory G. Carson for Commerce: The committee re-referred this bill because the sponsor was unable to testify before the committee due to personal illness. Vote 16-0.

HB 798, relative to the bonding requirement for health clubs. RE-REFER TO COMMITTEE

Rep. David T. Mittelman for Commerce: Current law requires a health club to post a surety bond if it offers long-term memberships. While the intent of this provision was to protect consumers, the impact has been less than ideal. Many health clubs do not comply while others that do find the requirement financially prohibitive. The committee would like additional time to reexamine this law so as to make it less burdensome to small businesses without adversely affecting consumers. Vote 15-1.

HB 809, establishing a committee to study the feasibility of bringing the New England Patriots to New Hampshire OUGHT TO PASS

Rep. George Hurt for Commerce: The majority of the committee felt this legislation is appropriate and worthy in working towards attracting the New England Patriots to New Hampshire. Vote 14-2.

CRIMINAL JUSTICE AND PUBLIC SAFETY

HB 118-FN, relative to penalties for marijuana possession. INEXPEDIENT TO LEGISLATE

Rep. Yvonne Coulombe for Criminal Justice and Public Safety: This bill would reduce the penalties for possession of 1 1/2 ounces of marijuana from a class A misdemeanor to a violation. Our legislature has enacted a strong controlled drug law over the past 10 years. The committee feels that this proposal would be contrary to our clear public policy against the use of unlawful drugs by minimizing the penalties for possessing a substantial amount of marijuana. Vote 17-0.

HB 202, relative to the sale of air guns to minors and the use of air guns by minors. OUGHT TO PASS WITH AMENDMENT

Rep. Leo P. Pepino for Criminal Justice and Public Safety: This bill as amended defines air guns and restricts minors under the age of 17 from purchasing, possessing, and using an air gun without adult supervision. Vote 17-0.

HB 204-FN-L, relative to transportation of arrestees, detained defendants, and prisoners and court control of arrestees, detained defendants, and prisoners. RE-REFER TO COMMITTEE

Rep. Leo P. Pepino for Criminal Justice and Public Safety: This bill provides that once an arrestee, detained defendant or prisoner has arrived at a superior or district court house, the state through bailiffs and court security personnel is responsible for the conduct and control of such arrestee, detained defendant or prisoner as part of its responsibility for public security in the court house. Due to the very complex issues involved in this bill and the concerns of some members of the Hillsborough County delegation the committee will need more time to study this bill. Vote 18-0.

HB 236, to include a person who is being stalked in the definition of "family household member" for purposes of the domestic violence law. OUGHT TO PASS WITH AMENDMENT

Rep. William V. Knowles for Criminal Justice and Public Safety: There is no current mechanism for a person being stalked to obtain a restraining order. This legislation allows such person to apply to the courts for a restraining order in the same manner as a victim of domestic violence. Vote 18-0.

HB 458-FN, relative to the elements of simple assault and relative to certain persons with prior convictions for first degree, second degree, or simple assault. INEXPEDIENT TO LEGISLATE

Rep. Stephen J. Adams for Criminal Justice and Public Safety: The subject matter in this bill will be discussed in HB 480 which was recommended as "re-referred" by our committee. Vote 16-0.

HB 467-FN, relative to felonious activities relating to wireless telephone cloning. RE-REFER TO COMMITTEE

Rep. Stephen J. Adams for Criminal Justice and Public Safety: The committee feels this bill addresses an existing problem with theft of wireless phone service, but needs further information from the industry representatives. There are also problems with penalties conflicting with existing

statutes. Vote 18-0.

HB 480, revising the law relative to protection of persons from domestic violence. RE-REFER TO COMMITTEE

Rep. Herbert R. Hansen for Criminal Justice and Public Safety: The committee felt that rather extensive revisions and additions are needed to make this bill acceptable. Vote 18-0.

HB 532-FN, relative to the transportation of alcoholic beverages by a minor. OUGHT TO PASS WITH AMENDMENT

Rep. Andrew Christie, Jr. for Criminal Justice and Public Safety: This bill was amended by the committee making two changes to the current law. First, it makes illegal transportation a violation as it was not before and second, it says that the court may require attendance and successful completion of the impaired driver intervention program before restoration of the license. Vote 15-2.

HB 559-FN, relative to crimes against persons under 13 years of age. RE-REFER TO COMMITTEE

Rep. Richard F. Doucette for Criminal Justice and Public Safety: This bill would make negligently causing the death of a child under the age of 13 a class A felony under the negligent homicide statute. The penalty for a class A felony is 7 to 15 years incarceration. The committee agrees with the motives but would like to study the penalty and possible fiscal impact on the state. Vote 17-0.

HB 565-FN, relative to penalties for joy-riding and car theft across state lines. RE-REFER TO COMMITTEE

Rep. L. Randy Lyman for Criminal Justice and Public Safety: While the committee agreed that there is a need for some type of legislation, this particular bill needs considerable revision to be sure the offense classification is correct. Vote 18-0.

HB 573-FN, repealing administrative suspension of driver's licenses for driving while intoxicated. INEXPEDIENT TO LEGISLATE

Rep. Herbert R. Hansen for Criminal Justice and Public Safety: Driving while intoxicated is such a serious public offense that those testifying and the committee felt that this law should stay as it is. Vote 19-0.

HB 583-FN-LOCAL, relative to felonious disarming of a law enforcement officer. RE-REFER TO COMMITTEE

Rep. Frank M. Schanda for Criminal Justice and Public Safety: This bill would make an individual who takes a firearm from a law enforcement officer guilty of a class A felony. Currently, a person who uses force to escape from a law enforcement officer is guilty of a class A felony. The committee voted to further study to determine if such a new class of felony is needed. Vote 18-0.

HB 614-FN, making any person who, while operating a motor vehicle, fails to yield in certain circumstances guilty of a class B misdemeanor if such failure results in an accident or an injury. INEXPEDIENT TO LEGISLATE

Rep. Bruce F. Hunter for Criminal Justice and Public Safety: This bill creates a class "B" misdemeanor for failure to yield, with an accident or injury resulting. The committee has read RSA 265:30, I, II, & III and does not believe sufficient evidence was presented to make a criminal penalty for failure to yield. Vote 18-0.

HB 665-FN, establishing the crime of felony murder. RE-REFER TO COMMITTEE

Rep. Lori Cardin for Criminal Justice and Public Safety: This bill would essentially establish a new Class A felony that makes a person guilty of second degree murder if the foreseeable death of another occurs as a result of committing a felony. This bill was prompted as a result of the Hudson armored car heist where two guards were murdered in the normal course of their employment while other actors were committing a felony. This is a good bill and the committee would like to take the time to study the merits of it. Vote 16-0.

HB 669-FN, enhancing penalties for violations of laws regulating underground storage facilities. INEXPEDIENT TO LEGISLATE

Rep. Bruce F. Hunter for Criminal Justice and Public Safety: The committee feels that this legislation is not needed at this time. The Department of Environmental Services seeks to increase penalties to the level of Class B felony for knowingly violating any provision of RSA 146-C, the underground storage tank statutes or any rule pertaining to such tanks. There have so far only been two cases where this penalty would have been considered out of a potential 6,000 underground storage tanks. In 1990, there were 10,000 such tanks. Currently only 2,500 tanks need to be upgraded or removed before December 1998. Vote 18-0.

HB 672-FN-Local, relative to lowering the allowable alcohol concentration for persons under 21 operating OHRVs. OUGHT TO PASS

Rep. Bruce F. Hunter for Criminal Justice and Public Safety: This bill lowers the allowable alcohol concentration for persons under 21 operating

OHRVs, and conforms with penalties that pertain to under 21 motor vehicle violations. Vote 19-0.

HB 673-FN, establishing a penalty for committing certain offenses while aboard an aircraft which lands in this state and relative to the jurisdiction of law enforcement officers and the courts over persons committing offenses in an aircraft landing in this state. INEXPEDIENT TO LEGISLATE

Rep. Bruce F. Hunter for Criminal Justice and Public Safety: This bill would establish that any offenses committed during the flight of any passenger aircraft within the jurisdiction of the United States shall be deemed to continue through the time that such aircraft lands in the state of New Hampshire. If the offense actually happened in air space over New York, it is a stretch to prosecute in New Hampshire for crimes committed outside the state. The problems outweighed the solutions. Vote 19-0.

HB 682-FN-Local, requiring law enforcement agencies to notify certain community organizations when a sexual offender moves into the community. RE-REFER TO COMMITTEE

Rep. Herbert R. Hansen for Criminal Justice and Public Safety: This bill needs an amendment to make it comply with requirements for obtaining federal funds. In addition, more work is needed to insure that the list of organizations to be notified is complete. Vote 17-0.

HB 684-FN, relative to drivers who purposely neglect to stop when under pursuit by a law enforcement officer. INEXPEDIENT TO LEGISLATE

Rep. Andrew Christie, Jr. for Criminal Justice and Public Safety: Presently, if you fail to stop for a police officer RSA 265:4 makes it a violation under most circumstances. However, if any person other than the driver of the pursued vehicle sustains personal injury in a collision resulting from the driving of a vehicle which is evading pursuit by a law enforcement officer, the driver of such pursued vehicle shall be guilty of a class B felony. The committee felt these punishments were appropriate as is. Vote 18-0.

HB 685-FN, relative to the assault of a law enforcement officer acting in the line of duty. INEXPEDIENT TO LEGISLATE

Rep. Paul K. Chase, Jr. for Criminal Justice and Public Safety: The committee felt that the concerns expressed in this bill were in fact closely associated with those concerns that were addressed in HB 583 which was voted re-referred to committee for further study of these complex issues and to come back with a recommendation on that bill in the next session. Vote 18-0.

HB 692, relative to the use of court, case, and police records of delinquent children in sentencing for conviction of certain crimes as adults. INEXPEDIENT TO LEGISLATE

Rep. Herbert R. Hansen for Criminal Justice and Public Safety: This bill called for courts sentencing adults convicted of certain crimes to consider certain juvenile court, case and police records of such adult to determine the sentence to be imposed. Since this same material is covered in re-referred HB 604, the committee voted this bill as inexpedient to legislate. Vote 18-0.

HB 694, allowing law enforcement officers to make a video recording of certain communications without notification. INEXPEDIENT TO LEGISLATE

Rep. Herbert R. Hansen for Criminal Justice and Public Safety: The sponsor requested that we find the bill inexpedient to legislate since audio recording by the police without notification is unlawful and video recording is already covered in current law. Vote 16-0.

HB 730-FN, relative to penalties for sexual misconduct by mental health counselors. RE-REFER TO COMMITTEE

Rep. Herbert R. Hansen for Criminal Justice and Public Safety: This bill is intended to make a mental health counselor who engages in certain acts with a mental health client guilty of aggravated felonious sexual assault. Since a senate bill covering similar situations is forthcoming (SB 191), the committee voted to re-refer this bill to either be included in the senate bill or to replace it, if necessary. Vote 16-0.

HB 735-FN, adding certain conduct to that which constitutes aggravated felonious sexual assault and felonious sexual assault. OUGHT TO PASS

Rep. Andrew Christie, Jr. for Criminal Justice and Public Safety: This legislation enables charges of aggravated felonious sexual assault or felonious sexual assault to be brought against corrections officers or probation and parole officers who use their supervisory authority over a victim to coerce them to submit to a sexual act. We believe that people with mandated supervisory authority should be held to a higher standard. Vote 16-0.

HB 752, relative to the commission of robbery or burglary while armed with a deadly weapon, culpability for capital murder, and the potential death sentence for first degree murder. INEXPEDIENT TO LEGISLATE

Rep. Andrew Christie, Jr. for Criminal Justice and Public Safety: This bill does three things. It makes robbery or burglary while armed with a deadly weapon when death results a capital crime. It adds to the list of conduct which constitutes capital murder and adds the death penalty as a

potential sentence for first degree murder. The majority of the committee saw no need to expand the death penalty statute as it has not been used since 1939. Also, there is a huge potential cost to litigating appeals with regard to death sentences. Vote 14-2.

HB 764-FN, relative to a person subject to a domestic violence petition applying to purchase a handgun. OUGHT TO PASS WITH AMENDMENT

Rep. Stephen J. Adams for Criminal Justice and Public Safety: This bill would make an attempt to purchase a firearm while subject to protective order or restraining order a punishable offense. Also, included would be same day cancellation notification when a protective or restraining order is lifted. Vote 14-2.

HB 770-FN, relative to blood testing in the instance of motor vehicle fatalities and other instances. OUGHT TO PASS

Rep. Andrew Christie, Jr. for Criminal Justice and Public Safety: Only one person testified on this bill and that testimony was in strong support of the changes in the bill. The bill makes technical changes to the Fish and Game, Motor Vehicle and Boating Laws relative to the definition of alcohol. It updates the references to medical technicians and technologists instead of lab technicians, the admissibility of the external standard reference check to show that the instrument was properly calibrated, and the rules for preliminary breath test devices. The committee felt these changes served a very useful and needed purpose. Vote 16-0.

HB 777-FN, prohibiting a fish and game officer who makes an arrest for a fish and game violation from also being the prosecuting officer. INEXPEDIENT TO LEGISLATE

Rep. Herbert R. Hansen for Criminal Justice and Public Safety: The testimony provided by witnesses indicated that of the approximately 200 trials annually that are prosecuted by the arresting officer, only one appears to have been controversial. Based on this and the increased cost to the state of approximately \$100,000 per year to have an independent prosecutor, the committee voted this bill inexpedient to legislate. Vote 17-0.

HB 795-FN, enhancing the penalties for DWI and driving after revocation and suspension and eliminating certain driver intervention programs. INEXPEDIENT TO LEGISLATE

Rep. Stephen J. Adams for Criminal Justice and Public Safety: The committee will be studying the effectiveness of the multiple DWI intervention program in HB 271 and will also consider other penalties for violators that may be more effective. Vote 17-0.

ELECTION LAW

HB 328, requiring certain proof of identification to register to vote on election day and relative to hour limitations on voting. OUGHT TO PASS WITH AMENDMENT

Rep. Natalie S. Flanagan for Election Law: The amendment is now the bill. It allows persons who are waiting to register at the closing of the polls to register and vote. Vote 14-0.

HB 377, relative to primary election petitions. INEXPEDIENT TO LEGISLATE

Rep. Natalie S. Flanagan for Election Law: This bill has been taken care of by House Bill 276. Vote 17-0.

ENVIRONMENT AND AGRICULTURE

HB 291, relative to the use of the terms "native," "local," and "our own" when referring to farm products. OUGHT TO PASS WITH AMENDMENT

Rep. David L. Babson Jr. for Environment and Agriculture: This bill defines the terms "native", "local", "locally grown" and others as related to agricultural produce. This is an effort on the part of the committee to support and promote the fine work of the Department of Agriculture, Markets and Food, and the farm community. Vote 13-0.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

HB 283, establishing a study committee to examine the parity of salary scales between state troopers and other law enforcement officers. INEXPEDIENT TO LEGISLATE

Rep. Merton S. Dyer for Executive Departments and Administration: This bill would form a study committee to investigate the parity of troopers salary scales. This is a subject that the troopers should study and bring to the negotiating table for resolution. The legislature should not interfere with the collective bargaining process. Vote 18-0

HB 346, relative to the effect of federal law on any reorganization of the executive branch. INEXPEDIENT TO LEGISLATE

Rep. Sylvia A. Holley for Executive Departments and Administration: This bill adds the term "constitutional" to RSA 21-8:16. Addition of this term in the statute on reorganization would have the effect of requiring all statutes and rules promulgated by the federal government to be proven constitutional before the state agencies would have to comply with federal requirements. This is not an acceptable means of interaction between the state and federal governments. Vote 17-0.

HB 540, establishing a committee to study the possibility of requiring government agencies to provide a training and development policy instead of the current method of policing, penalizing, and fining business owners for infractions of the law. OUGHT TO PASS WITH AMENDMENT

Rep. Kipp A. Cooper for Executive Departments and Administration: The committee felt that the goals of this bill were laudable and that the establishment of the committee was appropriate to study ways by which state agencies may provide training and policies which will serve as incentives for small businesses to adhere to laws and rules rather than solely relying on punitive measures. This would serve to reduce the adverse impact and chilling effect that state interventions often have on small business activity. Vote 17-0.

HB 545, making the term of the attorney general coterminous with that of the governor. INEXPEDIENT TO LEGISLATE

Rep. Sylvia A. Holley for Executive Departments and Administration: Presently, the term of attorney general runs from March 31 to March 31 for 4 years. On March 5, 1997, the house passed CACR I which changes the term of the governor to 4 years. In light of this, the committee decided to leave the 4 year term of the attorney general as it now stands. Vote 17-0.

HB 745-FN, relative to the compensation of the members of the workers' compensation appeals board. INEXPEDIENT TO LEGISLATE

Rep. Myron S. Steere, III for Executive Departments and Administration: This bill would change the compensation to members of the workers' compensation appeals board from \$150 per diem to an hourly rate as determined by the commissioner of labor. The committee heard testimony from legislative audit, commissioner of labor, and members of the board. As a result of the hearing, the committee did not believe the change was necessary. Vote 18-0.

HB 749-FN, requiring group I retirement system members to be incapacitated for any gainful employment before receiving accidental disability retirement benefits. RE-REFER TO COMMITTEE

Rep. Merton S. Dyer for Executive Departments and Administration: Present statutes require a group I employee member of the NHRS to be incapacitated for further performance of duty before receiving accidental disability retirement. This bill would change the definition of any gainful employment. This would mean that employees injured on the job and not able to continue in their present position might be employed in another position. This portion of the statute applies only to employee members of the NHRS, both state and local employees and does not affect teachers, police, or fire personnel. The full information on the number of employees, the type of injuries and the effect of workman's compensation was not available at the time this bill had to be reported, therefore, the committee is requesting re-referral of this bill to properly study the question. Vote 18-0.

JUDICIARY AND FAMILY LAW

HB 290, relative to electronic signatures. RE-REFER TO COMMITTEE

Rep. Carol H. Holden for Judiciary and Family Law: Under the provisions of this bill electronic signatures are given the same force and effect as written signatures. Electronic commerce will be the new way of doing business. The secretary of state would have the authority to issue certificates to verify the digital signatures. The heads of the state agencies would be required to implement the control processes and procedures. The committee wants the opportunity to see how this process could be implemented in New Hampshire. Vote 12-0.

HB 326, requiring that parties filing for divorce attempt a mutually agreeable divorce settlement through mediation prior to proceeding with the adversarial process. INEXPEDIENT TO LEGISLATE

Rep. Wayne T. Moynihan for Judiciary and Family Law: The committee is very supportive of the concept of alternative dispute resolution (ADR). Divorce mediation is a form of ADR that the committee seeks to encourage. However, this bill seeks to do too much. This bill would make it mandatory for all couples seeking divorce to undertake mediation before the couple could proceed in a court of law. This requirement would be imposed on all couples whether the couple wanted to use such a service or not. There may not be a sufficient number of qualified, affordable, and accessible mediators around the state to allow such a requirement to be met. Mediation is most successful when the process is approached by the parties on a voluntary basis and not when it is forced upon them. There was significant opposition to the bill. Couples are free to attempt mediation before commencing divorce proceedings. The rules of the superior court already include provisions that allow for suspension of proceedings whenever a couple seeks to attempt mediation. No need for this legislation was evident. Mandatory mediation was not found to be good policy Vote 12-0.

HB 329, repealing the fireman's rule. OUGHT TO PASS WITH AMENDMENT

Rep. Sandra B. Keans for Judiciary and Family Law: The original bill was a repeal of the fireman's rule. The committee could not support that because we believe the legislation agreed to in 1993 among all parties still makes good public policy. We believe that the amendment better clarifies just what that agreement was and tries to incorporate the committee report of SB 109 from 1993. Vote 13-0.

HB 369, relative to the admission to practice and bar association membership for attorneys. INEXPEDIENT TO LEGISLATE

Rep. Cynthia A. McGovern for Judiciary and Family Law: There was no public testimony in support of this bill. While some committee members agreed with the sponsor, with respect to a required or mandated professional association, there was no strong argument for changing it. Vote 12-0.

HB 395, repealing the exemption for teacher certification records from the right-to-know law. INEXPEDIENT TO LEGISLATE

Rep. Sandra B. Keans for Judiciary and Family Law: No one but the sponsor testified for this bill. The Department of Education testified that on a periodic basis they publish the list of names of people whose certification has been revoked. Most of the information the sponsor wants is available. However, some information is not kept in Concord; such as which out of state college a person graduated from, only in-state vs out-of-state. We must remember the decision on who to hire is made at the local school district. Vote 12-0.

HB 439-FN, establishing a procedure for reporting on abortions. INEXPEDIENT TO LEGISLATE

Rep. Marjorie K. Smith for Judiciary and Family Law: The Center for Disease Control has regularly collected information on abortions which is published in CDC Surveillance Summaries, Morbidity and Mortality Weekly Report, and includes by state, number, ratio, rate, age, race, weeks of gestation, type and procedure, ethnic background, marital status, previous number of pregnancies and abortions, and fatalities. The report includes additional detailed information on teenagers. In addition, the New Hampshire Department of Health and Human Services has authority under RSA 120:25 II to collect such information and intends to do so. There is no need for this bill. Vote 12-0.

HB 444, extending the reporting date for the house committee to study the state investigation of the late John C. Fairbanks. INEXPEDIENT TO LEGISLATE

Rep. Alf E. Jacobson for Judiciary and Family Law: The concerns of this bill are incorporated into HB 688-FN-A. Vote 12-0.

HB 512-FN, requiring mediation in domestic cases involving minor children. INEXPEDIENT TO LEGISLATE

Rep. Wayne T. Moynihan for Judiciary and Family Law: This bill will make divorce mediation mandatory for all couples seeking divorce if they have minor children. This bill is different from HB 326 because the requirement for mediation is imposed only upon couples who have minor children. Again, the committee believes that mediation may be advisable, especially in cases where there are minor children who would be affected by the divorce. However, the bill would impose the mediation process upon couples who may not want or need to undertake that process. Mediation is most successful when it is approached by the parties on a voluntary basis and not when it is imposed upon them. There was limited support for the bill and mixed opposition. The accessibility and affordability of qualified mediators is limited. A pilot program is in effect in the superior court that does require that couples with minor children attend information seminars which address the effect of divorce on children. This court program better serves the need this bill seeks to address because, while it is a required course, it has a low limited cost and does not force the parties into mediation where the circumstances of the parties make mediation unnecessary or inappropriate. While some other states apparently make mediation mandatory, it is not good policy for New Hampshire. Vote 11-2.

HB 518-FN, requiring administrative agents to obtain warrants based upon probable cause to perform searches or inspections. INEXPEDIENT TO LEGISLATE

Rep. Marjorie K. Smith for Judiciary and Family Law: The sponsor did not appear. The committee heard testimony from representatives from three departments, each of whom spoke in opposition because such a law would make it impossible to enforce existing regulation protecting the public in areas as diverse as food service and preparation, communicable diseases, and liquor enforcement. Vote 13-0.

HB 549, relative to service-connected military or coast guard disability compensation in the determination of alimony or separate maintenance. INEXPEDIENT TO LEGISLATE

Rep. Deborah L. Woods for Judiciary and Family Law: Federal law adequately provides the prohibition of service-connected disability payments from being garnished for an alimony award. This bill would create havoc in the courts with the onslaught of divorce cases which might possibly be re-opened by a simple request from someone who believes they fall under this law. There is also the question of how appropriate it is to single out one specific federal anti-garnishment provision and how many others would be brought forward. Vote 12-0.

HB 550, relative to certain social security disability compensation in the determination of alimony or separate maintenance. INEXPEDIENT TO

LEGISLATE

Rep. Sandra B. Keans for Judiciary and Family Law: Since 1975, the Social Security Act has authorized the use of payments for alimony and support. New Hampshire would be in conflict with federal law if we passed this. There is currently nothing that prevents spouses from returning to court in order to get a modification of support payments when circumstances change. Vote 12-0.

HB 554, relative to damages in suits brought by administrators of an estate. OUGHT TO PASS

Rep. Sandra B. Keans for Judiciary and Family Law: This bill allows the surviving spouse of a victim of a wrongful death to recover damages for loss of consortium. Current law allows for such recovery in cases involving personal injury, but not death. Loss of consortium involves the loss of comfort, society, and companionship of the spouse who was killed by someone's negligence. This bill passed the House last year on a voice vote. The committee agreed with the testimony we heard that this was a fairness issue. Vote 12-0.

HB 555, exempting an individual's pensions and individual retirement accounts from bankruptcy attachment. RE-REFER TO COMMITTEE

Rep. Sandra B. Keans for Judiciary and Family Law: The committee agrees with the sponsor that the area of pensions needs to be studied, but time constraints do not allow us to do a good job. The committee needs time to be thorough. The sponsor supports re-refer. Vote 13-0.

HB 568-FN, relative to the oath of office for attorneys and the penalty for failure to fulfill the oath. INEXPEDIENT TO LEGISLATE

Rep. David C. Allison for Judiciary and Family Law: The committee finds that the oath of office, as the amended version would read, will add only confusion, rather than clarity, to the true purpose of the oath. Vote 12-1.

HB 595-FN, protecting consumers from the unlicensed practice of law. RE-REFER TO COMMITTEE

Rep. Carol H. Holden for Judiciary and Family Law: After hearing considerable testimony, the committee determined that there were many questions that needed to be addressed on the proposed remedies and civil penalties on the unlicensed practice of law. Vote 12-0.

HB 608-FN, providing that a district court shall not require the department of health and human services to certify a particular provider of children's services. INEXPEDIENT TO LEGISLATE

Rep. Wayne T. Moynihan for Judiciary and Family Law: The committee studied this bill carefully. A great deal of information was presented pro and con at the public hearing. Ongoing litigation over the language of the existing statute was reviewed. The Department of Health and Human Services already has the right to use its discretion as to whether or not a particular provider of services will or will not be certified. The number of out-of-state placements for troubled youth has been reduced from 174 in 1994 to 68 in 1996. The trend continues to decline. The department has developed more in-state programs for the specialized treatment required by some troubled youth. The district court does not have a blank check or the power to order the department to certify particular providers. It was considered important not to diminish the role of the district court as the final arbiter of what services a child may need and the best option for treatment. To the extent that a problem existed in this area, it has been effectively addressed within the existing statutory framework. Vote 17-0.

HB 623, allowing a landlord or housing owner under the housing finance authority to terminate a tenancy to allow a family member to occupy the premises. INEXPEDIENT TO LEGISLATE

Rep. Susan J. Clay for Judiciary and Family Law: This bill is not needed for the following reasons: there is already in the landlord/tenant laws the ability to remove tenants at will. There is also reasonable protection for landlords to remove tenants who have leases. Vote 14-0.

HB 624, subjecting certain payments made to public employees upon resignation, discharge, or retirement to the right-to-know law. OUGHT TO PASS

Rep. Sandra B. Keans for Judiciary and Family Law: The committee agreed with the sponsor that when a public employee is terminated, the financial payment should be public information available under the right-to-know law. This bill does not in any way provide for disclosure of personnel issues. Vote 16-0.

HB 635, relative to a limitation on liability for emergency medical care providers. RE-REFER TO COMMITTEE

Rep. David A. Bickford for Judiciary and Family Law: This bill requires further study, along with another limited liability bill which was heard by the Judiciary Committee and also recommended for HB 793. Vote 16-0.

HB 711, relative to post-termination commissions. OUGHT TO PASS

Rep. Paul M. Mirski for Judiciary and Family Law: At present, unscrupulous manufacturers may withhold commissions due manufacturers representatives for services rendered, knowing that the cost to manufacturers representatives to pursue justice in the courts may well exceed sums due. This bill will introduce an element of fairness into the relationship between the two parties as far as payment of commissions are concerned. Vote 16-0.

HB 773-FN, relative to intentional interference with child custody and visitation. OUGHT TO PASS

Rep. Deborah L. Woods for Judiciary and Family Law: This bill addresses a real problem in many domestic cases involving child custody and visitation issues. It carries real consequences for those who, on a recurring basis, intentionally violate court-ordered custody visitation. This legislation adds additional remedies for those parents who are hurt by the actions of the other parent and kept from their children. Vote 16-0.

HB 774-FN, relative to child support, custodial rights, and visitation. RE-REFER TO COMMITTEE

Rep. Deborah L. Woods for Judiciary and Family Law: The public hearing on this bill was not held until 3/10/97. It is good legislation that needs a few changes. The committee is also mindful that Senate Bill 192 will be before the committee this session. That bill is very similar to HB 774-FN and may very well be a good vehicle to make corrections. Vote 17-0.

HB 787-FN, requiring the executive council to hold public hearings on judicial appointments. OUGHT TO PASS

Rep. Alf E. Jacobson for Judiciary and Family Law: This bill establishes the requirement that the Executive Council shall hold a public hearing prior to confirmation of nominees for judges in the courts of New Hampshire. Vote 14-0.

HB 793, limiting the civil liability of persons engaged in equine activities. RE-REFER TO COMMITTEE

Rep. Carol H. Holden for Judiciary and Family Law: The committee recommends that this bill be re-referred to committee. Testimony indicated that horse shows, county fairs, dog shows and other similar events need study. Litigation, due to presumed liabilities, in these other events will be considered along with those presented by the equine industry. Vote 11-4.

HB 802, relative to judgments on past due rent and judgments for eviction. RE-REFER TO COMMITTEE

Rep. Sandra B. Keans for Judiciary and Family Law: The committee has re-referred several tenant/landlord bills this session and would like this issue to be a part of the study. Vote 14-0.

HB 805, relative to homestead rights and revocable trusts. OUGHT TO PASS WITH AMENDMENT

Rep. Wayne T. Moynihan for Judiciary and Family Law: The bill protects citizens from the inadvertent loss of their homestead right when they transfer property to irrevocable trusts as a part of an estate planning or other process. An amendment was adopted to place the language of the bill within the homestead title of the statute, and to insure the applicability of the changes to as many existing trusts as possible. A need was demonstrated and the bill solved the problem. Vote 12-0.

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

HB 429, establishing a committee to study unemployment compensation as it relates to the contingent work force and to women workers. OUGHT TO PASS WITH AMENDMENT

Rep. Wanda G. McNamara for Labor, Industrial and Rehabilitative Services: This bill charges the Unemployment Compensation Advisory Council with the responsibility to study unemployment compensation as it relates to the contingent work force and low wage workers. The act will take effect upon passage to allow the council to prepare its report and recommendations by the November 1, 1997, deadline. Vote 15-0.

HB 478, requiring certain notices to be posted at certain job sites for purposes of workers' compensation. OUGHT TO PASS WITH AMENDMENT

Rep. Joseph D. Kenney for Labor, Industrial and Rehabilitative Services: This bill requires contractors, subcontractors, and independent contractors engaged in the nonresidential building or construction industry to provide a workers' compensation compliance statement, upon request. No contractor, subcontractor, or independent contractor, however, would be required to deliver to the commissioner a requested workers' compensation compliance statement more than twice in one calendar year. The committee felt this bill provides a better legal playing field to offset any misrepresentation of workers' compensation payment in the building industry. Vote 14-0.

HB 615-FN, allowing group accounts for certain employers under the unemployment compensation laws. INEXPEDIENT TO LEGISLATE

Rep. Franklin C. Bishop for Labor, Industrial and Rehabilitative Services: After considerable deliberation and review of the issue, it was determined by the sponsor and the committee that the current law addresses the concerns. Vote 14-0.

LOCAL AND REGULATED REVENUES

HB 198-L, allowing municipalities to offer tax incentives to foster growth in new and existing industrial construction. RE-REFER TO COMMITTEE

Rep. Stephen G. Avery for Local and Regulated Revenues: The committee had many questions on this piece of legislation, including the constitutionality of the bill. The committee would like to ask the House to send questions concerning certain provisions of this bill to the supreme court for an advisory opinion and then address the issues later this session. The Chairman of the committee will offer a motion to table this bill and address the House Resolution which would request an Opinion of the Justices. Vote 15-0.

MUNICIPAL AND COUNTY GOVERNMENT

HB 381, relative to public recreation and park areas in municipalities. OUGHT TO PASS WITH AMENDMENT

Rep. Norma A. Sabella for Municipal and County Government: This bill as amended is meant to overcome obstacles to combining municipal recreation departments with other departments/commissions. This will improve the relevant statute and make the statute dealing with parks and recreation more effective. Vote 16-0.

HB 502-LOCAL, placing limitations on warrant articles at special meetings. OUGHT TO PASS WITH AMENDMENT

Rep. Robert W. Brundige for Municipal and County Government: This bill defines the term "emergency" for the purpose of special town and school district meetings. It incorporates as a minimum the factors described in recent decisions of the NH Supreme Court. Vote 14-2.

HB 552-LOCAL, clarifying the authority of municipalities to regulate the use of their highways which provide sole access to properties in adjoining municipalities. RE-REFER TO COMMITTEE

Rep. Cynthia J. Dokmo for Municipal and County Government: This bill addresses issues concerning subdivisions which border on adjoining municipalities. The committee felt it needed an opportunity to further examine this complex matter. Vote 16-0.

HB 679-FN-LOCAL, repealing the limitation on zoning ordinance protest petitions. RE-REFER TO COMMITTEE

Rep. Paul A. McGuirk for Municipal and County Government: The particular repeal of a portion of RSA 675:5 as requested by HB 679 is attempting to clarify protest petitions submitted to amend or repeal zoning ordinances. The committee wishes to spend more time on this request. Zoning questions can be, at times, controversial. Vote 17-0.

HB 701-LOCAL, granting a municipality alternatives to accepting a tax deed to the property when the property owner is tax delinquent. OUGHT TO PASS WITH AMENDMENT

Rep. Betsey L. Patten for Municipal and County Government: This bill allows a municipality to refuse to accept a tax deed/tax lien for more than just environmental reasons. For example, if the property includes a multi-family residence and the municipality does not want to be a landlord, the governing body does not have to accept that tax deed/tax lien. Also if the property is a condominium and the fees owed to the owners' association exceeds the amount of taxes due, the governing body does not have to accept the tax deed/tax lien. The bill also clarifies what does happen when the governing body refuses a tax deed/tax lien. There is a new section included which allows the governing body to dispose of the property "as justice may require" which includes being able to convey the property to a former owner or to a third party for the benefit of the former owner. Vote 17-1.

RESOURCES, RECREATION AND DEVELOPMENT

HB 272, relative to boat docking facilities. RE-REFER TO COMMITTEE

Rep. Michael D. Whalley for Resources, Recreation and Development: This bill would regulate the location and design of boat docking facilities on public waters. Presently, the Department of Environmental Services is in the process of drafting proposed rules relating to shoreline structures. The committee believes it is best to re-refer this bill as well as HB 547 until a complete review of the rules takes place. Vote 17-0.

HB 389, relative to the water protection assistance program within the office of state planning. OUGHT TO PASS WITH AMENDMENT

Rep. Michael W. Downing for Resources, Recreation and Development: This bill clarifies the laws governing the water protection assistance program within the Office of State Planning. The current law offers no flexibility to municipalities who wish to tailor their water resources planning

efforts to their specific local needs. Passing this bill will encourage and make it easier for communities to develop or include water resources in their community planning and removes the rule making process from the Office of State Planning. Vote 17-0.

SCIENCE , TECHNOLOGY AND ENERGY

HB 406, relative to environmental disclosure by electric power facilities. RE-REFER TO COMMITTEE

Reps. Jeb E. Bradley and Clifton C. Below for Science, Technology and Energy: The issue of registration requirements for electric power suppliers, including environmental disclosure, is being addressed legislatively in HB 726 and administratively by the Public Utilities Commission. The committee wants to hold this bill as a vehicle to discuss the Bulk Power Facilities Statute which needs revision in the context of electric industry restructuring. Vote 14-0.

HB 411, authorizing municipalities to issue bonds for the purpose of defraying the cost of purchasing or taking public utility property. INEXPEDIENT TO LEGISLATE

Rep. Clifton C. Below for Science, Technology and Energy: The content of this bill has been incorporated into House Bill 528. Vote 18-0.

HB 452, establishing a legislative oversight committee on telecommunications restructuring and relative to aggregation of telecommunications services customers by municipalities and counties. OUGHT TO PASS WITH AMENDMENT

Reps. John H. Thomas and Jeb E. Bradley for Science, Technology and Energy: Passage of this bill will create a telecommunications oversight committee. With passage of both federal and state legislation that encourages increased competition in the telecommunications industry, the committee believes such oversight is appropriate. This legislation also reduces the approval time at the Public Utilities Commission for new telecommunication tariffs or services offered by a telephone utility from 9 months to 2 months. Speeding up this process will significantly improve the ability of phone companies to offer new services which will be of great assistance to businesses needing rapid access to these new services. Vote 18-0.

HB 482, relative to the access and development of interstate computer network systems. RE-REFER TO COMMITTEE

Reps. Elizabeth K. Hoadley and Norman L. Major for Science, Technology and Energy: The bill requires a study relative to improving computer network systems access in New Hampshire. Even though some of these features have been folded into House Bill 452, we believe continued study is appropriate. Vote 18-0.

HB 485, relative to limited electrical energy producers. RE-REFER TO COMMITTEE

Rep. Clifton C. Below & Rep. Jeffrey C. MacGillivray for Science, Technology and Energy: The Limited Electrical Energy Producers Act (LEEPA) needs comprehensive revision, with repeal of some provisions, in the context of electric industry restructuring and competitive choice of energy suppliers. The committee will continue its work on this bill. Vote 14-0.

HB 651-FN-Local, relative to electric rate reduction financing. RE-REFER TO COMMITTEE

Rep. Clifton C. Below & Rep. Jeb E. Bradley for Science, Technology and Energy: This is a complex bill with major policy implications. It addresses a financing technique called securitization that might help to reduce electric rates and facilitate restructuring of the electric utility industry. However, the committee has many questions and concerns to carefully consider before it is ready to make any final recommendation. Vote 18-0.

HB 702-FN-Local, establishing procedures governing municipal acquisition of public utility property. INEXPEDIENT TO LEGISLATE

Rep. Jeb E. Bradley for Science, Technology and Energy: The issues regarding the public interest determination for municipalization are being considered in HB 528. The committee is also recommending re-referral of another bill, HB 750, which deals with municipalization issues. Vote 14-0.

HB 750-FN-Local, relative to municipal water systems. RE-REFER TO COMMITTEE

Rep. Harold V. Lynde and Rep. Norman L. Major for Science, Technology and Energy: Many of the provisions of this bill have been folded into HB 528, a more general amendment to the utility municipalization statutes. The committee wishes to re-refer this bill to serve as a vehicle to address additional utility municipalization concerns which require additional study. Vote 14-0.

HB 754-FN, relative to special gas and electric rates for customers dependent on life-support equipment. RE-REFER TO COMMITTEE

Rep. Donald B. White and Rep. Terie T. Norelli for Science, Technology and Energy: The committee feels this bill has merit. However, more research is required with respect to the scope of the problem, the costs involved, and the appropriate agency responsible for the administration of the program before making a final recommendation to the House. Vote 14-0.

HJR 4, urging the United States Congress and the Federal Energy Regulatory Commission to cooperate with state plans to restructure the electric utility industry. OUGHT TO PASS WITH AMENDMENT

Rep. Clifton C. Below & Rep. Jeffrey C. MacGillivray for Science, Technology and Energy: This resolution calls for federal action to clarify and affirm state jurisdiction over, and take other actions to support, implementation of retail competition in the electric utility industry. Congress is currently considering federal legislation on this issue. Vote 18-0.

HJR 5, urging the United States Congress and the United States Environmental Protection Agency to make certain changes in the Clean Air Act which would result in more cost effective air pollutant emission reductions. OUGHT TO PASS WITH AMENDMENT

Rep. Jeffrey C. MacGillivray & Sarah K. Bonneau for Science, Technology and Energy: New Hampshire has continued to decrease air pollution emissions and has attempted to substitute more cost effective air pollution control strategies for some measures mandated by the Federal Clean Air Act. The resolution, as amended, outlines New Hampshire's suggestions for amending the Clean Air Act and EPA policies to provide New Hampshire with more flexibility in its efforts to produce greater environmental improvement at less cost. Vote 18-0.

STATE FEDERAL RELATIONS AND VETERANS AFFAIRS

HB 117, relative to Persian Gulf War bonus payments. OUGHT TO PASS WITH AMENDMENT

Rep. George R. Rubin for State-Federal Relations and Veterans Affairs: Payments for members of the armed forces who served in Southeast Asia and were awarded the Southeast Asia Service medal - the committee felt that the citizens of New Hampshire will honor those citizens who have served our country during this conflict. Vote 16-0.

HJR 7, urging the United States Congress and the Veterans Administration to maintain adequate health care services for New Hampshire veterans OUGHT TO PASS

Rep. Rita G. MacAuslan for State-Federal Relations and Veterans Affairs: While the veterans administration should implement any cost savings that would not impact quality, availability and accessibility of services to New England veterans, this resolution expresses New Hampshire's concerns that its - and all New England's - veterans continue to receive all necessary health care at a locally accessible location. Vote 12-0.

HR 13, recognizing Bob Dole's many years of public service and dedication to our country. INEXPEDIENT TO LEGISLATE

Rep. Peter F. Bergin for State-Federal Relations and Veterans Affairs: The committee recognized that Bob Dole had many years of public service and dedication to our country, however, it was felt that Bob Dole has been recognized recently with the Medal of Freedom from President Clinton. In addition, the only person to be recognized since 1985 in a house resolution was Senator Paul Tsongas who was memorialized on January 19, 1997. Vote 14-1.

TRANSPORTATION

HB 231-FN-LOCAL, imposing a penalty on motor vehicle operators under 20 years of age if the operator is convicted of any violation offense involving the operation of a motor vehicle. RE-REFER TO COMMITTEE

Rep. Peter R. Cote for Transportation: This bill involving operators under 20 years of age is of complex nature. By a unanimous vote by the committee, it was recommended to be Re-Referred for a more thorough study along with other driver bills. Vote 13-0.

HB 477, prohibiting aircraft from landing and taking off on a certain portion of the Pemigewasset River. RE-REFER TO COMMITTEE

Rep. Philip M. Ackerman for Transportation: The committee feels that this issue can be resolved locally by the parties which have an equal right to responsible use of the area. Re-referral allows time for communications between the parties and the Department of Transportation to resolve the issue. If this is not successful, this bill may be revisited during the next session. Vote 12-1.

HB 649-FN, relative to reckless driving. RE-REFER TO COMMITTEE

Rep. Robert J. Letourneau for Transportation: The committee felt that it should re-refer this bill so it could have the time to examine the current penalties being assessed young drivers. After passing HB 459-FN, a youth driver license bill, we felt further study of the problems of young drivers could be necessary. Vote 13-0.

HB 662, revising the laws relative to the use of dealer plates. OUGHT TO PASS WITH AMENDMENT

Rep. Kenneth W. Malcolm for Transportation: This bill, as amended, is the result of several hours of meetings, and the result is the cleaning up of long alleged use and misuse of various trade use of motor vehicle plates. This bill more clearly defines proper use of dealer, wholesale dealer, utility and transporter plates. It also sets up a licensing process and increases the bond requirement for car dealers. The bill, as amended, is agreed upon by all parties involved. This bill maintains the economic viability of the automotive business, and maintains the logical legality for the motor vehicle license system in New Hampshire. Vote 12-0.

HB 712, relative to the purchase, preservation, and reactivation of abandoned railroad rights-of-way and limiting railroad liability for passenger rail service. RE-REFER TO COMMITTEE

Rep. John W. Flanders, Sr. for Transportation: The committee was not sure of constitutionality of 75,000,000 liability cap. Want to work on bill over the summer with different departments involved. Vote 18-0.

HCR 11, relative to the preservation and revitalization of New Hampshire's rail-based corridors of commerce. OUGHT TO PASS

Rep. George N. Katsakiores for Transportation: This resolution urges the rail based "corridors of commerce" be revitalized and preserved in order to put railways on an even competitive playing field with other modes of transportation. Vote 12-0.

TUESDAY, MARCH 18

REGULAR CALENDAR

COMMERCE

HB 147, relative to disclosure of certain information relating to tobacco products. RE-REFER TO COMMITTEE

Rep. Keith R. Herman for Commerce: This is one of a series of bills dealing with the issue of smoking. The committee has agreed to look at all the issues presented in the various bills during the summer. This bill requires disclosing cigarette ingredients. The committee is committed to study this issue further since it is still pending in the Massachusetts courts. Vote 8-2.

HB 506, prohibiting all smoking in any restaurant where serving food is the primary function. MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.

Rep. Richard H. Krueger for the Majority of Commerce: In the State of New Hampshire cocktail lounges cannot exist without at least 50% of their business being food. It would be impossible to have a cocktail lounge without food being the major portion of their business. Testimony showed that the marketplace is the best way to resolve this issue. Some restaurants have chosen on their own to have non-smoking environments even in their cocktail lounges while others have not. In either case, those testifying each claim their business grew and their customer base continued. Vote 10-4.

Rep. Martha Fuller Clark for the Minority of Commerce: The minority was very concerned about involuntary exposure by restaurant employees and children from secondhand smoke in public restaurants, given extensive testimony on the grave medical consequences due to exposure to such secondhand smoke. 58,000 Americans die annually from exposure to secondhand smoke. Our current smoking laws separating non-smokers from smokers in restaurants do not adequately protect non-smokers. Additional testimony was heard concerning entire communities in Massachusetts and elsewhere, including the state of California, that have a total ban on smoking in public restaurants. Such businesses actually have seen an increase in patronage since these bans went into effect. If New Hampshire is to control the escalating health care costs related to smoking, every effort must be made to protect both children and adults from the dangers of smoking, including secondhand smoke. This bill would go a long way in doing that and is a critical component of the anti-smoking bills before the legislature this session.

HB 650, relative to limited liability companies. OUGHT TO PASS WITH AMENDMENT

Rep. David T. Mittelman for Commerce: This bill as amended significantly enhances the viability of Limited Liability Companies (LLCs) by taking advantage of recent federal tax rules and making key non-tax improvements. In particular, HB 650 as amended: 1) permits single member LLCs; 2) gives LLC members a right to demand member meetings, rather than requiring annual meetings; 3) clarifies rules for removing members; 4) eliminates certain types of events that can trigger LLC dissolution; 5) modifies the right of departing members to receive immediate payment for their LLC interests; and 6) allows for mergers among LLCs and other types of business entities. An LLC has become the business form of choice because it combines the positive attributes of corporations and partnerships. The changes made by HB 650 will further encourage business formations and promote economic development. Vote 12-0.

HB 721, prohibiting certain tobacco or alcohol advertising within drug-free school zones. RE-REFER

Rep. Gregory G. Carson for Commerce: This bill is one of several pieces of tobacco related legislation before the Commerce Committee this session. As stated previously, the committee unanimously supports all the efforts to restricting youth access to tobacco products. The committee is greatly concerned as to the effect this bill would have on property owner rights, zoning laws and first amendment rights if passed into law. Vote 15-1.

HB 799, regulating the sale of insurance by financial institutions. OUGHT TO PASS WITH AMENDMENT

Rep. Gregory C. Carson for Commerce: Currently, federal law now allows federally chartered banks to sell insurance. This bill changes state law to allow state chartered banks to also sell insurance. More importantly, HB 799 creates important, substantial consumer protection regulations which apply equally to federal and state chartered banks selling insurance in New Hampshire. The committee worked hard to create an environment which will protect consumers and keep parity between the banks. This bill, as amended, is a compromise. Neither the bankers or insurance agents receive everything they originally wanted. Vote 12-3.

CRIMINAL JUSTICE AND PUBLIC SAFETY

HB 455-FN-LOCAL, relative to a preliminary breath test for alcohol concentration. OUGHT TO PASS WITH AMENDMENT

Rep. Herbert R. Hansen for Criminal Justice and Public Safety: This bill provides clarification of the laws regarding the use of preliminary breath tests for alcohol concentration by allowing the results of the preliminary breath test to be admissible as evidence by the prosecution to establish probable cause for a subsequent arrest. It also provides for suspending the license or nonresident driving privilege of any person refusing the test for six months. Additionally, this bill will be consistent with motor vehicle, boating and OHRV offenses. Vote 14-1.

HB 517-FN, relative to aggravated felonious sexual assault. MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE

Rep. Andrew Christie, Jr. for the Majority of Criminal Justice and Public Safety: The bill allows the court to impose a life sentence on a person convicted of aggravated felonious sexual assault when the victim is less than 13 years of age. The imposition of a life sentence would allow those offenders who prey on children and who are often repeat offenders to be under lifetime parole when they are released from prison thereby assuring lifetime supervision. Vote 10-8.

Rep. Walter J. Mikowski for the Minority of Criminal Justice and Public Safety: We feel that on a first offense, we are empowering the judicial system, which can impose a life sentence, on emotion alone. A person can be convicted on the word of a coached child and be completely innocent yet be sentenced to a life term in prison, unless he pleads guilty. This would also have a financial impact on the budget of the probation department budget which would have to monitor this person, if released for the rest of the person's natural life.

HB 527, classifying smoke bombs as permissible fireworks OUGHT TO PASS

Rep. Andrew Christie, Jr. for Criminal Justice and Public Safety: The committee discussed this issue at length and found there was a need to add smoke bombs to the list of fireworks to go before the Permissible Fireworks Committee. This will allow a review of the chemical contents of the smoke bomb and the size of its cloud. Then the determination of whether or not to allow the sale of smoke bombs will be made by the permissible Fireworks Committee. Vote 18-1.

HB 558-FN, relative to life imprisonment for persons who have committed 3 or more serious violent felonies. INEXPEDIENT TO LEGISLATE

Rep. Richard F. Doucette for Criminal Justice and Public Safety: The committee killed a less restrictive bill than this last year and felt that even though the offenses in this bill were more narrowly defined than before, there were too many questions left undecided. For instance, should arson of a historical structure count towards three violent felonies? Also, we felt that cost to the indigent defense fund would escalate out of control as there would be a large increase in trials of defendants who are already two time losers. There would also be an increase in the cost to run the public defender program because they defend many of these cases. And finally, states that have similar laws like California are considering changes to them as the related costs are out of control. Vote 13-4.

HB 680-FN, relative to criminal liability for harm caused by dangerous domestic animals or captive wildlife. INEXPEDIENT TO LEGISLATE

Rep. Andrew Christie, Jr. for Criminal Justice and Public Safety: Domestic animals and dogs are already covered in RSA 466 and 467. Captive wild animals used to be covered in RSA 469 which was repealed in 1992. Keeping this in mind, there was no testimony at the public hearing to support this bill. The sponsor was not able to attend due to illness. Vote 15-2.

HB 696-FN-Local, authorizing the court to suspend the motor vehicle driver's license of a person convicted of criminal mischief when such conviction was the result of an act facilitated by the use of an automobile. OUGHT TO PASS WITH AMENDMENT

Rep. Herbert R. Hansen for Criminal Justice and Public Safety: This bill allows the court to suspend, for a period not to exceed 90 days, the driver's

license of a person who is convicted of criminal mischief or the driver's licenses of persons who are convicted of criminal mischief if the court determines that a motor vehicle was used to abet the commission of criminal mischief. Vote 16-2.

ELECTION LAW

HB 156, eliminating straight ticket voting. WITHOUT RECOMMENDATION

Rep. Janet S. Arndt for Election Law: Many good ideas were presented on both sides of the issue. The committee felt that since the positions reflected several different thought processes that it was better to let each House member decide for himself or herself. Vote 9-9.

HB 276, relative to petitions for filing for a primary election. MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE

Reps. Joseph A. Foster and Thomas I. Arnold, Jr. for the Majority of Election Law: This bill, as amended, retains the voluntary spending cap but removes the requirement that candidates who wish to exceed the voluntary cap must, as a precondition, gather petitions to be placed on the ballot. If the bill is passed, candidates will still be required to declare whether they plan to exceed the cap and their opponents will be free to raise the decision to exceed the cap as an issue in the campaign. Under current law, a candidate for governor who wishes to retain his or her constitutional right to exceed the cap must gather 2,000 petitions while a candidate who voluntarily agrees not to exceed the cap has no such obligation. The spending cap law is currently being challenged in Federal District Court partially on the basis that the petition requirement places an undue burden on the candidate's constitutional right to free speech. A majority of the committee concluded that the goals and policies of the law would remain if the petition process were removed and the critical aspects of the law-the cap itself-would be much more likely to survive constitutional challenge. The committee will be reviewing the merits of the cap itself in the context of other bills which have been referred. By passing this bill, the Legislature, not the courts, will have the final say on the utility of the spending cap law. Vote 12-5.

Rep. C. Donald Stritch for the Minority of Election Law: This bill as amended would make negligible the requirements to voluntarily limit or not campaign expenditures by eliminating almost any need for petitions. Now we go back to the era of spend, spend and spend some more. A cap and petition requirement for over a dozen years are effectively scrapped and candidates have little need or incentive to limit. Comments regarding the constitutionality of a 12-year law are premature and presupposed. We should not eliminate a law with nothing in the loop to replace it.

