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Contains: Additional Committee Hearings and Amendments for March 4

HOUSE CALENDAR

ADDITIONAL COMMITTEE MEETINGS

MONDAY, MARCH 8

WILDLIFE AND MARINE RESOURCES, Rooms 305-307, LOB

1:00 p.m. ***HB 710-FN***, relative to expanding the availability of lifetime licenses for hunting and fishing.

1:30 p.m. ***HB 704-FN-A***, establishing a wildlife damage control program to prevent and redress damage to certain commercial agricultural property, and making an appropriation therefor.

2:45 p.m. Continued public hearing on ***HB 298-FN***, relative to the authority of the executive director of fish and game to prevent damage to commercial agricultural crops through wildlife reduction or management.

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

THURSDAY, MARCH 4

ADDITIONAL AMENDMENTS

(LISTED IN NUMERICAL ORDER)

1999-0242h

Floor Amendment to HB 108-FN-A-LOCAL

Proposed by Reps. Alger, Sapareto and Whittemore

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

AN ACT establishing a statewide education property tax and a 3 percent sales tax to provide equal per student funding for state-mandated education and funding for kindergarten and making an appropriation therefor.

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

1 Intent.

I. The purpose of this act is to provide a stable source of state financial support to municipalities to enable them to deliver an adequate public education to all New Hampshire's pupils as required by the state constitution and statutes, and further, to ensure that every such municipality, regardless of the amount of taxable property it has per pupil, will not pay unreasonable education property tax rates in fulfilling its responsibilities for education on behalf of the state. This purpose is accomplished by the establishment of annual per pupil block grants to municipalities to reimburse them for providing an adequate education, and by the establishment of a statewide education property tax and a 3 percent sales tax to provide stable funding for such block grants.

II. The legislature intends that the statewide education property tax and sales tax be 2 of several sources of funding of an adequate public education. The legislature recommends that any taxes established or increases in existing taxes adopted in 1999 or in the following years shall be deposited in the education trust fund created under this act and used to pay the costs of an adequate public education.

2 New Chapter; Statewide Education Property Tax. Amend RSA by inserting after chapter 76 the following new chapter:

CHAPTER 76-A

STATEWIDE EDUCATION PROPERTY TAX

76-A:1 Definitions. In this chapter:

I. "Assessing official" means the assessing authority of any town, city, or place.

II. "Claimant" means a person who:

(a) Has filed a claim with a municipality for reduction in such claimant's property taxes under this chapter; and

(b) During the 3 fiscal years preceding the year in which the person files a claim for relief under this chapter:

(1) Has had an ownership interest in a homestead and was domiciled in the homestead upon which education property taxes have accrued and for which the person is making a claim for tax relief from the statewide education property tax in this state; and

(2) Was not a full-time student claimed as a dependent by any taxpayer under the United States Internal Revenue Code.

III. "Commissioner" means the commissioner of the department of revenue administration.

IV. "Consumer price index" means the most recent available consumer price index for the Boston metropolitan area published by the United States Department of Labor.

V. "Department" means the department of revenue administration.

VI. "Education property taxes" means the sum of the statewide education property tax under this chapter and the education

portion of property taxes assessed by a municipality.

VII. "Equalized assessed value" or "equalized assessed valuation" means the modified assessed valuation of property equalized by the commissioner pursuant to RSA 21-J:3, XIII. In this paragraph, "modified assessed valuation" means the sum of the assessments of taxable property in a municipality less the statutory exemptions provided in RSA 72:12-a, 72:12-b, 72:37, 72:39-a, and 72:39-b. "Modified assessed valuation" shall not include optional exemptions provided in RSA 72:37-b, 72:62, 72:66, and 72:70.

VIII.(a) "Excess education property taxes" means the sum of:

- (1) The product of the state education rate determined by the commissioner pursuant to RSA 76-A:2 multiplied by the equalized value of qualifying homesteads not exceeding \$100,000 and exclusive of special assessments not including current use, delinquent interest and charges for service, levied as of April 1 on a claimant's homestead in this state; and
- (2) The amount of the education portion of property taxes assessed by the claimant's municipality levied as of April 1 on a claimant's homestead in this state;

which is in excess of 10 percent of a claimant's household income for the calendar year preceding the tax year of the excess education property tax claim.

(b) In this paragraph, "equalized assessed value of qualifying homesteads" means the local assessed value of the homestead equalized by applying the equalization ratio for the municipality, as determined by the commissioner pursuant to RSA 21-J:3, XIII, for the year of the claim.

(c) A qualifying homestead is the first \$100,000 of equalized value of a homestead. If a homestead is owned by 2 or more persons or entities as joint tenants or tenants in common, and one or more persons or entities are not members of the claimant's household, "excess education property taxes" applies to that part of statewide education property taxes levied on the homestead which reflects the ownership percentage of the claimant and the claimant's household. If a homestead is an integral part of a larger unit such as a multi-dwelling building, the statewide education property taxes shall be that percentage of the total education property taxes accrued as the total inhabitable area of the claimant's dwelling is of the total inhabitable area of the building. For purposes of this paragraph "unit" refers to the parcel of property covered by a single tax statement of which the homestead is a part.

IX.(a) "Homestead" means the dwelling owned by a claimant which is used as the claimant's principal place of residence for not less than 240 days in a calendar year and includes the following:

- (1) The land upon which the dwelling stands;
- (2) Visual and ordinary appurtenant structures such as but not limited to garages, wood sheds, barns, and other out buildings;
- (3) The land upon which such appurtenant structures stand;
- (4) Land contiguous to such dwelling and appurtenant structures that is groomed and maintained around them; and
- (5) Land necessary to the support and service of the dwelling such as but not limited to driveways and maintained rights-of-way for purposes of ingress and egress to the dwelling.

(b) A homestead may consist of a part of a multi-unit dwelling and its proportionate share of the land upon which it stands and other ordinary appurtenant common facilities.

(c) In this paragraph the term "owned" includes a vendee in possession under a land contract and one or more joint tenants or tenants in common.

