

State
New Hampshire

HOUSE RECORD

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

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Contains: Amendments for Re-referred Bills

HOUSE CALENDAR

ALL LEGISLATORS ARE ASKED TO RETAIN THIS CALENDAR

FOR FLOOR USE ON JANUARY 7, 1998

AMENDMENTS FOR RE-REFERRED BILLS

(LISTED IN NUMERICAL ORDER)

1998-0121h

Amendment to HB 111-FN

Proposed by the Committee on Legislative Administration

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

AN ACT establishing a committee to study the preservation of and access to records of legislation in the state archives.

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

1 Committee Established. There is established a committee to study the preservation of and access to records of legislation in the state archives.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

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

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

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:

I. Request the advice and participation of the state archivist and staff.

II. Review varying types of preservation technology.

III. Review the costs and durability of each available technology.

IV. Make recommendations regarding the preservation technology to be adopted and the appropriation that may be required to cover the costs thereof, all with the understanding that the house committee on legislative administration believes that steps must be taken to improve the current state of preservation of legislative records.

4 Chairperson. The first meeting of the committee shall be called by the first-named house member. The members of the study committee shall elect a chairperson from among the members.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 1998.

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

AMENDED ANALYSIS

This bill establishes a committee to study the preservation of and access to records of legislation in the state archives.

1998-0120h

Amendment to HB 126-FN-LOCAL

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

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

AN ACT relative to road toll refunds for retail dealers.

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

1 Road Tolls; Retail Dealers; Refund Rate Reduced. Amend RSA 260:48, I to read as follows:

I. The amount of refund shall be computed at the rate of ~~[one]~~ **0.5** percent of the toll paid on gross purchases.

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

AMENDED ANALYSIS

This bill reduces the road toll refund rate for retail dealers from one percent to 0.5 percent.

1998-0003h

Amendment to HB 132-FN

Proposed by the Committee on Wildlife and Marine Resources

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

1 Fishing and Hunting Licenses; Armed Forces and Coast Guard. RSA 214:3 is repealed and reenacted to read as follows:

214:3 Members of the Armed Forces and Coast Guard.

I. Any resident of this state who is on regular active duty in any branch of the armed forces including the coast guard, and who is permanently stationed outside of the state, may acquire at no charge, upon application to the executive director and subject to

the restrictions of title XVIII, a special license to hunt and fish during any period while on leave or furlough.

II. Any nonresident who is on regular active duty in any branch of the armed forces including the coast guard, and who is permanently stationed within the state, may purchase regular hunting and fishing licenses or combination licenses, subject to the restrictions of title XVIII, at the same fee as is charged a legal resident of the state.

III. The executive director shall adopt rules pursuant to RSA 541-A relative to:

- (a) Establishing any restrictions on the use of a special license issued under paragraph I.
- (b) The documentation required in order to qualify for a license under this section.
- (c) The locations at which a license may be issued.

2 Effective Date. This act shall take effect January 1, 1999.

AMENDED ANALYSIS

This bill allows residents of the state who are on active duty in the armed forces or coast guard to be issued basic resident hunting and fishing licenses at no charge while on leave or furlough. The bill also allows nonresidents on active duty to purchase regular or combination licenses at the fee that is charged to residents.

1998-0131h

Amendment to HB 147

Proposed by the Committee on Commerce

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

1 New Section; Access and Dissemination Required. Amend RSA 78 by inserting after section 12-d the following new section:

78:12-e Access and Dissemination of Information Required.

I. For the purpose of protecting the public health, the commissioner of the department of health and human service shall obtain annually from the state of Massachusetts, Department of Public Health, or other sources if they become available, a public report containing the list of additives for each brand of tobacco products sold.

II. The department shall make available to the public any information received under paragraph I above.

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

AMENDED ANALYSIS

This bill requires the commissioner of health and human services to obtain certain information regarding tobacco products and to disclose such information to the public.

1998-0075h

Amendment to HB 152

Proposed by the Committee on Criminal Justice and Public Safety

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

1 New Subparagraph; Certain Items Added to Definition of Permissible Fireworks. Amend RSA 160-B:1, V-b by inserting after subparagraph (h) the following new subparagraph:

- (i) The following items listed by department of transportation reference number:
 - (1) EX-8306058.
 - (2) EX-8306108.

- (3) EX-8306336.
- (4) EX-8307002.
- (5) EX-8310043.
- (6) EX-8310044.
- (7) EX-8401060.
- (8) EX-8401222.
- (9) EX-8402328.
- (10) EX-8405088.
- (11) EX-8407201.
- (12) EX-8408026.
- (13) EX-8408240.
- (14) EX-8408359.
- (15) EX-8409021.
- (16) EX-8409109.
- (17) EX-8409142.
- (18) EX-8411085.
- (19) EX-8502137.
- (20) EX-8710383.
- (21) EX-8805121.
- (22) EX-8810274.
- (23) EX-8810276.
- (24) EX-8812047.
- (25) EX-8812103.
- (26) EX-8812105.
- (27) EX-8812108.
- (28) EX-8903063.
- (29) EX-8903185.
- (30) EX-8911225.
- (31) EX-9011076.
- (32) EX-9102141.
- (33) EX-9103277.
- (34) EX-9112095.

- (35) EX-9204312.
- (36) EX-9206183.
- (37) EX-9207128.
- (38) EX-9210016.
- (39) EX-9301133.
- (40) EX-9303127.
- (41) EX-9405144.
- (42) EX-9405146.
- (43) EX-9405222.
- (44) EX-9407197.
- (45) EX-9408110.
- (46) EX-9410181.
- (47) EX-9411054.
- (48) EX-9503151.
- (49) EX-9503164.
- (50) EX-9503167.
- (51) EX-9503168.
- (52) EX-9503170.
- (53) EX-9503171.
- (54) EX-9505108.
- (55) EX-9508012.
- (56) EX-9508013.
- (57) EX-9510143.
- (58) EX-9510144.
- (59) EX-9602032.
- (60) EX-9604049.
- (61) EX-9605074.
- (62) EX-9605076.
- (63) EX-9609049.
- (64) EX-9703045.
- (65) EX-9705020.
- (66) Sky Happiness, Department of Transportation reference number Ex-pending.

(67) Nice Jewelry, Department of Transportation reference number Ex-pending.

(68) Crackling Candle Barrage, Department of Transportation reference number Ex-pending.

(69) Red, White & Blue Roman Candles, Department of Transportation reference number Ex-pending.

2 Gender Neutral. Amend RSA 160-B:3, I(a) and (b) to read as follows:

(a) Has obtained a certificate of competency issued pursuant to RSA 158:9-f which ~~[he has]~~ **shall be** in ~~[his]~~ **such person's** possession at the time of display and which has not been revoked or suspended.

(b) Has obtained a municipal permit to display issued pursuant to RSA 160-B:7 which ~~[he has]~~ **shall be** in ~~[his]~~ **such person's** possession and which has not been revoked or suspended.

3 Gender Neutral. Amend RSA 160-B:4, I(a) to read as follows:

(a) A person who has in ~~[his]~~ **the person's** possession a certificate of competency issued pursuant to RSA 158:9-f and a valid permit to display issued pursuant to RSA 160-B:7.

4 Gender Neutral. Amend RSA 160-B:4, II to read as follows:

II. Any person who violates the provisions of this section shall be guilty of a violation unless ~~[he]~~ **the person** possesses with intent to sell, in which case ~~[he]~~ **such person** shall be guilty of a misdemeanor.

5 Gender Neutral. Amend RSA 160-B:6, I and II to read as follows:

I. Any person who desires to sell fireworks as limited by RSA 160-B:2 may apply to the municipality in which ~~[he]~~ **such person** desires to sell fireworks. The licensing board of any municipality or, if one does not exist, the chief of police, the fire chief, or the governing body may issue a permit to sell fireworks to a person who applies, provided that the person has a valid permit for the sale of fireworks issued pursuant to title 18 of the United States Code. The municipality may charge a fee for the permit or application for permit under this section.

II. After the person has obtained a municipal permit to sell fireworks ~~[he]~~ **such person** may apply for a state license to sell fireworks. Upon application of any person, the commissioner, or a person designated by the commissioner, may issue a license authorizing the applicant to sell or market fireworks in this state for not more than one year from the date of issue, provided the person has first obtained a permit to sell fireworks pursuant to RSA 160-B:6, I. The license shall be in duplicate and shall bear the name, address, description, and signature of the licensee. The license shall be displayed at all times, openly and publicly, at the licensee's place of business. The original of the license shall be delivered to the licensee and the duplicate shall be preserved by the commissioner. The license shall be issued within a reasonable time after application.

6 Gender Neutral. Amend RSA 160-B:6, IX to read as follows:

IX. No person under the age of 21 shall be engaged in the business of handling or selling any fireworks; provided, however, that a person less than 21 years of age but at least 18 years of age may handle and sell fireworks if ~~[he is]~~ under the direct supervision of a person 21 years of age or older.

7 Gender Neutral. Amend RSA 160-B:7, V to read as follows:

V. An application for a display permit shall be made in writing at least 15 days in advance of the date of the display. The town, city or village district may charge a reasonable fee for a permit to display fireworks. No display permit granted under this section shall be transferable, and each display permit shall be valid for only one display to be held on the date permitted. If, in the opinion of the chief of the fire department, conditions deteriorate during the 15 days before the date for which such permit is granted so that a fire hazard exists, ~~[he]~~ **the chief** may revoke the permit.

8 Gender Neutral. Amend RSA 160-B:14 to read as follows:

160-B:14 Immediate Suspension Authority. Notwithstanding any other provision of law to the contrary, the commissioner may immediately suspend a license issued pursuant to RSA 160-B:6 if the commissioner has evidence that the licensee is selling fireworks contrary to any of the provisions of RSA 160-B or any rules adopted under this chapter. Any person whose license is suspended pursuant to this section shall be given the opportunity for a hearing within 10 days of the suspension. Any person found to be selling fireworks after ~~[his]~~ **the person's** license has been suspended pursuant to this section shall not have ~~[his]~~

the license reinstated for a minimum of one year from the date of suspension.

9 Repeal. RSA 160-B:1, V-b(i), relative to certain permissible fireworks, are repealed.

10 Effective Date of Repeal. Section 9 of this act shall take effect when the commissioner of safety has adopted rules under RSA 160-B:8, V-c relating to recommendations of the permissible fireworks committee regarding the items listed in RSA 160-B:1, V-b(i) as inserted by section 1 of this act, as certified to the secretary of state by the director of legislative services.

11 Effective Date.

I. Section 9 of this act shall take effect as provided in section 10 of this act.

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

AMENDED ANALYSIS

Section 1 of this bill includes certain items in the definition of permissible fireworks, thereby requiring such items to be regulated under RSA 160-B. The remainder of this bill amends certain RSA provisions making them gender neutral in accordance with RSA 17-A:6 relative to gender neutral drafting.

1998-0105h

Amendment to HB 170-LOCAL

Proposed by the Committee on Local and Regulated Revenues

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

1 New Section; Property Tax Exemptions for Certain Greenhouses. Amend RSA 72 by inserting after section 12-c the following new section:

72:12-d Exemption.

I. Demountable, plastic-covered greenhouses shall be exempt from taxation if all of the following qualifications are met:

(a) Removal of the demountable greenhouse will not affect the utility of the underlying real estate.

(b) The demountable greenhouse is not permanently affixed to the underlying real estate with concrete or similar non-portable footings.

(c) Removal of the demountable greenhouse can be accomplished without damage to the greenhouse and will not render the greenhouse unfit for subsequent use as a demountable greenhouse.

(d) The demountable greenhouse is specifically designed, constructed, and used for the culture and propagation of horticultural commodities.

(e) The demountable greenhouse is not used for the retail sale of any farm or non-farm products.

II. For purposes of this section, the term "demountable, plastic-covered greenhouse" means:

(a) Framework.

(b) Coverings.

(c) Portable electric appliances, the installation of which involves only the insertion of an attachment plug into a fixed receptacle outlet. The word "portable" does not include or apply to any type or fixed electrically operated or driven equipment.

(d) Benches.

(e) A portable source of heat not fixed to the greenhouse or underlying real estate.

(f) A portable source of ventilation not fixed to the greenhouse or underlying real estate.

(g) A portable irrigation system.

III. Nothing in this section shall be construed to change or affect the current use laws under RSA 79-A and the rules adopted in furtherance of RSA 79-A.

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

1998-0184h

Amendment to HB 177-FN

Proposed by the Committee on Wildlife and Marine Resources

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

1 Wild Black Bear License and Tag Fee Increased. Amend RSA 208:24, II to read as follows:

II. No person shall take wild black bears in this state without first procuring a bear license and tag in addition to the applicable license to hunt issued pursuant to RSA 214:9 or 208:5. The cost of [~~said~~] ***the*** bear license and tag shall be [~~\$2~~] ***\$4***.

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

1998-0115h

Amendment to HB 204-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 granting responsibility for court security and custody and control of prisoners while in the courthouse to the county sheriff and providing for state reimbursement of the sheriff for the costs of such security services.

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

1 Statement of Intent.

I. It is the intent of the legislature in adopting this act to provide for the protection of staff, members of the public, and officers of the court while conducting their affairs and business in the state's courts.

II. The legislature intends this act to be in accordance with part I, article 37 of the New Hampshire constitution, regarding separation of powers, to keep law enforcement functions and custody issues separate from the judicial functions of the court. The legislature intends to remain within its constitutional authority pursuant to part I, article 37 in requiring that the sheriff, through the sheriff's deputies and bailiffs, be responsible for courtroom security and the custody and control of detained defendants during the time they are within the state's courts.

III. The legislature does not intend the provisions of this act to infringe upon the ability of the judiciary to establish rules governing the administration of all courts in the state and the practice and procedure which shall have the force and effect of law pursuant to part II, article 73-a of the New Hampshire constitution. The legislature distinguishes the judiciary's authority over practice and procedure from the legislature's authority to designate the sheriff's duties of custody and control of detained defendants and courtroom security. The legislature believes that law enforcement and custody issues are an executive branch function and the conduct of trials is clearly the function and responsibility of the judiciary.

IV. By adopting this act, the legislature does not intend for sheriffs to provide security in the supreme court. It would not be outside the intent of the legislature for the judiciary to hire personnel to protect supreme court justices. The legislature also intends that the judiciary should have the power to influence the certification and training of bailiffs.

2 Responsibility for Custody of Detained Defendants. Amend RSA 30-B:4, III to read as follows:

III.**(a)** The superintendent shall, in person or by agent, receive all persons sent by lawful authority to the county department of corrections and retain them until they are released by process appropriate under law, ***except as provided in subparagraph (b)***.

(b) Whenever a person in the custody of the superintendent under subparagraph (a) is transported to a state court, the sheriff through the sheriff's deputies and bailiffs shall be responsible for custody and control of such person during the time period such person is in the courthouse.

3 Duties of Sheriff. RSA 104:5 is repealed and reenacted to read as follows:

104:5 Duties.

- I. The sheriff and the sheriff's deputies shall serve and execute all writs and other precepts directed to the sheriff's department and issued from lawful authority.
- II. The sheriff, sheriff's deputies and bailiffs shall perform the duties of crier of the court.
- III. The sheriff's bailiffs shall provide adequate security in all state courts, except the supreme court.
- IV. The sheriff's bailiffs shall comply with such background investigation checks, physical and mental standards, and training appropriate to their duties as the police standards and training council may require. The council shall consult with the New Hampshire Sheriffs Association and the administrative office of the courts prior to adopting these standards.

4 Sheriff as Bailiff; District Courts. RSA 104:31, XII is repealed and reenacted to read as follows:

XII. The state shall reimburse the sheriff's office \$65 for each full day and \$35 for each half day, plus traveling expenses to attend any official business, for any person employed as a bailiff by the sheriff's office. For the purpose of this paragraph, a half day shall be defined as a day in which a bailiff works 4 hours or less. The state shall reimburse the counties for all costs associated with employing court bailiffs, if those costs are the result of job requirements imposed by federal and state governments.

5 Bailiffs. Amend RSA 594:1-a to read as follows:

594:1-a Bailiffs and Court ***Security*** Officers.

- I. Bailiffs and supreme court security officers responsible for court security shall have the powers of arrest provided in this chapter when performing their duties relating to court security.***
- II. The sheriff, through the sheriff's deputies and bailiffs, shall be responsible for court security and shall be responsible for the conduct and control of detained defendants and prisoners during the time period that such defendants and prisoners are in all state courts, except for the supreme court.***

6 Detention of Person Arrested. Amend RSA 594:19-a to read as follows:

594:19-a Detention of Person Arrested; ***With Warrant; Without Warrant.***

- ~~I. [ON WARRANT.] Every officer making an arrest or holding a person in custody under a warrant shall take the accused [before] to the court as directed [therein] in the warrant without unreasonable delay [and shall there detain him for trial or examination until relieved by the court].~~
- ~~II. [WITHOUT WARRANT.] An officer arresting a person without a warrant shall without unreasonable delay take [him before] such person to the court to answer a complaint for the offense.~~

7 Court Appearances. Amend RSA 623:1-a to read as follows:

623:1-a Court Appearances. Any person confined in a county department of corrections facility, state prison, or other place of detention may, under necessary precautions and upon approval of the administrator of the institution in which said person is confined, be taken by some regular or specially authorized officer from such place of detention to a state or federal court within the state of New Hampshire to appear in a proceeding before that court, provided that the absence of the inmate from the place of detention shall not exceed 12 hours without approval of a justice of the superior court. ***During the time period such person is in a state courthouse, the sheriff, through the sheriff's deputies and bailiffs, shall be responsible for such person's custody and control.***

8 Positions Abolished. Except for the court security officer positions at the supreme court, all judicial branch employee positions directly associated with courthouse security are hereby abolished.

9 Court Security; Transfer of Funds. Amend 1997, 350:1 by replacing PAU 02, 01, 06 for fiscal year 1999 with the following:

02 Admin of justice & public prtn

01 Judicial branch

06 Court security

FY 1999

10 Personal services - permanent 28,395

20 Current expenses 2,000

24 Maint. other than build. & grnds 9,500

30 Equipment new/replacement 7,000

50 Personal service -temp/appointe 17,954

60 Benefits 14,368

70 In-state travel

92 Sheriff reimbursement

93 Additional sheriff reimbursement

49 Transfers to other state agencies D * 2,333,603

* The judicial branch shall make transfers

sufficient to fully fund the provisions of

RSA 104:31, XII and other court bailiff reimbursement.

Total 2,412,820

Estimated source of funds for

Court security

General Fund 2,412,820

Total 2,412,820

Total 49,106,105

10 Court Security; Reimbursement of Funds. Amend 1997, 350:1 by inserting in PAU 01, 04, 01, 06 the following new class line for fiscal year 1999:

93 Court bailiff reimbursement D * 2,333,603

* This classline shall remain fully funded for the purpose

of funding court bailiff reimbursement.

11 Totals Adjusted; Court Security Funds. Amend PAU 01, 04, 01, 06 as inserted by 1997, 350:1 by replacing the estimated source of funds and totals for fiscal year 1999 with the following:

Total 9,574,998

Estimated source of funds for

Court facilities

01 Transfers from other agencies 9,348,372

09 Agency income 226,626

Total 9,574,998

12 Effective Date. This act shall take effect July 1, 1998.

AMENDED ANALYSIS

This bill makes the county sheriffs, through their deputies and bailiffs, responsible for providing adequate security in all state courts, except the supreme court. The bill abolishes judicial employee positions, except for court security officer positions at the supreme court, and transfers funds for fiscal year 1999 for this purpose. The bill increases the rate of state reimbursement to sheriffs and counties for providing such security services.

1998-0119h

Amendment to HB 256-FN

Proposed by the Committee on Executive Departments and Administration

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

AN ACT establishing uniform adjudicative proceedings for state agencies.

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

1 Adjudicative Proceedings. Amend RSA 541-A:16, I(b)(2) to read as follows:

(2) Rules governing adjudicative ~~hearings~~ ***proceedings pursuant to RSA 541-A:30-a***; and

2 New Section; Rules for Adjudicative Hearings. Amend RSA 541-A by inserting after section 30 the following new section:

541-A:30-a Rules for Adjudicative Proceedings.

I. Each agency shall adopt rules pursuant to RSA 541-A governing the nature and requirement of all formal and informal procedures available in an adjudicative proceeding.

II. The director of the office of legislative services, in consultation with the attorney general, shall establish model uniform procedures relative to adjudicative proceedings within one year of the effective date of this act and shall amend such procedures as necessary.

III. These model uniform procedures shall address at least the following:

(a) Filing and service of documents;

(b) Appearances before agencies, including the unauthorized practice of law;

(c) Discovery procedures;

(d) Burden of proof;

(e) Standard of proof;

(f) Computation of time;

(g) Roles of complainants, intervenors, and agency staff in disciplinary and enforcement proceedings;

(h) Continuances;

(i) Reopening of the record;

(j) Waiver of rules governing adjudicative proceedings;

(k) Methods to petition for the withdrawal of a presiding officer; and

(l) Retention schedule for written decisions or orders pursuant to RSA 541-A:35, subject to any longer periods for retention set by the director of the division of records management and archives of the department of state pursuant to rules adopted under RSA 5:40.

IV. In order to comply with paragraph I, each agency may adopt, pursuant to RSA 541-A, the text of the current model uniform procedures, and shall also be subject to the following:

(a) Supplements or modifications shall also be adopted pursuant to RSA 541-A if necessary to implement the specific statutory provisions of the agency, or judicial decisions, affecting the conduct of an adjudicative proceeding.

(b) Each agency with no effective rules relative to adjudicative proceedings which has not adopted the text of the model uniform procedures and any necessary supplements or modifications within one year of the effective date of the model uniform procedures shall be subject to RSA 541-A:31, V-a.

(c) Each agency without effective rules or statutes in areas of an adjudicative proceeding, which are addressed in the model uniform procedures, shall be subject to RSA 541-A:31, V-a if the agency has not adopted the relevant provisions of the model uniform procedures and any necessary supplements or modifications within one year of the effective date of the model uniform procedures.

(d) When readopting, amending, or repealing effective rules on adjudicative proceedings, each agency that does not conform with the model uniform procedures and the provisions of subparagraph (a) of this section shall be subject to RSA 541-A:31, V-a.

V. Notwithstanding the provisions of RSA 541-A:22, I, an agency not in compliance with paragraph I of this section shall apply whatever model uniform procedures are necessary in a particular adjudicative proceeding when no effective agency rule addresses the matter covered by the applicable model rule, provided that:

(a) Such use shall not conflict with a statute, judicial decision, or other rules of the agency;

(b) Notice shall be given to all parties with the notice pursuant to RSA 541-A:31, III of the extent to which the model uniform procedures will apply to the proceeding;

(c) The agency notifies the attorney general, the director of the office of legislative services, and the joint legislative committee on administrative rules before the final decision is rendered that the model uniform procedures are being applied; and

(d) The agency shall not apply model uniform procedures pursuant to the provisions of this paragraph in another adjudicative proceeding more than one year after the final decision is rendered in the proceeding in which the agency first applied the model uniform procedures in this manner. The agency shall instead adopt the model uniform procedures pursuant to paragraph V.

VI. A copy of the written decision or order pursuant to RSA 541-A:35 shall be readily available to the public pursuant to the provisions of RSA 91-A unless:

(a) Otherwise provided by statute; or

(b) The written decision or order has been disposed after a retention period adopted pursuant to paragraph V.

VII. Each agency shall retain a copy of the verbatim recording of all oral proceedings pursuant to RSA 541-A:31, VII at least 30 days after the opportunity for all administrative and judicial appeals has been exhausted.

VIII. The attorney general shall prepare and distribute to all agencies authorized to conduct contested cases recommended guidelines for presiding officers in an adjudicative proceeding. These guidelines shall be available to the public pursuant to RSA 91-A. The guidelines shall be updated annually to address relevant changes in statutes, rules, or judicial decisions. Each agency that receives the guidelines shall provide a copy to all presiding officers in a contested case and to all members of the agency who may render the final decision in a contested case.

3 New Paragraph; Agency's Authority to Commence Adjudicative Proceeding Limited. Amend RSA 541-A:31 by inserting after paragraph V the following new paragraph:

V-a. Notwithstanding RSA 541-A:31, I, an agency shall not commence an adjudicative proceeding and shall not take action for which a prior adjudicative proceeding is otherwise required pursuant to RSA 541-A:30, I, if:

- (a) No effective statute agency rule or model uniform procedure applicable pursuant to RSA 541-A:30-a, VI addresses the adjudicative procedure or procedures to be used in the proceeding;
- (b) The agency has not adopted the text of the model uniform procedures pursuant to RSA 541-A:30-a, V and RSA 541-A:30-a, VI does not apply; or
- (c) No effective agency rule addresses the substantive matter or matters which are the subject of the adjudicative proceeding.

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

AMENDED ANALYSIS

This bill establishes uniform adjudicative proceedings for state agencies.

1998-0109h

Amendment to HB 272

Proposed by the Majority of the Committee on Resources, Recreation and Development

Amend the bill by replacing section 1 with the following:

- 1 New Paragraph; Fill and Dredge in Wetlands; Excavating and Dredging Permit; Boat Docking Facilities. Amend RSA 482-A:3 by inserting after paragraph XII the following new paragraph:
- XIII.(a) All boat docking facilities shall be at least 20 feet from an abutting property line in non-tidal waters, and at least 20 feet in tidal waters.
- (b) Boat docking facilities may be perpendicular or parallel to the shoreline or extend at some other angle into a water body, depending on the needs of the landowners, factors related to safe navigation, and the difficulty of construction. However, any boat secured to such a dock shall not extend beyond the extension of the abutter’s property line.
- (c) Notwithstanding the provisions of paragraph I, boat docking facilities may be located closer than 20 feet from an abutter's property line in non-tidal waters and 20 feet in tidal waters, if the owner of the boat docking facility obtains the written consent of the abutting property owner. Such consent shall be signed by all parties, notarized and filed with the dock application with the department of environmental services.
- (d) Abutters may apply for a common dock on or near their common property line. Any application for a common dock shall be accompanied by a notarized written agreement, which shall be signed by all property owners. Such agreement shall be filed at the registry of deeds and attached to the deed of each property owner.

1998-0016h

Amendment to HB 290

Proposed by the Committee on Judiciary and Family Law

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

AN ACT relative to digital signatures.

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

- 1 Statement of Purpose. The purpose of this act is to:
- I. Facilitate economic development by means of reliable electronic messages.
 - II. Enhance public confidence in the use of digital signatures.
 - III. Minimize the incidence of forged digital signatures and fraud in electronic commerce.

IV. Foster the development of electronic commerce through the use of digital signatures to lend authenticity and integrity to writings in any electronic medium.

2 New Subdivision; Digital Signatures. Amend RSA 506 by inserting after section 7 the following new subdivision:

Digital Signatures

506:8 Definitions. In this subdivision:

I. "Digital signature" means a type of electronic manipulation that transforms a message using an asymmetric cryptosystem such that a person having the transformed message and the signer's public key can accurately determine:

(a) Whether the transformation was created using the private key that corresponds to the signer's public key.

(b) Whether the initial message has been altered since the transformation was made.

II. "Asymmetric cryptosystem" means an algorithm or series of algorithms which provide a secure key pair.

III. "Electronic signature" means a digital signature, executed or adopted by a party with an intent to authenticate a writing. A writing is electronically signed if a digital signature is logically associated with such writing.

IV. "Key pair" means a private key and its corresponding public key in an asymmetric cryptosystem, under which the public key verifies a digital signature the private key creates.

V. The use or acceptance of a digital or electronic signature shall be at the option of the parties, both sending and receiving. Nothing in this section shall require an entity to use or permit the use of a digital signature.

506:9 Digital Signatures Given Effect. Unless otherwise provided by law, a digital signature may be used to sign a writing and shall have the same force and effect as a written signature.

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

AMENDED ANALYSIS

This bill gives electronic signatures the same force and effect as written signatures.

1998-0014h

Amendment to HB 371

Proposed by the Committee on Wildlife and Marine Resources

Amend the bill by replacing section 1 with the following:

1 New Subdivision; State Authority and Jurisdiction over Wildlife. Amend RSA 207 by inserting after section 57 the following new subdivision:

State Jurisdiction

207:58 Purpose. The legislature finds it is in the best interests of the state and its citizens to regulate, protect, restore, and conserve the wildlife resources of the state under a uniform scheme of management through the fish and game department. It is the intent of the general court to explicitly reaffirm the state's long-standing exclusive authority and jurisdiction over the wildlife of the state as established by title XVIII.

207:59 Exclusive Authority of the State. The state of New Hampshire shall have exclusive authority and jurisdiction over the management, preservation, protection, propagation and taking of wildlife in the state. Except as otherwise specifically provided by statute, no ordinance or regulation of a political subdivision may regulate the management, preservation, protection, propagation and taking of wildlife. Nothing in this section shall be construed as affecting a political subdivision's property rights concerning land owned and controlled by that entity.

AMENDED ANALYSIS

This bill provides that the state has exclusive authority concerning the management, preservation, protection, propagation, and taking of wildlife, and prohibits political subdivisions from regulating fish, game, or wildlife without express authority in the fish and game laws.

1998-0063h

Amendment to HB 420

Proposed by the Committee on Criminal Justice and Public Safety

Amend the bill by replacing section 1 with the following:

1 Administrative License Suspension; Alcohol Concentration Tests. Amend RSA 265:91-a, I to read as follows:

I. If any person refuses a test as provided in RSA 265:92 or submits to a test described in RSA 265:84 which [~~discloses an alcohol concentration~~] ***shows a reported value*** of 0.08 or more or, in the case of a person under the age of 21, 0.02 or more, the law enforcement officer shall submit a sworn report to the department. In the report the officer shall certify that the test was requested pursuant to RSA 265:84 and that the person refused to submit to testing or submitted to a test which [~~disclosed an alcohol concentration~~] ***shows a reported value*** of 0.08 or more, or, in the case of a person under the age of 21, 0.02 or more.

Amend the bill by deleting section 2 and renumbering the original sections 3-7 to read as 2-6, respectively.

Amend the bill by replacing section 6 with the following:

6 Effective Date. This act shall take effect January 1, 1999.

AMENDED ANALYSIS

This bill:

- I. Establishes criteria by which a breath test and a blood or urine test may be established to have been properly administered.
- II. Replaces the law relative to the scope of administrative hearings for serious traffic offenses.

1998-0196h

Amendment to HB 443

Proposed by the Committee on Election Law

Amend the bill by replacing section 1 with the following:

1 Findings and Purpose. The general court finds that anonymous "push-polling" is a deceitful practice having an adverse impact on the political process. While the general court affirms the rights of candidates for public office to engage in free speech, it finds that candidates should be fully accountable for the statements and messages generated by their campaigns. This act is intended to insure that the public is fully informed when candidates engage in push-polling.

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

3 Push-polling; Submission of Information Required. Amend RSA 664 by inserting after section 16 the following new section:
664:16-a Identification Required.

- I. Any person who engages in push-polling, as defined in RSA 664:2, XVII, shall inform any person contacted that the telephone call is being made on behalf of, in support of, or in opposition to a particular candidate for public office, identify that candidate by name, and provide a telephone number from where the push-polling is conducted.
- II. Any person or entity who violates paragraph I shall be subject to penalty under RSA 664:21, V.

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

1998-0067h

Amendment to HB 467-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 clarifying the definition of "telephone cloning paraphernalia."

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

1 Definition; "Telephone Cloning Paraphernalia." Amend the introductory paragraph of RSA 638:21, IX to read as follows:

IX. "Telephone cloning paraphernalia" means materials, ***including at least one of the items in subparagraph (a), (f), (g), or (h)***, that, when possessed in combination, are capable of creating a cloned cellular telephone. Telephone cloning paraphernalia includes, but is not limited to:

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

AMENDED ANALYSIS

This bill clarifies the definition of "telephone cloning paraphernalia".

1998-0048h

Amendment to HB 477

Proposed by the Minority of the Committee on Transportation

Amend the bill by replacing section 1 with the following:

1 Aircraft Prohibited. Notwithstanding any other provision of law, aircraft shall be prohibited from landing and taking off on the portion of the Pemigewasset River from Ayers Island Dam to Sawhegenet Falls, except for the purpose of allowing passengers to embark and disembark. In this section "aircraft" means aircraft as defined in RSA 422:3, IV.

1998-0066h

Amendment to HB 480

Proposed by the Committee on Criminal Justice and Public Safety

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

1 Cross Reference Revised; Department of Safety Investigations. Amend RSA 159-C:2, I(a) to read as follows:

(a) Review its criminal history records and any protective order records in its possession, if any, to determine if the potential buyer or transferee is prohibited from receipt or possession of a handgun pursuant to state or federal law or protective order under RSA ~~[173-B:6]~~ **173-B**;

2 Chapter Revised; Protection of Persons From Domestic Violence. RSA 173-B is repealed and reenacted to read as follows:

CHAPTER 173-B

PROTECTION OF PERSONS FROM DOMESTIC VIOLENCE

173-B:1 Definitions. As used in this chapter:

I. "Abuse" means the commission or attempted commission of one or more of the following acts by a family or household member or current or former sexual or intimate partner:

(a) Assault or reckless conduct as defined in RSA 631:1 through 631:3.

(b) Criminal threatening as defined in RSA 631:4.

(c) Sexual assault as defined in RSA 632-A:2 through 632-A:5.

(d) Interference with freedom as defined in RSA 633:1 through 633:3-a.

(e) Destruction of property as defined in RSA 634:1 and 634:2.

(f) Unauthorized entry as defined in RSA 635:1 and 635:2.

(g) Harassment as defined in RSA 644:4.

II. "Applicant" means any private, town, city or regional agency or organization applying for funds under RSA 173-B:16.

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

IV. "Contact" means any action to communicate with another either directly or indirectly, including but not limited to, using any form of electronic communication, leaving items, or causing another to communicate in such fashion.

V. "Coordinator" means the agency or organization appointed by the commissioner to administer the domestic violence grant program.

VI. "Cross orders for relief" means separate orders granted to parties in a domestic violence situation where each of the parties has filed a petition pursuant to this chapter on allegations arising from the same incident or incidents of domestic violence.

VII. "Deadly weapon" means any weapon as defined in RSA 625:11, V.

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

IX. "Domestic violence" means abuse as defined in RSA 173-B:1, I.

X. "Family or household member" means:

(a) Spouses, ex-spouses, persons cohabiting with each other, persons who cohabited with each other but who no longer share the same residence; and

(b) Parents and other persons related by consanguinity or affinity other than minor children who reside with the defendant.

XI. "Firearm" means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by force of gunpowder.

XII. "Foreign protective order" is an order enforceable under RSA 173-B:13.

XIII. "Fund" means the special fund for domestic violence programs established by RSA 173-B:15.

XIV. "Grantee" means any private, town, city, or regional agency or organization receiving funds under RSA 173-B:16.

XV. "Intimate partners" means persons currently or formerly involved in a romantic relationship, whether or not such relationship was ever sexually consummated.

XVI. "Mutual order for relief" means an order restraining both parties from abusing the other originating from a petition filed by one of the parties and arising from the same incident or incidents of domestic violence.