HB 446, prohibiting candidates of one party from accepting the nomination of another party. OUGHT TO PASS

Rep. John M. Root for Election Law: This was a non-partisan vote. The majority considered this bill as a "truth in labeling" fix to present practice which was characterized as a "politician protection procedure." It was also pointed out that this bill does not restrict a voter's right to vote for any candidate by writing in a name; rather it seeks to restrict a nominee from accepting the windfall nomination of another party by means of a handful of votes. Vote 9-8.

ENVIRONMENT AND AGRICULTURE

HB 171, relative to the citizens advisory committee which advises the pesticide control board. OUGHT TO PASS WITH AMENDMENT

Rep. Harold P. Melcher for Environment and Agriculture: Testimony made clear that the citizens advisory board was ineffective and that the existing pesticide control board has the identical responsibility. Therefore the advisory committee is deemed unnecessary. Vote 13-0.

HB 352, modifying the definitions of "agriculture" and "farming" for certain purposes. OUGHT TO PASS WITH AMENDMENT

Rep. Donald R. Philbrick for Environment and Agriculture: The committee agrees with the policy of including the category of genetically engineered short rotation tree fiber in RSA 21:34a. The bill as amended includes the exemption of this crop from timber yield taxes, as fruit trees and Christmas trees have been exempted. Genetically engineered short rotation tree fiber is being proposed on an experimental basis using a hybrid type of poplar tree which is used for pulp in the production of paper. Vote 14-0.

HB 384, relative to requiring notification by utilities of right-of-way maintenance. INEXPEDIENT TO LEGISLATE

Rep. John B. Heath for Environment and Agriculture: The current system of notification is by and large working. The considerable additional expense of effective signage and additional publicity efforts, especially in the worrisome present economic climate of energy deregulation, seemed to a strong majority of the committee to be unwarranted at this time. Vote 13-1.

HB 418, prohibiting the land application of sludge or biosolids containing amounts of heavy metals over certain limits. RE-REFER TO COMMITTEE

Rep. Peter R. Leishman for Environment and Agriculture: The committee, with sponsor approval, agreed that further research and information is

required concerning this proposed legislation. Vote 14-0.

HB 496, requiring all land application of sludge or biosolids to comply with certain best management practices and relative to an exceptional quality exclusion. INEXPEDIENT TO LEGISLATE

Rep. David L. Babson Jr. for Environment and Agriculture: The committee takes the position that Department of Environmental Services rules in place incorporate "best management" practices and placing exemptions in law for any portion of these issues is not appropriate at this time. Vote 13-0.

HB 497, excluding domestic septage from regulation as sludge or biosolids. RE-REFER TO COMMITTEE

Rep. Perley E. Davis for Environment and Agriculture: The committee felt that this bill should be re-referred to allow the committee to work out solutions for several questions on a controversial and emotional subject. Vote 11-3.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

HB 368, establishing the honorary position of artist laureate of the state of New Hampshire. OUGHT TO PASS WITH AMENDMENT

Rep. Howard C. Dickinson, Jr. for Executive Departments and Administration: HB 368, as amended, provides for New Hampshire residents to be honored with the title of New Hampshire "Artist Laureate". This appointment will be made by the governor and council every two years so that many artists will have the opportunity to be considered by the New Hampshire Council on the Arts for nomination. Vote 16-2.

HB 378, regulating the practice of acupuncture. MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE

Rep. Maurice E. Goulet for the Majority of Executive Departments and Administration: The bill establishes a board of acupuncture licensing to be administratively attached to the office of the commissioner of the department of health and human services. Although well written, it required 4 amendments to fine tune the bill. The amendments will 1) require the use of disposable needles for each patient, 2) allow licensed health professionals to provide acupuncture treatment if their current statutes permit such treatment, 3) provide Class B misdemeanor for persons who violate this act, and 4) allow the board to assess administrative fines. To become licensed, an acupuncturist must have a baccalaureate degree or be licensed as a nurse or physicians assistant and have successfully completed a post secondary acupuncture college program which is board approved. Acupuncturists may reciprocate from another state if they hold a valid license and the states licensure requirements are equal to or greater than the New Hampshire requirements. Enactment of this law will allow those that now must travel to Maine, Massachusetts or Vermont for treatment to obtain these services in New Hampshire and acupuncture will take its place as an alternative health practice in New Hampshire. Vote 14-2.

Rep. Timothy N. Robertson for the Minority of Executive Departments and Administration: This bill legitimizes the practice of acupuncture. Acupuncture is not a science. The fact that it is effective only proves the power of the human mind. The only statement given during our hearing was "It works, because it does".

HB 469, relative to the rules of the board of dental examiners. OUGHT TO PASS WITH AMENDMENT

Rep. Nancy C. Stickney for Executive Departments and Administration: This bill is a housekeeping bill which expands the scope of activity to allow, under a temporary license, voluntary dental and dental hygiene services. It requires that in all types of dental practices, there will be only licensed dentists that can practice dentistry and only licensed dental hygienists that can practice dental hygiene. This bill also clarifies the type of permits involving anesthesia, and the requirements for reporting by the professional liability insurers to the board on action of dental injury within 30 days after the initial action. Vote 18-0.

HB 632-Local, relative to changing the membership of the water well board and relative to board procedures in refusing, suspending, or revoking licenses. OUGHT TO PASS WITH AMENDMENT

Rep. Merton S. Dyer for Executive Departments and Administration: This bill, as amended, adds the expertise of water well drillers and technical drillers to the water council at the department of environmental services while keeping all existing rules and regulations, relative to water well drilling and technical drilling in place. By repeating references to the water well board, department of environmental services and the water council will be responsible for hearing all appeals and for writing future rules. Of greatest significance HB 632, as amended, is good consumer protection legislation because the public's ability to bring complaints is made easier. Vote 18-0.

HB 639, relative to the term of office of any person appointed by the governor and council between a general election and the expiration of the term of a governor who was not reelected. INEXPEDIENT TO LEGISLATE

Rep. Sylvia A. Holley for Executive Departments and Administration: The committee was not convinced that this bill would improve or correct any

perceived abuses by governors with appointments, between the election and the beginning of the next term. With the concurrence of the governor's council required for appointment, and public disclosure required prior to nomination, there are checks and balances in place. Therefore, it was felt this legislation was not necessary at the time. Vote 14-5.

HB 660, adding the name of Martin Luther King, Jr. to Civil Rights Day. INEXPEDIENT TO LEGISLATE

Rep. Merton S. Dyer for Executive Departments and Administration: The committee has two bills in its possession dealing with this subject. The majority of the committee asks that this bill be voted inexpedient to legislate so that we may consider the other bill dealing with this subject (SB 157). Consideration of SB 157 will allow the membership latitude in their final vote and provides the house with a resolution of the issue which has the unanimous support of the committee. Therefore, we request the house vote inexpedient to legislate.. Vote 16-5.

SB 157, adding the name of Martin Luther King, Jr. to Civil Rights Day. OUGHT TO PASS WITH AMENDMENT

Rep. Merton S. Dyer for Executive Departments and Administration: The committee voted unanimously to support this bill as amended. The amendment represents an attempt to produce an amended bill which honors an inspirational national leader, an important New Hampshire participant in the struggle for civil rights and recognizes the contributions of all individuals who have worked for civil rights. Current law is being amended to read "the third Monday in January, designated as Civil Rights Day, to honor Martin Luther King, Jr., Jonathan M. Daniels, and all individuals who have worked for civil rights in this nation". Vote 20-0.

HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

HB 470, implementing recommendations of the Centers for Disease Control and Prevention relative to the laws requiring a prescription to possess hypodermic needles and modifying the drug paraphernalia laws applying to syringes. OUGHT TO PASS

Rep. Barbara French for Health, Human Services and Elderly Affairs: This bill would remove the prescription requirement to purchase syringes and it decriminalizes the possession of syringes. The Centers for disease Control (CDC) considers access to sterile syringes critical in the slowing of the spread of the HIV virus. New Hampshire is one of only 9 states that require such a prescription. This bill is supported by the Dept. of Health and Human Services, the New Hampshire Medical society, and former U.S. Surgeon General C. Everett Koop. In addition it is the clear intent of this committee that nothing in this bill will affect the re-imbursement for needles and syringes by insurance carriers upon a written order of a physician. Vote 14-4.

JUDICIARY AND FAMILY LAW

HB 133, establishing a family resource council to address the efficient delivery of services to children and families. INEXPEDIENT TO LEGISLATE

Rep. Kevin M. Smith for Judiciary and Family Law: The majority opinion was that while a council of this type may have been helpful 5 years ago, with the recent growth in new computer technologies, a council such as this is now unnecessary, and would almost definitely be obsolete in 2 years, if enacted. Another concern of the committee is the fact that the council would be duplicating already existing community family council centers, and would only be creating more bureaucracy at the higher levels Vote 9-6.

HB 211, defining the terms "psychological injury" and related terms under the child protection act. MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE

Rep. Julie M. Brown for the Majority of Judiciary and Family Law: This bill has had considerable study and is needed as our present law is so vague. This compromise language improves what we now have and is a first step in helping our children, and could be the beginning of landmark legislation. Vote 10-7.

Reps. Paul M. Mirski and Thomas M. Colburn for the Minority of Judiciary and Family Law: The sponsors of HB 211 have worked diligently to create a definition of psychological abuse which would clarify the definition which presently exists in statute. Unfortunately, to the potential detriment of parents and other caregivers, the bill as proposed still offers the opportunity for expansive interpretation of a wide variety of behaviors as potential causes of psychological injury. The minority believe that the interests of abused children and the interests of parents and others would be better served by editing out those elements in the language of the bill which would permit or encourage less studious and less astute members of the judiciary to inadvertently convict responsible caregivers of psychological abuse.

HB 365, providing that communications made during family mediation shall be privileged. OUGHT TO PASS WITH AMENDMENT

Rep. Sandra B. Keans for Judiciary and Family Law: This bill gives to a family mediators the same confidentiality privilege that this legislature confers on marital mediators. Family mediators are volunteers offering their services free of charge to non-profit programs throughout the state. The goals of family mediation are to keep families intact, prevent youths from becoming entangled in the criminal justice system, and improve the daily

lives of family members. Families are frequently referred to these programs by the court, schools, and juvenile justice authorities. If the volunteer mediators can be compelled to appear in court to testify, the pool of mediators will vanish. This bill, is prompted by a recent case where a volunteer mediator might have been subpoenaed. Vote 9-3.

HB 421, amending the law against discrimination to prohibit discrimination on the basis of sexual orientation. OUGHT TO PASS WITH AMENDMENT

Rep. Barbara Hull Richardson for Judiciary and Family Law: This bill extends civil rights in employment, public accommodations and housing accommodations to include persons regardless of their sexual orientation. The Manchester Diocese supports this bill. The definition of sexual orientation does not render lawful any conduct prohibited by the criminal laws of New Hampshire. Vote 13-3.

HB 768-FN, relative to certain abortions. MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS

Rep. Cynthia A. McGovern for the Majority of Judiciary and Family Law: The United States Supreme Court has ruled repeatedly that a woman has a constitutionally protected right to obtain an abortion of a nonviable fetus free from government intrusion, and an abortion of a viable fetus if her life or health is at risk. Such medical decisions cannot be made by this, or any, legislature. They must remain where they belong - with the woman, her conscience and her physician. HB 768 places an impermissible and unconstitutional burden on a woman's right to choose. Vote 9-7.

Rep. Paul M. Mirski for the Minority of Judiciary and Family Law: Partial birth abortion is a procedure which entails delivering a baby in the breech position until only its head is left in the mother. At this point, scissors are used to open a hole in the upper portion of the baby's neck, a catheter tube is then inserted in the hole created by the scissors in order to suck the baby's brains out, collapsing the skull and permitting delivery of the inert remains. Every doctor testifying at the hearing supported the bill and described the procedure as barbaric, gruesome, and unnecessary. They all agreed that this procedure falls just short of legal infanticide.

HR 16, urging that impeachment proceedings be instituted against Strafford county probate court judge Gary R. Cassavechia. INEXPEDIENT TO LEGISLATE

Reps. Deborah L. Woods, Barbara Hull Richardson, Marjorie K. Smith, Cynthia A. McGovern, Lionel W. Johnson, Janet G. Wall, David C. Allison, Kevin H. Smith, Alf E. Jacobson, Sandra B. Keans, Susan J. Clay and Irene A. Pratt for Judiciary and Family Law: This legislation is essentially the same as HR 51 of the 1996 session and HR 46 of the 1994 session. Both were overwhelmingly voted down by this committee and the full House. For the 3rd time this committee is convinced that this legislation is a personal vendetta against Judge Cassavechia and for the 3rd time unanimously votes ITL. It cannot be stated strongly enough that we feel this resolution has no merit whatsoever. Vote 13-0.

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

HB 633, requiring employers to offer a point-of-service option. MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: RE-REFER TO COMMITTEE.

Rep. George D. Murch, III for the Majority of Labor, Industrial and Rehabilitative Services : This bill would require all employers who offer health care to also offer point-of-service options even if employees do not sign up for the option. This is an employer mandate. This mandate potentially adds significant administrative burdens that could force some small businesses to drop out of providing health care altogether. The majority feels that most employers try to meet the health care needs of their employees without being mandated to do so. Vote 10-5.

Rep. Rebecca C. Hutchinson for the Minority of Labor, Industrial and Rehabilitative Services: The sponsor requested to have this bill re-referred to address concerns of the subcommittee. The point-of-service option, allowing employees to receive services outside a provider network, is important and merits further study. The intent of this bill is for the employee, not the employer, to pay any additional costs that may be incurred.

LEGISLATIVE ADMINISTRATION

HB 495, prohibiting registered lobbyists from serving on the legislative ethics committee OUGHT TO PASS WITH AMENDMENT

Rep. Warren C. Henderson for Legislative Administration: The Legislative Ethics Committee has worked hard to deal with complex and sensitive issues while withstanding criticism about its goals, its members and its legality. The house has clearly spoken about the appropriateness of maintaining an Ethics Committee. This bill would assure that lobbyists could not sit on that Ethics Committee in judgment of legislators. The committee stressed that this bill does not in any way adversely reflect on the current makeup of the Ethics Committee. Vote 11-2.

HB 622-FN, requiring legislative approval of certain out-of-court settlements of claims against the state. OUGHT TO PASS WITH AMENDMENT

Rep. Donnalee Lozeau for Legislative Administration: This bill requires that all settlements that would have a substantial financial impact on the state budget must be approved by the legislature. While current state law prohibits state officials from agreeing to settlements beyond appropriated

funds, this bill sets out a procedure for legislative review of those legal settlements resulting in financial commitments in excess of 1/4 of one percent of the previous year's general fund unrestricted revenues. (In 1997, this figure is \$2,047,000). The threshold amount requiring review will be adjusted annually by the Legislative Budget Assistant based on the previous year's general fund unrestricted revenues. Vote 10-2.

LOCAL AND REGULATED REVENUES

HB 337-L, allowing a municipality to reduce the property tax on improvements. RE-REFER TO COMMITTEE

Rep. Jean R. Wallin for Local and Regulated Revenues: This bill has raised many issues which the committee would like to review during the summer. Vote 11-3.

MUNICIPAL AND COUNTY GOVERNMENT

CACR 10, relating to municipalities' home rule. Providing that municipalities shall have home rule authority to exercise any powers not specifically prohibited by the state or federal constitutions or any statute adopted by the legislature. OUGHT TO PASS WITH AMENDMENT

Rep. Joseph E. Stone for Municipal and County Government: The bill provides that municipalities shall have home rule authority to exercise any powers not specifically prohibited by the state or federal constitutions. As a result of this change, municipalities will have greater flexibility to deal with the increased responsibilities that they face in today's more competitive world. The amendment deleted language which could have provided confusion with regard to bills passed by the legislature but not enacted into law. The committee recommends that once this is approved by a 2/3 vote by the people of New Hampshire an appropriate transition committee be established to work on issues resulting from this change in the constitution. Vote 17-0.

HB 653-LOCAL, relative to address numbers on streets and highways and relative to penalties for violations of certain planning and zoning laws. OUGHT TO PASS WITH AMENDMENT

Rep. Betsey L. Patten for Municipal and County Government: The first section of this bill addresses the notification process when a numbering change happens within a community. The governing body or the planning board may hold a public hearing if they deem it necessary. The municipalities are also encouraged to notify the bureau of emergency communications to keep the E911 database up to date. The second part of the bill increases the fines for transferring lots in unapproved subdivisions from \$500 per lot/per day to \$1000 per lot/per day to curb this type of action. Vote 13-0.

HB 743-FN-LOCAL, relative to the municipal option to impose additional fees for motor vehicle registration permits to fund public parking facilities. INEXPEDIENT TO LEGISLATE

Rep. Robert A. Lockwood for Municipal and County Government: This bill would have repealed an enabling statute passed which allowed cities of over 50,000 population to administer a surcharge on local vehicle registrations to help fund maintenance costs for public parking garages. Manchester exercised this option. The Manchester Board of Mayor and Alderman voted on March 4, 1997 to abandon the surcharge policy effective in June, thus settling their problems through "home rule". The committee was reluctant to repeal at this time because it was not aware if there is any other such activity ongoing under this RSA. Vote 17-1.

PUBLIC WORKS AND HIGHWAYS

HB 294-L, relative to the placement of off-premises advertising devices in municipalities which prohibit such advertising devices. MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.

Rep. Paul I. LaMott for the Majority of Public Works and Highways: This bill as amended only deals with Department of Transportation designated business directional signs and their placement along New Hampshire highways exclusive of turnpikes and interstate highways. These signs are from 9 to 20 inches high, and 3 to 8 feet long depending on the area's speed limits. A number of towns in New Hampshire have zoning laws that prohibit off-premise signs and for years the Department of Transportation informally acknowledged those laws by not placing any off-premise business directional signs in towns that had such a prohibition. Unfortunately, challenges to that informal action resulted in a Department of Transportation decision that since there was no law prohibiting these placements, they were powerless to deny applications. Hence, this amended bill. This is simply an issue of fairness. If business A is located off the highway in a township that does not allow off-premise signs, and does not qualify for a state directional sign due to the type of business, they're stuck. Yet, business B in the next town who qualifies for a business directional sign can have an off-premise sign in business A's town when business A cannot. This bill will still allow off-premise business directional signs, but they will need to be placed within the town in which the advertised business is located. Vote 15-2.

Rep. Steve Vaillancourt for the Minority of Public Works and Highways: The minority believes that these signs serve as a service to the traveling public and should be viewed as a plus rather than a minus. The minority further believes that the Department of Transportation has not abused the privilege of placing these blue and white signs which are situated on the state right-of-way and not on private property.

RESOURCES, RECREATION AND DEVELOPMENT

HB 544, relative to reconstruction or repair of boathouses which are suitable for use as dwellings. MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE

Rep. William E. Williams, Jr. for the Majority of Resources, Recreation and Development: RSA 482-A:26 III does not allow a dwelling over water to be reconstructed within its original footprint in the case of obsolescence, fire, storm damage, or pestilence. These legal, non-conforming structures presently can only be repaired. This bill solves this problem. Vote 9-7.

Rep. Mary Ellen Martin for the Minority of Resources, Recreation and Development: All the waters in the State of New Hampshire are owned by the public and held in trust for them by the state via the Public Trust Doctrine. This legislature is appointed as guardians of the public trust and has both the authority and the responsibility to preserve and protect these waters and lands for the public good. In some instances, waterfront property owners have exceeded their one special right to wharf out over public lands, (i.e. read "dock") in order to access the water . Some have built homes or other structures beyond their property line (the high water mark) and out over or in the water (public land). This bill says in effect, "Hey, that's o.k. - You can have that land". It allows them to reconstruct these structures, in effect giving them the lands they encroached on forever. This is a "taking" of public trust lands. This creates two groups of waterfront property owners with unequal rights - also unconstitutional.! One group stayed within their property lines , one did not. This legislature has the authority to do so, but it is certainly a violation of their responsibilities as guardians for all the people. This is a wrongful act, which we don't have the right to do!

HB 547, relative to granting permits to build certain structures on shoreline property. MAJORITY: RE-REFER TO COMMITTEE. MINORITY: INEXPEDIENT TO LEGISLATE.

Rep. Michael D. Whalley for the Majority of Resources, Recreation and Development: This bill deals with the granting of permits by the Department of Environmental Services to an owner of shoreline on public waters to construct docks or structures extending into the water. Under the common law public trust doctrine, the state owns the waters of the state and much of the beds beneath the waters, holding them in trust for the benefit of the public, while property owners have a right to wharf out and make reasonable use of their shorefront property. As mentioned in the Committee Report with regard to HB 272, the Department of Environmental Services is in the process of drafting proposed rules relating to shoreline structures. For this reason, the committee believes re-referred is the best action at this time to deal with those proposed rules. Vote 12-5.

Rep. Deborah F. Merritt for the Minority of Resources, Recreation and Development : The minority believes that the acceptance of certain structures as consistent with the public trust doctrine is a violation of historical case law. The state holds all waters in public trust and the Department of Environmental Services ability to adopt rules regulating such structures is predicated on this doctrine.

HB 628, relative to leasing Mount Sunapee and Cannon Mountain ski areas based on the prototype lease developed pursuant to prior legislation. OUGHT TO PASS WITH AMENDMENT

Rep. Michael D. Whalley for Resources, Recreation and Development: This bill as amended provides appropriate legislative oversight in determining the future of Cannon Mountain Ski Area and Mt. Sunapee Ski Area. The bill as amended requires the Commissioner of the Department of Resources and Economic Development to develop and issue a request for proposals for an agreement or contract to include but not be limited to a lease, concession agreement, or management contract for the Mount Sunapee or Cannon Mountain Ski Area operations or both in consultation with a legislative committee established by this legislation. This bill also requires an agreement or contract recommended by the Commissioner be approved by the capital budget overview committee before that agreement takes effect. This bill also requires the Commissioner of the Department of Resources and Economic Development to report on the disposition of ski area employees affected by any agreement or contract. Vote 17-0.

HB 693, establishing a house committee to examine water quality issues. OUGHT TO PASS WITH AMENDMENT

Rep. Deborah F. Merritt for Resources, Recreation and Development: This bill establishes a house committee to look at water quality issues including a centralized data system for water quality data, to develop an incentive system to reduce toxins, and the impact of water quality on growth and economic development. The committee will also look at the findings of The Comparative Risk Analysis project. Vote 11-5.

SCIENCE , TECHNOLOGY AND ENERGY

HB 528-Local, relative to municipal water, gas and electric utilities. OUGHT TO PASS WITH AMENDMENT

Reps. Clifton C. Below and Jeb E. Bradley for Science, Technology and Energy: This legislation repeals and reenacts RSA 38 which allows for municipalization of electric, gas, or water systems by towns and cities. The provisions of this statute have not been updated in many years and are cumbersome for any community seeking to municipalize utility services. With competition coming in the electric industry, the committee believes that towns and cities need the option to municipalize electric utility services if there is to be a level playing field with utilities that might seek to delay implementation of competition. The provisions in this bill are balanced as the Public Utilities Commission must determine if a municipalization is in the public interest. A two thirds favorable vote by a city of town would, however, constitute a rebuttable presumption of

public interest. Furthermore, there are protections for residents of a community that are not customers of a municipal utility. Vote 17-0.

HB 716, relative to economic development and retention rates and special contracts. OUGHT TO PASS WITH AMENDMENT

Rep. Jeb E. Bradley & Rep. Harold V. Lynde for Science, Technology and Energy: Legislation passed in 1996 created economic development and business retention electric rates for those businesses that could leave the state, or would not move to, or expand within New Hampshire due to our extremely high electric rates. This bill modifies that policy so that it is consistent with competition in the electric industry. The committee believes it is critically important to attract new businesses to the state as well as retain existing businesses so that stranded costs will be recovered from the largest possible customer base. Passage of this bill will not effect any economic development and business retention rates or special contract agreements entered into prior to the date upon which the Chairman of the Public Utilities Commission certifies that retail electric competition exists within New Hampshire. Vote 18-0.

HB 726-FN, relative to the jurisdiction and authority of the public utilities commission, and relative to the underground utility damage prevention system. OUGHT TO PASS WITH AMENDMENT

Reps. John H. Thomas and. Jeb E. Bradley for Science, Technology and Energy: This bill authorizes a 911 charge on wireless or cellular telephone service. Currently the 911 charge is accessed only on phone lines. Given the increasing demand for 911 service from cellular phones, the committee believes this new charge is entirely appropriate. The bill also creates a violation for deliberate misuse of the 911 system. Such misuse is significant in many regions of the country. This legislation also updates the digsafes program. Finally the bill authorizes the Public Utilities Commission to establish non-price requirements for competitive electric suppliers. These requirements include registration, registration fees, customer information, disclosure, standards of conduct, and customer protection. The pilot program has highlighted the need for the Commission to be involved with these specific aspects of electric industry restructuring relative to competitive electricity suppliers. Vote 19-0.

STATE FEDERAL RELATIONS AND VETERANS AFFAIRS

HCR 12, urging ratification of the Convention for the Elimination of All Forms of Discrimination Against Women. OUGHT TO PASS

Rep. John M. Pratt for State-Federal Relations and Veterans Affairs: This convention reaffirms the policy of the United States that any form of discrimination against women is not acceptable. The resolution places the General Court on record in support of United States ratification of the convention. Vote 11-4.

HJR 2, urging the members of Congress to support and pass the Family Forestland Preservation Tax Act. MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.

Rep. James J. Fenton for the Majority of State-Federal Relations and Veterans Affairs: The committee recognized the value of family wood lots and the over-all importance of the timber industry to the economy of our state. Therefore, the majority of the members support the Congressional legislation introduced by Senator Gregg known as the Family Forestland Preservation Tax Act. This act offers heirs economical incentives to sustain proper management of these forest. Vote 10-4.

Rep. George R. Rubin for the Minority of State-Federal Relations and Veterans Affairs: The uses of preservation of forestlands has some merit, however, the thrust of this resolution is to change the tax codes for special interests. It forgives and reduces to pay capital gains and federal inheritance taxes for selected heirs.

TRANSPORTATION

HB 203, relative to driving after a revocation or suspension of license. OUGHT TO PASS

Rep. Philip M. Ackerman for Transportation: This bill makes a second and subsequent offense of driving after suspension of license a misdemeanor, regardless of whether the suspension was as a result of court-imposed penalty or administrative license suspension. Currently, first and second Administrative License Suspension violations are violations. The committee felt that increasing the penalty would act as a deterrent and possibly increase the collection of defaulted fines. Vote 11-2.

HB 273-FN, increasing the age that child passenger restraints are required from 12 years of age to 18 years of age. OUGHT TO PASS WITH AMENDMENT

Rep. Ralph L. Akins for Transportation: Teens have the lowest usage rate of any age group when it comes to wearing a seat belt, yet the highest rate of accidents. The committee felt that it was logical to extend the child passenger restraint law age from 12 to 18 years of age since statistics show that the number of serious injuries and fatalities have dropped significantly since the original child passenger restraint law was enacted. Vote 14-0.

NOTICE OF RECONSIDERATION

This day, Thursday, the 13th of March, 1997, at 11:55 a.m., Representative Robert R. Cushing, having voted with the prevailing side, did serve notice that today or some other day as limited by Rules he would ask the House to reconsider its action whereby it re-referred ***HB 579-FN-LOCAL***, providing that a person who, having obtained a restraining order against an abuser and having made all reasonable efforts to preserve employment, leaves a job in order to protect himself or herself from domestic abuse, shall not be denied unemployment compensation.

Karen O. Wadsworth, Clerk of the House

LAI D ON TABLE

HR 19, affirming unrestricted revenue estimates for fiscal years 1998 and 1999. (Pending question is ordering to third reading.)

COMMITTEE HEARINGS

FRIDAY, MARCH 14

EDUCATION, Room 207, LOB

10:00 a.m. Subcommittee work session on ***HB 50-FN-A-LOCAL***, increasing aid for kindergarten programs, and establishing a program for the construction of public kindergarten facilities and making an appropriation therefor.

FINANCE - (DIVISION I), Room 212, LOB

Work and executive session on the budget and the following bills:

9:30 a.m. ***HB 531-FN***, increasing the amount superior court bailiffs are paid per day.

10:15 a.m. ***HB 658-FN***, ensuring that the division of safety services, department of safety receives its ½ share of unrefunded tolls for boat motor fuels as required by law, and establishing a special fund therefor.

10:45 a.m. ***HB 674-FN-L***, relative to dam registration and filing fees.

11:15 a.m. ***HB 533-FN***, making technical corrections in the liquor laws.

1:00 p.m. ***HB 413***, expanding the authority of the commissioner of the department of transportation to use a certain appropriation to purchase airports.(A)

1:30 p.m. ***HB 402***, relative to the use of revenues of the fish and game department.

FINANCE - (DIVISION III), ROOM 210-211, LOB

10:00 a.m. ***HB 582-FN***, relative to medicaid rate setting.

11:00 a.m. ***HJR 1***, urging the preservation and continued development of community services to people with developmental disabilities and their families.

1:00 p.m. ***HB 225-FN***, requiring the commissioner of health and human services to establish a needle exchange pilot program.(A)

Executive sessions may be held throughout the day.

MONDAY, MARCH 17

EDUCATION, Room 207, LOB

9:00 a.m. Subcommittee work session on ***HB 50-FN-A-LOCAL***, increasing aid for kindergarten programs, and establishing a program for the construction of public kindergarten facilities and making an appropriation therefor.

FINANCE - (DIVISION I), Room 212, LOB

Work and executive session on the budget and the following bills:

10:00 a.m. **HB 755-FN**, increasing certain OHRV registration fees and requiring the department of fish and game to file an annual report to the legislature.

HB 760-FN, relative to OHRVs and OHRV registration fees.(A)

10:45 a.m. **HB 151-FN-L**, establishing comprehensive medical, physical and psychological standards for law enforcement officers. (A)

11:15 a.m. **HB 457-FN**, requiring all state agencies, departments, and commissions in all 3 branches of government to have a presence on the New Hampshire automated information system by January 1, 1998, and designating the state library as the official repository of state government information.(A)

11:30 a.m. **HB 196-FN**, providing for the regulation of horticultural growing media.(A)

11:45 a.m. **HJR 6**, requiring the joint legislative historical committee to acquire and cause to be displayed a portrait of suffragist Marilla Marks Ricker.

1:00 p.m. **HB 572-FN**, relative to town, city, and county treasurers and to the state treasurer.(A)

1:15 p.m. **HB 616-FN**, relative to jury selection reforms. (A)

1:30 p.m. **HB 734-FN**, requiring district courts to hold evening sessions.

1:45 p.m. **HB 197-FN**, relative to the regulation of wetland scientists.(A)

HB 677-FN, increasing the wetlands excavating and dredging permit fee for major and minor projects. (A)

2:15 p.m. **HB 744-FN**, relative to administrative fines for violations of safety regulations regarding water pollution and waste disposal, authorizing the attorney general to enjoin any youth camp, public swimming pool, or spa operating without approval, and relative to the legal status of local river management advisory committees. (A)

3:00 p.m. **HB 638-FN**, requiring random on-site inspection and testing of certain sludge and biosolid samples. (A)

HB 588-FN, relative to certification of operators of solid waste plants, water treatment plants and wastewater treatment plants, and adding late renewal fees. (A)

3:30 p.m. **HB 771-FN-L**, relative to hazardous waste operator permit application costs, adding an exemption to the hazardous waste cleanup fund fee, increasing grant awards made pursuant to the used oil collection center program, and relative to the automotive oil fee.(A)

4:00 p.m. **HB 530-FN-A**, establishing civil action filing fee surcharges to fund civil legal assistance to low-income persons and continually appropriating a special fund.

4:30 p.m. **HB 440-FN**, changing the legislative mileage formula.(A)

4:45 p.m. **HB 459-FN**, establishing a youth operator's license for persons under 18 years of age.(A)

5:00 p.m. **HB 268-FN**, relative to the powers of the Pease development authority.

FINANCE - (DIVISION II), ROOM 209, LOB

Work and executive session on the budget and the following bills:

9:30 a.m. **HB 229-FN-A-L**, establishing a reading recovery training program and making an appropriation therefor.

9:45 a.m. **HB 275-A**, establishing the equipment grant program, and making an appropriation therefor.

10:00 a.m. **HB 783-FN-A-L**, relative to funding vocational student organizations and making an appropriation therefor.(A)

10:15 a.m. **HB 748-FN**, clarifying the school building aid law relative to kindergarten programs.(A)

10:30 a.m. **HB 436-FN-L**, establishing restrictions in building aid for conversions of area schools to cooperative school districts, and relative to increasing or decreasing grades in cooperative school districts. (A)

10:45 a.m. **HB 501**, including blindness in the special education provisions, and allowing attorneys to act as neutrals in special education dispute resolution.

11:00 a.m. **HB 525**, relative to Braille instruction for functionally blind pupils. (A)

11:15 a.m. **HB 700-FN-L**, relative to the renovation of regional vocational education centers and making an appropriation therefor.(A)

2:00 p.m. **HB 717-FN-A**, relative to the taxation of venture capital firms under the business profits tax.

2:30 p.m. **HB 731-FN-A-L**, relative to the taxation of sand, gravel, loam, and other similar substances. (A)

3:00 p.m. **HB 564-FN-A**, increasing the cigarette tax and designating a portion of the revenue for anti-smoking programs aimed at teenagers.

Executive session to follow.

FINANCE - (DIVISION III), ROOM 210-211, LOB

10:00 a.m. Work and executive session on the budget and other pending legislation.

PUBLIC WORKS AND HIGHWAYS, Room 201, LOB

9:30 a.m. Executive session on **HB 25-A**, making appropriations for capital improvements.

TUESDAY, MARCH 18

PUBLIC WORKS AND HIGHWAYS, Room 201, LOB

Executive session on **HB 25-A**, making appropriations for capital improvements, immediately following the House session..

WEDNESDAY, MARCH 19

FINANCE, Rooms 210-211, LOB

Executive session will be held at the conclusion of he House session.

FINANCE - (DIVISION I), Room 212, LOB

9:30 a.m. Work and executive session on the budget and other pending legislation.

PUBLIC WORKS AND HIGHWAYS, Room 201, LOB

Executive session on **HB 25-A**, making appropriations for capital improvements, immediately following the House session..

THURSDAY, MARCH 20

COMMERCE, Room 302, LOB

1:30 p.m. **SB 72**, relative to the New Hampshire life and health guaranty association, changing the order of distribution for policy holders and claimants in the case of insurer insolvency and repealing the law relative to the interstate insurance receivership compact.

2:00 p.m. **SB 22**, relative to health benefit plans sponsored by qualified franchise associations.

2:30 p.m. **SB 10**, relative to funds for prearranged funerals or burial plans.

Executive session on pending legislation may be held throughout the day, time permitting, from the time the committee is initially convened.

CRIMINAL JUSTICE AND PUBLIC SAFETY, Room 204, LOB

10:00 a.m. Executive session on pending legislation.

EDUCATION, Room 207, LOB

9:30 a.m. ***SB 138***, establishing teacher appreciation day.

1:15 p.m. ***SB 128***, increasing the membership of the university system study committee.

2:00 p.m. ***SB 115-L***, establishing a committee to study issues relating to the withdrawal of a receiving district from an area school district.

Executive session on pending legislation may be held throughout the day, time permitting, from the time the committee is initially convened.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 202, LOB

10:00 a.m. ***SB 48-FN***, to provide an optional retirement program for certain employees of the department of regional community-technical colleges

11:30 a.m. ***SB 60-FN***, excluding claims against New Hampshire hospital which are under \$500 from the jurisdiction of the state board of claims.

1:15 p.m. ***HB 806-FN-LOCAL***, relative to the business finance authority.

1:45 p.m. ***SB 146***, establishing a committee to study the issue of reducing the number of years of service required to be vested in the retirement system plan from 10 years to 5 years.

Executive session on pending legislation may be held throughout the day, time permitting, from the time the committee is initially convened.

FINANCE, Rooms 210-211, LOB

9:00 a.m. Executive session.

FINANCE - (DIVISION I), Room 212, LOB

9:30 a.m. Work and executive session on the budget and other pending legislation.

FINANCE - (DIVISION II), ROOM 209, LOB

9:30 a.m. Work and executive session on the budget and other pending legislation.

Work and executive session on the following bills:

1:00 p.m. ***HB 781-FN***, relative to lucky 7 tickets and bingo games and requiring manufacturers and distributors of bingo supplies to be licensed.(A)

1:30 p.m. ***HB 598-FN***, relative to liens on aircraft for nonpayment of aircraft registration fees.

Executive session to follow.

FINANCE - (DIVISION III), ROOM 210-211, LOB

1:30 p.m. ***HB 724-FN***, allowing the office of reimbursements in the department of health and human services to set rates for the multiple DWI offender intervention detention center program.

2:30 p.m. ***HB 599-FN***, relative to youth access to tobacco products. (A)

3:30 p.m. ***HB 785-FN***, relative to alcohol and drug abuse professionals.(A)

Executive session to follow.

HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS, Room 205, LOB

9:30 a.m. **SB 24**, relative to prescriptions for certain controlled drugs.

10:30 a.m. **SB 133**, relative to the task force on perinatal chemical dependency.

1:00 p.m. **SB 35**, including "accessibility lift" within the definition of "elevator".

1:30 p.m. **SB 163**, relative to the Uniform Anatomical Gift Act.

Executive session on pending legislation may be held throughout the day, time permitting, from the time the committee is initially convened.

JUDICIARY AND FAMILY LAW, Room 208, LOB

10:00 a.m. Full committee work session on **HB 609-FN-LOCAL**, enacting the Uniform Interstate Family Support Act

2:30 p.m. **HB 52**, authorizing the assignment of superior court judges to hear cases in the district court.

Executive session on pending legislation may be held throughout the day, time permitting, from the time the committee is initially convened.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

10:00 a.m. **SB 110-L**, allowing the Coos county convention to revise the compensation of the county sheriff.

10:30 a.m. **SB 152**, establishing a committee to study issues related to allowing the city of Manchester to adopt a 2-year budget cycle.

11:00 a.m. **SJR 1**, recognizing the town of Brentwood as the county seat of Rockingham county.

1:30 p.m. Work and executive session on pending legislation

PUBLIC WORKS AND HIGHWAYS, Room 201, LOB

9:00 a.m. Executive session on **HB 25-A**, making appropriations for capital improvements.

NUCLEAR DECOMMISSIONING FINANCE COMMITTEE (RSA 162-F:15), Seabrook Town Hall, 99 Lafayette Road, Seabrook

7:00 p.m. Regular meeting.

TRANSPORTATION, Room 203, LOB

9:00 a.m. **SB 86-FN**, requiring the division of motor vehicles to report those in default to a consumer reporting agency.

10:00 a.m. **SB 153**, requiring a check-off box on a driver's license application form relative to having the social security number indicated on the driver's license.

10:30 a.m. **SB 63-FN**, relative to access to motor vehicle records.

FRIDAY, MARCH 21

ADMINISTRATIVE RULES (RSA 541-A:2), Rooms 306-308, LOB

9:00 a.m. Regular meeting.

FINANCE - (DIVISION I), Room 212, LOB

9:30 a.m. Work and executive session on the budget and other pending legislation.

FINANCE - (DIVISION II), ROOM 209, LOB

10:00 a.m. Work and executive session on the budget and other pending legislation.

FINANCE - (DIVISION III), ROOM 210-211, LOB

9:30 a.m. *HB 756-FN*, relative to the registration of alternative providers of mental health services.(A)

10:45 a.m. *HB 488-FN*, relative to involuntary admission to the state hospital on an emergency basis.(A)

11:30 a.m. *HB 592-FN-A L*, establishing an advisory council on brain and spinal cord injuries.(A)

1:30 p.m. *HB 646-FN-A*, relative to eligibility for child day care services for persons receiving public assistance and making an appropriation therefor.(A)

3:00 p.m. *HB 606-FN-L*, relative to procedures regarding children in need of services under RSA 169-D.

Executive session to follow.

MONDAY, MARCH 24

EDUCATION, Department of Education, 194 Pleasant Street, Concord

9:00 a.m. Meeting with State Board of Education on new teacher academic knowledge certification.

FINANCE - (DIVISION III), ROOM 210-211, LOB

9:30 a.m. *HB 765-FN*, establishing an osteoporosis prevention, education, and treatment program.(A)

10:30 a.m. *HB 686-FN-A*, relative to financing of child day care facilities and making an appropriation therefor. (A)

Executive session to follow.

OIL FUND DISBURSEMENT (RSA 146-D:4), Room 305, LOB

9:00 a.m. Hearing and regular meeting.

10:00 a.m. Rules hearing.

TUESDAY, MARCH 25

EDUCATION, Room 207, LOB

9:30 a.m. *SB 155*, requiring the division of educational improvement, department of education, to prepare and adopt a plan for providing special education to inmates in the state prison system and county correctional facilities.

10:30 a.m. *SB 156*, establishing a committee to study issues relating to providing special education services to eligible pupils who are incarcerated in the state prison system and county correctional facilities.

Executive session on pending legislation may be held throughout the day, time permitting, from the time the committee is initially convened.

FINANCE - (DIVISION III), ROOM 210-211, LOB

10:00 a.m. Executive session.

HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS, Room 205, LOB

10:00 a.m. *SB 49-FN*, clarifying certain procedures under the lead paint law.

Executive session on pending legislation may be held throughout the day, time permitting, from the time the committee is initially convened.

PUBLIC WORKS AND HIGHWAYS, Room 201, LOB

9:30 a.m. Rescheduled public hearing on *SB 182-FN*, relative to the administration, operation, and maintenance of the New Hampshire state veterans cemetery.

10:30 a.m. Rescheduled public hearing on ***SB 64-FN-A***, exempting motor fuel used for automobile racing from road toll taxation.

Executive session on pending legislation may be held throughout the day, time permitting, from the time the committee is initially convened.

11:15 a.m. Rescheduled public hearing on ***SB 175***, establishing a committee on the feasibility of installing rumble strips before toll booths.

1:30 p.m. Rescheduled public hearing on ***SB 158-FN-A***, relative to the funding of beach erosion control projects along the south side of the Hampton Harbor Inlet.

Executive session on pending legislation may be held throughout the day, time permitting, from the time the committee is initially convened.

SCIENCE , TECHNOLOGY AND ENERGY, Room 304, LOB

10:00 a.m. Department of Environmental Services, Air Resources Division will present Diesel Emissions Study to committee.

WEDNESDAY, MARCH 26

FINANCE - (DIVISION III), ROOM 210-211, LOB

10:00 a.m. Executive session.

THURSDAY, MARCH 27

EDUCATION, Room 207, LOB

1:15 p.m. ***SB 154***, relative to charter schools.

2:15 p.m. ***SJR 2***, relative to federal funding under the Individuals with Disabilities Education Act.

Executive session on pending legislation may be held throughout the day, time permitting, from the time the committee is initially convened.

FINANCE - (DIVISION III), ROOM 210-211, LOB

10:00 a.m. Executive session.

FRIDAY, MARCH 28

BOARD OF CLAIMS (RSA 541-B:3), Room 202, LOB

9:30 a.m. Rescheduled regular meeting.

FINANCE - (DIVISION III), ROOM 210-211, LOB

10:00 a.m. Executive session.

SATURDAY, MARCH 29

FINANCE - (DIVISION III), ROOM 210-211, LOB

10:00 a.m. Executive session.

TUESDAY, APRIL 1

ENVIRONMENT AND AGRICULTURE, Room 303, LOB

10:00 a.m. Rescheduled public hearing on ***SB 29***, establishing a pet overpopulation trust.

10:30 a.m. Rescheduled public hearing on ***SB 31***, relative to rabies certificates.

11:00 a.m. Rescheduled public hearing on ***SB 145-LOCAL***, relative to the definition of "open space land" for purposes of current use taxation.

Executive session on pending legislation may be held throughout the day, time permitting, from the time the committee is initially convened.

MONDAY, APRIL 14

FISCAL COMMITTEE (RSA 14:30-a), Rooms 210-211, LOB

9:00 a.m. Rescheduled regular business.

9:30 a.m. Rescheduled audits.

Department of State and related boards and commissions for the ten months ended April 30, 1996 and New Hampshire Retirement System management letter for the year ended June 30, 1996.

OFFICIAL NOTICES

COUNTY DELEGATION NOTICE

Coos County Delegation will meet Saturday, March 15 at the County Nursing Home in West Stewartstown at 10:00 a.m. This is to finalize the county budget.

Rep. Lynn C. Horton, Chairman

Coos County Delegation

COUNTY DELEGATION NOTICE

Rockingham County Executive Committee will meet Friday, April 18 at 9:30 a.m. in the Hilton Auditorium, Rockingham County Nursing Home.

Rep. Sherman A. Packard, Chairman

Rockingham County Executive Committee

UPDATE ON THE LATE DELIVERY OF HOUSE CALENDARS:

We are still working with the US Postal representative in Bedford to determine the problem and improve delivery time. At the Postal representative's suggestion, we are stamping all of the envelopes ***FIRST CLASS*** and bundling them by zip codes with a marker for ***DIRECT DELIVERY***. Please continue to help us track the problem by saving your envelope when it does arrive.; write on it the date of receipt and bring the envelope to the Clerk's Office. We will continue to work at solving the problem. Thank you for your cooperation.

Karen O. Wadsworth, Clerk of the House

During House sessions, members that wish to keep book bags, briefcases etc. with them please place them under seats and not in the aisles in front of seats. This is asked as a courtesy to fellow colleagues and for safety and emergency evacuation purposes. Thank you.

Rob Johnson, House Sergeant-at-Arms

REVISED AMENDED FISCAL NOTES

The following HBs have a revised or amended fiscal note: HBs 50, 120, 186, 225, 340; 378, 557, 559, 560, 562, 564, 567; 569, 570; 573, 577, 578;

587, 588, 589; 591, 595;596, 598, 602; 603; 604, 605; 607; 610; 615; 617; 618; 619;625; 626, 627; 637, 638; 643; 644,645; 649; 661; 663, 686; 689, 702, 716; 719; 720, 723, 724, 725, 726, 727, 729, 731, 733, 734, 739, 740, 741, 742, 743, 745, 747, 748, 749, 750, 751, 760, 761, 762, 763. 764, 765,766, 767, 768, 769, 770, 771, 773, 774, 780, 781, 783, 784, 785, 786, 788, 791, 792, 794, 795 and 796.

Leo J. Callahan, Assistant Clerk

When the House Clerk is aware of House Members who are hospitalized or homebound by serious illness, it will publish a list of names and addresses so that their colleagues who so desire may send cards and greetings.

Charles H. Felch, Sr., PO Box 22, Seabrook, New Hampshire 03874-0022

Beverly A. Gage, 75 South Policy Street Lot 31, Salem, New Hampshire 03079-2919

Francis C. Vincent, 14 Central Street, Somersworth, New Hampshire 03878-2402

Karen O. Wadsworth, Clerk of the House

*****MEMBERS' NOTICES

The following notices are published in the House record as a courtesy to the member(s) requesting publication. These are not official public notices and will be limited to legislative policy or social activities and political meetings or events. Publication should not be construed as support for either the events listed or the view espoused by the individual or organization sponsoring the event.

Members of the NH Senate and House are encouraged to utilize the complimentary ski privileges afforded them. Upon presentation of proper credentials at the ticket window, NH Senators and Representatives may receive a lift ticket for their personal use and one for a guest. The elected official must be present to personally present the credentials, unless prior arrangement is made with Commissioner Thomson. (Lift tickets are to be picked up at Guest Services at Sunapee; and at Guest Services or the Ticket Window at Cannon.)

Donna Sytek, Speaker

Improve your mind, and recycle! Bring a book - Buy a book is located outside the cafeteria. It is sponsored by the OWLs. All moneys go to the scholarship fund.

Rep. Betsy McKinney

All are welcome to the 5th Annual St. Patrick's Day celebration, sponsored by the Merrimack County Democrats on Tuesday, March 18 from 5:30 p.m. to 8:00 p.m. at the Eagle's Nest at Eagle Square in Concord. A \$20 donation is appreciated and RSVP.

Rep. Miriam D. Dunn

All legislators and staff are invited to Children's Lobby Day 1997, sponsored by Child and Family Services on Tuesday, March 18 from 11:45 a.m. to 1:00 p.m. in the Executive Council Chambers. There will be remarks form Governor Jeanne Shaheen and leading child advocates. A complimentary lunch will be served.

Rep. Julie M. Brown

Legislators for Limited Spending will meet Wednesday, March 19 at noon in Room 209, LOB.

Rep. Frances L. Riley

All legislators and staff are invited to attend the annual Spring Legislative reception sponsored by the Retail Merchants Association of NH, Make plans to attend this event on Wednesday, March 19 at the Holiday Inn, 172 North Main Street, Concord from 4:30 to 6:00 p.m.

Rep. Toni Crosby

The Legislative Tourism Caucus is holding its second meeting from 3:00 to 5:00 p.m. (or upon adjournment of the House session) in the Function Room at Forefathers Taverne (across from the State House) on Wednesday, March 19th.

The topic is BEYOND LOON MOUNTAIN: Balancing recreational Interests with Environmental Protection. Richard Ober, Senior Director of Communications with the Society of the Protection of New Hampshire Forests, will discuss the fine art of balancing tourism interests with environmental interests. Alice Pearce, Executive Director of Ski New Hampshire, will also discuss balancing multiple uses of the White Mountain National Forest that provides for recreational opportunities, including skiing. Ms. Pearce will also discuss the economic impact that the ski industry has on the state's economy. Wine, cheese and other refreshments will be available courtesy of the New Hampshire Lodging and Restaurant Association. All legislators are cordially invited.

Rep. Stephen G. Avery, Chairman

Legislative Tourism Caucus

The American Legislative Exchange Council (ALEC) will meet March 26 at noon in Room 209, LOB.

Rep. Frances L. Riley

The Teamsters Union, Local 633, is hosting a reception for all legislators and staff on Wednesday, March 26 at the Szechuan Garden on Fisherville Road from 4:30 p.m. to 7:00 p.m. Refreshments and hors d'oeuvres will be served.

Reps. Peter Hoe Burling and Robert L. Wheeler

The New Hampshire Order of Women Legislators Installation Banquet will be held Wednesday, April 2 at the Holiday Inn, Concord. Cocktails 5:30 p.m. Dinner 6:30 p.m. Tickets \$25 are available from Reps. Karen McRae (497-2186) or Anne Grassie (332-8562).

Reps. Karen K. McRae and Anne C. Grassie

The Hillsborough County Republican Committee is holding its Annual Lincoln Day Dinner on Friday, April 4 at the Knights of Columbus Hall, 42 Elm Street, Milford. Congressman John Kasich will be the speaker. The reception begins at 6:30 p.m. with the roast beef dinner being served at 7:00 p.m. Tickets are \$15 and are available from Reps. Maurice Goulet (4-88) or Carol H. Holden(3-1).

Rep. Carol H. Holden

All legislators and staff are cordially invited to the Crossover reception hosted by the New Hampshire Automobile Dealers Association at its offices on 507 South Street (just up from the Hampton Inn) on Thursday, April 10 from 4:00 to 7:00 p.m. (or immediately following the House session). Hors d'oeuvres, refreshments, door prizes and entertainment for a well-deserved recess. Handicapped accessible.

Reps. Robert L. Wheeler and Peter Hoe Burling

The Department of Transportation will hold the following meetings:

Mar 18 Seabrook Elementary School Gymnasium, 257 Walton Road, Seabrook, 7:00 p.m. Public hearing , Seabrook, US Route 1.

Mar 25 Kennett High School Gymnasium, 176 Main Street, Conway, 7:00 p.m. Public hearing, Conway, NH Route 16 and West Side Road.

Mar 26 Community Room, Municipal Library, 26 Railroad Street, Charlestown, 7:00 p.m. Public hearing, Charlestown, NH Route 12A.

Apr 8 Town Office Meeting Room, Main Street, New Hampton, 7:00 p.m. Public Informational/Public Officials meeting, New Hampton, Dana Hill Road/NH Railroad.

Apr 9 Stoddard Town Hall, Route 123, Stoddard, 7:00 p.m. Public hearing, Stoddard, NH Route 9.

Rep. Gene G. Chandler, Chairman

Public Works and Highways

State of
New Hampshire
HOUSE RECORD

First Year of the 155th Session of the General Court

CALENDAR AND JOURNAL OF THE 1997 SESSION

Vol. 19 Concord N.H Friday, March 14 No. 36

Contains: Amendments for Tuesday, March 18 and Wednesday, March 19

HOUSE CALENDAR

LEGISLATORS ARE ASKED TO KEEP THIS CALENDAR
FOR FLOOR USE ON
MARCH 18 AND 19

TUESDAY, MARCH 18 AND WEDNESDAY, MARCH 19

AMENDMENTS

(Listed in numerical order.)

1997-0191h

Amendment to CACR 10

Proposed by the Committee on Municipal and County Government

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

RELATING TO: municipalities' home rule.