(d) "Homestead" shall not include personal property such as furniture, furnishings or appliances or structures.

(e) Manufactured housing may be a homestead.

X. "Household income" means federal adjusted gross income as defined in the United States Internal Revenue Code.

XI. "Municipality" means a city, town, or place.

XII. "Statewide education property tax" means a tax levied at an equal and uniform rate on the equalized assessed valuation of property.

XIII. "Tax collector" means the appointed or elected collector of taxes for a municipality.

XIV. "United States Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended, without the rules, regulations, forms, and procedures of the United States Internal Revenue Service. The rules, regulations, forms and procedures of the United States Internal Revenue Service may, however, be used by the commissioner of revenue administration in formulating rules for adoption under RSA 541-A. This definition shall be operative unless and until a specific statutory exception to its adoption is provided in this chapter, or until the application of one of its provisions is held to violate the New Hampshire constitution.

76-A:2 Statewide Education Property Tax Established.

I. A statewide education property tax is levied annually on all taxable real estate in the state to compensate each municipality, on an equal per pupil basis by grade, for its costs in the preceding school year to:

(a) Provide a constitutionally adequate education pursuant to part 2, article 83 of the New Hampshire constitution and as defined in RSA 193-C:10.

(b) Compensate each municipality on an equal per pupil basis for kindergarten where provided in the last completed school year or where provided in the current school year and not in the last completed school year.

(c) Provide additional grants to certain qualifying municipalities whose tax effort per pupil exceeds an equalized rate of \$5.

II. Valuation of the property for the purpose of apportionment and setting the equalized state education rate shall be determined by equalized assessed valuation as prepared annually by the department.

III. The total amount to be raised, each year, shall be the sum the department of revenue administration calculates as provided in RSA 198:44.

IV. The rate shall be established by the commissioner of revenue administration each year based on the equalized state education rate required to raise the total amount in RSA 76-A:2, III, following the methods in RSA 198:38-50, as determined by the commissioner. The commissioner shall report to the legislature on or before December 1 of each year.

76-A:3 Apportionment. The commissioner, before December 15 of every year, shall apportion the amount to be raised by each municipality according to its proportion of the equalized assessed valuation of the state from the most recently available equalization survey. The commissioner shall report the amounts assessed against each municipality to the state treasurer and to each municipality.

76-A:4 Time of Assessment and Payment. The statewide education property tax shall be deemed assessed on April 1 in each year and is payable on demand to the education trust fund on or after said date.

76-A:5 Collection. The assessing officials for each municipality shall make a list of all statewide education property taxes by them assessed against property under their hands and seals to the tax collector, directing the tax collector to collect the statewide education property taxes along with other property taxes. It shall be listed as a separate line on the single municipal property tax bill. Upon application by the assessing officials, the commissioner for good cause may extend the time for delivery of the statewide education property tax warrant.

76-A:6 Remedies for Collection. The statewide education property tax may be collected by all of the means and methods provided for the collection of property taxes under RSA 80.

76-A:7 Interest and Charges for Nonpayment. Nonpayment of the statewide education property tax shall incur the same charges and interest accruing to municipalities as are imposed by law for nonpayment of property taxes.

76-A:8 Liability of Cities and Towns. Each municipality shall be liable to the state for all statewide education property taxes lawfully assessed in such municipality.

76-A:9 Payment to State. Each municipality shall cause its tax collector to certify such information as the state treasurer shall require, and shall cause its treasurer to pay over to the state treasurer, less any payments due from the state treasurer or which would be due to the state treasurer under RSA 198:45 attributable to this chapter, 25 percent, of the assessed statewide

property taxes on each of the following dates: July 1, October 1, January 1, and April 1.

76-A:10 Failure to Make Payment. If any municipality fails to make payments as provided in this chapter:

I. The state treasurer shall withhold an amount equal to any unremitted statewide education property taxes for which the municipality is liable, from any amounts payable by the state to such municipality. The state treasurer shall not pay to any municipality any amounts that may be due it from the state until all payments of statewide education property tax as due have been paid; and

II. The commissioner shall penalize the municipality for an amount which is twice the amount owed by the municipality under this chapter.

76-A:11 Extents. The state treasurer may also issue an extent for the amounts of all statewide education property taxes not remitted by any municipality as provided in this chapter.

76-A:12 Supplementary Bond of Collector. Whenever the commissioner considers it necessary, a tax collector may be required to furnish a further and additional bond beyond that required by other provisions of law, with sureties, in such form and amount as the commissioner approves. The additional premium costs shall be paid by the state from the education trust fund established by RSA 198:39.

76-A:13 Disposition of Taxes. All funds received by the state treasurer under the provisions of this chapter shall be deposited in the education trust fund established by RSA 198:39.

Statewide Education Property Tax Relief

76-A:14 Claims for Statewide Education Property Tax Relief.

I.(a) A claimant shall be entitled to make claim to the taxing municipality for statewide education property tax relief equal to the excess education property taxes as levied under this chapter on the first \$100,000 of equalized valuation of the claimants homestead. Such claims shall not exceed \$2,250 per claimant during any calendar year. A claimant shall not be entitled to any statewide education property tax relief if there are no excess education property taxes or for any excess education property taxes which accrued prior to January 1 of the preceding calendar year.

(b) No claim with respect to relief by a claimant under this subdivision shall be allowed unless the claim is filed with the municipality by March 1 following the date of notice of tax as defined in RSA 72:1-d. The municipality shall include all necessary forms for filing as provided by the department in the first bill.

II. No interest shall be allowed on any relief to which a claimant may be entitled under this subdivision.

76-A:15 Rebate to Claimant. Within 30 days of receipt of a claim, the municipality shall reduce the claimant's tax bill by the qualifying excess education property taxes. Where more than one tax bill is issued by the municipality, the excess education property taxes shall be divided proportionally between the bills. Timely payment to the municipality of net taxes by the claimant is not required to receive the tax reduction under this chapter.

76-A:16 Reports of Claims. Municipalities shall report to the department by April 1 of each year on the total amount of rebates made under RSA 76-A:15. By April 15 of each year, the department shall report to the state treasurer the total amount of rebates made by each municipality under RSA 76-A:15.