XVII. "Program" means services or facilities provided to domestic violence victims.

173-B:2 Jurisdiction and Venue.

I. All district courts shall have concurrent jurisdiction with the superior court over all proceedings under this chapter.

II. If the plaintiff has left the household or premises to avoid further abuse, the plaintiff shall have the option to commence proceedings pursuant to RSA 173-B:3 in the county or district where the plaintiff temporarily resides.

III. Proceedings under this chapter may be transferred to another court upon the motion of any party or of the court as the interests of justice or the convenience of the parties may require.

IV. In any county where the family division is located, the family division shall have jurisdiction over domestic violence cases consistent with 1995, 152.

173-B:3 Commencement of Proceedings; Hearing.

I. Any person may seek relief pursuant to RSA 173-B:5 by filing a petition, in the county or district where the plaintiff or defendant resides, alleging abuse by the defendant. Notice of the pendency of the action and of the facts alleged against the defendant shall be given to the defendant, either personally or as provided in paragraph III. The plaintiff shall be permitted to supplement or amend the petition if the defendant is provided an opportunity prior to the hearing to respond to the supplemental or amended petition. Notice of the whereabouts of the plaintiff shall not be revealed except by order of the court for good cause shown. Any answer by the defendant shall be filed with the court and a copy shall be provided to the plaintiff by the court.

II.(a) The minority of the plaintiff shall not preclude the court from issuing protective orders against a present or former intimate partner, spouse, or ex-spouse under this chapter.

(b) A minor plaintiff need not be accompanied by a parent or guardian to receive relief or services under this chapter.

III. No filing fee or fee for service of process shall be charged for a petition under this section, and the plaintiff may proceed without legal counsel. Either a peace officer or the sheriff's department shall serve process under this section. Any proceeding under this chapter shall not preclude any other available civil or criminal remedy.

IV. The clerks of the district and superior courts shall supply forms for petitions and for relief under this chapter designed to facilitate pro se proceedings.

V. Upon entry of any action in a district court, where the court determines that there is pending in the superior court a cause of action involving the same parties arising out of the same situation on which the district court action is based, the case shall be transferred to the superior court to be heard as if originally entered in the superior court, unless the district court determines that the interests of justice or expediency require the district court to exercise jurisdiction. Any transfer to the superior court under this paragraph shall be made as soon as practicable following entry of the action.

VI. The findings of facts shall be final, but questions of law may be transferred to the supreme court in the same manner as from the superior court.

VII. The court shall hold a hearing within 30 days of the filing of a petition under this section or within 10 days of service of process upon the defendant, whichever occurs later.

VIII. In any proceeding under this chapter, the court shall not be bound by the technical rules of evidence and may admit evidence which it considers relevant and material.

173-B:4 Temporary Relief.

I. Upon a showing of an immediate and present danger of abuse, the court may enter temporary orders to protect the plaintiff with or without actual notice to defendant. The court may issue such temporary orders by telephone or facsimile. Such telephonically issued orders shall be made by a district or superior court judge to a law enforcement officer, shall be valid in any jurisdiction in the state, and shall be effective until the close of the next regular court business day. Such orders shall be returnable to the district court where the plaintiff resides or has fled to, unless otherwise ordered by the issuing justice. If non-telephonic temporary orders are made ex parte, the party against whom such relief is issued may file a written request with the clerk of the court and request a hearing on such orders. Such hearing shall be held no later than 5 business days after the request is received by the clerk. Such hearings may constitute the final hearing described in RSA 173-B:3, VII. Such temporary relief shall direct the defendant to relinquish to a peace officer any and all firearms and ammunition in the control, ownership, or possession of the defendant or any other person on behalf of the defendant for the duration of the protective order. Other temporary relief may include:

(a) Protective orders:

(1) Restraining the defendant from abusing the plaintiff.

(2) Restraining the defendant from entering the premises and curtilage where the plaintiff resides, except when the defendant is accompanied by a peace officer and, upon reasonable notice to the plaintiff, is allowed entry by the plaintiff for the sole purpose

of retrieving toiletries, medication, clothing, business equipment, and any other items as determined by the court.

(3) Restraining the defendant from withholding items of the plaintiff's personal property which are specified in the order. A peace officer shall accompany the plaintiff in retrieving such property to protect the plaintiff.

(4) Awarding custody of minor children to either party or, upon actual notice, to the department when it is in the best interest of a child.

(5) Denying the defendant visitation, ordering that visitation shall be supervised, or ordering a specific visitation schedule. Visitation shall only be ordered on an ex parte basis where such order can be entered consistent with the following requirements. In determining whether visitation can be safely ordered, the court shall consider the following factors:

(A) The degree to which visitation exposes the plaintiff or the children to physical or psychological harm.

(B) Whether the risk of physical or psychological harm can be removed by ordering supervised visitation.

(C) Whether visitation can be ordered without requiring plaintiff and defendant to have contact regarding the exchange of children.

(6) Restraining the defendant from contacting the plaintiff or entering plaintiff's place of employment, school, or any specified place frequented regularly by the plaintiff or any family or household member.

(7) Restraining the defendant from abusing the plaintiff, plaintiff's relatives regardless of their place of residence, or plaintiff's household members in any way.

(8) Restraining the defendant from taking, converting, or damaging property in which the plaintiff may have a legal or equitable interest.

(9) Directing the defendant to relinquish to the peace officer, in addition to the relief specified in RSA 173-B:4, I, any and all deadly weapons specified in the protective order that are in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant, for the duration of the protective order.

(b) Other relief, including but not limited to:

(1) The exclusive use and possession of an automobile, home and household furniture;

(2) Restraining the defendant from taking any action which would lead to the disconnection of any and all utilities and services to the parties' household, or the discontinuance of existing business or service contracts, including, but not limited to, mortgage or rental agreements.

II. The defendant shall be prohibited from purchasing, receiving, or possessing any deadly weapons and any and all firearms and ammunition for the duration of the order. The court may subsequently issue a search warrant authorizing the peace officer to seize any deadly weapons specified in the protective order and any and all firearms and ammunition, if there is probable cause to believe such firearms and ammunition and specified deadly weapons are kept on the premises or curtilage of the defendant and if the court has reason to believe that all such firearms and ammunition and specified deadly weapons have not been relinquished by the defendant.

173-B:5 Relief.

I. A finding of abuse shall mean the defendant represents a credible threat to the physical safety of the plaintiff. Upon a showing of abuse of the plaintiff by a preponderance of the evidence, the court shall grant such relief as is necessary to bring about a cessation of abuse. Such relief shall direct the defendant to relinquish to the peace officer any and all firearms and ammunition in the control, ownership or possession of the defendant or any other person on behalf of the defendant for the duration of the protective order. Other relief may include:

(a) Protective orders:

(1) Restraining the defendant from abusing the plaintiff.

(2) Restraining the defendant from entering the premises and curtilage where the plaintiff resides, except when the defendant is accompanied by a peace officer and is allowed entry by the plaintiff for the sole purpose of retrieving personal property specified

by the court.

(3) Restraining the defendant from contacting the plaintiff or entering the plaintiff's place of employment, school, or any specified place frequented regularly by the plaintiff or any family or household member.

(4) Restraining the defendant from abusing the plaintiff, plaintiff's relatives, regardless of their place of residence, or plaintiff's household members in any way.

(5) Restraining the defendant from taking, converting, or damaging property in which the plaintiff may have a legal or equitable interest.

(6) Directing the defendant to relinquish to the peace officer, in addition to the relief specified in RSA 173-B:5, I, any and all deadly weapons specified in the protective order that are in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant.

(b) Other relief including, but not limited to:

(1) Granting the plaintiff the exclusive use and possession of the premises and curtilage, unless the defendant exclusively owns or leases and pays for the premises and the defendant has no legal duty to support the plaintiff or minor children on the premises.

(2) Restraining the defendant from withholding items of the plaintiff's personal property specified by the court. A peace officer shall accompany the plaintiff in retrieving such property to protect the plaintiff.

(3) Granting to the plaintiff the exclusive right of use and possession of the household furniture, furnishings, or a specific automobile, unless the defendant exclusively owns such personal property and the defendant has no legal duty to support the plaintiff or minor children.

(4) Ordering the defendant to make automobile, insurance, health care, utilities, rent or mortgage payments.

(5) Awarding temporary custody of the parties' minor children to either party or, where appropriate, to the department, provided that:

(A) Where custody of the parties' minor children with the department may be appropriate, the department shall receive actual notice of the hearing 10 days prior to such hearing provided that, if necessary, such hearing may be continued 10 days to provide the department adequate notice.

(B) The department may move at any time to rescind its custody of the parties' minor children.

(6) Establishing visitation rights with regard to the parties' minor children. The court shall consider and may impose on a custody award, conditions necessary to assure the safety of the plaintiff and minor children. This may include orders denying visitation or requiring supervised visitation, where such order can be entered consistent with the following requirements. In determining whether visitation shall be granted, the court shall consider whether visitation can be exercised by the non-custodial parent without risk to the plaintiff's or children's safety. In making such determination, the court shall consider, in addition to any other relevant factors, the following:

(A) The degree to which visitation exposes the plaintiff or the children to physical or psychological harm.

(B) Whether the risk of physical or psychological harm can be removed by ordering supervised visitation.

(C) Whether visitation can be ordered without requiring plaintiff and defendant to have contact regarding the exchange of children.

(7) Directing the defendant to pay financial support to the plaintiff or minor children, unless the defendant has no legal duty to support the plaintiff or minor children.

(8) Directing the abuser to engage in batterer's intervention program or personal counseling. If available, such intervention and counseling program shall focus on alternatives to aggression. The court shall not direct the plaintiff to engage in joint counseling services with the defendant. Court-ordered and court-referred mediation of cases involving domestic violence shall be prohibited.

(9) Ordering the defendant to pay the plaintiff monetary compensation for losses suffered as a direct result of the abuse which may include, but not be limited to, loss of earnings or support, medical and dental expenses, damage to property, out-of-pocket losses for injuries sustained, and moving and shelter expenses.

(10) Ordering the defendant to pay reasonable attorney's fees.

II. Reconciliation after a previous order, prior to filing the current action, shall not be grounds for denying or terminating a new or existing protective order. Furthermore, the court shall not deny the plaintiff protective orders based solely on a lapse of time between an act of domestic violence and the filing of a petition.

III. No order made under this section shall supersede or affect any court order pertaining to the possession of a residence; household furniture; custody of children pursuant to RSA 169-B, 169-C, or 169-D; support or custody made under RSA 458; or title to real or personal property.

IV.(a) Mutual orders for relief shall not be granted. A foreign mutual order for relief shall only be granted full faith and credit in New Hampshire if it meets the requirements set out in RSA 173-B:13, VII.

(b) Cross orders for relief may be granted only if:

(1) The court has made specific findings that each party has committed abuse against the other; and

(2) The court cannot determine who is the primary physical aggressor.

V. Any order under this section shall be for a fixed period of time not to exceed one year, but may be extended by order of the court upon a motion by the plaintiff, showing good cause, with notice to the defendant. A defendant shall have the right to a hearing on the extension of any order under this paragraph to be held within 30 days of the extension. The court shall retain jurisdiction to enforce and collect the financial support obligation which accrued prior to the expiration of the protective order.

VI. Both parties shall be issued written copies of any orders issued by the court and all orders shall bear the following language: "A willful violation of this order is a crime, as well as contempt of court. Violations of the protective provisions shall result in arrest and may result in imprisonment." Orders shall clearly state how any party can request a further hearing and how the plaintiff may bring a criminal complaint if there is a violation of any court order.

VII. No order issued under this chapter shall be modified other than by the court. Temporary reconciliations shall not revoke an order.

(a) If either party wishes the defendant to be excused from any provisions of an order of protection, the remedy is to petition the court for modification of such order.

(b) If a defendant is restrained from contacting the plaintiff or entering the premises of the plaintiff, an invitation by the plaintiff to do so does not waive or nullify an order for protection.

(c) This paragraph shall give unequivocal direction to peace officers that orders for protection are to be enforced as written and that no action by a party relieves them of the duty to enforce the order.

VIII.(a) A copy of each protective order issued under this chapter shall be transmitted to the department of safety by computer. An emergency protective order issued telephonically shall be transmitted by telephone or facsimile to the department of safety.

(b) The department of safety shall enter information regarding the protective order into the state data base and make information regarding the protective order available to police and sheriff departments statewide.

(c) The issuing court shall notify the department of safety upon expiration or termination of a protective order.

(d) Notwithstanding any other provision of law, the department of safety, its employees and agents, and law enforcement officials shall not be held criminally or civilly liable for action taken under this chapter or RSA 458:16, provided they are acting in good faith and without gross negligence, and within the scope of their duties and authority.

IX.(a) Upon expiration of the protective orders, the defendant may request by motion to the court, return of any and all firearms and ammunition and specified deadly weapons held by the law enforcement agency during the protective orders. The plaintiff shall receive notice and may object. The court shall hold a hearing to determine whether such firearms and ammunition and specified deadly weapons shall be returned to the defendant. Unless the protective orders are extended, firearms and

ammunition and specified deadly weapons shall be returned to the defendant. The court shall issue to both parties a written decision detailing the rationale for its findings.

(b) Law enforcement agencies shall not release firearms and ammunition and specified deadly weapons without a court order granting such release. The law enforcement agency may charge the defendant a reasonable fee for the storage of any firearms and ammunition and specified deadly weapons taken pursuant to a protective order. The fee shall not exceed the actual cost incurred by the law enforcement agency for the storage of the firearms and ammunition and specified deadly weapons.

(c) No law enforcement agency shall be held liable for alleged damage or deterioration due to storage or transportation to any firearms and ammunition and specified deadly weapons held by a law enforcement agency, so long as due care is used.

173-B:6 Guardian Ad Litem. In all proceedings under this chapter, the court may appoint a guardian ad litem to represent the interests of the children of either or both parties. The guardian ad litem may continue to serve after the final disposition of the case.

173-B:7 Minority Not a Preclusion for Services. The minority of any individual seeking assistance from any domestic violence or sexual assault program, as defined by RSA 173-C:1, shall not preclude provision of such requested services.

173-B:8 Notification.

I. A copy of any order made under this chapter which prohibits any person from abusing another shall be promptly transmitted to the local law enforcement agency having jurisdiction to enforce such order.

II. Temporary orders shall be promptly served on the defendant by a peace officer. Subsequent orders shall be sent to the defendant's last address of record. The defendant shall be responsible for informing the court of any changes of address. Law enforcement agencies shall establish procedures whereby a peace officer at the scene of an alleged violation of such an order may be informed of the existence and terms of such order.

III. Any court-ordered changes or modifications of the order shall be effective upon issuance of such changes or modifications, and shall be mailed or otherwise provided to the appropriate local law enforcement agency and transmitted to the department of safety within 24 hours of the entry of such changes or modifications.

173-B:9 Violation of Protective Order; Penalty.

I.(a) When the defendant violates either a temporary or permanent protective order issued or enforced under this chapter, peace officers shall arrest the defendant and ensure that the defendant is detained until arraignment. Such arrests may be made within 6 hours without a warrant upon probable cause, whether or not the violation is committed in the presence of a peace officer.

(b) Subsequent to an arrest, the peace officer shall seize any firearms and ammunition in the control, ownership, or possession of the defendant and any deadly weapons which may have been used, or threatened to be used, during the violation of the protective order. The law enforcement agency shall maintain possession of the firearms and ammunition and/or deadly weapons until the court issues an order directing that the firearms and ammunition and/or deadly weapons be relinquished and specifying the person to whom the firearms and ammunition and/or deadly weapons will be relinquished.

II. The prosecution and sentencing for criminal contempt for a violation of a protective order shall not preclude the prosecution of or sentencing for other criminal charges underlying the contempt.

III. A person shall be guilty of a class A misdemeanor if such person knowingly violates a protective order issued under RSA 173-B, RSA 458:16, III, or any foreign protective order which meets the requirements of RSA 173-B:13. In accordance with RSA 625:9, charges made under this chapter shall not be reduced to a lesser charge.

IV. Any person convicted under RSA 173-B:9, III, or who has been convicted in another jurisdiction of violating a foreign protective order which meets the requirements of RSA 173-B:13, who, within 6 years of such conviction or the completion of the sentence imposed for such conviction, whichever is later, subsequently commits and is convicted of one or more offenses involving abuse shall be sentenced to an enhanced penalty for each subsequent offense as follows:

(a) There shall be no enhancement under this section if the subsequent offense is a class A felony or an unclassified felony;

(b) If the subsequent offense is a class B felony, it shall be sentenced as a class A felony;

- (c) If the subsequent offense is a class A misdemeanor, it shall be sentenced as a class B felony;
- (d) If the subsequent offense is a class B misdemeanor, it shall be sentenced as a class A misdemeanor.
- (e) If the subsequent offense is a violation, it shall be sentenced as a class B misdemeanor.

V. A victim of domestic violence shall be entitled to all rights granted to victims of crime under RSA 21-M:8-k.

173-B:10 Protection by Peace Officers.

I. Whenever any peace officer has probable cause to believe that a person has been abused, as defined in RSA 173-B:1, that officer shall use all means within reason to prevent further abuse including, but not limited to:

- (a) Confiscating any deadly weapons involved in the alleged domestic abuse and any firearms and ammunition in the defendant's control, ownership, or possession.
- (b) Transporting or obtaining transportation for the victim and any child, to a designated place to meet with a domestic violence counselor, local family member, or friend.
- (c) Assisting the victim in removing toiletries, medication, clothing, business equipment, and any other items determined by the court.
- (d) Giving the victim immediate and written notice of the rights of victims and of the remedies and services available to victims of domestic violence. The written notice shall include a statement substantially as follows:

"If you are the victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an emergency telephonic order for protection. You may also request that the officer assist you in obtaining from your premises and curtilage, toiletries, medication, clothing, business equipment, and any other items as determined by the court, and in locating and taking you to a local safe place including, but not limited to, a designated meeting place for a crisis center, a family member's or friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining an ambulance. You may request a copy of the report filed by the peace officer, at no cost, from the law enforcement department."

II. Pursuant to RSA 594:10, an arrest for abuse may be made without a warrant upon probable cause, whether or not the abuse is committed in the presence of the peace officer. When the peace officer has probable cause to believe that the persons are committing or have committed abuse against each other, the officer need not arrest both persons, but should arrest the person the officer believes to be the primary physical aggressor. In determining who is the primary physical aggressor, an officer shall consider the intent of this chapter to protect the victims of domestic violence, the relative degree of injury or fear inflicted on the persons involved, and any history of domestic abuse between these persons if that history can reasonably be obtained by the officer.

173-B:11 Notice to the Victim.

I. Notwithstanding the peace officer's obligations in RSA 173-B:9 and 10, all peace officers shall give victims of abuse immediate and adequate notice of their right to go to the district or superior court of their county to file a petition asking for protective orders against the abusive person and to seek a private criminal complaint.

II. It shall be the responsibility of the office of the clerk of the court to advise victims that they may request that the judge issue an order which shall include removing any and all firearms and ammunition in the control, ownership, or possession of the defendant and may include:

- (a) Restraining the defendant from abusing the victim.
- (b) Directing the defendant to leave and stay away from the victim's premises and curtilage.
- (c) Giving the victim custody of any minor children, denying the defendant visitation, or requiring that visitation be supervised to ensure safety for the victim and minor children.
- (d) Directing the defendant to support the victim and any minor children if the defendant has the legal responsibility to support either or both.

- (e) Restraining the defendant from contacting the victim, or entering the victim's place of employment, school, or any specified place frequented regularly by the victim or any family or household member.
- (f) Restraining the defendant from abusing, in any way, the victim, household members, or victim's relatives, regardless of their place of residence.
- (g) Restraining the defendant from taking, converting, or damaging property in which the victim may have a legal or equitable interest.
- (h) Directing the defendant to temporarily relinquish to the peace officer specific deadly weapons in the control, ownership or possession of the defendant which may have been used, or been threatened to be used, in an incident of abuse against the victim or any member of the victim's household.
- (i) Ordering the defendant to pay the victim monetary compensation for losses suffered as a direct result of the abuse which may include, but not be limited to, loss of earnings or support, medical and dental expenses, damage to property, out-of-pocket losses for injuries sustained, and moving and shelter expenses.
- (j) Ordering the defendant to pay reasonable attorney's fees.

173-B:12 Emergency Care; Limitation and Liability. Any act or omission of any peace officer rendering emergency care or assistance to a victim of domestic violence including, but not limited to transportation, shall not impose civil liability upon the peace officer or the peace officer's supervisors or employer if the care or assistance is rendered in good faith, unless the act or omission is a result of gross negligence or willful misconduct.

173-B:13 Orders Enforceable.

I. Any protective order issued under this chapter shall be effective throughout the state, in all districts and counties.

II. Any protective order issued by any other state, tribal, or territorial court related to domestic or family violence, including an ex parte order, shall be deemed valid if the issuing court had jurisdiction over the parties and matter under the law of the state, tribe, or territory, and the person against whom the order was made was given reasonable notice and opportunity to be heard. There shall be a presumption in favor of validity where an order appears authentic on its face.

III. Any valid protective order, as defined in paragraph II, shall be accorded full faith and credit throughout as if the order were issued in New Hampshire. If the order of the issuing state affords greater protection than RSA 173-B, its provisions shall be enforced by the New Hampshire authorities.

IV. A person entitled to protection under a foreign protective order, as defined in paragraph II, may file such order in any district court by filing with the court a certified copy of the order. Such person shall swear under oath in an affidavit to the best of such person's knowledge that the order is presently in effect as written. Such filing shall be without fee or cost. The office of the clerk of the district court shall forward such order to the state police who shall enter such order in the state data base. Such filing shall not be a pre-condition to arrest or enforcement of a foreign order.

V. A peace officer may rely upon a copy of any protective order issued under this chapter, RSA 458, or a foreign protective order as defined in this section, which has been provided to the peace officer by any source.

VI. Law enforcement personnel may rely on the statement of the person protected by the order that the order remains in effect

VII. A mutual protective order issued by any other state, tribal, or territorial court against one who has petitioned, filed a compliant, or otherwise filed a written pleading for protection relating to domestic or family violence shall be accorded full faith and credit only if:

- (a) A cross or counter petition, complaint or other written pleading was filed seeking such protection order; and
- (b) The court made specific findings of domestic or family violence by both parties and that each party was entitled to such order.

173-B:14 Orders of Support.

I. The superior court, in any action determining the obligation of the obligor to support the obligee or the parties' minor children including, but not limited to, actions for divorce or custody pursuant to RSA 458; paternity, pursuant to RSA 168-A; child

support, pursuant to RSA 161-B, RSA 161-C, and RSA 458; reimbursement of public assistance, pursuant to RSA 161-C; and the uniform reciprocal enforcement of support act, pursuant to RSA 546; shall take judicial notice of any support obligation established pursuant to this chapter upon the filing of a certified copy of the district court order in the superior court by:

- (a) Either party to the domestic violence proceeding.
- (b) The department.
- (c) Any other agency or person legally entitled to enforce the obligation of support for the minor children.

II. Any superior court order for financial support shall include enforcement of any duly filed district court order from the date of filing forward, and shall include enforcement of any arrears which have been:

- (a) Reduced to judgment by the district court;
- (b) Documented by the department pursuant to an order to make payable through the department; or
- (c) Documented by the obligee in a notarized statement, provided that the obligor shall have 30 days to object and request a hearing on the issue of arrears.

173-B:15 Fund for Domestic Violence Grant Program. A special fund for domestic violence programs is established. The sole purpose of the fund shall be to provide revenues for the domestic violence program established in RSA 173-B:16, which shall not be available for any other purpose. The state treasurer shall deposit all fees received by the department under RSA 457:29 in the fund. All moneys deposited in the fund shall be continually appropriated for the purposes of the domestic violence grant program and shall not lapse.

173-B:16 Grant Program Established. A grant program is established within the department for the allocation of grant money to New Hampshire programs which provide aid and assistance to victims of domestic violence. The grant program shall be funded by the fund established under RSA 173-B:15.

173-B:17 Duties of the Commissioner. The commissioner shall:

- I. Administer the grant program established in RSA 173-B:16 through a coordinator. The costs of administration shall be covered by the fund, and shall not exceed 2 percent.
- II. Adopt rules, under RSA 541-A, relative to procedures under which interested New Hampshire programs may apply for funding.
- III. Appoint the coordinator.
- IV. Enter into a contract with the coordinator, subject to the approval of the governor and council.

173-B:18 Selection of Coordinator. The commissioner shall be satisfied that the organization or agency chosen as the coordinator shall be qualified to provide at least those services listed in RSA 173-B:20.

173-B:19 Compensation for Coordinating Domestic Violence Grant Program. Compensation for the functions and duties of coordinating the program shall not exceed 30 percent of the total revenues of the fund.

173-B:20 Duties of Coordinator. The coordinator shall be a statewide organization or agency which has demonstrated its ability, at a minimum, to:

- I. Serve as a clearinghouse for information relating to domestic violence.
- II. Conduct educational programs on domestic violence, both for the general public and for specialized interest groups, such as law enforcement and medical personnel.
- III. Provide technical assistance to local domestic violence programs in the areas of budget, management, and other such skills.
- IV. Enlist the assistance of public and voluntary health, education, welfare, legal, and rehabilitation agencies in a concerted effort to prevent domestic violence.
- V. Provide coordination and supervision of programs.

VI. Assist the commissioner in the administration of the fund.

VII. Publicize the availability of the fund, the date by which applications must be received, and act on all applications within 45 days of the application deadline.

VIII. Notify each agency or organization in writing whether or not it is eligible for funds, and specify the amount available.

IX. Publicize the availability of domestic violence programs to the public.

X. Provide training for court advocates and social services agency advocates to accompany domestic violence victims.

XI. Apply for and receive any federal funds for which this program may be eligible.

XII. Ensure, as far as possible, that grants are awarded on a reasonable geographical basis throughout the state.

XIII. Obtain and evaluate reports from each grantee, at least annually, on its operations under this chapter.

173-B:21 Criteria for Selection of Direct Service Grantees. The coordinator shall use all of the following criteria for selecting grantees:

I. A grantee's ability to provide direct services to victims of domestic violence as follows:

(a) Shelter or safe homes on a 24-hours-a-day, 7-days-a-week basis.

(b) A 24-hours-a-day, 7-days-a-week switchboard for crisis calls.

(c) Temporary housing and food facilities.

(d) Psychological support and peer counseling.

(e) Referrals to existing services in the community and follow-up on the outcome of the referrals.

(f) A drop-in center to assist victims of domestic violence who have not yet made the decision to leave their homes, or who have found other shelter but who have a need for support services.

(g) Arrangements for school-aged children to continue their education during their stay at the center.

(h) Emergency transportation to a shelter, and when appropriate, arrangements with local law enforcement for assistance in providing such transportation.

(i) Trained court advocates and social service agency advocates to accompany domestic violence victims.

II. A grantee shall be a private or private nonprofit organization, or a public agency.

III. A grantee shall demonstrate the need for the services proposed by the program.

IV. A grantee shall establish its ability to secure community support and its efficiency of administration.

V. A grantee shall receive at least 50 percent of its funding from sources other than the fund, including town, city, county, federal, or private sources. Contributions in kind, whether material, commodities, transportation, office space, or personal services, may be evaluated and counted as part of the required non-state funding.

173-B:22 Confidentiality. All persons who are employed, appointed, or who volunteer under this chapter shall maintain confidentiality with regard to persons served by the coordinator and grantees and files kept by the coordinator and grantees, except for reasons of safety for other shelter residents or staff.

173-B:23 Referral. Where centers are available, any law enforcement officer who investigates an alleged incident of domestic violence shall advise the person subject to such violence of the availability of programs from which that person may receive services.

173-B:24 Rights Reserved. A person shall not be prejudiced by the court having jurisdiction under RSA 173-B for having left the residence or household with or without the children to avoid further domestic violence.

173-B:25 Severability. If any provision of this chapter or the application of such provision 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.

3 Cross Reference Revised; Definition of "Domestic Violence Center." Amend RSA 173-C:1, II to read as follows:

II. "Domestic violence center" means any organization or agency which would qualify as a direct service grantee under RSA ~~[173-B:19]~~ **173-B:21**.

4 Cross Reference Revised; Marriage License Fees. Amend RSA 457:29 to read as follows:

457:29 Marriage License Fee. The fee for the marriage license shall be \$45 to be paid by the parties entering into the marriage. The clerk shall forward \$38 from each fee to the department of health and human services for the purposes of RSA ~~[173-B:13]~~ **173-B:15**. The clerk shall retain the remaining \$7 as ~~his~~ **the** fee for making the records of notice, issuing the certificate of marriage, and forwarding the \$38 portion of the marriage license fee.

5 New Paragraph; Domestic Violence Protective Orders Issued in Divorce Cases; Form. Amend RSA 458:16 by inserting after paragraph I the following new paragraph:

I-a. Permanent domestic violence protective orders issued as part of a divorce decree shall be issued on a domestic violence protective order form under RSA 173-B.

6 Cross Reference Revised; Preparing Checklists. Amend RSA 654:25 to read as follows:

654:25 Preparing Checklist. The secretary of state shall issue and distribute guidelines for the composition and style of checklists and for the maintenance of data related to checklists by which the supervisors of the checklist shall compile and correct the checklist. Such guidelines shall specify the information which will be maintained and updated by the supervisors. The secretary shall establish standard forms and procedures for the use of the supervisors for the maintenance of such information. The information to be maintained and updated shall include the full name, address and party affiliation, if any, of each voter on the checklist and such other information as the secretary requires. The supervisors shall use the information so maintained and updated to prepare the checklist for all state elections. Every checklist used at any state election shall contain as a minimum the full name, address, and mailing address if different, and party affiliation, if any, of each voter on the checklist. The address and mailing address, if different, of a voter shall not appear on the checklist at the request of the voter if the voter presents to the supervisors of the checklist a valid protective order pursuant to RSA ~~[173-B:4]~~ **173-B**. A voter who presents a valid protective order may, however, request that a mailing address, if different, be maintained on the checklist. If a voter who presents a valid protective order requests that no address be maintained on the checklist, the supervisors of the checklist may nonetheless maintain a designation on the checklist which indicates that no address is required for that voter.

7 Effective Date. This act shall take effect January 1, 1999.

1998-0188h

Amendment to HB 485

Proposed by the Committee on Science, Technology and Energy

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

1 Limited Electrical Energy Producers Act; Declaration of Purpose. Amend RSA 362-A:1 to read as follows:

362-A:1 Declaration of Purpose. It is found to be in the public interest to provide for small scale and diversified sources of supplemental electrical power to lessen the state's dependence upon other sources which may, from time to time, be uncertain. It is also found to be in the public interest to encourage and support diversified electrical production that uses indigenous and renewable fuels and has beneficial impacts on the environment and public health. ***It is also found that these goals should be pursued in a competitive environment pursuant to the restructuring policy principles set forth in RSA 374-F:3. It is further found that net energy metering for eligible customer-generators may be one way to provide a reasonable opportunity for small customers to choose interconnected self generation, encourage private investment in renewable energy resources, stimulate in-state commercialization of innovative and beneficial new technology, enhance the future diversification of the state's energy resource mix, and reduce interconnection and administrative costs. However, due to uncertain cost and technical impacts to electric utilities and other***

ratepayers, the general court finds it appropriate to limit the availability of net energy metering to eligible customer-generators who are early adopters of small-scale renewable electric generating technologies.

2 New Paragraphs; Limited Electrical Energy Producers Act; Definitions; "Eligible Customer-Generator" Added. Amend RSA 362-A:1-a by inserting after paragraph II the following new paragraphs:

II-a. "Electricity suppliers" has the same meaning as in RSA 374-F:2, II.

II-b. "Eligible customer-generator" means an electric utility customer who owns and operates electrical generating facilities powered by solar, wind, and/or hydro energy with a total peak generating capacity of not more than 25 kilowatts that is located on the customer's premises, is interconnected and operates in parallel with the electric grid, and is intended primarily to offset part or all of the customer's own electricity requirements.

3 New Paragraph; Limited Electrical Energy Producers Act; Definitions; "Net Energy Metering" Added. Amend RSA 362-A:1-a by inserting after paragraph III the following new paragraph:

III-a. "Net energy metering" means measuring the difference between the electricity supplied over the electric distribution system and the electricity generated by an eligible customer-generator which is fed back into the electric distribution system over a billing period.

4 New Paragraph; Limited Electrical Energy Producers Act; Definitions; "Qualifying Facility" Added. Amend RSA 362-A:1-a by inserting after paragraph VII the following new paragraph:

VII-a. "Qualifying facility" means either or both of a qualifying small power production facility or qualifying cogeneration facility.

5 Limited Electrical Energy Producers Act; Purchase of Output by Private Sector; Additional Authority. Amend the introductory paragraph of RSA 362-A:2-a, I to read as follows:

I. A limited producer of electrical energy shall have the authority to sell its produced electrical energy to not more than 3 purchasers other than the franchise electric utility, ***unless additional authority to sell is otherwise allowed by statute or commission order***. Such purchaser may be any individual, partnership, corporation, or association. ***The commission may authorize a limited producer, including eligible customer-generators, to sell electricity at retail, either directly or indirectly through an electricity supplier, within a limited geographic area where the purchasers of electricity from the limited producer shall not be charged a transmission tariff or rate for such sales if transmission facilities or capacity under federal jurisdiction are not used or needed for the transaction.*** The public utilities commission shall review and approve all contracts concerning a retail sale of electricity pursuant to this section. The public utilities commission shall not set the terms of such contracts but may disapprove any contract which in its judgment:

6 Limited Electrical Energy Producers Act; Purchase of Output by Public Utilities; New Purchases Not Required After Competition Certified. Amend RSA 362-A:3 to read as follows:

362-A:3 Purchase of Output of Limited Electrical Energy Producers by Public Utilities.

I. The entire output of electric energy of such limited electrical energy producers, if offered for sale to the electric utility, shall be purchased by the electric public utility which serves the franchise area in which the installations of such producers are located.

II. No purchases and related transactions involving qualifying facilities shall take place under RSA 362-A:3 or RSA 362-A:4 in any location where retail electric competition is certified to exist pursuant to RSA 38:36, unless such purchase or related transaction is pursuant to:

(a) Commission orders or agreements providing for qualifying facility power sales existing prior to such certification;

(b) Negotiated qualifying facility power purchase contracts existing prior to such certification; or

(c) Commission orders or agreements resulting from the renegotiation of orders, agreements, or contracts referenced in subparagraphs (a) and (b).