PROVIDING THAT: municipalities shall have home rule authority to exercise any powers not specifically prohibited by the state or federal constitutions or any statute.

Amend the resolution by replacing paragraph I with the following:

I. That the first part of the constitution be amended by inserting after article 39 the following new article:

[Art.] 40 [Home Rule Authority Granted.] A municipality may exercise any powers and perform any functions pertaining to its government and affairs, unless specifically prohibited from doing so by the state or federal constitutions or by any statute.

Amend the resolution by replacing paragraph IV with the following:

IV. That the wording of the question put to the qualified voters shall be:

Are you in favor of amending the constitution to allow home rule for municipalities, unless specific functions are prohibited by the state or federal constitutions or by any statute.

AMENDED ANALYSIS

This constitutional amendment-concurrent resolution provides home rule authority to municipalities, so that they may exercise any powers not specifically prohibited by the state and federal constitutions or by statute.

1997-0436h

Amendment to HB 117

Proposed by the Committee on State-Federal Relations and Veterans Affairs

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

1 End Date for Active Service; Qualifications for Bonus Payment. Amend RSA 115-A:9 to read as follows:

115-A:9 Qualifications for Bonus. Each person who actively served in any capacity as a member of the armed forces of the United States ~~[between~~ ***on or after*** August 2, 1990[;] and ~~[a date to be determined by the Secretary of Defense]~~ ***on or before November 30, 1995***, and who earned the Southwest Asia Service Medal (SASM); and who was discharged, released or has a certificate of service therefrom, under honorable conditions, or who is missing in action ***or who was killed in action***; and who at the time of entry on such active service, and at the time of such service was a bona fide resident of this state shall be entitled to the benefits provided under this subdivision. ~~[Residents of other states who were activated and served with a New Hampshire based National Guard or reserve unit shall also qualify.]~~ ***A person shall demonstrate bona fide residency under this section through such person's home of record at time of entry as listed on a DD Form 214 or a written verification from a town or city clerk that such person was a resident of a New Hampshire town or city at the time of active service.*** No individual who has received a Persian Gulf War bonus payment from another state shall be qualified to receive the benefits provided under this subdivision.

2 New Section; Forfeiture of Bonus for Fraud. Amend RSA 115-A by inserting after section 14 the following new section:

115-A:15 Forfeiture of Bonus. Any person who obtains a bonus payment under this subdivision by fraud shall forfeit such bonus to the state.

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

AMENDED ANALYSIS

This bill clarifies the dates of active service and the residency requirement for qualifying for a Persian Gulf War bonus payment.

The bill also provides for forfeiture of any Persian Gulf War bonus payment obtained by fraud.

1997-0598h

Amendment to HB 171

Proposed by the Committee on Environment and Agriculture

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

AN ACT repealing the citizens advisory committee which advises the pesticide control board.

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

1 Repeal. RSA 430:31-a, relative to the citizens advisory committee which advises the pesticide control board, is repealed.

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

AMENDED ANALYSIS

This bill repeals the citizens advisory committee which advises the pesticide control board.

1997-0586h

Amendment to HB 202

Proposed by the Committee on Criminal Justice and Public Safety

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

AN ACT relative to the sale of air guns to minors and the use of air guns by minors and prohibiting the furnishing of arms to persons under 17.

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

1 Air Guns; Minors. RSA 644:14 is repealed and reenacted to read as follows:

644:14 Sale of Air Guns to Minors; Use.

I. "Air gun" means a gun that uses compressed air or carbon dioxide to propel a projectile, including BB guns, pellet guns, and CO₂ guns.

II. Any person who sells, barter, rents, lends, or gives an air gun to a person under 17 years of age, without the written consent of such person's parent or guardian, shall be guilty of a violation.

III. The use of air guns without supervision of a responsible adult shall be a violation.

IV. The use of air guns by a person under 17 years of age shall be restricted to the home or the private property surrounding the home or an approved range under responsible adult supervision.

2 Furnishing Arms to Persons Under 17. Amend RSA 644:15 to read as follows:

644:15 Furnishing Arms to Persons Under ~~[+6]~~ 17. Any person who shall sell, barter, hire, lend or give to any person under the age of ~~[+6]~~ 17 years any cartridges or shotshells suitable for discharging in any rifle, pistol, revolver or shotgun shall be guilty of a violation. This section shall not apply to fathers, mothers or guardians of such children.

3 Effective Date. This act shall take effect January 1, 1998.

AMENDED ANALYSIS

This bill defines the term "air gun" for purposes of the sale of air guns to minors and the use of air guns by minors.

The bill also makes it a violation to furnish arms to persons under 17 years of age.

1997-0684h

Amendment to HB 211

Proposed by the Majority of the Committee on Judiciary and Family Law

Amend paragraphs I and II as inserted by section 1 of the bill by replacing them with the following:

I. Psychological injury produces both acute and long-term negative effects. Such injury is a repeated pattern of caregiver behavior that conveys the message that a child is worthless, flawed, unloved, unwanted, or endangered. Many caregivers, at some point, send such unfortunate messages. There are no perfect caregivers. Most psychological injury occurs when these negative messages pass from isolated incidents to a persistent oppressive pattern of caregiving style.

II. Research establishes a connection between psychological injury and attachment disorders, limitations in cognitive ability and problem solving, poor academic achievement, depression, poor peer relationships, behavior problems, anxiety disorders (especially post-traumatic stress disorder), and anti-social behavior. Impairments may extend into adulthood affecting one's ability to function and maintain relationships in the home, workplace, and community. Cases involving psychological injury receive less frequent intervention than do cases involving physical injury or sexual abuse, yet such injury may actually result in more serious negative effects.

Amend RSA 169-C:3, XXV-a as inserted by section 5 of the bill by replacing it with the following:

XXV-a.(a) "Psychological injury" means harm to the intellectual and psychological capacity of a child by a discernible and substantial impairment in the ability to function within the established ranges of normal growth and development accepted by academic and medical disciplines. Harm to a child's intellectual and psychological capacity may be caused by recurrent, harmful, behaviors engaged in by a caregiver. Such behavior is a repeated pattern of caregiver behavior that may include, but is not limited to, exposing a child to acts of hostile rejecting, isolating, exploiting or corrupting, domestic violence, or terrorizing.

(b) Sexual or physical abuse are not requisite to a finding of psychological injury or maltreatment. However, when there is a finding of sexual or physical abuse, there shall be a presumption of psychological injury.

1997-0644h

Amendment to HB 236-FN

Proposed by the Committee on Criminal Justice and Public Safety

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

AN ACT to allow who is being stalked to obtain a protective order.

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

1 Cross Reference Added. Amend RSA 633:3-a, I(d)(5) to read as follows:

(5) After being served with, or otherwise provided notice of, a protective order pursuant to RSA 173-B [or], RSA 458:16, *or paragraph III-a of this section*, or an order that prohibits the person from having contact with specific individuals pursuant to RSA 597:2, on a single occasion and in violation of the provisions of such order to:

2 Cross Reference Added. Amend RSA 633:3-a, III to read as follows:

III. For purposes of this section, a person who engages in acts which would constitute stalking after having been advised by a law enforcement officer as defined in RSA 630:1, II that ~~his~~ *the person's* acts were in violation of this chapter, *or a person who has been served with a protective order issued pursuant to paragraph III-a of this section*, shall be presumed to have acted knowingly.

3 New Paragraph. Amend RSA 633:3-a by inserting after paragraph III the following new paragraph:

III-a. A person who has been the victim of stalking as defined in this section may seek relief by filing a petition in the district court or the superior court in the county or district where the plaintiff or defendant resides. Upon a showing of stalking by a preponderance of the evidence, the court shall grant such relief as is necessary to bring about a cessation of stalking. The types of relief that may be granted, the procedures and burdens of proof to be applied in such proceedings, the methods of notice, service, and enforcement of such orders, and the penalties for violation thereof shall be the same as those set forth in RSA 173-B.

4 Cross Reference Added. Amend RSA 633:3-a, V to read as follows:

V. Any law enforcement officer may arrest, without a warrant, any person that the officer has probable cause to believe has violated the provisions of this section when the offense occurred within 6 hours, regardless of whether the crime occurred in the presence of the officer. A law enforcement officer shall arrest a person when he has probable cause to believe a violation of the provisions of this section has occurred within the last 6 hours when the offense involves a violation of a protective order issued pursuant to RSA 173-B [or], RSA 458:16, *or paragraph III-a of this section*.

5 Effective Date. This act shall take effect January 1, 1998.

AMENDED ANALYSIS

This bill allows a person who is being stalked to obtain a protective order under the same procedures and conditions as those issued for victims of domestic violence.

1997-0648h

Amendment to HB 273-FN

Proposed by the Committee on Transportation

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

1 Age Increased. Amend RSA 265:107-a, I to read as follows:

I. No person shall drive a motor vehicle on any way while carrying as a passenger a ~~child~~ *person* less than ~~[+2]~~ *18* years of age unless such ~~child~~ *person* is wearing a seat or safety belt which is properly adjusted and fastened or, if the ~~child~~ *person* is less than 4 years of age, unless such ~~child~~ *person* is properly fastened and secured by a child passenger restraint which is in accordance with the safety standards approved by the United States Department of Transportation in 49 C.F.R. section 571.213. No person shall drive a motor vehicle on any way while carrying as a passenger a ~~child~~ *person* less than ~~[+2]~~ *18* years of age unless the motor vehicle was designed for and equipped with the ~~child~~ passenger restraints specified above.

2 New Paragraph; Safety Belt Required for Drivers Under 18. Amend RSA 265:107-a by inserting after paragraph I the following new paragraph:

I-a. No person who is less than 18 years of age shall drive a motor vehicle on any way unless such person is wearing a seat or safety belt which is properly adjusted and fastened.

3 Fines Established. Amend RSA 265:107-a, III to read as follows:

III. Any driver who violates the provisions of this section shall be guilty of a violation[~~;~~] , ***and shall be subject to the following fines:***

(a) \$25 for a first offense.

(b) \$50 for a second or subsequent offense.

4 New Paragraphs; Relation to Other Offenses. Amend RSA 265:107-a by inserting after paragraph IV the following new paragraphs:

V. A conviction for violating the provisions of this section shall not preclude prosecution of any other offense for which violation of this section might constitute an element.

VI. Enforcement of this section by law enforcement agencies shall be accomplished only as a secondary action when a driver of a motor vehicle has been cited or charged with a violation or some other offense; provided, however, that a motor vehicle may be stopped for failure to comply with this section if the seat belt violation for a person under 12 years of age.

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

AMENDED ANALYSIS

This bill modifies the child passenger restraint law by increasing the age that restraints are required from 12 years of age to 18 years of age, imposing a schedule of fines for violations of the law, and clarifying the enforcement of the law.

1997-0708h

Amendment to HB 276

Proposed by the Majority of the Committee on Election Law

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

AN ACT removing primary petition filing requirements for candidates who do not voluntarily accept campaign spending limitations.

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

1 General Filing Provisions Modified. Amend RSA 655:14 to read as follows:

655:14 Filing; General Provisions. The name of any person shall not be printed upon the ballot of any party for a primary unless ~~[he]~~ ***the person:***

I. Is a registered member of that party~~[; he shall have]~~.

II. Has met the age and domicile qualifications for the office ~~[he seeks]~~ ***sought*** at the time of the general election~~[; he]~~.

III. Meets all the other qualifications at the time of filing~~[; and he shall file]~~.

IV. Files with the appropriate official between the first Wednesday in June and the Friday of the following week a declaration of candidacy as provided in RSA 655:17~~[; and~~

~~;~~ ***(a)*** The appropriate filing fee as provided in RSA 655:19~~[;]~~; or

~~[H-]~~ ***(b)*** The appropriate number of primary petitions ~~[as provided in]~~ ***under*** RSA 655:20, and ~~[655:22 and]~~ an assent to candidacy as provided in RSA 655:25.

2 Filing Fees; References Removed. Amend the introductory paragraph of RSA 655:19, I to read as follows:

I. At the time of filing declarations of candidacy, each candidate for the following offices shall pay to the official with whom the declarations are filed the following filing fees~~[; and shall file with the appropriate official the requisite number of primary petitions as provided in RSA 655:20 and 655:22]~~, unless the candidate agrees to limit ~~[his]~~ expenditures in accordance with RSA 664:5a. At the time of filing declarations of intent, each candidate for the following offices shall pay to the secretary of state the following filing fees, and the following filing fees shall be paid in addition

to the requisite number of nomination papers which must be submitted and filed. The filing fee paid under this section shall be in addition to the administrative assessment paid under RSA 655:19-c. The filing fees shall be as follows:

3 Certain Primary Petition Requirements Removed. Amend the introductory paragraph of RSA 655:19-c, I to read as follows:

I. Candidates for governor, United States senator, representative to Congress, executive councilor, state senator, county officer, and state representative who file declarations of candidacy shall pay the administrative assessment in paragraph I or file primary petitions as provided in paragraph III in addition to the filing fee ~~[and primary petition]~~ requirements of RSA 655:19 ~~[and 655:20]~~ ***unless the candidate agrees to limit expenditures in accordance with RSA 664:5-a.*** Candidates for governor, United States senator, representative to Congress, executive councilor, state senator, county officer, and state representative who file declarations of intent shall pay the administrative assessment in paragraph I in addition to the filing fee required by RSA 655:19 and shall meet the requirements of RSA 655:40-45 for nomination by nomination papers. Neither the administrative assessment which is paid nor the primary petitions which are filed under this section, nor the nomination papers which must be submitted under RSA 655:41 and filed under RSA 655:43, shall be waived or refunded for a candidate for any of the offices listed in this section who, pursuant to RSA 664:5-a, voluntarily accepts the expenditure limitation set forth in RSA 664:5-b. At the time of filing declarations of candidacy or declarations of intent, the administrative assessment shall be as follows:

4 Primary Petitions; References to Filing in Lieu of Expenditure Limitations Removed. RSA 655:20 is repealed and reenacted to read as follows:

655:20 Primary Petitions in Lieu of Filing Fees. Any person otherwise qualified to run for office who is unable to pay the filing fee as prescribed in RSA 655:19 by reason of indigency may have the person's name printed on the primary ballot of any party by filing with the appropriate official the requisite number of primary petitions made by members of the party, together with one written assent to candidacy. The number of primary petitions required shall be the same as required under RSA 655:19-c, III to avoid payment of the administrative assessment prescribed under RSA 655:19-c, I.

5 Repeal. RSA 655:22, relative to the number of certain primary petitions to be filed in lieu of acceptance of expenditure limitations.

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

AMENDED ANALYSIS

This bill removes primary petition filing requirements for candidates who do not voluntarily accept campaign spending limitations.

1997-0637h

Amendment to HB 291

Proposed by the Committee on Environment and Agriculture

Amend the bill by replacing sections 3 and 4 with the following:

3 Use of the Terms "Native," "Local," and "Our Own." Amend RSA 426:5 to read as follows:

426:5 Use of [Word] ***Words "Native," "Local," and "Our Own."***

I. No farm products sold, offered, or exposed for sale or distribution in the state shall be **advertised**, labeled, or described as "native" unless ~~[the name of the state in which they were grown or produced appears immediately after the word "native"]~~ they were grown or produced in the state of New Hampshire.

II. It shall be unlawful to advertise, label, or describe farm products sold, offered, or exposed for sale or distribution in this state in terms that are false, deceptive, or misleading as to the place of origin of the farm products. The term "our own" is deceptive when used to describe farm products unless they were grown or produced by the operator of the retail location. The terms "local," "locally grown," or "locally produced" are deceptive when used to describe farm products unless they were grown or produced within the state of New Hampshire.

4 Stop Sale, Use, or Removal Orders. Amend RSA 426:7-a to read as follows:

426:7-a Stop Sale, Use or Removal Orders. When the commissioner or ~~[his]~~ ***the commissioner's*** authorized agent has reasonable cause to believe farm products advertised as "native," "***local,***" "***locally grown,***" "***our own,***" or ~~["New Hampshire organically grown"]~~ "***locally produced***" are being distributed in violation of any of the provisions of this chapter, or of any of the rules adopted under this chapter, ~~[he]~~ ***the commissioner or agent*** may issue and serve a written "stop sale, use or removal" order upon the owner or custodian of any such farm products. The farm products shall not be sold, used or removed until the provisions of this chapter have been complied with and the farm products have been released by the

commissioner or the violation has been otherwise disposed of as provided in this chapter by a court of competent jurisdiction.

Amend the bill by replacing section 6 with the following:

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

AMENDED ANALYSIS

Section 3 of this bill:

- I. Restricts the use of the word "native" when used in a description of farm produce to produce grown in the state of New Hampshire.
- II. Limits the use of the word "local" when referring to locally grown or locally produced farm products to those grown or produced within the state of New Hampshire.
- III. Deems the term "our own" to be deceptive when used to describe farm products not grown or produced by the operator of a retail location.

Section 4 of this bill adds "local," "locally grown," "locally produced," and "our own" to the terms which when improperly used in advertising farm products may result in stop sale, use, or removal orders by the commissioner. The remainder of the bill amends certain provisions of RSA 426 making them gender neutral in accordance with RSA 17-A:6 relative to gender neutral drafting.

1997-0498h

Amendment to HB 294-LOCAL

Proposed by the Majority of the Committee on Public Works and Highways

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

AN ACT relative to the placement of off-premises business directional signs in municipalities which prohibit such advertising devices.

Amend the bill by replacing section 1 with the following:

1 New Section; Off-Premises Advertising Devices. Amend RSA 236 by inserting after section 74 the following new section:

236:74-a Off-Premises Advertising Devices. Notwithstanding any provision of law to the contrary, the department of transportation shall not permit the installation of any business directional sign which advertises a business or activity which is not located within a municipality, if such municipality has a local ordinance prohibiting off-premises advertising devices. Any business directional sign which is not in compliance with this section shall be removed within 3 years of the effective date of this section.

AMENDED ANALYSIS

This bill declares that the department of transportation shall not permit the installation of any business directional sign advertising a business or activity which is not located within a municipality which has a local zoning ordinance preventing off-premises advertising devices.

1997-0685h

Amendment to HB 327

Proposed by the Committee on Commerce

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

AN ACT relative to pledges for loans, finance charge disclosure statements, debt adjusters, and consumer credit transactions.

Amend RSA 398:2, II as inserted by section 1 of the bill by replacing it with the following:

- II. In excess of 4 motor vehicles or titles to motor vehicles, as defined in RSA 361-A:1, V;

Amend the bill by replacing all after section 3 with the following:

4 Clarification; Statutory Rate of Interest on Business Transactions. Amend RSA 336:1, I to read as follows:

I. The annual rate of interest in all business transactions in which interest is paid or secured, unless otherwise agreed upon in writing, shall equal 10 percent. *No consumer credit transaction, as defined in RSA 358-K:1, V, shall be subject to this paragraph. If agreed upon in writing, interest on business transactions may include charging other than simple interest.*

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

AMENDED ANALYSIS

This bill prohibits certain pledges as security for loans; authorizes a finance charge disclosure statement which is in conformity with Federal Reserve Board regulations for consumer credit transactions; and limits an exemption from regulation for nonprofit organizations offering debt adjustment services.

The bill clarifies that consumer credit transactions are not subject to the statutory rate of interest on business transactions.

1997-0605h

Amendment to HB 328

Proposed by the Committee on Election Law

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

AN ACT relative to hour limitations on voting.

Amend the bill by replacing section 1 with the following:

1 New Paragraph; Qualified Person to be Allowed to Vote. Amend RSA 654:7-a by inserting after paragraph II the following new paragraph:

III. Any person who is waiting to register to vote at the polling place on election day at the time scheduled for the closing of the polls shall be allowed to vote if determined to be qualified to register.

AMENDED ANALYSIS

This bill also requires that any person who is waiting to register to vote on election day at the time scheduled for the closing of the polling place be allowed to vote if they are found to be qualified to register.

1997-0561h

Amendment to HB 329

Proposed by the Committee on Judiciary and Family Law

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

AN ACT clarifying the applicability of the fireman's rule.

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

1 Clarification of Applicability of Fireman's Rule. Amend RSA 507:8-h, I to read as follows:

I. Firefighters, emergency medical technicians (E.M.T.'s), police officers and other public safety officers shall have no cause of action for injuries arising from negligent conduct which created the particular occasion for the officer's official engagement. However, this section does not affect such officer's causes of action *for negligent acts which take place on the scene of the incident which created the particular occasion for the officer's official engagement but which are subsequent to the incident and are unrelated to the incident*, or for other negligent conduct, or for reckless, wanton or willful acts of misconduct.

2 Effective Date. This act shall take effect January 1, 1998.

AMENDED ANALYSIS

This bill clarifies the applicability of the fireman's rule.

1997-0643h

Amendment to HB 352

Proposed by the Committee on Environment and Agriculture

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

AN ACT modifying the definitions of "agriculture" and "farming" for certain purposes and adding a definition of "short rotation tree fiber farming."

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

1 Short Rotation Tree Fiber Farming. Amend RSA 21:34-a to read as follows:

21:34-a Farm, Agriculture, Farming. The word "farm" shall mean any land or buildings or structures on or in which agriculture and farming operations are carried on and shall include the residence or residences of owners, occupants, or employees located on such land. The words "agriculture" and "farming" shall mean all operations of a farm such as the cultivation, conserving, and tillage of the soil, dairying, greenhouse operations, *short rotation tree fiber farming as defined in RSA 79:1, VI*, the production, cultivation, growing and harvesting of any agricultural, floricultural, sod, *short rotation tree fiber*, or horticultural commodities, the raising of livestock, bees, fur-bearing animals, fresh water fish or poultry, or any practices on the farm as an incident to or in conjunction with such farming operations including, but not necessarily restricted to, the following: preparation for market, delivery to storage or to market, or to carriers for transportation to market, of any products or materials from the farm; the transportation to the farm of supplies and materials; the transportation of farm workers; forestry or lumbering operations; the marketing or selling at wholesale or retail or in any other manner any products from the farm and of other supplies that do not exceed in average yearly dollar volume the value of products from such farm.

2 New Paragraph; Definition; Short Rotation Tree Fiber Farming. Amend RSA 79:1 by inserting after paragraph V the following new paragraph:

VI. "Short rotation tree fiber farming" means the production, cultivation, growing and harvesting of any genetically-engineered tree species for rotation periods not to exceed 15 years between planting and harvesting.

3 Release from Taxes; Genetically-Engineered Short Rotation Tree Fiber. Amend RSA 79:2 to read as follows:

79:2 Release from Taxes. All growing wood and timber except fruit trees, sugar orchards, nursery stock, Christmas trees and trees maintained only for shade or ornamental purposes *or for genetically-engineered short rotation tree fiber*, which shall not be subject to the yield tax, shall be released from the general property tax and the school tax in unincorporated places provided for in RSA 198:16, but the land on which such growing wood and timber stands shall be assessed.

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

AMENDED ANALYSIS

This bill adds short rotation tree fiber farming to the list of that which constitutes "agriculture" or "farming" and short rotation tree fiber commodities to the types of commodities included in the definition of "agriculture" and "farming".

The bill excludes trees grown and maintained for short rotation tree fiber not subject to the normal yield tax from the general property tax and the school tax.

1997-0221h

Amendment to HB 365

Proposed by the Committee on Judiciary and Family Law

Amend the bill by replacing section1 with the following:

1 New Section; Family Mediator Privileged Communications. Amend RSA 516 by inserting after section 35 the following new section:

516:35-a Family Mediators.

I. Family mediation proceedings shall be held in private, and all communications, oral or written, made in the proceedings shall be privileged and confidential and shall not be disclosed, except as provided in paragraph III of this section.

II. Nothing said by the parties during family mediation sessions shall be admissible in any court proceedings.

III. No family mediator shall be subpoenaed by any court of competent jurisdiction in this state to disclose any information received from any client unless:

(a) The family mediator has received material information alleging abuse or sexual abuse or neglect, as defined by RSA 169-C or RSA 173-B.

(b) The family mediator has received information about a felony that has been or is about to be committed.

IV. In this section:

(a) "Family mediation" means a process by which an impartial third person or persons, with the consent of the parties, assists and enables the members of a family or household to work together to communicate about common concerns and to reach mutually satisfactory agreements to disputes.

(b) "Family mediator" means an impartial third person who, with the consent of the participating family or household members, assists and enables those participants to communicate about common concerns and to reach mutually satisfactory agreements to disputes.

1997-0597h

Amendment to HB 368

Proposed by the Committee on Executive Departments and Administration

Amend RSA 3-D:1 and RSA 3-D:2 as inserted by section 2 of the bill by replacing them with the following:

3-D:1 Position Established. There is hereby established the position of artist laureate for the state. The governor, with the advice and consent of the council, shall appoint the artist laureate. The person so honored shall be a resident of this state and shall serve for a 2-year term which shall be coterminous with the term of the governor. There shall be no restriction on reappointment.

3-D:2 Recommendations. Prior to the appointment of an artist laureate, the New Hampshire ***council*** on the arts shall submit to the governor and council the names of persons whom they deem to be worthy of the honorary position. Upon the expiration of the term of the artist laureate, as provided in RSA 3-D:1, the commission shall again submit to the governor and council a name or names for a successor.

1997-0688h

Amendment to HB 370

Proposed by the Committee on Commerce

Amend the bill by replacing all after section 5 with the following:

6 Petition. RSA 388:1 is repealed and reenacted to read as follows:

388:1 Petition. Any state-chartered savings bank, building and loan association, cooperative bank, or trust company, by vote of a majority of its members if it is a mutual institution or by vote of a majority of the holders of its voting stock if it is a stock institution, and any other state-chartered banking institution or any national bank or federally chartered savings association or bank, by the same vote, may apply by petition to the superior court in the county in which either of the institutions is located for a decree authorizing a union of such institutions by merger or consolidation. The superior court may authorize any appropriate action relating to the merger or consolidation, including without limitation, the organization of any corporation for consolidating such institutions and the dissolution of such of them as are to be liquidated in the consolidation.

7 Power to Merge and Consolidate. Amend RSA 393:55 to read as follows:

393:55 Power to Merge or Consolidate. Cooperative banks, savings and loan associations, ***and*** building and loan associations [~~and mutual savings banks~~] organized under the laws of this state may merge or consolidate [~~with one another and transfer their engagements, funds and property to one~~]

another with the written approval and upon terms prescribed by the bank commissioner, pursuant to the procedure as follows:

I. That the governing bodies of the corporations involved approve the merger or consolidation, its terms and conditions by a majority vote of those present and voting at a regular meeting or a special meeting called for that purpose.

II. That the voters of the corporations approve the merger or consolidation by majority vote of those present and voting at the annual meeting or at a special meeting called for that purpose, provided that:

(a) Notice of the meeting and the purpose for which it is held is mailed to all the eligible voters at their last known address as shown on the books of the corporations at least 14 days prior to the meeting;

(b) Notice of the meeting shall have been published once a week for 3 successive weeks in one of the newspapers published in the municipalities where the corporations' principal offices are located, if any, otherwise in such newspapers as the commissioner may order, the last notice published at least 14 days prior to the date of the meeting named in the call.

III. The reorganized cooperative bank, association or mutual savings bank shall be liable for all obligations existing prior to such merger or consolidation and may retain and service all accounts lawfully held by it on the date of such consolidation or merger.

IV. The merger or consolidation shall not prejudice the right of any creditor of any of the corporations involved therein to have payment of his debt out of the assets thereof, nor shall any creditor be thereby deprived of, or prejudiced in, any right of action then existing against the officers or directors of said corporations for any neglect or misconduct.

V. The terms and conditions of the merger or consolidation shall be set forth in an agreement signed by the duly authorized officers of the corporations and under their respective seals and shall provide for the mode of carrying the same into effect, when the merger or consolidation shall be effective, the manner of converting the savings capital and accounts of one corporation into the savings capital and accounts of the other corporation, together with such other provisions and details as shall be necessary to perfect the merger or consolidation.

VI. After the meetings of the voters of the corporations as provided for have been held, then that fact shall be certified on said agreement by the secretaries of the corporations, and the original and sufficient duplicate originals of the agreement so signed, adopted and certified, shall be forwarded to the commissioner for his approval or disapproval, one copy to be forwarded to each corporation. If approved, a copy thereof, certified by the commissioner, shall be filed in his office within 60 days after the day of the meeting at which said agreement was adopted by the voters of the corporations. From the time of filing the copy of such agreement with the commissioner, said agreement shall thenceforth be taken and deemed to be the agreement and act of merger or consolidation of said constituent corporation for all purposes of the laws of this state] *in accordance with the procedures and requirements set forth in RSA 388.*

8 Fidelity Bond Coverage. RSA 383:14 is repealed and reenacted to read as follows:

383:14 Fidelity Bond Coverage.

I. Each institution under the supervision of the commissioner shall purchase fidelity bond coverage for protection or indemnity against losses from dishonest or criminal acts of officers, employees, and agents of the institution, and acts such as robbery, burglary, or forgery by persons not associated with the institution.

II. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to fidelity bond coverage for the protection and indemnity of financial institutions under the commissioner's supervision.

9 Irregularities. RSA 384:12 is repealed and reenacted to read as follows:

384:12 Irregularities. A clerk neglecting to give such notification to the bank commissioner or giving a false notification or knowingly giving or causing to be given a notice containing the name of a person who has not taken the oath of office shall be fined \$100.

10 New Section; Interim Banks. Amend RSA 384 by inserting after section 63-a the following new section:

384:63-b Interim Banks. Notwithstanding any other law to the contrary, if a state-chartered stock savings bank, stock building and loan association, stock cooperative bank, or trust company is organized on an interim basis for the sole purpose of effecting either a reorganization of a state-chartered stock savings bank, stock building and loan association, stock cooperative bank, or trust company into a holding company structure or the acquisition of another banking institution by a bank holding company or savings and loan holding company, the holding company may organize and be the sole incorporator of such interim state-chartered bank, and only such persons who will serve as directors, trustees, or executive officers of the resulting bank who are not already serving as directors, trustees, or executive officers of the existing bank will be required to submit personal and financial information to the bank commissioner for review pursuant to applicable rules and regulations.

11 Repeal. RSA 393:55-a, relative to the power of federal savings and loan associations to merge with certain state banking associations, is repealed.

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

AMENDED ANALYSIS

This bill updates certain banking laws to comply with recently enacted federal laws and regulations and makes technical corrections.

1997-0590h

Amendment to HB 378

Proposed by the Majority of the Committee on Executive Departments and Administration

Amend the bill by replacing section 1 with the following:

1 New Chapter; Acupuncture. Amend RSA by inserting after chapter 328-E the following new chapter:

CHAPTER 328-F

ACUPUNCTURE

328-F:1 Findings and Purpose.

I. The general court finds that a significant number of New Hampshire residents choose acupuncture and oriental medicine to be part of their health care needs and declares that acupuncture and oriental medicine form a distinct health care profession that affects the public health, safety, and welfare and provides freedom of choice in health care.

II. The purpose of this chapter is:

- (a) To provide standards for the licensing and regulation of acupuncturists in order to protect the public health, safety, and welfare.
- (b) To ensure that acupuncture and oriental medical therapies practiced by qualified persons are available to the people of New Hampshire.
- (c) To provide a means of identifying qualified acupuncturists.

328-F:2 Definitions. In this chapter:

I. "Acupuncture" means primarily the insertion of needles through the skin at certain points on the body, with or without the application of electric current and/or heat, for the purpose of promoting health and balance as defined by the principles of oriental medicine.

II. "Acupuncturist" means a person licensed to practice acupuncture as defined in this chapter, and whose license is in good standing.

III. "Board" means the board of acupuncture licensing established under RSA 328-F:3.

IV. "Cupping" means a therapeutic method of oriental medicine that utilizes a partial vacuum created in a glass dome or cup that is then applied to a particular area of the body.

V. "Moxibustion" means the thermal stimulation of acupuncture points or specific body areas by utilizing the burning of the dried form of the herb, Artemisia Vulgaris; the heat may be applied on or above specific points or areas or on the acupuncture needle itself.

VI. "NACSCAOM" means the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine.

VII. "NCCA" means the National Certification Commission for Acupuncture and Oriental Medicine.

VIII. "Oriental medicine" means the distinct system of health care that diagnoses and treats illness, injury, pain or other conditions by controlling and regulating the flow and balance of energy to restore and maintain health.

328-F:3 Board Established.

I. There shall be a board of acupuncture licensing consisting of the following members:

(a) Four acupuncturists, appointed by the governor, who shall:

(1) Be NCCA certified and hold a current, valid license to practice acupuncture in another state in which licensure requirements are substantially equivalent to, or higher than, those of this state, in the case of the initial board appointees, and a current, valid license to practice under this chapter, in the case of subsequent board appointees.

(2) Have been residents of this state for at least one year immediately preceding such appointment.

(b) One public member, appointed by the governor, who shall:

(1) Be of legal age of majority.

(2) Be a resident of this state for 3 years immediately preceding such appointment.

(3) Not be, nor ever have been, a member of the acupuncture profession nor have or have had a material, financial interest in either the provision of acupuncture services or an activity directly related to acupuncture, including the representation of the board or profession for a fee at any time during the 5 years preceding appointment.

II. The governor shall appoint the initial board within 6 months of passage of this chapter.

III. The terms of office shall be 3 years for all board members. The initial board appointees shall consist of one acupuncturist for a term of 3 years, one acupuncturist for a term of 2 years, 2 acupuncturists for a term of one year each, and one public member for a term of 3 years. A member may be removed from office by the governor if the governor finds the member was guilty of malfeasance, misfeasance or dishonorable conduct.

IV. There shall be no monetary liability on the part of, and no cause of action shall arise against, the members of the board, or personnel of the board, for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.

328-F:4 Administrative Attachment. The board of acupuncture shall be an administratively attached agency, under RSA 21-G:10, to the office of the commissioner of the department of health and human services.

328-F:5 Reimbursement; Travel. The board shall serve without pay except that each member of the board shall be reimbursed for mileage at the legislative rate for travel to and from meetings of the board and for other travel necessary to fulfill duties of the board.

328-F:6 Organization and Meetings. The board shall hold regular meetings at least semi-annually and shall give notice to its members of the time and place for holding all regular and special meetings. A quorum of the board shall consist of not less than 3 members. The board shall biennially elect a chairperson, a vice-chairperson, and a secretary from among its members.

328-F:7 Rulemaking Authority. The board shall adopt rules, under RSA 541-A, relative to:

I. Procedures and forms for application for an acupuncture license.

II. Scope of practice and fees for licenses issued or renewed under this chapter.

III. Procedures for license renewal, including continuing education requirements, testing, peer review, or other appropriate procedures, and methods to ensure compliance with such requirements.

IV. Maintaining a register of licensed acupuncturists practicing in the state.

V. Establishing and enforcing ethical and professional standards to be met by each licensee including, as necessary, requirements for proficiency in specialty practice.

VI. Maintaining a register of approved acupuncture schools.

VII. Procedures for hearings for disciplinary action under RSA 328-F:12.

VIII. The definition of acupuncture consistent with RSA 328-F:2, I.

IX. Methods for ensuring appropriate display of licenses, including, but not limited to, signs and other forms of advertising.

X. A student practicing acupuncture under the direct supervision of a licensed acupuncturist as part of a course of study approved by the board.

XI. Temporary licensure of a visiting acupuncture teacher.

XII. Other matters necessary for the proper administration of this chapter.

XIII. Establishing a schedule of administrative fines.

328-F:8 Disposition of Receipts. All moneys received by the board under this chapter shall be paid to the secretary of the board, who shall give a receipt therefor and shall, at the end of each month, report to the commissioner of the department of health and human services the total amount of money received and deposit it with the state treasurer.

328-F:9 Licensure Required; Renewal; Reissuance; Continuing Education.

I. No person shall practice acupuncture within this state without first obtaining a license from the board except physicians licensed under RSA 329 and doctors of naturopathic medicine licensed under RSA 328-E:12.

II. The board shall issue a license to any applicant who satisfies all of the following requirements:

(a) Is 21 years of age or older.

(b) Has current, active NCCA certification through examination or Credentials Documentation Review.

(c) Has successfully completed an NCCA approved Clean Needle Technique Course.

(d) Has paid the requisite fees and filed the application established by the board.

(e) Is of good moral character.

(f) Has earned a baccalaureate, registered nurse, or physician's assistant degree from an accredited institution. An applicant who possesses a current, valid license to practice acupuncture from another state who meets all other requirements of licensure may have this requirement waived at the discretion of the board.

(g) Has successfully completed a post-secondary acupuncture college program which is NACSCAOM or board approved. For one year from the date on which the first license is issued this requirement will be waived for an applicant who possesses a current, valid license to practice acupuncture in another state, provided that the applicant meets the other requirements of this chapter. After one year from the date on which the first license is issued, this requirement may only be waived at the discretion of the board. The board of acupuncture licensing will review on a case by case basis valid apprenticeship programs that demonstrate a balanced approach of clinical training and fundamental sciences and that conform to NCCA standards. In addition, all applicants who have not graduated from an accredited acupuncture school must show proof of successful completion of a college level course in anatomy and physiology.

III. Only a person licensed under this chapter or a physician licensed under RSA 329 or a doctor of naturopathic medicine licensed under RSA 328-E:12, shall hold out to members of the public that such person is practicing acupuncture, or use a title or description which suggests such, including any of the following:

(a) C.A. or Certified Acupuncturist.

(b) Acupuncturist.

(c) M.D., C.A. or M.D., Certified Acupuncturist.

(d) Any other letters or words denoting that the person practices acupuncture.

IV. Notwithstanding paragraph III, the title, "Licensed Acupuncturist", and its abbreviations, "L.Ac." Or "Lic. Ac.", shall be used only by persons licensed under this chapter.

V. Whoever, not being licensed or exempted as provided in this chapter, shall advertise oneself or in any way hold oneself out as qualified to practice acupuncture, or shall practice acupuncture, or whoever does so after receiving notice that one's license has been revoked, and whoever, being licensed as provided in this chapter, shall advertise or call oneself or allow oneself to be advertised or called a physician or a doctor in such a way as to imply that such credential relates to the provision of acupuncture services, or use any physician's or doctor's insignia for such purposes

shall be in violation of this chapter.

VI. Persons licensed pursuant to this chapter who engage in the practice of acupuncture without complying with this chapter shall be subject to refused renewal, limitation, revocation, or suspension of their license.

VII. Nothing in this chapter is intended to limit, interfere with, or prevent any other licensed health care professionals from practicing within the scope of their licenses as defined by each profession's New Hampshire licensing statutes, but they shall not hold themselves out to the public or any private group of business by any title or description of services that includes any of the terms in paragraphs III or IV unless they are licensed under this chapter, RSA 329, or RSA 328E:12.

VIII. Notwithstanding any other provisions of law to the contrary, those health care professionals licensed under RSA 316-A who are practicing acupuncture as of the effective date of this chapter may petition the board for an exemption to the licensure requirements of this chapter. The board shall consider the educational qualifications and the clinical experience of those individuals licensed under RSA 316-A seeking exemption to the licensure requirements of this chapter.

IX. All licenses issued by the board shall be valid for 2 years from the date of issuance and shall be renewed biennially or reissued pursuant to rules adopted and fees established by the board.

X. As a condition of renewal of license, the board shall require each licensee to show proof of having completed in each biennial period 30 continuing education units at approved institutions or as approved by the board. Maintaining continuous NCCA certification shall fulfill the continuing education requirement as long as NCCA certification continues to require at least 30 Professional Development Activity points in each biennium.

328-F:10 Scope of Practice.

I. Under this chapter the scope of practice of acupuncture shall include the allied techniques and modalities of oriental medicine, both traditional and modern. The scope of practice shall include: diagnostic procedures; electrical and magnetic stimulation; moxibustion and other forms of heat therapy; cupping and scraping techniques; dietary, nutritional, and herbal therapies; and lifestyle counseling.

II. Notwithstanding paragraph I, the scope of practice may be further defined by the board in accordance with RSA 541-A.

III. Nothing in this section is intended to limit, interfere with, or prevent any other health care professionals from practicing within their defined scopes of practice.

IV. Needles used in acupuncture practice shall be sterile, disposable, one-use needles.

328-F:11 Powers and Duties of the Board.

I. The board shall:

(a) Insure that licensed acupuncturists serving the public meet minimum standards of proficiency and competency to protect the health, safety, and welfare of the public.

(b) Administer and enforce all provisions of this chapter, which pertain to licensees and applicants, and all rules adopted by the board under the authority granted in this chapter.

(c) Maintain an accurate account of all receipts, expenditures, and refunds granted under this chapter.

(d) Maintain a record of its acts and proceedings, including the issuance, refusal, suspension, or revocation of licenses.

(e) Maintain a roster of all acupuncturists licensed under this chapter which indicates:

(1) The name of the licensee.

(2) Current professional office address.

(3) The date of issuance and the number of the licensee's license.

(4) Whether the licensee is in good standing.

- (f) Keep all applications for licensure as a permanent record.
- (g) Maintain a permanent record of the results of all examinations it gives.
- (h) Keep all examination records including written examination records and tape recordings of the questions and answers in oral examinations.
- (i) Keep the records of the board open to public inspection at all reasonable times.
- (j) Adopt and use a seal, the imprint of which, together with the signatures of the chairperson or vice-chairperson and the secretary-treasurer of the board, shall evidence its official acts.
- (k) Annually compile and publish a directory.

II. The board may appoint qualified personnel to administer any part or all of any examinations provided for under this chapter.

III. The board shall have the power to subpoena witnesses and administer oaths in any hearing or disciplinary proceedings, and to compel, by subpoena duces tecum, the production of papers and records.

IV. Witnesses summoned before the board shall be paid the same fees as witnesses summoned to appear before the superior court, and such summons shall have the same effect as though issued for appearance before such court.

V. At the same time the board files the text of a proposed rule with the director of legislative services under RSA 541-A:10, the board shall provide the commissioner of the department of health and human services with a copy of the text of the proposed rule. The commissioner shall monitor the rulemaking of the board to ensure that all rules are:

- (a) Consistent with the provisions of RSA 541-A;
- (b) Consistent with the specific statutory authority under which they are adopted;
- (c) Consistent with other statutes; and
- (d) Consistent with rules adopted by any board, commission, or agency.

VI. If the commissioner determines that a rule proposed for adoption is not consistent with the criteria established in paragraph V of this section, the commissioner shall notify the board in writing and the board shall take corrective action.

328-F:12 Disciplinary Actions.

I. The board may undertake disciplinary proceedings:

- (a) Upon its own initiative; or
- (b) Upon written complaint of any person which charges that a person licensed by the board has committed misconduct under paragraph II and which specifies the grounds for the misconduct.

II. Misconduct sufficient to support disciplinary proceedings under this section shall include:

- (a) The practice of fraud or deceit in procuring or attempting to procure a license to practice under this chapter.
- (b) Conviction of any crime which demonstrates unfitness to practice acupuncture.
- (c) Violation of the standards adopted under RSA 328-F:7, V.
- (d) Demonstrable gross incompetence of the licensee.
- (e) Addiction to the use of alcohol or other habit-forming drugs to a degree which renders the licensee unfit to practice under this chapter.
- (f) A legal finding of mental incompetence.
- (g) Willful or repeated violation of the provisions of this chapter.

(h) Suspension or revocation without subsequent reinstatement of a license, similar to one issued under this chapter, in another jurisdiction.

III.(a) The board may take disciplinary action in any one or more of the following ways:

(1) By public or private reprimand.

(2) By suspension, limitation, or restriction of license.

(3) By revocation of license.

By assessing administrative fines in amounts established by the board which shall not exceed \$2000 per offense, or in the case of a continuing offense, \$250 for each day the violation continues.

(b) Disciplinary action taken under this paragraph may be ordered by the board in a decision made after a hearing in the manner provided by the rules adopted by the board and reviewed in accordance with RSA 541.

(c) No person licensed under this chapter shall continue to practice acupuncture while the person's license is suspended or revoked.

328-F:13 Hearings. The board shall take no disciplinary action without a hearing. At least 14 days prior to hearing, both parties to a disciplinary proceeding shall be served, either personally or by registered mail, with a written copy of the complaint filed and notice of the time and place for hearing. All complaints shall be objectively received and fairly heard by the board, but no complaint shall be acted upon unless in writing. A hearing shall be held on all written complaints received by the board within 3 months of the date notice of a complaint was received by the accused, unless otherwise agreed to by the parties. Written notice of all disciplinary decisions made by the board shall be given to both parties to the proceeding upon their issuance.

328-F:14 Penalties. It shall be a class B misdemeanor for any person to violate RSA 328-F:9.

328-F:15 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

1997-0649h

Amendment to HB 381

Proposed by the Committee on Municipal and County Government

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

1 Officials and Powers. Amend the introductory paragraph of RSA 35-B:3 to read as follows:

The power conferred by RSA 35-B:1 may be exercised by ~~[any commission or board]~~ **a recreation or park commission or any other board or commission as** authorized by the governing body of the political subdivision and charged with the responsibility of providing leisure-time services within the political subdivisions' jurisdiction. These powers may be divided ~~[between any combination of boards]~~ as ~~[dictated]~~ **directed** by the governing body. The ~~[boards or combination of boards]~~ **commission** shall have powers as are necessary to carry out the purpose for which ~~[they are]~~ **it is** created. These powers may include but not be restricted to the power:

2 Grammatical Change. Amend RSA 35-B:3, VIII to read as follows:

VIII. To hold trust or manage public property useful to the accomplishment of ~~[their]~~ **its** objectives.

3 Appointment of Commission. Amend RSA 35-B:4 to read as follows:

35-B:4 Recreation or Park Commission. If any town, city, county, or village district decides that the above powers shall be exercised by a recreation or park commission, it shall consist of citizens of such town, city, county, or village district who shall serve without pay. In cities the citizens shall be appointed by the mayor or city council, subject to provisions of the city charter; in towns by the selectmen; and in other political subdivisions by the governing body of ~~[said]~~ **the** subdivision. The persons initially appointed ~~[or elected]~~ to the commission shall serve staggered terms. Their successors shall be appointed under the same appointing procedure for 3 years. Vacancies as they occur shall be filled by the appointing authority for the unexpired term. Any city or town may by ordinance or resolution provide that the mayor or a selectman, or councilman, shall be an ex officio member of the commission.

4 Organization and Procedures of Recreation or Park Commission. RSA 35-B:5 is repealed and reenacted to read as follows:

35-B:5 Organization and Procedures of Recreation or Park Commission. The commission shall from its own number elect a chairperson, secretary, and other necessary officers to serve one year, or until their successors are elected. The commission shall meet at least quarterly. All regular meetings of the commission shall be open to the public. A majority of the members of the commission shall constitute a quorum. Any action is not official unless authorized by a majority of the total membership. The commission shall also have the power to adopt other rules of procedure and prescribe regulations for the conduct of all business within its jurisdiction necessary to carry out the functions for which it was created.

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

1997-0601h

Amendment to HB 389

Proposed by the Committee on Resources, Recreation and Development

Amend RSA 4-C:20, I as inserted by section 1 of the bill by replacing it with the following:

I. The office shall ~~[adopt rules under RSA 541-A to serve as a guide to]~~ ***prepare guidance materials for use by*** municipalities in the development of local water resources management and protection plans as provided in RSA 674:2, VIII, and other appropriate protection measures. ***If the written guidance materials discuss any requirements which exist under state or federal law and which the office believes may be applicable to the municipalities' plans, the materials shall identify the source of such requirements.***

Amend the bill by inserting after section 4 the following and renumbering the original section 5 to read as 6:

5 Reports. The office of state planning and the department of environmental services shall report to the house resources, recreation, and development committee and to the senate environment committee by November 30, 1997 regarding standards for soils information for septic and subdivision requirements. Further, they shall report on efforts to develop consistent standards for soil mapping and characterization between the department of environmental services and the office of state planning.

AMENDED ANALYSIS

This bill clarifies the laws governing the water protection assistance program within the office of state planning.

1997-0602h

Amendment to HB 421

Proposed by the Committee on Judiciary and Family Law

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

AN ACT amending the law against discrimination to prohibit discrimination on account of a person's sexual orientation.

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

1 Statement of Intent. While the state of New Hampshire does not intend to promote or endorse any sexual lifestyle other than the traditional marriage-based family, the legislature recognizes the need to provide protection in certain areas to individuals on account of their sexual orientation.

2 New Section; Definition of Sexual Orientation. Amend RSA 21 by inserting after section 48 the following new section:

21:49 Sexual Orientation. "Sexual orientation" means having or being perceived as having an orientation for heterosexuality, bisexuality or homosexuality. This definition is intended to describe the status of persons and does not render lawful any conduct prohibited by the criminal laws of this state or impose any duty on a religious organization. This definition does not confer legislative approval of such status, but is intended to assure the basic rights afforded under New Hampshire law.

3 Adding Reference; Division of Personnel. Amend 21-I:42, XVI to read as follows:

XVI. Developing and implementing an equal employment opportunity program that will ensure the employment of all qualified people regardless of age, sex, race, color, ***sexual orientation***, ethnic background, marital status, or physical or mental disability. This program shall include a review and

revision of the job classification process and testing process to ensure that they are free from either conscious or inadvertent bias.

4 Adding Reference; State Employees. Amend RSA 21-I:52, I to read as follows:

I. No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of ~~[his]~~ **the person's** political opinions, religious beliefs or affiliations, age, sex, or race ~~[-provided, however, that]~~. **In addition, no person shall have any such employment action taken on account of such person's sexual orientation.** Nothing in this section shall require the appointment or prevent the dismissal of any person who advocates the overthrow of the government by unconstitutional and violent means. No person shall use, or promise to use directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration. No employee in the state classified service shall hold any remunerative elective public office, or have other employment, either of which creates an actual, direct and substantial conflict of interest with ~~[his]~~ **the employee's** employment, which conflict cannot be alleviated by said employee abstaining from actions directly affecting ~~[his]~~ **such** classified employment. Determination of such conflict shall be made by the personnel appeals board after the parties are afforded rights to a hearing pursuant to RSA 21-I:58. The burden of proof in establishing such a conflict shall be upon the party alleging it. No action affecting said employee shall be taken by the appointing authority because of such public office or other employment until after a full hearing before and approval of such action by the personnel appeals board. If an actual, direct and substantial conflict of interest, which cannot be alleviated by abstention by the employee, is found by the personnel appeals board, the board must approve any action proposed by the appointing authority; and the employee shall be given a reasonable amount of time to leave ~~[his]~~ **the employee's** public office or other employment or otherwise end the conflict before the appointing authority initiates that action.

5 Reference Added; Appeals under the Personnel Rules. Amend RSA 21-I:58, I to read as follows:

I. Any permanent employee who is affected by any application of the personnel rules, except for those rules enumerated in RSA 21-I:46, I and the application of rules in classification decisions appealable under RSA 21-I:57, may appeal to the personnel appeals board within 15 calendar days of the action giving rise to the appeal. The appeal shall be heard in accordance with the procedures provided for adjudicative proceedings in RSA 541-A. If the personnel appeals board finds that the action complained of was taken by the appointing authority for any reason related to politics, religion, age, sex, race, color, ethnic background, marital status, or disabling condition, **on account of the person's sexual orientation** or was taken in violation of a statute or of rules adopted by the director, the employee shall be reinstated to the employee's former position or a position of like seniority, status, and pay. The employee shall be reinstated without loss of pay, provided that the sum shall be equal to the salary loss suffered during the period of denied compensation less any amount of compensation earned or benefits received from any other source during the period. "Any other source" shall not include compensation earned from continued casual employment during the period if the employee held the position of casual employment prior to the period, except to the extent that the number of hours worked in such casual employment increases during the period. In all cases, the personnel appeals board may reinstate an employee or otherwise change or modify any order of the appointing authority, or make such other order as it may deem just.

6 Changing Reference. Amend RSA 151:21, XVI to read as follows:

XVI. The patient shall not be denied appropriate care on the basis of race, religion, color, national origin, sex, age, disability, marital status, ~~[sexual preference]~~ or source of payment, **nor shall any such care be denied on account of the patient's sexual orientation.**

7 Changing Reference. Amend RSA 151:21-b, II(b) to read as follows:

(b) Receive appropriate and professional care without discrimination based on race, color, national origin, religion, sex, ~~[sexual preference]~~ disability, or age, **nor shall any such care be denied on account of the patient's sexual orientation.**

8 Adding Reference. Amend RSA 354-A:1 to read as follows:

354-A:1 Title and Purposes of Chapter. This chapter shall be known as the "Law Against Discrimination." It shall be deemed an exercise of the police power of the state for the protection of the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the constitution of this state concerning civil rights. The general court hereby finds and declares that practices of discrimination against any of its inhabitants because of age, sex, race, creed, color, marital status, familial status, physical or mental disability or national origin are a matter of state concern, that such discrimination not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants. A state agency is hereby created with power to eliminate and prevent discrimination in employment, in places of public accommodation and in housing accommodations because of age, sex, race, creed, color, marital status, familial status, physical or mental disability or national origin as herein provided; and the commission established hereunder is hereby given general jurisdiction and power for such purposes. **In addition, the agencies and council's so created shall exercise their authority to assure that no person be discriminated against on account of sexual orientation.**

9 New Paragraph; Definition of Sexual Orientation. Amend RSA 354-A:2 by inserting after paragraph XIV the following new paragraph:

XIV-a. "Sexual orientation" means having or being perceived as having an orientation for heterosexuality, bisexuality or homosexuality. This definition is intended to describe the states of persons and does not render lawful any conduct prohibited by the criminal laws of this state or impose any duty on a religious organization. This definition does not confer legislative approval of such status, but is intended to assure basic rights afforded under this chapter.