76-A:17 Reimbursement to Municipalities for Claims. Within 30 days of receipt of the report by the department required under RSA 76-A:16, the state treasurer shall reimburse municipalities for the total of qualified claims received under RSA 76-A:15. Such payments shall be charged against the education trust fund established in RSA 198:39.

76-A:18 One Claimant Per Household. Only one claimant per household per year shall be entitled to relief under this subdivision.

76-A:19 Claim is Personal. The right to file a claim under this subdivision shall be personal to the claimant. The right to file a claim under this subdivision shall survive the claimant's death to the extent that this right may be exercised on behalf of a claimant by a legal guardian, attorney, spouse, or another person who could have qualified as the claimant had the decedent not filed.

76-A:20 Administration; Rulemaking.

I. This subdivision shall be administered and enforced by the department.

II. The department shall adopt rules, pursuant to RSA 541-A, necessary to administer and enforce this subdivision.

76-A:21 Forms for Claim.

I. The commissioner of revenue administration shall make available to municipalities suitable forms with instructions for claimants. Such forms may require claimants to provide all information reasonably necessary to determining the accuracy of claims, including, but not limited to, property taxes accrued, changes of homestead, household membership, household income, size and nature of property claimed as the homestead, and a statement that the property taxes have been or will be paid by the claimant.

II. Municipalities shall make such forms available to claimants.

76-A:22 Verification of Claim; Redetermination.

I. If a municipality has reason to suspect the accuracy of a claim, the municipality may request that the department verify the household income of the claimant.

II. Upon receipt of such income verification from the department, the municipality may redetermine the claim and assess and collect, in the same manner as provided for property taxes under RSA 80, any amount of such claim in excess of the redetermined amount.

76-A:23 Fraudulent Claims; Penalty. A person shall be guilty of a class A misdemeanor who:

I. Files a fraudulent claim.

II. With fraudulent intent, assisted in the preparation or filing of the fraudulent claim or supplied information upon which the fraudulent claim was prepared.

76-A:24 Appeals. Any person aggrieved by the denial in whole or in part of a claim under this subdivision, except when the denial is based upon late filing of claim, may appeal the denial to the board of tax and land appeals or to the superior court in the county in which the person resides by filing a petition within 30 days after such denial. Procedures for an appeal of a denial of a claim shall be the same as the procedures for an appeal of a denial of an abatement of property tax under RSA 76:16-a–76:17.

76-A:25 Claim Applied Against Outstanding Liabilities. The amount of any claim otherwise payable under this subdivision may be applied by the municipality against any liability outstanding against the claimant or against anyone who was a member of the household in the taxable year to which the claim relates.

3 New Chapter; Sales and Use Tax. Amend RSA by inserting after chapter 77-E the following new chapter:

CHAPTER 77-F

SALES AND USE TAX

77-F:1 Definitions. In this chapter:

I. "Casual sale" means an isolated or occasional sale of an item of tangible personal property by a person who is not regularly engaged in the business of making sales of that general type of property at retail where the property was obtained by the person making the sale, through purchase or otherwise, for his or her own use. Aircraft, snowmobiles, motorboats, and vessels, are hereby specifically excluded from the definition of casual sale.

II. "Commissioner" means the commissioner of the department of revenue administration.

III. "In this state or in the state" means within the exterior limits of the state of NewHampshire and includes all territory within these limits owned by or ceded to the United States of America.

IV. "Person" means an individual, partnership, society, association, joint stock company, corporation, public corporation or public authority, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise and any combination of the foregoing.

V. "Persons required to collect tax or persons required to collect any tax imposed by this chapter" means and includes every vendor of taxable tangible personal property or services. These terms shall also include any officer or employee of a corporation or of a dissolved corporation who as that officer or employee is under a duty to act for the corporation in complying with any requirement of this chapter and any member of a partnership.

VI. "Property and services the use of which is subject to tax" means and includes all property sold to a person within the state, whether or not the sale is made within the state, the use of which property is subject to tax under RSA 77-F:4 or will become subject to tax when such property is received by or comes into the possession or control of such person within the state.

VII. "Purchaser" means a person who purchases property or who receives services taxable under this chapter.

VIII. "Receipt" means the amount of the sales price of any property taxable under this chapter valued in money, whether received as money or otherwise, without any deduction for expenses or early payment discount, but excluding any amount for which credit is allowed by the vendor to the purchaser, and excluding any allowance in cash or by credit made upon the return of merchandise pursuant to warranty or the price of property returned by customers when the full price thereof is refunded either in cash or by credit, and excluding the price received for labor or services used in installing or applying to repairing the property sold, if separately charged or stated, and the cost of transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser provided those charges are separately stated and provided the transportation occurs by means of common carrier, contract carrier or the United States mails.

IX. "Retail sale" or "sold at retail" means the sale of tangible personal property to any person for any purpose, other than for resale, except resale as a casual sale. Sales of tangible personal property to all contractors, subcontractors or repairpersons of materials and supplies for use by them in erecting structures for others, or building on, or otherwise improving, altering, or repairing real property of others are deemed to be retail sales.

X. "Sales, selling or purchase" means any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor; except professional, insurance, personal service transactions, advertising services and computer and data processing services where tangible personal property is transferred as part of such service transaction so long as no separate charge is made for the tangible personal property and so long as the value of the tangible personal property transferred is essentially an inconsequential element in relation to the value of the service transaction. The provisions of this paragraph shall be retroactive if to the benefit of the taxpayer.

XI. "Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses and shall include fuel, but shall not include rights and credits, insurance policies, bills of exchange, stocks and bonds, and similar evidences of indebtedness or ownership. Tangible personal property shall also include electricity unless RSA 83-E, the electricity consumption tax, is in effect.

XII. "Use" means the exercise of any right or power over tangible personal property by the purchaser thereof and includes, but is not limited to, the receiving, storage or any keeping or retention for any length of time, withdrawal from storage, any installation, any affixation to real or personal property, or any consumption of that property.