7 Limited Electrical Energy Producers Act; Payment by Public Utilities for Purchase of Output; Payments After Competition Certified. Amend RSA 362-A:4 to read as follows:

362-A:4 Payment by Public Utilities for Purchase of Output. Public utilities purchasing electrical energy in accordance with the provisions of this chapter shall pay rates per kilowatt hour to be set from time to time by the commission. Such rates shall be based on the purchasing utility's avoided costs. The commission may set long term rates which shall, at the option of the qualifying small power producer or qualifying cogenerator, be based on the purchasing utility's avoided costs either calculated for the time of delivery or calculated for a specified term at the time the qualifying small power producer or qualifying cogenerator agrees to be obligated to deliver for the specified term. Nothing in this section shall limit the authority of any electric utility or any qualifying small power producer or qualifying cogenerator to agree to a rate for any purchase which differs from the rate or terms or conditions which would otherwise be required by the commission. ***No payments or rates shall be required by this section in locations where retail electric competition is certified to exist pursuant to RSA 38:36, unless such payments or rates are pursuant to an arrangement authorized by RSA 362-A:3.***

8 Limited Electrical Energy Producers Act; Consideration by the Commission; Existing Order or Agreement. Amend RSA 362-A:4-c to read as follows:

362-A:4-c Consideration by the Commission. The commission shall independently and expeditiously consider any mutually acceptable agreement ***for the buydown, buyout, or renegotiation of any existing commission order providing for qualifying facility power sales or power purchase agreement*** regardless of the status of ***any other such pending*** renegotiations. ***No complete buyout shall be approved until competition is certified to exist in at least 70 percent of the state pursuant to RSA 38:36, and provided that restrictions are not placed on selling the output of the qualifying facility in a competitive generation market pursuant to RSA 374-F. The commission shall not approve more than one complete buyout of a wood-fired qualifying facility in any 12-month period, unless the commission finds that such additional complete buyouts would cause no significant adverse impact on the forest products industry in New Hampshire.***

9 New Subparagraph; Limited Electrical Energy Producers Act; Payment Obligations; Commission Considerations; Electric Rates Added. Amend RSA 362-A:8, II(b) by inserting after subparagraph (4) the following new subparagraph:

(5) The impact on electric rates.

10 New Section; Limited Electrical Energy Producers Act; Net Energy Metering. Amend RSA 362-A by inserting after section 8 the following new section:

362-A:9 Net Energy Metering.

I. A standard contract or tariff providing for net energy metering shall be developed and made available to eligible customer-generators by each electric distribution utility within 6 months of the start of retail choice of electric suppliers. Such tariffs or contracts shall be available on a first-come, first-served basis within each electric utility service area under the jurisdiction of the commission until such time as the total rated generating capacity owned and operated by eligible customer-generators totals 0.05 percent of the annual peak energy demand distributed by each such utility as determined by the commission from time to time.

II. Net energy metering shall be accomplished using a single meter capable of registering the flow of electricity in two directions. However, an additional meter or meters to monitor the flow of electricity in each direction may be installed, provided that it is not at the expense of the customer-generator unless requested by the customer-generator, and provided that such metering shall be used only to provide the information necessary to accurately bill the customer-generator pursuant to the provisions of this section, or for research purposes. If an additional meter or meters are installed, the net energy metering calculation shall yield the same result as when a single meter is used. The net energy metering calculation shall be made by taking the difference between the electricity supplied over the electric distribution system and the electricity generated by the eligible customer-generator and fed back into the electric distribution system over the billing period.

III. Each net energy metering contract or tariff offered by an electric distribution utility shall be identical, with respect to rates, rate structure, and periodic charges, to the contract or tariff to which the same customer would be assigned if such customer was not an eligible customer-generator. Electricity suppliers may voluntarily determine the terms, conditions, and prices under which they will agree to provide generation supply to and purchase net generation output from eligible customer-generators; however, electricity suppliers who provide default service or transition service to such a customer shall only bill for the net energy supplied as calculated in accordance with this section.

IV. The following rules shall apply to net energy measurement:

- (a) The net energy produced or consumed on a monthly basis shall be measured in accordance with normal metering practices.
- (b) Where the electricity supplied to the customer-generator over the electric distribution system exceeds the electricity generated by the customer-generator during the billing period, the customer-generator shall be billed based on the net energy supplied for distribution services and other charges in accordance with this section and standard applicable rates.
- (c) Where the electricity generated by the customer-generator exceeds the electricity supplied by the electric grid, the customer-generator shall be credited during the next billing period for the excess kilowatt hours generated in accordance with this section.

V. The commission shall adopt rules, pursuant to RSA 541-A, to establish reasonable interconnection requirements for safety, reliability, and power quality as it determines the public interest requires.

VI. The commission, by order, may waive any of the limitations set forth in this chapter for targeted net energy metering arrangements that are part of a utility strategy to minimize distribution costs.

11 Report by Commission on Net Energy Metering. Within 6 months after the limit on the availability of net energy metering set forth in RSA 362-A:9, I, as inserted by section 10 of this act, is reached in one or more electric utility service areas, the commission shall submit a report to the legislative oversight committee on electric utility restructuring, the house science, technology and energy committee, and the senate executive departments and administration committee. The report shall concern the results and effects of net energy metering arrangements to date, including a summary of information available from participating utilities, electricity suppliers, and eligible customer-generators, and may recommend continuing or modifying the limits set forth in RSA 362:9, I and RSA 362-A:1-a, II-b.

12 Intent of Repeal of RSA 362-A:4-b. The repeal of RSA 362-A:4-b is intended to allow for mutually acceptable buyouts. However, the prospect of possible buyouts of existing commission orders providing for qualifying facility power sales as an alternative to the negotiated agreements for buydowns pending before the commission on or before the effective date of this act, or subsequent modifications of those negotiated agreements, shall not be considered by the commission as a factor in its determination of whether Northeast Utilities has used its "best efforts" to renegotiate existing commission orders providing for qualifying facility power sales pursuant to its obligations under the rate agreement referenced in RSA 362-C.

13 Repeal. RSA 362-A:4-b, relative to buyout of existing rate orders, is repealed.

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

AMENDED ANALYSIS

This bill provides for the buyout of public utility purchase obligations from limited electrical energy producers after competition is certified to exist. This bill also provides for net energy metering and agreements between eligible customer-generators and electric utilities. This bill also provides for additional selling authority by limited electrical energy producers and repeals the existing statute relative to buyout of existing rate orders.

1998-0150h

Amendment to HB 490

Proposed by the Committee on Health, Human Services and Elderly Affairs

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

AN ACT relative to the confidentiality of medical information.

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

1 Purpose. The general court recognizes that preserving the confidentiality of medical information is of great importance to the citizens of the state. The ability to communicate freely and privately with health care professionals fosters the provision of appropriate health care. Consequently, the general court recognizes that medical information should be used only in connection with providing or paying for an individual's health care. Medical information that allows the identification of a patient should not be a commodity in the marketplace.

2 New Section; Confidentiality of Medical Information. Amend RSA 332-I by inserting after section 2 the following new section:

332-I:3 Confidentiality of Medical Information.

I. In this section:

- (a) "Health care" includes examination, diagnosis, treatment including but not limited to dispensing pharmaceuticals, evaluation, rehabilitation or advice as may be permissible under the laws of this state regulating health care providers.
- (b) "Health care payer" means an insurance company that offers health insurance to the public, a health service corporation, or a health maintenance organization and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by a public or private entity.
- (c) "Health care provider" means any person regulated by this state to provide health care, or an officer, employee, or agent of that regulated person acting in the course and scope of employment, or agency related to health care.
- (d) "Individual" means a human being, alive or dead, who is the subject of medical information and includes the individual's legal or other authorized representative.
- (e) "Non-health care payer" means an insurance company that offers life, disability income, long-term care or other insurance coverages that have a medical payment component to the public.
- (f) "Person" includes a human being, association, organization, trust, corporation, partnership, the state of New Hampshire, an agency of the state, and any political subdivision of the state.
- (g) "Medical information" means personal or private information relating to an individual that is reported at or derived from a health care provider-patient encounter and which:
 - (1) Contains primary or obvious identifiers, such as the individual's name, address, telephone number, and social security number, or secondary identifiers through which a user could deduce the individual's identity; and
 - (2) Is under the control of a medical information holder.
- (h) "Medical information holder" means any person in possession of or having access to medical information, other than the individual to whom it relates.

II. There is hereby recognized an individual's right of privacy in the content of the individual's medical information.

III. Except as provided under paragraph IV or otherwise provided by law or if the individual or the individual's authorized representative otherwise consents or waives confidentiality, a medical information holder may disclose or use medical information only in connection with providing or paying for health care for an individual. No person to whom medical information is disclosed may use the information for any purpose other than the purpose for which it was disclosed.

IV.(a) A medical information holder may disclose medical information without the consent of the individual if the medical information is disclosed to:

- (1) An agent, employee, or independent contractor of the medical information holder solely to carry out risk management, quality assurance, utilization review, and peer review activities.
- (2) A person engaged in assessment, evaluation, or investigation of the quality of health care furnished by a health care provider pursuant to statutory, regulatory, or private accreditation standards or the requirements of a private or public program for the payment of health care.
- (3) An employer, for the purposes of workers' compensation or employee drug-testing.
- (4) A person authorized to receive such information pursuant to a valid order of a court of competent jurisdiction for good cause shown and after the individual whose medical information is the subject of the order has been notified of the proposed order in clear, conspicuous, and simple language, and has had an opportunity to contest the proposed order.
- (5) A person, for the purpose of avoiding or minimizing a direct threat of imminent harm to the health or safety of any human being, as determined by a current health care provider to the individual based on reasonable professional judgment.
- (6) The department of health and human services or any representative of the department to the extent required by law or rule or as otherwise necessary to enable the department to carry out its responsibilities.

(b) Any disclosure under paragraph IV shall provide only the minimum amount of medical information to the minimum number of persons necessary and in as confidential a manner as possible in order to effect the purpose for which it is being disclosed.

V. Any consent to the disclosure of medical information under paragraph III shall be valid only if it is fully informed, freely-given, and in writing. "Fully informed" means that the individual consenting knows the nature of what will be disclosed, to whom the information will be disclosed, and the purpose for which the disclosure will be made.

(a) Consent shall not be considered freely given if it is a condition of entering a contract, except:

(1) A health care provider may, as a condition of service, require an individual to consent to the release or use of medical information if the release or use is no broader than necessary to appropriately provide health care.

(2) A health care payer may, as a condition of service or coverage, require an insured person, enrollee, or prospective enrollee to consent to the release or use of medical information if the release or use is no broader than necessary to appropriately underwrite the risk, conduct utilization review or quality assurance activities, or process claims with respect to health care, except as otherwise precluded under RSA 420-G.

(3) A non-health care payer may, as a condition of service or coverage, require an insured person, enrollee or prospective enrollee to consent to the release or use of medical information if the release or use is no broader than necessary to appropriately underwrite the risk, conduct utilization review or quality assurance activities, or process claims with respect to life, disability and long-term care insurance.

(b) Consent may be revoked prospectively at any time, subject to the rights of any person who acted in reliance thereon prior to revocation.

VI. Nothing in this section shall be deemed to affect a scientific research project that has been approved by an institutional review board, which, for the purposes of this section, means a board, committee, or other group formally designated by a health care facility or an educational institution of higher learning authorized under federal law to review, approve, or conduct periodic reviews of research programs.

VII.(a) The penalties for violating a provision of this section are as follows:

(1) An aggrieved individual may bring a civil action under this section if a medical information holder knew or should have known that medical information was being used in violation of this section. In addition to compensatory damages, the aggrieved individual, if successful, shall be awarded special damages of not less than \$1,000 for each violation as well as reasonable legal fees.

(2) An aggrieved individual may bring an action for injunctive relief for a violation of this section in addition to or instead of the penalties provided in this paragraph. The application for injunctive relief under this section shall not be required to give security as a condition upon the issuance of the injunction.

(3) Whenever the attorney general has reason to believe that a person has knowingly and willfully violated a provision of this section and that an action under this section is in the public interest, the attorney general may bring an action to enjoin the violations of this section.

(b) Notwithstanding anything to the contrary in this paragraph, subparagraphs (a)(1) and (2) shall not apply against:

(1) The department of health and human services or any representative of the department for the use or disclosure of medical information required by law or rule to enable the department to carry out its responsibilities; or

(2) Any person who discloses medical information to the department of health and human services or any representative of the department to enable the department to carry out its responsibilities required by law or rule.

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

AMENDED ANALYSIS

This bill declares that medical information is confidential and provides safeguards for the disclosure of medical information.

1998-0153h

Amendment to HB 505

Proposed by the Committee on Commerce

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

AN ACT relative to smoking in indoor public places.

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

1 Definition; Effectively Segregated. Amend the introductory paragraph of RSA 155:65, V to read as follows:

V. "Effectively segregated" means ***all of*** the following conditions have been met:

2 Definition Expanded. Amend RSA 155:65, XI to read as follows:

XI. "Public educational facility" means any enclosed place or portion of such place, which is supported by public funds and which is used for the instruction of students enrolled ***in preschool programs and*** in grades kindergarten through 12. This definition shall include ***all administrative buildings and offices and*** areas within facilities supportive of instruction and subject to educational administration including, but not limited to, lounge areas, passageways, restrooms, laboratories, study areas, cafeterias, gymnasiums, libraries, maintenance rooms and storage areas.

3 Employees of Grocery Stores Added; Smoking Prohibited. Amend RSA 155:66, V to read as follows:

V. Grocery stores by customers ***and employees, except when such employees are in an effectively segregated smoking-permitted area exclusive of customer areas.***

4 New Paragraph; Rulemaking Added. Amend RSA 155:71 by inserting after paragraph I the following new paragraph:

I-a. Criteria for smoking-permitted areas in a manner that effectively segregates areas, in accordance with RSA 155:65, V, where smoking may be permitted in the facilities under RSA 155:66, I and II.

5 New Paragraph; Rulemaking Added. Amend RSA 155:71 by inserting after paragraph V the following new paragraph:

VI. A schedule of administrative fines, pursuant to RSA 155:74, I.

6 Noncompliance Procedures. Amend RSA 155:73 to read as follows:

155:73 Noncompliance. If an employee or user of a building or facility determines or believes that the person in charge or others are not complying with this subdivision or rules adopted pursuant to this subdivision, a complaint shall be registered with the person in charge. ***A complaint may also be registered by the department on behalf of any employee or user of a building or facility.*** If the complaint is not resolved within one calendar month, the complainant may proceed under the complaint procedures established by the commissioner under RSA 155:71.

7 Investigations and Fines. RSA 155:74, I is repealed and reenacted to read as follows:

I. If, after investigation, the department determines that a violation of this subdivision or the rules adopted under this subdivision has occurred, the department may impose an administrative fine against a person in charge in accordance with RSA 155:76, II. The commissioner shall adopt rules in accordance with RSA 541-A relative to administrative fines, which shall be subject to the limitations in RSA 155:76, II and scaled to reflect the scope and severity of the violation. Fines may be imposed only after notice and hearing, if requested. The sums obtained from the levying of administrative fines under this subdivision shall be forwarded to the state treasurer to be deposited into the general fund.

8 Fines Increased. RSA 155:76 is repealed and reenacted to read as follows:

155:76 Enforcement; Penalties.

I. The person in charge, or designee, may call law enforcement authorities if any person refuses to refrain from smoking in an area where smoking is prohibited. Any person who smokes in an enclosed public place where smoking is prohibited shall be guilty of a violation and subject to a fine of not less than \$100.

II. A person in charge who violates a provision of this subdivision or rules adopted under this subdivision shall be subject to an

administrative fine not to exceed \$100 for each occurrence. Failure to correct a violation or repeated violations shall subject the person in charge to an administrative fine not to exceed \$500 for each occurrence.

9 New Section; Local Ordinances. Amend RSA 155 by inserting after section 77 the following new section:

155:78 Local Ordinances. Nothing in this subdivision shall be construed to supersede or in any manner affect a county, municipality, town, or city ordinance to restrict or prohibit smoking, provided that the provisions of any such ordinance are no less stringent than the provisions of this subdivision.

10 Repeal. RSA 155:71, I-a, relative to certain rulemaking is repealed.

11 Effective Date.

I. Section 10 of this section shall take effect January 1, 2001.

II. The remainder of this act shall take effect January 1, 1999.

AMENDED ANALYSIS

This bill makes certain changes in the Indoor Smoking Act. Specifically, this bill increases certain fines and adds administrative fines and adds temporary rulemaking to adopt criteria for effectively segregated smoking areas in certain facilities.

1998-0046h

Amendment to HB 529

Proposed by the Committee on Municipal and County Government

Amend the bill by replacing section 2 with the following:

2 New Paragraph; Wireless Communication Facilities. Amend RSA 672:14 by inserting after paragraph III the following new paragraph:

IV. The rent, lease, development, or grant of easement to a person for the purpose of placing and maintaining a wireless communications facility shall not be construed as a subdivision under this title, and shall not be deemed to create any new division of land for any other purpose. For purposes of this paragraph, "wireless communications facilities" means any towers, poles, antennas, or other unstaffed structure of less than 500 square feet intended for use in connection with licensed transmission or receipt of radio or television signals, or any other licensed spectrum-based transmissions or receptions. This paragraph shall not be deemed to affect other local zoning, site plan, or other regulatory authority over wireless communications facilities.

1998-0183h

Amendment to HB 535

Proposed by the Committee on Executive Departments and Administration

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

1 Definition Modified. Amend RSA 310-A:28, II to read as follows:

II. "Architecture" means any professional service or creative work requiring the application of advanced knowledge of architectural design, building construction and standards, and involving the constant exercise of discretion and judgment in such activities as *design of, or* consultation, investigation, evaluation, planning, ~~design~~ or responsible ~~supervision~~ *observation* of construction in connection with, any public or private buildings wherein the safeguarding of life, health, *welfare*, or property is concerned.

2 Sentence Structure Corrected. Amend RSA 310-A:29, II to read as follows:

II. Each member of the board shall be a citizen of the United States and a resident of this state. Each architect member shall have actively practiced architecture ~~for~~ *as* the *member's* chief means of livelihood for at least 10 years prior to appointment and shall have held a responsible position in charge of such work for at least 5 years prior to appointment, which may include

the teaching of architecture.

3 Reference to Architects' Fund Removed. Amend RSA 310-A:29, IV to read as follows:

IV. ~~[In addition to any moneys received under RSA 310-A:34,]~~ Members of the board shall receive \$25 for each day actually engaged in the duties of their office and shall be reimbursed for all actual travel, incidental and clerical expenses necessarily incurred in carrying out the provisions of this chapter.

4 Board Secretary's Duties Regarding Roster. Amend RSA 310-A:29, VII as follows:

VII. The secretary of the board shall ~~[publish]~~ ***maintain*** a roster listing the names and places of business of all architects licensed under this subdivision by the board ~~[during February of each even-numbered year]~~. Copies of this roster shall be mailed ***upon request*** to each person so licensed, placed on file with the secretary of state, and furnished to the public upon request at a fee to be established by the board. The board may include in such roster any other information it deems appropriate.

5 Rulemaking Authority, Fee Requirements, and Receipts and Disbursements Accounting. Amend RSA 310-A:32-34 to read as follows:

310-A:32 Rulemaking Authority.

I. The board shall adopt rules, pursuant to RSA 541-A, relative to:

- (a) The application procedure for a license to practice under this subdivision[;].
- (b) The qualifications of applicants in addition to those requirements set by statute, and including the qualifications for satisfactory evidence of good professional character[;].
- (c) How an applicant shall be examined, including the time and place of the examination[;].
- (d) How a license to practice under this subdivision shall be renewed ***or reinstated, including any requirements for continuing education***[;].
- (e) The establishment of all fees required under this subdivision[;].
- (f) Ethical and professional standards required to be met by each holder of a license under this subdivision and how disciplinary actions by the board shall be implemented for violations of these standards[;].
- (g) Matters related to the proper administration of this subdivision[;].
- (h) Procedures for the conduct of hearings consistent with the requirements of due process[;].
- (i) The design of an official seal[;].
- ~~[(j) The salary of the board secretary; and~~
- ~~[(k) Application procedures of and issuance of corporate engineering certificates.]~~

II. In adopting any rule under this section, the board may consult with the joint board established under RSA 310-A:1.

III. ~~[At least 40 days prior to]~~ Any hearing to be held pursuant to RSA 541-A:11~~[, the board shall furnish a copy of any proposed rules of professional conduct, or amendments thereto, to all affected professionals licensed by the board]~~ ***shall be advertised as specified under RSA 541-A.***

310-A:33 Fees. The board shall establish fees for examination of applicants, for licenses, for certificates of authorization, for reissuance of licenses, for renewal of licenses and certificates to practice under this subdivision, and for transcribing and transferring records and other services. ***The fees established by the board shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the board for the previous fiscal year.***

310-A:34 Receipts and Disbursements. ~~[There shall be a board secretary who shall receive and]~~ ***A staff administrator appointed by the joint board shall*** account for all moneys derived under the provisions of this subdivision and shall pay the same to the state treasurer ~~[who shall keep such moneys in a separate fund to be known as the "Architects' Fund." Such fund shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only for purposes of this~~

~~subdivision. All moneys in the fund are hereby specifically appropriated for the use of the board. The secretary of the board shall receive such salary as the board shall determine. The board may employ such clerical and other assistants as are necessary for the proper performance of its work, and may make expenditures from this fund for any purpose which is reasonably necessary for the proper performance of its duties under this subdivision. Under no circumstances shall the total amount of payments made under this section exceed the amount of the fees collected].~~

6 Licensure Requirement. Amend RSA 310-A:37 to read as follows:

310-A:37 Licensure Required. No person shall practice architecture in this state~~[-except as permitted in RSA 310-A:52;]~~ without an architect's license issued under this subdivision. ***The scope of architectural practice is defined in RSA 310-A:28, II and 310-A:52.***

7 Certificates and Interstate Licensure Requirements. Amend RSA 310-A:44-46 to read as follows:

310-A:44 Certificates; Seals. The board shall issue a license upon payment of the registration fee established by the board, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this subdivision. Licenses shall show the full name of the licensee, have a serial number, and be signed by the chairperson and the secretary of the board under seal of the board. The issuance of a license by the board shall be prima facie evidence that the person named in the license is entitled to all the rights and privileges of a licensed architect while the license remains valid. Each licensee shall upon licensure obtain a seal of the design authorized by the board, bearing the registrant's name and the legend, "Licensed Architect." All papers or documents involving the practice of ~~[a profession]~~ ***architecture*** under this subdivision, when issued or filed for public record, shall be dated and bear the signature and seal of the licensed ~~[professional]~~ ***architect*** who prepared or had responsibility for and approved them ***in accordance with the rules of conduct adopted by the board pursuant to RSA 310-A:32, I(f).*** It shall be a class B misdemeanor for the licensee to stamp or seal any documents with such seal after the license of the licensee has expired or has been revoked, unless such license shall have been renewed or reissued. ***This section shall not apply to those persons exempted under RSA 310-A:52, III and IV.***

310-A:45 Interstate Licensure.

- I. The board in its discretion may, upon application and the payment of a fee, issue an architect's license to any person who holds a National Council of Architectural Registration Board certificate~~[-or to any person who holds an unexpired license or certificate of registration issued by any state, territory or possession of the United States, provided that the applicant's qualifications meet the requirements of this subdivision and the rules established by the board].~~
- II. The board may grant an architect's license to any applicant who ~~[is similarly licensed in any other state, provided the other state's licensing requirements are substantially equivalent to or higher than those of this state]~~ ***holds an unexpired license or certificate of registration issued by any state, territory or possession of the United States, or a province of Canada, provided that the applicant's qualifications for initial licensure in that jurisdiction were substantially similar to those in New Hampshire at the time the license was granted, and provided that the applicant has continued to maintain the same level of professional character and competence required of persons licensed under this subdivision and the rules of the board.***
- III. A nonresident architect seeking to render architectural services ***or to participate in a competition*** in this state, who holds an unexpired license or certificate of registration issued by the state in which such person's principal office is located, and such other certification as the board deems necessary, ***after having given notice to the board and prospective clients in writing,*** shall be permitted to offer to render such architectural services in this state without first having been licensed by this state, but shall not practice architecture until licensed in this state.

310-A:46 Expiration and Renewals. All licenses issued by the board shall expire on the last day of the month of the licensee's birth in the year 2 years following the year of issuance. The board shall cause notification of the impending license expiration to be sent to each licensee at least one month prior to the expiration date of the license. If the renewal fee is not submitted ~~[within 12]~~ ***on time, a late fee shall be charged as established by the board, and after 6 months*** ~~[after the expiration date of the license]~~, the ~~[licensee's name shall be removed from the mailing list and roster]~~ ***the licensee shall file an application for reinstatement. The board shall establish reinstatement procedures pursuant to RSA 541-A.***

8 Board's Authority in Disciplinary Actions. RSA 310-A:47 is repealed and reenacted to read as follows:

310-A:47 Disciplinary Action.

- 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 as set forth in paragraph II of this section and which specifies the ground therefor.

II. The board, after notice and opportunity for hearing, may take disciplinary action against any person licensed by it upon finding that the person:

- (a) Has knowingly provided false information during any application for professional licensure, whether by making any affirmative statement which was false at the time it was made or by failing to disclose any fact material to the application.
- (b) Is a habitual user of drugs or intoxicants or is afflicted with physical disability, insanity, psychiatric disorders, or other disease deemed dangerous to the public health.
- (c) Dishonest or unprofessional conduct related to the practice of the profession or any particular aspect or specialty thereof, including, but not limited to: violation of state or federal laws pertaining to the practice of the profession; nationally recognized ethical code or set of ethical principles pertaining to the profession; or violation of any ethical code or principles identified in rules adopted by the board.
- (d) Unfitness or incompetence to practice any particular aspect of the profession, as evidenced by, in a context related to the practice of the profession, gross or repeated negligence; or a pattern of conduct inconsistent with the basic skills, knowledge, or professional character expected of licensed practitioners.
- (e) Has included in advertising any statement of a character tending to deceive or mislead the public or any statement claiming professional superiority.
- (f) Has violated any provision of this chapter or any substantive rule of the board.
- (g) Has been convicted of a felony under the laws of the United States or any state.

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

- (a) By reprimand.
- (b) By suspension, limitation, or restriction of a license, or probation for a period of time as determined reasonable by the board.
- (c) By revocation of license.
- (d) By requiring the person to submit to the care, treatment, or observation of a physician, counseling service, health care facility, professional assistance program, or any combination thereof which is acceptable to the board.
- (e) By requiring the person to participate in a program of continuing professional education in the area or areas of which the person has been found deficient.
- (f) By assessing administrative fines in amounts established by the board which shall not exceed \$2,000 per offense, or, in the case of continuing offenses, \$500 for each day that the violation continues, whichever is greater.

IV. The board may issue a nondisciplinary reprimand to licensees when the conduct in question does not violate RSA 310-A:47, II but would be likely to do so if it were repeated or if it differed only in some matter of degree, or if the public health and safety clearly warrants the elimination of the practice. Such letters may be publicly released as a public reprimand, or may be

kept confidential as a private reprimand, in the board's discretion. In either case, nondisciplinary actions shall not constitute disciplinary action, and shall not be subject to judicial review. Such action may, however, be introduced as evidence in any subsequent disciplinary proceeding against the licensee to the extent it may be relevant to any issue of prior notice, repetition, or licensee cooperation.

V. No civil action shall be maintained against the board or any member of the board or its agents or employees with regard to any action or activity taken in the performance of any duty or authority established by this chapter. No civil action shall be maintained against any organization or its members or against any other person for or by reason of any good faith statement, report, communication, or testimony to the board or determination by the board in relation to proceedings under this chapter.

VI. Allegations of professional misconduct or other violations of this chapter enforceable by the board shall be brought within 6 years from the time the board could reasonably have discovered the act, omission or failure complained of, except that conduct which resulted in a criminal conviction or in a disciplinary action by a relevant licensing authority in another jurisdiction may be considered by the board without time limitation in making licensing or disciplinary decisions if the conduct would otherwise be grounds for discipline under this chapter. The board may also consider licensee conduct without time limitation when the ultimate issue before the board involves a pattern of conduct or the cumulative effect of conduct which becomes apparent as a result of conduct which has occurred within the 6 year limitation period prescribed by this paragraph.

9 New Sections; Disciplinary Actions. Amend RSA 310-A by inserting after section 47 the following new sections:

310-A:47-b Investigations.

I. The board may investigate possible misconduct by licensees and applicants, and other matters within the scope of this chapter, including unauthorized practice. Investigations shall be conducted with the issuance of a board order setting forth the general scope of the investigation.

II. The board may commence a formal or informal investigation, or an adjudicative hearing, concerning allegations of misconduct and other matters within the scope of this chapter on its own motion whenever it has a reasonable basis for doing so, and the type of procedure chosen shall be a matter reserved to the discretion of the board. Formal or informal investigations may be conducted on an ex parte basis. The conclusion reached in all investigations shall be reduced to writing and served upon the parties. Such conclusions shall not be public until they are served upon the parties.

III. The board may administer oaths or affirmations, preserve testimony, and issue subpoenas for witnesses and for documents during any formal investigation or adjudicatory hearing, and as provided by paragraph IV of this section. The board may issue subpoenas with the approval of the office of the attorney general. Any subpoena issued by the board shall first be approved by the office of the attorney general. Subpoenas not covered by paragraph IV shall be served in accordance with the procedures and fee schedules established by the superior court, except that:

- (a) Board licensees shall not be entitled to a witness fee or mileage expenses for travel within the state.
- (b) Witness fees and mileage expenses need not be tendered in advance if the subpoena is annotated "Fees Guaranteed by the New Hampshire Joint Board."
- (c) The respondent shall be allowed at least 48 hours to comply.

IV. The board may at any time subpoena the professional records of its licensees. Such subpoenas shall be served by certified mail or by personal delivery to the address provided to the board pursuant to the application and licensure requirements established by the board, and no witness or other fee shall be necessary for valid service. A minimum of 15 days' advance notice shall be allowed for complying with a subpoena duces tecum issued under this chapter.

V. Persons holding or applying for licenses or other privileges granted by the board shall keep the board informed of their current business and residence addresses, and shall furnish written notice to the board of any change in such addresses within 30 days from the date the change occurs. A licensee or applicant shall receive adequate notice of any hearing or other action taken by the board under this chapter if notice is mailed in a timely fashion to the most recent home or business address furnished under this paragraph.

VI.(a) Complaints of licensee misconduct shall be in writing, and shall be treated as requests for the commencement of a disciplinary hearing to which the time limitations of RSA 541-A:29 shall not apply.

(b) A complaint which fails to state a cause of action may be dismissed or summarily denied in whole or in part.

(c) The board shall investigate all complaints to the extent warranted by the allegations and the resources available to the board. Following an investigation, the board shall have discretion to decline to prosecute or to defer prosecution on allegations made in any complaint based upon the board's assessment of the seriousness of the alleged misconduct and the resources and priorities of the board. Board decisions deferring misconduct prosecutions shall be final and shall be subject to judicial review.

(d) Some or all of the allegations in a complaint may be consolidated with another complaint or with issues which the board wishes to investigate or hear on its own motion.

(e) The board may at any time settle misconduct allegations made in a complaint without the consent of the complainant,

provided that material facts are not in dispute and the complainant is given an opportunity to comment in writing upon the terms of the proposed settlement.

VII. At the commencement of an adjudicatory proceeding, or at any time during a formal or informal investigation, and without issuing a subpoena, the board, or a person to whom the board has delegated appropriate authority, may mail a statement of the allegations being investigated to a licensee and order that person to provide a detailed and good faith written response. In such circumstances, the board may also require a licensee to furnish complete copies of appropriate professional records concerning matters relevant to allegations at issue. In both instances, the licensee shall respond within a reasonable time period of not less than 15 days, as the board may specify in its written order.

10 Hearings. RSA 310-A:48 and 49 are repealed and reenacted to read as follows:

310-A:48 Hearings.

I. Except as otherwise provided by this section, adjudicative proceedings shall be open to the public. The board's public docket file for each such proceeding shall include a taped or written record of all oral hearings and shall be retained for public inspection for at least 6 years from the issuance of the board's final decision.

II.(a) Any member of the board, or any other qualified person appointed by the board, may act as the presiding officer in an adjudicative proceeding any may issue oaths or affirmations to witnesses, rule on evidentiary and other procedural matters, and prepare a proposal for decision as provided by RSA 541-A:34, without regard to any quorum requirements otherwise applicable to board action or activities.

(b) If the person acting as a presiding officer prepares a recommended decision, that person shall not participate in the board's deliberations or otherwise assist the board in the preparation of its final decision.

(c) If a nonboard member acts as a presiding officer and no recommended decision is prepared, that person may participate in board deliberations to the extent of providing technical assistance to the board in preparing its final decision.

III.(a) Except as otherwise provided by this chapter or RSA 541-A:30, respondents in adjudicative proceedings shall receive at least 15 days' written notice of the date, time, and place of a hearing. Hearing notices shall include an itemization of the issues to be heard and shall be public documents.

(b) When the board issues a hearing notice after investigating allegations contained in a written complaint, the hearing notice shall constitute a final determination of the complainant's request for the commencement of a disciplinary proceeding on each of the allegations raised in the complaint. The hearing notice shall be served upon the complainant as well as the licensee, and provide the complainant with an opportunity to intervene subject to restrictions which reasonably advance the public interest objectives of this chapter.

(c) Any person appearing as a party or witness in an adjudicatory proceeding, or any person who is the subject of an investigation, or who is questioned in an investigation, may be represented by legal counsel, but the board shall have no obligation or authority to appoint or provide an attorney to any such person.

IV. In adjudicative proceeding, the presiding officer may hold prehearing conferences which are closed to the public and exempt from provisions of RSA 91-A until such time as the first session of the public evidentiary hearing is convened. In all instances, however, any settlement discussions engaged in at prehearing conferences may be conducted off the record.

V. The board may dispose of issues or allegations at any time during an investigation or adjudicative proceeding by issuing a settlement agreement or consent order; an order of dismissal for default or failure to state a proper basis for disciplinary action; or a summary judgment order based upon undisputed material facts, provided, however, that disciplinary action taken by the board at any time and in any context, and any dispositive action taken after the issuance of a public hearing notice, shall be reduced to writing and made available to the public.

VI. Final decisions in adjudicative proceedings shall be made by a majority of the board members eligible to participate in the decision, and the board's deliberative processes in such cases shall be privileged, confidential, and exempt from the public disclosure provisions of RSA 91-A. Decisions and orders in adjudicatory proceedings, including prehearing orders required by RSA 541-A:31, V(d), shall be publicly available, but only after they have been reduced to writing, signed by a representative of the board, and served upon the parties.

VII. Final decisions in adjudicative proceedings may be appealed to the supreme court pursuant to RSA 541. Disciplinary

actions taken by the board shall not be subject to stay pending appeal.

310-A:49 License Reinstatement. Persons whose licensees have expired, been surrendered, or been revoked may apply to the board for reinstatement upon such forms and in accordance with such requirements as the board may impose through the adoption of Rules under RSA 541-A.