10 Adding Reference. Amend RSA 354-A:5, VIII and IX to read as follows:

VIII. To create such advisory agencies and conciliation councils, local, regional or statewide, as in its judgment will aid in effectuating the purpose of this chapter, and the commission may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination, because of age, sex, race, color, ***sexual orientation***, marital status, familial status, or physical or mental disability, religious creed or national origin, in order to foster, through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the population of the state, and make recommendations to the commission for the development of policies and procedures in general and in specific instances, and for programs of formal and informal education which the commission may recommend to the appropriate state agency. Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay, but with reimbursement for actual and necessary traveling expenses; and the commission may make provision for technical clerical assistance to such agencies and councils and for the expenses of such assistance.

IX. To issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of age, sex, race, color, marital status, familial status, physical or mental disability, religious creed or national origin ***and on account of sexual orientation***.

11 Adding Reference. Amend RSA 354-A:6 to read as follows:

354-A:6 Opportunity for Employment Without Discrimination a Civil Right. The opportunity to obtain employment without discrimination because of age, sex, race, creed, color, marital status, physical or mental disability or national origin is hereby recognized and declared to be a civil right. ***In addition, no person shall be denied the benefits of the rights afforded by this section on account of that person's sexual orientation.***

12 Adding Reference. Amend RSA 354-A:7, I-III to read as follows:

I. For an employer, because of the age, sex, race, color, marital status, physical or mental disability, religious creed, or national origin of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification. ***In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.***

II. For a labor organization, because of the age, sex, race, color, marital status, physical or mental disability, creed, or national origin of any individual, to exclude from full membership rights or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer, unless based upon a bona fide occupational qualification. ***In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.***

III. For any employer or employment agency to print or circulate or to cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry or record in connection with employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, sex, race, color, marital status, physical or mental disability, religious creed or national origin or any intent to make any such limitation, specification or discrimination in any way on the ground of age, sex, race, color, marital status, physical or mental disability, religious creed or national origin, unless based upon a bona fide occupational qualification; provided, however, that nothing in this chapter shall limit an employer after the offer of hire of an individual from inquiring into and keeping records of any existing or pre-existing physical or mental conditions. ***In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.***

13 Adding Reference. Amend RSA 354-A:8 to read as follows:

354-A:8 Equal Housing Opportunity Without Discrimination a Civil Right. The opportunity to obtain housing without discrimination because of age, sex, race, creed, color, marital status, familial status, physical or mental disability or national origin is hereby recognized and declared a civil right. ***In addition, no person shall be denied the benefit of the rights afforded by this section on account of that person's sexual orientation.***

14 Adding Reference. Amend RSA 354-A:10 to read as follows:

354-A:10 Unlawful Discriminatory Practices. It shall be an unlawful discriminatory practice for any person, being the owner, lessee, sublessee, assignee, managing agent or other person having the right to rent or lease a dwelling or commercial structure or being in the business of selling or

renting dwellings or commercial structures:

I. To refuse to sell or rent after the receipt of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or commercial structure to any person because of age, sex, race, color, marital status, familial status, physical or mental disability, religion or national origin. ***In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.***

II. To discriminate against any person in the terms, conditions, or privilege of sale or rental of a dwelling or commercial structure, or in the provision of services or facilities in connection therewith, because of age, sex, race, color, marital status, familial status, physical or mental disability, religion or national origin. ***In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.***

III. To make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement, with respect to the sale or rental of a dwelling or commercial structure that indicates any preference, limitation, or discrimination based on age, sex, race, color, marital status, familial status, physical or mental disability, religion or national origin, or an intention to make any such preference, limitation or discrimination. ***In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.***

IV. To represent to any person because of age, sex, race, color, marital status, familial status, physical or mental disability, religion or national origin that any dwelling or commercial structure is not available for inspection, sale, or rental when such dwelling is in fact so available.

V. For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular age, sex, race, color, marital status, familial status, physical or mental disability, religion or national origin. ***In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.***

VI. To evict a tenant solely on the grounds that the person has acquired immune deficiency syndrome (AIDS) or is regarded to have acquired immune deficiency syndrome.

VII. For any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of age, race, color, religion, sex, disability, familial status, marital status, or national origin. ***In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.***

15 Adding Reference. Amend RSA 354-A:16 and 17 to read as follows:

354-A:16 Equal Access to Public Accommodations a Civil Right. The opportunity for every individual to have equal access to places of public accommodation without discrimination because of age, sex, race, creed, color, marital status, physical or mental disability or national origin is hereby recognized and declared to be a civil right. ***In addition, no person shall be denied the benefit of the rights afforded by this section on account of that person's sexual orientation.***

354-A:17 Unlawful Discriminatory Practices in Public Accommodations. It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, because of the age, sex, race, creed, color, marital status, physical or mental disability or national origin of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof; or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of age, sex, race, creed, color, marital status, physical or mental disability or national origin; or that the patronage or custom thereof of any person belonging to or purporting to be of any particular age, sex, race, creed, color, marital status, physical or mental disability or national origin is unwelcome, objectionable or acceptable, desired or solicited. ***In addition, no person shall be denied the benefit of the rights afforded by this section on account of that person's sexual orientation.***

16 Clarifying Reference. Amend RSA 651:6, I(g) to read as follows:

(g) He was substantially motivated to commit the crime because of hostility towards the victim's religion, race, creed, sexual orientation ***as defined in RSA 21:49***, national origin or sex; or

17 Applicability. Nothing in this act shall be interpreted to permit adoptions by homosexuals or to allow marriage of persons of the same sex.

18 Effective Date. This act shall take effect January 1, 1998.

AMENDED ANALYSIS

This bill prohibits the denial of the benefit of the rights afforded under the employment, public accommodations, and housing accommodations law on account of a person's sexual orientation.

The bill also clarifies references to sexual orientation and sexual preference in the patient's bill of rights and the criminal code.

1997-0627h

Amendment to HB 429

Proposed by the Committee on Labor, Industrial and Rehabilitative Services

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

AN ACT charging the advisory council on unemployment compensation with the task of studying the issue of unemployment compensation as it relates to the contingent work force and low wage workers.

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

1 Purpose.

I. Since 1980, there has been a significant increase in the growth of part-time employment in the New Hampshire economy. This contingent work force is often lower paid, lacks job security, and typically lacks benefits like health insurance or pensions. Women and younger workers are over-represented in this sector.

II. The unemployment compensation system has not adapted to these significant changes. At the inception of unemployment compensation, the system was premised on a one wage-earner family, where one adult worked outside the home and the other worked in the home. Since that time, women have come into the work force in much larger numbers.

III. There is a need for unemployment compensation to respond to the changed needs prompted by the changing economy. Workers often must attempt to balance work and family responsibilities. These workers sometimes must restrict the time of day they are available for work or their number of hours of work per day or week due to care-giving responsibilities. The unemployment compensation system has failed to examine the implications of the increased role of women in the economy. Therefore, the general court finds it necessary to study the issue of unemployment compensation as it relates to the contingent work force and low wage workers.

2 Advisory Council on Unemployment Compensation. The advisory council on unemployment compensation, established under RSA 282-A:128, shall study the issue of unemployment compensation as it relates to the contingent work force and to low wage workers.

3 Compensation. The advisory council, when attending to its duties under this act, shall be reimbursed in accordance with RSA 282-A:130.

4 Duties. The advisory council shall study, take public testimony, make recommendations and prepare a report on issues including, but not limited to; part-time workers who qualify for benefits, but who then must look for full-time work; the issue of leaving work due to lack of child care, or other domestic reasons; and the issue of monetary qualifications for benefits. The advisory council shall seek and invite, by letter, input from the New Hampshire Women's Lobby, New Hampshire Legal Assistance, the Coalition Against Domestic Violence, and the Civil Practice Clinic of the Franklin Pierce Law Center.

5 Chairman; Quorum. The chairman of the advisory council shall call the first meeting on the issues outlined in this act within 45 days after the effective date of this section. Three members of the council shall constitute a quorum.

6 Report. The advisory council shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 1997.

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

AMENDED ANALYSIS

This bill charges the advisory council on unemployment compensation with the additional duty of studying the issue of unemployment compensation as it relates to the contingent work force and to low wage workers.

1997-0703h

Amendment to HB 452

Proposed by the Committee on Science, Technology and Energy

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

AN ACT establishing a legislative oversight committee on telecommunications restructuring and relative to approval by the public utilities commission of tariffs for new telephone services.

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

1 New Sections; Telecommunications Oversight Committee Established. Amend RSA 374 by inserting after section 22-g the following new sections:

374:22-h Oversight Committee; Establishment.

I. There shall be an oversight committee on telecommunications consisting of 14 members as follows:

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

(b) Seven members of the house science, technology and energy committee, appointed by the speaker of the house.

II. Membership on the oversight committee shall be for the biennium and shall be coterminous with membership in the general court.

374:22-i Organization and Compensation. The oversight committee shall have a chairperson who shall be chosen by vote from among the committee membership. The chairperson's term of office shall be for the biennium. The committee shall have a clerk who shall be chosen by vote by members of the committee. The clerk's term of office shall be for the biennium. The committee shall meet immediately upon the close of each legislative session. The legislative members of the committee shall receive legislative mileage when in performance of their duties.

374:22-j Duties of the Oversight Committee. The committee's duties shall include, but not be limited to:

I. Examining the restructuring of telecommunications services and rates.

II. Examining the issue of the resale of telecommunications services and the feasibility of facilitating the resale process.

III. Considering the feasibility and cost-effectiveness of installing certain high-speed telecommunications lines.

IV. Exploring the feasibility of establishing special rates for educational institutions, to the extent that it has not occurred.

V. Examining the issue of rural access and delivery.

VI. Examining the expansion of internet access to all parts of New Hampshire, including rural areas.

VII. Examining the improvement of access to on-line services.

VIII. Examining the issues of encryption and data security in computer networks.

IX. Examining the issue of municipal aggregation of local, toll, and other telecommunications services.

X. Submitting a report, together with any recommendations for legislation, to the speaker of the house of representatives, the senate president, and the governor on or before November 1 of each year.

2 Telecommunications Service Filings. Amend RSA 378:6, I(b) to read as follows:

(b) **Except as provided in RSA 378:6, IV, for** ~~For~~ all other schedules filed with the commission, the commission may, by an order served upon the public utility affected, suspend the taking effect of said schedule and forbid the demanding or collecting of rates, fares, charges or prices covered by the schedule for such period or periods, not to exceed 3 months from the date of the order of suspension, but if the investigation cannot be concluded within a period of 3 months, the commission in its discretion and with reasonable explanation may extend the time of suspension for 5

additional months.

3 New Paragraph; Approval of Tariffs for Telephone Services. Amend RSA 378:6 by inserting after paragraph III the following new paragraph:

IV. Any tariff for services filed for commission approval by a telephone utility, except a tariff reviewed pursuant to RSA 378:6, I(a), shall become effective as filed 30 days after filing, unless the commission amends or rejects the filing within the 30 day period. The commission may, in its discretion and with reasonable explanation, including an explanation of the likely areas of disagreement with the tariff, extend the time for its determination by up to 30 days. At its discretion, the commission may permit changes to existing tariffs to become effective in fewer than 30 days from the date of filing.

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

AMENDED ANALYSIS

This bill establishes a legislative oversight committee on telecommunications restructuring.

This bill also provides for approval by the public utilities commission of tariffs for new telephone services.

1997-0697h

Amendment to HB 453

Proposed by the Committee on Commerce

Amend the bill by replacing all after section 3 with the following:

4 Definition; "Sales Finance Company." Amend RSA 361-A:1, XI to read as follows:

XI. "Sales finance company" means a person engaged, in whole or in part, directly or indirectly in the business of providing financing to one or more retail buyers, or in the business of purchasing retail installment contracts from one or more retail sellers. The term includes but is not limited to a **savings** bank, trust company, **credit union, cooperative bank**, finance company, lending agency, industrial bank, or investment company, if so engaged. The term does not include the pledgee of an aggregate number of such contracts to secure a bona fide loan thereon, ***nor does it include a retail seller who (1) makes a retail installment contract and assigns such contract either within 5 business days, if the contract requires monthly payments, or within 2 business days, if the contract requires payments more frequently than monthly, of the contract's execution by the retail buyer and retail seller, or (2) makes 4 or fewer retail installment contracts in any year or has 4 or fewer retail installment contracts outstanding at any time, the aggregate outstanding principal balance of which does not exceed \$10,000 at any time; or (3) makes retail installment contracts to employees for the purchases of motor vehicles solely from the retail seller employer.***

5 Licensing Requirements; Retail Sellers and Sales Finance Companies. Amend RSA 361-A:2, I to read as follows:

I. No person shall engage in the business of a sales finance company or retail

seller in this state without a license therefor as provided ~~herein~~ ***in this chapter***. No **savings** bank, trust company, **credit union, cooperative bank**, or industrial bank shall be required to obtain such a license but shall comply with ~~all of~~ the ~~other~~ provisions of ~~this chapter~~ ***RSA 361-A:8-10, unless otherwise exempted in this chapter.***

6 New Paragraph; Licensing Requirements; Retail Sellers and Sales Finance Companies. Amend RSA 361-A:2 by inserting after paragraph II the following new paragraph:

II-a. Sales finance company license applicants shall at the same time file with the commissioner a \$25,000 surety bond to the state for the use of the state and any person who may have a cause of action against the principal in the bond under the provisions of this chapter, and conditioned that the principal will conform to and abide by each provision of this chapter and will pay to the state and to any such person any sum that may become due or owing under this chapter from the principal of the bond to the state or to such person. Recovery against the bond may be made by the state after due notice and hearing in accordance with the provisions of RSA 541-A, and by any such person who may have obtained a final judgment in a court of competent jurisdiction naming said principal. The surety bond shall include a provision requiring the surety to give written notice to the commissioner 10 days in advance of the cancellation or termination of the bond. A separate bond shall be required for each different name under which a sales finance company conducts its business in this state.

7 Licensing Requirements; Retail Sellers and Sales Finance Companies. Amend RSA 361-A:2, V(a) to read as follows:

V.(a) Upon the filing of the application for a sales finance company license and payment of the required fee, if the bank commissioner determines that the applicant's financial resources and responsibility, experience, personnel, and record of past or proposed conduct warrant the public's confidence and that the business will be operated lawfully, honestly, and fairly within the purposes of this chapter, the bank commissioner shall enter an order approving such application and shall issue a license to the applicant to engage in the business of a sales finance company under and in accordance with the provisions of this chapter. Each *sales finance company* license shall expire on December 31 of each calendar year, **and each retail seller license shall expire on April 30 of each calendar year**. No sales finance company licensee shall transact any business provided for by this chapter under any other trade names unless the licensee holds a separate license for the business conducted under the other trade name.

8 Rulemaking. Amend RSA 361-A:2, VI to read as follows:

VI. The bank commissioner ~~[shall]~~ **may** adopt rules, pursuant to RSA 541-A, relative to ~~[licensing under this section]~~ **the administration and enforcement of this chapter**.

9 New Paragraph; Annual Report; Penalties for Failure to Disclose or Underdisclosure. Amend RSA 361-A:2-b by inserting after paragraph IV the following new paragraph:

V. A licensee who files an annual report under this section which fails to disclose or materially underdiscloses retail installment contracts made during the reporting year may, after opportunity for hearing pursuant to RSA 541-A, be subject to a fine of not more than \$1,000 and to license revocation or suspension pursuant to RSA 361-A:3.

10 Suspension or Revocation of Licenses. Amend RSA 361-A:3, I(b) to read as follows:

(b) Willful failure to comply with any provision of this chapter ~~[relating to retail installment contracts]~~;

11 New Section; Cease and Desist Orders. Amend RSA 361-A by inserting after section 3 the following new section:

361-A:3-a Cease and Desist Orders. Whenever the commissioner has reasonable cause to believe that any person is engaging in the business of a sales finance company or retail seller without obtaining a license as provided in this chapter, the commissioner may, in addition to all actions provided for in this chapter, enter an order requiring such person to cease and desist from such violation. If any person refuses to obey such order, an action may be brought by the commissioner or by the attorney general on the commissioner's behalf in any superior court in this state to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance of such violation. In any such action, an order or judgment may be entered awarding a temporary or permanent injunction, and awarding the commissioner or the attorney general or both costs in bringing such action. The court shall have the power to enforce obedience to such injunction, in addition to all the court's customary powers, by a fine not exceeding \$10,000 or by imprisonment, or both.

12 Fine Increased; Powers of Bank Commissioner. Amend RSA 361-A:5 to read as follows:

361-A:5 Powers of Bank Commissioner. The bank commissioner shall have the power to issue a subpoena to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before ~~[him]~~ **the commissioner** in any matter over which ~~[he]~~ **the commissioner** has jurisdiction, control or supervision pertaining to the provisions of this chapter. ~~[He]~~ **The commissioner** shall have the power to administer oaths and affirmation to any person whose testimony is required. If any person shall refuse to obey any such subpoena or to give testimony or to produce evidence as required thereby, any justice of the superior court may, upon application and proof of such refusal, order the issuance of a subpoena, or subpoena duces tecum, out of the superior court, for the witness to appear before the superior court to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the superior court, the clerk shall issue such subpoena, as directed, requiring the person to whom it is directed to appear at the time and place therein designated. If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the bank commissioner may apply to any justice of the superior court who, after proof of such refusal, shall issue such citation, directed to any sheriff, for the arrest of such person, and, upon ~~[his]~~ **such person's** being brought before such justice, proceed to a hearing of the case. The ~~[justice]~~ **court** shall have power to enforce obedience to such subpoena, and the answering of any question and the production of any evidence that may be proper, by a fine not exceeding ~~[\$100]~~ **\$10,000** or by imprisonment ~~[in the county jail]~~, or by both.

13 Assistants; Payment. Amend RSA 361-A:6 to read as follows:

361-A:6 Assistants. For the enforcement of the provisions ~~[hereof]~~ **of this chapter**, the bank commissioner is authorized to appoint, subject to the provisions of the personnel law, such personnel as are necessary. The salary, traveling expenses, and all expenses of administration and enforcement of the provisions ~~[hereof]~~ **of this chapter** shall be paid out of fees received from licenses issued ~~[hereunder]~~ **under this chapter, and funds collected pursuant to RSA 383:11**.

14 Examinations. Amend RSA 361-A:6-a, II to read as follows:

II. The affairs and records of every sales finance company licensee or person shall be subject at any time to periodic, special, regular, or other examination by the banking department with or without notice to the licensee *or person. Those licensees or persons that maintain their files and business documents in another state shall appoint a New Hampshire agent and shall return such files and documents to their principal New Hampshire office or the office of their New Hampshire agent for examination no later than 21 calendar days after being requested to do so by the banking department. Failure to provide files and documents within the time established by this paragraph shall subject a licensee or person to a fine of \$50 per day for each day after 21 days the files and documents are not produced. Failure to provide files and documents within 60 days after being requested to do so by the banking department shall be sufficient cause for license revocation, suspension, or denial.*

15 Requirements; Retail Installment Contracts. Amend RSA 361-A:7, I to read as follows:

I.(a) A retail installment contract shall be in writing, shall be signed by ~~[both]~~ the buyer and *(1) for direct loans, the sales finance company; or (2) for indirect loans, the seller* and shall be completed as to all essential provisions or by memorandum as provided in paragraph VI prior to the signing of the contract by the buyer.

(b) The printed portion of the contract, other than instructions for completion, shall be in at least 8 point type. The contract shall contain in a size equal to at least 10 point bold type: A specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case, and the following notice: "Notice to the Buyer: 1. Read this contract before signing. 2. You are entitled to an exact copy of the contract you sign."

(c) The seller shall, *for an indirect loan, or the sales finance company shall, for a direct loan,* deliver to the buyer, or mail to ~~[him]~~ *the buyer* at ~~[his]~~ *the* address shown on the contract, a copy of the *signed* contract ~~[signed by the seller]~~ *buyer*. Until the seller *or sales finance company* does so, a buyer who has not received delivery of the motor vehicle shall have the right to rescind ~~[his]~~ agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract, or if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least 10 point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

(d) The contract shall contain the names of the seller and the buyer, *if an indirect loan, or the names of the sales finance company and the buyer, if a direct loan;* the place of business of the seller, *if an indirect loan, or the sales finance company, if a direct loan,* the legal residence or place of business of the buyer as specified by the buyer and, *for an indirect loan,* a description of the motor vehicle including its make, year model, model and identification numbers or marks. *For a direct loan, the sales finance company shall retain in the loan file a copy of the purchase and sales agreement between the buyer and the seller that contains a description of the motor vehicle that is substantially similar to the description required in the contract for an indirect loan.*

16 Time Balance Installments. Amend RSA 361-A:7, II(h) to read as follows:

(h) The time balance, which is the sum of (f) and (g), payable in installments by the buyer ~~[to the seller]~~, the number of installments, the amount of each installment and the due date or period thereof.

17 Requirements; Insurance. Amend RSA 361-A:7, III to read as follows:

III. The amount, if any, included for insurance, which may be purchased by *or protects* the holder of the retail installment contract, shall not exceed the applicable premiums chargeable in accordance with the rates filed with the insurance commissioner. If dual interest insurance on the motor vehicle is purchased by the holder, ~~[he]~~ *the holder* shall, within 30 days after execution of the retail installment contract, send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance. The buyer shall have the privilege of purchasing ~~[such]~~ insurance from an agent or broker of ~~[his]~~ *the buyer's* own selection authorized by the insurance commissioner to do business in the state, but in such case the inclusion of the *dual interest* insurance premium in the retail installment contract shall be optional with the seller.

18 Prohibitions; Pyramiding of Delinquency or Collection Charges. Amend RSA 361-A:7, V to read as follows:

V. The holder may, if the contract so provides, collect a *single* delinquency and collection charge on each installment in default for a period not less than 10 days in an amount not in excess of 5 percent of ~~[each]~~ *the* installment ~~[or 6 percent per annum on the total unpaid balance, whichever is greater]~~ *in default*. In addition to such delinquency and collection charge, the contract may provide for the payment of reasonable attorneys' fees where such contract is referred for collection to an attorney not a salaried employee of the holder of the contract plus the court costs and the financier's out-of-pocket collection expenses. *The pyramiding of delinquency or the collection of unfair late charges as prohibited in Federal Reserve Regulation AA, 12 C.F.R. 227.15, as amended from time to time, is prohibited.*

19 Requirements; Retail Installment Contracts. Amend RSA 361-A:7, VII to read as follows:

VII. ~~[Upon]~~ ***Within 5 business days of receipt of*** written request from the buyer ~~[at reasonable intervals]~~, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments ~~[and]~~ ***or*** the total amount unpaid under such contract, ***or both, as specified in the request.*** A buyer shall be given a written or stamped receipt for any payment when made in cash.

20 New Paragraph; Prohibitions; Retail Installment Contracts. Amend RSA 361-A:7 by inserting after paragraph VIII the following new paragraph:

IX. The following provisions are prohibited in retail installment contracts and shall not be enforceable:

(a) Any provision permitting the holder to waive the buyer's right to notice of default.

(b) Any provision permitting the holder to accelerate the principal balance under the contract for default for any cause other than:

(1) Non-payment of any amount due under the terms of the contract; or

(2) Failure to insure the vehicle which secures the contract against loss, if such insurance is required by the terms of the contract and except where the contract provides for the holder to purchase such insurance and collect the premiums for the insurance from the borrower.

(c) Any provisions permitting the holder to:

(1) Declare the note in default prior to 10 days following failure to make any installment payment due; or

(2) Add any charge for vehicle repairs to the principal balance of the contract after the contract has been executed; or

(3) Assess a prepayment penalty on a contract with a term of less than 6 years.

21 Direct Loans by Sales Finance Companies. Amend RSA 361-A:7-a to read as follows:

361-A:7-a Direct Loans by Sales Finance Companies. The provisions of RSA 361-A:7 shall apply to a sales finance company which provides direct loans to retail buyers for the purchase of motor vehicles from retail sellers, ***except RSA 361-A:7, I and II shall not apply to savings banks, trust companies, credit unions, cooperative banks or industrial banks which do not act as sellers, but provide direct loans to retail buyers and supply a disclosure statement in conformity with Federal Reserve Board Regulation Z Truth-in-Lending, 12 C.F.R. 226, as amended from time to time.***

22 Penalties. Amend RSA 361-A:11, III to read as follows:

III. Any person violating the provisions of RSA 361-A:7 or RSA 361-A:8 ***or engaging in the business of a sales finance company without a license if a license is required under this chapter*** shall be barred from recovering any finance charge, delinquency, or collection charge on the contract. ***Where no finance charge is payable under the terms of the contract, a person engaging in the business of a sales finance company without a license shall be barred from recovering any amount in excess of the wholesale market value of the vehicle, if the vehicle was purchased by the seller at a wholesale auction or other wholesale outlet, or the trade-in value of the vehicle if the seller acquired the vehicle in trade. Such value shall be that quoted for New Hampshire or the New England region in a value quotation publication generally recognized by the motor vehicle industry and as specified by the commissioner in rules adopted pursuant to RSA 541A.***

23 Effective Date.

I. Sections 2, 6, and 9 of this act shall take effect January 1, 1998.

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

AMENDED ANALYSIS

This bill changes certain definitions under RSA 361-A, relative to regulation of sales finance companies and retail sellers. The bill also increases penalties for failure to comply with this chapter and changes the requirements and prohibitions for retail installment contracts. The bill also makes the bank commissioner's rulemaking authority under this chapter discretionary rather than mandatory.

1997-0661h

Amendment to HB 455-FN-LOCAL

Proposed by the Committee on Criminal Justice and Public Safety

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

1 Statement of Purpose. The general court finds that preliminary breath tests for alcohol concentration are valuable tools for the enforcement of prohibitions against operating motor vehicles, boats, and off highway recreational vehicles (OHRVs) while intoxicated. The general court intends to facilitate the enforcement of these provisions by allowing the results of the preliminary breath test to be admissible as evidence of probable cause to arrest the operator, and by suspending the license or nonresident driving privilege of any person refusing the test for 6 months. The general court's intent shall be accomplished relative to motor vehicles by amending RSA 265:92-a, I; relative to boats by amending RSA 270:57, I; and relative to OHRVs by the amendment to RSA 265:92-a, I, which is applicable to OHRVs through RSA 215-A:11-i.

2 Preliminary Breath Test for Alcohol Concentration. Amend RSA 265:92-a, I to read as follows:

I. Any police officer, who has been certified by the police standards and training council according to standards for such certification contained in rules adopted by ~~the~~ **the** council pursuant to RSA 541-A, having reasonable grounds to believe that a person has been driving ~~or operating~~ a vehicle on a way while under the influence of intoxicating liquor or controlled drug or while the person's alcohol concentration was 0.08 or more **or in the case of a person under the age of 21, 0.02 or more** may, without making an arrest, request that such person submit to a preliminary breath test for alcohol concentration to be administered by the officer. **Any person who drives a vehicle upon the ways of this state and has been requested to submit to a preliminary breath test by an officer having reasonable grounds as set forth above shall be deemed to have given consent for the purpose of determining the presence of alcohol in the person.** The results of this test ~~shall not be admissible in evidence by the prosecution, and failure to submit to the test shall not constitute a violation of this chapter~~ **may be admissible in evidence by the prosecution to establish probable cause for a subsequent arrest. If a person refuses upon the request of a law enforcement officer to submit to a preliminary breath test, the director shall suspend the person's license to drive or nonresident driving privilege for a period of 6 months. The 6-month suspension period imposed pursuant to this section shall not run concurrently with any other suspension imposed under the provisions of this title. Any such suspension or denial of a license or privilege to drive shall be imposed in addition to any other suspension provided by law. A refusal of consent for any post-arrest physical testing and testing of blood, urine, or breath following any one arrest shall be deemed one refusal for the purposes of this section.** Nothing contained in this section shall be construed to prevent or require a subsequent test pursuant to RSA 265:84. ~~[The police officer requesting the test shall advise orally and in writing the person to be tested that his failure to take the test or his taking of the test shall not be construed to prevent or require a subsequent test pursuant to RSA 265:84.]~~ **Before any preliminary breath test is given, the law enforcement officer shall inform the person that a refusal to submit to the test will result in the suspension or denial of a license or privilege to drive.** The results of the test shall be furnished immediately in writing to the person tested by the police officer administering the test.

3 Preliminary Breath Test for Alcohol Concentration. Amend RSA 270:57, I to read as follows:

I. Any authorized agent or any peace officer who has been trained and certified according to standards for such training and certification set by the police standards and training council and contained in rules adopted by the ~~the~~ **the** council pursuant to RSA 541-A, having reasonable grounds to believe that a person has been operating or was in control of a boat upon the public waters of the state while under the influence of intoxicating liquor or controlled drugs or any combination of intoxicating liquor or controlled drugs may, without making an arrest, request that such person submit to a preliminary breath test to be administered by the officer. **Any person operating or in control of a boat upon the waters of this state and who has been requested to submit to a preliminary breath test by an officer having reasonable grounds as set forth above shall be deemed to have given consent for the purpose of determining the presence of alcohol in the person.** The results of this test ~~shall not be admissible in evidence by the prosecution, and failure to submit to the test shall not constitute a violation of this chapter~~ **may be admissible in evidence by the prosecution to establish probable cause for a subsequent arrest. If a person refuses upon the request of a law enforcement officer to submit to a preliminary breath test, the director shall suspend the person's license to drive or nonresident driving privilege for a period of 6 months. The 6-month suspension period imposed pursuant to this section shall not run concurrently with any other suspension imposed under the provisions of this title. Any such suspension or denial of a license or privilege to drive shall be imposed in addition to any other suspension provided by law. A refusal of consent for any post-arrest physical testing and testing of blood, urine, or breath following any one arrest shall be deemed one refusal for the purposes of this section.** Nothing contained in this section shall be construed to prevent or require a subsequent test pursuant to RSA 270:49. ~~[The officer requesting the test shall advise the person to be tested that his failure to take the test or his taking of the test shall not be construed to prevent or require a subsequent test pursuant to RSA 270:49.]~~ **Before any preliminary breath test is given, the officer shall inform the person that a refusal to submit to the test will result in the suspension or denial of a license or privilege to drive and operate a boat.** The results of the test shall be furnished forthwith to the person tested by the officer administering the test.

4 Effective Date. This act shall take effect January 1, 1998.

1997-0473h

Amendment to HB 469

Proposed by the Committee on Executive Departments and Administration

Amend the bill by replacing all after section 3 with the following:

3 General Anesthesia, Deep Sedation, or Conscious Sedation. Amend RSA 317-A:12, XII-a(e) to read as follows:

(e) The issuance of permits for use of general anesthesia, deep sedation, and conscious sedation, ***or of permits for use of conscious sedation;*** ~~and~~

4 Board Investigation Authority; Requirements for Professional Liability Insurers Added. Amend RSA 317-A:17, V to read as follows:

V.(a) Every insurer, including self-insurers, providing professional liability insurance to a licensee of the board shall send a complete report to the board as to all reservable claims and suits coincident with the initiation of an action for dental injury within 30 days after the initiation of the action. For the purpose of this paragraph, dental injury means any adverse, untoward, or undesired consequences arising out of or sustained in the course of professional services rendered by a dental care provider, whether resulting from negligence, error, or omission in the performance of such services; from rendition of such services without informed consent or in breach of warranty or in violation of contract; from failure to diagnose; from premature abandonment of a patient or of a course of treatment; from failure properly to maintain equipment or appliances necessary to the rendition of such services; or otherwise arising out of or sustained in the course of such services.

(b) The board shall conduct an investigation of any person licensed by the board who has been the subject of 3 insurance claims or legal judgments for medical injury as defined in RSA 329:17, III, which pertain to 3 different events within any consecutive 5-year period commencing with January 1, 1988.

5 Permit for General Anesthesia, Deep Sedation, or Conscious Sedation. Amend RSA 317A:20, II to read as follows:

II. Any dentist who wishes to administer general anesthesia, deep sedation, ~~and~~ ***or*** conscious sedation shall apply to the board for ~~a~~ ***the appropriate*** permit and pay an application fee set by the board in accordance with RSA 317-A:12, XII-a.

6 Technical Correction. Amend RSA 317-A:20, IV to read as follows:

IV. Such things as the board shall determine to be "dental hygiene" under ~~sections~~ RSA 317-A:12 or RSA 317-A:21 shall not be deemed to be the practice of dentistry within the meaning of this section.

7 Reference to Dental Hygienists. Amend RSA 317-A:21, II to read as follows:

II. Applications for licensure ***as a dental hygienist*** shall be made to the board in writing and shall be accompanied by a fee established by the board and by satisfactory proof that the applicant is a graduate of a school of dental hygiene with a minimum of a 2-year program in an institution of higher education, the program of which is accredited by a national accrediting agency recognized by the United States Department of Education and the American Dental Association Commission of Dental Accreditation.

8 Only Licensed Persons May Practice. Amend RSA 317-A:28 to read as follows:

317-A:28 ~~[Assistants; Qualifications]~~ ***Unlicensed Persons Prohibited.*** ~~[No]~~ ***A manager, proprietor, partnership, association, or corporation owning, operating, managing, or controlling any place where dental work is done, provided or contracted for shall employ, keep, or retain any unlicensed person or dentist as an operator only licensed dentists to practice dentistry and licensed dental hygienists to practice dental hygiene.***

9 List of Dentists and Assistants. Amend RSA 317-A:29 to read as follows:

317-A:29 List of ~~Assistants~~ ***Dentists and Dental Hygienists.*** Any manager, proprietor, partnership, association, or corporation specified in RSA 317-A:28 shall, within 10 days after demand made by the secretary-treasurer of the board by registered mail, furnish to the secretary-treasurer the names and addresses of all persons practicing ~~[or assisting in the practice of]~~ dentistry ***or dental hygiene*** in ~~his~~ ***their*** or its place of business or under ~~his~~ ***their*** or its control, together with a sworn statement showing by what license or authority said persons are practicing.

10 Effective Date. This act shall take effect July 1, 1997.

AMENDED ANALYSIS

This bill:

I. Expands the scope of activity allowed under temporary licenses to include voluntary dental or dental hygiene services.

II. Requires all insurers providing professional liability insurance to dental licensees to send a report to the board as to all reservable claims and suits coincident with the initiation of an action for dental injury within 30 days after the initiation of the action. The bill defines dental injury.

III. Requires all persons who act as dental hygienists to be licensed.

1997-0657h

Amendment to HB 478

Proposed by the Committee on Labor, Industrial and Rehabilitative Services

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

AN ACT relative to workers' compensation compliance statements and making a technical correction.

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

1 New Section; Compliance Statement. Amend RSA 281-A by inserting after section 4 the following new section:

281-A:4-a Workers' Compensation Compliance Statement.

I. Within 30 days following a written request from the commissioner, any building or construction industry contractor, subcontractor or independent contractor engaged in the nonresidential building or construction industry shall deliver to the commissioner a workers' compensation compliance statement. The workers' compensation compliance statement shall state the total number of employees employed during the 4-month period preceding the request and shall state the total number of hours the contractor, subcontractor, and independent contractor compensated such employees during that 4-month period and which hours apply to the appropriate National Council on Compensation Insurance (NCCI) classification code applicable to the scope of work performed. Any contractor, subcontractor, or independent contractor who fails to comply with this section or who falsifies information on the statement may be fined up to \$1,000 for each week of noncompliance beginning on the date of such failure or falsification. The commissioner shall be entitled to all costs and fees directly associated with obtaining any information not properly made available under this section. All moneys collected as a fine under this section shall be forwarded to the state treasurer and deposited into the general fund. The commissioner shall make available a form as may be needed to comply with this section.

II. Any person may request that the commissioner provide such person with a copy of a contractor, subcontractor, or independent contractor's workers' compensation compliance statement. If the commissioner deems it necessary, the commissioner shall obtain such statement from the contractor, subcontractor, or independent contractor and shall make it available to the requesting party. The commissioner shall be required to obtain and provide the requested compliance statement if the requesting person submits evidence to the commissioner of a contractor's, subcontractor's, or independent contractor's noncompliance with RSA 281-A. No contractor, subcontractor, or independent contractor, however, shall be required to deliver to the commissioner a requested workers' compensation compliance statement more than twice in one calendar year.

2 Technical Correction. Amend RSA 281-A:2, VII(b) to read as follows:

(b) "Employee," with respect to public employment shall not include any inmate of a county or state correctional facility who is, under RSA 651, required or allowed to work or perform services for which no significant remuneration is provided, ***any volunteer not covered under RSA 281-A:2, VII(a)(2) through (5), who performs services for which no significant remuneration is provided***, or any participant performing community service work under a court order or the provisions of a court diversion program. "Employee," with respect to public employment, shall include any person participating in a local welfare work program established under RSA 165:31; however, the local governing body may vote to make the provisions of this chapter not applicable to local welfare work program participants through guidelines adopted under RSA 165:1, II.

3 Effective Date.

I. Section 1 of this act shall take effect January 1, 1998.

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

AMENDED ANALYSIS

This bill requires contractors, subcontractors, and independent contractors engaged in the nonresidential building or construction industry to provide a workers' compensation compliance statement, upon request.

This bill also makes a technical correction in RSA 281-A:2.

1997-0583h

Amendment to HB 483

Proposed by the Committee on Commerce

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

1 Definition; "Branch Office." Amend RSA 421-B:2, IV-a to read as follows:

IV-a. "Branch office" means any ~~[office to which a broker-dealer directly or indirectly contributes to a substantial portion of the operating expenses and which is utilized by any person associated with the broker-dealer who is engaged in the investment banking or securities business, whether it be a commercial office space or residence, or an office for which the broker-dealer authorizes a listing in any publication or any other media, including a professional dealer's digest or a telephone directory, which listing designates a place as an office or if the broker-dealer designates any such place with any organization as an office]~~ **location other than the main office, identified by any means to issuers, other broker-dealers or investment advisers or to the public, customers, or clients as a location at which a broker-dealer or investment adviser conducts a securities or investment advisory business. "Branch office" shall not include:**

(a) A location identified solely in a telephone directory line listing or on a business card or letterhead if:

(1) The listing, card or letterhead also sets forth the address and telephone number of a New Hampshire office of the broker-dealer or investment adviser from which individuals conducting business from such identified location are directly supervised; and

(2) No more than one agent or investment adviser agent transacts business on behalf of the broker-dealer or investment adviser from such identified location; or

(b) Any other location not within the intent of this paragraph as the secretary of state may determine.

2 New Paragraph; Limited Licensing of Canadian Broker Dealers Doing Business with Canadian Citizens in New Hampshire. Amend RSA 421-B:6 by inserting after paragraph VII the following new paragraph:

VIII.(a) A broker-dealer that is resident in Canada and has no office or other physical presence in this state may, provided the broker-dealer is licensed in accordance with this section, effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:

(1) A person from Canada who is temporarily resident in this state, with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States; or

(2) A person from Canada who is resident in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.

(b) An agent who will be representing a Canadian broker-dealer licensed under this section may, provided the agent is licensed in accordance with this section, effect transactions in securities in this state as permitted for the broker-dealer in subparagraph (a).

(c) A Canadian broker-dealer may become licensed under this section, provided that the broker-dealer:

(1) Files an application in the form required by the jurisdiction in which it has its head office;

(2) Files a consent to service of process;

(3) Is registered as a broker or dealer in good standing in the jurisdiction from which it is effecting transactions into this state and files evidence thereof; and

(4) Is a member of a self-regulatory organization or stock exchange in Canada.

(d) An agent who will be representing a Canadian broker-dealer licensed under this section in effecting transactions in securities in this state may become licensed under this section, provided that the agent:

(1) Files an application in the form required by the jurisdiction in which the broker-dealer has its head office;

(2) Files a consent to service of process; and

(3) Is registered in good standing in the jurisdiction from which he or she is effecting transactions into this state and files evidence thereof.

(e) If no denial order is in effect and no proceeding is pending under this chapter, the license becomes effective on the thirtieth day after an application is filed unless earlier made effective.

(f) A Canadian broker-dealer licensed under this section shall:

(1) Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing;

(2) Provide the secretary of state upon request with its books and records relating to its business in this state as a broker-dealer;

(3) Inform the secretary of state forthwith of any criminal action taken against the broker-dealer or its agent or of any finding or sanction imposed on the broker-dealer as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation, or similar conduct; and

(4) Disclose to its clients in the state that the broker-dealer and its agents are not subject to the full regulatory requirements in this chapter.

(g) An agent of a Canadian broker-dealer licensed under this section shall:

(1) Maintain his or her provincial or territorial registration in good standing;

(2) Inform the secretary of state forthwith of any criminal action, taken against him or her, or of any finding or sanction imposed on the agent as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation, or similar conduct.

(h) Renewal applications for Canadian broker-dealers and agents under this section shall be filed before December 1 each year and may be made by filing the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer has its head office, or if no such renewal application is required, the most recent application filed pursuant to subparagraph (c)(1) or subparagraph (d)(1), as the case may be.

(i) Every applicant for a license or renewal of a license under this section shall pay the fee for broker-dealers and agents as required under RSA 421-B:31.

(j) A Canadian broker-dealer or agent licensed under this section shall only effect transactions in this state

(1) As permitted in subparagraph (a) or (b);

(2) With or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, and (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts or other financial institutions or institutional buyers, whether acting for themselves or as trustees; and

(3) As otherwise permitted by this chapter.

(k) A Canadian broker-dealer or agent licensed under this section and acting in accordance with the limitations set out in subparagraph (j) is exempt from all of the requirements of this chapter, except the anti-fraud provisions and the requirements set out in this section. Such Canadian broker-dealer or agent may only have its license under this section denied, suspended or revoked for a breach of the anti-fraud provisions of this chapter or the requirements in this section.

3 New Paragraph; Limited Licenses for Certain Broker-Dealers. Amend RSA 421B:7 by inserting after paragraph II the following new paragraph:

II-a. The secretary of state may issue a limited license to a broker-dealer whose license is similarly restricted by the National Association of Securities Dealers.

4 Examination of Investment Adviser Offices. Amend RSA 421-B:9, I to read as follows:

I. For the purpose of determining the financial condition, fulfillment of its contractual obligations, and compliance with the law, whenever the secretary of state shall deem it expedient, he shall examine, either in person or by some examiner duly authorized by him the affairs, transactions, accounts, records, documents, and assets of each licensed broker-dealer, investment adviser, or issuer-dealer as to any matter relevant to the financial affairs or obligations of the broker-dealer, investment adviser, or issuer-dealer or any other fact relative to its business methods, management and its dealings with clients, as often and to the extent he deems advisable. Except as otherwise provided, he shall examine each domestic broker-dealer, **investment adviser**, or issuer-dealer and domestic branches of foreign broker-dealers or ~~issuer-dealers~~ **investment advisers** at least once every 4 years. Examination of an alien broker-dealer, investment adviser, or issuer-dealer shall be limited to its broker-dealer, investment adviser, or issuer-dealer transactions, assets, trust deposits, and affairs in the United States except as otherwise required by the secretary of state.

(a) The secretary of state shall in like manner examine each broker-dealer, investment adviser, or issuer-dealer applying for an initial license to transact securities business in this state.

(b) In lieu of making his own examination, the secretary of state may, in his discretion, accept a full report of the most recent examination of a foreign or alien broker-dealer, investment adviser, or issuer-dealer certified to by the securities supervisory official of another state or by the Securities Exchange Commission, or the National Association of Securities Dealers.

(c) ~~[As far as practical, the examination of a foreign or alien broker-dealer, investment adviser, or issuer-dealer shall be made in cooperation with the Securities Exchange Commission, the National Association of Securities Dealers and the securities supervisory officials of other states in which the broker-dealer, investment adviser, or issuer-dealer transacts business.]~~ ***For the purpose of avoiding unnecessary duplication of examinations, the secretary of state, insofar as he deems it practicable in administering this section, may cooperate with the securities administrators of other states, the Securities and Exchange Commission and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.***

5 Securities Violations in Other States or Provinces. Amend RSA 421-B:10, I(b)(2) to read as follows:

(2) Has willfully violated or failed to comply with any provision of this title or a predecessor law, ***or of any other state's or Canadian province's securities laws***, or the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or any rule under any of such statutes, or any order thereunder of which he has notice and to which he is subject;

6 "Preliminarily" Added. Amend RSA 421-B:10, I(b)(4) to read as follows:

(4) Is permanently, ***preliminarily***, or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

7 New Subparagraph; Order by Another State. Amend RSA 421-B:10, I(b) by inserting after subparagraph (5) the following new subparagraph:

(5-a) Is the subject of an adjudication or order entered after notice and opportunity for hearing by an administrator of another state, federal agency, or Canadian province that reflects that person has violated the securities laws of another state or Canadian province.

8 Misdemeanor and Felony Convictions Included. Amend RSA 421-B:10, I(b)(6) to read as follows:

(6) Is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the Securities and Exchange Commission denying, ***suspending***, or revoking licenses or registration as a broker-dealer, issuer-dealer, agent, or investment adviser, or the substantial equivalent of those terms, or is the subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States Postal Service fraud order ***or has been convicted within the past 10 years of any misdemeanor involving a security or any aspect of the securities business, or any felony which has not been annulled by a court;***

9 Process for Order to Show Cause. Amend RSA 421-B:10, III to read as follows:

III. The secretary of state may issue an order requiring the person to whom any license has been granted to show cause why the license should not be revoked. The order shall be calculated to give reasonable notice of the time and place for the revocation hearing, and shall state the reasons for the issuance of the order. The secretary of state may by order summarily postpone or suspend any license pending final determination of any order to show cause, or of any other proceeding under this section, provided he finds that the public interest would be irreparably harmed by delay in issuing such order. Upon the entry of the order, the secretary of state shall promptly notify the applicant or licensee, as well as the employer or prospective employer if the applicant or licensee is an agent, that it has been entered and of the reasons for the order and that within 10 days after the receipt of a written request the matter will be set down for hearing. ~~[If no hearing is requested and none is ordered by the secretary of state, the order will remain in effect until it is modified or vacated by the secretary of state.]~~ ***If the person to whom an order to show cause is issued fails to request a hearing within 30 days of receipt of such order, and none is ordered by the secretary of state, then such person shall be deemed in default, and the order shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the secretary of state, for good cause shown.*** If a hearing is requested or ordered, the secretary of state, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

10 Addendum Requirements. Amend the introductory paragraph to RSA 421B:11, II to read as follows:

II. Before the secretary of state may accept ***(1)*** articles of incorporation for a new corporation under RSA 293-A, an application for a certificate of authority ***for a foreign corporation*** under RSA 293-A, ***(2)*** a certificate of limited partnership for a new limited partnership ***or an application for registration of a foreign limited partnership*** under RSA 304-B, ***(3)*** a certificate of formation for a new limited liability company or an application for ~~***registration***~~ ***registration*** as a foreign limited liability company under RSA 304-C, ***or (4) an application for*** registration of a registered limited

liability partnership or a notice of registration of a foreign registered limited liability partnership under RSA 304-A, ~~for an application for registration of a foreign partnership under RSA 305-A~~ the following requirements shall be met:

11 Correction to Addendum Requirement. Amend RSA 421-B:11, II(b) to read as follows:

(b) The statement shall be signed by the incorporators of a corporation to be formed, by an executive officer of an existing corporation, by the general partners or intended general partners if a limited partnership, by one or more members or managers authorized to do so if a limited liability company, or **by** one or more partners authorized to do so if a registered limited liability partnership or foreign registered limited liability partnership.

12 Annual Reporting Requirements for Registered Securities. Amend RSA 421-B:15, II-a to read as follows:

II-a. Every corporation and partnership having securities registered in this state shall, within ~~[90]~~ **120** days after the close of its fiscal year, file with the secretary of state annually a financial statement audited and certified by an independent certified public accountant. The audited statement shall be prepared in accordance with generally accepted accounting principles and such other standards as the secretary of state shall adopt by rule. Issuers of securities registered under this chapter shall also provide quarterly financial reports within 60 days of the end of each quarter to their shareholders, partners, and ~~[the secretary of state, except that issuers of open end mutual funds shall provide such reports on a semi-annual basis]~~ **members**. Such quarterly reports need not be independently audited. **The secretary of state may extend the time for filing such statement for good cause shown.**

13 Exemptions. Amend the introductory paragraph of RSA 421-B:17, I to read as follows:

I. The following securities are exempted from RSA 421-B:11, and RSA 421B:18, **I**:

14 New Subparagraph; Exemption. Amend RSA 421-B:17, I(m) to read as follows:

(m) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association[-];

(n) Any security designated by rule or order by the secretary of state after a finding that the designation is consistent with the purposes fairly intended by the policy and provisions of this title.

15 Exemptions. Amend the introductory paragraph of RSA 421-B:17, II to read as follows:

II. The following transactions are exempted from RSA 421-B:11 and RSA 421-B:18, **I**:

16 Cross-Reference Correction. Amend RSA 421-B:17, II(h)(3)(ix)to read as follows:

(ix) A Form U-4 as prepared by the National Association of Securities Dealers and the Securities and Exchange Commission for each officer or director who will be effecting transactions in New Hampshire pursuant to RSA 421B:2, ~~[H(d)]~~ **II(e)**;

17 Typographical Error Correction. Amend RSA 421-B:17, II(I) to read as follows:

(i) Any offer, but not a sale, ~~[or]~~ **of** a security for which a registration statement has been filed under both this chapter and the Securities Act of 1933, if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act; and any offer of a security if the sale of such security is or would be exempt under this section. The secretary of state may by rule or order exempt such other offers, but not sales, of securities for which a registration statement has been filed, consistent with the purposes of this chapter.

18 New Subpagraph; Exemption. Amend RSA 421-B:17, II by inserting after subparagraph (s) the following new subparagraph:

(t) Any security designated by rule or order by the secretary of state after a finding that the designation is consistent with the purposes fairly intended by the policy and provisions of this title.

19 Withdrawal of Abandoned Exemption Filings. Amend RSA 421-B:17, III to read as follow:

III. The secretary of state may issue an order requiring any person who claims the benefit of an exemption with respect to a specific security or transaction, to show cause why the exemption should not be revoked. The order shall be calculated to give reasonable notice of the time and place for the revocation hearing, and shall state the reasons for the entry of the order. The secretary of state may by order summarily suspend, deny or revoke an exemption pending final determination of any order to show cause, provided the secretary of state finds the public interest will be irreparably harmed by delay in issuing such an order. If an exemption is denied, revoked or suspended pending final determination of an order to show cause, a hearing on the merits shall be held within 10 days of the issuance. **The secretary of state may deem abandoned and withdraw any**

filing made pursuant to this section, if any person fails to respond in writing within 180 days, to a written request from the secretary of state requesting a response, such request having been sent via certified mail to the last known address of the person making the filing.

20 Administrative Penalty; Investor Education. Amend RSA 421-B:26, III and III-a to read as follows:

III. Any person who, either knowingly or negligently, violates any provisions of ~~[RSA 421-B:3, 421-B:4, 421-B:5, 421-B:6, 421-B:11, 421-B:19, or 421-B:23]~~ **this chapter** may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, including the forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties imposed pursuant to RSA 421-B:24 or civil liabilities imposed pursuant to RSA 421-B:25.

III-a. Every person who directly or indirectly controls a person liable under paragraph I ~~[or]~~, II, **or III** every partner, principal executive officer, or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the acts or transactions constituting the violation, either knowingly or negligently, ~~[violates any provisions of RSA 421-B:3, 421-B:4, 421-B:5, 421-B:6, 421-B:11, 421-B:19, or 421-B:23]~~ may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties imposed pursuant to RSA 421-B:24 or civil liabilities imposed pursuant to RSA 421-B:25. No person shall be liable under this paragraph who shall sustain the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist.

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

AMENDED ANALYSIS

This bill allows for limited licensing of Canadian broker-dealers and their agents conducting business with Canadian citizens who reside in New Hampshire.

The bill allows the bureau of securities regulation to deny, suspend, or revoke any license or to deny a license application if the licensee or applicant (1) has violate another state's or Canadian province's securities laws; (2) has been preliminarily enjoined by any court from any securities activity; (3) has been convicted of securities-related misdemeanors or any felonies; (4) is subject to an order of another state, federal agency, or Canadian province.

The bill requires a person to request an administrative hearing on a securities license revocation within 30 days of receipt of a show cause order. The bill requires addendum filings for foreign limited partnerships and changes the definition of "branch offices" of broker-dealers and investment advisors.