XIII. "Vendor" means and includes:

- (a) A person making sales of tangible personal property or services, the receipts from which are taxed by this chapter;
- (b) A person maintaining a place of business in the state and making sales, whether at that place or business or elsewhere, to persons within the state of tangible personal property or services, the use of which is taxed by this chapter;
- (c) A person who solicits business either by employees, independent contractors, agents or other representatives or by distribution of catalogs or other advertising matter and by reason thereof makes sales to persons within the state of tangible personal property or services, the use of which is taxed by this chapter;
- (d) Any other person making sales to persons within the state of tangible personal property or services, the use of which is taxed by this chapter, who may be authorized by the commissioner to collect the tax imposed by this chapter; and
- (e) The state of New Hampshire or any of its agencies, instrumentalities, public authorities, public corporations, including a public corporation created pursuant to agreement or compact with another state, or political subdivision when that entity sells services or property of a kind ordinarily sold by private persons.

77-F:2 Imposition of Sales Tax. Except as otherwise provided in this chapter, there shall be paid a tax of 3 percent upon the receipts from the sale of tangible personal property purchased at retail in this state.

77-F:3 Tax Bracket Schedule.

I. For the purpose of adding and collecting the tax imposed by RSA 77-F:2, or an amount equal as nearly as possible or practicable to the average equivalent thereof, to be reimbursed to the vendor by the purchaser, the following formula shall be in force and effect as follows:

Amount of Sale Amount of Tax

0.01 - 0.05 .01

0.06 - 0.50 .02

0.51 - 1.00 .03

II. In addition to a tax of .03 on each full dollar, a tax shall be collected on each part of a dollar in excess of a full dollar in accordance with the following formula:

0.01 - 0.50 .02

0.51 - 1.00 .03

III. When several taxable articles are purchased together at the same time, the tax shall be computed on the total amount of the purchase of several taxable items.

77-F:4 Imposition of Compensating Use Tax. Unless property has already been or will be subject to the purchase tax under RSA 77-F:2, there is imposed on every person a use tax at the rate of 3 percent for the use within this state, except as otherwise exempted under this chapter:

I. Of any tangible personal property purchased at retail; and

II. Of any tangible personal property manufactured, processed or assembled by the user, if items of the same kind of tangible personal property are offered for sale by the user in the regular course of business, but the mere storage, keeping, retention or withdrawal from storage of tangible personal property or the use for demonstrational or instructional purposes of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by such person.

77-F:5 Administration; Rulemaking. In addition to other powers granted to the commissioner in this chapter and in RSA 21-J, the commissioner shall:

I. Collect the taxes, interest, additions to tax, and penalties imposed under this chapter and RSA 21-J.

II. Adopt rules, pursuant to RSA 541-A, relative to:

(a) The administration of the sales and use tax.

(b) The recovery of any tax, interest on tax, additions to tax, or the penalties imposed by RSA 77-F or RSA 21-J.

(c) The form of any returns, certificates and documents and the data which they must contain for the correct determination on computation of receipts and the tax assessed thereon.

III. Require any person required to collect taxes to keep detailed records of all receipts, received, charged or accrued, including those claimed to be nontaxable, and also of the nature, type, value, and amount of all purchases, sales, and other facts relevant in determining the amount of tax due and to furnish that information upon request to the commissioner. Such person may withhold and keep 3 percent of taxes imposed by this chapter for services rendered, but shall report the same as part of information furnished to the commissioner.

IV. Publish and maintain, as the commissioner deems necessary, lists of specific items of tangible personal property which are found to be exempt from tax under RSA 77-F:2.

77-F:6 Liability for Tax. Every person required to collect any tax imposed by this chapter shall be personally liable for the tax imposed, collected or required to be collected, under this chapter. That person shall have the same rights in collecting the tax from the purchaser or regarding nonpayment of the tax by the purchaser as if the tax were a part of the purchase price of the property, and payable at the same time; provided, however, that the commissioner shall be joined as a party in any action or proceeding brought to collect the tax.

77-F:7 Principal and Agent; Joint Liability. When, in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to treat any salesperson, representative, peddler, or canvasser as the agent of the vendor, distributor, supervisor, or employer under whom the person operates or from whom the person obtains tangible personal property sold by the person or for whom the person solicits business, the commissioner may, in the commissioner's discretion, treat such agent as the vendor jointly responsible with the principal, distributor, supervisor, or employer for the collection and payment of the tax.

77-F:8 Payment and Return by Purchaser.

I. Where any purchaser has failed to pay a tax imposed by this chapter to the person required to collect the same, then in addition to all other rights, obligations and remedies provided, the tax shall be payable by the purchaser directly to the commissioner and it shall be the duty of the purchaser to file a return with the commissioner and to pay the tax to the commissioner within 20 days of the date the tax was required to be paid.

II. The commissioner may, whenever the commissioner deems it necessary for the proper enforcement of this chapter, provide by rule that purchasers shall file returns and pay directly to the commissioner any tax herein imposed, at such times as returns are required to be filed and paid by persons required to collect the tax.

77-F:9 Transfers not in Course of Business; Notice; Lien.

I. Whenever a person required to collect the tax shall make a sale, transfer, or assignment in bulk of any part or the whole of such person's business assets, otherwise than in the ordinary course of business, the purchaser, transferee or assignee shall, at least 10 days before taking possession of the subject of the sale, transfer or assignment, or payment therefor, notify the commissioner by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferer or assignor, has represented, to, or informed the purchaser, transferee or assignee that any tax is owed pursuant to this chapter, and whether or not the purchaser, transferee, or assignee has knowledge that the taxes are owing, and whether any taxes are in fact owing.

II. Whenever the purchaser, transferee or assignee shall fail to give notice to the commissioner as required by paragraph I, or whenever the commissioner shall inform the purchaser, transferee or assignee that a possible claim for the tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferer or assignor shall be subject to first priority right and lien for any taxes theretofore or thereafter determined to be due from the seller, transferer or assignor to the state, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferer or assignor any sums of money, property or choses in action to the extent of the amount of the state's claim. For failure to comply with this section the purchaser, transferee or assignee shall be personally liable for the payment to the state of any taxes theretofore or thereafter determined to be due to the state from the seller, transferer or assignor, and the liability may be assessed and enforced in the same manner as the liability for tax under this chapter.