11 Violations. Amend the introductory paragraph of RSA 310-A:50, I to read as follows:

I. It shall be a class B misdemeanor for any natural person or a felony for any ~~[business organization]~~ **other person** to:

12 Exemptions. Amend RSA 310-A:52, IV to read as follows:

IV. The preparation of drawings and specifications for, and the supervision ~~[and]~~ **of the construction or** alteration of, any structure which does not have as its principal structural members reinforced concrete or structural steel ~~[and]~~; is 2-1/2 stories or less~~[-and]; is~~ 4,000 square feet **of total building area** or less~~[-]; and is not a building of assembly, which includes schools, churches, auditoriums, theatres, hospitals and any building for the elderly.~~

V. The practice of engineering by a duly licensed engineer.

13 Repeal. RSA 310-A:28, IV, relative to the definition of business organizations, is repealed.

14 Effective Date. This act shall take effect July 1, 1998.

AMENDED ANALYSIS

This bill:

- I. Changes the definition of "architecture."
- II. Changes the duties of the secretary of the board of architects.
- III. Changes the board's authority and duty to adopt administrative rules and to provide copies of proposed rules to certain persons.
- IV. Requires that fees collected by the board reach a certain minimum amount.
- V. Changes examination requirements, certificates, and interstate licensure requirements for acting as an architect.
- VI. Changes the board's authority to undertake disciplinary proceedings.
- VII. Gives the board authority to assess administrative fines for unauthorized practice and to conduct certain investigations.
- VIII. Establishes requirements for administrative hearings and gives the board specific authority in conducting such hearings.
- IX. Changes the board's hearings process.
- X. Changes the requirements for the reissuance of licenses.
- XI. Repeals the law defining "business organization" for the purposes of the subdivision on architecture.

1998-0008h

Amendment to HB 552-LOCAL

Proposed by the Committee on Municipal and County Government

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

1 Lands Solely Accessed Via Another Municipality. Amend RSA 674:53, II to read as follows:

II. Upon receipt of an application for a permit or approval under this title for the subdivision, development, ~~[or]~~ change of use of ~~[a]~~, **or erection or alteration of any structure upon any** lot, tract, site or other division of land whose boundary or portion thereof is a municipal boundary line, ~~[a]~~ **or whose sole street access or sole maintained street access is via a private**

*road or class IV, V, or VI highway located in an adjoining municipality, the municipality receiving the application shall inquire in writing to the appropriate administrative officials in the adjoining municipality or municipalities as to the existence of facts **or regulations** which, under [paragraph] **paragraphs I, III or IV of this section or otherwise**, would preclude **or affect** such subdivision, development, **construction**, or change of use. Response shall be made to such inquiries within the period provided by this title for approval or disapproval of the underlying application. A response which invokes an ordinance or regulation of such adjoining municipality may be appealed in that adjoining municipality in the same manner as any other administrative decision. **An adjoining municipality in which is located an existing private road or class VI highway that serves as an applicant’s sole means of fulfilling the street access requirements under RSA 674:41 shall have the same regulatory powers under that statute with respect to that road or highway as if the proposed building or development were located within that same municipality.***

2 Access Via Adjoining Municipality. Amend RSA 674:53, IV to read as follows:

IV. No plat or plan showing land or streets in more than one municipality in the state shall be deemed approved for purposes of this title unless it has been approved by the planning boards of all included municipalities in which the planning board has been granted authority over approval of that type of plat or plan. ***In addition, no plat or plan showing land whose sole street access or sole maintained street access is or is planned to be via a private road or class IV, V or VI highway located in an adjoining municipality shall be deemed approved for purposes of this title unless it has been approved by the planing board, if any, of that adjoining municipality, provided however that the sole issue which may be addressed or regulated by the adjoining municipality shall be the adequacy of such street access, and the impact of the proposal upon it.***

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

1998-0086h

Amendment to HB 555

Proposed by the Committee on Judiciary and Family Law

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

1 New Paragraph; Individual’s Pensions and IRAs Exempt From Bankruptcy Attachment; Gender Neutral. Amend RSA 511:2 to read as follows:

511:2 Exemptions. The following goods and property are exempted from attachment and execution:

- I. The wearing apparel necessary for the use of the debtor and ~~[his]~~ ***the debtor’s*** family.
- II. Comfortable beds, bedsteads and bedding necessary for the debtor, ~~[his the debtor’s wife]~~ ***the debtor’s spouse*** and children.
- III. Household furniture to the value of \$3,500.
- IV. One cook stove, one heating stove and one refrigerator and necessary utensils belonging to the same.
- V. One sewing machine, kept for use by the debtor or ~~[his]~~ ***the debtor’s*** family.
- VI. Provisions and fuel to the value of \$400.
- VII. The uniform, arms and equipments of every officer and private in the militia.
- VIII. The Bibles, school books and library of any debtor, used by ~~[him]~~ ***the debtor*** or ~~[his]~~ ***the debtor’s*** family, to the value of \$800.
- IX. Tools of the debtor's occupation to the value of \$5,000.
- X. One hog and one pig, and the pork of the same when slaughtered.
- XI. Six sheep and the fleeces of the same.
- XII. One cow; a yoke of oxen or a horse, when required for farming or teaming purposes or other actual use; and hay not exceeding 4 tons.

- XIII. Domestic fowls not exceeding \$300 in value.
- XIV. The debtor's interest in one pew in any meetinghouse in which ~~[he]~~ **the debtor** or ~~[his]~~ **the debtor's** family usually worship.
- XV. The debtor's interest in one lot or right of burial in any cemetery.
- XVI. One automobile to the value of \$4,000.
- XVII. Jewelry owned by the debtor or ~~[his]~~ **the debtor's** family to the value of \$500.
- XVIII. The debtor's interest in any property, not to exceed \$1,000 in value, plus up to \$7,000 of any unused amount of the exemptions provided under paragraphs III, VI, VIII, IX, XVI, and XVII of this section.

XIX. Subject to the Uniform Fraudulent Transfer Act, RSA 545-A, any interest in a retirement plan or arrangement qualified for tax exemption purposes under present or future Acts of Congress; provided, such interest shall be exempt only to the extent that contributions by or on behalf of a participant were not subject to federal income taxation to such participant at the time of such contributions, plus earnings and other additions thereon; provided further, any transfer or rollover contribution between retirement plans or arrangements which avoids current federal income taxation shall not be deemed a transfer which is fraudulent as to a creditor under the Uniform Fraudulent Transfer Act. "Retirement plan or arrangement qualified for tax exemption purposes" shall include without limitation, trusts, custodial accounts, insurance, annuity contracts, and other properties and rights constituting a part thereof. By way of example and not by limitation, retirement plans or arrangements qualified for tax exemption purposes permitted under present Acts of Congress include defined contribution plans and defined benefit plans as defined under the Internal Revenue Code (IRC), individual retirement accounts, individual retirement annuities, simplified employee pension plans, Keogh plans, IRC section 403(a) annuity plans, IRC section 403(b) annuities, and eligible state deferred compensation plans governed under IRC section 457. This paragraph shall be in addition to and not a limitation of any other provision of New Hampshire law which grants an exemption from attachment or execution and every other species of forced sale for the payment of debts. This paragraph shall be effective for retirement plans and arrangements in existence on, or created after January 1, 1999.

2 Effective Date. This act shall take effect January 1, 1999.

1998-0047h

Amendment to HB 559-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 allowing courts to impose an extended term of imprisonment upon persons of any age who have committed certain crimes against person under 13 years of age.

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

- 1 Extended Term of Imprisonment. Amend the introductory paragraph of RSA 651:6, I to read as follows:
I. ~~[If a court finds that a convicted person is 18 years of age or older, he]~~ A convicted person may be sentenced according to paragraph II if the court also finds, and includes such findings in the record, that:
- 2 Extended Term of Imprisonment. Amend RSA 651:6, I(f) to read as follows:
(f) He has committed or attempted to commit any of the crimes defined in RSA **630:3, I**, 631 or 632-A against a person under 13 years of age; or
- 3 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill allows courts to impose an extended term of imprisonment upon a person of any age who has committed or attempted to commit a specified crime against a person under 13 years of age.

1998-0074h

Amendment to HB 565-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 relative to unauthorized use of a propelled vehicle or animal.

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

1 Repeal. RSA 634:3, relative to unauthorized use of propelled vehicle or animal, is repealed.

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

AMENDED ANALYSIS

This bill repeals the law prohibiting the unauthorized use of propelled vehicle or animal.

1998-0073h

Amendment to HB 579-FN-LOCAL

Proposed by the Committee on Labor, Industrial and Rehabilitative Services

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

AN ACT providing that a person who, 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.

Amend RSA 282-A:32, I(a)(3) as inserted by section 1 of the bill by replacing it with the following:

(3) The leaving of employment was necessary to protect the individual from domestic abuse, as defined in RSA 173-B:1 and in accordance with rules adopted by the commissioner, and the individual made all reasonable efforts to preserve the employment, and in addition:

(A) The individual relocated to escape the abuse; or

(B) The individual, due to changed circumstances, is able to return to the individual's employment, but the employer is unable to return the individual to the individual's job, or to comparable work, due solely to:

(i) A reduction in work force; or

(ii) Other economic conditions, and the individual did all things that a reasonably prudent person would have done to continue the employer-employee relationship or the possibility of reemployment during the period the individual was unable to work due to the domestic abuse;

Amend the bill by replacing section 3 with the following:

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

AMENDED ANALYSIS

This bill provides that a person who, 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.

1998-0023h

Amendment to HB 583-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 New Section; Taking a Firearm From a Law Enforcement Officer; Class A Felony. Amend RSA 642 by inserting after section 3 the following new section:

642:3-a Taking a Firearm From a Law Enforcement Officer.

I. Whoever knowingly takes or attempts to take a firearm from the person of a law enforcement officer, while such officer is engaged in the performance of official duties, shall be guilty of a felony and, notwithstanding the provisions of RSA 651:2, shall be sentenced as provided in paragraph II.

II. The penalties for an offense under this section shall be:

(a) In the case of a completed offense, or an attempt during which the firearm is discharged (other than intentionally by the officer), a fine under this title and imprisonment for a maximum term which is not to exceed 20 years and a minimum which is not to exceed ½ of the maximum.

(b) In the case of an attempt where the firearm is not discharged, a fine under this title and imprisonment for a maximum term which is not to exceed 15 years and a minimum which is not to exceed ½ of the maximum.

III. A term of imprisonment imposed under this section shall not run concurrently with any other term of imprisonment imposed with respect to the same criminal episode.

IV. In this section:

(a) "Firearm" means firearm as defined in section 921 of Title 18 of the United States Code.

(b) "Law enforcement officer" means a sheriff or deputy sheriff of any county, a state police officer, a constable or police officer of any city or town, an official or employee of any prison, jail or corrections institution, a probation-parole officer, or a conservation officer.

2 Effective Date. This act shall take effect January 1, 1999.

AMENDED ANALYSIS

This bill makes the taking and attempted taking of a firearm from a law enforcement officer felonies and prescribes the sentences for these offenses.

1998-0189h

Amendment to HB 587-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 system benefits charge.

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

1 Findings.

I. The commission is encouraged to form a working group to examine that portion of the system benefits charge relating to energy efficiency programs.

II. For any utility not subject to the limitations of RSA 374-F:4, VIII(b), as inserted by this act, the commission is encouraged to maintain existing programs until there has been review by commission-appointed working groups.

III. If a comprehensive multiparty settlement of the legal, economic, and technical issues arising from electric utility restructuring is proposed to the commission for any utility, and, if such proposed settlement would conflict with the limitations

of the system benefits charge in RSA 374-F:4, VIII(b), as inserted by this act, then the legislature should carefully reconsider those limitations.

IV. The establishment of the limitations set forth in this act are not intended to set any precedent or to prejudge what, if any, limits should be placed on the system benefits charge beyond the first 2 years of competition.

2 System Benefits Charge; Limitations. Amend RSA 374-F:4, VIII to read as follows:

VIII.**(a)** The commission is authorized to order such charges and other service provisions and to take such other actions that are necessary to implement restructuring and that are substantially consistent with the principles established in this chapter. The commission is authorized to require that distribution and electricity supply services be provided by separate affiliates.

(b) The system benefits charge referred to in RSA 374-F:3, VI shall be limited as follows:

(1) During the first year after competition is certified to exist pursuant to RSA 38:36, the portion of the system benefits charge due to energy efficiency programs, new renewable programs, and programs for low income customers shall not exceed 2.5 mills per kilowatt hour for any utility whose rates are at or above regional average as determined by the commission.

(2) During the second year after competition is certified to exist pursuant to RSA 38:36, the portion of the system benefits charge due to energy efficiency programs, new renewable programs, and programs for low income customers shall not exceed 3 mills per kilowatt hour for any utility whose rates are at or above regional average as determined by the commission.

(c) The limitations of the system benefits charge in subparagraph (b) shall not apply to any member controlled electric cooperative.

(d) Targeted conservation and load management programs and incentives that are part of a strategy to minimize distribution costs shall be included in the distribution charge, and not included in a system benefits charge.

(e) Beginning in 1999, the commission shall submit a report to the legislative oversight committee on electric utility restructuring by October 1 of each year. The report shall concern the results and effectiveness of the system benefits charge.

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

AMENDED ANALYSIS

This bill establishes limits on the amount of system benefits charge that may be assessed and requires the public utilities commission to submit an annual report on the systems benefit charge.

1998-0187h

Amendment to HB 605-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 Applicability; Purpose. RSA 169-B:1, II is repealed and reenacted to read as follows:

II. Consistent with the protection of the public interest, to promote the minor’s acceptance of personal responsibility for delinquent acts committed by the minor, encourage the minor to understand and appreciate the personal consequences of such acts, provide a minor who has committed delinquent acts with counseling, supervision, treatment, and rehabilitation, and make parents aware of the extent to which they may have contributed to the delinquency and make them accountable for their role in its resolution.

2 Definition of Delinquent Revised. Amend RSA 169-B:2, IV to read as follows:

IV. "Delinquent" means a person who has committed an offense before reaching the age of 17 years which would be a felony ~~[or]~~, misdemeanor, **or violation** under the criminal code of this state if committed by an adult, and is expressly found to be in need of counselling, supervision, treatment, or rehabilitation as a consequence thereof, **or a person who has committed an offense**

before reaching the age of 16 that would be a violation of a motor vehicle law, an aeronautics law, a law relating to navigation or boats, a fish and game law, a law relating to federal Title XIII, a law relating to fireworks under RSA 160-B, or any town or municipal ordinance.

3 New Paragraphs; "Diversion" and "Intervention" Defined. Amend RSA 169-B:2 by inserting after paragraph IV the following new paragraphs:

IV-a. "Diversion" means a decision made by a person with authority which results in specific official action of the legal system not being taken or being postponed in regards to a juvenile and, in lieu of such inaction or postponement, providing an individually designed program for delivery of services for the juvenile by a specific provider or a plan to assist the juvenile in finding a remedy for his or her inappropriate behavior. The goal of diversion is to prevent further involvement of the juvenile in the formal legal system. Diversion of a juvenile may take place either at pre-filing as an alternative to the filing of a petition, or at arraignment.

IV-b. "Intervention" means a decision made by a person with authority which results in specific official action of the legal system not being taken or being postponed in regards to a juvenile and, in lieu of such inaction or postponement, providing an individually designed program for delivery of services for the juvenile by a specific provider or a plan to assist the juvenile in finding a remedy for his or her inappropriate behavior. The goal of intervention is to prevent further involvement of the juvenile in the formal legal system. Intervention for a juvenile may take place either at the adjudicatory or dispositional level.

4 New Paragraph; "Services" Defined. Amend RSA 169-B:2 by inserting after paragraph IX the following new paragraph:

X. "Services" means and shall include, but not be limited to, diagnostic needs assessment, restitution programs, community service, job training and placement, specialized tutoring, constructive academic exercises, constructive recreational activities, general counseling, and counseling during a crisis situation.

5 New Section; Parental Responsibility. Amend RSA 169-B by inserting after section 2 the following new section:

169-B:2-a Parental Responsibility.

I. In each case brought pursuant to this chapter, on the date of arraignment, the court shall identify the parents of the minor or, in their absence, the guardian or other person charged by law with the responsibility for the welfare of the minor. It shall be the obligation of such parents or guardians to:

(a) Personally attend and assure the attendance of the minor at all hearings of the court.

(b) Personally attend and assure the attendance of the minor at all meetings with the department of health and human services and collateral support service agencies occasioned by the action.

(c) Fully participate in all services ordered by the court including, but not limited to, substance abuse treatment, parenting classes, mediation, community service, and therapy.

(d) Pay a portion, or all, of any restitution or fines imposed by the court when the court finds the payment by the parent to be in the interest of justice and rehabilitation.

(e) Supervise the minor's compliance with all orders of the court and conditions of release and probation including, but not limited to, curfew, school attendance, and general behavior.

II. Failure to supervise and otherwise accept responsibility as required by this section shall be treated as criminal contempt of court punishable by up to a \$1,000 fine and 6 months imprisonment. It shall be a defense to any such charge of contempt that the parent, guardian, or such other person or persons having custody and control of the minor made reasonable efforts to comply.

6 Legal Sufficiency of Petition. RSA 169-B:6, II is repealed and reenacted to read as follows:

II. To be legally sufficient, the petition shall set forth with particularity, but not be limited to, the date, time, manner and place of the conduct alleged, shall state the statutory provision alleged to have been violated, and shall be entitled, "In the interest of _____, a child."

7 Issuance of Summons and Notice. RSA 169-B:7 is repealed and reenacted to read as follows:

169-B:7 Issuance of Summons and Notice.

I. After a legally sufficient petition has been filed, the court shall issue a summons to be served personally or, if personal service is not possible, at the usual place of abode of the person having custody or control of the minor or with whom the minor may reside, requiring that person to appear with the minor at a specified place and time, which time shall not be less than 24 hours after service. The non-custodial parent shall be notified of the pending court petition via certified mail, return receipt requested, to his or her last known address.

II. A copy of the petition shall be attached to each summons or incorporated therein.

8 Failure to Appear; Hearings. RSA 169-B:8, II is repealed and reenacted to read as follows:

II. If the minor, parent, guardian, or other person ordered to appear fails to appear for any scheduled hearing, a bench warrant may be issued for the minor's appearance, or for the appearance of anyone having custody or control of the minor, or both. Additionally, the court may proceed against the minor, or anyone having custody or control of the minor, or both, for their failure to appear as authorized by RSA 263:56-a.

9 Juvenile Diversion Substituted for Release Without Court Referral. RSA 169-B:10 is repealed and reenacted to read as follows:

169-B:10 Juvenile Diversion.

I. At any time before or at arraignment pursuant to this chapter, a minor and the minor's family may be referred to a court-approved diversion program or other community resource. Referral may be made by the arresting or prosecuting agency or juvenile service officer, with the consent of the prosecuting agency, prior to filing a petition with the court or after the filing of a petition by such agency with the court's approval, or by the court on its own, or any party's motion. The administrative judge of the district court shall have the authority to approve diversion referral procedures for use in all juvenile matters throughout the state.

II. Referral to diversion or other community resource after filing is appropriate if:

- (a) The facts bring the case within the jurisdiction of the court;
- (b) Referral of the case is in the best interest of the public and the minor; and
- (c) The minor and parent, guardian, or other custodian consent with the knowledge that consent is not obligatory.

III. Referral after filing shall stay the proceedings for a period not to exceed 3 months from the date of referral, unless extended by the court for an additional period not to exceed 3 months and does not authorize the detention of the minor.

IV. During the period of referral, the court may require further conditions of conduct on the part of the minor and the minor's parents.

10 Appointment of Counsel; Procedures Revised. Amend RSA 169-B:12, I to read as follows:

I. Absent a valid waiver, the court shall appoint counsel at the time of arraignment of an indigent minor~~[-provided that an indigent minor detained pursuant to RSA 169-B:11, III, shall have counsel appointed upon the issuance of the detention order]~~ ***alleged to have committed an act which would be a felony or misdemeanor under the criminal code of this state***. For purposes of the appointment of counsel under this section, an indigent minor shall be a minor who satisfies the court, after appropriate inquiry, that the minor is financially unable to independently obtain counsel.

11 Waiver of Counsel; Procedures Revised. Amend the introductory paragraph of RSA 169-B:12, II to read as follows:

II. The court may accept a waiver of counsel in a delinquency proceeding ***alleging commission of an act which would be a felony or misdemeanor under the criminal code of this state*** only when:

12 Appointment of Counsel for Minor at Arraignment Revised. Amend RSA 169-B:13, I (c) to read as follows:

(c) Appoint counsel pursuant to RSA 169-B:12, ***if the offense alleged would be a felony or misdemeanor under the criminal code of this state***;

13 Arraignment. RSA 169-B:13, II is repealed and reenacted to read as follows:

II. The court may, at any time after arraignment, dispose of the petition by referring the minor or the minor and family for participation in an approved court intervention program.

14 New Paragraph; Court Referrals; Uncompensated Public Service by Minors. Amend RSA 169-B:13 by inserting after paragraph II the following new paragraph:

III. A referral under this section may include an order for the minor to perform up to 50 hours of uncompensated public service subject to the approval of the elected or appointed official authorized to give approval of the city or town in which the offense occurred. The court's order for uncompensated public service shall include the name of the official who will provide supervision to the minor. However, no person who performs such public service under this paragraph shall receive any benefits that such employer gives to its other employees, including, but not limited to, workers compensation and unemployment benefits and no such employer shall be liable for any damages sustained by a person while performing such public service or any damages caused by that person unless the employer is guilty of gross negligence.

15 Release or Detention Provisions Revised. Amend RSA 169-B:14, I to read as follows:

I. Following arraignment a minor alleged to be delinquent may be ordered by the court to be:

(a) Retained in the custody of a parent, guardian, or custodian; or

(b) Released in the supervision and care of a relative or friend~~[-or~~

~~(c) Released in the supervision and care of a foster home, as defined in RSA 169-C:3, XIII, which is specifically licensed to accept delinquent children with expenses charged according to RSA 169-B:40; or~~

~~(d) Placed in a group home, crisis home or shelter-care facility with expenses charged according to RSA 169-B:40; or~~

~~(e) Detained at a facility certified by the commissioner of the department of health and human services for detention of minors pursuant to the following:~~

~~(1) No minor charged with delinquency shall be securely detained following arraignment unless the prosecution establishes probable cause to believe that the minor committed the alleged delinquent acts and unless the prosecution demonstrates by clear and convincing evidence the need for secure detention, based upon the criteria for secure detention specified in subparagraph (c)(2);~~

~~(2) A minor shall not be securely detained unless secure detention is necessary:~~

~~(A) To insure the presence of the juvenile at a subsequent hearing; or~~

~~(B) To provide care and supervision for a minor who is in danger of self-inflicted harm when no parent, guardian, custodian, or other suitable person or program is available to supervise and provide such care; or~~

~~(C) To protect the personal safety or property of others from the probability of serious bodily harm or other harm].~~

16 New Paragraph. Release or Detention After Arraignment for Minors Allegedly Having Committed Felonies or Misdemeanors. Amend RSA 169-B:14 by inserting after paragraph I the following new paragraph:

I-a. Following arraignment a minor alleged to have committed an offense which would constitute a felony or misdemeanor under the criminal code of this state may be ordered by the court to be:

(a) Released in the supervision and care of a foster home, as defined in RSA 169-C:3, XIII, which is specifically licensed to accept delinquent children with expenses charged according to RSA 169-B:40; or

(b) Placed in a group home, crisis home or shelter-care facility with expenses charged according to RSA 169-B:40; or

(c) Detained at a facility certified by the commissioner of the department of health and human services for detention of minors pursuant to the following:

(1) No minor charged with delinquency shall be securely detained following arraignment unless the prosecution establishes probable cause to believe that the minor committed the alleged delinquent acts and unless the prosecution demonstrates by clear and convincing evidence the need for secure detention, based upon the criteria for secure detention specified in

subparagraph (c)(2);

(2) A minor shall not be securely detained unless secure detention is necessary:

(A) To insure the presence of the juvenile at a subsequent hearing; or

(B) To provide care and supervision for a minor who is in danger of self-inflicted harm when no parent, guardian, custodian, or other suitable person or program is available to supervise and provide such care; or

(C) To protect the personal safety or property of others from the probability of serious bodily harm or other harm.

17 Release or Detention Pending Adjudicatory Hearing. RSA 169-B:14, III is repealed and reenacted to read as follows:

III. All orders issued pursuant to this section shall be in accordance with guidelines promulgated by the administrative judge of the district court, shall set forth findings in writing, and such conditions as the court may determine.

18 Dispositional Hearing; Court Order. Amend the introductory paragraph of RSA 169-B:19, I to read as follows:

I. The department of health and human services shall provide the court with costs of the recommended services, placements and programs. If the court finds that a minor ~~[is delinquent]~~ **has committed an offense which would be a felony or misdemeanor under the criminal code of this state**, the court may order the least restrictive of the following dispositions, which the court finds is the most appropriate:

19 Dispositional Hearing; Penalties; Order for Services. RSA 169-B:19, I(b)-(d) are repealed and reenacted to read as follows:

(b) Fine the minor up to \$250, require restitution or both. Restitution ordered by the court may be collected by the department or by the court or by an agency designated by the court to collect it. In any case where a parent is ordered to pay all or any portion of the fine or restitution pursuant to RSA 169-B:2-a, the parents shall have the right to a hearing before the court to contest the amount of restitution or their liability.

(c) Order the minor to undergo physical treatment, substance abuse treatment or testing, treatment by a mental health center, or any other psychiatrist, psychologist, psychiatric nurse practitioner, psychiatric social worker or family therapist as determined by the court, attend mediation sessions, parenting programs, or any other such program or programs the court determines necessary to carry out the purposes of this chapter with expenses, if any, charged according to RSA 169-B:40. Utilization of community resource programs shall be encouraged.

(d) Order the minor's parents or family to undergo physical treatment or treatment by a mental health center, or any other psychiatrist, psychiatric social worker, or family therapist as determined by the court, with expenses charged under RSA 169-B:40. Utilization of community resource programs shall be encouraged.

(e) Order the minor's parents or the minor's family to undergo a substance abuse evaluation by a treatment provider contracted with the bureau of substance abuse services, and to undergo such substance abuse treatment as is recommended in the evaluation. Such recommendation may include treatment provided by a privately paid provider approved by the court. The cost of the evaluation and treatment shall be paid by private insurance if applicable, or pursuant to agreement by the provider with the bureau of substance abuse services shall be provided free or at reduced cost to low income parents or family members.

20 Dispositional Hearing; Court Dispositions. Amend RSA 169-B:19, I (i) to read as follows:

(i) Any combination of the above; ~~or~~

21 New Paragraph; Dispositional Hearing; Alternative Dispositions for Minors. Amend RSA 169-B:19 by inserting after paragraph I the following new paragraph:

I-a. If the court finds that a minor has committed an offense that would be a violation under the criminal code of this state, or committed an offense before reaching the age of 16 that would be a violation of motor vehicle law, an aeronautics law, a law relating to navigation or boats, a fish and game law, a law related to federal Title XIII, a law related to fireworks under RSA 160-B, or any town or municipal ordinance, the court may order the least restrictive of the following dispositions which the court finds is most appropriate:

(a) Return the minor to a parent, custodian or guardian;

(b) Fine the minor up to \$250, require restitution, or both. Restitution ordered by the court may be collected by the department, or by the court, or by an agency designated by the court for collection;

(c) Order the minor to perform up to 50 hours of uncompensated public service subject to the approval of the elected or appointed official authorized to give approval of the city or town in which the offense occurred. The court's order for uncompensated public service shall include the name of the official who will provide supervision to the minor. However, no person who performs such public service under this paragraph shall receive any benefits that such employer gives to its other employees, including, but not limited to, workers compensation and unemployment benefits and no such employer shall be liable for any damages sustained by a person while performing such public service or any damages caused by that person unless the employer is guilty of gross negligence.

(d) Any combination of the above.

22 Disposition Hearing; Guidelines; Findings. RSA 169-B:19, V is repealed and reenacted to read as follows:

V. All dispositional orders issued pursuant to this section shall be in accordance with guidelines promulgated by the administrative judge of the district court and shall include written findings as to the basis for the disposition and such conditions as the court may determine.

23 Determination of Competence; Felony or Misdemeanor Requirement Added. Amend RSA 169-B:20 to read as follows:

169-B:20 Determination of Competence. Any minor before the court ***alleged to have committed an offense which would be a felony or misdemeanor under the criminal code of this state*** shall, at the discretion of the court, together with parents, guardian or person with custody or control submit to a mental health evaluation to be completed within 60 days, by an agency other than the Philbrook center, approved by the commissioner of health and human services, a psychologist certified in New Hampshire, or a qualified psychiatrist, provided that the evaluation may be performed by the Philbrook center only upon receiving prior approval for such evaluation from the commissioner of the department of health and human services or designee. A written report of the evaluation shall be given to the court before the hearing on the merits is held. The court shall inform the parents, guardian, or counsel of the minor of their right to object to the mental health evaluation. They shall object in writing if they so desire to the court having jurisdiction of the matter within 5 days after notification of the time and place of the evaluation, and the court shall hold a hearing to consider the objection prior to ordering the evaluation or, upon good cause shown, may excuse the minor, parents, guardian, or person in custody or control from the provisions of this section. Whenever such an evaluation has been made for consideration at a previous hearing, it shall be jointly reviewed by the court and the evaluating agency before the case is heard. The evaluation facility, agency or individual shall keep records; but no reports or records of information contained in the reports shall be made available, other than to the court and parties, except upon the written consent of the person examined or treated and except as provided in RSA 169-B:35. The expense of such evaluation is to be borne as provided in RSA 169-B:40.

24 Mental Health and Substance Abuse Evaluation. RSA 169-B:21 is repealed and reenacted to read as follows:

169-B:21 Mental Health and Substance Abuse Evaluation.

I. Any court, finding that a minor has committed ~~[the]~~ ***an*** alleged offense ***which would be a felony or misdemeanor under the criminal code of this state***, may, before making a final disposition, order the minor, minor's parents, guardian or person with custody or control to submit to a mental health or substance abuse evaluation to be completed within 60 days. A written report of the evaluation shall be given to the court before the dispositional hearing. If the parents, guardian, minor, or person having custody or control objects to the mental health or substance abuse evaluation, they shall object in writing to the court having jurisdiction within 5 days after notification of the time and place of the evaluation. The court shall hold a hearing to consider the objection prior to ordering such evaluation. Upon good cause shown, the court may excuse the parents, guardian, minor, or person having custody or control from the provisions of this section.

II. Whenever such an evaluation has been made for consideration at a previous hearing, it shall be jointly reviewed by the court and the evaluating agency before the case is heard. The evaluating facility, agency, or individual shall keep records, but no reports or records of information contained therein shall be made available other than to the court and parties, except upon the written consent of the person examined or treated and except as provided in RSA 169-B:35. The expense of such evaluation shall be borne as provided in RSA 169-B:40.

25 Orders for Physical Examination and Treatment; Felony or Misdemeanor Requirement Added. Amend RSA 169-B:23 to read as follows:

169-B:23 Orders for Physical Examination and Treatment. If it is alleged in any petition, or it appears at any time during the progress of the case, that a delinquent ***alleged to have committed an offense which would be a felony or misdemeanor under the criminal code of this state*** is in need of physical treatment, the failure to receive which is a contributing cause of delinquency, due notice of that fact shall be given as provided in RSA 169-B:7. If the court, upon hearing, finds that such treatment is reasonably required, it shall be ordered and the expense thereof shall be borne as provided in RSA 169-B:40.

26 Case Closure and Review of Disposition. RSA 169-B:31 is repealed and reenacted to read as follows:

169-B:31 Case Closure and Review of Disposition. Upon making a finding that the purposes of this chapter have been met with regard to the minor named in the petition, or for such other reason the court may deem appropriate and consistent with the purposes of this chapter, the court may order a case closed. Any case remaining open for 12 months after the date of disposition shall be reviewed by the court annually and closed, unless the court finds by a preponderance of the evidence that the continued provision of services and court involvement are necessary and shall be fruitful to rehabilitate the minor or protect the public interest. All such findings shall be in writing and shall include the basis upon which those findings were made.

27 Effective Date. This act shall take effect January 1, 1999.

AMENDED ANALYSIS

This bill revises certain procedures relative to delinquency cases, defines "diversion" and "intervention," modifies certain provisions of juvenile release, detention, or other court ordered dispositions, and includes provisions relative to court intervention programs and parental responsibility.

1998-0203h

Amendment to HB 606-FN-LOCAL

Proposed by the Committee on Judiciary and Family Law

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

1 Applicability; Purpose. RSA 169-D:1, I and II are repealed and reenacted to read as follows:

- I. To recognize that certain behaviors occurring within a family or school environment indicate that a child is experiencing serious difficulties and is in need of services and corrective action in order to protect the child from the irreversibility of certain choices, and to protect the integrity of the family and the authority it must maintain in order to fulfill its responsibility to raise the next generation. To further provide the child with the treatment, care, guidance, counseling, discipline, supervision, and rehabilitation necessary to assist the child in becoming a responsible and productive member of society;
- II. To recognize that we must no longer bring the weight of family problems down on the child alone but that parents must be made aware of their contribution to the problem, must account for their role in the solution to the problem, and must accept the responsibility to participate in any program of care ordered by the court in order to assure that the outcome may have a good probability of success, while, at the same time, supporting families in their mission to teach values to youth and to exercise reasonable control of their children.

2 Applicability; Purpose. RSA 169-D:1, V is repealed and reenacted to read as follows:

- V. To achieve the foregoing purposes and policies by providing each child coming within the provisions of this chapter with a program of care, treatment, guidance, counseling, discipline, supervision, and rehabilitative resources which the child needs.

3 Definitions; Child Services. Amend RSA 169-D:2, I and II to read as follows:

- I. "Child" means a person who is under the age of 18 on the date the petition is filed pursuant to RSA [~~169-D:5~~] ***169-D:4-b and 169-D:4-c.***
- II. "Services" means care, guidance, counseling, discipline, supervision, treatment and rehabilitation or any combination thereof. ***"Services" also includes, but is not limited to, diagnostic needs assessment, restitution programs, community service, job training and placement, specialized tutoring, constructive academic exercises, constructive recreational activities, general counseling, and counseling during a crisis situation.***

4 New Paragraph; "Diversion" Defined. Amend RSA 169-D:2 by inserting after paragraph IV the following new paragraph:

IV-a. "Diversion" means a decision made by a person with authority which results in specific official action of the legal system not being taken or being postponed in regards to a juvenile and, in lieu of such inaction or postponement, providing an individually designed program for delivery of services for the juvenile by a specific provider or a plan to assist the juvenile in finding a remedy for his or her inappropriate behavior. The goal of diversion is to prevent further involvement of the juvenile in the formal legal system. Diversion of a juvenile may take place either at pre-filing as an alternative to the filing of a petition, or at any time after the filing of the petition.

5 "Child in Need of Services" Defined. RSA 169-D:2, IV(c) is repealed and reenacted to read as follows:

(c) A child who has committed an offense which if committed by an adult would be a violation under the criminal code of this state, or who has violated an ordinance or by-law of a city or a town, or a child under 16 who has committed an offense which if committed by a person 16 years of age or older would be a violation under the motor vehicle code of this state; and

6 New Sections; Filing of Petitions; Filing by Parents or School Officials. Amend RSA 169-D by inserting after section 4-a the following new sections:

169-D:4-b Petition Filed by Parent or School Official.

I. A petition alleging a child is in need of services may be filed by a parent, legal guardian, custodian or school official at the court in the judicial district in which the child is found or resides. The petition shall be in writing and verified under oath.

II. To be legally sufficient, the petition shall set forth with particularity, but not be limited to, the date, time, manner, and place of the conduct alleged, and shall state the statutory provision alleged to have been violated.