The bill also makes technical corrections and clarifications throughout RSA 421B.

This bill was requested by the bureau of securities regulation, department of state.

1997-0589h

Amendment to HB 495

Proposed by the Committee on Legislative Administration

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

1 Membership on Legislative Ethics Committee. Amend RSA 14-B:2, II to read as follows:

II. No person registered with the secretary of state as a lobbyist under RSA 15 shall serve as a member of the legislative ethics committee.

III. A committee meeting shall be called within 60 days of the convening of each biennial session. The members shall elect a chairperson and vice-chairperson at this meeting. The members shall serve for the biennium and shall not be removed from the committee for any reason except for good cause by unanimous vote of the remaining committee members. Members shall receive no compensation, except that legislative members shall receive mileage at the legislative rate and public members shall receive mileage at the state employee rate.

2 Effective Date. This act shall take effect July 1, 1997.

1997-0615h

Amendment to HB 502-LOCAL

Proposed by the Committee on Municipal and County Government

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

1 Special Town Meetings. Amend RSA 31:5, I to read as follows:

I.(a) No money shall be raised or appropriated or shall any appropriation previously made be reduced or rescinded at any special town meeting except by vote by ballot, nor unless the ballots cast at such meeting shall be equal in number to at least 1/2 of the number of legal voters borne on the checklist of the town ***entitled to vote*** at the annual or biennial election next preceding such special meeting; and such checklist, corrected according to law, shall be used at any meeting upon the request of 10 legal voters of the town. This section shall not apply to money to be raised for the public defense or any military purpose in time of war. In case an emergency arises requiring an immediate expenditure of money, the selectmen may petition the superior court for permission to hold a special town meeting which, if granted, shall give said meeting the same authority as ~~that~~ ***of*** an annual town meeting.

(b) "Emergency" for the purposes of this section shall mean a sudden or unexpected situation or occurrence, or combination of occurrences, of a serious and urgent nature, that demands prompt, or immediate action, including an immediate expenditure of money. This definition, however, does not establish a requirement that an emergency involves a crisis in every set of circumstances.

(c) To verify that an emergency exists, a petitioner shall present, and the court shall consider, a number of factors including:

(1) The severity of the harm to be avoided.

(2) The urgency of the petitioner's need.

(3) Whether the claimed emergency was foreseeable or avoidable.

(4) Whether the appropriation could have been made at the annual meeting.

(5) Whether there are alternative remedies not requiring an appropriation.

2 Special School District Meetings. Amend RSA 197:3, I to read as follows:

I.(a) No school district at any special meeting shall raise or appropriate money nor reduce or rescind any appropriation made at a previous meeting, unless the vote thereon is by ballot, nor unless the ballots cast at such meeting shall be equal in number to at least 1/2 of the number of voters of such district entitled to vote at the regular meeting next preceding such special meeting; and, if a checklist was used at the last preceding regular meeting, the same shall be used to ascertain the number of legal voters in said district; and such checklist, corrected according to law, may be used at such special meeting upon request of 10 legal voters of the district. In case an emergency arises requiring an immediate expenditure of money, the school board may petition the superior court for permission to hold a special district meeting, which, if granted, shall give said district meeting the same authority as an annual district meeting.

(b) "Emergency" for the purposes of this section shall mean a sudden or unexpected situation or occurrence, or combination of occurrences, of a serious and urgent nature, that demands prompt or immediate action, including an immediate expenditure of money. This definition, however, does not establish a requirement that an emergency involves a crisis in every set of circumstances.

(c) To verify that an emergency exists, a petitioner shall present, and the court shall consider, a number of factors including:

(1) The severity of the harm to be avoided.

(2) The urgency of the petitioner's need.

(3) Whether the claimed emergency was foreseeable or avoidable.

(4) Whether the appropriation could have been made at the annual meeting.

(5) Whether there are alternative remedies not requiring an appropriation.

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

AMENDED ANALYSIS

This bill defines the term "emergency," for the purposes of special town and school district meetings, as a sudden or unexpected situation or occurrence, or combination of occurrences, of a serious and urgent nature, that demands prompt or immediate action, including an immediate expenditure of money, but provides that a crisis is not a requirement of an emergency in every situation.

1997-0677h

Amendment to HB 511-FN-LOCAL

Proposed by the Committee on Commerce

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

AN ACT requiring health insurers to provide coverage for certain supplies, services, and education necessary in the treatment of diabetes.

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

1 New Section; Individual Policies; Accident and Health Insurance. Amend RSA 415 by inserting after section 6-d the following new section:

415:6-e Coverage for Diabetes Services and Supplies. Each insurer that issues or renews any individual policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses, shall provide to certificate holders of such insurance, who are residents of this state, coverage for medically appropriate and necessary outpatient self-management training and educational services, pursuant to a written order of a primary care physician or practitioner, including but not limited to medical nutrition therapy for the treatment of diabetes, provided by a certified, registered or licensed health care professional with expertise in diabetes, subject to the terms and conditions of the policy. Each insurer that issues or renews any individual policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses which provides a prescription rider shall cover medically appropriate or necessary insulin, oral agents and equipment used to treat diabetes subject to the terms and conditions of the policy. Each insurer that issues or renews any individual policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses which provides for durable medical equipment coverage shall provide coverage for medically appropriate or necessary equipment used to treat diabetes subject to the terms and conditions of the policy.

2 New Section; Group Policies; Accident and Health Insurance. Amend RSA 415 by inserting after section 18-e the following new section:

415:18-f Coverage for Diabetes Services and Supplies. Each insurer that issues or renews any policy, plan or contract of group or blanket accident or health insurance providing benefits for medical or hospital expenses, shall provide each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage for medically appropriate and necessary outpatient self-management training and educational services, pursuant to a written order of a primary care physician or practitioner, including but not limited to medical nutrition therapy for the treatment of diabetes, provided by a certified, registered or licensed health care professional with expertise in diabetes, subject to the terms and conditions of the policy. Each insurer that issues or renews any group or blanket policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses which provides a prescription rider shall cover medically appropriate or necessary insulin, oral agents and equipment used to treat diabetes subject to the terms and conditions of the policy. Each insurer that issues or renews any group or blanket policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses which provides for durable medical equipment coverage shall provide coverage for medically appropriate or necessary equipment used to treat diabetes subject to the terms and conditions of the policy.

3 New Section; Hospital Service Corporations. Amend RSA 419 by inserting after section 5-f the following new section:

419:5-g Coverage for Diabetes Services and Supplies. Every hospital service corporation and every similar corporation licensed under the laws of another state that issues or renews any policy, plan, or contract of individual or group or blanket accident or health insurance providing benefits for medical or hospital expenses, shall provide to each individual or group or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage for medically appropriate and necessary outpatient self-management training and educational services, pursuant to a written order of a primary care physician or practitioner, including but not limited to medical nutrition therapy for the treatment of diabetes, provided by a certified, registered or licensed health care professional with expertise in diabetes, subject to the terms and conditions of the policy. Each hospital service corporation that issues or renews any individual or group or blanket policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses which provides a prescription rider shall cover medically appropriate or necessary insulin, oral agents and equipment used to treat diabetes subject to the terms and conditions of the policy. Each hospital service corporation that issues or renews any individual or group or blanket policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses which provides for durable medical equipment coverage shall provide coverage for medically appropriate

or necessary equipment used to treat diabetes subject to the terms and conditions of the policy.

4 New Section; Medical Service Corporations. Amend RSA 420 by inserting after section 5-g the following new section:

420:5-h Coverage for Diabetes Services and Supplies. Every medical service corporation and every other similar corporation licensed under the laws of another state that issues or renews any policy plan, or contract of individual or group or blanket accident or health insurance providing benefits for medical or hospital expenses, shall provide to each individual or group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage for the medically appropriate and necessary outpatient self-management training and educational services, pursuant to a written order of a primary care physician or practitioner, including but not limited to medical nutrition therapy for the treatment of diabetes, provided by a certified, registered or licensed health care professional with expertise in diabetes, subject to the terms and conditions of the policy. Each medical service corporation that issues or renews any individual or group or blanket policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses which provides a prescription rider shall cover medically appropriate or necessary insulin, oral agents and equipment used to treat diabetes subject to the terms and conditions of the policy. Each medical service corporation that issues or renews any individual or group or blanket policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses which provides for durable medical equipment coverage shall provide coverage for medically appropriate or necessary equipment used to treat diabetes subject to the terms and conditions of the policy.

5 New Section; Nonprofit Health Service Corporations. Amend RSA 420-A by inserting after section 7-i the following new section:

420-A:7-j Coverage for Diabetes Services and Supplies. Every nonprofit health service corporation and every similar corporation licensed under the laws of another state that issues or renews any policy, plan, or contract of individual or group or blanket accident or health insurance providing benefits for medical or hospital expenses, shall provide to each individual or group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage for the medically appropriate and necessary outpatient self-management training and educational services, pursuant to a written order of a primary care physician or practitioner, including but not limited to medical nutrition therapy for the treatment of diabetes, provided by a certified, registered or licensed health care professional with expertise in diabetes, subject to the terms and conditions of the policy. Each nonprofit health service corporation that issues or renews any individual or group or blanket policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses which provides a prescription rider shall cover medically appropriate or necessary insulin, oral agents and equipment used to treat diabetes subject to the terms and conditions of the policy. Each nonprofit health service corporation that issues or renews any individual or group or blanket policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses which provides for durable medical equipment coverage shall provide coverage for medically appropriate or necessary equipment used to treat diabetes subject to the terms and conditions of the policy.

6 New Section; Health Maintenance Organizations. Amend RSA 420-B by inserting after section 8-j the following new section:

420-B:8-k Coverage for Diabetes Services and Supplies. Every health maintenance organization and every similar corporation licensed under the laws of another state that issues or renews any policy, plan, or contract of individual or group or blanket health insurance providing benefits for medical or hospital expenses, shall provide to each individual or group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage for the medically appropriate and necessary outpatient self-management training and educational services, pursuant to a written order of a primary care physician or practitioner, including but not limited to medical nutrition therapy for the treatment of diabetes, provided by a certified, registered or licensed health care professional with expertise in diabetes, subject to the terms and conditions of the policy. Each health maintenance organization that issues or renews any individual or group or blanket policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses which provides a prescription rider shall cover medically appropriate or necessary insulin, oral agents and equipment used to treat diabetes subject to the terms and conditions of the policy. Each health maintenance organization that issues or renews any individual or group or blanket policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses which provides for durable medical equipment coverage shall provide coverage for medically appropriate or necessary equipment used to treat diabetes subject to the terms and conditions of the policy.

7 Effective Date. This act shall take effect January 1, 1998.

AMENDED ANALYSIS

This bill requires health insurers, hospital service corporations, medical service corporations, nonprofit health service corporations, and health maintenance organizations to cover certain supplies, services, and education necessary in the treatment of diabetes.

1997-0722h

Amendment to HB 528-LOCAL

Proposed by the Committee on Science, Technology and Energy

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

1 Municipal Electric, Gas, or Water Systems. RSA 38 is repealed and reenacted to read as follows:

CHAPTER 38

MUNICIPAL ELECTRIC, GAS, OR WATER SYSTEMS

38:1 Definitions. In this chapter:

I. "Commission" means the public utilities commission, unless the context otherwise indicates.

II. "Utility" means any public utility engaged in the manufacture, generation, distribution, or sale of electricity, gas or water in the state.

III. "Municipality" means any city, town, unincorporated town, unorganized place, or village district within the state.

IV. "Municipal water company," means any water distribution system or water supply utility, owned or operated by a municipality, whether as a municipal department, separate company, or otherwise.

38:2 Establishment, Acquisition and Expansion of Plants. Any municipality may:

I. Establish, expand, take, purchase, lease, or otherwise acquire and maintain and operate in accordance with the provisions of this chapter, one or more suitable plants for the manufacture and distribution of electricity, gas, or water for municipal use, for the use of its inhabitants and others, and for such other purposes as may be permitted, authorized, or directed by the commission.

II. For these purposes, take, purchase and hold in fee simple or otherwise lease or otherwise acquire and maintain any real or personal estate and any rights therein, including water rights.

III. Do all other things necessary for carrying into effect the purposes of this chapter.

IV. Excavate and dig conduits and ditches in any highway or other land or place, and erect poles, place wires, and lay pipes for the transmission and distribution of electricity, gas, and water in such places as may be deemed necessary and proper.

V. Change, enlarge, and extend the same from time to time when the municipality shall deem necessary, and maintain the same, having due regard for the safety and welfare of its citizens and security of the public travel.

38:3 By Cities. Any city may initially establish such a plant after 2/3 of the members of the governing body shall have voted, subject to the veto power of the mayor as provided by law, that it is expedient to do so, and after such action by the city council shall have been confirmed by a majority of the qualified voters at a regular election or at a special meeting duly warned in either case. Such confirming vote shall be had within one year from the date of the vote to establish such a plant, and if favorable, shall create a rebuttable presumption that such action is in the public interest. If the vote is unfavorable, the question shall not be again submitted to the voters within 2 years thereafter.

38:4 By Towns or Village Districts. Any town or village district may initially establish such a plant after 2/3 of all the voters present and voting at an annual or special meeting, duly warned in either case, have voted by ballot with the use of the checklist that it is expedient to do so. A favorable vote to establish such a plant shall create a rebuttable presumption that such action is in the public interest. If such vote is unfavorable, the question shall not be again submitted to the voters within 2 years thereafter.

38:5 By Unincorporated Towns and Unorganized Places. Any unincorporated town or unorganized place may initially establish such a plant after 2/3 of the members of the county convention shall have voted that it is expedient to do so, and, if there are any registered voters in that unincorporated town or unorganized place, after such action by the county convention shall have been confirmed by a majority of the qualified votes in that unincorporated town or unorganized place at a regular election or at a special meeting duly warned in either case. Such confirming vote shall be had within one year from the date of the vote to establish such a plant, and if favorable, shall create a rebuttable presumption that such action is in the public interest. If the vote is unfavorable, the question shall not be again submitted to the voters within 2 years thereafter.

38:6 Notice to Utility. Within 30 days after the confirming vote provided for in RSA 38:3, 38:4, or 38:5 the governing body shall notify in writing any utility engaged, at the time of the vote, in generating or distributing electricity, gas, or water for sale in the municipality, of the vote. The municipality notifying any utility in such manner may purchase all or such portion of the utility's plant and property located within such municipality that the governing body determines to be necessary for the municipal utility service, and shall purchase that portion, if any, lying without the municipality which the public interest may require, pursuant to RSA 38:11 as determined by the commission. The notice to such utility shall include an inquiry as to whether the utility elects to sell, in the manner hereinafter provided, that portion of its plant and property located

within or without the municipality which the municipality has identified as being necessary for the municipal utility service.

38:7 Reply by Utility. The utility shall reply to the inquiry provided for in RSA 38:6 by delivering its answer in writing to the governing body within 60 days of the receipt of the inquiry. If the reply is in the negative, or if the reply is not made within the 60 days, the utility thereby forfeits any right it may have had to require the purchase of its plant and property by the municipality, and the municipality may proceed to acquire the plant as provided in RSA 38:10. If the reply is in the affirmative, the utility shall submit the price and terms it is willing to accept for all of its plant and property identified by the municipality in its inquiry, together with a detailed schedule of such plant and property with proper evidence of title. All of the plant and property identified by the municipality shall at all reasonable times thereafter be open to the examination of the officers and agents of the municipality and others charged with the duty of determining the fair value of the property.

38:8 By Agreement. The governing body of a municipality may negotiate and agree with the utility upon the price to be paid for such plant and property; provided, however, that such agreement shall not be binding upon the municipality until ratified pursuant to RSA 38:13.

38:9 Valuation.

I. If the municipality and the utility fail to agree upon a price, or if it cannot be agreed as to how much, if any, of the plant and property lying within or without the municipality the public interest requires the municipality to purchase, or if the schedules of property submitted in accordance with RSA 38:7 are not satisfactory, either the municipality or the utility may petition the commission for a determination of these questions.

II. The commission, after proper notice and hearing, shall decide the matters in dispute.

III. When required to fix the price to be paid for such plant and property, the commission shall determine the amount of damages, if any, caused by the severance of the plant and property proposed to be purchased from the other plant and property of the owner. In the case of electric utilities, such amount shall be limited to the value of such plant and property and the cost of direct remedial requirements, such as new through-connections in transmission lines, and shall exclude consequential damages such as stranded investment in generation, storage, or supply arrangements which shall be determined as provided in RSA 38:33.

IV. The expense to the commission for the investigation of the matters covered by the petition, including the amounts expended for experts, accountants, or other assistants, and salaries and expenses of all employees of the commission for the time actually devoted to the investigation, but not including any part of the salaries of the commissioners, shall be paid by the parties involved, in the manner fixed by the commission.

38:10 Construction or Condemnation. If the utility shall have replied to the inquiry provided for in RSA 38:7 in the negative or if it shall have failed to reply within the time prescribed in RSA 38:7, the municipality, in the event that it shall have passed the vote or votes required in RSA 38:3, 38:4, and 38:5 and after the commission upon proper notice and hearing has determined that it is in the public interest to do so, may construct a municipal plant or may take all or any portion of such private plant and property by condemnation, paying therefor just compensation determined in the manner provided in RSA 38:9.

38:11 Public Interest Determination by Commission. When making a determination as to whether the purchase or taking of utility plant or property is in the public interest under this chapter, the commission may set conditions and issue orders to satisfy the public interest. The commission need not make any public interest determinations when the municipality and utility agree upon the sale of utility plant and property.

38:12 Expansion of Existing Municipals. A municipality that has an existing municipal plant may expand such plant or may purchase or take, in the manner prescribed in RSA 38:6-11 and RSA 38:33, all or a portion of such plant owned by a utility which is necessary for expanded municipal utility service. Such action shall not require any further vote under RSA 38:3, 38:4, or 38:5.

38:13 Ratification. Within 90 days of the final determination of the price to be paid for the plant and property to be acquired under the provisions of RSA 38:8, 38:9 or 38:10 and any consequential damages under RSA 38:33, the municipality shall decide whether or not to acquire the plant and property at such price by a vote to issue bonds and notes pursuant to RSA 33-B as may be necessary and expedient for the purpose of defraying the cost of purchasing or taking the plant, property, or facilities of the utility which the municipality may thus acquire. The municipality is authorized to hold a special meeting, if necessary, to take such vote without having to petition the superior court for permission to do so. An affirmative vote under RSA 33-B shall constitute ratification on the part of the municipality of the final determination of the price to be paid for the plant and property under the provisions of RSA 38:8, 38:9, or 38:10 and any consequential damages under RSA 38:33. If the money is so raised it shall immediately be paid to the utility, which shall thereupon execute a proper conveyance and surrender the plant and property to the municipality. If the ratifying vote provided for in this section shall be in the negative, no other action under this chapter shall be had during the ensuing period of 2 years.

38:14 Operation of Plant. A municipality, which has so acquired the plant, property, or facilities of a public utility in any other municipality, may operate within such other municipality as a public utility with the same rights and franchises which the owners of such outlying plant, as purchased, would have had such purchase not been made. The operation by a municipality outside its own limits shall be subject to the jurisdiction of the commission except as provided in RSA 362. If the outlying municipality shall itself vote to establish a municipal plant all the provisions of this

chapter shall be binding as to such determination.

38:15 Taking Property. Any such municipality may enter upon and take by eminent domain any land or any interest in land or water right within its limits, or in the case of a village district within the limits of the town or towns within which it is situated, which may be necessary for the construction, extension, or maintenance of its plant, and shall pay all damages sustained thereby, or by any other thing done under the authority of this chapter.

38:16 Damages. If the municipality shall not agree with the owner of the property referenced in RSA 38:15 as to damages, either party may apply to the superior court in the county where the town or district is located, or if the municipality is a village district then to the board of selectmen of the town or towns within which the village district is situated, to have the same laid out and the damages determined and proceedings thereon shall be as upon a petition for the laying out of a highway.

38:17 Supply Contracts. Any such municipality may contract with individuals, corporations, and other municipalities and the citizens of such other municipalities for supplying them with electricity, gas, or water for any of the purposes named or contemplated in this chapter, and make such contracts, and establish such regulations and such reasonable rates for the use thereof, as may from time to time be authorized by the commission.

38:18 Commissioners. For the more convenient management of any such electric, gas, or water works system, any such municipality may vest the construction, management, control and direction of the same in a board of commissioners to consist of 3 or more citizens of such municipality, the commissioners to have such powers and duties as the municipality may prescribe. Their term of office shall be for 3 years and until their successors are elected and qualified. The first board of commissioners may be chosen for terms of one, 2, and 3 years, respectively, by the legal voters of the municipality at any legal meeting or election at which the provisions of this chapter are accepted, or at any special meeting or election thereafter called for that purpose, and their successors shall be elected at each annual meeting or election thereafter in the manner or form as the municipality may determine.

38:19 Appointment. The commissioners may be appointed by the mayor and board of aldermen or city council, by the selectmen of the town, or by the commissioners of the district if the municipality fails to elect or votes to allow appointments.

38:20 Compensation and Organization. The compensation of the commissioners shall be fixed by the municipality. They shall be sworn to the faithful discharge of their duties. They shall annually organize by choosing one of their number as chairperson of their board. They shall appoint a clerk and a superintendent of the works and such other officers as they may deem necessary, and shall thereupon furnish a certificate of such organization to the clerk of the municipality, who shall record the same in the clerk's records. The commissioners shall fix the compensation of all officers and agents appointed by them, and all officers and agents shall be sworn to the faithful discharge of their duties.

38:21 Reports. The commissioners shall annually, at the time other city, town, or district officers report, make a report to the municipality of the condition of the plant financially and otherwise, showing the funds of the department, the expenses and income of the department, and all other material facts. This report shall be published in the annual report of the municipality.

38:22 Liens and Collection of Charges.

I. All charges for services furnished to patrons by a municipally owned electric, gas, or water works shall create a lien upon the real estate where such services are furnished.

II. A municipality may use any of the following collection procedures for charges and the use of one collection procedure for one service shall not preclude the use of a different collection procedure for another service:

(a) A municipality may commit bills for charges to the tax collector with a warrant signed by the appropriate municipal officials requiring the tax collector to collect them. The tax collector shall have the same rights and remedies, including a lien on the real estate, and be subject to the same liabilities in relation thereto as in the collection of taxes as provided in RSA 80; provided, however, that the real estate lien shall continue for 18 months from the date of the last unpaid bill.

(b) The official or board responsible for administering the municipal utility may collect charges for services by direct billing on any periodic basis it may choose. All charges which are delinquent may be committed to the tax collector with a warrant signed by the appropriate municipal officials requiring the tax collector to collect them. The tax collector shall have the same rights and remedies, including a lien on the real estate, and be subject to the same liabilities in relation thereto as in the collection of taxes as provided in RSA 80; provided, however, that the real estate lien shall continue for 18 months from the date of the last unpaid bill.

(c) If the official or board responsible for administering the municipal utility has not committed the charges to the collector of taxes, the municipality shall have a lien upon the real estate where the services were furnished and the lien shall continue for 18 months from the date of the last unpaid bill, unless the municipality records in the registry of deeds for the county in which the land is situated a notice of lien, in which case the lien shall continue for 6 years from the date of the last unpaid bill. The lien may be enforced in a suit by the municipality against the owner of the

real estate. In such a suit, the municipality shall have the right to a judgment for per year charges, interest at the rate of 12 percent from the date of the last unpaid bill to the date of judgment, and costs. The records in the municipal department which furnished the services shall be sufficient notice to maintain suit upon the lien against subsequent purchasers or attaching creditors of the real estate.

(d) When the services were furnished to some person or legal entity other than the owner of the real estate, the liens provided for in this paragraph shall be effective against the owner of the real estate only for charges of which the owner of the real estate was notified by the municipality within 120 days of the date the charges became delinquent; provided, however, that a municipality may meet these notice requirements by mailing to the owner of the real estate copies of the bills for services at the same time bills are furnished to the person or legal entity which received the services.

38:23 Security Deposits from Tenants. Notwithstanding any other provision of law, any public utility, including any municipal corporation, providing electricity or gas services other than for resale to a customer who is not the owner of the premises serviced by the utility and who has a separate electric or gas meter, for the premises serviced, may obtain a security deposit from the customer only, and shall not obtain a security deposit from the owner of the premises. The owner of the premises shall not be liable for the failure of a tenant to pay the utility bill when such tenant's premises has a separate meter, and the utility shall not have any lien on the property of the landlord under RSA 38:22 for the tenant's failure to pay the utility bill.

38:24 Effect on City Charters. Nothing contained in this chapter shall affect, alter or change the provisions of any city charter with respect to the management, control, and direction of electric, gas, or water works.

Additional Provisions for Water Systems

38:25 Water Control. Any municipality which shall have received an order from the department of environmental services under the provisions of RSA 147, 485 or 485-A shall proceed forthwith, after a majority vote in favor of such action, by the governing body, to acquire whatever easements and lands as are necessary to comply with the order and may enter upon, for the purpose of survey leading to land description, any land within the municipality. In so proceeding, the selectmen of the town, commissioners of the district, county commissioners, or mayor and aldermen of a city shall institute any necessary land taking in accordance with the provisions of RSA 38:15 and 38:16, and anything contained in RSA 231 or in the statutes generally notwithstanding, the decision of the officials authorized by this section to institute proceedings shall not be vacated and any subsequent appeal or other action by the owner or owners shall be based solely on the amount of damages assessed, and the duly authorized agents of the municipality shall have full right of immediate entry for the purposes of detailed surveys, borings, or the conduct of any and all other actions necessary or desirable to aid the municipality in the implementation of the order of the department.

38:26 Bylaws and Ordinances.

I. In municipalities with public water systems the governing body, or the board of water commissioners, if any, may adopt such ordinances and bylaws relating to the system or structures as required for proper maintenance and operation.

II. Any person who violates any ordinance or bylaw adopted pursuant to paragraph I of this section shall be subject to a civil penalty not to exceed \$10,000 per day of such violation.

38:27 Assessment for Water Supply. The governing body, or board of water commissioners if any, may assess upon the persons who are served by the water system, or whose lands receive special benefit from the water system, their just share of the expense of constructing, acquiring, and operating the system or paying any capital debt or interest incurred for the system.

38:28 Water Rates. For the defraying of the cost of acquisition, construction, payment of the interest on any debt incurred, management, maintenance, operation and repair of water systems, or construction, enlargement, or improvement of such systems, the governing body, or the board of water commissioners, if any, may establish a scale of rates to be called water rates, may prescribe the manner in which and the time at which such rates are to be paid and may change such scale from time to time as may be deemed advisable. The amount of such rates may be based upon the consumption of water on the premises connected to the water system, or the number of persons served on the premises, or upon some other equitable basis.

38:29 Water Funds.

I. The funds received from the collection of water rates shall be kept as a separate and distinct fund to be known as the water fund. Such fund shall be allowed to accumulate from year to year, shall not be commingled with town or city tax revenues, and shall not be deemed part of the municipality's general fund accumulated surplus. Such fund may be expended only for the purposes specified in RSA 38:28, or for the previous expansion or replacement of water lines or water systems.

II. Except when a capital reserve fund is established pursuant to paragraph III, all water funds shall be held in the custody of the municipal treasurer. Estimates of anticipated water rate revenues and anticipated expenditures from the water fund shall be prepared and submitted to the governing body as set forth in RSA 32:3, if applicable, and shall be included as part of the municipal budget submitted to the local legislative body for

approval. If the municipality has a properly established board of water commissioners, then notwithstanding RSA 41:29 or RSA 48:16, the treasurer shall pay out amounts from the water fund only upon order of the board of water commissioners. Expenditures shall be within amounts appropriated by the local legislative body.

III. At the option of the local governing body, or of the board of water commissioners, if any, all or part of any surplus in the water fund may be placed in one or more capital reserve funds held in the custody of the trustees of trust funds pursuant to RSA 35:7. If such a reserve fund is created, then the governing body, or board of water commissioners, if any, may expend such funds pursuant to RSA 35:15 without prior approval or appropriation by the local legislative body, but all such expenditures shall be reported to the municipality pursuant to RSA 38:21. This paragraph shall not be construed to prohibit the establishment of other capital reserve funds for any lawful purpose relating to municipal water systems.

38:30 Protection of Water Supply. Any municipality or municipal water company supplying water to the public for domestic use shall have the power to take by the exercise of the right of eminent domain any property needed to protect the purity of the water so supplied, upon petition to the superior court or in the case of a village district to the board of selectmen of the town or towns within which the district is situated and proceedings thereon as in case of a petition for the laying out of a highway.

38:31 Discontinuance of Service.

I. Notwithstanding any other provision of law to the contrary, except as provided in paragraph V of this section, no municipal water company shall disconnect service to a customer if any part of the service provided accrues to the benefit of one or more parties known by company to be residential tenants, unless the company gives written notice to the tenants. Such notice shall set forth:

- (a) The date on or after which the company proposes to disconnect service.
- (b) A statement that the reason for disconnection is a dispute between the company and the landlord.
- (c) A statement that the tenant should contact the landlord for more information.
- (d) An address and telephone at which the tenant may contact the utility in order to make arrangements to maintain service.

II. A municipal water company shall refrain from terminating service to the affected premises if so requested by the tenant, provided that the tenant agrees to be responsible for service provided as of the date of the tenant's request. However, the water company may continue to list the landlord's past due balance on the tenant's bill, and the lien created pursuant to RSA 38:22 shall include any past due charges which accrue after the company begins billing the tenant. The utility shall provide direct service to the person requesting it on terms and conditions applicable to all residential customers. Such service may include other charges, such as sewer and fire protection service, if customarily included with water service billing.

III. Immediately upon learning that a tenant has been disconnected without the notice required in paragraph I, the water company shall reconnect service and may charge a reasonable reconnection fee which may be added to the existing arrearage.

IV. The notice required by paragraph I shall be provided to the tenant no less than 7 days in advance of the proposed disconnection, by posting a conspicuously lettered notice on the main entrance door to each building in which service is being terminated. In addition, the company shall post the notice on a back door or side door to which the company has reasonable access, or in a common area of each building. The company, at its option, may notify the tenants in the affected property by mail rather than by posting.

V. The notice to tenants required by paragraph I of this section shall not be required when necessary to avoid danger to life or property, and upon the order of a duly constituted public authority such as police, firefighters, public health officer, and building inspectors.

Additional Provisions for Electric Systems

38:32 Exemption for Municipal Small Scale Power Facility. Except in municipalities which have acquired, expanded, or established a plant under this chapter, the development by a municipality of any small scale power facility, as defined in RSA 374-D:1, IV shall not be subject to the provisions of this chapter. Nothing in this section shall be construed as exempting municipalities from the provisions of this chapter with respect to the acquisition of a utility plant and equipment if there exists a dispute between the municipality and the utility.

38:33 Consequential Damages. To the extent that the Federal Energy Regulatory Commission does not have jurisdiction, the commission shall determine, to a just and reasonable extent, the consequential damages such as stranded investment in generation, storage, or supply arrangements resulting from the purchase of plant and property from a utility and shall establish an appropriate recovery mechanism for such damages. The commission need not make such a determination when the municipality and utility agree upon the sale of utility plant and property.

38:34 Unbundling Rates and Open Access. Municipal electric utilities established after July 1, 1997, shall unbundle their rates and allow for open access to competitive retail electric supply markets as soon as retail electric competition is certified to exist anywhere in the state pursuant to RSA

38:36. Municipal electric utilities established prior to July 1, 1997, may voluntarily unbundle their rates and allow open access to competitive retail electric supply markets.

38:35 Financial Responsibility.

I. Any retail electric customer located within a municipality that has established a municipal electric utility after July 1, 1997, but who is not within the service area of such utility, shall not be responsible for, and no entity may require the customer to pay, through taxes or otherwise, any costs associated with such utility except for electric power and services consumed directly by the municipality, and any electric power and services sold by the utility to the customer.

II. Any retail electric customer located within the service area of a municipal electric utility established after July 1, 1997, who does not purchase generation services by or acquired through such municipal electric utility, as allowed by RSA 38:34, shall not be responsible for, and no entity may require the customer to pay, through taxes or otherwise, any costs of generation services from such municipal electric utility, except for electric power consumed directly by the municipality. Nothing in this paragraph shall prevent any property owners or retail electric customers from signing contracts of any duration with such municipal electric utility after retail electric competition is certified to exist pursuant to RSA 38:36, and being bound by their terms, including damages for termination.

III. If any municipal electric utility acquires existing plant and equipment used for the generation of electric power, the municipal electric utility shall make payments in lieu of property taxes in the amount that the plant and equipment would have paid taxes if they had been owned by a private owner. Such payments in lieu of taxes shall be included in "costs of generation services" as provided in paragraph II.

38:36 Certification. The chairman of the public utilities commission shall certify to the secretary of state the date that retail electric competition exists in each portion of the state.

2 Definition; Revenue-Producing Facilities. Amend RSA 33-B:1, VI to read as follows:

VI. "Revenue-producing facilities" means water works, sewerage systems, sewage treatment or disposal facilities, solid waste disposal or resource recovery facilities, parking facilities, **facilities for the production, generation, transmission, or distribution of electricity or gas** and any other real or personal property or interests in a municipality owned or controlled by the municipality, from the operation of which revenues are or are expected to be derived by the municipality.

3 New Subdivision; Redundant Electric Lines. Amend RSA 374 by inserting after section 57 the following new subdivision:

Redundant Electric Lines

374:58 Redundant Lines. No public utility or municipal utility shall construct redundant parallel electric utility lines. Such duplication of lines shall be deemed contrary to sound economic policy and contrary to the public interest. This section shall not apply until retail electric competition is certified to exist pursuant to RSA 38:36.

4 Reference Change. Amend RSA 374-B:1, III to read as follows:

III. "Municipality" means a city, town or village district engaged in the generation and sale or the purchase and sale of electricity or the ~~[transmission]~~ **distribution** thereof, for ultimate consumption by the public under provisions of RSA 38, RSA 52 or any special laws. Except where otherwise specifically provided, a municipality may exercise any of its powers or authority contained in this chapter through its municipal officers or members of the board of commissioners in whom the management of its electric system is vested.

5 Reference Change. Amend RSA 374-B:15, II to read as follows:

II. The determinations of the commission required under RSA 38:9 or ~~[40]~~ **38:10** have been made not more than ~~[24]~~ **12** months following the initial vote taken under RSA ~~[38:4 or 5]~~ **38:3, RSA 38:4 or RSA 38:5**, except that this provision shall not apply to any vote taken prior to June 24, 1975.

6 Reference Change. Amend RSA 485:4 and 485:5 to read as follows:

485:4 Power to Require Improvements. The department is empowered to investigate the sanitary conditions and methods pertaining to the source, treatment, and distribution of all public water supplies for domestic use, and to require the application of any treatment or improvement in conditions and methods as it may deem necessary to insure fitness and safety and adequate protection of the public health. If the department determines that improvements are necessary, the municipality, corporation, or person shall be so notified in writing and the requirements so ordered shall be effected pursuant to RSA ~~[38:14-a]~~ **38:25** within a reasonable time to be fixed by the department. Appeals of actions of the department may be made as provided in RSA 485:59. The department may set intermediate goals and time frames to assist municipalities, corporations, or persons to

abide by an order of the department under this section.

485:5 Power to Require Acquisition of Land. The acquisition of adjacent or marginal lands necessary to provide reasonable sanitary control over the quality of a public water supply shall be deemed an improvement in sanitary conditions which is within the power of the department to require under the provisions of RSA 485:4. Municipalities shall comply with such order pursuant to RSA ~~[38:14-a]~~ **38:25**.

7 Reference Change. Amend RSA 485:28 to read as follows:

485:28 Power to Require the Installation of Sewage Facilities. The department is hereby empowered to investigate the conditions and methods relating to the disposal of sewage in any municipality, as set forth in RSA 486:1, and to require the installation of public sewers, as defined in RSA 147:8, whenever such investigation demonstrates that individual sewage disposal systems are inadequate or incapable of protecting the health and welfare of the citizens of the affected municipality or preventing pollution of the surface waters of the state, as defined in RSA 485-A. Before issuing an order requiring the installation of public sewer facilities, the department shall notify the municipality of its findings and shall give the municipality an opportunity to be heard. After such hearing if it shall be determined that said facilities are necessary, the municipality shall be so notified in writing and the requirements so ordered shall be effected pursuant to RSA ~~[38:14-a]~~ **38:25** within a reasonable time to be fixed by the department. If any municipality whose duty it is to act shall fail or refuse for a period of 10 days after the expiration of the time fixed by said order, or, in the case of appeal for a period of 10 days after final judgment shall have been entered, to obey the same or in good faith to begin to make the installation as ordered, such municipality so failing shall be fined not more than \$1,000 for each day of failure to comply with the order of the department. Said fine shall be paid to the state and may be recovered in an action of debt brought by the attorney general in the name of the state treasurer.

8 Reference Change. Amend RSA 485-A:22, III to read as follows:

III. The department shall issue a written cease and desist order against any discharge or act in violation of this subdivision or RSA 485-A:5 or lawful regulation of the department made under them or any condition of any permit lawfully issued by the department, and any such discharge or act may be enjoined by the superior court upon application of the attorney general, whether the court is in term time or vacation. Municipalities shall comply with such orders pursuant to RSA ~~[38:14-a]~~ **38:25**.

9 Severability. If any provision of this act or the application thereof to any person or circumstance is held to be invalid, the invalidity shall not affect any other provision or the application of such provision to other persons or circumstances, and to this and the provisions of this act are severable.

10 Effective Date. This act shall take effect July 1, 1997.

AMENDED ANALYSIS

This bill revises RSA 38, relative to municipal lighting and water systems, to apply to the establishment and operation of municipal electric, gas, or water systems.

1997-0544h

Amendment to HB 532-FN

Proposed by the Committee on Criminal Justice and Public Safety

Amend the bill by replacing section 1 with the following:

1 Transportation of Alcoholic Beverage By a Minor; Attendance at Impaired Driver Intervention Program. Amend RSA 265:81-a, I to read as follows:

I. Notwithstanding RSA 265:81, II, no driver under the age of 21 shall, except when accompanied by a parent, legal guardian or legal age spouse, transport any liquor or beverage in any part of a vehicle. A driver violating this section *shall be guilty of a violation and* may have his *or her* license or right to drive suspended for 60 days. *The court may also require attendance and successful completion of the impaired driver intervention program or similar program approved as provided in RSA 263:65-a, prior to restoring the license or driving privilege of any person whose license or privilege has been revoked or suspended pursuant to this paragraph.* The words "liquor" and "beverage" as used in this section shall have the same meanings as defined in RSA 175:1. "Legal age spouse" means a person 21 years of age or older.

AMENDED ANALYSIS

This bill makes transportation of an alcoholic beverage by a minor a violation, and allows a court to require a person under 21 years of age, who is convicted of transporting alcoholic beverages, to attend and successfully complete the impaired driver intervention program or similar program,

prior to restoring the person's driving privileges.

1997-0599h

Amendment to HB 540

Proposed by the Committee on Executive Departments and Administration

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

AN ACT establishing a committee to study ways in which state agencies can be encouraged to assist small businesses to develop practices that comply with state law.

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

1 Committee Established. There is established a committee to study ways in which state agencies can be encouraged to assist small businesses to develop practices that comply with state law.

2 Membership and Compensation.

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

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

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

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

3 Duties. The committee shall study ways in which state agencies can be encouraged to assist small businesses to develop practices that comply with state law. Committee responsibilities should include, but not be limited to, a study of methods of requiring state agencies to provide training and development policies which will serve as incentives for small businesses to comply with laws and rules including education, community awareness, and public recognition. Agencies could consider, as a first response, adopting proactive, preventative solutions rather than current reactive punitive measures, for the purpose of reducing the adverse impact and chilling effect that state intervention often has on small business activity in New Hampshire.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 30 days of the effective date of this section. Three members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 1997.

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

AMENDED ANALYSIS

This bill establishes a committee to study ways in which state agencies can be encouraged to assist small businesses to develop practices which comply with state law.

1997-0742h

Amendment to HB 544

Proposed by the Majority of the Committee on Resources, Recreation and Development

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

AN ACT relative to dwellings which extend over public waters.

Amend the bill by deleting section 1 and renumbering the original sections 2-5 to read as 1-4, respectively.

Amend RSA 482-A:26, III as inserted by section 2 of the bill by replacing it with the following:

1 Construction, Reconstruction, or Repair of Dwellings Over Water. Amend RSA 482-A:26 to read as follows:

482-A:26 ~~[Residential Use Prohibited]~~ **Dwellings Over Water.**

- I. No person shall construct ~~[or reconstruct]~~ any structure ~~[intended]~~ **suitable** for use as a dwelling if ~~[said]~~ **the** structure or any part of ~~[said]~~ **the** structure extends beyond the shoreline of any public water or publicly-owned water body. ~~[For the purposes of this paragraph, "the shoreline" shall be that shoreline which exists when the surface of the water is at the mean high water level.]~~
- II. No person shall convert or modify any existing structure in order to make ~~[said]~~ **the** structure suitable as a dwelling if ~~[said]~~ **the** structure or any part of ~~[said]~~ **the** structure extends beyond the shoreline of any public water or publicly-owned water body. ~~[For the purposes of this paragraph, "the shoreline" shall be that shoreline which exists when the surface of the water is at the mean high water level.]~~

2 New Paragraphs; Reconstruction or Repair of Dwellings Over Water. Amend RSA 482-A:26 by inserting after paragraph II the following new paragraphs:

III. Existing dwellings over water which were constructed or converted to be made suitable for use as a dwelling in accordance with the law in effect at the time of construction or conversion, may be repaired or reconstructed using any modern technologies. Such repair or reconstruction may alter the interior design or existing cribwork, but no expansion of the existing footprint or outside dimensions to that section of the structure over water shall be permitted. A condition of RSA 482-A:3 approval shall be the existence or installation of a sewage disposal system which has been approved pursuant to RSA 485-A:29-44. No permit shall be required for routine maintenance that does not involve work in the water.

IV. For the purposes of this section:

- (a) "Dwelling over water" means any structure suitable for use as a dwelling which extends in any part beyond the shoreline of any public water or public-owned water body.
- (b) "Shoreline" means that shoreline which exists when the surface of the water is at the mean high water level.
- (c) "Suitable for use as a dwelling" means any structure which is used for residential purposes by one or more persons, or which contains kitchen, bathroom, shower, or toilet facilities.

V. The provisions of RSA 482-A:10, relative to reconsideration and appeals, and RSA 482A:10-a, relative to takings without compensation, shall apply to all decisions of the department made under paragraph III.

AMENDED ANALYSIS

This bill requires any person reconstructing or repairing a dwelling which extends over public waters to obtain a septic system approval.

1997-0502h

Amendment to HB 580-FN

Proposed by the Committee on Commerce

Amend the bill by replacing the title with the following:

AN ACT providing that the proper place for filing security interests on manufactured housing is in the office where mortgages or real estate are filed or recorded.

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

1 Place for Filing Security Interests on Manufactured Housing. Amend RSA 382-A:9-401(1)(b) to read as follows:

(b) when the collateral is timber to be cut or is minerals or the like (including oil and gas), ~~[or]~~ accounts subject to subsection (5) of Section 9-103, **or manufactured housing as defined in RSA 674:31**, or when the financing statement is filed as a fixture filing (Section 9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

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

AMENDED ANALYSIS

This bill provides that in order to perfect a security interest on manufactured housing, it should be filed in the office where a mortgage on the real estate would be filed or recorded.

1997-0727h

Amendment to HB 611-FN

Proposed by the Committee on Commerce

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

1 Definition; Agent. Amend the introductory paragraph of RSA 421-B:2, II to read as follows:

II. "Agent" means any individual, other than a broker-dealer, issuer or issuer-dealer, who represents a broker-dealer, issuer or issuer-dealer in effecting or attempting to effect purchases or sales of securities or an individual other than an investment adviser who represents an investment adviser by providing investment advice *or who is an investment adviser representative*. "Agent" does not include an individual who represents an issuer in:

2 New Paragraph; Definition; Covered Security. Amend RSA 421-B:2 by inserting after paragraph IV-b the following new paragraph:

IV-c. "Covered security" means a security identified as a covered security under section 18(b) of the Securities Act of 1933 or rules or regulations promulgated thereunder.

3 New Paragraphs; Definitions; Federal Covered Adviser and Federal Covered Security. Amend RSA 421-B:2 by inserting after paragraph V-c the following new paragraphs:

V-d. "Federal covered adviser" means a person who is (i) registered under section 203 of the Investment Advisers Act of 1940; or (ii) is excluded from the definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940.

V-e. "Federal covered security" means any security that is a covered security, except that a covered security for which a filing or fee has not been submitted as required by this chapter shall not be a federal covered security.

4 Definitions; Investment Advisor; Investment Advisory Contract. Amend RSA 421-B:2, IX to read as follows:

IX. "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities, or other investments, or as to the advisability of investing in, purchasing or selling securities, or as to the advisability of making other investments, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities, or other investments. *"Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation.* "Investment adviser" does not include:

- (a) A bank, savings institution or trust company;
- (b) A lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of ~~his~~ *the* profession;
- (c) A broker-dealer whose performance of these services is solely incidental to the conduct of ~~his~~ business as a broker-dealer and who receives no special compensation for them;
- (d) A publisher of any bona fide newspaper, news magazine or business or financial publication of general, regular, and paid circulation;
- (e) A person whose advice, analyses, or reports relate only to securities exempted by RSA 421-B:17, I(a);
- (f) A person who has no place of business in this state if ~~his~~ *the person's* only clients in this state are other investment advisers, *federal covered advisors*, broker-dealers or persons to whom sales are exempted under RSA 421-B:17, II(g);
- (g) A person who transacts business in the field of insurance, provided such business is solely and exclusively in the field of insurance;

(h) Any real estate broker who does not promote or sell any interest in any limited partnership;

(i) *Any person that is a federal covered adviser;*

(j) *A person who has no place of business in this state and who, during the preceding 12 month period, has had not more than 5 clients, other than those specified in subparagraph (f), who are residents of this state;*

(k) Such other persons not within the intent of this paragraph as the secretary of state may by rule or order designate.

5 New Paragraph; Investment Adviser Representative. Amend RSA 421-B:2, IX-a to read as follows:

IX-a. "Investment adviser representative" means any partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is licensed or required to be licensed under this chapter, or who has a place of business located in this state and is employed by or associated with a federal covered adviser; and who does any of the following:

(a) Makes any recommendations or otherwise renders advice regarding securities or other investments;

(b) Manages accounts or portfolios of clients;

(c) Determines which recommendation or advice regarding securities or other investments should be given;

(d) Solicits, offers, or negotiates for the sale of or sells investment advisory services; or

(e) Supervises employees who perform any of the functions in subparagraphs (a)-(d).

IX-b. "Investment advisory contract" means any contract or agreement whereby a person agrees to act as an investment adviser or to manage any investment or trading account for a person other than an investment adviser as defined in RSA 421-B:2, IX.

6 New Paragraph; Definition; "NSMIA". Amend RSA 421-B:2 by inserting after paragraph XIV the following new paragraph:

XIV-a. "NSMIA" means the National Securities Improvement Act of 1996, or rules or regulations promulgated thereunder.

7 New Paragraphs; Definitions. Amend RSA 421-B:2, XV to read as follows:

XV. "Open-end mutual fund" means an open end management company as defined in the Investment Company Act of 1940.

XV-a. "Order" means an order issued pursuant to this chapter.

XV-b. "Other investment company" means a closed end management company, face amount certificate company, or unit investment trust as such terms are defined in the Investment Company Act of 1940.

8 New Paragraph; Definition; Federal Securities Laws. Amend RSA 421-B:2 by inserting after paragraph XIX-b the following new paragraph:

XIX-c. "Securities Act of 1933," "Securities Exchange Act of 1934," "Investment Advisers Act of 1940," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after the effective date of this paragraph.

9 New Paragraphs; Investment Advisory Activities; Requirements and Prohibitions. Amend RSA 421-B:4 by inserting after paragraph III the following new paragraphs:

IV. It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of paragraph I for any investment adviser who has custody or possession of any funds or securities in which any client has any beneficial interest, to do any act or take any action, directly or indirectly, with respect to any such funds or securities, unless:

(a) All such securities of each such client are segregated, marked to identify the particular client who has the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss; and

(b) All such funds of such clients are deposited in one or more bank accounts which contain only clients' funds, such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients, and the investment adviser maintains a separate record for each such account which shows the name and address of the bank where such account is maintained, the dates and amounts of deposits in and

withdrawals from such account, and the exact amount of each client's beneficial interest in such account; and

(c) Such investment adviser, immediately after accepting custody or possession of such funds or securities from any client, notifies such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, gives each such client written notice thereof; and

(d) Such investment adviser sends to each client, not less frequently than once every 3 months, an itemized statement showing the funds and securities in the custody or possession of the investment adviser at the end of such period, and all debits, credits, and transactions in such client's account during such period; and

(e)(1) All such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent public accountant at a time that shall be chosen by such accountant without prior notice to the investment adviser. A certificate of such accountant stating that an examination of such funds and securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form ADV-E (17 CFR 279.8) and transmitted to the secretary of state promptly after each examination.

(2) Subparagraph IV(e)(1) shall not apply to an investment adviser also registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 if (i) such broker-dealer is subject to and in compliance with Rule 15c3-1 (Reg. 240.15c3-1, 25,126) under the Securities Exchange Act of 1934, or (ii) such broker-dealer is a member of an exchange whose members are exempt from Rule 15c3-1 (Reg. 240.15c3-1, 25,126) under the provisions of paragraph (b)(2) thereof, and such broker-dealer is in compliance with all rules and settled practices of such exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

V. A person who is an investment adviser or a federal covered adviser is a fiduciary and has a duty to act primarily for the benefit of the person's clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser and the clients and the circumstances of each case, an investment adviser or a federal covered adviser shall not engage in unethical business practices which constitute violations of paragraph I, including the following:

(a) Recommending to a client to whom investment supervisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

(b) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(c) Introducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account in light of the fact that an adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. This subparagraph appropriately forbids an excessive number of transaction orders to be induced by an adviser for a customer's account.

(d) Placing an order to purchase or sell a security for the account of a client without the authority to do so.

(e) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third party trading authorization from the client.

(f) Borrowing money or securities from a client unless a client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(g) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(h) To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(i) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. This prohibition does not apply to a situation where the adviser uses published research reports or statistical analysis to render advice or where an adviser orders such a report in the normal course of providing service.

(j) Charging a client an unreasonable advisory fee.

(k) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(1) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients or such services; and

(2) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

(l) Guaranteeing a client that a specific result will be achieved such as gain or no loss, with advice which will be rendered.

(m) Publishing, circulating, or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

(n) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

(o) Take any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Reg 206(4)-2 under the Investment Advisers Act of 1940.

(p) Entering into, extending, or renewing any investment adviser contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser, and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

(q) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of section 204A of the Investment Advisers Act of 1940.

(r) Entering into, extending, or renewing any advisory contract which would violate section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers registered or required to be registered under the Investment Advisers Act of 1940, notwithstanding whether such adviser would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940.

(s) To indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of this chapter or of the Investment Advisers Act of 1940 or any other practice that would violate section 215 of the Investment Advisers Act of 1940.

(t) Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contravention of section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.

(u) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this chapter or any rule adopted under it.

The conduct set forth above is not inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices, shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced in this paragraph shall apply to investment advisers and federal covered advisers, regardless of whether the federal provision limits its application to advisers subject to federal registration.

10 Licensing Requirements. Amend RSA 421-B:6 to read as follows:

421-B:6 Licensing Requirements.

I. It is unlawful for any person to transact business in this state as a broker-dealer, issuer-dealer, investment adviser, or agent unless ~~he~~ **such person** is licensed under this chapter. ***Except with respect to advisers whose only clients are those described in RSA 421-B:2, IX(f), it is unlawful for any federal covered adviser to conduct advisory business in this state unless such person complies with the provisions of RSA 421-B:7, I-a. An investment adviser representative is required to be licensed as an agent under this section, in addition to any agent license held as a representative of any broker-dealer.***

II. It is unlawful for any broker-dealer, issuer-dealer, and investment adviser to employ an agent unless the agent is licensed, ***or for a federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of business located in this state,***

unless such investment adviser representative is licensed as an agent under this chapter, or is exempt from the licensing requirements. Under this chapter, an agent's license is only in effect when such agent is associated with a particular broker-dealer, ***investment adviser, federal covered adviser,*** or a particular issuer. No agent shall at any time represent more than one broker-dealer or issuer-dealer, except that where broker-dealers ***or issuer-dealers*** affiliated by direct common control are licensed under this chapter, an agent may represent any such broker-dealer ***or issuer-dealer.*** When an agent begins or terminates those activities which make ~~him~~ ***the person*** an agent, the broker-dealer, issuer-dealer, and investment adviser shall promptly notify the secretary of state. ***When an investment adviser representative begins or terminates employment with a federal covered adviser, the investment adviser representative shall promptly notify the secretary of state.***

III. All licenses for agents, broker-dealers, investment advisers, and issuer-dealers ***or notice filings for federal covered advisers*** shall expire every year on December 31.