77-F:10 Registration.

I. On or before September 1, 1999, or in the case of persons commencing business or opening new places of business after that date, within 3 days after the commencement or opening, every person required to collect any tax imposed by this chapter and every person purchasing tangible personal property for resale shall file with the commissioner a certificate of registration in a form prescribed by the commissioner. The commissioner shall issue, without charge, to each registrant a certificate of authority empowering the registrant to collect the tax. Each certificate shall state the place of business to which it is applicable. The certificate of authority shall be prominently displayed in the place of business of the registrant. A registrant who has no regular place of doing business shall attach the certificate to the registrant's cart, stand, truck or other merchandising device, or carry it on the registrant's person. The certificate shall be nonassignable and nontransferable and shall be surrendered to the commissioner immediately upon the registrant's ceasing to do business at the place named.

II. Any person who is not otherwise required to collect any tax imposed by this chapter and who makes sales to persons within the state of tangible personal property or services, the use of which is subject to tax under this chapter, may, if such person so

elects, file a certificate of registration with the commissioner who may, in the commissioner's discretion and subject to such conditions as the commissioner may impose, issue to such person a certificate of authority to collect the compensating use tax imposed by this chapter.

77-F:11 Restrictions on Advertising.

I. No person required to collect any tax imposed by this chapter shall advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the tax is not considered as an element in the price payable by the customer. The tax shall be separately charged, so stated to the customer, without option for refunding if the purchase transaction is completed.

II. Upon written application duly made and proof duly presented to the satisfaction of the commissioner showing that in the vendor's particular business it would be impractical for such vendor to separately charge the tax to the customer, the commissioner may waive the application of the requirement herein as to such vendor.

III. Whenever reference is made in placards or advertisements or in any other publications to any tax imposed by this chapter, the reference shall be in substantially the following form: "sales and use tax"; except that in any bill, receipt, statement or other evidence or memorandum of sale issued or employed by a person required to collect tax, if the tax is required to be stated separately thereon as provided in RSA 77-F:23, the word "tax" shall suffice.

77-F:12 Recordkeeping. Every person required to collect any tax imposed by this chapter shall keep records of every sale and of all amounts paid or charged or due thereon and of the tax payable thereon, in such form as the commissioner shall require. These records shall include a true copy of each sales slip, invoice, receipt, statement or memorandum upon which RSA 77-F:23 requires that the tax be stated separately. The records shall be available for inspection and examination at any time upon demand by the commissioner or the commissioner's duly authorized agent or employee and shall be preserved for a period of 3 years, except that the commissioner may consent to their destruction within that period or may require that they be kept longer.

Exemptions

77-F:13 Sales not Covered. Receipts from the following shall be exempt from the tax on retail purchases imposed under RSA 77-F:2 and the use tax imposed under RSA 77-F:4:

I. Sales not within the taxing power of this state under the Constitution of the United States.

II. All health care items, including, but not limited to, purchases of medicines and drugs sold pursuant to a doctor's prescription for human use, oxygen for medical purposes, blood, blood plasma, artificial components of the human body, prosthetic devices, medicinal appliances, corrective appliances, corrective optical devices, dentures, hearing aids, seeing eye dogs, crutches, wheelchairs, hospital type beds, medical and dental devices and instruments, medical and dental equipment (including component parts thereof) and supplies used in treatment intended to alleviate human suffering or to correct, in whole or in part, human physical disabilities.

III. Casual sales.

IV. Purchases of all alcoholic beverages.

V. Purchases of motor fuels; taxed or exempted under RSA 260, provided, however, that jet fuel shall be taxed under this chapter.

VI. Purchases of tobacco products taxed or exempted under RSA 78.

VII. Rents for rooms, taxed under RSA 78-A and the transactions exempted therefrom.

VIII. Purchases of meals, taxed or exempted under RSA 78-A.

IX. Purchases of food, food stamps, purchases made with food stamps, food products and beverages sold for human consumption off the premises where sold.

X. Purchases of equipment, supplies, and building materials made directly to volunteer fire departments, volunteer ambulance companies, or volunteer rescue squads for official use by the volunteer organizations.

XI. Funeral charges, including, but not limited to, sales of tangible personal property such as caskets, vaults, boxes, clothing,

crematory urns, and other such funeral furnishings as are necessary incidents of the funeral, and other items sold as an accommodation rather than as an integral part of the funeral service or preparation therefor.

XII. Tangible personal property purchased for use or consumption directly and exclusively, except for isolated or occasional uses, in commercial, industrial or agricultural research or development in the experimental or laboratory sense. It shall be rebuttably presumed that uses are not isolated or occasional if they total more than 4 percent of the time the machinery or equipment is operated. Such research or development shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising promotions, or research in connection with literary, historical or similar projects.

XIII. Purchases of electricity, oil, gas and other fuels used in a residence for all domestic uses including heating, and sales of such fuels when used by businesses and farms for farming and business purposes.

XIV. All vessels over 50 tons.

XV. Home and household items, including but not limited to, firewood and kindling, propane gas for grills and stoves, fertilizer, fungicides, insecticides, cloth diapers, which are reusable and recyclable, plants and seeds which produce food for human consumption, and car seats.

XVI. All items of clothing and shoes and fabric goods under \$100 for any single item and \$250 for more than one item in a single purchase and fire, police, waitress and nurse work uniforms and footwear.

XVII. Purchases of bibles, prayer books, missals, and other religious texts.

77-F:14 Transactions not Covered. This chapter shall not cover the following transactions:

I. Private yard sales, limited in total to 3 weeks annually, which consist of the casual sale of tangible personal property.

II. The transfer of tangible personal property to a corporation solely in consideration for the issuance of its stock, pursuant to a merger or consolidation effected under the laws of New Hampshire or any other jurisdiction.