III. If the parents of a child are filing the petition, they shall include information which shows that the child and family have sought to resolve the expressed problem through available community alternatives, that the problem still remains, and that court intervention is needed.

IV. No acts which qualify as delinquent acts as described in RSA 169-B:2, IV shall be included in any petition filed under this chapter.

V. Except as provided in paragraph VI, when a school official is filing the petition, information shall be included which shows that the legally liable school district has sought to resolve the expressed problem through available educational approaches; that the school district has sought to engage the parents or guardian in solving the problem, but they have been unwilling or unable to do so; that the problem remains; and that court intervention is needed.

VI. When a school official is filing a petition involving a child determined to be educationally disabled pursuant to RSA 186-C, the official shall include information which demonstrates that the legally liable school district:

(a) Has determined that the child is educationally disabled; and

(b) Has reviewed for appropriateness the child's current individualized education program (I.E.P.) and placement, and has made modifications where appropriate.

VII. After a legally sufficient petition has been filed, the court shall, unless the case is referred to diversion or a consent order is entered and approved, schedule an initial appearance, to be held within 10 business days of filing, and issue a summons including a copy of the petition, to be served personally upon the person having custody or control of the child or with whom the child may be, requiring that person to appear with the child on the specified date and time. If personal service is not possible, service shall occur at the usual place of abode of the person having custody or control of the child or with whom the child may be. If the person so notified is not the parent or guardian of the child, each parent or guardian shall be notified by first class mail, with proof of mailing, provided the parent or guardian and their residence are known, or if there is neither parent nor guardian whose residence is known, some relative, if any, if their residence is known. Each parent, unless served personally or at their abode, shall be so notified by first class mail, with proof of mailing at the last known address.

VIII. If the child or the parent or guardian is not a resident of this state, or if the court determines it would be more efficient, service may be made by first class mail, with proof of mailing.

IX. A copy of the petition shall be attached to each summons or incorporated in such summons.

X. The summons shall state as follows: "Parents and other individuals chargeable by law for the child's support and necessities

may be liable for expenses incurred in this proceeding including the costs of certain evaluations and placements. RSA 186-C, regarding children with educational disabilities, grants children certain rights to special education and related services at public expense and gives their parents the right to appeal school district decisions regarding services to be provided."

169-D:4-c Petition Filed by Law Enforcement Agency.

I. A law enforcement agency may file a petition alleging a child is in need of services with a judge or clerk of the court in the judicial district in which the child is found or resides. The petition shall be in writing and verified under oath.

II. The petitioning law enforcement officer may issue a summons in hand to the child and to the child's parent, guardian or such other person having custody and control of the child or with whom the child may be living. If personal service is not possible, service shall occur at the usual place of abode of the person having custody or control of the child or with whom the child may be living. If the person summoned is not the parent or guardian of the child, each parent or guardian shall be notified by the law enforcement agency as soon as practicable provided the parent or guardian and their residence are known or if neither the parent nor guardian or their residence is known, some adult relative, if any, whose residence is known. If the person notified is not the parent or guardian of the child, each parent or guardian shall be notified by first class mail, proof of mailing at the last known address, provided the parent or guardian and their residence are known, or if there is neither parent nor guardian whose residence is known, some relative, if any, if their residence is known.

III. The summons shall contain:

(a) The title and statutory citation invoking the process for children in need of services.

(b) A statement as follows: "Parents and other individuals chargeable by law for the child's support and necessities may be liable for expenses incurred in this proceeding including the costs of certain evaluations and placements. RSA 186-C, regarding children with educational disabilities, grants children certain rights to special education and related services from school districts at public expense and gives their parents the right to appeal school district decisions regarding programs to be provided."

(c) Brief instructions regarding court procedure as approved by the administrative judge of the district court.

IV. To be legally sufficient, the petition shall set forth with particularity, but not be limited to, the date, time, manner, and place of the conduct alleged, shall state the statutory provision alleged to have been violated, and shall be entitled, "In the interest of, a child."

V. After a legally sufficient petition has been filed, the court shall, unless the case is referred to diversion or a consent order is entered and approved, schedule an initial appearance to be held not later than 10 business days after the filing of the petition. Notice shall include a copy of the legally sufficient petition and a scheduling order, and shall be made by first class mail, with proof of mailing at the last known address, directed to the parent or guardian or person having custody or control of the minor.

VI. A copy of the petition shall be attached to each summons or incorporated in such summons.

7 Notice of Petition to Department. RSA 169-D:5-a is repealed and reenacted to read as follows:

169-D:5-a Notice of Petition to Department of Health and Human Services. The court shall serve the department of health and human services with a copy of any petition filed under RSA 169-D:4-b and 169-D:4-c, and the department shall have legal standing at and receive notice of all proceedings under this chapter from the time of such service. No agreement or consent order imposing an obligation upon the department shall be approved by the court unless the department has joined in the agreement or consent order.

8 Warrant for Failure to Appear. RSA 169-D:7, II is repealed and reenacted to read as follows:

II. If the child, parent, guardian, or other person ordered to appear, fails to appear for any scheduled hearing, a bench warrant may be issued for the child's appearance or for the appearance of anyone having custody or control of the child, or for both. Additionally, the court may proceed against the child or anyone having custody or control of the child for failure to appear, as authorized by RSA 263:56-a.

9 Diversion Substituted for Release Without Court Referral. RSA 169-D:9 is repealed and reenacted to read as follows:

169-D:9 Diversion.

I. At any time before or during a proceeding brought pursuant to this chapter, a child and the child's family may be referred to a court-approved diversion program or other community resource. Referral may be made by a law enforcement agency or juvenile service officer with the consent of the law enforcement agency prior to or after filing a petition with the court, upon the court's own motion, or at the request of any party with the approval of the court.

II. Referral after filing is appropriate if:

- (a) The facts bring the case within the jurisdiction of the court.
- (b) Referral of the case is in the best interest of the public and the child.
- (c) The child and parent, guardian, or other custodian consent with the knowledge that consent is not obligatory.

III. Referral after filing shall stay the proceedings for a period not to exceed 3 months from the date of referral, unless extended by the court for an additional period not to exceed 3 months. The court may, on its own motion or that of any party, utilize a multi-disciplinary team to consider the facts and circumstances of the case, the needs of the child and family and available services and resources.

IV. During the period of referral, the court may require further conditions of conduct on the part of the child and the child's parents.

10 Initial Appearance. RSA 169-D:11 is repealed and reenacted to read as follows:

169-D:11 Initial Appearance.

I. Unless the matter is referred to diversion pursuant to RSA 169-D:9 or continued for good cause, an initial appearance shall be held within 10 business days of the filing of a legally sufficient petition.

II.(a) At the initial appearance, the court shall:

- (1) Advise the child in writing and orally of any formal charges.
 - (2) Appoint counsel pursuant to RSA 169-D:12.
 - (3) Establish any conditions for release.
 - (4) Set a hearing date.
- (b) However, no plea shall be taken until the child has had the opportunity to consult with counsel or until a waiver is filed pursuant to RSA 169-D:12.

III. After hearing, the court may, with the consent of the child, dispose of the petition by ordering the child to participate in an approved court diversion program.

11 Release Pending Adjudicatory Hearing. RSA 169-D:13 is repealed and reenacted to read as follows:

169-D:13 Release Pending Adjudicatory Hearing.

I. Following the initial appearance, a child alleged to be in need of services may be ordered by the court, subject to such conditions as the court may order, to be:

- (a) Retained in the custody of a parent, guardian, or custodian.
- (b) Released in the supervision and care of a relative.
- (c) Placed in a foster home, as defined in RSA 169-C:3, XIII, which is specifically licensed to accept children in need of services with expenses chargeable as provided in RSA 169-D:29.
- (d) Placed with a friend.
- (e) Placed in a group home, crisis home, or shelter care facility licensed pursuant to RSA 170-E with expenses charged according to RSA 169-D:29.

II. The adjudicatory hearing shall be held within 30 calendar days of the initial appearance unless continued for good cause. No adjudicatory hearing for a child placed outside the child's home may be continued more than once for good cause or for a period longer than 14 days, except by agreement of all the parties.

III. All orders issued pursuant to this section shall set forth the findings, as to the form of release or any conditions, in writing and shall state any custody provisions under paragraph I.

12 Adjudicatory Hearing. Amend RSA 169-D:14, III to read as follows:

III. If the court finds the child is in need of services, it shall, unless a report done on the same child less than 3 months previously is on file, order the department of health and human services or other appropriate agency to make an investigation and written report consisting of, but not limited to, the home conditions, school record and the mental, physical and social history of the child.

III-a. Evaluations performed at the Philbrook center may occur only upon receiving prior approval for such evaluation from the commissioner of the department of health and human services or designee. When ordered by the court, such investigation may include a physical and mental examination of the child, parents, guardian, or person having custody. ***If indicated by the written report of the department of health and human services, the court may order a substance abuse evaluation of the child, parents, guardian, or person having custody. Any substance abuse evaluation of the parent, guardian, or person having custody of the child shall be conducted by a provider contracted with the bureau of substance abuse services, or a provider paid by the parent, guardian, or person having custody of the child. The cost of said evaluation shall be paid by private insurance if available, otherwise by the person undergoing the evaluation, to whom the evaluation shall be provided free or at reduced cost if the person is of limited means.*** The court shall inform the parents, guardian or person having custody and child of their right to object to the physical examination ~~or~~, mental health evaluation, ***or substance abuse evaluation.*** Objections shall be submitted in writing to the court having jurisdiction within 5 ***business*** days after notification of the time and place of the examination or evaluation. The court may excuse the child, parents, guardian, or person having custody upon good cause shown. No disposition order shall be made by the court without first reviewing the investigation report, if ordered.

13 Dispositional Hearing. Amend RSA 169-D:14, V to read as follows:

V. The court shall hold a final dispositional hearing within 30 days of the adjudicatory hearing ***unless continued for good cause. No dispositional hearing for a child placed outside the child's home may be continued more than once for good cause or for a period longer than 14 days, except by agreement of all the parties.***

14 New Subparagraph; Dispositional Hearing May Include Certain After-School or Evening Programs. Amend RSA 169-D:17, I by inserting after subparagraph (d) the following new subparagraph:

(e) Requiring any child to attend structured after-school or evening programs which address some of their compliance issues, as well as supervise the child during the time of the day in which they most value their freedom and the time which is most often used to perform unruly acts.

15 Application for Review. RSA 169-G:2, I is repealed and reenacted to read as follows:

I. The department of health and human services or department of youth development services may file with the clerk of the district court, where the dispositional order was issued, an application for review of the order by the review panel. The application shall be filed within 5 business days after the date of the dispositional order, but not after such date, except for good cause shown. The filing of an application for review shall stay the implementation of the dispositional order.

16 Repeal. The following are repealed:

I. RSA 169-D:5, relative to the filing of petitions for children in need of services.

II. RSA 169-D:6, relative to the issuance of summons and notice in cases involving children in need of services.

17 Effective Date.

I. Section 15 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect January 1, 1999.

AMENDED ANALYSIS

This bill revises certain procedures relative to cases involving children in need of services, defines "diversion," and includes provisions relative to court diversion programs and filing of petitions.

1998-0065h

Amendment to HB 616-FN

Proposed by the Committee on Judiciary and Family Law

Amend RSA 500-A:7-a as inserted by section 5 of the bill by inserting paragraph IV the following new paragraph:

V. A juror shall not have been convicted of any felony which has not been annulled or which is not eligible for annulment under New Hampshire law.

Amend the bill by replacing section 6 with the following:

6 New Subparagraph; Felony Conviction. Amend RSA 500-A:6, III(b) to read as follows:

(b) Require the prospective juror to specify if he is:

(1) A citizen of the United States and a resident of the county;

(2) Able to read, speak and understand the English language; ~~[or]~~

(3) Subject to any physical or mental disability which would impair his capacity to render satisfactory jury service; ~~[and]~~ **or**

(4) A convicted felon whose conviction has not been annulled or whose conviction is not eligible for annulment under New Hampshire law; and

Amend the bill by replacing section 8 with the following:

8 Effective Date. This act shall take effect January 1, 1999.

AMENDED ANALYSIS

This bill changes the method for compiling the master jury list. The voter lists and the driver's license list will be blended annually into a master jury list by the administrative office of the courts.

This bill repeals most jury exemptions. The bill prohibits a convicted felon whose conviction has not been annulled or is not eligible for annulment under New Hampshire law from serving on juries.

1998-0098h

Amendment to HB 627-FN

Proposed by the Committee on Transportation

Amend RSA 261:91-b, I as inserted by section 2 of the bill by replacing it with the following:

I. There is hereby established a conservation number plate trust fund under the administration of the state treasurer. The fund shall be used for the promotion, protection, and investment in the state's natural, cultural, and historic resources. The fund shall be nonlapsing. The state treasurer shall distribute the funds annually on July 1 as follows: \$5,000 of every \$100,000 received, up to a total of \$50,000, shall be distributed to the department of transportation for the expanded wild flower establishment program for use in planting native wild flowers; the remainder shall be distributed equally among the department of cultural affairs, the department of fish and game, the department of resources and economic development, and the state conservation committee.

Amend RSA 261:91-c, V as inserted by section 2 of the bill by replacing it with the following:

V. The funds transferred to the department of transportation shall be used for the expanded wildflower establishment program to be used in maintenance districts.

VI. Any funds transferred from the conservation number plate trust fund which remain unexpended at the end of the fiscal year shall be non-lapsing.

Amend RSA 261:91-d, I(g) as inserted by section 2 of the bill by replacing it with the following:

(g) Three senators appointed by the president of the senate.

Amend the bill by deleting 261:91-d, I(h), as inserted by section 2 of the bill.

Amend RSA 261:91-d, III(c) as inserted by section 2 of the bill by replacing it with the following:

(c) Monitor the implementation of the program through an annual evaluation of projects accomplished during the preceding year and an assessment, prior to implementation, of projects proposed for the coming year to ensure that they are in accordance with legislative intent.

Amend RSA 261:91-f as inserted by section 2 of the bill by replacing it with the following:

261:91-f Report.

I. The members representing the department of transportation, the department of cultural affairs, the department of fish and game, the state conservation committee, the department of resources and economic development, and the department of safety shall each submit a report to the New Hampshire conservation number plate advisory committee chairperson no later than October 1 of each year. The committee chairperson shall compile the 6 reports as a unified report and submit the unified report to the governor, senate president, and the speaker of the house no later than December 31 of each year.

II. The unified report shall contain the following:

(a) A report from the department of safety indicating:

(1) The total number of conservation number plates sold during the preceding year, including the number of initial plates and the number of renewals.

(2) The gross revenue derived from the sale of conservation number plates.

(3) The amount retained by the department of safety to cover administrative costs of the program.

(4) The amount paid to the state treasurer for deposit into the New Hampshire conservation number plate trust fund during the preceding fiscal year.

(b) A report from each of the 5 agencies receiving proceeds under RSA 261:91-c, indicating:

(1) The amount of proceeds received under RSA 261:91-c.

(2) Total funds expended.

(3) Accomplishments achieved pursuant to RSA 261:91-c during the preceding fiscal year.

(4) An outline of the projects and programs to be conducted in the ensuing fiscal year with proceeds from the fund.

Amend the bill by replacing section 3 with the following:

3 New Subparagraph; Application of Receipts. Amend RSA 6:12, I by inserting after subparagraph (qqq) the following new subparagraph:

(rrr) The designated portion of moneys received under RSA 261:91-a, which shall be credited to the conservation number plate trust fund established in RSA 261:91-b.

1998-0181h

Amendment to HB 630-FN-LOCAL

Proposed by the Committee on Executive Departments and Administration

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

AN ACT relative to additional voluntary contributions to provide for early retirement by members of the retirement system.

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

1 Early Retirement. Amend RSA 100-A:16, I(c) to read as follows:

(c)(1) In addition to the contributions deducted from the compensation of members as hereinbefore provided, and subject to the approval of the board of trustees and to such rules and regulations as the board may make with respect to the crediting of interest thereon, any member may provide an additional retirement allowance by making contributions at an additional rate not in excess of the rate computed to be sufficient to provide an additional retirement allowance which, together with his regular retirement allowance, will result in a total retirement allowance not in excess of 50 percent of his average final compensation. Such additional contributions shall become part of his accumulated contributions except in the case of retirement, when they shall be treated as excess contributions returnable to the member in cash or as a member annuity of equivalent actuarial value.

(2)(A) Any member, or a member's participating employer, may make additional contributions on behalf of a member at an additional rate as determined by the actuary and approved by the board of trustees or its designee. Any additional contributions made by a member who intends to retire pursuant to RSA 100-A:5, I(c), or additional contributions of the employer, may be used to offset the reduction, or a portion thereof, in retirement benefits for early retirement as provided in RSA 100-A:5, I(c). Any actuarial fees incurred in determining the amount of additional contributions required for early retirement as provided by this subparagraph shall be paid by the member.

(B) Any additional contributions made under this subparagraph shall become part of the member's accumulated contributions including interest, and may be withdrawn, in cash, upon the member's retirement in lieu of the provisions in subparagraph (c)(2)(A).

(C) Participation by an employer in the provisions for early retirement under RSA 100-A:16, I(c)(2) shall be by resolution, on a form approved by the board of trustees, adopted by the legislative body of a political subdivision.

2 Effective Date. This act shall take effect June 30, 1998.

AMENDED ANALYSIS

This bill allows members of the retirement system, or a member's employer, to provide for an early retirement in certain circumstances by making additional contributions, as determined by the actuary and approved by the board of trustees of the retirement system.

1998-0101h

Amendment to HB 642

Proposed by the Committee on Municipal and County Government

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

AN ACT clarifying the effect of subdivision on property tax assessment and collection.

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

1 New Section; Effect of Subdivision on Property Tax Assessment and Collection. Amend RSA 674 by inserting after section 37 the following new section:

674:37-a Effect of Subdivision On Tax Assessment and Collection. The collection of taxes with respect to land being subdivided shall be governed by the following provisions:

I. If approval of a subdivision plat has been granted on or before April 1 of a particular tax year, giving the owner a legal right to sell or transfer the lots, parcels or other divisions of land depicted on the plat without further approval or action by the municipality, then such lots or parcels shall for that tax year be assessed and appraised as separate estates pursuant to RSA 75:9, whether or not any such sale or transfer has actually occurred, and shall continue to be so assessed unless and until

subdivision approval is revoked under RSA 676:4-a, or the parcels are merged pursuant to RSA 674:39-a.

II. If subdivision approval does not become final until after April 1, then all assessments, appraisals, and tax warrants for that property during that tax year shall pertain to the entire non-subdivided property as it was configured on April 1, notwithstanding any later sale or transfer of subdivided lots or parcels which may occur during that year.

III. When property has been assessed as a single parcel or estate in accordance with paragraph II, and some subdivided portion of that property is later sold or transferred prior to the payment of all taxes, interest, and costs due for that tax year, the municipality's tax lien shall remain in effect with respect to the entire property, and each lot or parcel transferred or retained shall remain obligated for the entire amount, and shall be subject to all procedures of RSA 80 until that amount is collected.

IV. In order to avoid the liability of subdivided lots or parcels for taxes due on the entire property as set forth in paragraph III, any person with a legal interest may, at the time of subdivision approval or any time thereafter, prepay all taxes to be assessed on the entire property for that tax year. If such prepayment is offered prior to the determination of the property's full tax obligation for that year, the collector shall notify the assessing officials, who shall make a reasonable jeopardy assessment in accordance with the provisions of RSA 76:10-a, and commit it to the collector. After full prepayment the tax collector shall upon request execute a statement identifying the subdivision plat, and stating that all real estate tax obligations for the tax year have been fulfilled with respect to the property shown on the plat. Such a statement may be recorded in the registry of deeds at the expense of the party requesting it.

V. Nothing in this section shall be construed to prevent the parties to a conveyance from making alternative provisions, through privately-held escrow or other means, for the allocation and satisfaction of tax obligations; provided, however, that the municipality shall not, with respect to property assessed as a single parcel or estate pursuant to paragraph II, be required to apportion taxes among subdivided lots, or to release any subdivided portion of such property from the municipality's tax lien unless and until the full tax obligation for the assessed property has been satisfied.

2 Reference Added; Separate Tracts. Amend RSA 75:9 to read as follows:

75:9 Separate Tracts. Whenever it shall appear to the selectmen or assessors that 2 or more tracts of land which do not adjoin or are situated so as to become separate estates have the same owner, they shall appraise and describe each tract separately and cause such appraisal and description to appear in their inventory. In determining whether or not contiguous tracts are separate estates, the selectmen or assessors shall give due regard to whether the tracts can legally be transferred separately under the provisions of the subdivision laws including RSA 676:18, ***RSA 674:37-a***, and RSA 674:39-a.

3 Effective Date. This act shall take effect January 1, 1999.

AMENDED ANALYSIS

This bill clarifies the effect of subdivision of land on property tax assessment and collection.

1998-0190h

Amendment to HB 643-FN

Proposed by the Committee on Science, Technology and Energy

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

1 New Chapter; Industry Average Performance System for Air Pollution Control. Amend RSA by inserting after chapter 125-K the following new chapter:

CHAPTER 125-L

Industry Average Performance System

for Air Pollution Control

125-L:1 Purpose.

I. The general court finds that the general level of air pollution in New Hampshire is greater than desirable for public health and ecological integrity, and that considerable reduction of air pollutant emissions from current levels, at a rate consistent with

the continued well-being of the state's economy, is a desirable goal.

II. The general court further finds that based on current scientific evidence, there is no threshold level of air pollution that is safe. Therefore, the goal of the state's air pollution control strategy shall be to provide for continual improvement in air quality and continuing reduction in air pollutant emissions, rather than setting specific goals and terminating programs upon reaching those goals.

III. The purpose of this chapter is to establish a cost-effective system of air pollution control which can provide for continual improvement in air quality and maximize air pollution emission reductions for every dollar spent.

125-L:2 Definitions. In this chapter:

I. "Commissioner" means the commissioner of the department of environmental services.

II. "Heavy motor vehicle" means a motor vehicle of 8,500 pounds gross vehicle weight or more.

III. "Light motor vehicle" means a motor vehicle of less than 8,500 pounds gross vehicle weight.

IV. "Major air pollutant" means:

(a) Carbon monoxide;

(b) Nitrogen oxides; or

(c) Sulfur dioxide.

V. "Nitrogen oxides" means nitric oxide (NO) or nitrogen dioxide (NO₂).

VI. "Ton" means an English ton of 2,000 pounds.

125-L:3 Principles and Goals.

I. To provide cost-effective flexibility for air pollution emission reductions, and to allow for differing circumstances, differing existing equipment, and differing available pollution reduction options, polluters shall be allowed the option of reducing pollution from their own sources or paying into a fund that will directly or indirectly pay for air pollution reductions by others. To provide maximum benefit for every dollar spent, all economic incentives shall be strictly connected to actual physical reductions in amounts of air pollutant emissions. An integrated system shall be established for regulating all air pollutants, so that air pollution control expenditure decisions for all pollutants can be considered as a package.

II. Because under this chapter the state collects and distributes funds within individual categories of polluters, the legislature may choose to include separate categories of polluters in this regulatory system one at a time.

III. The goal for improvement in air pollutant emissions is 3 to 5 percent compounded reduction per year. At this rate, air pollutant emissions will be halved every 15 to 25 years. Pollution control fee rates shall be set to achieve overall emission reduction of that magnitude.

IV. The pollution control fee rates for various major air pollutants should be based on the best available scientific data for relative damage done by the major air pollutants. Such evidence may include, but shall not be limited to, federal Environmental Protection Agency standards for the various major air pollutants, current levels of air pollution concentrations, other public health data, and other environmental and ecological integrity data.

V. The pollution control fee rates shall be set by the legislature.

VI. Since many air pollution controls require significant capital expenditures with sizable lifetimes, the state hereby adopts a stable, slowly changing air pollution control regulatory system. New major air pollutants shall be added only after they have been accepted as a serious problem for several years, and after their relative toxicities have been established by repeated scientific research. Pollution control fee rate ratios among major air pollutants should be adjusted slowly, and only on the basis of repeated scientific research. Changes shall be announced in advance so that adequate time is available to plan and execute additional pollution reduction measures prior to the change. The goal of this regulatory system of economic incentives is to encourage air pollution reduction, not to collect reparations.

125-L:4 Pollution Control Fee Rate.

I. A pollution control fee rate shall be established for each major air pollutant, in terms of dollars per ton to the nearest whole dollar. The rate shall be calculated by multiplying the base pollution control fee rate of paragraph II by any automatic adjustments in accordance with paragraph III, and multiplying the total by the inflation adjustment provided for in paragraph IV.

II. The base pollution control fee rate for each major air pollutant shall be:

(a) For carbon monoxide, \$175 per ton.

(b) For nitrogen oxides:

(1) \$2,275 per ton during the months of May through September, inclusive; and

(2) \$775 per ton during the months of October through April, inclusive.

(c) For sulfur dioxide:

(1) \$455 per ton during the months of May through September, inclusive; and

(2) \$275 per ton during the months of October through April, inclusive.

III. If the actual total annual major air pollutant emissions in any odd-numbered year, starting in 2001, calculated in dollars based on the pollution control fee rates listed in paragraph II, exceed the target upper limit for any year, specified in paragraph V, then all base pollution control fee rates shall be permanently increased by the ratio of the actual total annual major air pollutant emissions for that year to the target upper limit for that year.

IV. Whenever the commissioner determines that the cost of living, as measured by the federal CPI-U index, or its successor, as determined by the Bureau of Labor Statistics, shall have increased by 5 percent or more from January 1, 1998, or from the date used for the previous adjustment under this paragraph, the commissioner shall establish a corresponding inflation adjustment which shall take effect at the beginning of the next calendar month.

V.(a) The target upper limit for the year 2001 shall be the total of the following amounts, evenly distributed by month throughout the year, calculated in dollars based on the base pollution control fee rates listed in paragraph II:

(1) 300,000 tons of carbon monoxide,

(2) 56,000 tons of nitrogen oxides, and

(3) 48,000 tons of sulfur dioxide.

(b) The target upper limit for any odd-numbered year after 2001 shall be 92 percent of the target upper limit for the year 2 years prior to that year.

125-L:5 Categories of Polluters; Implementation; Rulemaking Authority.

I.(a) There is established a retail electricity pollution control fund for the purposes of collecting money from electricity generation sellers who generate electricity within New Hampshire and distributing all money collected to end-user consumers of electricity within the state on a monthly basis.

(b) The commissioner shall determine emissions for all electricity generation sellers who generate electricity within New Hampshire and 1996 average emission rate levels for each facility. For facilities without continuous emission monitoring, emission rates shall be determined based on the scientifically best available data.

(c) All electricity generation sellers who generate electricity within New Hampshire shall pay into the fund the amount determined in RSA 125-L:4 for all emissions on or after the date that money may be collected and distributed from the fund pursuant to subparagraph I(g), less the following credits and exemptions:

(1) A credit against this payment shall be allowed for existing electricity generation sellers who generate electricity within New Hampshire. For the Public Service Company of New Hampshire, or its assignees or successors in interest, the total of credit per month for all facilities shall be, for each of the following periods, calculated in dollars based on the pollution control fee rates established in RSA 125-L:4 for that month:

May, 1999 through April, 2000	900 tons of nitrogen oxides
and 4300 tons of sulfur dioxide	
May, 2000 through April, 2001	880 tons of nitrogen oxides
and 4200 tons of sulfur dioxide	
May, 2001 through April, 2002	860 tons of nitrogen oxides
and 4100 tons of sulfur dioxide	
May, 2002 through April, 2003	840 tons of nitrogen oxides
and 4000 tons of sulfur dioxide	
May, 2003 through April, 2004	820 tons of nitrogen oxides
and 3900 tons of sulfur dioxide	
After April, 2004	800 tons of nitrogen oxides
and 3800 tons of sulfur dioxide	

- (2) Any unused credits may be carried over to future months, without expiration date, and may be transferred or assigned to any other entity. They may only be used as credits against payments to the fund established in subparagraph I(a).
- (3)(A) Between the effective date of this chapter and the day before the date that money may be collected and distributed from the fund pursuant to subparagraph I(g), any facility that reduces its emission rate from 1996 average emission rate levels shall receive a credit against future payments due under this chapter.
- (B) The credit earned for any day for a facility shall be equal to the number of kilowatt-hours sold from that facility’s production, times the credit earned per kilowatt-hour sold. The credit earned per kilowatt-hour sold shall be the amount by which the emissions payment per kilowatt-hour sold, calculated under RSA 125-L:4, based on actual emissions, is less than the emissions payment per kilowatt-hour for that facility, calculated for that day under RSA 125-L:4, if its emissions were 90 percent of its average emissions per kilowatt-hour sold during the year 1996, or 90 percent of its maximum allowable emissions per kilowatt-hour sold under current federal and other state regulations, whichever is less.
- (4) Any facility existing as of May 21, 1996 that, as of that date, was selling 50 percent or more of its annual output under a qualified facility rate order or contract pursuant to RSA 362-A shall be exempt from making any payments into the retail electricity pollution control fund for the duration of that rate order, contract, or any renegotiated arrangement thereto approved by the public utilities commission. Between the effective date of this chapter and the expiration of that rate order, contract, or arrangement, any such facility that reduces its emission rate to less than 90 percent of its 1996 average emission rate levels shall receive a credit against future payments under this chapter, calculated as provided in subparagraph I(c)(3)(B), which may be transferred in accordance with subparagraph I(c)(2).

- (d) All amounts received by the retail electricity pollution control fund each month shall be distributed to all end-user consumers of electricity within the state based on consumption during that month. Funds shall be distributed as a lump sum to each electricity distribution service provider for all of its customers and applied as a credit against customer bills.
- (e) The commissioner shall be responsible for determining all amounts due to the fund, and for notifying the public utilities commission of these amounts. The public utilities commission shall be responsible for calculating all amounts due from the fund.
- (f) The public utilities commission shall be responsible for collecting all amounts required by this paragraph, depositing them to the retail electricity pollution control fund, and distributing the funds in accordance with this chapter.
- (g) No money shall be collected or distributed from the retail electricity pollution control fund until any rules required to be adopted to implement this paragraph become effective, or May 1, 1999, whichever is later.

II.(a) There is established a light motor vehicle pollution control account for the purpose of accounting for all net funds collected from any increases or discounts established pursuant to this chapter from all motor vehicle registrations of light motor vehicles under RSA 261:141, III(g).

- (b) The commissioner shall determine the dollar amount of discounts in motor vehicle registration fees for different categories of light motor vehicles in accordance with the pollution control fee rates and other provisions of this chapter, and shall notify the commissioner of the department of safety of these discount amounts. This determination shall include procedures for handling different weight classes which have been assigned differing emission limits under the federal Clean Air Act.
- (c) Any light motor vehicle manufactured to a standard less stringent than 1998 federal standards shall be treated for purposes of this chapter the same as a vehicle meeting the 1998 federal standards.
- (d) The commissioner of the department of safety shall provide that emissions category information be added to the motor vehicle registration form of light motor vehicles to identify categories of vehicles with pollution emissions at rates less than 1998 federal standards.
- (e) The commissioner of the department of safety shall determine the necessary increase in the motor vehicle registration fee for light motor vehicles not qualifying for a discount. This increase shall be sufficiently large to accommodate the discounts determined in subparagraph II(b) and retain a positive or zero balance in the light motor vehicle pollution control account, and may be large enough so that registration fees will not need to be changed more often than once every 12 months. The commissioner of the department of safety shall then determine the necessary dollar amount adjustments in motor vehicle registration fees under RSA 261:141, III(g) in accordance with this chapter. All adjustments in motor vehicle registration fees shall be in multiples of \$.60 per year (\$.05 per month).
- (f) Light motor vehicle registration fees shall not be changed pursuant to this chapter until after the effective date of any rules required to be adopted to implement this chapter; or the date on which the commissioner of the department of safety certifies that at least 10 percent of all light motor vehicles registered in New Hampshire, or at least 50 percent of all light motor vehicles of a completed model year registered in New Hampshire, qualify for a registration fee discount of at least \$5 per year; or April 1, 2000, whichever is latest.

III. The commissioner of the department of safety shall provide that emissions category information be added to the motor vehicle registration form of heavy motor vehicles to identify categories of vehicles with pollution emissions at rates less than 1998 federal standards.

125-L:6 Rulemaking Authority; Contingent Authority for Chapter.

I. The commissioner shall adopt rules, pursuant to RSA 541-A:

- (a) For the determination of emissions for each facility generating electricity pursuant to RSA 125-L:5, I(b).
- (b) To calculate payments and credits, and determine amounts due to the retail electricity pollution control fund.
- (c) To determine discounts in motor vehicle registration fees pursuant to RSA 125-L:5, II(b).
- (d) For such other purposes as necessary to implement this chapter.

II. The commissioner of the department of safety shall adopt rules, pursuant to RSA 541-A:

- (a) To add emissions category information to motor vehicle registration forms pursuant to RSA 125-L:5, II(d).
- (b) For the determination of changes in motor vehicle registration fees under RSA 125-L:5, II(e).
- (c) To determine the percentage of light motor vehicles qualifying for registration fee discounts.
- (d) For such other purposes as necessary to implement this chapter.

III. The public utilities commission shall adopt rules, pursuant to RSA 541-A:

- (a) To determine all amounts due from the retail electricity pollution control fund.
- (b) To provide for the collection and distribution of funds in accordance with RSA 125-L:5, I.
- (c) For such other purposes as necessary to implement this chapter.

IV.(a) The addition of emissions category information to motor vehicle registration forms as described in RSA 125-L:5, II(d) and RSA 125-L:5, III, and any necessary rulemaking, may begin on the effective date of this chapter.

(b) All other rulemaking under RSA 541-A authorized by this chapter shall not begin until the commissioner has:

- (1) Certified that the federal Environmental Protection Agency will allow the state to substitute emission reductions achieved under this chapter for part or all of federal motor vehicle emission testing requirements which would otherwise be necessary;
- (2) Studied the emissions reductions expected under this chapter and compared them with those required to substitute for motor vehicle emission testing; and
- (3) Submitted a report on this study to the speaker of the house, senate president, governor, and state library.

(c) Fund collections, fund payments, and changes in motor vehicle registration fees pursuant to this chapter shall not begin until the legislature has received the study required by this paragraph and authorized implementation in future legislation.

125-L:7 Integration with Other Air Pollution Control Programs. Any payment under this chapter shall not excuse anyone from the obligation to comply with all other applicable laws.

125-L:8 Annual Report. The department of environmental services shall study possible modifications to this chapter, and shall annually report findings and recommendations of the study to the governor and council, speaker of the house, senate president, house clerk, senate clerk, and state library by October 31. This study shall include recommendations on:

I. Any desirable changes to the base pollution control fee rates, based on scientifically valid evidence, including studies of pollutant transport, differences in pollutant impact depending on location, and differences in pollutant impact depending on temperature or other meteorological variables.

II. The practicality and desirability of adding additional categories of polluters, and creating additional funds or accounts, to this chapter.