IV. All licensed agents, broker-dealers, investment advisers, ***federal covered advisers,*** and issuer-dealers and any persons applying for such licenses shall be liable for the fees established pursuant to RSA 421-B:31.

V. Prior to opening a branch office, a broker-dealer, ***or investment adviser*** shall ~~notify~~ ***send written notification directly to*** the secretary of state of the location of the branch office, telephone number, name of the individual supervising the office, and any other pertinent information required by the secretary of state.

VI. The following sales of securities shall not constitute acts requiring licensure as a broker-dealer, issuer-dealer, or issuer-dealer agent:

(a) Sales of securities made pursuant to qualified pension plans, qualified profit-sharing plans, and dividend reinvestment plans.

(b) Sales of securities of a corporation to its officers, its directors, and sales made pursuant to RSA 421-B:17, I(h).

(c) Sales or distributions of securities to majority owned subsidiaries.

VII. The following sales of securities shall not constitute acts requiring licensure as an issuer-dealer: RSA 421-B:17, I(a); (b); (h); (i); (j); (k); and II(a); (b); (d); (e); (f); (g); (j); (k); (l); (m); (n); (o); (p)(1); and (q).

VIII. Under the provisions of NSMIA and this chapter, until October 11, 1999, if a federal covered adviser fails to or refuses to pay fees pursuant to RSA 421-B:31 prior to acting as a federal covered adviser in this state, such federal covered adviser shall be subject to penalties for conducting unlicensed investment advisory business, in addition to any other penalties provided for under this chapter, and licensure as an investment adviser of such federal covered adviser shall be required in this state.

11 New Paragraph; Licensing Procedure. Amend RSA 421-B:7 by inserting after paragraph I the following new paragraph:

I-a. Except with respect to federal covered advisers whose only clients are those described in RSA 421-B:2, IX(f), a federal covered adviser shall file with the secretary of state, prior to acting as a federal covered adviser in this state, a notice, which shall consist of a copy of the most recent complete Form ADV filed with the Securities and Exchange Commission, a Form U-2, and shall pay initial and annual fees in accordance with 421-B:31. Initial fees shall be paid before business is transacted in this state, and annual fees shall be paid on or before December 31 of the current year for the ensuing year. Federal covered advisers shall submit copies of all documents filed with the Securities and Exchange Commission pursuant to the securities laws within 10 business days of their submission to the Securities and Exchange Commission.

12 Licensing Procedures. RSA 421-B:7, III and IV are repealed and reenacted to read as follows:

III. The secretary of state may, by rule or order, require a minimum capital for brokerdealers, subject to the limitations of section 15 of the Securities Exchange Act of 1934, and establish minimum financial requirements for investment advisers, subject to the limitations of section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over such funds or securities and those investment advisers who do not.

IV. The secretary of state may require licensed brokerdealers, and investment advisers who have custody of or discretionary authority over client funds or securities, to post surety bonds in an amount determined by the secretary of state based upon the number of clients and the total assets under management of the investment adviser, and the disciplinary history of the investment adviser or broker-dealer, subject to the limitations of section 15 of the Securities Exchange Act of 1934 for broker-dealers, and section 222 of the Investment Advisers Act of 1940 for investment advisers, and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond required. Every bond shall provide for suit thereon by any person who has a cause of action under RSA 421B:25, and, if the secretary of state by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within 6 years after the sale or other act upon which it is based.

13 Post-Licensing Provisions. Amend RSA 421-B:8, I to read as follows:

I. Every broker-dealer or issuer-dealer doing business in this state unless otherwise directed shall, within 60 days after the close of the fiscal year, make and transmit to the secretary of state a filing under oath of its chief managing officer showing or providing the financial statement, changes in management, changes in ownership, and any significant changes in the method of doing business for the preceding fiscal year, ***except as provided by section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer, and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser.*** Said filing shall include statements or periodic reports filed with any regulatory, state or federal authority or exchange if so directed by order or rule of the secretary of state.

14 New Paragraph; Corrections to Documents. Amend RSA 421-B:8 by inserting after paragraph IX the following new paragraph:

IX-a. If the information contained in any document filed with the secretary of state is or becomes inaccurate or incomplete in any material respect, the licensee or federal covered adviser shall file a correcting amendment promptly if the document is filed with respect to a licensee or when such amendment is required to be filed with the Securities and Exchange Commission if the document is filed with respect to a federal covered adviser, unless notification of the correction has been given under RSA 421-B:6, II.

15 New Paragraphs; Information; Books and Records Requirements; Other Requirements. Amend RSA 421-B:8 by inserting after paragraph X the following new paragraphs:

XI. With respect to investment advisers, the secretary of state may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the secretary of state, in his discretion, information furnished to clients or prospective clients of an investment adviser that would be in compliance with the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

XII.(a) Every licensed broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the secretary of state prescribes by rule or order, except as provided by section 15 of the Securities Exchange Act 1934 in the case of a broker-dealer, and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser. All records so required, shall be true and accurate, and shall be preserved for a period of not less than 6 years, the first 2 years in an easily accessible place and form, subject to the exceptions previously referenced in this section.

(b) Every broker-dealer licensed or required to be licensed under this chapter shall, at a minimum, make and keep true, accurate and current the following records:

(1) Unless otherwise provided by order of the Securities and Exchange Commission, each broker-dealer licensed or required to be licensed under this chapter shall make, maintain and preserve books and records in compliance with U.S. Securities and Exchange Commission rules 17a3 (17 C.F.R. 240.17a-3 (1996)), 17a-4 (17 C.F.R. 240.17a-4 (1996)), 15c2-6 (17 C.F.R. 240.15c2-6 (1996)), and 15c2-11 (17 C.F.R. 240.15c2-11 (1996)).

(2) To the extent that the U.S. Securities and Exchange Commission promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the secretary of state for violation of this section to the extent that the violations results solely from the broker-dealer's compliance with the amended rule.

(c) Every investment adviser licensed or required to be licensed under this chapter shall make and keep true, accurate and current the following books, ledgers and records:

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers or other comparable records, reflecting asset, liability, reserve, capital, income, and expense accounts.

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt, or delivery of a particular security, and of any modification, or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification, or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(4) All checkbooks, bank statements, canceled checks, and cash reconciliations of the investment adviser.

(5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.

(6) All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser.

(7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to (A) any recommendation made or proposed to be made and any advice given or proposed to be given, (B) any receipt, disbursement or delivery of funds or securities, or (C) the placing or execution of any order to purchase or sell any security; provided, however, (i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and (ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication, or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement, a memorandum describing the list and the source thereof.

(8) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities, or transactions of any client.

(9) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof.

(10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such.

(11) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than persons connected with such investment adviser) and, if such notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication recommends the purchase or sale of a specific security and does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor.

(12)(A) A record of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction, acquires any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(B) For purposes of this subparagraph (c)(12) the term "advisory representative" shall mean any partner, officer, or director of the investment adviser; any employee who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with the employee's duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser, prior to the effective dissemination of such recommendations or of the information concerning such recommendations: (i) any person in a control relationship to the investment adviser, (ii) any affiliated person of such controlling person, and (iii) any affiliated person of such affiliated person. "Control" shall have the same meaning as that set forth in section 2(a)(9) of the Investment Company Act of 1940, as amended.

(C) An investment adviser shall not be deemed to have violated the provisions of this subparagraph because of failure to record securities transactions of any investment adviser representative if the investment adviser establishes that adequate procedures were instituted and reasonable diligence used to obtain promptly reports of all transactions required to be reported.

(13)(A) Notwithstanding the provisions of subparagraph (a)(12) where the investment adviser is primarily engaged in a business or businesses other than advising advisory clients, a record shall be maintained of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected, and the name of the broker-dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 calendar days after the end of the calendar quarter in which the transaction was effected.

(B) An investment adviser is "primarily engaged in a business or businesses other than advising advisory clients" when, for each of its most recent 3 fiscal years or for the period of time since organization, whichever is less, the investment adviser derived, on an unconsolidated basis, more than 50

percent of (i) its total sales and revenues, and (ii) its income or loss before income taxes and extraordinary items, from such other business or businesses.

(C) For purposes of this subparagraph (c)(13), the term "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising advisory clients, means any partner, officer, director, or employee of the investment adviser who makes any recommendation, who participates in the determination of which recommendation shall be made or whose functions or duties relate to the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations: (i) any person in a control relationship to the investment adviser, (ii) any affiliated person of such controlling person, and (iii) any affiliated person of such affiliated person. "Control" shall have the same meaning as that set forth in section 2(a)(9) of the Investment Company Act of 1940, as amended.

(D) An investment adviser shall not be deemed to have violated the provisions of this subparagraph (c)(13) because of failure to record securities transactions of any advisory representative if the investment adviser establishes that adequate procedures were instituted and reasonable diligence used to obtain promptly reports of all transactions required to be recorded.

(14) A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment adviser and a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(15) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than persons connected with such investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debts, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this subparagraph.

(d) If an investment adviser subject to subparagraph (b) has custody or possession of securities or funds of any client, the records required to be made and kept under subparagraph (b), shall also include:

(1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts.

(2) A separate ledger account for each such client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits.

(3) Copies of confirmations of all transactions effected by or for the account of any such client.

(4) A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in each security, the amount or interest of each such client, and the location of each such security.

(e) Every investment adviser subject to subparagraph (b) who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate, and current:

(1) Records showing separately for each such client the securities purchased and sold, and the date, amount, and price of each such purchase and sale.

(2) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount or interest of such client.

(f) Any books or records required by this paragraph may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment advisory services is indicated by numerical or alphabetical code or some similar designation.

(g)(1) All books and records required to be made under the provisions of subparagraph (b)(2)(c)(1), inclusive of this paragraph (except for books and records required to be made under the provisions of subparagraph (b)(11) and (b)(15) of this paragraph), shall be maintained and preserved in an easily accessible place for a period of not less than 5 years from the end of the fiscal year during which the last entry was made on such record, the first 2 years in an appropriate office of the investment adviser.

- (2) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor shall be maintained in the principal office of the investment adviser and preserved until at least 3 years after termination of the enterprise.
- (3) Books and records required to be made under the provisions of subparagraphs (b)(11) and (b)(15) shall be maintained and preserved in an easily accessible place for a period of not less than 5 years, the first 2 years in an appropriate office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication.
- (h) An investment adviser subject to subparagraph (b) of this paragraph, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this paragraph for the remainder of the period specified in this paragraph, and shall notify the secretary of state in writing of the exact address where such books and records will be maintained during such period.
- (i)(1)The records required to be maintained and preserved pursuant to this paragraph shall be immediately produced or reproduced by photograph, on film, or as provided in subparagraph (i)(2), on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by the photographic film or computer storage medium, the investment adviser shall:
- (A) Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;
 - (B) Be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the secretary of state by its examiners or other representatives may request.
 - (C) Store separately from the original one other copy of the film or computer storage medium for the time required,
 - (D) With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction,
 - (E) With respect to records stored on photographic film, at all times have available for the secretary of state examination of its records pursuant to provisions of this chapter, and facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.
- (2) Pursuant to subparagraph (i)(1) an adviser may maintain and preserve, on computer tape or disk or other computer storage medium, records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser slowly on electronic media or by electronic data transmission.
- (j) For purposes of this paragraph, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.
- (k) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of this paragraph, provided the investment adviser is licensed in such state and is in compliance with such state's recordkeeping requirements.
- XIII.(a)(1) Unless otherwise provided in this section, an investment adviser, licensed or required to be licensed under this chapter shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with a written disclosure statement which may be a copy of Part II of its Form ADV or written documents containing at least the information then so required by Part II of Form ADV, or such other information as the secretary of state may require.
- (2) An investment adviser shall deliver the statement required by this section to an advisory client or prospective advisory client not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client, or at the time of entering into any such contract, if the advisory client has the right to terminate the contract without penalty within 5 business days after entering into the contract.
- (b) Delivery of the statement required by subparagraph (a)(1) need not be made in connection with entering into an investment company contract or a contract for impersonal advisory services.
- (c)(1) An investment adviser, except as provided in subparagraph (a)(2), shall annually, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this section.
- (2) The delivery or offer required by subparagraph (c)(1) need not be made to advisory clients receiving advisory services solely pursuant to:

(A) An investment company contract; or

(B) A contract for impersonal advisory services requiring a payment of less than \$200.

(3) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of \$200 or more, an offer of the type specified in subparagraph (e)(1) shall also be made at the time of entering into an advisory contract.

(4) Any statement requested in writing by an advisory client pursuant to an offer required by this subdivision must be mailed or delivered within 7 days of the receipt of the request.

(d) If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part II of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(e) Nothing in this paragraph shall relieve any investment adviser from any obligation pursuant to any provision of this chapter or the rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this paragraph.

(f) For the purpose of this paragraph:

(1) "Contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services:

(A) By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(B) Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(C) Any combination of the foregoing services.

(2) "Entering into" in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

(3) "Investment company contract" means a contract with an investment company registered under the Investment Company Act of 1940 which meets the requirements of section 15(c) of that act.

XIV.(a) Every licensed investment adviser who has custody of client funds or securities or requires payment of advisory fees 6 months or more in advance and in excess of \$500 per client shall file with the secretary of state an audited balance sheet as of the end of the investment adviser's fiscal year. Each balance sheet filed pursuant to this subparagraph shall be:

(1) Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;

(2) Audited by an independent public accountant or an independent certified public accountant; and

(3) Accompanied by an opinion of the accountant as to the report of financial position and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.

(b) Every licensed investment adviser who has discretionary authority over client funds or securities, but not custody, shall file with the secretary of state a balance sheet, which need not be audited, but which shall be prepared in accordance with generally accepted accounting principles and represented by the investment adviser or the person who prepared the statement as true and accurate, as of the end of the investment adviser's fiscal year.

(c) The financial statements required by this paragraph shall be filed with the secretary of state within 90 days following the end of the investment adviser's fiscal year.

XV. Every licensed broker-dealer shall comply with minimum financial requirements and financial reporting requirements as follows:

(a) Each broker-dealer licensed or required to be licensed under this chapter shall comply with SEC Rule 15c3-1 (17 C.F.R. 240.15c3-1 (1996)), 15c3-2 (17 C.F.R. 240.15c3-2 (1996)), and 15c3-3 (17 C.F.R. 240.15c3 (1996)).

(b) Each broker-dealer licensed or required to be licensed under this chapter shall comply with SEC Rule 17a-11 (17 C.F.R. 240.17a-11) and shall file with the secretary of state upon request, or as required by this chapter or orders or rules promulgated thereunder, copies of notices and reports required under SEC Rules 17a-5, 17a-10, and 17a-11.

(c) To the extent that the U.S. Securities and Exchange Commission promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the secretary of state for violation of this rule to the extent that the violation results solely from the dealer's compliance with the amended rule.

XVI. Every licensed investment adviser shall comply with minimum financial requirements and financial reporting requirements as follows:

(a) An investment adviser licensed or required to be licensed under this chapter who has custody of the client funds or securities shall maintain at all times a minimum net worth of \$35,000, and every investment adviser licensed or required to be licensed under this chapter who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

(b) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser licensed or required to be licensed under this chapter shall by the close of business on the next business day notify the secretary of state if such investment adviser's total worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day, a report with the secretary of state of its financial condition, including the following:

- (1) A trial balance of all ledger accounts;
- (2) A statement of all client funds or securities which are not segregated;
- (3) A computation of the aggregate amount of client ledger, debit balances; and
- (4) A statement as to the number of client accounts.

(c) For purposes of this paragraph, the term "net worth," shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishings, automobiles, and any other personal items not readily marketable in the case of an individual; advances or loans to stockbrokers and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(d) The secretary of state may require that a current appraisal be submitted in order to establish the worth of any asset.

(e) Every investment adviser that has its principal place of business in a state other than this state shall maintain such minimal capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state in compliance with such state's minimal capital requirements.

16 Registration Requirements; Notice Filing Requirements. Amend RSA 421B:11 to read as follows:

421-B:11 Registration Requirement and Notice Filing of Securities.

I. It is unlawful for any person to offer or sell any security in this state unless it is registered under this chapter ~~[or]~~, the security or transaction is exempted under RSA 421-B:17, ***or it is a federal covered security.***

I-a. With respect to notice filings of covered securities, the following requirements shall apply:

(a) Prior to the offer or sale of any class or portfolio of covered securities under section 18(b)(2) of the Securities Act of 1933, a notice shall be filed which includes:

- (1) A consent to service of process on Form U-2 signed by the issuer;***
- (2) A Form N-1A, prospectus, or amendment that contains a complete description of the offering; and***
- (3) The fee required for each class in RSA 421-B:31.***

All mutual funds doing business in this state offering multiple classes of shares shall submit a notice filing for each class individually, and pay

the fee set forth in RSA 421B:31. All mutual funds doing business in this state offering securities through a combined prospectus shall submit a notice filing for each portfolio and each class thereof contained in the combined prospectus and pay fees set forth in RSA 421-B:31. Annual renewals of notice filings shall be made for each class of mutual fund shares not later than May 1 of each year and shall include (i) the fee set forth in RSA 421-B:31 and (ii) a current prospectus.

(b) Prior to the offer or sale of covered securities under section 18(b)(3), a notice shall be filed which includes:

- (1) The name, address, and telephone number of the issuer, and the type of securities to be sold;*
- (2) A consent to service of process on Form U-2 signed by the issuer;*
- (3) Any document filed with the Securities and Exchange Commission; and*
- (4) The fee required in RSA 421-B:31, I(k) and RSA 421-B:31, II(f).*

(c) Prior to the offer or sale of covered securities under section 18(b)(4)(A), a notice shall be filed which includes:

- (1) The name, address, and telephone number of the issuer, and the type of securities to be sold;*
- (2) A consent to service of process on Form U-2 signed by the issuer;*
- (3) The most recent 10-K and 10-Q reports filed with the Securities and Exchange Commission;*
- (4) The name of a registered broker-dealer who will effect transactions in this state; and*
- (5) The fee required in RSA 421-B:31, I(h).*

(d) Prior to the offer or sale of covered securities under section 18(b)(4)(C), a notice shall be filed which includes:

- (1) The name, address, and telephone number of the issuer, and the type of securities to be sold;*
- (2) A consent to service of process on Form U-2 signed by the issuer;*
- (3) A copy of the prospectus; and*
- (4) The name of a registered broker-dealer who will effect transactions in this state; and*
- (5) The fee required in RSA 421-B:31, I(k) and 421-B:31, II(f).*

(e) Prior to the offer or sale of covered securities under section 18(b)(4)(D), a notice shall be filed which includes:

- (1) The name, address, and telephone number of the issuer and the type of securities to be sold;*
- (2) A consent to service of process on Form U-2 signed by the issuer;*
- (3) A complete Form D, including pages 1-8, filed with the Securities and Exchange Commission;*
- (4) The name of any registered broker-dealer who will effect transactions in this state; and*
- (5) The fee pursuant to RSA 421-B:31, I(h). No offer or sales shall be made by officers or directors of the issuer unless a Form U-4 shall have been submitted for each individual and authorization obtained pursuant to RSA 421-B:2, II(e).*

I-b. Until October 11, 1999, the secretary of state may require the registration of any covered security for which a nonpayment or underpayment of fees has not been promptly remedied following written notification from the secretary of state of the nonpayment or underpayment of such fees.

II. Before the secretary of state may accept articles of incorporation for a new corporation under RSA 293-A, an application for a certificate of authority under RSA 293-A, a certificate of limited partnership for a new limited partnership under RSA 304-B, a certificate of formation for a new limited liability company or an application for regulation as a foreign limited liability company under RSA 304-C, registration of a registered limited liability partnership or a notice of registration of a foreign registered limited liability partnership under RSA 304-A, or an application for

registration of a foreign partnership under RSA 305-A, the following requirements shall be met:

(a) Along with a \$50 filing fee, a statement shall be filed with the secretary of state that the capital stock of the corporation, **memberships**, or the interests of the limited partnership, registered limited liability partnership, foreign registered limited liability partnership, or limited liability company have been registered, or when offered will be registered, under this chapter or are exempted, or when offered will be exempted, under this chapter, or are or will be offered in a transaction exempted from registration under this chapter, or are not securities under this chapter, **or are federal covered securities under this chapter**; and, in the case of a New Hampshire corporation, limited partnership, registered limited liability partnership, or limited liability company, that the articles of incorporation or certificate of limited partnership state whether the capital stock, **memberships**, or interests in the limited partnership, registered limited liability partnership or limited liability company will be sold or offered for sale within the meaning of this chapter.

(b) The statement shall be signed by the incorporators of a corporation to be formed, by an executive officer of an existing corporation, by the general partners or intended general partners if a limited partnership, by one or more members or managers authorized to do so if a limited liability company, or one or more partners authorized to do so if a registered limited liability partnership or foreign registered limited liability partnership.

17 Non-issuer Sales. Amend RSA 421-B:15, VIII to read as follows:

VIII. Every registration statement shall be effective, for the purpose of any non-issuer distribution until withdrawn, suspended, or revoked. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any non-issuer transaction so long as the registration statement is effective. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. **With respect to non-issuer sales of covered securities under section 18(b)(4)(A) of the Securities Act of 1933, refer to RSA 421-B:11 and RSA 421-B:31, I(h).**

18 New Paragraph; Stop Order. Amend RSA 421-B:16 by inserting after paragraph II the following new paragraph:

II-a. The secretary of state may issue a stop order suspending the offer and sale of a covered security, except a covered security under section 18(b) (1) of the Securities Act of 1933, if the secretary of state finds that:

(1) The order is in the public interest; and

(2) There is a failure to comply with any condition established under sections RSA 421-B:2, 421-B:11, or 421-B:31.

19 Reference to Rule 506. Amend RSA 421-B:17, II(h)(4) to read as follows:

(4) This exemption is not available for:

(A) Offerings made pursuant to the Securities Act of 1933, **Regulation D**, [Rules] **Rule** 230.505 [~~and 230.506~~], which qualify for exemption from registration pursuant to RSA 421-B:17,II(r); **and**

(B) **Offerings of covered securities under section 18(b)(4)(D) of the Securities Act of 1933.**

20 Information Requests by Secretary of State. Amend RSA 421-B:18 to read as follows:

421-B:18 Filing of Sales and Advertising Literature and Other Information.

I. **Subject to the limitations of section 222 of the Investment Advisers Act of 1940 and section 18 of the Securities Act of 1933**, the secretary of state may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser.

II. **Subject to the limitations of section 222 of the Investment Advisers Act of 1940 and section 18 of the Securities Act of 1933**, the secretary of state may require at any reasonable time and in any reasonable manner from any person or issuer subject to this title, statements; reports, including reports audited by independent public accountants and sales reports; answers to questionnaires; and other information and evidence thereof, in whatever reasonable form he designates, and at such reasonable intervals as he may choose, or from time to time.

21 No Legend for Federal Covered Securities. Amend RSA 421-B:20, II to read as follows:

II. The full text of paragraph I shall be reproduced, in type no smaller than 12 point boldface type, on any one of the first 5 pages of any prospectus or other offering document, when offered to New Hampshire residents in a private offering. Public offerings shall bear either a legend approved by the North American Securities Administrators Association, Inc., such as the modified Federal Regulation S-K legend or the legend required on Form U-7 which is required for offerings not federally registered. **This paragraph shall not apply to offers and sales of covered securities.**

22 Previous Filings of Consent: Amend the introductory paragraph of RSA 421B:30, VII to read as follows:

VII. Every applicant for licensing under this chapter and every issuer who proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the secretary of state, in such form as the secretary of state prescribes by rule, irrevocable consent appointing the secretary of state to receive service of any lawful process in any non-criminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration ***or notice filing*** need not file another. In instances where an offering is firmly underwritten, the issuer shall not be required to file a consent. Service may be made by leaving a copy of the process in the office of the secretary of state along with \$5, but it is not effective unless:

23 Fees. RSA 421-B:31 is repealed and reenacted to read as follows:

421-B:31 Fees.

I. Initial fees and fees for amendments shall be as follows:

(a) Broker dealer's and investment adviser's fees

(1) Broker dealer's and investment adviser's initial license fee \$200

(2) Non-refundable broker-dealer's and investment

adviser's application fee \$50

(3) Amended dealer's license fee \$100

(4) Non-refundable fee for a federal covered

adviser's initial notice filing \$250

(5) Notice filing amendment fee for a name change

of a federal covered adviser \$100

(b) Agent's fees.

(1) Agent's initial license fee \$100

(2) Non-refundable agent's license application fee \$30

(3) Amended agent's license fee \$25

(c) Issuer-dealer's fees.

(1) Issuer-dealer agent's initial license fee \$50

(2) Non-refundable issuer-dealer agent's application fee \$25

(3) Issuer-dealer initial license fee \$50

(d) Non-refundable registration fee for offers and sales of

each class of open end mutual funds required to

register under RSA 421-B:11, I-b. \$1,000

(e) Non-refundable examination fee prior to offers or

sales of securities under RSA 421-B:17, II(h) \$300

(f) Registration fee prior to offers or sales of securities in this state

2/10 of one percent of the offering value of the issue provided said fee shall not be more than \$1,050, plus a \$200 non-refundable examination fee.

(g) Fee prior to offers and sales of securities in initial

public offerings in this state under RSA 421-B:17, I(f)(1)(i) \$1,000

(h) Non-refundable fee prior to offers or sales of:

(1) Securities under RSA 421-B:17, II(r),

(2) Covered securities of other investment companies under section 18(b)(2) of the Securities Act of 1933,

(3) Non-issuer transactions under section 18(b)(4)(A) of the Securities Act of 1933 - a one-time filing fee, and

(4) Initial and annual renewal notice filing fee for sales of covered securities under Section 18(b)(4)(D) of the Securities Act of 1933. \$500

(i) A copying and printing charge may be assessed per page for each document.

(j) Non-refundable initial notice filing fee prior to offers or sales of each class of an open end mutual fund under section 18(b)(2) of the Securities Act of 1933 \$1,000

(k) Initial notice filing fee prior to offers or sales of covered securities under sections 18(b)(4)(C) and 18(b)(3) of the Securities Act of 1933.

2/10 of one percent of the offering value of the issue, provided said fee shall not be more than \$1,050, plus \$200 non-refundable initial notice fee.

II. Renewal fees shall be as follows:

(a) Broker-dealer's and investment adviser's license renewal fee \$200

(b) Annual notice filing fee for a federal covered adviser \$200

(c) Agent's license renewal fee \$100

(d) Issuer-dealer license renewal fee \$50

(e) Issuer-dealer agent's license renewal fee \$50

(f) Annual notice filing fee for offers or sales of covered securities under sections 18(b)(4)(C) and 18(b)(3) of the Securities Act of 1933.

2/10 of one percent of the offering value of the issue, provided said fee shall not be more than \$1,050.

(g) Annual non-refundable notice filing fee for offers and sales of each class of an issuer of open end mutual funds which are covered securities under section 18(b)(2) of the Securities Act of 1933, due on or before May 1 of each year. \$1,000

(h) Annual non-refundable registration fee for each class of an issuer of open-end mutual funds, due on or before May 1 of each year, if required to register

under RSA 421-B:11, I-b. \$1,000

III. In addition to any other penalties, provisions, or fees prescribed under this chapter, a late filing fee of 1/10 of one percent of the offering value of (1) a registered securities issue, or (2) an offering of covered securities, provided said fee shall not be more than \$525, shall be imposed if:

(a) It is requested that the provisions of RSA 421-B:13, III(b) be waived; or

(b) Securities sold in this state are more than registered on the effective application filed with the secretary of state, where the maximum registration fee has not been paid; or

(c) The registration application is amended to increase the amount registered in this state, where the maximum registration fee has not been paid,

subsequent to the effectiveness of the registration in this state; or

(d) Covered securities sold in this state are more than described in the notice filing made, where the maximum notice filing fee or the total amount of a flat fee has not been paid; or

(e) The notice filing for covered securities sold in this state is amended to increase the amount to be sold, subsequent to the date the filing was made in this state.

IV. Any person who offers or sells securities in New Hampshire under (1) RSA 421-B:12, 13, or 14, where less than the maximum filing fee has been paid in this state, (2) RSA 421-B:17, II(r) or (h), (3) a notice filing under section 18(b)(4)(D) of the Securities Act of 1933, or (4) a notice filing under section 18(b) of the Securities Act of 1933 where less than the maximum filing fee has been paid in this state shall file a sales report with the secretary of state. Such reports shall be filed one year from (1) the effective date of the registration or exemption or (2) the date the notice filing under section 18(b) of the Securities Act of 1933 was made with the secretary of state, and a final sales report shall be filed within 60 days of the termination of the offering. The sales report shall indicate the termination date, the total number and amount of sales in this state, and the total number and amount of sales in all jurisdictions. Any person who (1) fails to file a sales report or (2) fails to submit annual audited financial statements to the secretary of state under RSA 421-B:15, II-a shall pay a penalty of \$25 for each day of delinquency; provided, however, that the secretary of state may, for good cause shown, abate all or a portion of said delinquency penalty. The provisions of this paragraph shall not apply to federal covered securities pursuant to section 18(b)(2) of the Securities Act of 1933.

24 Repeal. RSA 421-B:15, IX-a, relative to a penalty for failure to file a sales report, is repealed.

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

1997-0693h

Amendment to HB 622-FN

Proposed by the Committee on Legislative Administration

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

AN ACT relative to legislative approval of settlements of court claims against the state.

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

1 New Subdivision; Settlements of Court Claims Against the State. Amend RSA 14 by inserting after section 35-a the following new subdivision:

Approval of Court Settlements

14:35-b Settlements of Court Claims Against the State.

I. Any settlement of a claim against the state in which the state through its attorneys agrees to a commitment with financial consequences in excess of ¼ of one percent or more of total reported general fund revenues for the previous fiscal year as reported by the legislative budget assistant pursuant to paragraph II shall be subject to the approval of the legislature.

II. The legislative budget assistant shall report to the attorney general on January 1 of each year the latest available audited general fund unrestricted revenues for the previous fiscal year as well as the threshold amount at which a financial settlement would be subject to legislative approval pursuant to paragraph I.

III. Any proposed settlement subject to this section shall be presented as legislation in the next convened session of the legislature and acted upon in the same manner as any other bill.

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

AMENDED ANALYSIS

This bill requires legislative approval of certain settlements of court claims against the state.

1997-0707h

Amendment to HB 628

Proposed by the Committee on Resources, Recreation and Development

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

AN ACT relative to an agreement or contract for the Mount Sunapee or Cannon Mountain ski area operations, or both, establishing a committee to develop a proposal and review responses, and requiring review of any agreement or contract by the capital budget overview committee.

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

1 Mount Sunapee and Cannon Mountain; Request for Proposals.

I. Notwithstanding any other provision of law, the commissioner of the department of resources and economic development shall, in consultation with the committee established in section 2 of this act, develop and issue a request for proposals to include but not be limited to a lease, concession agreement, or management contract for the Mount Sunapee or Cannon Mountain ski area operations or both.

II. The request for proposals shall include but not be limited to the following terms, conditions, and provisions:

- (a) Length of the agreement.
- (b) Assets to be included.
- (c) Outline of master plan.
- (d) Environmental regulation and controls including but not limited to:
 - (1) Soils,
 - (2) Water quality,
 - (3) Wetlands,
 - (4) Wildlife habitat,
 - (5) Scenic and aesthetic qualities,
 - (6) Multi-seasonal recreational opportunities,
 - (7) Forestry issues.
- (e) Expansion limitations.
- (f) State and local regulatory authority.
- (g) Operational responsibilities remaining with the state.
- (h) Requirement of performance bonds.
- (i) Past practices and agreements.
- (j) Repurchase.
- (k) Federal agency requirements, conditions, and regulations.
- (l) Consideration of state employees.

III. All responses to a request for proposals developed under this act shall be reviewed by the committee established in section 2 of this act in cooperation with the commissioner of resources and economic development.

2 Committee Established. There is established a committee for the purpose of advising the commissioner of resources and economic development, pursuant to section 1 of this act, on the creation of a request for proposals and the review of any responses to a request for proposals.

I. The committee shall consist of the following members:

(a) Ten members of the house of representatives, at least 3 of whom shall be members of the democratic party, and at least 8 of whom shall be members of the resources, recreation, and development committee, appointed by the speaker of the house.

(b) Four members of the senate, at least 1 of whom shall be a member of the democratic party, appointed by the president of the senate.

II. The members of the committee shall elect a chairperson from among its members. Members shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Review by Capital Budget Overview Committee. Any agreement or contract recommended pursuant to this act shall be submitted to the capital budget overview committee established in RSA 17-J for review and approval. No agreement or contract shall take effect until such approval is obtained.

4 Report on Future Status of Ski Area Employees. The commissioner of the department of resources and economic development shall provide along with any agreement or contract submitted under section 3 of this act, a report on the disposition of employees of the ski areas at Mount Sunapee or Cannon Mountain, or both.

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

AMENDED ANALYSIS

This bill requires the commissioner of resources and economic development to develop and issue a request for proposals for an agreement or contract for the Mount Sunapee or Cannon Mountain ski area operations, or both, in consultation with a legislative committee, and requires any agreement or contract to be approved by the capital budget overview committee.

This bill also requires the commissioner of resources and economic development to report on the disposition of ski area employees in any agreement or contract.

1997-0606h

Amendment to HB 632-LOCAL

Proposed by the Committee on Executive Departments and Administration

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

AN ACT abolishing the water well board and transferring its authority to the department of environmental services.

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

1 Reference Deleted. Amend RSA 21-O:3, IV to read as follows:

IV. Have the authority to adopt rules, pursuant to RSA 541-A, necessary to assure the continuance or granting of federal funds or other assistance intended to promote the administration of this chapter, not otherwise provided for by law, and to adopt all rules necessary to implement the specific statutes administered by the department or by any division or unit within the department, whether the rulemaking authority delegated by the legislature is granted to the commissioner, the department, or any administrative unit or subordinate official of the department. The ~~[water well board and the]~~ state board for the licensing and regulation of plumbers shall be exempt from the rulemaking provisions described in this section.

2 Water Well Contractor and Technical Driller Added to Water Council. Amend RSA 21-O:7, I to read as follows:

I. There is established a water council which shall consist of ~~[16]~~ **18** members:

(a) ~~[Eleven]~~ **Thirteen** of the members shall be public members appointed by the governor, with the consent of the council, who shall serve for terms of 4 years. Of these members, 2 shall represent the industrial interests of the state; one shall represent the vacation home or private recreational interests of the state; one shall represent the agricultural interests of the state; one shall be an employee of any municipal or privately-owned waterworks in the state; one shall be a representative of the septage hauling industry, nominated by the New Hampshire Association of Septage

Haulers; one shall be a member of a statewide nonprofit conservation or environmental organization; one shall be a treatment plant operator; ~~and~~ one shall be a designer or installer of septic systems, nominated by the Granite State Designers and Installers Association; **one shall be a licensed water well contractor, and one shall be a licensed technical driller.** The 2 remaining members shall be appointed and commissioned respectively as the ~~chairman~~ **chairperson** and vice ~~chairman~~ **chairperson** of the council;

(b) The remaining 5 members shall include:

- (1) The commissioner of the department of health and human services ;
- (2) The executive director of fish and game;
- (3) The director of parks and recreation;
- (4) The director of the office of state planning; and
- (5) The commissioner of safety.

3 Chapter Title Changed. The chapter title of RSA 482-B is repealed and reenacted to read as follows:

WATER WELL CONSTRUCTION

4 Reference Deleted. Amend RSA 482-B:1 to read as follows:

482-B:1 Purpose. The purpose of this chapter is to protect and improve the general health and welfare of the people of the state of New Hampshire; to protect the groundwater resources of the state; to regulate the construction of water wells and the installation of well pumps; to license water well contractors and well pump installers; to provide well and pump records~~[-to create a water well board,]~~ and to provide for penalties for violations of this chapter.

5 Reference Changed. Amend RSA 482-B:2, I to read as follows:

I. ~~["Board"]~~ **"Commissioner"** means the **commissioner of the** ~~[New Hampshire water well board established under RSA 482-B]~~ **department of environmental services.**

6 New Paragraph; Definition Added. Amend RSA 482-B:2 by inserting after paragraph I the following new paragraph:

I-a. "Department" means the department of environmental services.

7 Board Changed to Commissioner. Amend the introductory paragraph of RSA 482-B:4 to read as follows:

482-B:4 Rulemaking. The ~~[water well board]~~ **commissioner** shall adopt rules under RSA 541-A relative to:

8 Board Changed to Program. Amend RSA 482-A:4, VI to read as follows:

VI. The establishment of all fees required under this chapter at rates which will make the ~~[board]~~ **program** self-supporting.

9 Appeals. Amend RSA 482-B:9, III to read as follows:

III. Appeal from a decision of the ~~[board]~~ **department** may be made in accordance with RSA ~~[541]~~ **21-O:14.**

10 Reference Changed From Board to Commissioner. Amend RSA 482-A:15 to read as follows:

482-B:15 Maintenance and Repair of Wells and Pumps. All wells shall be maintained in a proper condition to conserve and protect groundwater resources and shall not be a source or cause of contamination or pollution of the water supply of any aquifer. All materials and construction practices used in the construction of a new well or new pump installation or in the maintenance, repair, or replacement of any well or pump installation shall conform with rules adopted by the ~~[board]~~ **commissioner**. All maintenance and repair work shall be done only by a licensed water well contractor, licensed pump installer, licensed plumber or licensed electrician.

11 References Changed. Amend the following RSA provisions by replacing "board" or "water well board" with "department": RSA 482-B:5, II, III, IV; 482-B:6; 482-B:8; 482-B:9, I, II; 482-B:10; 482-B:13; 482-B:16, II, III; and 482-B:17.

12 Transfer of Funds and Records. All funds allocated to the water well board and all records held by the water well board shall be transferred to the department of environmental services upon the effective date of this act.

13 Rules of the Water Well Board. Rules adopted by the water well board prior to the effective date of this act shall remain in effect until expiration or until amended or repealed by the department of environmental services. All references in such rules to the water well board shall be deemed to refer to the department of environmental services.

14 Repeal. RSA 482-B:3, relative to the water well board, is repealed.

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

AMENDED ANALYSIS

This bill abolishes the water well board and transfers its authority to the department of environmental services. This bill also adds members to the water council.

1997-0687h

Amendment to HB 650

Proposed by the Committee on Commerce

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

1 Corporate Filings. Amend RSA 293-A:1.22(a)(4) to read as follows:

(4) Articles *or certificate* of

merger or *articles of* share exchange \$35

2 New Sections; Mergers of Corporations With Limited Liability Companies and Limited Partnerships; Conversions. Amend RSA 293-A by inserting after section 11.07 the following new sections:

293-A:11.08 Merger of Corporation and Other Entities.

(a) As used in this section, "other entity" or "other entities" shall mean domestic or foreign limited liability companies and limited partnerships authorized by applicable statute to merge with a corporation.

(b) Any one or more corporations may merge with one or more other entities. Such corporation or corporations and such one or more other entities may merge with or into a corporation, which may be any one of such corporations, or they may merge with or into an other entity, which may be any one of such other entities, pursuant to an agreement or plan of merger complying and approved in accordance with this section and otherwise in compliance with this section.

(c) Each such corporation and other entity shall enter into a written agreement or plan of merger. The agreement shall state:

(1) The terms and conditions of the merger;

(2) The mode of carrying the same into effect;

(3) The manner of converting the shares of stock of each such corporation and the limited liability company or partnership interests of each such other entity into shares, limited liability company or partnership interests or other securities of the entity surviving such merger, and if any shares of any such corporation or any limited liability company or partnership interests of any such other entity are not to be converted solely into shares, limited liability company or partnership interests or other securities of the entity surviving such merger, the cash, property, rights or securities of any other corporation or entity which the holders of such shares or limited liability company or partnership interests are to receive in exchange for, or upon conversion of such shares or limited liability company or partnership interests and the surrender of any certificates evidencing such shares or interests, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares, limited liability company or partnership interests, or other securities of the entity surviving such merger; and

(4) Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance of fractional shares or interests of the surviving corporation or other entity. Any of the terms of the agreement or plan

of merger may be made dependent upon facts ascertainable outside of such agreement or plan, provided that the manner in which such facts shall operate upon the terms of the agreement or plan is clearly and expressly set forth in the agreement or plan of merger.

(d) The agreement or plan required by subsection (c) shall be adopted by the board of directors of each of the corporations and approved by the shareholders of each of the corporations to the extent required and in the same manner as is provided in RSA 293-A:11.03 and, in the case of the other entities, shall be approved in accordance with their limited liability company or partnership agreements and in accordance with the laws of the state under which they are formed, as the case may be.

(e) After a plan or agreement of merger is adopted and approved in the manner required by subsection (d), the surviving corporation or other entity shall deliver to the secretary of state for filing a certificate of merger setting forth:

(1) The name and jurisdiction of formation or organization of each business entity that is to merge;

(2) That an agreement or plan of merger has been approved, adopted, and executed by each business entity that is a party to the merger;

(3) The name of the surviving entity;

(4) If a corporation is the surviving entity of the merger, the plan of merger;

(5) If shareholder approval was not required, a statement to that effect;

(6) If approval of the shareholders of one or more corporations party to the merger was required:

(i) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

(ii) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group;

(7) In the case of a merger in which a corporation is the surviving entity, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger; and

(8) If the surviving entity is not a corporation, that the executed agreement of merger is on file at the principal place of business of the surviving business entity and the address thereof and that a copy of the agreement of merger will be furnished by the surviving entity, on request and without cost, to any shareholder of any constituent corporation, any member of any constituent limited liability company, or any partner of a constituent limited partnership.

(f) A merger takes effect upon the effective date of the certificate of merger.

(g) Upon the merger taking effect, a surviving foreign corporation or other entity of a merger is deemed:

(1) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger; and

(2) To agree that it will promptly pay to the dissenting shareholders of each corporation party to the merger the amount, if any, to which they are entitled under RSA 293A:13.01 through 293-A:13.31.

293-A:11.09 Approval of Conversion of a Corporation. A corporation may convert to a limited liability company organized under the laws of the state of New Hampshire upon the authorization of such conversion in accordance with this section and fulfillment of the requirements of RSA 304C:17-a. The board of directors of the corporation shall adopt a plan of conversion and shall submit the plan of conversion for approval of the shareholders in the manner provided for shareholder approval of a plan of merger under RSA 293-A:11.03 for a merger requiring shareholder approval. After a plan of conversion is authorized and at any time before the certificate of conversion is filed, the planned conversion may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedures set forth in the plan of conversion, or if none is set forth, in the manner determined by the board of directors.

3 Definitions; Dissenter's Rights. Amend RSA 293-A:13.01(1) to read as follows:

(1) "Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation *or other entity* by merger [or], share exchange, *or conversion* of that issuer.

4 Court Action on Appraisal Shares. Amend RSA 293-A:13.30(b) to read as follows:

(b) The corporation shall commence the proceeding in the superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located. If the corporation is a foreign corporation *or other entity* without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic corporation merged with *or converted into* or whose shares were acquired by the foreign corporation *or other entity* was located.

5 New Subparagraph; Right to Dissent to Conversion. Amend RSA 293-A:13.02(a) by inserting after subparagraph (5) the following new subparagraph:

(6) Consummation of a plan of conversion to which the corporation is a party converting to another entity.

6 Registered Limited Liability Partnership; Effective Date. Amend RSA 304-A:44, III to read as follows:

III. A partnership becomes a registered limited liability partnership at the ~~[time]~~ *close of business on the date* of the filing of the initial registration with the secretary of state or at ~~[any later]~~ *the effective time or the delayed effective time* and date not later than the ninetieth day after the date the registration is filed, specified in the registration, if, in ~~[either]~~ *any* case, there has been substantial compliance with the requirements of this chapter. A partnership continues as a registered limited liability partnership if there has been substantial compliance with the requirements of this chapter. The status of a partnership as a registered limited liability partnership and the liability of a partner of such registered limited liability partnership shall not be adversely affected by errors or subsequent changes in the information stated in a registration under paragraph I of this section.

7 New Paragraphs; Registered Limited Liability Partnership Filing Requirements. Amend RSA 304-A:51 by inserting after paragraph IV the following new paragraphs:

V. Except as provided in paragraph VI, a document accepted for filing is effective:

- (a) At the close of business on the date it is filed, as evidenced by the secretary of state's date endorsement of the original document; or
- (b) At the time specified in the document as its effective time on the date it is filed.

VI. A document filed in the office of the secretary of state may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective as of the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

8 Reserved Power of State. Amend RSA 304-A:54 to read as follows:

304-A:54 Reserved Power of State of New Hampshire to Amend or Repeal Chapter. All provisions of this chapter may be amended from time to time or repealed, and all rights of ~~[members and managers]~~ *partners* are subject to this reservation.

9 New Subdivision; Partnerships; Conversions and Mergers. Amend RSA 304-A by inserting after section 55 the following new subdivision:

Conversions and Mergers

304-A:56 Conversion of Partnership to Limited Partnership or Limited Liability Company.

- I. A partnership may be converted to a limited partnership or a limited liability company pursuant to this section.
- II. The terms and conditions of a conversion of a partnership to a limited partnership or a limited liability company must be approved by all of the partners.
- III. After the conversion is approved by the partners, the partnership shall file a certificate of conversion together with a certificate of limited partnership, in the case of a conversion to a limited partnership, or a certificate of formation, in the case of a conversion to a limited liability company, in the jurisdiction in which the limited partnership or the limited liability company is to be formed and in accordance with the laws applicable to such other entity. The certificate of conversion must include:
 - (a) A statement that the partnership was converted to a limited partnership or a limited liability company from a partnership;
 - (b) Its former name; and
 - (c) A statement that all of the partners approved the conversion.

IV. The conversion takes effect upon the effective date and time of the certificate of limited partnership or the certificate of formation of the limited liability company, as the case may be.

V. A general partner who becomes a limited partner of a limited partnership or a member of a limited liability company as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership or limited liability company reasonably believes when entering the transaction that the limited partner or member is a general partner, the limited partner or member is liable for an obligation incurred by the limited partnership or limited liability company within 90 days after the conversion takes effect. The liability of the limited partner or member for all other obligations of the limited partnership or the limited liability company incurred after the conversion takes effect is that of a limited partner or a member, as the case may be, as provided in RSA 304-B and RSA 304-C.

304-A:57 Conversion of Limited Partnership or Limited Liability Company to Partnership.

I. A limited partnership or a limited liability company may be converted to a partnership pursuant to this section and the laws applicable to such entities.

II. After the conversion is approved by the partners of a limited partnership in accordance with applicable law, the limited partnership shall cancel its certificate of limited partnership.

III. After the conversion is approved by the members of a limited liability company in accordance with applicable law, the limited liability company shall file a certificate of cancellation in the manner required by applicable law.

IV. The conversion takes effect upon the effective date and time of the certificate of cancellation of the limited partnership or the certificate of cancellation of the limited liability company, as the case may be.

V. A limited partner of a limited partnership or a member of a limited liability company who becomes a general partner as a result of the conversion remains liable only as a limited partner or a member for an obligation incurred by the limited partnership or the limited liability company before the conversion takes effect and is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

304-A:58 Effect of Conversion; Entity Unchanged.

I. A partnership, limited partnership, or limited liability company that has been converted pursuant to RSA 304-A:56 or 304-A:57 is for all purposes the same entity that existed before the conversion.

II. When a conversion takes effect:

(a) All property owned by the converting partnership, limited partnership, or limited liability company remains vested in the converted entity;

(b) All obligations of the converting partnership, limited partnership, or limited liability company continue as obligations of the converted entity; and

(c) An action or proceeding pending against the converting partnership, limited partnership or limited liability company may be continued as if the conversion had not occurred.

304-A:59 Merger of Partnerships.

I. Pursuant to a plan of merger approved as provided in paragraph III, a partnership may be merged with one or more partnerships, or with one or more limited partnerships or limited liability companies to the extent permitted by the laws applicable to such entities.

II. The plan of merger must set forth:

(a) The name of each partnership, limited partnership, or limited liability company that is a party to the merger;

(b) The name of the surviving entity into which the other partnerships, limited partnerships, or limited liability companies will merge;

(c) Whether the surviving entity is a partnership, a limited partnership, or a limited liability company and the status of each partner;

(d) The terms and conditions of the merger;

(e) The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or

other property in whole or part; and

(f) The street address of the surviving entity's chief executive office.

III. The plan of merger must be approved:

(a) In the case of a partnership that is a party to the merger, by all of the partners;

(b) In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement; and

(c) In the case of a limited liability company that is a party to the merger by the vote required by the law of the jurisdiction in which the limited liability company is organized.

IV. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

V. A merger takes effect:

(a) If a certificate of merger is required to be filed pursuant to RSA 304-A:61, upon the effective date of the certificate of merger; or

(b) If a certificate of merger is not required to be filed pursuant to RSA 304-A:61, upon the approval of the plan of merger by all parties to the merger as provided in paragraph III unless the plan of merger specifies a delayed effective date and time, in which event the merger shall take effect upon such specified date and time.

304-A:60 Effect of Merger.

I. When a merger takes effect:

(a) The separate existence of every partnership, limited partnership, or limited liability company that is a party to the merger, other than the surviving entity, ceases;

(b) All property owned by each of the merged partnerships, limited partnerships, or limited liability companies vests in the surviving entity;

(c) All obligations of every partnership, limited partnership, or limited liability company that is a party to the merger become the obligations of the surviving entity; and

(d) An action or proceeding pending against a partnership, limited partnership, or limited liability company that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

II. The secretary of state is the agent for service of process in an action or proceeding against a surviving foreign partnership, limited partnership, or limited liability company to enforce an obligation of a domestic partnership, limited partnership, or limited liability company that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership, limited partnership, or limited liability company.

III. A partner of a surviving partnership or limited partnership is liable for:

(a) All obligations of a party to the merger for which the partner was personally liable before the merger;

(b) All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and

(c) All obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

IV. If the obligations incurred before the merger by a partnership that is a party to the merger are not satisfied out of the property of the surviving entity, the partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in RSA 304-A:40 or in the limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

304-A:61 Certificate of Merger.

I. In a merger of a limited liability company, registered limited liability partnership, or a limited partnership with a partnership in which a partnership is the surviving entity, the surviving entity shall file in the office of the secretary of state a certificate of merger, together with payment of a filing fee of \$35.

II. A certificate of merger must contain:

- (a) The name of each partnership, limited partnership, or limited liability company that is a party to the merger;
- (b) The name of the surviving entity into which the other entities were merged;
- (c) The street address of the surviving entity's chief executive office and of an office in this state, if any;
- (d) A statement that the executed agreement of merger is on file at the principal place of business of the surviving business entity and the address thereof; and
- (e) A statement that a copy of the agreement of merger will be furnished by the surviving partnership, on request and without cost, to any limited partner of any constituent limited partnership or any member of any constituent limited liability company.

III. Except as otherwise provided in paragraph IV, for the purposes of RSA 304-A:10, property of a surviving partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

IV. For the purposes of RSA 304-A:10, real property of a surviving partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the certificate of merger, if a certificate of merger is required by paragraph I, and otherwise a certificate of merger satisfying the requirements of paragraph II acknowledged by all persons executing the certificate, in the registry of deeds of the county in which the real property is located.

V. A filed and, if appropriate, recorded certificate of merger, stating the name of a partnership, limited partnership, or limited liability company that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by paragraph II, operates with respect to the partnerships, limited partnerships, or limited liability companies named to the extent provided in paragraphs III and IV.

304-A:62 Nonexclusive. This subdivision is not exclusive. Partnerships may be converted or merged in any other manner provided by law.

10 Certificate of Limited Partnership; Effective Date. Amend RSA 304-B:8, II to read as follows:

II. A limited partnership is formed at the ~~[time]~~ **close of business on the date** of the filing of the certificate of limited partnership in the office of the secretary of state, together with the certificate required by RSA 421-B:13, I-a(b), or ~~[any later time]~~ **the effective time or the delayed effective time and date** specified in accordance with RSA 304-B:13, IV in the certificate of limited partnership if, in ~~[either]~~ **any** case, there has been substantial compliance with the requirements of this section.

11 Cancellation of Certificate; Effective Date. Amend RSA 304-B:10, IV to read as follows:

IV. The effective date ~~[(which shall be a date certain)]~~ **and time** of cancellation if it is not to be effective upon **the close of business on the date of** the filing of the certificate; and

12 Execution of Certificates. Amend RSA 304-B:11, I to read as follows:

I. Each certificate required by this ~~[subdivision]~~ **chapter** to be filed in the office of the secretary of state shall be executed in the following manner:

- (a) An original certificate of limited partnership must be signed by all general partners;
- (b) A certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner; ~~[and]~~
- (c) A certificate of cancellation must be signed by all general partners~~[-];~~ **and**
- (d) A certificate of merger and a certificate of conversion must be signed by all the general partners.**

13 Filing in Office Of Secretary of State; Certificate of Limited Partnership. Amend RSA 304-B:13 to read as follows:

304-B:13 Filing in Office of Secretary of State.