III. The distribution of property by a corporation to its stockholders as a liquidating dividend.

IV. The distribution of property by a partnership to its partners in whole or partial liquidation.

V. The distribution of property by a limited liability company to its members in whole or partial liquidation.

VI. The transfer of property to a corporation upon its organization in consideration for the issuance of its stock.

VII. The contribution of property to a partnership in consideration for a partnership interest.

VIII. The contribution of property to a limited liability company in consideration for a membership interest.

IX. The sale of tangible personal property where the purpose of the vendee is to hold the thing transferred as security for the performance of an obligation of the vendor.

X. The sawing of lumber owned by the person requesting the sawing or such person's agent.

77-F:15 Organizations not Covered. Any purchase or service charged by or to any of the following or any use by any of the following are not subject to the sales and use taxes imposed under this chapter:

I. The state of New Hampshire, or any of its agencies, instrumentalities, public authorities, public corporations, including a public corporation created pursuant to agreement or compact with another state, or political subdivisions when it is the purchaser, user or consumer, or when it is a vendor of services or property of a kind not ordinarily sold by private persons.

II. The United States of America, any of its agencies and instrumentalities, insofar as it is immune from taxation when it is the purchaser, user or consumer, or when it sells services or property of a kind not ordinarily sold by private persons.

III. Organizations which qualify for exempt status under the provisions of Section 501(c)(3) of the United States Internal Revenue Code, as the same may be amended or redesignated, excepting sales, storage or use in activities which are mainly commercial enterprises; provided, however:

(a) That the organization first shall have obtained a certificate from the commissioner stating that it is entitled to the exemption;

(b) That the sale or service or use is for the exempt purpose of such organization; and

(c) That the vendor keeps a record of the purchase price of each such separate purchase, the name of the purchaser, the date of each separate purchase, and the number of the certificate.

IV. Purchases of building materials and supplies to be used in the construction, reconstruction, alteration, remodeling or repair of:

(a) Any building structure or other public work owned by or held in trust for the benefit of any governmental body or agency mentioned in paragraphs I and II of this section and used exclusively for public purposes;

(b) Any building or structure owned by or held in trust for the benefit of any organization described in paragraph III and used exclusively for the purposes upon which its exempt status is based; and

(c) Any building or housing project subject to the provisions of RSA 204-C, provided, however, that the governmental body or agency, the organization, or person has first obtained a certificate from the commissioner stating that it is entitled to the exemption and the vendor keeps a record of the purchase price of each separate purchase, the name of the purchaser, the date of each separate purchase, and the number of the certificate. In this paragraph, the words "building materials and supplies" shall include all materials and supplies consumed, employed or expended in the construction, reconstruction, alteration, remodeling, or repair of any building, structure, or other public work as well as the materials and supplies physically incorporated therein.

V. Organizations which qualify for exempt status under the provisions of Section 501(c)(4)-(13) and (19), and political organizations as defined in Section 527(e) of the United States Internal Revenue Code, as the same may be amended or redesignated, shall not be exempt from taxation of the purchase or use of tangible personal property as defined in RSA 77-F:1.

77-F:16 Property Exempt From Use Tax.

I. The following uses of property are not subject to the compensating use tax imposed under this chapter:

(a) Property used by the purchaser in this state prior to July 1, 1999.

(b) Property purchased by the user while a nonresident of this state, except in the case of tangible personal property which the user, in the performance of a contract, incorporates into real property located in the state and except in the case of vessels under 50 tons and used in the waters of this state for at least 30 days.

(c) Property or services to the extent that a retail sales or use tax was legally due and paid thereon, without any right to a refund or credit thereof, to any other state or jurisdiction within any other state but only when it is shown that the other state or jurisdiction allows a corresponding exemption with respect to the purchase or use of tangible personal property or services upon which such a purchase tax or compensating use tax was paid to this state. To the extent that the tax imposed by this chapter is at a higher rate than the rate of tax in the first taxing jurisdiction, this exemption shall be inapplicable and the tax imposed by RSA 77-F:4 shall apply to the extent of the difference in the rates.

(d) Property withdrawn from inventory for the purpose of donating such property to an entity described in RSA 77-F:15, I, II, or III.

II. A person while engaged in any manner in carrying on in this state any employment, trade, business or profession, not entirely in interstate or foreign commerce, shall not be deemed a nonresident with respect to the use in this state of property in that employment, trade, business or profession.

77-F:17 Certificate or Affidavit of Exemption. Unless a vendor shall have taken from the purchaser a certificate, signed by the purchaser and bearing the purchaser's name and address and the number of the purchaser's registration certificate, to the effect that the property was purchased for resale or the purchaser prior to taking delivery, furnishes to the vendor any affidavit, statement or additional evidence, documentary or otherwise, which the commissioner may require demonstrating that the purchaser is an exempt organization described in RSA 77-F:15, the purchase shall be deemed a taxable purchase at retail. Provided, however, the commissioner may authorize a purchaser, who acquires tangible personal property or services under circumstances which make it impossible at the time of acquisition to determine the manner in which the tangible personal property or services will be used, to pay the tax directly to the commissioner and waive the collection of the tax by the vendor.

Provided, further, the commissioner shall authorize any contractor, subcontractor or repairperson who acquires tangible personal property consisting of materials and supplies for use in erecting structures for others, or building on, or otherwise improving, altering, or repairing real property of others, to pay the tax directly to the commissioner and waive the collection of the tax by the vendor. No such authority shall be granted or exercised except upon application to the commissioner and the issuance by the commissioner of a direct payment permit. If a direct payment permit is granted, its use shall be subject to conditions specified by the commissioner and the payment of tax on all acquisitions pursuant to the permit shall be made directly to the commissioner by the permit holder.

77-F:18 Computing Receipts and Consideration.

I. The retail purchase tax imposed under RSA 77-F:2 and the compensating use tax imposed under RSA 77-F:4 when computed in respect to tangible personal property wherever manufactured, processed or assembled and used by such manufacturer, processor or assembler in the regular course of business within the state, shall be based on the price at which items of the same kind of tangible personal property are offered for sale by such manufacturer, processor or assembler.