III. The practicality and desirability of adding additional major air pollutants to this chapter.

2 Motor Vehicle Registration Fees; Reference Added. Amend RSA 261:141, III(g) to read as follows:

(g) For all motor vehicles other than those in RSA 261:141, I:

0-3000 lbs. \$19.20 (\$1.60 per month)

3001-5000 lbs. \$31.20 (\$2.60 per month)

5001-8000 lbs. \$43.20 (\$3.60 per month)

8001-73,280 lbs. \$.84 per hundred lbs. gross

weight[-], ***provided that***

the fees may be adjusted

pursuant to RSA 125-L:5, II.

3 Initial Report by the Department of Environmental Services. In addition to the requirements of RSA 125-L:8, the department of environmental services report due October 31 , 1998 shall include specific recommendations on:

I. The practicality and desirability of adding one or more heavy motor vehicle funds to this chapter, and the possibility of using this chapter as a substitute for the purposes of the clean fuel fleet program established in RSA 125-K, and of repealing RSA 125-K.

II. The practicality and desirability of making pollution control fee rates for nitrogen oxides depend on outdoor air temperature rather than just the month of the year.

III. The practicality and desirability of adding additional categories of polluters, and creating additional funds, for industrial fuel combustion other than by electricity generation sellers and for retail gasoline sellers.

IV. The current state of knowledge regarding differences among different physical and chemical components of particulate matter and differences among volatile organic compounds, and the additional information needed before they could be considered for addition to the list of major air pollutants.

V. The current state of knowledge regarding mercury and the additional information needed before it could be considered for addition to the list of major air pollutants.

4 Legislative Intent; Report of Department of Environmental Services Due October 31, 2001. It is the intent of the legislature that the credits described in RSA 125-L:5, I(c)(1) for the periods following April, 2004 are subject to legislative review. The department of environmental services, in the annual report due October 31, 2001 pursuant to RSA 125-L:8, shall include specific recommendations for appropriate dollar amounts for the credits for the periods following April, 2004.

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

1998-0201h

Amendment to HB 647-FN-A-LOCAL

Proposed by the Committee on Election Law

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

1 New Section; Centralized Computer Voter Checklist. Amend RSA 5 by inserting after section 6-c the following new section:

5:6-d Centralized Computer Voter Checklist.

I.(a) The secretary of state shall maintain in the office of the secretary of state a centralized computer checklist which shall contain the voter checklist from each town and city ward in the state whether submitted electronically or in written form. The checklist shall contain the name, mailing and legal address of each voter, except if nonpublication is authorized by law, and shall be capable of being sorted by a board of supervisors, party, address, and voting history for the past 3 primary and general biennial elections. If a resident registers to vote on election day the electronic checklist shall contain a feature that automatically notifies the resident's previous town or city ward in which the resident voted. The database shall contain one false name and address from each jurisdiction as a security device.

(b) The secretary of state shall maintain the checklist; provided that the supervisors of the checklist may modify its checklist and provided that notice is provided the secretary of state.

(c) A person who has not voted in the previous 3 general biennial elections shall be removed from the checklist.

II.(a) The checklist shall be a public record open to inspection at reasonable times. The secretary of state shall furnish one or more portions of or the entire copy of the checklist to any requesting person and shall charge a reasonable fee based upon the actual costs incurred for producing the copies, but not to exceed \$25 per supervisory jurisdiction.

(b) Twenty percent of the collected fee shall be deposited in the general fund and 80 percent shall be returned to the town or city providing the requested checklist. If a town or city sells its checklist, the town or city shall retain the entire fee.

(c) Persons who have purchased a checklist shall not be permitted in any way transfer the checklist for profit or commercial purposes.

III. The secretary of state shall provide the attorney general written notice if the checklist indicates a voter has voted twice in the same election.

IV.(a) An advisory panel is established to assist the secretary of state in implementing the provisions of this section.

(b) The panel shall consist of the following members:

(1) One representing the New Hampshire Town Clerks Association, appointed by the association.

(2) One representing the New Hampshire Municipal Association, appointed by the association.

(3) Two representing each of the 2 largest political parties in the state, as determined by representation in the general court, to be appointed by the chairpersons of the parties.

(4) Two from the house election laws committee, including one from each of the 2 largest political parties, to be appointed by the speaker of the house.

(5) Two from the senate public affairs committee, including one from each of the 2 largest political parties, to be appointed by the senate president.

V. The secretary of state may apply for assistance from the Americorps program and university system of New Hampshire volunteers to establish and maintain the computer voter checklist. University system volunteers may be eligible for academic credit.

2 Appropriation. The sum of \$150,000 for the fiscal year ending June 30,1999, is hereby appropriated to the department of state for the purposes in section 1 of this act. This sum shall be in addition to any other funds appropriated to the department of state. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

3 Prospective Repeal. RSA 5:6-d, IV relative to a computer voter checklist advisory panel, is hereby repealed.

4 Effective Date.

I. Section 3 of this act shall take effect November 1, 2001.

II. The remainder of this act shall take effect July 1, 1998.

AMENDED ANALYSIS

This bill:

I. Requires the secretary of state to maintain a centralized computer voter checklist which shall contain the voter checklists from each city and town in the state. The checklist shall be available as a public record.

II. Establishes an advisory panel for the purpose of assisting the secretary of state in implementing the centralized computer voter checklist.

III. Appropriates \$150,000 for the fiscal year ending June 30, 1999 for the purposes of this bill.

1998-0195h

Amendment to HB 651-FN-LOCAL

Proposed by the Committee on Science, Technology and Energy

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

1 New Chapter; Electric Rate Reduction Financing. Amend RSA by inserting after chapter 369 the following new chapter:

CHAPTER 369-A

Electric Rate Reduction financing

369-A:1 Declaration of Purpose and Findings. The general court finds that:

- I. Restructuring of electric utilities to provide greater competition and more efficient regulation has been found by the general court to be in the public good and New Hampshire is now aggressively pursuing restructuring and increased customer choice in order to provide electric service at lower and more competitive rates.
- II. The transition to competitive markets for electricity is a complex endeavor and requires the development of creative and flexible mechanisms to facilitate the movement from monopoly to competition.
- III. The establishment of structured financing options for public utilities will enhance and facilitate the expeditious transition to competition, choice for retail electric customers, and reductions in electric rates for all customer classes consistent with the near term rate relief principle of RSA 374-F:3, XI, without creating any debt or obligation of the state or other adverse impacts upon the state's finances or credit rating. Structured financing options may facilitate and help mitigate stranded cost recovery that the commission determines is appropriate, equitable, and balanced pursuant to authority granted in RSA 374-F:3, XII and 374-F:4.
- IV. Structured finance options are best pursued in the context of settlement agreements between a utility and the commission concerning the implementation of competition. The authorization to securitize the pending buydowns pursuant to RSA 369-A:3, VI(a) is not intended to set any precedent or to prejudice whether structured finance options should be used under any other circumstances.

369-A:2 Definitions. In this chapter:

- I. "Commission" means the public utilities commission established in RSA 363.
- II. "financing entity" means any entity formed or used for the purpose of financing transition costs through the issuance of rate reduction bonds which acquires transition property directly or indirectly from an electric utility in accordance with the terms of a finance order approved by the commission.
- III. "Finance order" means an order of the commission adopted pursuant to this chapter.
- IV. "Rate reduction bonds" means bonds, notes, certificates of participation or beneficial interest, or other evidences of indebtedness or ownership, issued pursuant to an indenture or other security agreement of an electric utility, the proceeds of which are used to pay, finance, reimburse, or refinance transition costs and are secured by or payable from transition property.
- V. "Service territory" means, with respect to any public utility, the geographic area established by the commission as the retail electric service territory of such public utility, as such territory is depicted on the "Electric Utilities Franchise Areas" map issued by the commission, dated July 1, 1993.
- VI. "Security interest" means a "security interest" as defined in RSA 382-A:1-201(37).
- VII. "Transition costs" means expenditures incurred by a public utility or public utilities or which a public utility or public utilities are obligated to incur either prior or subsequent to the effective date of this chapter, and costs approved by the commission to mitigate such expenditures, as shall be designated in a finance order approved by the commission and which may include:
 - (a) Costs associated with generation-related assets and obligations, including generation facilities, generation-related regulatory assets, nuclear settlements, and power purchase contracts, including but not limited to power purchase contracts or arrangements between a public utility and a qualifying facility within the meaning of RSA 362-A, and any renegotiated arrangements thereof;
 - (b) Costs associated with conservation and load management programs;
 - (c) Costs incurred in connection with acquisitions of electric utilities by other electric utilities, including but not limited to premiums paid in connection with such acquisitions;
 - (d) Amounts necessary to refinance or retire existing debt or equity capital of the electric utility and any costs related thereto;
 - (e) Amounts necessary to recover federal or state taxes whose recovery is modified by the transactions approved in a finance

order issued by the commission pursuant to this chapter; and

(f) Reasonable costs, as approved by the commission, relating to the issue, servicing, or refinancing of rate reduction bonds under the provisions of this chapter, including, without limitation, principal and interest payments and accruals, sinking fund payments, transaction costs and redemption premiums, if any, and all other fees, costs, and charges in respect of rate reduction bonds.

VIII. "Transition property" means the irrevocable vested property right created pursuant to this chapter including, without limitation, the right, title, and interest of a public utility or a financing entity to all revenues, collections, claims, payments, money, or proceeds of or arising from rates authorized to be imposed and collected pursuant to a finance order to recover transition costs issued pursuant to this chapter and the costs of paying, financing, reimbursing, or refinancing the transition costs, including the costs of issuing, servicing, and retiring rate reduction bonds, all as determined by the commission in its approval of such finance orders. "Transition property" shall constitute a current irrevocable vested property right notwithstanding the fact that the value of such property right will depend upon electricity usage or the performance of certain services.

369-A:3 Authority to Issue Finance Orders to Finance Transition Costs.

I. The commission is authorized, after hearing or investigation as it may deem proper, to issue one or more finance orders pursuant to which rate reduction bonds shall be issued, if the commission finds that the issuance of such finance order or finance orders is consistent with the public good and will result in significant net savings for ratepayers.

II. When determining whether the issuance of a finance order is consistent with the public good the commission's consideration should include, but not be limited to, whether such an order will assist in providing cost mitigation pursuant to RSA 374-F:3, XII(c), will assist in providing near term rate relief pursuant to RSA 374-F:3, XI, and is consistent with stranded cost recovery that is appropriate, equitable, and balanced pursuant to RSA 374-F:3, XII and 374-F:4.

III. Such finance order or finance orders shall designate certain expenditures or amounts made or incurred by a public utility or public utilities, or expenditures which a public utility or public utilities are obligated to make or incur, as transition costs, and shall direct that the proceeds from the issuance of rate reduction bonds shall be applied only as approved pursuant to RSA 369-A:5.

IV. Finance orders for any transition costs shall only be issued by the commission after approving such transition costs for recovery from ratepayers pursuant to RSA 374-F:4, V and 374-F:4, VII.

V. A utility may petition the commission for adjudication of all or partial stranded cost recovery and the commission may make final determination of some or all amounts approved for stranded cost recovery under RSA 374-F:4, V and 374-F:4, VII at any time.

VI. The commission shall only issue finance orders for the following purposes:

(a) Notwithstanding the limitations of paragraph IV, the commission may issue finance orders to facilitate any or all of the pending buydowns that have been negotiated between the remaining 6 wood to energy plants, or any modified buydowns, if the commission determines that the transition costs being financed are approved for recovery from ratepayers.

(b) The commission shall not issue any finance orders beyond those authorized in this paragraph without further express legislative authorization.

369-A:4 Establishment of Rates to Recover Transition Costs.

I. A finance order shall establish and place into effect one or more non-bypassable rates or charges, including any provisions for subsequent adjustments thereto, that shall provide for the collection of revenues from customers of public utilities sufficient in amount to recover all transition costs designated in the finance order and the costs of capital associated with such transition costs, including, without limitation, the payment of principal, premium, if any, interest, and other costs arising from the issuance of rate reduction bonds. Such rates or charges shall be set forth in a schedule or schedules filed with the commission in such form as may be determined by the commission.

II. The commission shall set the rates or charges, per unit of electricity or unit of capacity for delivery of electricity, necessary and sufficient to provide for the full recovery of payments and interest on the rate reduction bonds, in accordance with the amortization schedule for such bonds determined at the time of offering, as well as financing costs and fees (collectively, "debt

service"), based upon the electric utility's reasonable assumptions, including sales forecasts. Such rates and charges shall be adjusted periodically as determined by the commission, but not less frequently than annually nor more frequently than quarterly. Adjustments shall reconcile actual costs and collections and insure that the debt service on rate reduction bonds is being fully recovered on a current cost basis and that any over-recovery or under-recovery from prior periods is reconciled within one year of the end of such prior periods. The electric utility shall submit a report to the commission showing the calculation of each such adjustment, and such report shall include certification by an independent, nationally-recognized accounting firm, with experience in utility accounting, that the adjustment was computed in accordance with the requirements of this paragraph. Upon its own motion, the commission may investigate the reasonableness of the charges hereunder.

III. The rates or charges established in a finance order shall be collected from each electric customer who purchases electricity distribution services, meaning the retail delivery of electricity to another, and who is located within the service territory or service territories of public utilities identified in the finance order. If such an electric customer purchases electricity distribution services from any person other than the public utility in whose service territory the ratepayer is located, the commission shall require such new electricity distribution service provider to collect such rates or charges from the electric customer by or on behalf of the public utility with revenues therefrom remitted solely for the benefit and repayment of rate reduction bonds as a condition to the provision of electric service to such ratepayer, unless the ratepayer shall have paid a termination charge in the manner and on the basis specified in the finance order.

IV. The commission may set special capacity charges, as part of a finance order, for electric customers who purchase back-up, emergency, or supplemental capacity for the distribution of electricity.

369-A:5 Issuance of Rate Reduction Bonds.

I. An electric utility or financing entity may, from time to time, and after review and approval by the commission, pursuant to a finance order or orders, issue rate reduction bonds. The power and authority of such electric utility or financing entity to issue such bonds shall expire on December 31, 2002. The proceeds from the issuance of rate reduction bonds shall only be used to pay, finance, reimburse, or refinance transition costs, including debt retirement, purchase or redemption of the electric utility's stock, payments made in settlement of outstanding obligations, and amortization of regulatory or intangible assets, all as expressly and specifically approved by the commission. Proceeds from the issuance of rate reduction bonds shall not be used for dividends or executive bonuses.

II. Notwithstanding any other provision of law, RSA 374:30 and RSA 369 shall not apply to any sale, assignment, or other transfer or grant of a security interest in any transition property or the issuance of rate reduction bonds under this chapter.

369-A:6 Creation, Assignment, and Pledge of Transition Property.

I. The vested right established pursuant to this chapter to collect rates or charges to finance, reimburse, or refinance transition costs pursuant to a finance order shall constitute transition property. Transition property, including, without limitation, the irrevocable right to receive all proceeds arising with respect thereto, shall be a vested property right of the public utility or financing entity that owns such transition property. Notwithstanding any other provision of law, if the commission takes final action to designate transition costs and to establish rates or charges pursuant to a finance order, the commission, as it may be constituted from time to time, and any successor agency exercising functions similar to the commission, shall not have authority to thereafter issue any order or process which would alter, amend, suspend, annul, revalue, set aside, or otherwise modify such approval or result in the fixing of rates or transition costs other than in the manner prescribed in the finance order, or which would in any manner reduce or impair the value of transition property or the revenues arising with respect thereto. Upon application by a public utility or a financing entity, or upon its own motion, the commission shall have authority to initiate such other proceedings, hold such other hearings, and take such other actions as may be necessary to implement, protect, and preserve the value of the finance order, the rates and charges specified therein and the transition property. The state pledges that the state shall not limit, alter, or in any way reduce the value of rates or charges approved by the finance order until the principal of the rate reduction bonds and the interest thereon are fully paid and discharged or the contracts are fully performed by the public utility, and that the state shall not impair the rights or remedies of the holders of such rate reduction bonds.

II. An owner of transition property established pursuant to a finance order may, with the approval of the commission, sell or assign all or portions of the owner's right, title, and interest in transition property directly or indirectly to one or more financing entities for the purpose of facilitating the issuance of rate reduction bonds. A public utility or financing entity may, with the approval of the commission, grant rights in transition property as collateral to secure the repayment and satisfaction of all obligations under rate reduction bonds.

III. If a public utility or public utilities sell and assign transition property to a financing entity, the commission shall authorize

the public utility or public utilities to contract with the financing entity obligating such public utility or utilities, or their respective successors to collect the rates and charges established under the finance order for the benefit and account of the financing entity for the satisfaction of obligations under rate reduction bonds.

IV. A transfer of transition property by a public utility to a financing entity that the parties have expressly stated in the governing documentation to be a sale or other absolute transfer, in a transaction approved in a finance order and made in connection with the issuance of rate reduction bonds shall be treated as a true sale and not as a pledge or other financing of the transition property. According the holders of the rate reduction bonds a preferred right to revenues of the public utility or the provision by the utility of other credit enhancement with respect to rate reduction bonds shall not impair or negate the characterization of any transfer as a true sale. Any finance order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceeding with respect to the debtor, pledgor, or transferor of transition property.

369-A:7 Security Interests in Transition Property.

I. The provisions of this section shall apply to any transaction regardless of its form which is intended to create a security interest in transition property. The provisions of this section, and the provisions of Article 9 of RSA 382-A to the extent not inconsistent with the provisions of this section, shall apply to the creation, perfection and enforcement of any security interest in transition property. If any conflict should arise between the provisions of this section and the provisions of Article 9 of RSA 382-A, the provisions of this section shall govern. This section applies to security interests in transition property created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract, and lease or consignment intended as security.

II. The filing of a financing statement in accordance with the terms of this section is required to perfect a security interest in transition property. Unless a person has filed a financing statement in accordance with the terms of this section, the person shall not have a perfected security interest in transition property. A security interest is perfected when it has attached and when a financing statement is filed with the commission and with the office of the secretary of state. If such filings are made before the security interest attaches, then the security interest is perfected at the time when it attaches. The financing statement shall contain a statement describing the transition property and identifying the finance order that establishes the transition property that is the subject of the financing statement. A financing statement substantially complying with the requirements of this section and applicable provisions of Article 9 of RSA 382-A is effective even though it contains minor errors which are not seriously misleading.

III. Presentation for filing of a financing statement or acceptance of the financing statement by the filing officer constitutes filing under this section. A filed financing statement is effective and continues until a termination statement is filed.

IV. The priority between conflicting security interests in transition property shall be determined according to the following:

(a) Conflicting security interests in transition property rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the transition property or the time the security interest is first perfected in accordance with the provisions of this section, whichever is earlier.

(b) For conflicting security interests that are unperfected, the first to attach has priority.

V. A security interest in transition property that has been perfected in accordance with the provisions of this section shall be a continuously perfected security interest in the transition property and any and all proceeds arising with respect thereto, whether received or accrued before or after granting of the security interest.

VI. Except as otherwise provided in this section, when a debtor is in default under a security agreement that grants a security interest in transition property, a secured party shall have the rights and remedies provided in Article 9 of RSA 382-A.

(a) Unless otherwise agreed, upon a default of the debtor, a secured party shall have, in addition to all other rights and remedies that the debtor may have, the right to petition the commission to issue an order directing the debtor to sequester revenues arising with respect to the transition property and to pay such sequestered revenues to the financing entity for the benefit of the holders of rate reduction bonds. The commission shall issue this sequestration and payment order upon petition by the debtor and a finding that the debtor has defaulted under its obligations with respect to the rate reduction bonds and security agreements with respect to the transition property. To the fullest extent permitted by law, any such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor.

(b) If a security interest in transition property is perfected and subsequently the transition property or the revenues arising

with respect to the transition property shall become commingled with other funds of the debtor, the party with a perfected security interest in transition property shall have priority over all other parties with security interests in cash, funds, and deposit accounts of the debtor. This senior ranking shall apply notwithstanding any provision of Article 9 of RSA 382-A to the contrary.

(c) Any surplus in excess of amounts necessary to pay principal, premium, if any, interest, and other costs arising under the documents establishing and governing the rate reduction bonds, shall be remitted to the debtor.

369-A:8 Successors to Public Utilities. Any successor to a public utility pursuant to any merger, acquisition, divestiture, sale, property transfer, bankruptcy, reorganization, or other insolvency proceeding shall perform and satisfy all obligations of the public utility with respect to rate reduction bonds in the same manner and to the same extent as was required of the public utility before such proceeding, including, without limitation, collecting and paying to the holders of the rate reduction bonds, or their representatives, revenues arising with respect to the transition property and seeking tariff adjustments, as necessary and permitted by a finance order, to recover all transition costs designated in an applicable finance order or finance orders.

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

1998-0137h

Amendment to HB 659

Proposed by the Committee on Election Law

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

1 Findings and Purpose. The general court finds that in the interest of maintaining the integrity of the election process, candidates for public office should clearly identify their authorization and payment for any political advertising broadcast on television. To further clarify which advertisements have been authorized by a candidate, any advertisement that is not authorized by any candidate shall contain a statement to that effect. Such disclosure shall reduce the amount of confusing or misleading statements issued during campaigns for public office.

2 Section Heading Modified. Amend the section heading of RSA 664:14 to read as follows:

664:14 Signature, ***Identification, and Lack of Authorization.***

3 Restrictions on Candidate’s Political Advertising Modified. Amend RSA 664:14, IV to read as follows:

IV.**(a)** In the case of political advertising broadcast on radio, television, or any public address system, the name and address of the signer shall be clearly identified.

(b) All political advertising broadcast on television shall identify the name of the candidate who pays for the advertisement or whose advertisement is paid for by a campaign committee. Such identification shall be made both aurally and visually. The visual presentation shall be clearly legible and shall use letters equal or greater than 12 percent of the vertical picture height and shall air for not less than 4 seconds at the conclusion of the broadcast. For the purpose of this section, "campaign committee" means any committee established to elect a particular candidate to office, including raising funds for that purpose.

4 Restrictions on Unauthorized Political Advertising. Amend RSA 664:14, VI to read as follows:

VI. Notwithstanding any other provision of this section, any advertising in support of or in opposition to a candidate by a political committee not authorized by the candidate or candidate committee shall so state ***and shall identify the sponsor of the advertisement. All such political advertising broadcast on television shall include the statement: "This advertisement has been paid for by (name of sponsor) and has not been authorized by any candidate." Such statement shall be made both aurally and visually. The visual presentation shall be clearly legible and shall use letters equal or greater than 12 percent of the vertical picture height and shall be broadcast for not less than 4 seconds at the conclusion of the advertisement.***

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

AMENDED ANALYSIS

This bill:

I. Requires that all political advertising broadcast on television shall end with a display of a photographic image sufficient to identify the candidate who pays for the advertisement or whose advertisement is paid for by a campaign committee.

II. Requires that all political advertising broadcast on television that is not paid for by a candidate, or by a campaign committee, shall identify, aurally and visually, the sponsor of the advertisement.

1998-0145h

Amendment to HB 670-FN

Proposed by the Committee on Commerce

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

An Act prohibiting telephone solicitors from using caller identification blocking services.

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

1 Caller Identification Added. Amend the chapter heading of RSA 359-E to read as follows:

USE OF AUTOMATIC TELEPHONE DIALING SYSTEMS

AND CALLER IDENTIFICATION SERVICES

2 New Paragraphs; Definitions Added. Amend RSA 359-E:1 by inserting after paragraph I the following new paragraphs:

I-a. "Caller identification information" means:

(a) The telephone listing number and/or name of the customer from whose telephone instrument a telephone number is dialed;
or

(b) Other information that may be used to identify the specific originating number or originating location of a wire or electronic communication transmitted by a telephone instrument.

I-b. "Caller identification service" means a service offered by a telecommunications utility that provides caller identification information to a device capable of displaying the information.

I-c. "Per-call blocking" means a telecommunications service that prevents the transmission of caller identification information to a called party on an individual call if the calling party acts affirmatively to prevent the transmission of the caller identification information.

I-d. "Per-line blocking" means a telecommunications service that prevents the transmission of caller identification information to a called party on every call unless the calling party acts affirmatively to release the caller identification information.

3 New Section; Blocking Prohibited. Amend RSA 359-E by inserting after section 5 the following new section:

359-E:5-a Blocking Prohibited. No person using an automated telephone dialing system or any other method for solicitation in this state shall use any method, including per-call blocking or per-line blocking, that prevents caller identification information for the telephone solicitor's lines used to make telephone calls to a residential telephone subscriber from being shown by a device capable of displaying caller identification information. The caller identification information displayed shall contain a telephone number at which the telephone solicitor may receive a telephone calls if the telephone solicitor leaves a message on a telephone answering device or uses an automatic telephone dialing system that plays a recorded message when a connection is completed to a telephone number.

4 Effective Date. This act shall take effect January 1, 1999.

AMENDED ANALYSIS

This bill prohibits persons using automatic telephone dialing systems or any other method of solicitation from using caller identification blocking services.

1998-0096h

Amendment to HB 676-FN-LOCAL

Proposed by the Committee on Municipal and County Government

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

AN ACT relative to distribution of proceeds from the sale of tax-deeded property and repurchase of tax-deeded property by a former owner.

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

1 Statement of Intent. The purpose of this act is to prevent unjust enrichment of a municipality when property which a municipality has acquired by tax deed is sold for substantially more than the amount of taxes, costs and interest owed, while at the same time retaining a sufficient incentive for a taxpayer to redeem property prior to tax deeding. The accumulation of interest on unpaid taxes does not by itself provide such an incentive, because at the time the owner gets notice of the impending tax deed under RSA 80:77, such interest is already owed. This act therefore provides for an additional penalty, as set forth in RSA 80:90, I(f), of 15 percent of the equalized assessed value of the property. This amount can be thought of as a sort of brokerage commission paid by the taxpayer to the municipality for its marketing and disposal of the property, but one which is sufficiently higher than typical commissions charged by private brokers, so as to dissuade a taxpayer from voluntarily opting to let the municipality market the property.

2 New Sections; Proceeds From Sale of Tax-Deeded Property; Repurchase of Property. Amend RSA 80 by inserting after section 87 the following new sections:

80:88 Distribution of Proceeds from the Sale of Tax-Deeded Property.

I. Notwithstanding any other provision of law, for any sale by a municipality of property which is acquired by tax deed on or after the effective date of this section, the municipality's recovery of proceeds from the sale shall be limited to back taxes, interest, costs and penalty, as defined in RSA 80:90.

II. If there are excess proceeds over and above the amount of municipal recovery permitted under paragraph I, then within 60 days of settlement by the purchaser or purchasers of the property sold, the municipality shall file a bill of interpleader with the superior court for the county in which the property is located, naming the former owner or owners, and all persons having a recorded interest in the property as defendants, and paying to the court all amounts over and above those entitled to be retained. The municipality shall also be entitled to retain its reasonable costs and attorney's fees for the preparation and filing of the petition. The court shall issue such orders of notice as are necessary, and shall make such disposition of the funds as it finds appropriate, based upon ownership and lienholder interests at the time of the tax deed. The municipality shall be deemed to have a continuing interest in said funds, and in default of valid claims made by other parties, such funds shall be decreed to be the property of the municipality, free and clear of any remaining liability. No bill of interpleader shall be necessary if, at the time of the tax deed execution, there were no record lienholders, and only one record owner or joint owners, and such former owner or owners are easily identified and located, in which case the excess proceeds shall be paid to such owner or owners.

80:89 Notice to Former Owner and Opportunity for Repurchase.

I. At least 45 days prior to any sale or conveyance by a municipality of property which is acquired by tax deed on or after the effective date of this section, the municipal governing body or its designee shall send notice by certified mail, return receipt requested, to the last known post office address of the owner of the property at the time of the tax deed, if known, or to the person to whom notice of the pending tax deed was given under RSA 80:77. At least one such notice shall be given not more than 90 days prior to a municipality's sale or conveyance. The notice shall set forth the right of the former owner or owners to repurchase the property, as set forth in paragraph II. Copies of any such notice shall also be sent by certified mail, return receipt requested, to any mortgagee to whom notice of the impending tax deed was sent under RSA 80:77-a. For any notice sent pursuant to this paragraph, \$10 may be added to the municipality's "costs" as defined in RSA 80:90.

II. Within 30 days after the notice required by paragraph I, any former owner of the property may give notice by certified mail, return receipt requested, of intent to repurchase the property from the municipality, and stating that such owner is ready, willing and able to pay all back taxes, interest, costs and penalty, as defined in RSA 80:90. If all such back taxes, interest, costs and penalty have not been actually tendered within 15 days of such notice of intent to repurchase, the municipality may otherwise dispose of the property.

III. The deed from the municipality upon such repurchase shall convey the municipality's interest in the property, or such portion as has not been previously disposed of by the municipality, to all record former owners in the same proportional undivided interests as the former owners of record.

IV. The former owners' title upon repurchase shall be subject to any liens of record against the property as of the time of the tax deed to the municipality, and subject to any leases, easements, or other encumbrances as may have been granted or placed on the property by the municipality. In the case of multiple former owners, any owner paying more than a proportional share of the purchase price to the municipality shall have a lien against the other owners for the amount of the excess paid.

V. A notice of intent to repurchase under this section may also be filed by the holder of any recorded mortgage interest in the property which was unredeemed as of the date of the tax deed. Upon payment the property shall be deeded as provided in paragraph III, but the mortgagee shall be entitled to add the amount paid to the municipality to the amount due under the mortgage.

VI. Conveyances under this section shall not be subject to the real estate transfer tax under RSA 78-B.

VII. For purposes of this section, the date of sale or conveyance of the property shall mean the date the municipality enters into a binding contract to convey the property to a third party buyer, whether or not such contract is subject to any contingencies.

80:90 Definitions.

I. For purposes of RSA 80:88 and 80:89, the phrase "back taxes, interest, costs and penalty" shall include all of the following:

(a) All taxes assessed but unpaid as of the date of the tax deed, together with all taxes which would thereafter otherwise have been assessed against such property based on its valuation, but for its ownership by the municipality.

(b) All statutory interest actually accrued on all back taxes as of the date of the tax deed, together with all statutory interest which would otherwise thereafter have accrued on all taxes listed in subparagraph (a), but for the property's ownership by the municipality.

(c) All allowable statutory fees charged for notice and recording in connection with the tax collection process.

(d) All legal costs incurred by the municipality in connection with the property, including those connected with the municipality's sale or the former owner's repurchase.

(e) All incidental and consequential costs as are reasonably incurred or estimated to be incurred by the municipality in connection with its ownership and disposition of the property, including but not limited to insurance, maintenance, repairs or improvements, and marketing expenses.

(f) An additional penalty equal in amount to 15 percent of the assessed value of the property as of the date of the tax deed, adjusted by the most recently available equalization ratio.

II. For purposes of RSA 80:88 and 80:89, "former owner" shall mean any person in whom title to the property, or partial interest therein, was vested at the time of the tax deed, and shall include any heir, successor, or assign of any former owner, provided, however, that any person to whom a former owner has attempted to convey or assign any interest, lien or expectancy in the property subsequent to the date of the tax deed shall not be deemed a former owner.

80:91 Liability and Obligations Limited. With respect to actions of a municipality under RSA 80:88 and 80:89, if the municipality has complied with the provisions of this chapter it shall not have any liability whatsoever to any former owner or lienholder in connection with its management of the property or for the amount of consideration received upon disposition of the property. After the execution of a tax deed, the municipality may treat the property in all respects as the fee owner thereof, including leasing or encumbering all or any portion of the property, without any accountability to former owners, except that the proceeds of any sale must be accounted for as provided in RSA 80:88. Nothing in this chapter shall obligate a municipality to dispose of property acquired by tax deed, except as provided in RSA 80:89.

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

AMENDED ANALYSIS

This bill establishes procedures for the distribution of proceeds from the sale of tax-deeded property and for the repurchase of

tax-deeded property by a former owner.

1998-0029h

Amendment to HB 682-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 requiring the division of state police to maintain a central offender registry and relative to public access to information contained in the registry.

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

1 Transfer to Community-Based Residential Program Added. Amend RSA 651-B:3, I to read as follows:

I. Upon release of any sexual offender or offender against children after conviction, whether on probation, parole, conditional or unconditional release, ***transfer to any community-based residential program***, completion of sentence, or for any other reason, the official in charge of such release shall notify the offender of the offender's duty to report under this chapter. The offender shall acknowledge in writing that he has received such notice. The official shall obtain the address at which the offender expects to reside upon release and shall report such address to the department. The department shall inform the local law enforcement agency where the offender expects to reside. The division shall enter the information concerning the offender's release and notification in the LENS system.

2 Central Offender Registry; Availability of Information to the Public. RSA 651-B:7 is repealed and reenacted to read as follows:

651-B:7 Central Offender Registry; Availability of Information to the Public.

I.(a) The division shall maintain a central offender registry of all individuals registered pursuant to this chapter. This registry shall include the:

- (1) Name and address of the registered individual;
- (2) Offense for which the individual was convicted; and
- (3) Date and court of the conviction for which the individual is registered.

(b) Where such information is available, the registry may also include:

- (1) A photograph or physical description of the individual;
- (2) The date and court of the individual's other convictions, if any;
- (3) Information on the profile of the victim or victims of the individual's offense or offenses; and
- (4) The method of approach utilized by the individual.

(c) In no event shall the registry include the identity of any victim.

II.(a) At periodic intervals, not less frequently than once each month, the commissioner of the department of corrections and the superintendent of each county correctional facility shall forward to the division, a list of every sexual offender or offender against children who is confined in a facility under their control, and who is eligible at that time for any unsupervised work detail or other assignment which may bring the offender into contact with members of the public. These lists shall include:

- (1) The name of the eligible individual and the name and address of the facility where he or she is confined;
- (2) The offense for which the individual was convicted; and
- (3) The date and court of the conviction for which the individual is confined.

(b) Where such information is available, the lists may also include:

- (1) A photograph or physical description of the individual;
 - (2) The date and court of the individual's other convictions, if any;
 - (3) Information on the profile of the victim or victims of the individual's offense or offenses; and
 - (4) The method of approach utilized by the individual.
- (c) In no event shall the registry include the identity of any victim.
- (d) The lists described in this paragraph shall be incorporated by the division into the central offender registry.

III. The division shall forward the information contained in the central offender registry to each local law enforcement agency at periodic intervals, but in no event less frequently than once each month. Information contained in the central offender registry shall be made available to interested members of the public upon request to the local law enforcement agency. The department shall adopt rules, pursuant to RSA 541-A, establishing procedures for the collection of information described in this section, the transmission of the information from the division to the local law enforcement agencies, and the manner in which the information shall be made available to the public. These rules shall enable the public to request information about a named individual or about all listed individuals residing or confined in a specified city or town. The rules shall also include provisions for identifying and maintaining a record of the parties to whom information from the central offender registry has been disclosed, and may also provide for the imposition of a reasonable fee to defray the administrative costs of collecting information and making the information available to the public.

IV. Nothing in this chapter shall be construed to limit the local law enforcement agency from making any use or disclosure of information obtained pursuant to this chapter as may be necessary to the performance of a valid law enforcement function.

V. Local law enforcement agencies, employees of local law enforcement agencies, and county and state officials shall be immune from civil and criminal liability for good faith conduct under this chapter. Nothing in this paragraph shall be deemed to grant any such immunity to any person for that person's reckless or wanton conduct.