I. Two signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation) **and of any certificate of merger or certificate of conversion** shall be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of [his] authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law [he] **the secretary of state** shall:

(a) Endorse on each duplicate original the word "filed" and the day, month and year of the filing thereof;

(b) File one duplicate original in [his] **the secretary of state's** office; and

(c) Return the other duplicate original to the person who filed it or [his] **the person's** representative.

II. Upon the [filing] **effective date and time** of a certificate of amendment (or judicial decree of amendment) in the office of the secretary of state, the certificate of limited partnership shall be amended as set forth therein, and upon the effective date **and time** of a certificate of cancellation (or a judicial decree thereof), the certificate of limited partnership is cancelled.

III. Except as provided in paragraph IV, a document accepted for filing is effective:

(a) At the close of business on the date it is filed, as evidenced by the secretary of state's date endorsement of the original document; or

(b) At the time specified in the document as its effective time on the date it is filed.

IV. A document filed in the office of the secretary of state may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective as of the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

14 New Subdivisions; Limited Partnership; Mergers and Conversions; Dissenters' Rights. Amend RSA 304-B by inserting after section 16 the following new subdivisions:

Mergers and Conversions

304-B:16-a Merger.

I. As used in this section, "other business entity" means a domestic or foreign corporation, limited liability company, or partnership, whether general or limited, that is authorized by applicable statute to merge with a limited partnership.

II. Pursuant to an agreement of merger, a limited partnership may merge with or into one or more limited partnerships or other business entities, with such limited partnership or such other business entity as the agreement shall provide being the surviving limited partnership or other business entity.

III. Each such limited partnership and other entity shall enter into a written agreement or plan of merger. The agreement shall state:

(a) The terms and conditions of the merger;

(b) The mode of carrying the same into effect;

(c) The manner of converting the partnership interests of each such limited partnership and the shares or the limited liability company or partnership interests of each such other entity into shares, limited liability company or partnership interests, or other securities of the entity surviving from such merger, and if any partnership interests of any such limited partnership or any shares limited partnership or limited liability company or partnership interests of any such other entity are not to be converted solely into shares, limited liability company or partnership interests, or other securities of the entity surviving from such merger, the cash, property, rights or securities of any other corporation or entity which the holders of such shares or limited liability company or partnership interests are to receive in exchange for, or upon conversion of such shares or limited partnership or limited liability company interests and the surrender of any certificates evidencing such shares or interests which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares, limited liability company or partnership interests, or other securities of the entity surviving from such merger; and

(d) Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment

of cash in lieu of the issuance of fractional shares or interests of the surviving corporation or other entity. Any of the terms of the agreement or plan of merger may be made dependent upon facts ascertainable outside of such agreement or plan provided that the manner in which such facts shall operate upon the terms of the agreement or plan is clearly and expressly set forth in the agreement or plan of merger.

IV. Unless otherwise provided in the partnership agreement, a merger shall be approved by each limited partnership which is to merge (1) by all general partners, and (2) by the limited partners or, if there is more than one class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate. In connection with a merger hereunder, rights or securities of, or interests in, a limited partnership or other business entity which is a constituent party to the merger may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving limited partnership or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a limited partnership or other business entity which is not the surviving limited partnership or other business entity in the merger. Notwithstanding prior approval, an agreement of merger may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger at any time before the certificate of merger is filed.

V. If a limited partnership is merging under this section, the limited partnership or other business entity surviving in the merger shall file in the office of the secretary of state a certificate of merger setting forth:

- (a) The name and jurisdiction of formation or organization of each of the limited partnerships or other business entities which is to merge;
- (b) That an agreement of merger has been approved and executed by each of the limited partnerships or other business entities which is to merge;
- (c) The name of the surviving limited partnership or other business entity;
- (d) If a corporation is the surviving entity of the merger, the plan of merger;
- (e) If shareholder approval of any corporation party to the merger was not required, a statement to that effect;
- (f) If approval of the shareholders of one or more corporations party to the merger or share exchange was required:
 - (1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and
 - (2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.
- (g) In the case of a merger in which a corporation is the surviving entity, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the articles of incorporation of the surviving corporation shall be its articles of incorporation;
- (h) If the surviving business entity is not a corporation, that the executed agreement of merger is on file at the principal place of business of the surviving business entity and the address thereof;
- (i) That a copy of the agreement of merger will be furnished by the surviving limited partnership or other business entity, on request and without cost, to any partner or any limited partnership or any person holding an interest in any other business entity which is to merge;

VI. Upon the merger taking effect, a surviving foreign other entity of a merger is deemed:

- (a) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting partners of each limited partnership party to the merger; and
- (b) To agree that it will promptly pay to the dissenting parties of each limited partnership party to the merger or share exchange the amount, if any, to which they are entitled under RSA 304-C:16-b.

VII. A merger shall be effective upon the effective date and time of the certificate of merger.

VIII. A certificate of merger shall act as a certificate of cancellation for a domestic limited partnership which is not the surviving entity in the merger.

IX. Notwithstanding anything to the contrary contained in a partnership agreement, a partnership agreement containing a specific reference to this paragraph may provide that an agreement of merger approved in accordance with paragraph VII of this section may (1) effect any amendment to the partnership agreement or (2) effect the adoption of a new partnership agreement for a limited partnership if it is the surviving limited partnership in the merger. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger. The provisions of this paragraph shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law, including that the partnership agreement of any constituent limited partnership to the merger (including a limited partnership formed for the purpose of consummating a merger) shall be the partnership agreement of the surviving limited partnership.

X. When any merger shall have become effective under this section, for all purposes of the laws of the state of New Hampshire, all of the rights, privileges and powers of each of the limited partnerships and other business entities that have merged, and all property, real, personal and mixed, and all debts due to any of said limited partnerships and other business entities, as well as all other things and causes of action belonging to each of such limited partnerships and other business entities, shall be vested in the surviving limited partnership or other business entity, and shall thereafter be the property of the surviving limited partnership or other business entity as they were of each of the limited partnerships and other business entities that have merged, and the title to any real property vested by deed or otherwise, under the laws of the state of New Hampshire, in any of such limited partnerships and other business entities, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of said limited partnerships and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the limited partnerships and other business entities that have merged shall thenceforth attach to the surviving limited partnership or other business entity, and may be enforced against it to the same extent as if said debts, liabilities, and duties had been incurred or contracted by it. Unless otherwise agreed, a merger of a limited partnership, including a limited partnership which is not the surviving entity in the merger, shall not require such limited partnership to wind up its affairs under RSA 304-B:46 or pay its liabilities and distribute its assets under RSA 304-B:47.

XI. Except as provided by agreement with a person to whom a general partner of a limited partnership is obligated, a merger of a limited partnership that has become effective shall not affect any obligation or liability existing at the time of such merger of a general partner of a limited partnership which is merging.

XII. If a limited partnership is a constituent party to a merger that shall have become effective, but the limited partnership is not the surviving entity of the merger, then a judgment creditor of a general partner of such limited partnership may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the surviving entity of the merger unless:

- (a) a judgment based on the same claim has been obtained against the surviving entity of the merger and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
- (b) The surviving entity of the merger is a debtor in bankruptcy;
- (c) The general partner has agreed that the creditor need not exhaust the assets of the limited partnership that was not the surviving entity of the merger;
- (d) The general partner has agreed that the creditor need not exhaust the assets of the surviving entity of the merger;
- (e) A court grants permission to the judgment creditor to levy execution against the assets of the general partner based on a finding that the assets of the surviving entity of the merger that are subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of the assets of the surviving entity of the merger is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or
- (f) Liability is imposed on the general partner by law or contract independent of the existence of the surviving entity of the merger.

304-B:16-b Approval of Conversion of a Limited Partnership. A limited partnership may convert to an other business entity, as defined in RSA 304-B:16-a, I, other than a limited partnership, upon the authorization of such conversion in accordance with this section and to the extent authorized by and in accordance with the laws applicable to conversion to such other business entity. If the partnership agreement specifies the manner of authorizing a conversion of the limited partnership, the conversion shall be authorized as specified in the partnership agreement. If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership and does not prohibit a conversion of the limited partnership, the conversion shall be authorized in the same manner as is specified in the partnership agreement for authorizing a merger that involves the limited partnership as a constituent party to the merger. If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership or a merger that involves the limited partnership as a constituent party and does not prohibit a conversion of the limited partnership, the conversion shall be authorized by the approval (1) by all general partners, and (2) by the limited partners or, if there is more than one class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate.

Dissenters' Rights

304-B:16-c Definitions and Construction. In this subdivision:

I. "Dissenter" means a limited partner who is entitled to dissent from limited partnership action under RSA 304-B:16-d and who exercises that right when and in the manner required under this subdivision.

II. "Fair value" means the value of the dissenter's partnership interest of a limited partnership immediately before the effective date of the limited liability action referred to in RSA 304-B:16-d, excluding any appreciation or depreciation in anticipation of the limited partnership action.

III. "Interest" means interest from the effective date of the action referred to in RSA 304B:16-d that gave rise to the limited partner's right to dissent until the date of payment, at the average auction rate paid on United States treasury bills with a maturity of 6 months (or the closest maturity thereto) as of the auction date for such treasury bills closest to such effective date.

IV. "Limited partnership" means a limited partnership whose limited partners have obtained rights to dissent under RSA 304-B:16-d and includes any successor by merger or conversion.

304-B:16-d Dissenters' Rights.

I. A limited partner is entitled to dissent from, and obtain payment of the fair value of the limited partner's partnership interest upon either of the following actions:

(a) Consummation of a plan of merger to which the limited partnership is a party.

(b) Consummation of a plan of conversion of the limited partnership to some other business entity.

II. A limited partner entitled to dissent and obtain payment for such limited partner's partnership interest under this subdivision may not challenge the limited partnership action creating such limited partner's entitlement unless the action is unlawful or fraudulent with respect to the limited partner or the limited partnership.

304-B:16-e Notice of Dissenters' Rights.

I. If the proposed action of the limited partnership creating dissenters' rights under RSA 304-B:16-d is submitted to a vote at a meeting of the limited partners, the meeting notice must state that limited partners are or may be entitled to assert dissenters' rights under this subdivision and be accompanied by a copy of this subdivision.

II. If the limited partnership action creating dissenters' rights under RSA 304-B:16-d is taken without a vote of the limited partners, the limited partnership shall notify in writing all limited partners entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in RSA 304-B:16-g.

III. A limited partnership's failure to give notice pursuant to this section shall not invalidate the limited partnership action.

304-B:16-f Notice of Intent to Demand Payment.

I. If proposed action of a limited partnership creating dissenters' rights under RSA 304B:16-d is submitted to a vote at a meeting of the limited partners, a limited partner who wishes to assert dissenters' rights shall:

(a) Deliver to the limited partnership before the vote is taken a written notice of the member's intent to demand payment for the limited partner's limited partnership interest if the proposed action is effectuated.

(b) Not vote the limited partner's limited partnership interest in favor of the proposed action.

II. No such written notice of intent to demand payment is required of any limited partner to whom the limited partnership has failed to provide the notice required by RSA 304-B:16-e.

III. A limited partner who does not satisfy the requirements of this section is not entitled to payment for such limited partner's limited partnership interest under this subdivision.

304-B:16-g Dissenters' Notice.

I. If proposed action of a limited partnership creating dissenters' rights under RSA 304B:16-d is authorized at a meeting of the limited partners, the limited partnership shall deliver a written dissenters' notice to all limited partners who have satisfied the requirements of RSA 304-B:16-f.

II. The dissenters' notice must be sent no later than 10 days after the action of the limited partnership was authorized by the members or effectuated, whichever is the first to occur, and shall:

(a) State where the payment demand shall be sent;

(b) Supply a form for demanding payment that includes the date of the first announcement to news media or to limited partners of the principal terms of the proposed limited partnership action and requires that the person asserting dissenters' rights certify whether or not the limited partner acquired the limited partnership interest before that date;

(c) Set a date by which the limited partnership must receive the payment demand, which date may not be fewer than 30 days and not more than 60 days after the date of the notice required by paragraph II is sent; and

(d) Be accompanied by a copy of this subdivision if the limited partnership has not previously sent a copy of this subdivision to the limited partner pursuant to RSA 304-B:16-e.

304-B:16-h Duty to Demand Payment.

I. A limited partner sent a dissenters' notice described in RSA 304-B:16-g must demand payment and certify whether the limited partner acquired the limited partnership interest before the date required to be set forth in the dissenters' notice pursuant to RSA 304-B:16-g.

II. A limited partner who demands payment under paragraph I retains all of the rights of a limited partner until those rights are canceled or modified by consummation of the proposed action of the limited partnership.

III. A limited partner who does not demand payment by the date set forth in the dissenters' notice is not entitled to payment of fair value for such limited partner's partnership interest under this subdivision.

IV. A demand for payment filed by a limited partner may not be withdrawn unless the limited partnership with which it was filed or the surviving limited partnership or other business entity consents to such withdrawal.

304-B:16-i Payment.

I. Except as provided in RSA 304-B:16-k, as soon as the proposed limited partnership action is effectuated, or upon receipt of a payment demand, whichever is later, the limited partnership shall pay each dissenter who complied with RSA 304-B:16-h the amount the limited partnership estimates to be the fair value of such dissenter's partnership interest, plus accrued interest.

II. The payment shall be accompanied by:

(a) The limited partnership's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, and the latest available interim financial statements, if any;

(b) A statement of the limited partnership's estimate of the fair value of the limited partnership interest;

(c) An explanation of how the value of the limited partnership interest was calculated;

(d) A statement of the dissenter's right to demand payment under RSA 304-B:16-l; and

(e) A copy of this subdivision, if the limited partnership has not previously sent a copy of this subdivision to the limited partner pursuant to RSA 304-B:16-e or RSA 304-B:16-g.

304-B:16-j Failure to Take Action. If the limited partnership does not effectuate the proposed action that gave rise to the dissenters' rights within 60 days after the date set for demanding payment, it shall send a new dissenters' notice under RSA 304-B:16-e and repeat the payment demand procedure if it effectuates the proposed action.

304-B:16-k After-Acquired Limited Partnership Interests.

I. A limited partnership may elect to withhold payment required by RSA 304-B:16-i from a dissenter unless the dissenter was a limited partner before the date set forth in the dissenters' notice as the date of the first announcement to news media or to limited partners of the principal terms of

the proposed limited partnership action.

II. To the extent the limited partnership elects not to withhold payment under paragraph I, after effectuating the proposed limited partnership action, it shall estimate the fair value of the limited partnership interest, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of the dissenter's demand. The limited partnership shall send with its offer a statement of its estimate of the fair value of the limited partnership interest, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under RSA 304-B:16-l.

304-B:16-l Procedure if Limited Partner Dissatisfied With Payment of Offer.

I. A dissenter may notify the limited partnership in writing of the dissenter's own estimate of the fair value of such dissenter's limited partnership interest and amount of interest due, and demand payment of the dissenter's estimate (less any payment under RSA 304-B:16-i), or reject the limited partnership's offer under RSA 304-B:16-k; and demand payment of the fair value of the limited partnership interest and interest due, if:

(a) The dissenter believes that the amount paid under RSA 304-B:16-i or offered under RSA 304-B:16-k is less than the fair value of such dissenter's limited partnership interest or that the interest due is incorrectly calculated; or

(b) The limited partnership fails to make payment under RSA 304-B:16-i within 60 days after the date set for demanding payment.

II. A dissenter waives the right to demand payment under this section unless the dissenter notifies the limited partnership of such dissenter's demand in writing under paragraph I within 30 days after the limited partnership made or offered payment for such dissenter's limited partnership interest.

304-B:16-m Court Action.

I. If a demand for payment under RSA 304-B:16-l remains unsettled, the limited partnership shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the limited partnership interest and accrued interest. If the limited partnership does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

II. The limited partnership shall commence the proceeding in superior court of the county where the limited partnership's principal executive office (or, if none in this state, its registered office) is located. If the limited partnership is a foreign entity without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic limited partnership merged with or converted into the foreign entity was located.

III. The limited partnership shall make all dissenters (whether or not residents of this state) whose demands remain unsettled parties to the proceeding as in an action against their limited partnership interests, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

IV. The jurisdiction of the court in which the proceeding is commenced under paragraph II is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

V. Each dissenter made a party to the proceeding is entitled to judgment:

(a) For the amount, if any, by which the court finds the fair value of the dissenter's partnership interest plus accrued interest exceeds the amount paid by the limited partnership; or

(b) For the fair value, plus accrued interest, of such dissenter's after-acquired partnership interests for which the limited partnership elected to withhold payment under RSA 304-B:16-k.

VI. The limited partnership is entitled to judgment against each specific dissenter for the amount, if any, by which the court finds the fair value of such dissenter's partnership interest, plus accrued interest, is less than the amount paid by the limited partnership to each dissenter.

304-B:16-n Court Costs and Counsel Fees.

I. The court in an appraisal proceeding commenced under RSA 304-B:16-m shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited partnership, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under RSA 304-B:16-l.

II. The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the limited partnership and in favor of any or all dissenters if the court finds the limited partnership did not substantially comply with the requirements of RSA 304-B:16-d through 304-B:16-l.

(b) Against either the limited partnership or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subdivision.

III. If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and that the fees for those services should not be assessed against the limited partnership, the court may award to these counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

304-B:16-o Procedures as to Assignees of Financial Rights.

I. When an assignment of all or a portion of a limited partnership interest is in effect and a copy delivered to the limited partnership prior to the action described in RSA 304-B:16-i, then as to that limited partnership interest the provisions of RSA 304-B:16-c through 304-B:16-n must be followed subject to the requirements of this section.

II. If the limited partner has not ceased to be a partner upon assignment of the limited partner's partnership interest prior to the action described in RSA 304-B:16-i, all rights to be exercised and actions to be taken by a limited partner under RSA 304-B:16-d through 304-B:16-n shall be taken by the limited partner and not by an assignee of the limited partner's partnership interest. As between the limited partnership and the assignees, the actions taken or omitted by the limited partner bind the assignees, and the following requirements shall apply:

(a) Instead of remitting a payment under RSA 304-B:16-i, the limited partnership shall forward to the dissenter limited partner:

(1) The materials described in RSA 304-B:16-i, II;

(2) An offer to pay the amount listed in the materials, with that amount to be allocated among and paid to the limited partner and the assignees of the limited liability company interest according to the terms of the assignments reflected in the required records; and

(3) A statement of that allocation.

(b) If the dissenter limited partner accepts the amount of the offer made under subparagraph (a) but disputes the allocation, the dissenter shall promptly so notify the limited partnership and within 60 days after the notification commence a proceeding and petition the court to determine the proper allocation. The limited partner shall commence the proceeding in superior court of the county in which the principal office of the limited partnership (or if none, its registered office) is located, or in the case of a surviving foreign limited partnership or other entity that is complying with this section following a merger with or conversion of limited partnership, the limited partner shall commence the proceeding in superior court the county in this state in which the last registered office of the limited partnership was located. The petition shall name as parties the limited partner, the limited partnership and all assignees of the limited partner's limited partnership interest. Upon being served with the petition, the limited partnership shall promptly pay into the court the amount offered under paragraph II and shall then be dismissed from the proceeding.

(c) If the dissenter considers the amount offered under subparagraph (a) inadequate, the dissenter may decline the offer and demand payment under RSA 304-B:16-l. If the dissenter makes demand for payment, RSA 304-B:16-m and 304-B:16-n apply with the court having jurisdiction also to determine the correctness of the allocation.

(d) If the limited partner fails to take action under either subparagraph (b) or (c), then:

(1) As to the limited partnership, both the member and the assignees of the limited partner's limited partnership interests are limited to the amount and allocation offered under subparagraph (a); and

(2) The limited partnership discharges its obligation of payment by making payment according to the amount and allocation offered under subparagraph (a).

III. If the limited partner has ceased to be a limited partner upon assignment of the limited partner's partnership interest, the assignees of the limited partner's partnership interest shall be entitled to exercise all rights of the limited partner pursuant to RSA 304-B:16-d through 304-B:16-n.

15 New Paragraph; Limited Partnerships; Certificate of Merger Fee. Amend RSA 304-B:64 by inserting after paragraph III the following new paragraph:

IV. For a certificate of merger, \$35.

16 New Paragraph; Limited Liability Companies; Definition; Business Entity. Amend RSA 304C:1 by inserting after paragraph I the following new paragraph:

I-a. "Business entity" means a domestic or foreign limited liability company, corporation, general partnership, or limited partnership.

17 Limited Liability Companies; Definitions. Amend RSA 304-C:1, V and the introductory paragraph of 304-C:1, VI to read as follows:

V. "Limited liability company" and "domestic limited liability company" mean a limited liability company formed under the laws of New Hampshire and having [2] **one** or more members.

VI. "Limited liability company agreement" means a written agreement of the members **or a document adopted by the sole member** as to the affairs of a limited liability company and the conduct of its business. A limited liability company agreement or another written agreement or writing:

18 Limited Liability Company; Filing Requirements. Amend RSA 304-C:2, VI(c) to read as follows:

(c) If the limited liability company is in the hands of a receiver, [trustee] **executor**, or other court appointed fiduciary, **trustee, or other fiduciary**, by that fiduciary.

19 Mergers and Conversions. Amend the subdivision heading preceding RSA 304-C:18 to read as follows:

Merger **and Conversion**

20 New Sections; Conversions of or to a Limited Liability Company. Amend RSA 304-C by inserting after section 17 the following new sections in the subdivision "merger and conversion":

304-C:17-a Conversion of Other Business Entities to Limited Liability Companies.

I. Any business entity may convert to a limited liability company by complying with the requirements of this section.

II. Each business entity that proposes to convert to a limited liability company shall approve a plan of conversion in the manner and by the vote required by the laws applicable to such business entity.

III. A plan of conversion shall set forth the terms and conditions of the conversion of the shares of stock of a corporation, the partnership interests of a partnership or a limited partnership or other equity interests in the converting business entity, as the case may be, into interests in the limited liability company or cash or other consideration to be paid or delivered as a result of the conversion.

IV. A business entity converting to a limited liability company shall file with the secretary of state:

(a) A certificate of conversion to a limited liability company;

(b) A certificate of formation that complies with the requirements of RSA 304-C:12; and

(c) The certificate required by RSA 421-B:13, I-a.

V. The certificate of conversion to a limited liability company shall state:

(a) The date on which and jurisdiction where the business entity was first created, formed, incorporated, or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a limited liability company.

(b) The name of the business entity immediately prior to the filing of the certificate of conversion to a limited liability company.

(c) The name of the limited liability company as set forth in its certificate of formation filed in accordance with paragraph IV of this section.

(d) If the business entity is a corporation:

(1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group is

sufficient for approval by that voting group.

(e) That the plan of conversion is on file at the principal place of business of the limited liability company and the address thereof and that a copy of the plan of conversion will be furnished by the limited liability company, on request and without cost, to any shareholder of the corporation.

VI. A conversion of a business entity to a limited liability company takes effect upon the effective date and time of the certificate of formation.

VII. Upon the effective date of the conversion the converting business entity shall be converted into a limited liability company, and the limited liability company shall thereafter be subject to all of the provisions of this chapter.

VIII. A conversion of a business entity to a limited liability company has the following effects:

(a) The limited liability company shall thereupon and thereafter possess all the rights, privileges, immunities, and powers of the business entity that converted into the limited liability company and shall be subject to all the restrictions, disabilities, and duties of such business entity to the extent that such rights, privileges, immunities, powers, franchises, restrictions, disabilities, and duties are applicable to a limited liability company.

(b) All property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest of or belonging to or due to such business entity shall be vested in the limited liability company without further act or deed.

(c) The title to all real estate and other interests therein vested in the business entity converting into the limited liability company shall not revert or be in any way impaired by reason of such conversion.

(d) The limited liability company shall thenceforth be liable for all liabilities and obligations of the business entity converting to the limited liability company and any claim existing or action or proceeding pending by or against such business entity may be prosecuted as if such conversion had not taken place, or the limited liability company may be substituted in the action.

(e) Neither the rights of creditors nor any liens on the property of the business entity converted to a limited liability company shall be impaired by the conversion.

(f) The interests or shares of the business entity that is converted into a limited liability company that are to be converted or exchanged into interests of the limited liability company under the terms of the plan of conversion are so converted, and the former holders thereof are entitled only to the interests in the limited liability company as provided in the plan of conversion or the rights otherwise provided by law.

(g) The conversion shall not be deemed to affect any obligations or liabilities of the converting business entity incurred before its conversion to a limited liability company.

IX. Unless otherwise agreed or as required under applicable law, the converting business entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the converting business entity.

304-C:17-b Approval of Conversion of a Limited Liability Company.

I. A limited liability company may convert to another business entity authorized by applicable statute to be formed by conversion of a limited liability company, upon the authorization of such conversion in accordance with this section and fulfillment of the requirements for conversion of the statute governing conversion into such other entity.

II. If the limited liability company agreement specifies the manner of authorizing a conversion of the limited liability company, the conversion shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company and does not prohibit a conversion of the limited liability company, the conversion shall be authorized in the same manner as is specified in the limited liability company agreement for authorizing a merger that involves the limited liability company as a constituent party to the merger.

III. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company or a merger that involves the limited liability company as a constituent party and does not prohibit a conversion of the limited liability company, the conversion shall be authorized by the approval by more than $\frac{1}{2}$ by number of the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by a more than $\frac{1}{2}$ by number of the members in each class or group, as appropriate.

21 Limited Liability Company; Merger. Amend RSA 304C:18, I to read as follows:

I. Unless otherwise provided in writing in a limited liability company agreement, and subject to any law applicable to business entities other than limited liability companies, one or more limited liability companies may merge with or into one or more other business entities **authorized by**

applicable statute to merge with a limited liability company, with the limited liability company or other business entity, as the merger agreement shall provide, being the surviving limited liability company or other business entity.

22 Limited Liability Company; Approval of Merger. Amend RSA 304-C:19, I to read as follows:

I. Unless otherwise provided in a limited liability company agreement, a limited liability company that is a party to a proposed merger shall approve the merger agreement by the consent of more than 1/2 by number of the members, ***or if there is more than one class or group of members, then by the consent more than 1/2 by number of the members of each class or group of members.***

23 New Subdivision; Limited Liability Companies; Dissenters' Rights. Amend RSA 304-C by inserting after section 22 the following new subdivision:

Dissenters' Rights

304-C:22-a Definitions and Construction. In this subdivision:

I. "Dissenter" means a member who is entitled to dissent from limited liability company action under RSA 304-C:22-b and who exercises that right when and in the manner required under this subdivision.

II. "Fair value" means the value of the dissenter's limited liability interest of a limited liability company immediately before the effective date of the limited liability action referred to in RSA 304-C:22-b, excluding any appreciation or depreciation in anticipation of the limited liability action.

III. "Interest" means interest from the effective date of the action referred to in RSA 304-C:22-b that gave rise to the member's right to dissent until the date of payment, at the average auction rate paid on United States treasury bills with a maturity of 6 months (or the closest maturity thereto) as of the auction date for such treasury bills closest to such effective date.

IV. "Limited liability company" means a limited liability company whose members have obtained rights to dissent under RSA 304-C:22-b, and includes any successor by merger or conversion.

V. "Member" includes a former member who has ceased to be a member, but who was not entitled to payment for the value of the member's limited liability interest upon cessation of membership.

304-C:22-b Dissenters' Rights.

I. A member of a limited liability company is entitled to dissent from, and obtain payment of the fair value of the member's limited liability company interest, upon any of the following actions:

(a) Consummation of a plan of merger to which the limited liability company is a party.

(b) Consummation of a plan of conversion of the limited liability company to some other business entity.

(c) An amendment to the limited liability company agreement (1) altering or abolishing a right in respect of distribution, (2) altering or abolishing a right to voluntarily withdraw, or (3) altering or abolishing any right of a member to vote on any matter, other than alteration by dilution through the admission of other members or acceptance of contributions.

II. A member entitled to dissent and obtain payment for such member's limited liability company interest under this subdivision may not challenge the limited liability company action creating such member's entitlement unless the action is unlawful or fraudulent with respect to the member or the limited liability company.

304-C:22-c Notice of Dissenters' Rights.

I. If the proposed action of the limited liability company creating dissenters' rights under RSA 304-C:22-b is submitted to a vote at a meeting of the members, the meeting notice must state that members are or may be entitled to assert dissenters' rights under this subdivision and be accompanied by a copy of this subdivision.

II. If the limited liability company action creating dissenters' rights under RSA 304-C:22-b is taken without a vote of the members, the limited liability company shall notify in writing all members entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in RSA 304-C:22-e.

III. A limited liability company's failure to give notice pursuant to this section shall not invalidate the limited liability company action.

304-C:22-d Notice of Intent to Demand Payment.

I. If proposed action of a limited liability company creating dissenters' rights under RSA 304-C:22-b is submitted to a vote at a meeting of the members, a member who wishes to assert dissenters' rights shall:

(a) Deliver to the limited liability company before the vote is taken a written notice of the member's intent to demand payment for the member's limited liability company interest if the proposed action is effectuated.

(b) Not vote the member's limited liability company interest in favor of the proposed action.

II. No such written notice of intent to demand payment is required of any member to whom the limited liability company has failed to provide the notice required by RSA 304-C:22-c.

III. A member who does not satisfy the requirements of this section is not entitled to payment for such member's limited liability company interest under this subdivision.

304-C:22-e Dissenters' Notice.

I. If proposed action of a limited liability company creating dissenters' rights under RSA 304C:22-b is authorized at a meeting of the members, the limited liability company shall deliver a written dissenters' notice to all members who have satisfied the requirements of RSA 304C:22-d.

II. The dissenters' notice must be sent no later than 10 days after the action of the limited liability company was authorized by the members or effectuated, whichever is the first to occur, and shall;

(a) State where the payment demand shall be sent;

(b) Supply a form for demanding payment that includes the date of the first announcement to news media or to members of the principal terms of the proposed limited liability company action and requires that the person asserting dissenters' rights certify whether or not the member acquired limited liability company interest before that date;

(c) Set a date by which the limited liability company must receive the payment demand, which date may not be fewer than 30 days and not more than 60 days after the date of the notice required by paragraph II is sent; and

(d) Be accompanied by a copy of this subdivision if the limited liability company has not previously sent a copy of this subdivision to the member pursuant to RSA 304-C:22-c.

304-C:22-f Duty to Demand Payment.

I. A member sent a dissenters' notice described in RSA 304-C:22-e must demand payment and certify whether the member acquired the limited liability company interest before the date required to be set forth in the dissenters' notice pursuant to RSA 304-C:22-e.

II. A member who demands payment under paragraph I retains all of the rights of a member until those rights are canceled or modified by consummation of the proposed action of the limited liability company.

III. A member who does not demand payment by the date set forth in the dissenters' notice is not entitled to payment of fair value for such member's membership interest under this subdivision.

IV. A demand for payment filed by a member may not be withdrawn unless the limited liability company with which it was filed or the surviving limited liability company or other business entity consents to such withdrawal.

304-C:22-g Payment.

I. Except as provided in RSA 304-C:22-i, as soon as the proposed limited liability company action is effectuated, or upon receipt of a payment demand, whichever is later, the limited liability company shall pay each dissenter who complied with RSA 304-C:22-f the amount the limited liability company estimates to be the fair value of such dissenter's membership interest, plus accrued interest.

II. The payment must be accompanied by:

(a) The limited liability company's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, and the latest available interim financial statements, if any;

- (b) A statement of the limited liability company's estimate of the fair value of the membership interest;
- (c) An explanation of how the value of the membership interest was calculated;
- (d) A statement of the dissenter's right to demand payment under RSA 304-C:22-j; and
- (e) A copy of this subdivision, if the limited liability company has not previously sent a copy of this subdivision to the member pursuant to RSA 304C:22-c or RSA 304-C:22-e.

304-C:22-h Failure to Take Action. If the limited liability company does not effectuate the proposed action that gave rise to the dissenters' rights within 60 days after the date set for demanding payment, it shall send a new dissenters' notice under RSA 304-C:22-c and repeat the payment demand procedure if it effectuates the proposed action.

304-C:22-i After-Acquired Limited Liability Company Interests.

I. A limited liability company may elect to withhold payment required by RSA 304-C:22-g from a dissenter unless the dissenter was a member before the date set forth in the dissenters' notice as the date of the first announcement to news media or to members of the principal terms of the proposed limited liability company action.

II. To the extent the limited liability company elects not to withhold payment under paragraph I, after effectuating the proposed limited liability company action, it shall estimate the fair value of the limited liability company interest, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of the dissenter's demand. The limited liability company shall send with its offer a statement of its estimate of the fair value of the limited liability company interest, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under RSA 304-C:22-j.

304-C:22-j Procedure if Member Dissatisfied With Payment or Offer.

I. A dissenter may notify the limited liability company in writing of the dissenter's own estimate of the fair value of such dissenter's limited liability company interest and amount of interest due, and demand payment of the dissenter's estimate (less any payment under RSA 304C:22-g), or reject the limited liability company's offer under RSA 304-C:22-i and demand payment of the fair value of the limited liability company interest and interest due, if:

- (a) The dissenter believes that the amount paid under RSA 304-C:22-g or offered under RSA 304-C:22-i is less than the fair value of such dissenter's limited liability company interest or that the interest due is incorrectly calculated; or
- (b) The limited liability company fails to make payment under RSA 304C:22-g within 60 days after the date set for demanding payment.

II. A dissenter waives the right to demand payment under this section unless the dissenter notifies the limited liability company of such dissenter's demand in writing under paragraph I within 30 days after the limited liability company made or offered payment for such dissenter's limited liability company interest.

304-C:22-k Court Action.

I. If a demand for payment under RSA 304-C:22-j remains unsettled, the limited liability company shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the limited liability company interest and accrued interest. If the limited liability company does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

II. The limited liability company shall commence the proceeding in superior court of the county where the limited liability company's principal executive office (or, if none in this state, its registered office) is located. If the limited liability company is a foreign entity without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic limited liability company merged or converted into with the foreign limited liability company was located.

III. The limited liability company shall make all dissenters (whether or not residents of this state) whose demands remain unsettled parties to the proceeding as in an action against their limited liability company interests, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

IV. The jurisdiction of the court in which the proceeding is commenced under paragraph II is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

V. Each dissenter made a party to the proceeding is entitled to judgment:

- (a) For the amount, if any, by which the court finds the fair value of the dissenter's membership interest plus accrued interest exceeds the amount paid by the limited liability company; or
- (b) For the fair value, plus accrued interest, of such dissenter's after-acquired membership interest for which the limited liability company elected to withhold payment under RSA 304-C:22-i.

VI. The limited liability company is entitled to judgment against each specific dissenter for the amount, if any, by which the court finds the fair value of such dissenter's membership interest, plus accrued interest, is less than the amount paid by the limited liability company to each dissenter.

304-C:22-l Court Costs and Counsel Fees.

I. The court in an appraisal proceeding commenced under RSA 304-C:22-k shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraiser appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under RSA 304-C:22-j.

II. The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

- (a) Against the limited liability company and in favor of any or all dissenters if the court finds the limited liability company did not substantially comply with the requirements of RSA 304C:22-b through 304-C:22-j.
- (b) Against either the limited liability company or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subdivision.

III. If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and that the fees for those services should not be assessed against the limited liability company, the court may award to these counsel reasonable fees to be paid out of the amount awarded to the dissenters who were benefited.

304-C:22-m Procedures as to Assignees of Financial Rights.

I. When an assignment of all or a portion of limited liability company interest is in effect and a copy delivered to the limited liability company prior to the action described in RSA 304C:22g, then as to that limited liability company interest the provisions of RSA 304-C:22-a through 304C:22-l must be followed subject to the requirements of this section.

II. If the member has not ceased to be a member pursuant to RSA 304-C:46, II(b) prior to the action described in RSA 304-C:22-g, all rights to be exercised and actions to be taken by a member under RSA 304C:22-b through 304-C:22-l shall be taken by the member and not by an assignee of the member's limited liability company interest. As between the limited liability company and the assignees, the actions taken or omitted by the member bind the assignees, and the following requirements shall apply:

(a) Instead of remitting a payment under RSA 304-C:22-g, the limited liability company shall forward to the dissenter member:

- (1) The materials described in RSA 304-C:22-g, II;
- (2) An offer to pay the amount listed in the materials, with that amount to be allocated among and paid to the member and the assignees of the limited liability company interest according to the terms in of the assignment reflected in the required records; and
- (3) A statement of that allocation.

(b) If the dissenter member accepts the amount of the offer made under subparagraph (a) but disputes the allocation, the dissenter shall promptly so notify the limited liability company and within 60 days after the notification commence a proceeding and petition the court to determine the proper allocation. The member shall commence the proceeding in the superior court the of county in which the principal office of the limited liability company (or if none, its registered office) is located, or in the case of a surviving foreign limited liability company or other entity that is complying with this section following a merger with or conversion of a limited liability company, the member shall commence the proceeding in superior court in the county in this state in which the last registered office of the limited liability company was located. The petition shall name as parties the member, the limited liability company and all assignees of the member's limited liability interest. Upon being served with the petition, the limited liability company shall promptly pay into the court the amount offered under paragraph II and shall then be dismissed from the proceeding.

(c) If the dissenter considers the amount offered under subparagraph (a) inadequate, the dissenter may decline the offer and demand payment under

RSA 304-C:22-j. If the dissenter makes demand for payment, RSA 304-C:22-k and 304-C:22-l apply with the court having jurisdiction also to determine the correctness of the allocation.

(d) If the member fails to act under either subparagraph (b) or (c), then:

(1) As to the limited liability company, both the member and the assignees of the member's limited liability company interests are limited to the amount and allocation offered under subparagraph (a); and

(2) The limited liability company discharges its obligation of payment by making payment according to the amount and allocation offered under subparagraph (a).

III. If the member has ceased to be a member upon assignment of his limited liability company interest pursuant to RSA 304-C:46, II(b), the assignees of the member's limited liability company interest shall be entitled to exercise all rights of the member pursuant to RSA 304-C:22-b through 304-C:22-l.

24 Single-Member Limited Liability Company. Amend RSA 304C:23, II to read as follows:

II. After the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company:

(a) In the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company; ~~or~~

(b) In the case of an assignee of a limited liability company interest, as provided in RSA 304-C:46, at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company~~[-];~~ *or*

(c) In the case of an assignee of a single-member limited liability company interest, upon such assignee's succeeding to the assignor's limited liability company interest under RSA 304-C:48, I(c), without further action.

25 Limited Liability Company; Meeting of Members. Amend the introductory paragraph of RSA 304-C:24, VIII to read as follows:

VIII. For a limited liability company in which management is vested in fewer than all the members, there shall be, ~~[no less than once each year]~~ *within 30 days of a written demand by any member*, a meeting of the members to consider the affairs of the limited liability company, and to take any action permitted to be taken by the members by law, the limited liability company agreement, or the certificate of formation, *unless there has been such a meeting within 240 days prior to delivery of the demand.*

26 Limited Liability Company; Removal of Member. RSA 304-C:27, I(b) is repealed and reenacted to read as follows:

(b) The member is removed as a member, if the limited liability company agreement neither provides for nor restricts removal of members, in accordance with RSA 304-C:27, IV.

27 New Paragraph; Limited Liability Company; Removal of Member. Amend RSA 304-C:27 by inserting after paragraph III the following new paragraph:

IV. If a limited liability company agreement neither provides for nor restricts removal of members, a member or personal representative exercising powers of a member under RSA 304-C:49 may be removed for inability or unwillingness to exercise management responsibilities, actions beyond authority or contrary to the limited liability company agreement, or fraudulent or illegal actions in relation to the business and affairs of the company:

(a) By a vote of no less than 2/3 by number of the other members acting reasonably and in good faith.

(b) By a court of competent jurisdiction on petition of at least 2 members, or, in the case of a limited liability company with only 2 members, one of the members.

28 Single Member Limited Liability Company; Cessation of Membership. Amend RSA 304C:27, I(e)(2) and RSA 304-C:27, I(f)-(i) to read as follows:

(2) Except in the case of a single-member limited liability company, the entry of an order by a court of competent jurisdiction adjudicating the

member incompetent to manage the member's person or estate.

(f) Unless otherwise provided in a limited liability company agreement or by the written consent of all members at the time[;]:

(I) In the case of a member who is a trust or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee.

~~[(g)](2) [Unless otherwise provided in an agreement or by the written consent of all members at the time,] In the case of a member that is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company.~~

~~[(h)](3) [Unless otherwise provided in a limited liability company agreement or by the written consent of all members at the time,] In the case of a member that is a corporation, the filing of a certificate of its dissolution or the equivalent for the corporation or the administrative or judicial dissolution of the corporation and the lapse of 90 days after notice to the corporation of such dissolution without reinstatement.~~

~~[(i)](4) [Unless otherwise provided in a limited liability company agreement or by the written consent of all members at the time,] In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.~~

29 Limited Liability Companies; Interim Distributions. Amend RSA 304-C:40 to read as follows:

304-C:40 Interim Distributions. Except as provided in this subdivision, to the extent and at the times or upon the occurrence of the events specified in the limited liability company agreement, a member is entitled to receive from a limited liability company distributions before ~~[the member's dissociation from the limited liability company]~~ **cessation of the member's membership** pursuant to RSA 304-C:27 and before the dissolution and winding up of the limited liability company.

30 Limited Liability Companies; Distribution Upon Cessation of Membership. Amend RSA 304-C:41 to read as follows:

304-C:41 Distribution Upon **Cessation of Membership** or Merger.

~~[F.]~~ Except as provided in this subdivision, any member, upon ceasing to be a member pursuant to RSA 304-C:27, is entitled to receive any distribution to which the member is entitled under a limited liability company agreement ~~[and], but, [if not] unless~~ otherwise provided in a limited liability company agreement, the member is **not** entitled to receive~~[-, within a reasonable time after dissociation,]~~ **any payment for** the ~~[fair]~~ value of the member's limited liability company interest as of the date of cessation of membership based upon the member's right to share in distributions from the limited liability company. ***If the member ceasing to be a member receives no payment for the value of the member's interest in the limited liability company, the member ceasing to be a member shall continue to have the rights of an assignee of a limited liability company interest under RSA 304-C:46, II, subject to the limited liability company's right of offset under RSA 304-C:27, III.***

~~[H. A member who files a written dissent to a merger of a limited liability company that is a party to a merger shall be entitled to withdraw from the limited liability company as of the effective date and time of the merger and receive, within a reasonable time after the merger becomes effective, the fair value of his limited liability company interest immediately before the merger becomes effective, excluding any appreciation or depreciation in anticipation of the merger, unless exclusion would be inequitable.~~

~~III. If any amendment to the limited liability company agreement (a) altering or abolishing a right in respect of distribution, (b) altering or abolishing a right to voluntarily withdraw, or (c) altering or abolishing any right of a member to vote on any matter other than alteration by dilution through the admission of other members or acceptance of contributions is adopted over the written dissent of that member, and that member is not then permitted to withdraw by voluntary act without breach or penalty, then such member shall be entitled to withdraw from the limited liability company as of the effective date and time of the amendment and receive, within a reasonable time after the amendment becomes effective, the fair value of his limited liability company interest immediately before the amendment becomes effective, excluding any appreciation or depreciation in anticipation of the amendment, unless exclusion would be inequitable.~~

~~IV. A member entitled to dissent and obtain payment for his interest under paragraph II or III shall not challenge the merger or amendment unless the merger or amendment is unlawful or fraudulent with respect to the member or the limited liability company.~~

~~V. Withdrawal from a limited liability company in accordance with paragraph II or III shall not constitute a breach of the limited liability company agreement.]~~

31 Nature of Limited Liability Company Interest. Amend RSA 304-C:45 to read as follows:

304-C:45 Nature of Limited Liability Company Interest. A limited liability company interest is **intangible** personal property. A member has no interest in limited liability company property. ***Rights and interests of members, other than their limited liability company interests, are personal and non-transferable except to the extent that a transferee may succeed to such rights and interests in conformity with RSA 304-C:46-49.***

32 Assignment of Limited Liability Company Interest. Amend the introductory paragraph of RSA 304-C:46, I to read as follows:

I. A limited liability company interest is assignable in whole or in part, except as provided in a limited liability company agreement. Except as otherwise provided in paragraphs I and II, ***or as provided in RSA 304-C:48 and RSA 304C:49***, the assignee of a member's limited liability company interest shall not be entitled to participate in the management and affairs of a limited liability company, or to exercise any rights or powers of a member. However, an assignee of a member's limited liability company interest may exercise the rights and powers of a member either:

33 New Paragraph; Definition; Assign. Amend RSA 304-C:46 by inserting after paragraph IV the following new paragraph:

V. "Assign" or "assignment" includes a transfer by gift, bequest, devise, or descents and distribution.

34 Limited Liability Companies; Right of Assignee to Become Member. Amend RSA 304-C:48, I to read as follows:

I. An assignee of a limited liability company interest ~~[may]~~ ***shall*** become a member ~~[either]~~:

(a) Upon the approval of all of the members of the limited liability company other than the member assigning the limited liability company interest; ~~[or]~~

(b) To the extent provided in the limited liability company agreement, and upon compliance with any procedure provided for in the limited liability company agreement~~[-];~~ ***or***

(c) In the case of a single-member limited liability company only, upon a person succeeding to such interest of the member.

35 Powers of Estate of Deceased or Incompetent Member. Amend RSA 304-C:49 to read as follows:

304-C:49 Powers of Estate of Deceased or Incompetent Member. If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage such member's person or property, the member's executor, administrator, guardian, conservator or other legal representative may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property~~[-including].~~ ***Such member's rights shall be exercised in accordance with the limited liability company agreement and shall include*** any power under ~~[a]~~ ***the*** limited liability company agreement, ***or this chapter***, of an assignee to become a member. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor ***for the purposes of winding up its affairs, unless provided otherwise in the limited liability company agreement.***

36 Limited Liability Company; Dissolution. Amend RSA 304-C:50 to read as follows:

304-C:50 Dissolution. A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

I. ~~[The time specified in a limited liability company agreement, or 30 years from the date of the formation of the limited liability company if no such time is set forth in the limited liability company agreement;~~

~~[H.]~~ The occurrence of events specified in a limited liability company agreement;

~~[HH.]~~ ***II. Unless otherwise provided in the limited liability company agreement, the vote or*** written consent of ~~[aH]~~ ***a majority of the*** members; ***or***

~~[IV. An event of dissociation of a member, as provided in RSA 304-C:27, unless:~~

~~(a) The business of the limited liability company is continued by the consent of all the remaining members on or before the ninetieth day following the occurrence of any such event; or~~

~~(b) Otherwise provided in the limited liability company agreement;~~

~~V. At any time there are fewer than 2 members; or~~

~~VI. The entry of a decree of judicial dissolution under RSA 304-C:51.]~~

III. The issuance of a notice of administrative dissolution under RSA 304-C:53, I or entry of a decree of judicial dissolution under RSA 304C:51.

37 Limited Liability Company; Name. Amend RSA 304-C:66, I(b) to read as follows:

(b) That the name under which a foreign limited liability company is registering must include the words "limited liability company" or the abbreviation "L.L.C." ***or similar abbreviation***;

38 Limited Liability Companies; Certificate of Conversion; Fee. Amend RSA 304-C:81, I(c) to read as follows:

(c) Upon the receipt for filing of a certificate of formation under RSA 304-C:12, a certificate of amendment under RSA 304-C:13, a certificate of merger under RSA 304-C:21, ***a certificate of conversion under RSA 304-C:17-a***, or a restated certificate of formation under RSA 304-C:17, a fee in the amount of \$35, and upon the receipt for filing of a certificate of cancellation of a domestic limited liability company under RSA 304-C:59, a fee in the amount of \$35.

39 Professional Limited Liability Company; Disqualified Person. Amend RSA 304-D:7, IV to read as follows:

IV. A member of a professional limited liability company becoming a disqualified person, unless such disqualification is for less than 5 months from the date of disqualification, shall ~~[constitute an event of dissociation]~~ ***cause cessation of membership*** for the purposes of RSA 304C:27.

40 Securities Registration. Amend RSA 421-B:11, II to read as follows:

II. ***(a)*** Before the secretary of state may accept articles of incorporation for a new corporation under RSA 293-A, an application for a certificate of authority under RSA 293-A, a certificate of limited partnership for a new limited partnership under RSA 304-B, a certificate of formation for a new limited liability company or an application for ~~[regulation]~~ ***registration*** as a foreign limited liability company under RSA 304-C, registration of a registered limited liability partnership or a notice of registration of a foreign registered limited liability partnership under RSA 304-A, or an application for registration of a foreign partnership under RSA 305-A, the following requirements shall be met:

~~[(a)]~~ ***(1)*** Along with a \$50 filing fee, a statement shall be filed with the secretary of state that the capital stock of the corporation or the interests of the limited partnership, registered limited liability partnership, foreign registered limited liability partnership, or limited liability company have been registered, or when offered will be registered, under this chapter or are exempted, or when offered will be exempted, under this chapter, or are or will be offered in a transaction exempted from registration under this chapter, or are not securities under this chapter; and, in the case of a New Hampshire corporation, limited partnership, registered limited liability partnership, or limited liability company, that the articles of incorporation or certificate of limited partnership state whether the capital stock or interests in the limited partnership, registered limited liability partnership or limited liability company will be sold or offered for sale within the meaning of this chapter.

~~[(b)]~~ ***(2)*** The statement shall be signed by the incorporators of a corporation to be formed, by an executive officer of an existing corporation, by the general partners or intended general partners if a limited partnership, by one or more members or managers authorized to do so if a limited liability company, or one or more partners authorized to do so if a registered limited liability partnership or foreign registered limited liability partnership.

(b) Notwithstanding any provision of law to the contrary, the statement filed pursuant to this paragraph shall not by itself constitute a registration, or a notice of exemption from registration, of securities within the meaning of sections 448 and 461(i)(3) of the United States Internal Revenue Code and the regulations promulgated thereunder.

41 Applicability. The amendment in section 30 of this act affecting RSA 304-C:41, I, shall not apply to New Hampshire limited liability companies formed prior to the effective date of section 30 until December 1, 1997; however, the amendments affecting RSA 304-C:41, II-V shall take effect as provided in section 43, paragraph I of this act.

42 Repeal. RSA 304-C:18, III, relative to the definition of "business entity," is repealed.

43 Effective Date.

I. Sections 15-22 and 24-41 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect on the later of:

(a) 60 days after its passage; or

(b) The date the proposed amendments of regulations (PS-43-95), published in the Federal Register on May 10, 1996, relating to the classification of certain business organizations with an elective regime, are effective.

1997-0651h

Amendment to HB 653-LOCAL

Proposed by the Committee on Municipal and County Government

Amend the bill by replacing section 1 with the following:

1 Address Numbers on Streets and Highways. Amend RSA 231:133-a to read as follows:

231:133-a Address Numbers on Streets and Highways. The governing body may adopt a system for assigning or altering address numbers of buildings and other property along any public or private way in the municipality. Prior to the actual assignation or alteration of numbers along any way or portion of any way the governing body ***or planning board*** shall hold a public hearing for which 10 days' notice has been given by posting in 2 public places in the municipality, by publication in a newspaper in circulation in the municipality, and by first class mail to all owners of property being numbered or renumbered, as indicated by town records. ***No public hearing shall be required where the property owner or owners voluntarily consent to their property being numbered or renumbered, as indicated by town records. Each municipality addressing numbers on streets and highways pursuant to this section is encouraged to notify the bureau of emergency communications of the changes in accordance with RSA 106-H:10.***

Amend the bill by inserting after the enacting clause the following and renumbering the original section 1-5 to read as 2-6:

1 Notification to Enhanced 911 System. Amend RSA 106-H:10 to read as follows:

106-H:10 Municipal Cooperation. Each municipality is encouraged to establish a customer data base containing information to identify the location of each telephone number within the municipality ***and is encouraged to notify the bureau of any changes.*** Customer information provided under this chapter may be used only for the purposes of responding to emergency calls or for the investigation of false or intentionally misleading reports of incidents requiring emergency services.

AMENDED ANALYSIS

This bill allows for the administrative renumbering of property in certain situations and encourages notification of the renumbering to the enhanced 911 system. The bill also increases the penalty for transferring lots in unapproved subdivisions and other violations of the planning and zoning laws.