II. Tangible personal property which has been purchased by a resident of the state outside of this state for use outside of this state and subsequently becomes subject to the compensating use tax imposed under this chapter, shall be taxed on the basis of the purchase price of the property, provided however:

(a) That where a taxpayer affirmatively shows that the property was used outside the state by the taxpayer for more than 6 months prior to its use within this state, the property shall be taxed on the basis of current market value of the property at the time of its first use within this state but the value of the property, for compensating use tax purposes, may not exceed its cost.

(b) That the compensating use tax on the tangible personal property brought into this state, other than for complete consumption or for incorporation into real property located in this state, and used in the performance of a contract or subcontract within this state by a purchaser or user for a period of less than 6 months may be based, at the option of the taxpayer, on the fair rental value of the property for the period of use within this state.

III. For purposes of RSA 77-F:4, I the tax shall be at the rate of 3 percent of the consideration given or contracted to be given for the property or for the use of the property adjusted in the same manner as is the sales price under the purchase tax to arrive at "receipts."

IV. For purposes of RSA 77-F:4, II the tax shall be at the rate of 3 percent of the price at which items of the same kind of tangible personal property are offered for sale by the user.

77-F:19 Returns.

I. Every person required to collect or pay tax under this chapter shall on or before the fifteenth day of the month make and file a return for the preceding month with the commissioner. The return of a vendor of tangible personal property shall show such vendor's receipts from sales and also the aggregate value of tangible personal property sold, the use of which is subject to tax under this chapter.

II. The commissioner may extend, for cause shown, the time of filing any return for a period not exceeding 3 months on such terms and conditions as the commissioner may require.

III. The commissioner may permit or require returns to be made covering other periods upon such dates as the commissioner specifies. In addition, the commissioner may require payment of tax liability at such intervals and based upon such classifications as the commissioner may designate. In prescribing the other periods to be covered by the return or intervals or classifications for payment of tax liability, the commissioner may take into account the dollar volume of tax involved as well as the need for insuring the prompt and orderly collection of the taxes imposed.

IV. The commissioner may require amended returns to be filed within 20 days after notice and to contain the information specified in the notice.

77-F:20 Payment of Tax.

I. Every person required to file a return under this chapter shall, at the time of filing the return, pay to the commissioner the taxes imposed by this chapter as well as all other moneys collected by such person under this chapter; provided, however, that every person who collects the tax from purchasers of taxable items according to the tax bracket schedule of RSA 77-F:3 shall be allowed to retain, as partial compensation for services rendered to the state of NewHampshire in collecting the tax, any amount

lawfully collected by such person in excess of the tax imposed by this chapter.

II. All the taxes for the period for which a return is required to be filed or for such lesser interval as shall have been designated by the commissioner, shall be due and payable to the commissioner on the date established for the filing of the return for that period, or on the date for such lesser interval as the commissioner has designated, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of receipts, or the value of property or services sold or purchased or the taxes due thereon.

77-F:21 Surety Bonds.

I. When the commissioner deems it necessary to protect the revenues to be obtained under this chapter, the commissioner may, after notice and hearing, require any vendor required to collect the tax imposed by this chapter to file with the commissioner a bond issued by a surety company authorized by the New Hampshire insurance department to do business in this state, in an amount fixed by the commissioner, to secure the payment of any tax, interest or penalties due, or which may become due. The vendor shall file a bond within 10 days after the department has issued and mailed such notice. Surety bonds may be required in situations such as, but not limited to, failure to file returns, failure to make payments with returns at the time required by law, tender by a vendor of checks returned for insufficient funds, failure to pay interest and penalties assessed, vendors who are itinerant, transient or temporary, and any other situation which, in the discretion of the commissioner, renders the collection of the tax in jeopardy.

II. The surety on such bond shall be discharged from the liability accruing on the bond after the expiration of 60 days from the date on which the surety shall have lodged with the department a written request to be so discharged; but such request shall not discharge such surety from any liability already accrued or which shall accrue before the expiration of said 60-day period. The duration of surety bonds shall be for one year only, unless the requirement is cancelled or revised by the commissioner before the expiration of the one-year period.

III. In lieu of a bond, cash in an amount prescribed by the commissioner may be deposited with the state treasurer who may, at any time, upon instructions from the commissioner and without notice to the depositor, apply the cash deposited to any tax or interest or penalties due. Cash deposited in lieu of a surety bond shall not earn interest.

IV. Failure to comply with the provisions of this section shall result in the suspension of the vendor's license, as provided in RSA 77-F:27.

77-F:22 Determination of Tax.

I. If a return required by this chapter is not filed, or if a return when filed, is incorrect or insufficient, the amount of tax due shall be determined and assessed by the commissioner from any information available. If necessary, the tax may be estimated on the basis of external indices, such as stock on hand, purchases, rental paid, location, scale of rents or charges, comparable rents or charges, type of accommodations and service, number of employees or other factors.

II. The commissioner may provide by rule for the exclusion from taxable receipts of amounts representing sales where the contract of sale has been cancelled, the property returned or the receipt or charge has been ascertained to be uncollectable or, in the case the tax has been paid upon that receipt or charge, for refund or credit of the tax so paid.

77-F:23 Collection of Tax From Purchaser. Every person required to collect the tax shall collect the tax from the purchaser when collecting the price to which it applies. If the purchaser is given any sales slip, invoice, receipt or other statement or memorandum of the price paid or payable, the tax shall be stated, charged and shown separately on the first of the documents given to him. The tax shall be paid to the person required to collect it as trustee for and on account of the state.

77-F:24 Deferred Payment Purchases. The commissioner may provide that the tax upon receipts from purchases on the installment plan, seasonal purchases, or deferred payment purchases may be paid on the amount of each deferred payment and upon the date when the payment is received.

77-F:25 Refunds.