3 Effective Date. This act shall take effect January 1, 1999.

AMENDED ANALYSIS

This bill requires the division of state police to maintain a central offender registry of all persons required to be registered as criminal offenders. Information contained in the central offender registry shall be made available to the public, upon application of interested members of the public and in accordance with rules adopted by the department of safety. The bill allows the department to charge a reasonable fee to defray the administrative costs of collecting information and making it available to the public.

1998-0061h

Amendment to HB 686-FN-A

Proposed by the Committee on Health, Human Services and Elderly Affairs

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

1 Statement of Intent. The purpose of this act is to establish the nonprofit child day care loan program in the department of health and human services to be administered through a statewide nonprofit community development financial institution. The loan program shall be used to provide low interest loans for nonprofit child day care providers to establish child day care programs and facilities which will improve the quality, availability, and safety of licensed and legally-operating child day care homes and centers, and to assist providers to comply with the federal Americans With Disabilities Act.

2 New Section; Nonprofit Child Day Care Loan Program Established. Amend RSA 170-E by inserting after 5-a the following new section:

170-E:5-b Nonprofit Child Day Care Loan Program.

I. There is established the child day care loan program to provide low interest loans for nonprofit child day care providers. The

primary purposes of these low interest loans include:

- (a) To construct wheelchair and handicap access ramps, van conversions, and bathroom renovations to accommodate children with disabilities.
- (b) To pay for expansion or construction costs to serve more children under the state voucher program for low income families to meet the expected increase of families receiving temporary assistance to needy families entering the work force.
- (c) To renovate or upgrade current facilities to maintain or exceed code requirements.
- (d) To renovate or expand facilities to serve priority populations, such as infants and toddlers and families in need of night, weekend, drop-in and mildly-ill care.
- (e) To allow after-school programs to expand and purchase startup supplies, including storage, for school-age children.
- (f) To enable child day care providers to secure a more stable environment and continuity of services through ownership or extended lease arrangements.
- (g) To allow the purchase or lease of vans to transport children.
- (h) To fund any other program-related costs as necessary.

II. Criteria for consideration of loan applicants shall include the provider's commitment to enroll low-income children, children subsidized through the Child Care and Development Fund, and children with disabilities, or legally-operating providers who provide services to these populations. In addition, applicants shall:

- (a) Be fiscally sound as shown in a financial statement.
- (b) Meet or exceed state and local operating and zoning regulations, including public health, fire, and safety requirements, or present a local exemption from regulations.
- (c) Demonstrate a commitment to providing quality child day care through one or more of the following:
 - (1) Local child care resource and referral relationship.
 - (2) Family day care support group participation.
 - (3) Enrollment in the United States Department of Agriculture food program (Child and Adult Food Program.)
 - (4) Documentation of training in the Child Care Basics program or other training approved by the department of health and human services.
- (d) Address a geographic or community need for projected child day care services.

III.(a) The department of health and human services may, after consultation with the state child care advisory committee established in RSA 126-A:17, adopt rules pursuant to RSA 541-A, relative to the implementation and administration of the child day care loan program under this section.

- (b) The department shall have the responsibility for notifying providers of the availability of the loans and shall provide guidelines for loan application. Notification shall be made publicly, as well as through child care associations and the child care resource and referral network of New Hampshire.
- (c) The department of health and human services shall have the authority to designate a statewide, nonprofit community development financial institution as recipient of the funds, or a portion of the funds, to be used as a loan loss reserve or interest subsidy or both.
- (d) The department may elect to contract with a statewide nonprofit community development financial institution for provision of the following services:
 - (1) To establish programmatic and credit criteria.
 - (2) To establish a mechanism for making lending decisions related to project feasibility.

(3) To maintain documentation on the borrower's organization, collateral, and on-going repayment ability.

(4) To collect and report the number of day care slots retained, created, or improved and the number of low income families served through the child day care loan program or related activities.

IV. The terms and conditions of the loan shall be contained in a binding agreement between the child day care provider and the lender and may include provisions for a lien on the property. Loans subsidized by an interest-rate subsidy shall carry a term of no more than 15 years and shall, to the extent possible and consistent with this section be determined to match the useful life of the improvements funded by the loan. The department shall annually, on or before July 1, account for any subsidy or loss reserve expended, as well as the repayment status of all loans made under this program.

3 Appropriation. The sum of \$150,000 is hereby appropriated, in addition to any other sums appropriated, to the department of health and human services, to be deposited in the nonprofit child day care loan program, established in RSA 170-E:5-b for the fiscal year ending June 30, 1999, for the purposes outlined in this act. This appropriation shall be nonlapsing. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

4 Transfer of Funds Authorized. The department of health and human services is authorized to transfer funds appropriated to the department for the fiscal year ending June 30, 1999, for the revolving loan fund program under RSA 161-G, to a designated statewide nonprofit community development financial institution for the purposes of the nonprofit child day care loan program established in RSA 170-E:5-b.

5 Transfer of Outstanding Loans Authorized. The department of health and human services is authorized to transfer loans outstanding under the revolving loan fund program established under RSA 161-G, to designated statewide nonprofit community development financial institution administering the nonprofit child day care program established in RSA 170-E:5-b. The designated statewide nonprofit community development financial institution shall monitor and collect such loans for the department. Principal repayments from the revolving loan fund established under RSA 161-G shall be added to the funds available for the nonprofit child day care loan program established in RSA 170-E:5-b.

6 Repeal. RSA 161-G, relative to a revolving loan fund for nonprofit child care providers, is repealed.

7 Effective Date. This act shall take effect July 1, 1998.

1998-0156h

Amendment to HB 697-FN-A-LOCAL

Proposed by the Committee on Health, Human Services and Elderly Affairs

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

AN ACT establishing a homeless prevention trust fund, to be funded by a charge on transfers of real estate.

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

1 Purpose. The purpose of the homeless prevention fund established in this act is to provide a safety net for basic shelter for all New Hampshire citizens and to provide for the establishment and maintenance of an integrated statewide continuum of care, both to prevent homelessness and to ensure a reliable and rapid transition of homeless families and individuals to permanent acceptable housing. This trust fund, which is funded through a charge on all transfers of real estate, will prevent the residents of any city or town from shouldering an unfair burden of the costs of homeless persons, especially those costs resulting from a reduction in federal or state programs for subsidized housing and poor and homeless families and individuals.

2 New Subdivision; Homeless Prevention Trust Fund. Amend RSA 126-A by inserting after section 32 the following new subdivision:

Homeless Prevention Trust Fund

126-A:32-a Definition. In this subdivision, "continuum of care" means a seamless provision of services to assist families and individuals in obtaining appropriate permanent housing. Continuum of care includes, but is not limited to, outreach, emergency shelter, transitional housing, permanent housing, and permanent housing with supportive services, as defined by the Department of Housing and Urban Development.

126-A:32-b Homeless Prevention Trust Fund Established. A homeless prevention trust fund is established in the treasury. The purpose of the trust fund is to provide adequate and stable funding for establishing and maintaining a statewide continuum of care for all New Hampshire citizens and for reimbursing municipalities for their costs in providing emergency shelter where an emergency shelter bed is not available. Interest and principal from this trust fund shall be used solely for these purposes and for these purposes only. Expenditures from the homeless prevention trust fund shall be approved by the legislature as part of the state operating budget. This trust fund is not intended to replace any general fund appropriations to the department of health and human services. The department shall be maintained at, at least, its fiscal year 1998 actual expenditure of general funds. The trust fund shall be administered by the administrator of the homeless and housing bureau of the department of health and human services. The commissioner shall have the authority to adopt rules, pursuant to RSA 541-A, necessary for the expenditures, including rules for reimbursing municipalities.

126-A:32-c Investment of Homeless Prevention Trust Fund. The homeless prevention trust fund shall be nonlapsing. The treasurer shall invest that part of the trust fund which is not needed for immediate distribution in short-term interest-bearing investments. The income from these investments shall be returned to the trust fund.

126-A:32-d Source of Funding. The state treasurer shall deposit into the fund:

- I. The charges on filing deeds of transferred real property under RSA 478:17-k.
- II. Other funds received from public or private sources which meet the criteria of RSA 126-A:32-e.

126-A:32-e Requirement for Acceptance of Other Funds. Other public and private funds may be accepted and used to match or otherwise replace state funds only if they do not financially or otherwise harm the persons needing shelter services and only if they do not restrict the ability to serve all the categories of persons who have demonstrated a need for basic shelter services.

3 New Section; Charge on Transfers of Real Property. Amend RSA 478 by inserting after section 17-j the following new section:

478:17-k Charge on Transfers of Real Property. On the recording of any deed filed as a result of change of ownership of property, the register of deeds shall collect \$5 from both the buyer and seller. Moneys collected shall be turned over to the state treasurer for deposit in the homeless prevention trust fund under RSA 126-A:32-d.

4 New Subparagraph; Homeless Prevention Fund. Amend RSA 6:12, I by inserting after subparagraph (qqq) the following new subparagraph:

(rrr) Moneys received under RSA 478:17-k shall be credited to the homeless prevention fund under RSA 126-A:32-d.

5 Separate Program Appropriation Unit for Continuum of Care Expenditures. Beginning with fiscal year 1999, a program appropriation unit shall be established within the operating budget specifically for continuum of care expenditures by the department of health and human services.

6 Repeal. The following are repealed:

- I. RSA 126-A:32-d, I, relative to the charge on filing deeds of transferred property as a source of funds for the homeless prevention trust fund.
- II. RSA 478:17-k, relative to the charge on filing deeds of transferred property as a source of funds for the homeless prevention trust fund.

7 Effective Date.

- I. Section 6 of this act shall take effect July 1, 2002.
- II. The remainder of this act shall take effect July 1, 1998.

AMENDED ANALYSIS

This bill establishes a homeless prevention trust fund within the treasury to be administered by the department of health and human services to provide continuum of care shelter services. The fund is to be funded by a charge on the filing of deeds resulting from the transfer of property ownership.

1998-0043h

Amendment to HB 707-LOCAL

Proposed by the Committee on Local and Regulated Revenues

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

AN ACT relative to municipal taxation of telecommunications poles and conduits.

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

1 New Section; Property Taxation of Telecommunications Poles and Conduits. Amend RSA 72 by inserting after section 8 the following new section:

72:8-a Telecommunications Poles and Conduits. All structures, poles, towers, and conduits employed in the transmission of telecommunication or cable services shall be taxed as real estate in the town in which such property or any part of its is situated. Wires, fiber optics, switching equipment, and other telecommunications or cable services transmission devices and equipment owned by a person or corporation operating as a telecommunications or cable services provider shall not be taxable as real property.

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

AMENDED ANALYSIS

This bill clarifies the types of telecommunications property which are subject to property taxation by municipalities.

1998-0134h

Amendment to HB 717-FN-A

Proposed by the Committee on Finance

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

AN ACT relative to taxation of qualified investment capital companies.

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

1 No Current Taxation of Qualified Investment Capital Companies. Amend RSA 77:4, V to read as follows:

V. For each holder of an ownership interest in a qualified investment company as defined in RSA 77-A:1, XXI ***which is not a qualified investment capital company as defined in RSA 77-A:1, XXIV***, which holder is subject to tax under RSA 77, the holder's proportional share of the income, less any income attributable to United States government notes or bonds, of such qualified investment company shall be treated as a dividend; however, notwithstanding any other provision of RSA 77, no actual distribution made to such holder by such qualified investment company shall be taxable under RSA 77.

VI. For each holder of an ownership interest in a qualified investment capital company, as defined in RSA 77-A:1, XXIV, which holder is subject to tax under RSA 77, any dividends, other than dividends paid in new or additional equity interests in the qualified investment capital company issuing the same, paid to the holder.

2 New Section; Adjustments for Contributions and Distributions with Respect to Qualified Investment Capital Companies. Amend RSA 77 by inserting after section 4-e the following new section:

77:4-f Adjustments for Contributions and Distributions With Respect to Qualified Investment Capital Companies. The following adjustments shall be made to the class of dividend and interest income taxable under this chapter:

I. A taxable person shall be allowed to deduct from the sum of the interest and dividends taxable under this chapter an amount equal to any cash contribution made to a qualified investment capital company during the applicable taxable period.

II. Notwithstanding RSA 77:7, a taxable person shall be required to report an additional taxable amount equal to any distribution or return of capital previously taken as a deduction pursuant to RSA 77:4-f, I as a capital contribution to a qualified investment capital fund if such return is received within 3 taxable periods after the taxable period in which it is deducted.

3 Definition Modification; Qualified Investment Company. Amend RSA 77-A:1, XXI to read as follow:

XXI.(a) "Qualified investment company" means:

(1) A regulated investment company as defined in section 851 of the United States Internal Revenue Code as defined in RSA 77-A:1, XX[7];

(2) An organization that is an investment company under the Investment Company Act of 1940 as amended[~~or~~];

(3) An organization that would be an investment company under the Investment Company Act of 1940, as amended, but for the exception from investment company status provided by section 3(c)(1) or 3(c)(7) of said Investment Company Act[~~provided, however~~]; **or**

(4) **A qualified investment capital company as defined in RSA 77-A:1, XXIV.**

(b) A qualified investment company shall limit its activities to investment **or other** activities **consistent with its organizational purpose** and those incidental to or in support of such activities and shall submit certification that it satisfies the requirements to be classified as a qualified investment company to the commissioner no later than 9 months subsequent to commencement of its investment activities, and provided further that any such exception from investment company status by reason of section 3(c)(7) is available only to issuers whose securities are owned by persons or organizations who are deemed under section 3(c)(7) or any order, regulation or interpretation thereunder not to require protection under the provisions of the Investment Company Act by reason of their size, nature, status, or sophistication. Upon petition, the commissioner may accept an untimely submission of such certification, which acceptance shall not be unreasonably withheld.

4 Qualified Investment Capital Company; Investment Company Manager Definitions. RSA 77-A:1, XXIV and XXV are repealed and reenacted to read as follows:

XXIV.(a) "Qualified investment capital company" means with respect to any taxable year a business organization that satisfies the following criteria:

(1) The principal purpose of the qualified investment capital company is to provide investment capital to companies through investment in equity and debt securities or interests issued by such companies, including common and preferred stock, indebtedness and convertible securities, to provide such management oversight and business advice to such companies as is reasonably appropriate to protect the investment and to encourage the success of the company and the investment, and to take any and all actions that may become necessary to preserve and protect investments in accordance with the terms of the investment securities.

(2) At least 30 percent of the qualified investment capital company's outstanding equity, capital and profits interests is owned by at least one person who is not related to the qualified investment company's investment company manager or investment company managers.

(3) Each investment company manager of the qualified investment capital company is subject to tax under RSA 77-A and has a payroll apportionment factor, computed in accordance with RSA 77-A:3, I(b), on a separate company or combined group basis as the case may be, that exceeds 50 percent.

(4) The qualified investment capital company has filed an election with the commissioner to be a qualified investment capital company with respect to any taxable period on a form prescribed by the commissioner at any time on or before the fifteenth day of the third month of such taxable period. Such an election shall be effective for the taxable period of the qualified investment capital company for which it is made and for all succeeding taxable periods of the qualified investment capital company. Such election shall designate each of the investment company managers for such qualified investment company.

(b) For purposes of this paragraph, an investment company manager is related to a person if it owns or controls, directly or indirectly (not including ownership through the qualified investment capital company), more than 25 percent of the voting interests in such person.

XXV. "Investment company manager" means with respect to a qualified investment capital company the general partner or general partners, manager or managers, trustee or trustees, other business organizations or individuals who are directly authorized and vested with the responsibility for making decisions regarding the investment, management and divestiture of assets of the qualified investment capital company.

5 Replacing References to Qualifying Venture Capital Fund. Amend RSA 77-A:4, XVII and XVIII to read as follows:

XVII. A deduction equal to any ***cash*** contribution made to a ~~[qualifying venture capital fund]~~ ***qualified investment capital company*** during the applicable taxable period.

XVIII. An addition equal to any return of capital previously taken as a deduction pursuant to RSA 77-A:4, XVII as a capital contribution to a ~~[qualifying venture capital fund]~~ ***qualified investment capital company*** if such return is received within 3 taxable periods after the taxable period in which it was deducted.

6 New Section; Reporting Obligation. Amend RSA 77-A by inserting after section 5-a the following new section:

77-A:5-b Reporting for Qualified Investment Capital Companies. Every business organization that elects treatment as a qualified investment capital company shall with respect to each taxable period make a report, in accordance with such forms or regulations as the commissioner may prescribe, setting forth the aggregate amounts of funds invested in the qualified investment capital company and the aggregate amounts of investments made by the qualified investment capital company by industry and state or other location. The information provided in such report shall be included in the tax expenditure report required under RSA 77-A:5-a notwithstanding RSA 21-J:14, however, such report shall not require disclosure of the identity of individual investors or individual investments made by the qualified investment capital company.

7 Definition Modification; Qualified Investment Company. Amend RSA 77-E:1, XIV to read as follows:

XIV. ***(a)*** "Qualified investment company" means:

(1) A regulated investment company as defined in section 851 of the United States Internal Revenue Code as defined in RSA 77-E:1, XVII[.];

(2) An organization that is an investment company under the Investment Company Act of 1940, as amended[, or];

(3) An organization that would be an investment company under the Investment Company Act of 1940, as amended, but for the exception from investment company status provided by section 3(c)(1) or 3(c)(7) of said Investment Company Act[, provided, however,]; ***or***

(4) ***A qualified investment capital company as defined in RSA 77-A:1, XXIV.***

(b) A qualified investment company shall limit its activities to investment ***or other*** activities ***consistent with its organizational purpose*** and those incidental to or in support of such activities and shall submit certification that it satisfies the requirements to be classified as a qualified investment company to the commissioner no later than 9 months subsequent to commencement of its investment activities, and provided further that any such exception from investment company status by reason of section 3(c)(7) is available only to issuers whose securities are owned by persons or organizations who are deemed under section 3(c)(7) or any order, regulation or interpretation thereunder not to require protection under the provisions of the Investment Company Act by reason of their size, nature, status, or sophistication. Upon petition, the commissioner may accept an untimely submission of such certification, which acceptance shall not be unreasonably withheld.

8 Repeal. The following are repealed:

I. RSA 77-A:1, XXVI-XXIX, relative to the definitions of "qualifying start-up firm," "affiliate," "affiliated," and "bank" for the purposes of qualified venture capital funds, are repealed.

II. RSA 77-A:2-c, relative to the tax on qualified venture capital funds.

9 Applicability. This act shall apply for all taxable periods ending after June 30, 1998.

10 Effective Date. This act shall take effect July 1, 1998.

AMENDED ANALYSIS

This bill expands the definition of qualified investment company to include qualified investment capital companies for the purposes of the business profits tax and the business enterprise tax. The bill also repeals the application of the business profits tax to qualified venture capital funds.

1998-0144h

Amendment to HB 721

Proposed by the Committee on Commerce

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

AN ACT authorizing municipalities to restrict the advertising of alcohol and tobacco through the exercise of zoning powers.

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

1 Findings; Intent.

I. The general court finds that there is a substantial governmental interest in permitting municipalities to regulate certain advertising of alcohol and tobacco in order to allow those municipalities which choose to do so to reduce the exposure of their young people, who are prohibited by state law from purchasing or using those substances, to the pernicious effects of such advertising.

II. The general court further finds that any municipality with an interest in reducing the incidence of youth exposure to certain tobacco and alcohol advertising, which is in turn ultimately aimed at reducing illegal youth consumption of those substances, will be able to directly advance that interest by enacting zoning provisions aimed at restricting the advertising of tobacco and alcohol.

III. The general court further finds that the United States Supreme Court in the case of *Packer Corp. v. State of Utah*, 285 U.S. 105 (1932), as well as the United States Court of Appeals for the Fourth Circuit in the cases of *Penn Advertising v. Mayor and City Council of Baltimore*, 63 F. 3d. 318 (4th Cir. 1995), and *Anheuser-Busch, Inc. v. Schmoke*, 63 F. 3d. 1305 (4th Cir. 1995), have upheld the constitutionality of restrictions on advertising of tobacco and alcohol, including for the purpose of ultimately reducing the incidence of youth consumption of tobacco and alcohol.

IV. The general court intends by enacting this legislation to enable municipalities to restrict certain advertising of tobacco and alcohol in a manner which is no more extensive than is necessary to advance the government interest in reducing the exposure of youth to such advertising.

2 New Paragraph; Tobacco and Alcohol Advertising Restrictions. Amend RSA 674:16 by inserting after paragraph II the following new paragraph:

II-a. The power to adopt a zoning ordinance under this subdivision expressly includes the power to restrict certain means of advertising tobacco and alcohol as provided by RSA 674:23-a.

3 New Section; Authority to Restrict Advertising of Tobacco and Alcohol. Amend RSA 674 by inserting after section 23 the following new section:

674:23-a Authority to Ban or Restrict Certain Means of Advertising Tobacco and Alcohol.

I. The local legislative body of any city, town, or county in which there are located unincorporated towns or unorganized places is authorized to adopt or amend a zoning ordinance which includes a ban or restrictions on tobacco or alcohol advertisements within any area or zone within the boundaries of the city, town, or unincorporated town, or unincorporated place, including drug-free school zones as provided by RSA 193-B. Such ordinance shall be designed to further the public health interest and reduce illegal youth consumption of alcohol and tobacco.

II. As used in this section, "tobacco or alcohol advertisements" mean any stationary promotional display for tobacco or alcohol products designed to attract public attention which is visible from a public way including, but not limited to, signs, billboards, window displays, banners or permanent trailers. It shall not include in-store displays which are incidentally visible through a window.

III. The commissioner of transportation shall not grant a permit under RSA 236:72 for any tobacco or alcohol advertisements which would violate any ordinance adopted under this section.

4 Effective Date. This bill shall take effect January 1, 1999.

AMENDED ANALYSIS

This bill permits a city, town, or unincorporated town or place to restrict by zoning ordinance alcohol and tobacco advertising within its boundaries.

1998-0191h

Amendment to HB 730-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 relative to aggravated felonious sexual assault.

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

- 1 New Paragraph; Definition of "Therapy." Amend RSA 632-A:1 by inserting after paragraph V the following new paragraph:
VI. "Therapy" means the treatment of bodily, mental, or behavioral disorders by remedial agents or methods.
- 2 Coercion Added; Unethical Therapy, Medical Treatment or Examination. Amend rsa 632-A:2, I(g) to read as follows:
(g) when the actor provides therapy, medical treatment or examination of the victim ***and in the course of that therapeutic or treating relationship:***
(1) Acts in a manner or for purposes which are not professionally recognized as ethical or acceptable; ***or***
(2) Uses this position as such provider to coerce the victim to submit.
- 3 Effective Date. This act shall take effect January 1, 1999.

AMENDED ANALYSIS

This bill makes it aggravated felonious sexual assault when a defendant uses a position as a provider of therapy or medical treatment to coerce a victim to submit to sexual penetration.

1998-0107h

Amendment to HB 736-FN

Proposed by the Committee on Judiciary and Family Law

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

AN ACT increasing the mileage rate for jurors.

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

- 1 Jurors' Mileage Rate Increased. Amend RSA 500-A:15, I to read as follows:
I. Grand and petit jurors' fees and mileage shall be paid by the state. The jurors' fees shall be \$10 for each half day's attendance before a superior court; for each mile's travel to and from the place where the juror serves, mileage shall be paid at the rate of [~~\$20~~] **\$.31** per mile, mileage to be allowed for each day's attendance when the juror is required to leave the town or city in which [~~he~~] ***the juror*** resides.
- 2 Effective Date. This act shall take effect January 1, 1999.

AMENDED ANALYSIS

This bill increases the mileage rate for serving as a juror.

1998-0149h

Amendment to HB 747-FN-A

Proposed by the Committee on Wildlife and Marine Resources

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

AN ACT establishing a wildlife habitat stamp for persons engaged in taking wild animals or birds and continually appropriating the funds for wildlife habitats.

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

1 New Section; Wildlife Habitat Stamp; Wildlife Habitat Account Established. Amend RSA 214 by inserting after section 1-e the following new section:

214:1-f Wildlife Habitat Stamp.

I. No person shall at any time take wild animals or wild birds in this state without first procuring, in addition to any applicable licenses required by title XVIII, a wildlife habitat stamp under RSA 214:9, XV, for the same period. Each stamp issued shall be signed across the face in a permanent manner with the applicant's signature and shall be carried upon such person while engaged in taking wild animals or wild birds. A person under the age of 16 years may take wild animals or wild birds without such a stamp provided that, while so doing, the person is accompanied by an adult who has procured such stamp. This paragraph shall not apply to any person who takes wild animals or wild birds under a complimentary license, excluding any administrative fee, issued pursuant to RSA 214:7-a, RSA 214:13-b, or RSA 214:13-c, or a lifetime license issued pursuant to RSA 214:9-c that was purchased in a prior calendar year.

II. A license to take any kind of wild animal or wild bird as required by title XVIII shall not be issued, except for the complimentary licenses listed under paragraph I, to any person who has not purchased a wildlife habitat stamp. A person shall only be required to purchase one wildlife habitat stamp each year regardless of the number of licenses purchased by that person during that year.

III. For the purpose of this section, "wild animal" shall not include fish or marine species.

IV. The executive director, with the approval of the commission, shall adopt rules, pursuant to RSA 541-A, relative to the manner of issuance of the wildlife habitat stamp, and may, with the approval of the commission, provide for the reproduction, sale, licensing, and other disposal of art created for the stamp. The art for the stamp may be selected through an art contest administered by the executive director with the approval of the commission.

V. The state treasurer shall establish a separate nonlapsing account within the fish and game fund, to be known as the wildlife habitat account, to which shall be credited all fees collected under RSA 214:9, XV from the sale of wildlife habitat stamps and all proceeds derived from the art created for the stamp under paragraph IV. The state treasurer may accept public and private grants and donations into the account.

VI. The state treasurer shall invest the moneys in the wildlife habitat account as provided by law. Interest received on investments shall be credited to the account.

VII. The wildlife habitat account is continually appropriated and may only be used for the following purposes within the state of New Hampshire:

- (a) The development, management, preservation, conservation, restoration, and maintenance of wildlife habitat on both public and private lands, with at least 50 percent of the annual revenue from stamp sales dedicated to pay costs of labor and materials for direct physical land management activities;
- (b) Obtaining land access to wildlife habitat areas;
- (c) The acquisition of easements upon private property for the purposes of subparagraphs (a) and (b);
- (d) The acquisition of private land to protect critical wildlife habitat, provided that the governing body of any municipality, unincorporated town, or unorganized place in which the property is located approves;
- (e) The promotion and production of the wildlife habitat stamp and artwork; and
- (f) Providing information to the public on the location of properties managed by the fish and game department.

VIII. When stamp revenue is used to either obtain an easement under subparagraph VII(c) or purchase land under subparagraph VII(d), no condition shall be accepted which restricts hunting and trapping on the associated land. This requirement shall not apply to lands used for access purposes or if the executive director finds that it is in the interest of the hunting and trapping community to allow such a restriction. The executive director shall allow hunting and trapping on such lands, as is permissible, but may prohibit for any length of time the hunting or trapping on the whole or part of such lands when it is necessary for the protection or propagation of a wildlife species or for public safety reasons.

IX. The executive director, with the approval of the commission, shall expend the funds in the wildlife habitat account. Prior to the expenditure of any funds, the fish and game department shall analyze the proposed project and provide the executive director and the commission with recommendations as to the project's usefulness and feasibility.

X. The executive director shall submit to the fiscal committee and the chairpersons of the house wildlife and marine resources committee and the senate wildlife and recreation committee a detailed fiscal year report by October 1 of each year, beginning with fiscal year 1999, with sufficient information to be fully understood by the general court and the public, summarizing the receipts and disbursements from the wildlife habitat account and the public benefits derived from the disbursements from it. Every fifth year, beginning in 2003, the annual report shall provide an in-depth financial accounting and summary of work accomplished in the previous 5 years, outlining all projects that are completed, in process, and planned. All annual reports shall be made available to the public after submission to the general court.

2 New Paragraph; Fee; Wildlife Habitat Stamp. Amend RSA 214:9 by inserting after paragraph XIV the following new paragraph:

XV. If the applicant wishes to take wild animals, excluding fish and marine species, or wild birds, \$2.50, and the agent shall thereupon issue a wildlife habitat stamp as provided in RSA 214:1-f. The agent shall be entitled to retain \$.50 of the \$2.50 fee for each wildlife habitat stamp sold and all stamps sold at the department headquarters or any subagency thereof shall retain the same \$.50 fee which, notwithstanding RSA 214:1-f, V, shall be credited to the general fish and game fund.

3 Effective Date. This act shall take effect on January 1, 1999.

AMENDED ANALYSIS

This bill requires that a person wishing to take wild animals or birds shall first acquire a wildlife habitat stamp. The revenue from the stamp shall be credited to a wildlife habitat account in the fish and game fund for the purposes of the acquisition, development, maintenance and promotion of wildlife habitats.

1998-0110h

Amendment to HB 749-FN

Proposed by the Committee on Executive Departments and Administration

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

AN ACT relative to disability retirement benefits for retirement system members permanently incapacitated for duty.

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

1 Group I; Burden of Proof Before Board. Amend RSA 100-A:6, I(c) to read as follows:

- (c) Upon the application of a group I member in service or of ~~his~~ **the member's** employer, any ~~such~~ member who has been totally and permanently incapacitated for duty as the natural and proximate result of:
- ~~(1) An accident occurring while in the actual performance of duty at some definite time and place, or [as the natural and proximate result of] or~~
- ~~(2) Repeated trauma or gradual degeneration occurring while in the actual performance of duty, or arising out of and in the course of employment, or [of]~~
- ~~(3) Any occupational disease arising out of or in the course of employment as defined by RSA 281-A:2, XI, RSA 281-A:2, XIII, or RSA 281-A:17, and found to be compensable by the commissioner of labor pursuant to RSA 281-A:43, provided that such injury shall be without willful negligence on [his] the member's part,~~

may be retired by the board of trustees on an accidental disability retirement allowance; provided that ~~[he]~~ **the member** is found to be mentally or physically incapacitated for the further performance of duty and that such incapacity is likely to be permanent[-] **and provided further that the member shall have the burden of proving causation to the satisfaction of the board of trustees if the member enters into a lump sum settlement of an injury claim that was at any time denied by the employer or the employer's insurance carrier and not found compensable by final decision of the labor commissioner or the compensation appeals board after hearing pursuant to RSA 281-A:43.**

2 Group II; Burden of Proof Before Board. Amend RSA 100-A:6, II (c) to read as follows:

(c) Upon the application of a group II member in service or of ~~[his]~~ **the member's** employer, any such member who has been totally and permanently incapacitated for duty as the natural and proximate result of:

(1) An accident occurring while in the actual performance of duty at some definite time and place, or ~~[as the natural and proximate result of]~~

(2) Repeated trauma or gradual degeneration occurring while in the actual performance of duty, or arising out of and in the course of employment, or ~~[of]~~

(3) Any occupational disease arising out of or in the course of employment as defined by RSA 281-A:2, XI or XIII, and found to be compensable by the commissioner of labor pursuant to RSA 281-A:43, provided that such injury shall be without willful negligence on ~~[his]~~ **the member's** part,

may be retired by the board of trustees on an accidental disability retirement allowance; provided that ~~[he]~~ **the member** is found to be mentally or physically incapacitated for the further performance of duty and that such incapacity is likely to be permanent[-], **and provided further that the member shall have the burden of proving causation to the satisfaction of the board of trustees if the member enters into a lump sum settlement of an injury claim that was at any time denied by the employer or the employer's insurance carrier and not found compensable by final decision of the labor commissioner or the compensation appeals board after hearing pursuant to RSA 281-A:43.**

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

AMENDED ANALYSIS

This bill requires group I or group II retirement system members to prove causation before the board of trustees in certain circumstances in order to receive disability benefits for permanent incapacity resulting from an injury while in the performance of duty.

1998-0125h

Amendment to HB 753

Proposed by the Committee on Executive Departments and Administration

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

AN ACT relative to the board of auctioneers.

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

1 Board of Auctioneers; Membership Increased. Amend RSA 311-B:2, I and II to read as follows:

I. There is hereby established a state board of auctioneers consisting of ~~[5]~~ **7** members, including ~~[4]~~ **5** auctioneers and ~~[one]~~ **2** public ~~[member]~~ **members**, appointed by the governor with the advice of the council for terms of 5 years. Terms shall expire March 1. All board members shall be residents of this state and no board member shall serve more than 2 consecutive terms.

II. ~~[The]~~ **Each** public member of the board shall be a person who is not, and never was, a member of the auctioneering profession or the spouse of any such person, and who does not have, and never has had, a material financial interest in either the provision of such professional services or an activity directly related thereto, including the representation of the board or profession for a fee at any time during the 5 years preceding appointment.

2 New Paragraph; Quorum; Voting. Amend RSA 311-B:2 by inserting after paragraph IV the following new paragraph:

V. Four members of the board shall constitute a quorum. At least one public member of the board must be present on each vote of the board.

3 New Section; Administrative Fines; Rulemaking Authority. Amend RSA 311-B by inserting after section 3 the following new section:

311-B:3-a Administrative Fines; Rulemaking Authority. The board, with the approval of the secretary of state, may adopt rules pursuant to RSA 541-A relative to the establishment of administrative fines for violations of this chapter.

4 Minimum Bond Amount. Amend RSA 311-B:8 to read as follows:

311-B:8 Bond. No license shall be granted until the applicant has filed a bond with the secretary of state in the sum of ***at least*** \$10,000, ***or an additional amount as determined by the board***, with sureties approved by the secretary of state, conditioned that he will properly account for and deliver to the person entitled, all moneys and things of value coming into his hands as an auctioneer and will conform to the laws relating to such auctions. All bonds required under this chapter shall be purchased from a reputable company authorized to do business in this state.

5 New Subparagraph; Disciplinary Action; Administrative Fines. Amend RSA 311-B:11, III by inserting after subparagraph (d) the following new subparagraph:

(e) By assessing administrative fines in amounts established by the board under RSA 311-B:3-a which shall not exceed \$2,000 per offense, or in the case of continuing offenses, \$200 for each day that the violation continues.

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

AMENDED ANALYSIS

This bill increases the membership of the board of auctioneers. This bill also allows the board to adopt rules establishing administrative fines and to determine a minimum bond amount.

1998-0167h

Amendment to HB 774-FN

Proposed by the Committee on Judiciary and Family Law

Amend RSA 458-C:2, I as inserted by section 2 of the bill by inserting after subparagraph (d) the following new subparagraph:

(e) Amounts actually paid by the obligor for allowable child care expenses or medical insurance coverage for the minor children to whom the child support order applies.

Amend the bill by inserting after section 2 the following new section and renumbering the original sections 3-9 to read as sections 4-10 respectively:

3 New Paragraph; Definition of "Allowable Child Care Expenses." Amend RSA 458-C:2 by inserting after paragraph I the following new paragraph:

I-a. "Allowable child care expenses" means actual work-related child care expenses for the children to whom the order applies, up to no more than an annual total of \$5,000 for one child, \$9,000 for 2 children, and \$12,000 for 3 or more children.