1997-0632h

Amendment to HB 662

Proposed by the Committee on Transportation

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

1 New Section; Definition; Auto Wholesale Dealer. Amend RSA 259 by inserting after section 5 the following new section:

259:5-a Auto Wholesale Dealer. "Auto wholesale dealer" shall mean any person with an established place of business, who is exclusively engaged in the business of purchasing vehicles requiring registration for use upon a way, for resale to a retail or wholesale dealer. For the purposes of this definition, "exclusively engaged" shall mean the retail sale of less than 5 motor vehicles in any state in any 12-month period.

2 Definition; Dealer. RSA 259:18 is repealed and reenacted to read as follows:

259:18 Dealer. "Dealer" shall mean a retail vehicle dealer or an auto wholesale dealer.

3 New Section; Definition; Motor Vehicle Business. Amend RSA 259 by inserting after section 60 the following new section:

259:60-a Motor Vehicle Business. "Motor vehicle business" shall mean a business which is principally engaged in one or more of the following activities: buying, selling, or exchanging motor vehicles requiring registration for use upon a way, motor vehicle mechanical service, motor vehicle collision repair service, the reconditioning and restoration of motor vehicles, and the sale of motor vehicle parts. For the purposes of this definition, "principally engaged" means that the business derives at least 51 percent of its annual gross income from the motor vehicle business or, if there was no income in the prior year, 51 percent of the assets of the business are directly related to the motor vehicle business.

4 New Section; Retail Vehicle Dealer. Amend RSA 259 by inserting after section 89 the following new section:

259:89-a Retail Vehicle Dealer. "Retail vehicle dealer" shall mean a person engaged in the motor vehicle business who sells motor vehicles to the general public, or demonstrates for sale vehicles on consignment to the general public. There shall be a rebuttable presumption that any person who sells or who acts as an agent of a seller for 5 or more vehicles at retail to the general public in a consecutive 12-month period is a retail vehicle

dealer.

5 Definition; Transporter. RSA 259:114 is repealed and reenacted to read as follows:

259:114 Transporter. "Transporter" shall mean:

- I. Any person who moves any motor vehicle owned by another person which requires registration for use upon a way for business purposes; or
- II. Any person engaged in the business of buying promissory notes secured by mortgages or conditional sales contracts who, in the regular course of such business, has occasion to repossess any vehicle.

6 Definition; Utility Dealer. RSA 259:121 is repealed and reenacted to read as follows:

259:121 Utility Dealer. "Utility dealer" shall mean:

- I. Any person engaged in the manufacture, purchase, sale, or exchange at wholesale or retail of travel or camp trailers, utility trailers, boat trailers, semi-trailers, tractors, farm equipment, construction equipment, chassis with special equipment, or any combination thereof.
- II. Any person engaged in the lease or rental of storage trailers.

7 Bond Required. RSA 261:98 is repealed and reenacted to read as follows:

261:98 Bond Required.

I. Every retail vehicle dealer as defined in RSA 259:89-a, every auto wholesale dealer as defined in RSA 259:5-a, every automotive recycling dealer as specified by RSA 261:123, and certain utility dealers as defined by RSA 259:121 if required by rule of the commissioner, shall obtain a bond or equivalent proof of financial responsibility as described in paragraph VI, and continue in effect a surety bond or other equivalent proof of financial responsibility satisfactory to the department in the amount of \$25,000 executed by a surety company authorized to transact business in the state by the insurance department. The bond or its equivalent shall only be for the benefit of a natural person who purchases a vehicle from a dealer, an automotive recycling dealer, or a utility dealer, and who suffers loss on account of:

- (a) The dealer's default or nonpayment of all valid bank drafts, including checks, drawn by the dealer for the purchase of motor vehicles;
- (b) The dealer's failure to deliver in conjunction with the sale of a motor vehicle a valid motor vehicle title certificate free and clear of any prior owner's interests and all liens except a lien created by or expressly assumed in writing by the buyer of the vehicle;
- (c) The motor vehicle purchased from the dealer was stolen; or
- (d) The dealer's intentional or knowing failure to disclose the vehicle's actual mileage at the time of sale.

II. Recovery against the bond or its equivalent may be made by any such person, who obtains a final judgment in a court of competent jurisdiction against the dealer for an act or omission on which the bond is conditioned if the act or omission occurred during the term of the bond. Every bond shall also provide that no suit may be maintained to enforce any liability on the bond unless brought within one year after the event giving rise to the cause of action.

III. The bond or its equivalent shall cover only those acts and omissions described in paragraph I. The surety on a bond shall not be liable for total claims in excess of the bond amount, regardless of the number of claims made against the bond or the number of years the bond remained in force.

IV. A separate bond shall be required for each different name under which the dealer conducts his business and for each community in which the dealer has a place of business.

V. Any dealer covered by an association bond as provided in RSA 261:101 shall only be covered under one name in one community. A dealer covered under RSA 261:101 who has a place of business in more than one town or city shall file a separate bond as provided in this section for each separate community in which he operates.

VI. In lieu of the bond required by this section, the department may allow the dealer to deposit collateral in the form of a certificate of deposit or irrevocable letter of credit, as authorized by the banking laws of the state of New Hampshire, which has a face value equal to the amount of the bond otherwise required. Such collateral may be deposited with or executed through any authorized state depository designated by the commissioner. Interest on any such certificate of deposit shall be payable to the dealer who has deposited it as collateral, or to such person as the dealer or the certificate may direct.

VII. Any surety is required to provide 60 days' notice of cancellation of the bond or certificate of deposit or letter of credit to the department, and to the dealer.

8 Application for Retail Vehicle Dealer Registration. RSA 261:103 is repealed and reenacted to read as follows:

261:103 Application for Retail Vehicle Dealer Registration.

I. Any retail vehicle dealer as defined in RSA 259:89-a who engages in the motor vehicle business, and who maintains in operating condition and in operation an established place of business which meets the signage requirements of paragraph II, may make application to the department upon blanks furnished by it for that purpose, for a general distinguishing number for vehicles owned by such dealer, provided that:

(a) The business location is where the retail vehicle dealer does a major portion of business during normal business hours; and

(b) Such business location is capable of storing and displaying motor vehicles indoors, in one building, in an area of at least 1,200 contiguous square feet.

II. An established place of business shall clearly and conspicuously display the business name of the dealer in letters no less than 10 inches in height, unless prohibited by local zoning. Such business signage shall be clearly visible from a traveling vehicle on the adjacent public way, unless an obstruction exists which cannot be remedied.

9 New Section; Vehicle Dealer License Required. Amend RSA 261 by inserting after section 103 the following new section:

261:103-a Vehicle Dealer License Required. Each dealer, as defined in RSA 259:18, shall apply for and obtain from the department a motor vehicle license before engaging in any motor vehicle business activity in the state. The department shall prescribe and provide forms to be used for applications for licenses and for the renewals thereof to be issued under the terms and provisions of this chapter and require all new applicants, as a condition precedent to the issuance of a license, a statement as to the following facts:

I. The name and residence address of the applicant and the trade name, if applicable, under which the applicant intends to conduct business, and:

(a) If the applicant is a co-partnership, the name and residence address of each member thereof, whether a limited or general partner, and the name under which the partnership business is to be conducted.

(b) If the applicant is a corporation, the name of the corporation and the name and address of each of its principal officers, directors and all persons owning more than 5 percent of outstanding shares of stock issued by the corporation.

II. A complete description, including the city, town with the street and number, if any, of the permanent, established place of business and such other and additional place or places of business as shall be operated and maintained by the applicant in conjunction with the permanent, established place of business.

III. For new applications, a financial statement dated not earlier than 12 months prior to the date of the application and copies of the most current financial information furnished to the manufacturer, distributor, or their representatives under the terms of any franchise agreements.

IV. The trade name or trade names or line-make or line-makes of the new vehicle or vehicles that the applicant is or has been franchised to sell or exchange and the name or names and address of any manufacturer or distributor who has enfranchised the applicant.

V. Whether the applicant proposes to sell new or used vehicles or both.

VI. A duly executed service agreement on forms provided by the department with a service or repair garage which is a licensed inspection facility within a reasonable distance from the applicant's established place of business, if the motor vehicle dealer applicant does not have facilities at the dealer's established place of business to service or repair motor vehicles.

VII. A statement that the applicant is or applicants are or intend to be engaged in the motor vehicle business and that this activity constitutes or will constitute the principal business of the applicants.

VIII. Certification from the appropriate officials of the municipality which contains the dealer's established place of business that the dealer's establishment is in compliance with all applicable local zoning ordinances.

IX. A statement that the dealer will comply with all state and federal requirements regarding the selling, titling, and financing of vehicles.

X. All applications shall be accompanied by the payment of a license fee of \$125. In the event that any application is denied or the license applied

for is not issued, 75 percent of the license fee shall be refunded to the applicant or applicants.

XI. Proof of a surety bond obtained through a company approved by the insurance department, or pursuant to RSA 261:101, which conforms to the criteria in RSA 261:98, or proper alternative proof of financial assurance pursuant to RSA 261:98, VI.

XII. A statement that the dealer shall notify the department upon cancellation of the surety bond.

XIII. A criminal record for each applicant and a statement whether the applicant has ever been subject to a civil judgment connected with a motor vehicle business.

XIV. All licenses shall be granted or denied after receipt of a complete application by the department. If application is incomplete, the department shall notify the applicant in writing indicating the reasons for incompleteness.

XV. All licenses issued pursuant to the provisions of this subdivision shall expire annually in the month designated by the director.

XVI. Any change of address, ownership, employment, trade name or line-make of motor vehicle a dealer is franchised to handle must be reported to the department within 30 days from the date of the change.

XVII. No license so issued shall be transferable, and a separate license shall be required for each separate place of business in a separate town or city, and shall be prominently displayed in the place of business operated by the person to whom such license is issued.

10 Retail Vehicle Dealer's Use of Dealer Registration. RSA 261:111 is repealed and reenacted to read as follows:

261:111 Retail Vehicle Dealer's Use of Dealer Registration.

I. A retail dealer and member of the dealer's family domiciled in the dealer's household, may use the dealer's registration on vehicles owned by the dealer for personal use.

II. Motor vehicles owned by the dealer which are designed for and engaged in the day-to-day business activities of the dealership, including but not limited to the transportation of freight or merchandise, such as wreckers, service trucks, and auto parts delivery trucks, shall not be so registered.

III. The dealer's employees who are employed full-time in the retail motor vehicle business may be issued a dealer plate on motor vehicles owned by the dealer, at the dealer's discretion, for personal use outside of normal business hours. For purposes of this paragraph, only the dealer's employees and no other person shall operate such motor vehicles. Personal use shall require that the motor vehicle be in saleable condition, with all legally required window stickers as appropriate, in view to the general public.

IV. Motorized or non-motorized vehicles owned by the dealer shall not be rented or otherwise used while registered under the dealer's registration, except for demonstration purposes, for use by a franchisor or distributor or agent or employee thereof, or for loaning or renting to a customer whose vehicle is being serviced in connection with the vehicle business.

V. Dealer registration shall not be used on motorized or non-motorized vehicles owned by another person unless there exists a valid consignment agreement, or unless the vehicle is being demonstrated or transported in connection with service or sales.

11 Application for Motorcycle and Moped Registration; Validity of Motorcycle Registration for Other Motor Vehicles. RSA 261:112 is repealed and reenacted to read as follows:

261:112 Application for Motorcycle and Moped Registration; Validity of Motorcycle Registration. A manufacturer or a retail vehicle dealer of motorcycles or mopeds or both may indicate on the retail vehicle dealer's registration application a preference for a general distinguishing motorcycle number and plate for its vehicles. A motorcycle registration is a valid registration on any motor vehicle owned by the dealer.

12 Use of Transporter Registration. RSA 261:116 is repealed and reenacted to read as follows:

261:116 Use of Transporter Registration.

I. Personal use shall be prohibited.

II. Transporter registration shall be used on motor vehicles not owned by the transporter.

13 Use of Utility Plates. RSA 261:121 is repealed and reenacted to read as follows:

261:121 Use of Utility Plates. Utility registration shall be used only for moving non-motorized vehicles or chassis with specialized equipment which are either owned or not owned by the utility dealer for business purposes, including but not limited to delivery, demonstration, sale, or repair.

14 Limitation on Use of Utility Plates. RSA 261:122 is repealed and reenacted to read as follows:

261:122 Limitation on Use of Utility Plates.

I. Utility plates shall not be loaned or assigned to any other person.

II. Personal use shall be prohibited.

15 Subdivision Heading Changed. The subdivision heading preceding RSA 261:140-a is repealed and reenacted to read as follows:

Auto Wholesale Dealer Registration

16 Auto Wholesale Dealer Registration. RSA 261:140-a is repealed and reenacted to read as follows:

261:140-a Auto Wholesale Dealer Registration and Plates.

I. Any auto wholesale dealer as defined in RSA 259:5-a, who has an established place of business which meets the signage requirements under paragraph II and is licensed pursuant to RSA 261:103-a, may make application on blanks furnished by the director for a general distinguishing number for use on vehicles owned by the auto wholesale dealer. If the director is satisfied that such applicant is a suitable person, such applicant shall be issued a general distinguishing number and a certificate of registration for an auto wholesale dealer.

II. An established place of business shall clearly and conspicuously display the business name of the dealer in letters no less than 10 inches in height, unless prohibited by local zoning. Such business signage shall be clearly visible from a traveling vehicle on the adjacent public way, unless an obstruction exists which cannot be remedied.

17 Use of Auto Wholesale Dealer Registration. RSA 261:140-b is repealed and reenacted to read as follows:

261:140-b Use of Auto Wholesale Dealer Registration.

I. Auto wholesale dealer vehicle registration shall be used for motor vehicle business purposes only, on vehicles owned by the auto wholesale dealer which are being transported to the auto wholesale dealer's place of business, to another location for mechanical service, or to a wholesale or retail dealer. Such registration shall not be used for the retail demonstration of any vehicles.

II. Personal use of auto wholesale dealer vehicle registration shall be prohibited.

III. Vehicles owned by the auto wholesale dealer which are designed for and engaged in day to day business activities, including but not limited to the transportation of freight or merchandise, such as wreckers, service trucks, and auto parts delivery trucks, shall not be so registered.

IV. The auto wholesale dealer shall not loan auto wholesale dealer number plates to any other person.

18 Change in Fee. RSA 261:141, III(u)(1) is repealed and reenacted to read as follows:

(u)(1) For each vehicle, owned by or under control of a manufacturer, wholesaler, or dealer - \$200 for the first plate.

19 Change in Fee. Amend RSA 261:141, III(w) and (x) to read as follows:

(w)(1) For motorcycles owned or under the control of a manufacturer or dealer in motorcycles -- \$12 [~~per set~~] for *the* first [~~3 plates~~] *plate*.

(2) For every additional plate -- \$3.

(x)(1) For mopeds owned or under the control of a manufacturer or dealer in mopeds -- \$12 [~~per set~~] for *the* first [~~3 plates~~] *plate*.

(2) For every additional plate -- \$3.

20 Penalties; Dealers, Utility Dealers, Auto Recycling Dealers, Transporters, and Repairers. RSA 261:177 is repealed and reenacted to read as follows:

261:177 Penalties; Dealers, Utility Dealers, Auto Recycling Dealers, Transporters and Repairers.

I. Upon any evidence of misuse of registration or any violation of the provisions of this chapter or any rules authorized by law the director may:

- (a) Suspend or revoke any dealer's, utility dealer's, automotive recycling dealer's transporter's or repairer's registration; or
- (b) Impose an administrative fine upon any dealer, utility dealer, automotive recycling dealer, transporter or repairer. The maximum amounts of the fines which may be assessed shall be as follows:
 - (1) For the first violation, \$250.
 - (2) For the second violation, \$500.
 - (3) For the third violation, \$750.
 - (4) For the fourth violation, \$1,000.
 - (5) For 5 or more violations, \$2,000.

No fine shall take effect unless approved by the commissioner. The commissioner shall have the authority to modify the amount of the fine assessed.

II. Whenever a dealer, utility dealer, automotive recycling dealer, transporter or repairer has a license or plates or license and plates revoked or suspended for a period of greater than 15 days, a fee of \$50 shall be paid for the restoration of such license or plates or license and plates.

21 Repeal. The following are repealed:

- I. RSA 261:105, relative to minimum area waivers.
- II. RSA 261:107, relative to number of plates.
- III. RSA 261:140-c, relative to a prohibition on use of plates by auto wholesalers.

22 Effective Date.

I. Section 6, 10-14, 17, 20 and 21 of this act shall take effect upon its passage.

- 1. The remainder of this act shall take effect January 1, 1998.

1997-0743h

Amendment to HB 693

Proposed by the Committee on Resources, Recreation and Development

Amend the bill by replacing section 5 with the following:

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house, the house clerk, the governor, and the state library on or before November 1, 1998.

1997-0652h

Amendment to HB 696-FN-LOCAL

Proposed by the Committee on Criminal Justice and Public Safety

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

AN ACT authorizing the court to suspend the motor vehicle driver's license of a person convicted of criminal mischief when the court determines that a motor vehicle was used to abet the commission of criminal mischief.

Amend RSA 634:2, VII as inserted by section 2 of the bill by replacing it with the following:

VII. If the court determines that a motor vehicle was used to abet the commission of the act constituting criminal mischief, the court may suspend, for a period not to exceed 90 days, the driver's license of a person who is convicted of criminal mischief, or the driver's licenses of persons who are convicted of criminal mischief.

AMENDED ANALYSIS

This bill allows the court to suspend, for a period not to exceed 90 days, the driver's license of a person who is convicted of criminal mischief or the driver's licenses of persons who are convicted of criminal mischief, if the court determines that a motor vehicle was used to abet the commission of criminal mischief.

1997-0592h

Amendment to HB 701-FN

Proposed by the Committee on Municipal and County Government

Amend the bill by deleting section 1 and renumbering the original sections 2-6 to read as 1-5, respectively.

1997-0725h

Amendment to HB 713

Proposed by the Committee on Commerce

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

AN ACT relative to the names of foreign limited partnerships, and eliminating an annual notice requirement for limited liability partnerships.

Amend the bill by deleting section 7 and renumbering the original section 8 to read as 7.

AMENDED ANALYSIS

This bill:

- I. Allows foreign limited partnerships registered in this state to have names which contain the name of a limited partner in certain circumstances.
- II. Eliminates the annual notice requirement for limited liability partnerships.

1997-0712h

Amendment to HB 716-FN

Proposed by the Committee on Science, Technology and Energy

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

1 Findings. The general court finds that for electric service:

- I. When retail electric competition exists, economic development discounts and retention discounts for stranded cost recovery charges will be useful tools in assisting the state's economy if their use is limited to cases which benefit all ratepayers.
- II. It is in the public interest to establish both discounts as expeditiously as possible.
- III. Tariffed economic development discounts and tariffed retention discounts should be preferred to individually negotiated special contracts, but special contracts may be necessary in some circumstances.
- IV. In order to limit the possible impact on other ratepayers, economic development discounts, retention discounts, and special contract discounts should be specific discounted rates that are discounts from the tariffed stranded cost recovery change rates, not percentage discounts from future

variations in tariffed stranded cost recovery charges.

V. Use of discounts will increase employment, avoid the loss of employment, or decrease the cost of electricity to other ratepayers.

2 New Paragraph; Availability of Economic Development and Retention Rates. Amend RSA 378:11-a by inserting after paragraph V the following new paragraph:

VI. The rates established in this section shall not be granted to new applicants in any portion of the state after retail electric competition is certified to exist in that portion of the state pursuant to RSA 378:11-b, VIII. Customers receiving service under existing rates established in this section shall be allowed to continue under those rates for the remainder of the agreed-upon term.

3 New Section; Economic Development Discounts and Retention Discounts. Amend RSA 378 by inserting after section 11-a the following new section:

378:11-b Economic Development Discounts and Retention Discounts

I. In this section, "stranded cost region" means a region of the state in which a stranded cost recovery charge (SCRC) has been imposed such that if the existing load were to decrease, the SCRCs collected from other ratepayers in that region would increase either in rate or in duration.

II. Notwithstanding any other provision of law to the contrary, the commission shall establish procedures for the review and approval of discounted SCRC rates that foster economic development and retention of existing load within the state. For the purposes of this section, "economic development discounts" means discounted SCRC rates, the purpose of which is to attract new industrial companies to the state and to encourage significant expansion of existing industrial load. For the purposes of this section, "retention discounts" means discounted SCRC rates, the purpose of which is to retain existing industrial load that would otherwise leave a stranded cost region. Such procedures shall provide that all electric utilities serving retail customers may file with the commission generally available schedules of discounted SCRC rates for the provision of economic development discounts and/or retention discounts to industrial customers, for a fixed period of time not to exceed 5 years. Such procedures may limit eligibility based on standard industrial classification (SIC) codes, provided that most industrial load is eligible. Such discounts shall take into consideration the effect on the stranded cost recovery charge to other ratepayers, the amount of new demand and energy for electric service involved, the effect on employment within the state, material adverse competitive impact on existing in-state firms, and end-user participation in conservation programs and other state established economic development enhancement programs. The commission shall approve such tariffed discounts only within stranded cost regions.

III. These discounts shall be discounts of the stranded cost recovery charge only, and shall not provide for discounts of distribution, transmission, or system benefits charges.

IV. To ensure fairness in the application of these discounts, if the commission finds that it is in the public good, the retention discount or the economic development discount may also be offered to a direct competitor of a company that has qualified for such rate.

V. Any request that a retention discount be granted to a particular customer shall become effective 30 days after filing, unless the commission rejects the request. The commission shall approve granting a retention discount to a particular customer that meets the eligibility criteria only after the commission:

(a) Gives the office of the consumer advocate an opportunity to examine any confidential data submitted in support of the request and an opportunity to comment.

(b) Except as provided in paragraph IV, finds that there is a strong likelihood that the existing load would have left the stranded cost region, and that granting a discount to a particular customer will then result in a benefit to other ratepayers.

VI. In any rate proceeding or stranded cost recovery charge proceeding subsequent to approval of economic development discounts or retention discounts, the commission shall not impute to the test year revenues, revenue requirements, or SCRC requirements the amount of the economic development discount or the amount of the retention discount, provided that those customers have qualified for the discount.

VII. The discounts established in this section shall not be available until retail electric competition is certified to exist in that portion of the state pursuant to paragraph VIII, and shall not be available after December 31, 2005.

VIII. The chairman of the public utilities commission shall certify to the secretary of state the date that retail electric competition exists in each portion of the state.

4 New Paragraph; New Special Contracts. Amend RSA 378:18-a by inserting after paragraph IV the following new paragraph:

V. In any portion of the state in which retail electric competition is certified to exist pursuant to RSA 378:11-b, VIII, new special contracts, or modifications of existing contracts, designed to retain or attract load shall be available to a customer only if all the conditions of RSA 378:11-b for applicability and approval are met, except as provided in RSA 378:11-b, V; the contract is approved pursuant to RSA 378:18, the commission finds that unusual circumstances exist such that no tariffed rate or discounted stranded cost recovery charge rate is sufficient to retain or attract the load, the commission gives the office of the consumer advocate an opportunity to examine any confidential data submitted in support of the request and an opportunity to comment, and the commission finds that there is a strong likelihood that granting the special contract to a particular customer will then result in a benefit to other ratepayers. Such special contracts to retain or attract load shall provide for discounts of the stranded cost recovery charge only, and shall not provide for discounts of distribution, transmission, or system benefits charges.

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

AMENDED ANALYSIS

This bill establishes economic development discounts and retention discounts, which will be available to eligible industrial customers of electric utilities after retail electric competition is certified to exist.

1997-0723h

Amendment to HB 726-FN

Proposed by the Committee on Science, Technology and Energy

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

AN ACT relative to the jurisdiction and authority of the public utilities commission, the underground utility damage prevention system, and the 911 system.

Amend the bill by deleting sections 1-2 and renumbering the original sections 3-18 to read as 116, respectively.

Amend RSA 362:4-b, I as inserted by section 1 of the bill by replacing it with the following:

I. The term "public utility" shall not include any corporation, company, association, joint stock association, partnership and person, their lessee, trustee or receiver appointed by any court, or assignee, which provides, sells, delivers, or stores liquefied petroleum gas in cylinders or tanks, or who distributes vaporized liquefied petroleum gas through underground distribution systems.

Amend RSA 369:8, II as inserted by section 2 of the bill by replacing it with the following:

II. To the extent that the approval of the commission is required by any other statute for any corporate restructuring, merger, acquisition, financing, change in long-term or short-term indebtedness, or issuance of stock involving parent companies of public utilities regulated by the commission, the approval of the commission shall not be required if the public utility represents to the commission in writing no less than 30 days prior to the anticipated completion of the transaction that the transaction will not adversely affect the rates, terms, service, or operation of the public utility within the state.

Amend RSA 374:51, IV and V as inserted by section 8 of the bill by replacing them with the following:

IV. Prior to complying with the notification requirements of paragraph II, an excavator shall identify the perimeter of the proposed site of the excavation by marking the perimeter in an appropriate manner in the color white or shall communicate the perimeter of the excavation by means of construction plans, an on-site meeting with affected operators, or other suitable means acceptable to the parties.

V. When making the notification required by this section, the excavator shall identify which of the methods described in paragraph IV will be used to identify the proposed excavation.

Amend the bill by replacing section 11 with the following:

11 Notice of Damage; Notification to Operator. Amend RSA 374:54 to read as follows:

374:54 Notice of Damage. When any underground [utility] facility is damaged, the excavator causing the damage shall immediately notify the affected [company] operator. The excavation shall not be backfilled without first receiving permission from the [company] operator whose facility was damaged.

Amend RSA 374:55, IV-c and IV-d as inserted by section 12 of the bill by replacing them with the following:

IV-c. Any excavator who does not identify the proposed excavation area in accordance with RSA 374:51, IV shall be subject to a civil penalty of up to \$500.

IV-d. The civil penalties provided for in this section may be increased to \$5,000 for any excavator who, in the prior 3 years, has been found to have violated RSA 374:51.

Amend the bill by replacing all after section 15 with the following:

16 Cellular or Wireless 911 Service. Amend RSA 106-H:8 to read as follows:

106-H:8 ~~[Telephone Utility]~~ Coordination ***by Provider of Telephone Service.*** Every telephone utility authorized to do business in the state pursuant to RSA 374:22 ***and every entity which provides cellular mobile or 2-way wireless telecommunications service*** shall make available the universal emergency telephone number 911 for use by the public in seeking assistance from fire, police and other related safety agencies through a single public safety answering point, ~~[no later than 3 years from the effective date of]~~ ***for the purpose of implementing*** this chapter. ***Any provider of cellular mobile or 2-way wireless telecommunications services shall be entitled to reimbursement from the bureau of the reasonable expenses incurred to accomplish the provision of enhanced 911 service to the extent authorized by the Federal Communications Commission and approved by the enhanced 911 commission. The bureau may utilize the services of any other state agency or a consultant to assist in reviewing the requested reimbursement to insure that it is reasonable and may seek recovery of the expense of that review from the provider.***

17 Cellular or Wireless 911 Surcharge. Amend RSA 106-H:9, I to read as follows:

I. The enhanced 911 system shall be funded through a surcharge to be levied upon each residence and business telephone exchange line, including PBX trunks and Centrex lines, ~~[trunks and lines serving cellular communications towers in the state,]~~ ***each individual cellular or 2-way wireless telephone number,*** and ***each*** semi-public ***and public*** coin and public access line. No such surcharge shall be imposed upon more than 25 ***business telephone exchange*** lines, ***including PBX trunks and Centrex lines,*** per customer billing account. ***In the case of local exchange telephone companies,*** the surcharge shall be contained within tariffs ***or rate schedules*** filed with the public utilities commission and shall be billed on a monthly basis by each local exchange telephone company. ***In the case of an entity which provides cellular mobile or 2-way wireless telecommunications services the surcharge shall be billed to each customer on a monthly basis.*** Each local exchange telephone company ***or entity which provides cellular mobile or 2-way wireless telecommunications services*** shall remit the surcharge amounts on a monthly basis to the enhanced 911 services bureau, which shall be forwarded to the state treasurer for deposit in the enhanced 911 system fund. Such fund shall be continually appropriated to the bureau and shall not lapse. The moneys in the account shall not be used for any purpose other than the development and operation of enhanced 911 services, in accordance with the terms of this chapter. Surcharge amounts shall be reviewed after the budget has been approved or modified, and if appropriate, new tariffs ***or rate schedules*** shall be filed with the public utilities commission reflecting the surcharge amount.

18 New Section; Misuse of 911 System. Amend RSA 106-H by inserting after section 14 the following new section:

106-H:15 Misuse of 911 System. Any deliberate use of the universal emergency telephone number 911 for any reason other than seeking emergency assistance from fire, police, or other safety related agencies shall constitute misuse of the 911 system. The third and any subsequent misuse of the 911 system in a calendar year shall constitute a violation.

19 New Section; Competitive Electricity Supplier Requirements. Amend RSA 374-F by inserting after section 6 the following new section:

374-F:7 Competitive Electricity Supplier Requirements. The commission is authorized to establish requirements, excluding price regulation, for competitive electricity suppliers, including registration, registration fees, customer information, disclosure, standards of conduct, and consumer protection and assistance requirements. These requirements shall be applied in a manner consistent with the restructuring principles of this chapter to promote competition among electricity suppliers. The commission is further authorized to assess fines against, to revoke the registration of, and prohibit from doing business in the state, any competitive electricity supplier which violates the requirements of this section. The commission shall adopt rules, under RSA 541-A, to implement this section. Aggregators of electricity load that do not take ownership of power and do not represent any supplier interest shall not be regulated by the commission.

20 Effective Date.

I. RSA 374:51, IV and V as inserted by section 8 of this act and RSA 374:55, IV-c as inserted by section 12 of this act shall take effect January 1, 1998.

II. Sections 17 and 18 of this act shall take effect July 1, 1997.

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

AMENDED ANALYSIS

This bill:

- (a) Exempts certain gas distributors from regulation as a public utility.
- (b) Makes misuse of the 911 system a violation.
- (c) Exempts from approval by the commission certain activities of parent companies of public utilities which do not adversely affect rates or services in state.
- (d) Makes various changes to the underground utility damage prevention system.
- (e) Allows the commission to waive submission requirements for certain least cost integrated resource plans.
- (f) Expands the enhanced 911 system to include cellular or wireless providers.
- (g) Authorizes the public utilities commission to establish and enforce requirements, excluding price regulation, for competitive electricity suppliers.

1997-0506h

Amendment to HB 764-FN-LOCAL

Proposed by the Committee on Criminal Justice and Public Safety

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

AN ACT relative to a person subject to a domestic violence petition applying to purchase a firearm.

Amend the bill by replacing section 1 with the following:

1 New Section; Felonious Attempt to Purchase a Firearm. Amend RSA 159 by inserting after section 3-a the following new section:

159:3-b Felonious Attempt to Purchase a Firearm.

- I. No person who is subject to a protective order or restraining order issued pursuant to RSA 173-B:4, RSA 173-B:6, or RSA 458:16, I(a), (b), or (c); a foreign order as defined in RSA 173B:11-b; or pursuant to the court's equitable powers, and who knows that such protective order has been issued, shall attempt to purchase a firearm while the order is in effect.
- II. Any person who violates paragraph I shall be guilty of violation for the first offense and shall be guilty of a class A misdemeanor for the second offense.
- III. For purposes of this section, "firearm" has the meaning given that term in section 921 of Title 18 of the United States Code.

AMENDED ANALYSIS

This bill prohibits a person, who is subject to a protective order and who knows that such protective order has been issued, from attempting to purchase a firearm while the order is in effect. The bill makes any person who violates this prohibition guilty of a violation for the first offense and guilty of a class A misdemeanor for the second offense. This bill also requires any court issuing a protective order to notify the department of safety by facsimile machine when a protective order has been canceled or expired on the same business day.

1997-0736h

Amendment to HB 799

Proposed by the Committee on Commerce

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

1 New Paragraph; Service Corporations. Amend RSA 384:16-b by inserting after paragraph II the following paragraph:

III. Provided further that any contrary provision of law notwithstanding, the provisions of paragraph II apply only to a subsidiary of a bank or banking association and do not apply to an affiliate thereof, and the provisions of this section shall not be construed to prevent a financial institution as defined in RSA 406-C:2, IV from conducting insurance activities pursuant to RSA 406-C and rules adopted under RSA 406-C, and as permitted in RSA 394-A:9, if such financial institution or its affiliate or subsidiary is located in a place of 5,000. A place of 5,000 means a town or city in this state with a population not exceeding 5,000 as determined by the last federal decennial census. An affiliate or subsidiary of any bank or banking association shall be bound by the provisions of RSA 406-C, with respect to sales of insurance in this state which are recommended or sponsored by a financial institution or sold on the premises of a financial institution.

2 Insurance; State-Chartered Financial Institutions. RSA 394-A:9 is repealed and reenacted to read as follows:

394-A:9 Insurance. A state-chartered financial institution may engage in the business of insurance to the same extent that a national bank or its affiliate or subsidiary is permitted to engage in such business under Section 92 of the National Bank Act, subject to the following conditions:

I. The insurance activity may be conducted only by the financial institution, an affiliate or subsidiary of the financial institution that is located in a place of 5,000. A place of 5,000 shall mean a town or city in this state with a population not exceeding 5,000 as determined by the last federal decennial census.

II. The conduct of the insurance activity shall comply with the provisions of RSA 406-C and any rules adopted thereunder, any applicable state insurance licensing laws and rules, and all applicable federal and state consumer protection laws, including the federal anti-tying provisions of 12 USC section 1972.

III. The provisions of paragraphs I and II shall not be construed to limit the authority of any credit union to engage in the business of insurance pursuant to the provisions of RSA 394B:52a.

3 New Chapter; Sales of Insurance by Financial Institutions. Amend RSA by inserting after chapter 406-B the following new chapter:

CHAPTER 406-C

SALES OF INSURANCE BY FINANCIAL INSTITUTIONS

406-C:1 Purpose. The purpose of this chapter is to regulate the solicitation for purchase and the sale in this state of insurance by financial institutions in places with a population of 5,000 or fewer people and to direct and authorize the insurance commissioner to adopt such rules as may be necessary to protect the interests of insurance policyholders in this state and to maintain parity with respect to the insurance powers of state and federally chartered financial institutions.

406-C:2 Definitions. In this chapter:

I. "Commissioner" means the insurance commissioner.

II. "Customer" means a person with an investment, security, deposit, trust, or credit relationship with a financial institution.

III. "Insurance" means all products defined or regulated as insurance by the state of New Hampshire, except:

(a) Credit life, credit accident and health, credit personal property insurance, and credit involuntary unemployment insurance;

(b) Insurance purchased by a financial institution in connection with collateral pledged as security for a loan when the debtor breaches the contractual obligation to provide that insurance;

(c) Private mortgage insurance; and

(d) Mortgage life and mortgage disability insurance

IV. "Financial institution" means a bank holding company, as defined in the Bank Holding Company Act of 1956, as amended, 12 U.S.C. section 1841, a savings and loan holding company as defined in the Home Owners' Loan Act, 12 U.S.C. 1467a, as amended; a bank, savings bank, savings and loan association, trust company, or any depository institution as defined by the Federal Deposit Insurance Act, as amended, 12 U.S.C. section 1813(c)(1); any subsidiary of any of the above described depository institutions, and any other individual, corporation, partnership, or association

authorized to take deposits and make loans in the state. For the purposes of this chapter, "financial institution" shall include only those institutions that are located in a place of 5,000. The term financial institution does not include an insurance company subject to regulation under Title XXXVII.

V. "Nonpublic customer information" means information regarding a person that has been derived from a record of a financial institution concerning insurance premiums, the terms and conditions of insurance coverage, insurance expirations, insurance claims, and insurance history of an individual, and such other information as established by rules adopted by the commissioner. "Nonpublic customer information" does not include customer names, addresses, and telephone numbers.

VI. "Place of 5,000" means a town or city in this state with a population of 5,000 or fewer people according to the latest federal decennial census.

406-C:3 License for Insurance Sales. A financial institution and the employees of a financial institution conducting insurance sales shall be required to obtain an agent's or broker's license authorizing the sale of insurance by complying with the licensing requirements of RSA 402:16.

406-C:4 Prohibition on Underwriting. Neither this chapter, nor RSA 384:16-b, III shall be construed to authorize any financial institution to engage in the underwriting of any insurance product or in any insurance underwriting activity requiring licensure under RSA 402 or RSA 405.

406-C:5 Licensure Requirement. Solicitation for the purchase or sale of any insurance product by the financial institution shall be conducted only by persons who are licensed and have complied with all applicable state insurance licensing laws and rules, and are officers, directors, or employees of the financial institution.

406-C:6 Authorized Carriers. A financial institution shall offer only insurance products of approved surplus lines carriers or approved products of insurance companies authorized to do insurance business in New Hampshire.

406-C:7 Separation of Activities.

I. Solicitation for the purchase or sale of insurance by the financial institution shall, to avoid customer confusion, to the extent practicable be conducted in a physical location distinct from the area where retail deposits or credit transactions are routinely conducted in accordance with rules adopted by the commissioner.

II. Solicitation for the purchase or sale of insurance by a licensed employee who exercises authority over credit transactions shall be conducted in a manner which addresses the potential for customer confusion and coercion consistent with rules adopted by the commissioner.

III. Signage, informational materials, and sales literature concerning the availability of insurance products through the financial institution shall be utilized and displayed in accordance with rules adopted by the commissioner.

IV. The financial institution, or any third party agent, marketer, or issuer of any insurance product shall not utilize an insurance product name identical to or misleadingly similar to the name of the financial institution so as to cause confusion on the part of insurance purchasers as to the uninsured nature of the product.

406-C:8 Disclosures.

I.

To avoid customer confusion and in addition to any other requisite disclosures, all advertising, promotional material and solicitation, including telemarketing contacts, shall, as required under rules, bulletins, or interpretive rulings adopted or promulgated by the commissioner, include a prominent disclosure that substantively states that a purchase of insurance:

(a) Is not a deposit;

(b) Is not insured by the Federal Deposit Insurance Corporation or any other agency or instrumentality of the federal government;

(c) Is not guaranteed by the seller or an affiliated insured, unless the insurance is guaranteed by the financial institution in which case the nature of the guarantee and identity of the guarantor shall be disclosed; and

(d) Where appropriate, involves investment risk, including potential loss of principal.

II. At the time of sale, the financial institution shall also provide written disclosure of how to complain to the insurance department about problems in the sale or solicitation of an insurance product. Other than disclosing how to complain to the insurance department, a financial institution that does not accept insured deposits is not required to disclose items I(a) through (c) of this section.

406-C:9 Confidential Customer Information.

- I. The financial institution shall not use any nonpublic customer information, other than information pertaining solely to insurance transactions between a customer and a financial institution or its affiliate or subsidiary, for the purpose of selling or soliciting the purchase of insurance or provide the nonpublic customer information to a third party for the purpose of another's sale or solicitation of the purchase of insurance, unless it is clearly and conspicuously disclosed that the information may be so used and the customer has provided prior written consent to the use for this purpose.
- II. Written consent for use of any nonpublic customer information shall not be required as a condition for performance by the financial institution of banking services for the customer.

406-C:10 Prohibition on Tying of Banking and Insurance Products.

- I. The financial institution shall not require or imply that the purchase of an insurance product by a customer or prospective customer is required as a condition of, or is in any way related to, the lending of money or extension of credit or the provision of services related to any such activities. A written disclosure to this effect, or such other disclosure as the department may authorize through rulemaking, shall be expressly acknowledged by the customer and shall include notice that the customer is free to select another insurance provider and that the customer's choice of another insurance provider will not affect the financial institution's credit decisions or credit terms in any way. The written disclosure shall be acknowledged at the time that the customer is first informed that insurance is available through the financial institution.
- II. The completion of a loan transaction or other transactions involving the extension of credit shall not be delayed or impeded by an officer or employee of a financial institution for the purpose of influencing a customer's selection or purchase of insurance.

406-C:11 Prohibition on Discrimination Against Non-Affiliated Agents.

- I. The financial institution shall not condition the provision of any product or service to any customer upon the purchase of a policy or contract of insurance through a particular insurer, agent, or broker or reject any insurance policy required in connection with a loan or extension of credit solely because such policy has been issued or underwritten by any person who is not associated with such institution.
- II. The financial institution shall not impose any discriminatory requirement on any insurance agent or broker who is not associated with the financial institution that is not imposed on any insurance agent who is associated with such institution.
- III. Unless otherwise authorized by any applicable federal or state law, no financial institution shall require any debtor, insurer, broker, or agent to pay a separate charge in connection with the handling of insurance that is required under a contract.

406-C:12 Prohibited Practices.

- I. An employee of a financial institution who is not licensed as an agent or broker may receive, directly or indirectly, nominal compensation or consideration, not to exceed \$20 per referral or appointment, from an agent, broker, insurance agency, insurer, or the financial institution, based upon referral of potential purchasers to or making appointments with a licensed agent or broker, provided that the compensation or consideration is not conditioned on the actual sale of insurance. The commissioner may adopt rules to effectuate the purposes of this paragraph.
- II. The financial institution shall not offer, recommend, sponsor, or sell an insurance product which has not been properly approved for sale to New Hampshire residents.
- III. An insurance product shall not be offered in a package with non-insurance products in violation of rules adopted by the commissioner to prohibit unlawful tying activities, rebating, and unfair competition with respect to insurance sales.
- IV. The payment for rental or lease of space by an unlicensed financial institution to an insurance agent or broker shall not be based directly or indirectly on the volume of premium written or insurance sold by the agent or broker.

406-C:13 Application of State and Federal Consumer Protection Provisions. Any financial institution which solicits or sells insurance products pursuant to RSA 384:16-b, III and this chapter shall be subject to all applicable federal and state consumer protection laws, including the federal

anti-tying provisions of 12 USC section 1972.

406-C:14 Examination Authority. The insurance activities of financial institutions pursuant to RSA 384:16-b, III and this chapter shall be subject to examination by the commissioner and the commissioner is authorized to impose reasonable assessments on the financial institution for such examination.

406-C:15 Rulemaking Authority for Implementing Regulations.

I. The commissioner may adopt rules to effectuate the purposes of this chapter, which are to protect the insurance buying public from potential coercion by financial institutions, to minimize the possibilities of unfair competitive practices by financial institutions that harm the public, and to maintain parity with respect to the insurance powers of state and federally chartered financial institutions.

II. The commissioner may also adopt rules which would vary the provisions of this chapter, if essential, and for the sole purpose of maintaining parity and eliminating competitive advantages enjoyed by federally chartered financial institutions, upon a determination by the commissioner that a specific federal law, regulation or ruling creates a substantial disparity in the insurance agency powers of state and federal financial institutions in this state. Any rule adopted pursuant to this paragraph shall not diminish any consumer protection afforded under this chapter. The commissioner shall seek appropriate legislation amending any affected provisions of this chapter at the earliest legislative opportunity.

III. Rules adopted by the commissioner under this chapter shall be adopted pursuant to RSA 541-A. Notwithstanding RSA 541-A:17, I, or any other law to the contrary, any rule adopted under this chapter shall continue in force and effect until amended or repealed.

406-C:16 Enforcement. Any person violating the provisions of this chapter shall be subject to any and all enforcement procedures within the authority of the insurance department including, but not limited to, the issuance of a cease and desist order requiring such person to cease all insurance sales and solicitation activities.

406-C:17 Penalties. Any financial institution violating any of the provisions of this chapter or any rule adopted under this chapter may be subject to an administrative fine not to exceed \$2,500 per violation. The commissioner may also suspend or revoke the license of any financial institution or other person or organization for any violation of this chapter or rule or for failure to comply with an order, including a cease and desist order, of the commissioner issued under this chapter.

406-C:18 Provisions Severable. If any provision of this chapter or the application thereof to any person or circumstance is held to be invalid for any reason, such invalidity shall not affect any other provisions or applications of this chapter which can be given effect without the invalid provisions of applications, and to this end the provisions of this chapter are severable.

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

AMENDED ANALYSIS

This bill allows the insurance commissioner to regulate the sale of insurance by financial institutions. Only financial institutions located in a place which has a population of less than 5,000 may sell insurance in this state. The insurance commissioner is granted rulemaking authority to implement the provisions of this bill.

1997-0582h

Amendment to HB 805

Proposed by the Committee on Judiciary and Family Law

Amend the bill by replacing section 1 with the following:

1 New Section; Homestead Rights. Amend RSA 480 by inserting after section 8-a the following new section:

480:9 Homestead Rights. A conveyance of real property by deed to one or more trustees of a revocable trust shall not result in the loss of homestead rights of any person executing the deed (unless the deed contains an express release of homestead rights by such person) provided that such retained homestead rights in any such property shall not be enforceable against any other person to the extent such other person acquired an interest in or lien on the property after its conveyance into the trust without having notice of the revocability of the trust. Such notice may be given by the inclusion of the word "revocable" in the name of the trust as recited in the deed, or by the recitation in the deed or a subsequently recorded document that at the time of the conveyance the trust was a revocable trust.

1997-0739h

Amendment to HJR 4

Proposed by the Committee on Science, Technology and Energy

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

Whereas, on May 21, 1996 New Hampshire became the first state in the nation to enact electric utility restructuring legislation, which provides for competitive retail customer choice of electric generation suppliers for all customers in 1998; and

Whereas, the United States Congress and the Federal Energy Regulatory Commission (FERC) by statute and orders have laid the groundwork for retail competition, by promoting wholesale competition in electricity markets through the adoption of the Energy Policy Act of 1992 and the issuance of FERC Order No. 888 promoting open access transmission services; and

Whereas, there remain some impediments and ambiguities in federal law relative to states' promotion of retail competition in electricity markets and the restructuring of the electric utility industry, and ambiguities in the boundary between federal and state jurisdiction; and

Whereas, divestiture by vertically integrated electric utilities of their electric generation business and their electric transmission and distribution business into separate entities may be a desirable part of electric utility restructuring, some states may want to encourage or mandate such divestiture, and the spinning off of one business or the other to current shareholders may be a desirable method of implementing this goal; and

Whereas, New Hampshire has adopted an electric utility restructuring policy principle in law which states, "Increased competition in the electric industry should be implemented in a manner that supports and furthers the goals of environmental improvement," and which continues, "As generation becomes deregulated, innovative market-driven approaches are preferred to regulatory controls to reduce adverse environmental impacts;" and

Whereas, FERC has indicated a clear desire that the United States Environmental Protection Agency implement appropriate environmental regulation to accompany electric utility restructuring; and

Whereas, the United States Congress is considering federal legislation to encourage and promote retail competition and customer choice in electricity supply markets; now, therefore, be it

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

That the general court of New Hampshire hereby urges the United States Congress, FERC, and other federal agencies to continue to cooperate with and support state efforts to restructure the electric utility industry and promote retail competition; and

That Congress and FERC should affirm state authority to order retail customer choice of electric generation suppliers including the authority to order filing of tariffs for the provision of retail transmission service by electric utilities under state jurisdiction and their affiliates, consistent with needs of retail customers as well as FERC's open access policies and comparability principles; and

That Congress should affirm that states have jurisdiction over all retail sales of electricity to end users within the state, so that states can require the imposition of nonbypassable distribution charges on all retail customers, even if there are no distribution facilities under state jurisdiction involved; and

That Congress should make clear state authority to order divestiture of generation assets by electric utilities that own distribution; and

That Congress should remove tax code obstacles and other barriers to electric utility restructuring, such as barriers to divestiture of generation assets by vertically integrated utilities or holding companies; and

That Congress should eliminate mandatory purchase requirements of the Public Utility Regulatory Policies Act of 1978 once all customers of a utility have the right to choose their own supplier of electricity; and

That Congress and the EPA should pursue policies, including amendments to the Clean Air Act, that promote market based systems which ensure continued and ongoing environmental improvement and reduction of air pollution emissions from electric power generation plants, and provide for fair competition among all generators; and

That copies of this resolution be sent by the clerk of the house of representatives to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the Federal Energy Regulatory Commission, the Secretary of the United States Department of Energy, the chairpersons of the committees of the United States Congress having jurisdiction over electric utility restructuring, and to each member of the New Hampshire congressional delegation.

1997-0724h

Amendment to HJR 5

Proposed by the Committee on Science, Technology and Energy

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

Whereas, the state of New Hampshire has continued to decrease air pollution emissions in accordance with the federal Clean Air Act Amendments of 1990; and

Whereas, the United States Environmental Protection Agency (EPA) has continued to fund scientific air pollution research which has shown that some of the scientific assumptions behind the federal Clean Air Act Amendments of 1990 are invalid; and

Whereas, certain regions of the country, including the state of New Hampshire, are required to make considerable additional expenditures on scientifically obsolete or ineffective air pollution controls mandated by the federal Clean Air Act; and

Whereas, the federal Clean Air Act does not allow the EPA to authorize states to substitute more cost effective air pollution control strategies for scientifically obsolete or ineffective air pollution control strategies, thereby stifling innovation; and

Whereas, certain regions of the country, including the state of New Hampshire, are currently victims of air pollution emitted upwind from the region, but are being held responsible for that pollution by the federal Clean Air Act; and

Whereas, the federal Clean Air Act requires the EPA to adopt standards which protect public health with an adequate margin of safety, despite recent scientific research which indicates that no safe level exists, providing opponents of air pollution control expenditures with unnecessary opportunities to question the implementation of the Clean Air Act; and

Whereas, the EPA is in the process of mandating low-emission vehicle requirements for new automobiles which needlessly mix cost-effective stricter nitrogen oxide emission standards with scientifically obsolete requirements for stricter hydrocarbon emission standards; and

Whereas, the EPA in its procedures for assessing state implementation plans for air pollution control gives little or no credit for voluntary pollution reductions already in place that are not mandated by law, and gives excessive credit for promises of future mandatory control measures; now, therefore, be it

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

That the federal Clean Air Act should be amended to require the EPA to permit states to substitute more effective air pollution control strategies for less effective strategies mandated by the federal Clean Air Act, so that states will be allowed to devise cost-effective strategies that will produce more air pollution improvement for less cost; and

That the federal Clean Air Act should be amended so that regions which are victims of windborne air pollution are not held responsible, and if polluted air gets cleaner as it passes over a region of a non-attainment area, that region should not be required to observe the additional air pollution control requirements for non-attainment areas, and the EPA should instead look to upwind polluters to apply additional controls; and

That the federal Clean Air Act should be amended to promote reductions in ground level ozone through nitrogen oxide emission reductions from power plants, industrial boilers, new automobiles, and new trucks, rather than further reducing hydrocarbon emissions from existing gasoline vehicles or industrial solvents; and

That the federal Clean Air Act should be amended so that the EPA may more justifiably set air quality standards at a level other than zero, which improve over time at a steady rate, based on scientific analysis of public health damage, ecological damage, and cost of control; and

That the EPA should revise its policies regarding motor vehicle emissions, including low-emission vehicle standards, to concentrate on nitrogen oxide emission reductions, not hydrocarbon emission reductions; and

That the EPA should revise its policies regarding state implementation plans for air pollution control so that states shall be given full credit in their state emission inventories for non-mandatory pollution reductions which can reasonably be expected to occur or to remain in place, including low-emission vehicles already registered in the state; and

That the EPA should act on its responsibility to forcefully communicate the results of its ongoing scientific research to the United States Congress and encourage Congress to amend the Clean Air Act so as to bring it in line with current research; and

That the EPA should promptly amend its own policies so as to bring them in line with current research; and

That copies of this resolution be sent by the house clerk to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the chairpersons of committees of the United States Congress having jurisdiction over the Clean Air Act, the Administrator of the United States Environmental Protection Agency, and each member of the New Hampshire congressional delegation.

1997-0728h

Amendment to SB 157

Proposed by the Committee on Executive Departments and Administration

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

AN ACT designating Civil Rights Day to honor all individuals who have worked for civil rights in this nation.

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

1 Purpose. In recognition of all efforts to help our nation achieve its highest ideals, in recognition of the struggle to achieve democratic rights for all Americans, and in recognition of individuals who served as symbols of the ongoing struggle for liberty and equality, it is the intent of the general court that a civil rights day honoring all individuals who have worked for civil rights in this nation serve as a time for New Hampshire residents to reflect on the principles of equality and nonviolent social change and to rededicate themselves to the ideals of freedom and justice.

2 Civil Rights Day Changed to Honor Certain Individuals. Amend RSA 288:1 to read as follows:

288:1 Holidays. January 1; the third Monday in January, ~~known~~ **designated** as Civil Rights Day, **to honor Martin Luther King, Jr., Jonathan M. Daniels, and all individuals who have worked for civil rights in this nation;** the third Monday in February, known as Washington's Birthday; the last Monday in May, known as Memorial Day or, on a date to coincide with the federal observance if it is held on a different day; July 4, known as Independence Day; the first Monday in September, known as Labor Day; the second Monday in October, known as Columbus Day; the day on which the biennial election is held; November 11, known as Veterans Day; Thanksgiving Day, whenever appointed; and Christmas Day are legal holidays.

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

AMENDED ANALYSIS

This bill designates Civil Rights Day to honor Martin Luther King, Jr., Jonathan M. Daniels, and all individuals who have worked for civil rights in this nation.