Amend RSA 458-C:2, VI as inserted by section 4 of the bill by replacing it with the following:

VI. "Net income" means the parents' combined adjusted gross income less standard deductions published on an annual basis by the Department of Health and Human Services and based on federal Internal Revenue Service withholding table amounts for federal income tax, F.I.C.A., and Medicare, which an employer withholds from the monthly income of a single person who has claimed a withholding allowance for 2 people.

Amend RSA 458-C:3, II as inserted by section 5 of the bill by replacing it with the following:

II.(a) The total support obligation shall be determined by multiplying the parents' total net income, as defined in RSA 458-C:2, VI, by the appropriate percentage derived from this section.

- (b) The total child support obligation shall be divided between the parents in proportion to their respective incomes as adjusted by this section, except when there are incurred by the obligee child care expenses or for the actual amount paid for medical insurance coverage for the minor children to whom the child support order applies.
- (c) For those cases involving allowable child care expenses or medical insurance expenses incurred by the obligee, the same methodology described in subparagraphs (a) and (b) shall be used, except as part of the determination of each parent's share of the child support obligation, the obligee's allowable child care expenses or medical insurance expenses shall be deducted from the adjusted gross income of the obligee.
- (d) All child support obligations calculated pursuant to this chapter shall be rounded to the nearest whole dollar.

Amend the bill by replacing section 10 with the following:

10 Effective Date. This act shall take effect April 1, 1998.

1998-0099h

Amendment to HB 784-FN-LOCAL
Proposed by the Committee on Education

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

AN ACT relative to changing the amount of estimated expenditures per pupil beyond which the department of education is liable for the cost of school district borrowing.

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

1 Liability of Department of Education; Costs Over 3-1/2 Times Estimated Expenditure. Amend RSA 186-C:18, VIII to read as follows:

VIII. A school district shall raise and appropriate funds reflecting the total cost in meeting catastrophic special education student costs as provided under RSA 186-C:18, including the school district and department of education liability. A school district may issue reimbursement anticipation notes as provided for in RSA 198:20-d to be redeemed upon receipt of reimbursement from the state. The department of education shall be liable for the cost of the school districts borrowing of any funds for special education student costs over ~~[40]~~ **3-1/2** times the estimated state average expenditure per pupil for the school year preceding the year of distribution.

2 Reimbursement Anticipation Notes; Exempt From Debt Limits. Amend RSA 198:20-d to read as follows:

198:20-d Reimbursement Anticipation Notes. Notwithstanding any other provision of law to the contrary, a school district may incur debt in anticipation of reimbursement under RSA 186-C:18. The governing body, after ~~[receiving authorization for borrowing from the legislative body]~~ **notice and public hearing**, may elect **to borrow such funds and** to recognize the proceeds of the borrowing as revenue for property tax rate setting purposes by providing written notification~~[prior to September 1,]~~ to the commissioner of the department of revenue administration stating the specific amount of borrowing to be recognized as revenue. ***Any borrowing under this section shall be exempt from the provisions of RSA 33, relative to debt limits.***

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

AMENDED ANALYSIS

This bill changes the amount of estimated expenditures per pupil beyond which the department of education is liable for the cost of school district borrowing, and allows school districts to incur debt in anticipation of reimbursement to meet catastrophic special education costs.

1998-0084h

Amendment to HB 793
Proposed by the Majority of the Committee on Judiciary and Family Law

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

AN ACT defining the responsibility of individuals engaged in equine activities.

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

1 Statement of Intent.

I. The general court finds that equine activities are important to the economy and culture of the state. The general court also recognizes that equines are prone to behave in ways that may result in injury, harm, or death to persons involved in equine activities, and so finds that the responsibilities of sponsors and professionals should be distinguished between those of the participants for purposes of determining liability for injuries suffered from those activities.

II. It is the intent of the general court that no person shall be liable for damages sustained by another solely as a result of risks inherent in equine activity, insofar as those risks are inherent to the equine activity and obvious to the person injured.

III. It is the intent of the general court that a person responsible for equines, or responsible for the safety of those engaged in equine activity, whose negligence proximately causes injury to a person engaged in those activities, is liable for that injury in accordance with other applicable law.

2 New Section; Liability; Equine Activities. Amend RSA 508 by inserting after section 18 the following new section:

508:19 Liability; Equine Activities.

I. In this section:

(a) "Engages in an equine activity" means rides or drives an equine; or assists in medical treatment of an equine; or is a passenger upon an equine; or is a passenger in a vehicle drawn by an equine; or trains, whether mounted or unmounted, an equine; or who is involved in event management. The term "engages in an equine activity" does not include being a spectator at an equine activity, except in cases where the spectator is in an unauthorized area and in immediate proximity to the equine activity.

(b) "Equine" means a horse, pony, mule, donkey, or hinny.

(c) "Equine activity" means:

(1) Equine shows, fairs, competitions, performances, or parades that involve any or all breeds of equines and any of the equine disciplines, including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, 3-day events, combined training, rodeos, driving, pulling, cutting, polo, steeple chasing, hunting, english and western performance riding, endurance riding, games, and eventing.

(2) Equine training or teaching activities.

(3) Boarding equines.

(4) Riding, inspecting, or evaluating an equine belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect, or evaluate the equine.

(5) Rides, trips, hunts, fields trials, or other equine activities of any type, however informal or impromptu, that are sponsored by an equine activity sponsor.

(6) Placing or replacing shoes on an equine.

(d) "Equine activity sponsor" means an individual, group, club, partnership or corporation, whether or not the sponsor is operating for profit or not for profit, which sponsors, organizes, or provides for, equine activities, including, but not limited, to pony clubs, 4-H clubs, field trial clubs, hunt clubs, riding clubs, school and college sponsored classes, programs and activities, therapeutic riding programs, stables, clubhouses, pony ride strings, fairs, and arenas at which the activity is held.

(e) "Equine professional" means a person engaged for compensation:

(1) In instructing a participant or renting to a participant an equine for the purpose of riding, driving, or being a passenger upon

the equine.

(2) In renting equipment or tack to a participant.

(3) In providing daily care of horses boarded at an equine facility.

(4) In training an equine.

(f) "Inherent risks of equine activities" means those dangers and conditions which are an integral part of equine activities, including, but not limited to:

(1) The propensity of an equine to behave in ways that may result in injury, harm, or death to persons on or around them.

(2) The unpredictability of an equine's reaction to such things as sounds, sudden movements, and unfamiliar objects, persons, or other animals.

(3) Certain hazards such as surface and subsurface conditions not obvious to the equine participant or not known and reasonably not known by the equine professional or sponsor.

(4) Collisions with other equines or objects that can be reasonably foreseen as a result of normal equine activities.

(5) The potential of a participant to act in a negligent manner that may contribute to injury of the participant or others, such as failing to maintain control over the animal or not acting within the participant's ability; except where said negligence can be reasonably foreseen and the equine professional or sponsor has failed to take any corrective measures.

(g) "Participant" means any person, whether amateur or professional, who engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

II. Except as provided in paragraph III of this section, an equine activity sponsor, an equine professional, or any other person engaged in an equine activity, shall not be liable for an injury or the death of a participant resulting from the inherent risks of equine activities and, except as provided in paragraph III of this section, no participant's representative shall make any claim against, maintain an action against, or recover from any other person for injury, loss, damage, or death of a participant resulting from any of the inherent risks of equine activities. Each participant in an equine activity expressly assumes the risk of and legal responsibility for any injury, loss or damage to person or property which results from participation in an equine activity. Each participant shall have the sole responsibility for knowing the range of his or her ability to manage, care for, and control a particular horse or perform a particular equine activity, and it shall be the duty of each participant to act within the limits of the participant's own ability, to maintain reasonable control of the particular horse at all times while participating in an equine activity, to heed all posted warnings, and to refrain from acting in a manner which may cause or contribute to the injury of any person.

III. Nothing in paragraph II of this section shall prevent or limit the liability of an equine activity sponsor, an equine professional, or any other person engaged in an equine activity, if the equine activity sponsor, equine professional, or person:

(a) Provided the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such equipment or tack was faulty to the extent that it did cause the injury; or

(b) Provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity.

(c) Owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known to the equine activity sponsor, equine professional, or person and for which warning signs have not been conspicuously posted.

(d) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury.

(e) Intentionally injures the participant.

3 Effective Date. This act shall take effect January 1, 1999.

AMENDED ANALYSIS

This bill determines the civil liability of equine activity sponsors, equine professionals, and other persons engaged in equine activities.

1998-0126h

Amendment to HB 798

Proposed by the Committee on Commerce

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

AN ACT relative to the regulation of health clubs.

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

1 Bond Requirements. Amend RSA 358-I:2, I and II to read as follows:

358-I:2 Registration; Surety Bond; Escrow of Deposits.

I. Any person, corporation, partnership, association, or other entity operating or intending to open or operate a health club within this state shall file a registration statement with the attorney general. Such registration statement shall be updated ~~[semiannually]~~ **annually**, and shall contain the name and address of the health club; the names and addresses of the officers, directors, and stockholders of the health club and its parent corporation, if such an entity exists; the type of available facilities; a written list of each piece of equipment and each service which the club has available for use by buyers; approximate size of the health club measured in square feet; whether or not a shower area is provided; the names and addresses of employees who provide guidance, instruction, or training to members, and their respective qualifications for employment in the health club field; type of membership plans to be offered and their cost; and a full and complete disclosure of any completed or pending litigation initiated against the health club and any of its officers or directors within the last 3 years.

II. Each health club registering pursuant to this chapter shall maintain in the files of the health club a copy of its registration statement filed pursuant to this section. ~~[This registration statement]~~ **A current registration certificate issued by the bureau of consumer protection and antitrust, department of justice**, shall be **posted or placed at all times in a conspicuous place and the registration statement shall be** made available for inspection by current health club members or prospective purchasers of health club memberships; provided, however, that the addresses of employees need not be disclosed, nor shall the attorney general publicly disclose such addresses except in connection with the prosecution of legal proceedings instituted under this chapter or other provisions of the RSA.

2 Increasing Allowable Refund Liability. Amend RSA 358-I:2, IV(b) to read as follows:

(b) Establishes to the satisfaction of the attorney general that its membership refund liability does not exceed ~~[\$1,000]~~ **\$5,000**.

3 Notice. Amend RSA 358-I:3, II to read as follows:

II. Each prepaid contract shall state in at least 10 point boldface type the following:

(a) "NOTICE TO BUYER: DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ ALL OF IT. ALSO, DO NOT SIGN THIS CONTRACT IF IT CONTAINS ANY BLANK SPACES."

(b) "STATE LAW REQUIRES THAT THIS HEALTH CLUB REGISTER WITH THE BUREAU OF CONSUMER PROTECTION AND ANTITRUST OF THE DEPARTMENT OF JUSTICE AND MAY REQUIRE THAT THIS CLUB POST A BOND OR OTHER SECURITY WITH THE ATTORNEY GENERAL TO PROTECT CUSTOMERS WHO PAY INITIATION FEES OR WHO PAY IN ADVANCE FOR MEMBERSHIP OR SERVICES IN THE EVENT THIS CLUB CLOSES. YOU SHOULD ASK TO SEE EVIDENCE THAT THIS CLUB HAS EITHER POSTED A BOND IN COMPLIANCE WITH THE LAW OR HAS BEEN EXEMPTED FROM THIS REQUIREMENT BY THE ATTORNEY GENERAL BEFORE YOU SIGN THIS CONTRACT. IF THIS CLUB HAS NOT POSTED SUCH A BOND, AND YOU PAY THIS HEALTH CLUB FOR MORE THAN ONE MONTH'S MEMBERSHIP OR SERVICES IN ADVANCE, THEN YOU ARE PAYING FOR FUTURE SERVICES, AND YOU MAY BE RISKING THE LOSS OF YOUR MONEY IN THE EVENT THAT THE CLUB CEASES TO CONDUCT BUSINESS."

4 Month-to-Month Membership. Amend RSA 358-I:5 to read as follows:

358-I:5 Length of Membership contract; Automatic Renewal Prohibited; **Mandatory Month-to-Month Membership.**

I. No contract for health club services shall be for a term of more than ~~[2 years]~~ **one year**, nor shall any health club contract contain an automatic renewal clause. A contract may provide for a renewal option for continued membership, but any such renewal must be accepted in writing by a buyer and is effective only upon payment of the renewal price. Under no circumstances may a contract for health club services be renewed more than 30 days before the contract's expiration date.

II. Every seller shall offer a month-to-month membership option in addition to any other term contract the seller offers. The availability of month-to-month memberships shall be stated in any written or broadcast advertisement, posting or marketing materials that describe any other membership option the seller offers. No seller may limit the availability of month-to-month memberships in any manner in which the seller does not also limit the availability of any term contract. No seller may accept payment or enter into a contract for a term contract until the buyer has been informed both orally and in writing of the availability of the month-to-month membership. Month-to-month memberships shall offer the same access to health club facilities and services that term contracts offer. A buyer may cancel a month-to-month membership option with 30 days written notice to the seller, for any reason, and have no further obligation to the seller. The provisions of this paragraph shall apply to a university, college or educational institution to the extent that it offers health club services to the general public, but shall not apply to a university, college or educational institution in its offer of health club services to its student body.

5 Effective Date. This act shall take effect January 1, 1999.

AMENDED ANALYSIS

This bill:

- (1) Requires health clubs to annually update the registration statement which is filed with the department of justice.
- (2) Increases the membership refund liability for purposes of the exemption from the bonding requirement.
- (3) Requires sellers of health club services to offer month-to-month memberships.

1998-0170h

Amendment to HB 802

Proposed by the Committee on Judiciary and Family Law

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

AN ACT relative to judgments on past due rent.

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

1 Writ of Summons. Amend RSA 540:13, III to read as follows:

III. The writ of summons and the notice provided in paragraph II shall be returnable 7 days from the ~~[day]~~ **date** of service of the writ by the sheriff. ***The writ of summons shall provide an opportunity for the landlord, at the landlord's option, to make a claim for an award of unpaid rent. If the landlord elects to make a claim for unpaid rent, the court shall consider any defense, claim or counterclaim by the tenant which offsets or reduces the amount owed to the plaintiff. If the court finds that the landlord is entitled to possession on the ground of nonpayment of rent, it shall also award the landlord a money judgment. If the court determines that the amount owed by the landlord to the tenant as a result of set-off or counterclaim exceeds or equals the amount of rent and other lawful charges owed by the tenant to the landlord, judgment in the possessory action shall be granted in favor of the tenant. If the court finds that the tenant's counterclaim exceeds the amount of the nonpayment, a money judgment shall issue in favor of the tenant. Any decision rendered by the court related to a money judgment, shall be limited to a maximum of \$1,500 and shall not preclude either party from making a subsequent claim in a court of competent jurisdiction to recover any additional amounts not covered by the \$1,500 judgment.***

2 New Paragraph; Payments Pending Possessory Action. Amend RSA 540:13 by inserting after paragraph VI the following new paragraph:

VII. In the case of nonpayment of rent, while the possessory action is pending, the landlord may accept payment of the rental arrearage without creating a new tenancy, provided that the landlord informs the tenant in writing of the landlord's intention to proceed with the eviction in spite of the landlord's acceptance of the payment. The landlord may choose not to accept payment and to proceed with the eviction.

3 Nonpayment of Rent. Amend RSA 540:14, I to read as follows:

I. If the defendant makes default, or if on trial it is considered by the court that the plaintiff has sustained ~~his~~ **its** complaint, judgment shall be rendered that the plaintiff recover possession of the demanded premises and costs, and a writ of possession shall issue. ***In cases based on nonpayment of rent, the court shall state the actual amount of the tenant's current weekly rent or, if rent is not paid on a weekly basis, the equivalent weekly rent amount, which must be paid into the court if an appeal is taken pursuant to RSA 540:20 and 540:25.*** The judgment may be enforced, at the sole discretion of the plaintiff, either by directing the sheriff to serve the writ of possession or by seeking judicial relief against the defendant for civil contempt. A writ of possession shall authorize the sheriff to remove the defendant from the premises.

4 New Paragraph; Successful Claims. Amend RSA 540:14 by inserting after paragraph II the following new paragraph:

III. If the plaintiff makes a successful claim for unpaid rent as well as possession, or the defendant makes a successful counterclaim, the court shall issue a money judgment at the same time that it makes its ruling regarding possession of the premises.

5 Appeal. Amend RSA 540:20 to read as follows:

540:20 Appeal. Any party to an action brought pursuant to this chapter shall, within 7 days of the ***date of the*** notice of judgment ~~[date]~~, file in the district court ***a*** notice of intent to appeal to the supreme court. ~~[Said appeal shall otherwise be filed in accordance with supreme court rule.]~~ ***Until the appeal is perfected by the filing of a notice of appeal in the supreme court, the district court shall retain exclusive jurisdiction of the case. After the filing of the notice of appeal in the supreme court, the district court shall retain jurisdiction of the matter for the purposes of collecting rent pending appeal.*** In all other respects, the judgment of the district court shall be final at the expiration of the appeal period.

6 Recognizance, by Defendant. Amend RSA 540:25 to read as follows:

540:25 Recognizance, by Defendant.

I. If the possessory action was instituted on the basis of nonpayment of rent, and the defendant files a notice of intent to appeal, the defendant shall pay into court the current rent in an amount determined by the judgment of the court pursuant to RSA 540:14, I, weekly and in advance. Payment of rent for one week must be made at the time the defendant files notice of intent to appeal in the district court. Rent which had been payable on other than a weekly basis shall be paid to the court each week based on the equivalent weekly rent determined by the judgment issued by the court, pursuant to RSA 540:14, I. During the pendency of the appeal, rent is payable on a weekly basis and is due on the same day of the week on which the notice of intent to appeal was filed. If rent is not paid by the due date, the court shall immediately mail a notice of default to the tenant and issue a writ of possession to the landlord. If, however, the tenant pays the clerk the entire amount of rent due since the filing of the notice of intent to appeal prior to the service of the writ by the sheriff, the writ of possession shall be recalled and the appeal shall be reinstated. Unless the appeal is reinstated, the district court shall vacate the appeal and award the plaintiff the rent money that has been paid into court. When the final decision on appeal is rendered, the money paid into court shall be apportioned between the plaintiff and the defendant, based on the amount of rent which is found to be due and owing as a result of the appeal.

II. If the possessory action was instituted for a reason other than nonpayment of rent, the defendant shall pay into court or to the plaintiff, as the court directs, all rents becoming due from the date the notice of intent to appeal is filed with the district court. In any case in which the duty to pay rent or a portion thereof is in dispute, the defendant shall be required to pay such portion of the rents becoming due after the notice of intent is filed into court, as the court may direct, which amounts shall be held by the court in escrow until a final decision is rendered. After such decision has been rendered, the escrowed rent money and any accrued interest thereon shall be apportioned between plaintiff and defendant on the basis of a finding of rent actually due. For the purpose of this section, "rent" shall mean the amount of money called for by the lease or rental agreement at the time the action for possession was instituted.

7 New Section; Change of Venue in Possessory Actions Regarding Residential Property. Amend RSA 502-A by inserting after

section 16 the following new section:

502-A:16-a Change of Venue in Possessory Actions Regarding Residential Property. Venue in possessory actions concerning residential property brought pursuant to RSA 540 which are initiated in a judicial district other than that in which the defendant resides may be transferred as follows:

I. In cases based on grounds other than nonpayment of rent, venue shall be transferred to the judicial district in which the defendant resides at the request of the defendant.

II. In cases based on nonpayment of rent, venue may be transferred to the judicial district in which defendant resides when the court, in its discretion, determines that justice so requires.

8 Landlord's Responsibility for Storage of Tenant's Property. Amend RSA 540-A:3, VII to read as follows:

VII. A landlord shall maintain and exercise reasonable care in the storage of the personal property of a tenant who has vacated the premises, either voluntarily or by eviction, for a period of ~~[45]~~ 28 days after the date upon which such tenant has vacated. ***During this period, the tenant shall be allowed to recover personal property without payment of rent or storage fees.*** After the ~~[45-day]~~ 28-day limit has expired, such personal property may be disposed of by the landlord without notice to the tenant.

9 Effective Date. This act shall take effect January 1, 1999.

AMENDED ANALYSIS

This bill:

I. Allows a landlord to make a claim for an award of unpaid rent in a writ of summons for possession of rented premises.

II. Expands the jurisdiction of the district court during the pendency of an appeal to the supreme court for the purposes of collecting rent.

III. Provides a schedule for the payment of rent while an appeal is pending.

IV. Provides for a change of venue in certain situations in which a possessory action under RSA 540 is initiated in a judicial district other than the one in which the defendant resides.

V. Changes the number of days a landlord is obligated to store personal property of a tenant, after the voluntary termination of a tenancy or a eviction, from 45 to 28 days.

1998-0165h

Amendment to HCR 12

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

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

A RESOLUTION urging the United States Senate to consider the Convention on the Elimination of All Forms of Discrimination Against Women.

Amend the resolution by replacing all after the title with the following:

Whereas, in 1980 the United States of America was a signatory to the Convention on the Elimination of All forms of Discrimination Against Women; and

Whereas, in 1994 the Senate Foreign Relations Committee voted 13-5 on the measure and it was sent to the floor but not considered because of lateness; and

Whereas, since the Senate Foreign Relations Committee has not reconsidered the treaty; and

Whereas, Legislatures issue rights of great significance to citizens and the world; now therefore, be it

Resolved by the House of Representatives, the Senate concurring:

That the general court of the state of New Hampshire strongly urges the United States Senate to consider the Convention on the Elimination of All Forms of Discrimination Against Women; and

That a copy of this resolution be sent by the clerk of the house of representatives to the President of the United States, with a copy to the Secretary of State, to each member of the United States Senate Foreign Relations Committee, and to each member of the New Hampshire Congressional delegation.

AMENDED ANALYSIS

This house concurrent resolution urges consideration by the United States Senate of the Convention for the Elimination of All Forms of Discrimination Against Women.

1998-0020h

Amendment to SB 10

Proposed by the Committee on Commerce

Amend the bill by replacing section 1 with the following:

1 Transfer Procedure Clarified. Amend RSA 325:45 to read as follows:

325:45 Funds to be Deposited. All moneys paid during a person's lifetime to any individual, firm, association, partnership, or corporation engaged in performing funeral services by such person or by someone in such person's behalf under an agreement that services be performed or merchandise be delivered in connection with the disposition of such person's body after the person's death shall be deposited by the payee within 30 days after receipt in a separate account in a bank, trust company, **credit union**, savings institution, licensed insurance company, or bonded, registered broker-dealer in this state in the name of the payee as mortuary trustee for the person for whose benefit the payment was made, and shall be held in such account together with any interest accrued. Nothing in this section shall be construed to prevent transfer of such funds to another such bank, trust company, **credit union**, savings institution, licensed insurance company, or bonded, registered broker-dealer by merger or consolidation or by operation of law. ***A mortuary trustee shall provide evidence of the original deposit and any subsequent deposits to the payor within 30 days after deposit into the separate account and shall provide evidence of any subsequent transfer of funds, as permitted by this section, to the payor within 30 days after effecting such transfer of funds. A copy of a written receipt or statement of deposit issued by the bank, trust company, credit union, savings institution, licensed insurance company, or bonded, registered broker-dealer, shall be sufficient as evidence of deposit or transfer for the purposes of this section. For purposes of this section, a mortuary trustee shall include any person or organization holding money in trust in connection with a pre-paid funeral.***

1998-0123h

Amendment to SB 26

Proposed by the Committee on Judiciary and Family Law

Amend RSA 508:19 as inserted by section 1 of the bill by replacing it with the following:

508:19 Wrongful Death Action on Behalf of Nonsupported Child; Recovery Limited. No parent shall receive any portion of an award of damages or an out-of-court settlement resulting from any claim or action for wrongful death on behalf of such parent's dependent child, until such parent has paid in full any child support arrearages owed, if such parent:

I. Was convicted of nonsupport of such child under RSA 639:4;

II. Failed to comply with a legal order for support of such child under RSA 161-B; or.

III. Was otherwise ordered to pay support for such child by a court or administrative agency in this state or another state, and failed to comply with such order.

AMENDED ANALYSIS

This bill prevents a parent who failed to support a dependent child and was either convicted of nonsupport or failed to comply

with a support order, from recovering damages or a settlement resulting from a wrongful death claim or action on behalf of such child, until such parent has paid in full any child support arrearages owed.

1998-0186h

Amendment to SB 53-FN

Proposed by the Committee on Executive Departments and Administration

Amend RSA 100-A:55, I as inserted by section 1 of the bill by replacing it with the following:

I. The additional benefits provided under RSA 100-A:52 shall apply to persons who are active or retired members of group II as of June 30, ~~[1988]~~ **1995**; to persons who prior to July 1, 1988, had completed no less than 20 years of group II creditable service, but who for reasons other than retirement or death ceased to be a group II member prior to attaining the age of 45, and who, as of July 1, 1993, are eligible for vested deferred retirement benefits; and to persons who are group II permanent policemen **or permanent firemen** members on disability retirement as the natural and proximate result of injuries suffered while in the performance of duty who become permanent policemen **or permanent firemen** members of group II after June 30, 1988, but before July 1, ~~[1991]~~ **1995**. Such additional benefits shall not apply to other persons who become members of group II after June 30, ~~[1991]~~ **1995**, without future legislation to include them. It is the intent of the legislature that future group II members shall be included only if the total cost of such inclusion can be funded by reimbursement from the special account established under RSA 100-A:16, II(h).

AMENDED ANALYSIS

This bill extends the payment of medical benefits to persons who were active or retired group II members as of June 30, 1995, to permanent firemen on disability retirement who became permanent firemen after June 30, 1988 but before July 1, 1995, and to permanent policemen on disability retirement who became permanent policemen after June 30, 1991 but before July 1, 1995.

1998-0079h

Amendment to SB 68-FN-LOCAL

Proposed by the Committee on Executive Departments and Administration

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

1 Local and State Employees Killed in Line of Duty. Amend RSA 21-I:30-a to read as follows:

21-I:30-a Additional Medical and Surgical Benefits.

I. The state shall pay a premium for permanent group hospitalization, hospital medical care, surgical care, and other medical and surgical benefits for the surviving spouse and dependent children of a deceased group I or group II state employee **or retirement system member** who dies as the natural and proximate result of injuries suffered while in the performance of duty, provided that:

(a) Any such child shall qualify as a dependent under the provisions of RSA 21-I:26-36 **and be under 18 years of age, or if a full-time student, be under 23 years of age.**

(b) Any such surviving spouse shall cease to be qualified for medical and surgical benefits under this section upon the remarriage of the surviving spouse.

(c) No surviving spouse or dependent children shall be qualified or continue to be qualified for medical and surgical benefits under this section while receiving medical insurance or health care benefits from any other employer-sponsored plan.

(d) The state shall pay the premium for supplemental medical and surgical benefits under this section for any such child who qualifies as a dependent under the provisions of RSA 21-I:26-36 and who is eligible for medicare benefits.

II. In the case of the surviving spouse and dependent children of a **group I or** group II state employee **or retirement system** member who are eligible for medical and surgical benefits under this section and also under the provisions of RSA 100-A:50-55, the state shall pay the difference between the amount paid under RSA ~~[100:52]~~ **100-A:52** and the premium paid under ~~[subparagraph]~~ **paragraph I.**

III. The additional benefits provided under this section shall be available to the surviving spouse and dependent children of a full-time employee of the state, an agency of the state, or any political subdivision of the of the state adopting the provisions of RSA 100-A, including full-time elected or appointed officers.

IV. The additional benefits provided under this section shall not be available to any employee, teacher, police officer, or firefighter of a political subdivision of the state if the political subdivision belongs to an organization or association that offers, through the organization or association or its affiliate, insurance coverage.

~~[HH]~~ V. Funding to pay the premium for benefits under this section shall come from the benefit adjustment account.

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

1998-0142h

Amendment to SB 100-FN

Proposed by the Committee on Commerce

Amend RSA 12-A:36, III and IV as inserted by section 2 of the bill by replacing them with the following:

III. The members of the commission, all of whom shall be appointed by the commissioner of the department of resources and economic development, shall be as follows:

(a) Three individuals representing the film and television industry.

(b) Two members of the general public with an interest in the film industry.

IV. The term of office for the members shall be 3 years and until a successor is appointed. The initial members of the commission shall serve staggered terms. Vacancies shall be filled in the same manner and for the unexpired terms. The members of the commission shall serve without compensation, but shall be reimbursed for necessary travel and other necessary expenses.

Amend the bill by replacing section 3 with the following:

3 Report. The commission established under section 2 of this act shall file a report no later than November 1, 1999, with the governor, the president of the senate, the speaker of the house and the chairperson of the senate executive departments and administration committee. The report shall include the progress made, any problems encountered, future needs and goals, and suggestions for potential legislation.

Amend the bill by replacing section 5 with the following:

5 Effective Date.

I. Section 4 of this act shall take effect June 1, 2001.

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

1998-0027h

Amendment to SB 102-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 relative to the possession of certain weapons in the commission of a crime.

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

1 Possession of Dangerous Weapon While Committing a Crime. RSA 159:15 is repealed and reenacted to read as follows:

159:15 Possession of Dangerous Weapon While Committing a Crime. A person shall be guilty of a class A misdemeanor if that person:

I. Is armed with or has upon the person slung shot, metallic knuckles, billies, or other dangerous weapons while committing a misdemeanor or felony; or

II. Used slung shot, metallic knuckles, billies, or other dangerous weapons in committing an offense for which the person is arrested.

2 Effective Date. This act shall take effect January 1, 1999.

AMENDED ANALYSIS

This bill makes a person guilty of a class A misdemeanor if that person is armed with or has upon his or her person slung shot, metallic knuckles, billies, or other dangerous weapons while committing a crime classified as a misdemeanor or felony. A person who uses such dangerous weapons in committing an offense for which the person is arrested is also guilty of a class A misdemeanor.

1998-0138h

Amendment to SB 161-FN-A

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 a master plan of Odiorne Point State Park.

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

1 Odiorne Point State Park. There shall be no appropriation for the expansion of the Seacoast Science Center at Odiorne Point State Park in Rye until the commissioner of the department of resources and economic development has completed a master plan of Odiorne Point State Park. The master plan shall examine all aspects of the state park, and the role of the Seacoast Science Center in conjunction with the mission of the state park system. The plan shall also update the "Thoresen Report," a management plan prepared in June 1983, and incorporate the recent purchases of the Brown property into the plan. White Island shall also be considered as a component of the plan.

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

AMENDED ANALYSIS

This bill prohibits appropriations for expansion of the Seacoast Science Center at Odiorne Point State Park until the commissioner of the department of resources and economic development has developed a master plan for the park.

1998-0155h

Amendment to SB 205-FN-LOCAL

Proposed by the Committee on Education

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

1 New Subparagraph; Special School District Added to Department of Corrections. Amend RSA 21-H:4, I by inserting after subparagraph (b) the following new subparagraph:

(c) Be responsible for the operation of the special school district, established under RSA 194:60, which shall provide appropriate education services to eligible offenders held in facilities operated by the department of corrections.

2 Special District Program Approval By Interagency Agreements. Amend RSA 186-C:5 to read as follows:

186-C:5 Program Approval. The state board of education shall adopt rules establishing standards for the approval of programs of education that are maintained by school districts, regional special education centers, and private organizations or state institutions for the benefit of educationally disabled children, including home-based programs; *except, however, that approval of programs of education for the special district established in RSA 194:60 shall be pursuant to the*

standards set forth in the interagency agreements between the department of corrections and the department of education.

3 Reference to "Special" School District Added. Amend RSA 186-C:9 to read as follows:

186-C:9 Education Required. Each child determined by the local ***or special*** school district as being educationally disabled in accordance with RSA 186-C:2 and in need of special education or special education and educationally related services shall be entitled to attend an approved program which can implement the child's individualized education plan. Such child shall be entitled to continue in an approved program until such time as the child has acquired a high school diploma or has attained the age of 21, whichever occurs first, or until the school district responsible for developing the child's individualized education plan determines that the child no longer requires special education in accordance with the provisions of this chapter.

4 State Prison Deleted. Amend RSA 186-C:19-a, II to read as follows:

II. The school district liability for educational expenses for an educationally disabled child in the youth development center ~~or the state prison~~, or who is placed in the youth services center while awaiting disposition of the court following arraignment pursuant to RSA 169-B:13, shall not exceed the state average elementary cost per pupil, as determined by the state board of education for the preceding school year.

5 Revised Definition of a School District; Amend RSA 194:1 to read as follows:

194:1 What Constitutes a District. Each town shall constitute a single district for school purposes; provided that districts organized under special acts of the legislature may retain their present organization, and the word "town", wherever used in the statutes in connection with the government, administration, support or improvement of the public schools, shall mean district. ***The special state prison school district, as established by RSA 194:60, shall constitute a single district for school purposes, and shall be subject to the provisions of RSA 194:60.*** Notwithstanding any other provision of law to the contrary, in the case of unincorporated towns or unorganized places in Coos county, Coos county shall constitute the district.

6 New Subdivision; Special School District; Department of Corrections. Amend RSA 194 by inserting after section 59 the following new subdivision:

Department of Corrections Special School District

194:60 Special School District; Department of Corrections.

- I. A special school district is established within the department of corrections, under RSA 21-H, for the purpose of providing approved educational programs pursuant to this chapter to eligible educationally disabled adult offenders, under the age of 21, who wish to participate.
- II. The special school district shall be exempt from state board of education rules, except that the standards for the education of students with disabilities and all education programs shall be set by an interagency agreement between the department of education and the department of corrections.
- III. The special school district shall be exempt from the organizational and budgetary requirements regarding other school districts or charter schools. The special state prison school district shall not be required to file financial reports with the department of education or the department of revenue administration.
- IV. The special school district shall have authority to perform all duties necessary to operate a school including, but not limited to, the following:
 - (a) Timely submission of all required educational program approval documents and reports to appropriate agencies.
 - (b) Maintenance of approved educational programs which comply with the requirements as provided for in the interagency agreements between the department of corrections and the department of education. The interagency agreements shall set forth the standards for approval of a school program for department of corrections facilities, the graduation requirements necessary for the special school district to issue a high school diploma, and the standards for special education program approval.
 - (c) Issuance of transcripts.
 - (d) Performing assessments and developing individual education programs.

(e) Providing fiscal management for the state and federally-funded approved educational programs.

(f) Operation of approved educational programs in a manner consistent with the legitimate security and safety concerns of a penal institution.

V. The special state prison school district shall not be assigned to a school administrative unit, nor shall it be subject to the provisions of RSA 194-C.

VI. The special state prison school district shall not be eligible to receive any form of state aid to education pursuant to RSA 198, including but not limited to, state building aid, state aid, dual enrollment grants, foundation aid, or alternative foundation aid.

VII. The special state prison school district shall not have a school board.

7 Effective Date. This act shall take effect July 1, 1998.

AMENDED ANALYSIS

This bill establishes a special school district within the department of corrections to provide special education for eligible inmates in the state prison system, and outlines certain specific differences between a regular school district and the special state prison school district.