I. Claims for refund or credit may be made by a customer who has actually paid the tax or by a person required to collect the tax, who has collected and paid over the tax to the commissioner, provided that the claim is timely made in accordance with RSA 21-J:28-a and RSA 21-J:29. No actual refund of moneys shall be made to a person until such person establishes to the satisfaction of the commissioner, under such rules as the commissioner may adopt, that such person has repaid to the customer the amount for which the application for refund is made. The commissioner may, in lieu of any refund, allow credit on payments

due from the claimant.

II. If the commissioner determines, on a petition for refund or otherwise, that a person has paid an amount of tax under this chapter which, as of the date of the determination, exceeds the amount of tax liability owing from the person to the state, with respect to the current and all preceding taxable periods, under any provision of this title, the commissioner shall forthwith refund the excess amount to the person together with interest as provided in RSA 21-J:28.

77-F:26 Proceedings to Recover Tax.

I. The commissioner may institute actions in the name of the state to recover any tax, interest on tax, additions to tax, or penalties imposed by this chapter.

II. In the collection of the tax imposed by this chapter, the commissioner may use all of the powers granted to tax collectors under RSA80 for the collection of taxes, except that the tax imposed by this chapter shall not take precedence over prior recorded mortgages. The commissioner shall also have all of the duties imposed upon the tax collectors by RSA 80 that are applicable to the commissioner. The provisions of RSA80:26 apply to the sale of land for the payment of taxes due under this chapter, and the state treasurer is authorized to purchase the land for the state. If the state purchases the land, the state treasurer shall certify the purchase to the governor, and the governor shall draw a warrant for the purchase price out of any money in the treasury not otherwise appropriated.

77-F:27 Suspension or Revocation of Certificates; Appeal.

I. The commissioner may, after notice and hearing, suspend or revoke the certificate of registration of any person required to collect the tax or may refuse to issue or renew any registration for failure to comply with this chapter or with any pertinent rules adopted hereunder.

II. Any person required to collect the tax aggrieved by a suspension, revocation, or refusal may appeal therefrom, in the same manner as provided in RSA 21-J:28-b for appeal for redetermination or reconsideration of assessments, within 10 days after written notice of the suspension, revocation or refusal has been mailed or delivered to such person.

III. If the appealing person required to collect the tax files a bond running to the state as provided in RSA 77-F:22, then the suspension or revocation shall be inoperative during the appeal.

77-F:28 Liens. If any person required to pay or collect and transmit a tax under this chapter neglects or refuses to pay the same after demand, the amount, together with all penalties and interest provided for in this chapter and together with any costs that may accrue in addition thereto, shall be a lien in favor of the state of New Hampshire upon all property and rights to property, whether real or personal, belonging to such person. Such lien shall arise at the time demand is made by the commissioner of taxes and shall continue until the liability for such sum with interest and costs is satisfied or becomes unenforceable. No lien upon real estate for taxes imposed by this chapter is valid and binding against any person other than the taxpayer until notice of such lien stating the name and address of the taxpayer and the amount of the tax due shall have been filed and recorded in the registry of deeds in the grantor index in the county in which such real estate is located. Notwithstanding the provisions of any other law, the lien shall continue and shall be valid and binding until the liability for the sum, with interest and costs, is satisfied or becomes unenforceable.

77-F:29 Disposition of Tax. All funds received by the state treasurer under the provisions of this chapter shall be deposited in the education trust fund established by RSA 198:39.

4 New Subdivision; Education Trust Fund. Amend RSA 198 by inserting after section 37 the following subdivision:

Education Trust Fund

198:38 Definitions. In this subdivision:

I. "Average daily membership in residence" means "average daily membership in residence" as defined in RSA 189:1-d, IV, except that pupils who are in a home education program under RSA193-A shall be counted as $\frac{1}{4}$ of a pupil attending public school.

II. "Adequate education block grant" means the total amount of the annual grant made to a municipality by the state from the education trust fund consisting of the sum of:

(a) The elementary pupil adequacy grant multiplied by the average daily membership in residence in the municipality for

grades K-8 in the last completed school year.

(b) The elementary pupil adequacy grant multiplied by:

(1) The low income pupil adequacy grant supplement;

(2) The low income pupil percentage; and

(3) The average daily membership in residence in the municipality for grades K-8 in the last completed school year.

(c) The high school pupil adequacy grant multiplied by the average daily membership in residence in the municipality for grades 9-12 in the last completed school year.

(d) The high school pupil adequacy grant multiplied by:

(1) The low income pupil adequacy grant supplement;

(2) The low income pupil percentage; and

(3) The average daily membership in residence in the municipality for grades 9-12 in the last completed school year.

(e) The amount needed, if any, to reduce the municipality's tax effort per pupil to an equalized tax rate of \$5 based on the latest available equalization survey for education spending greater than provided by the educational trust fund and all other non-municipal sources for the last completed school year.

III. "Consumer price index" means the most recent available consumer price index for the Boston metropolitan area published by the United States Department of Labor.

IV. "Elementary pupil adequacy grant" means the uniform per pupil grant amount set annually under this subdivision and made to municipalities annually from the education trust fund to reimburse them for providing adequate education for their average daily membership in residence in grades K-8 for the last completed school year. This amount is \$4,500 per pupil for the 1998-1999 school year.

V. "Equalized assessed value" means equalized assessed value as defined in RSA 76-A:1, VII.

VI. "High school pupil adequacy grant" means the uniform per pupil grant amount set annually under this subdivision and made to municipalities annually from the education trust fund to reimburse them for providing adequate education for their average daily membership in residence in grades 9-12 for the last completed school year. This amount is \$4,500 per pupil for the 1998-1999 school year.

VII. "Low income pupil adequacy grant supplement" means the percent increase set annually under this subdivision added to the elementary pupil adequacy grant and the high school pupil adequacy grant for a municipality's resident low income pupils as measured by a municipality's low income pupil percentage. This percentage is expressed as a percent of the elementary pupil adequacy grant and the high school pupil adequacy grant set annually under this subdivision. Beginning with the 1999-2000 school year, this percentage is 40 percent.

VIII. "Low income pupil percentage" means the percentage of resident pupils in grades K-4 in a municipality that are determined by the department of education in the last completed school year to be eligible for free or reduced cost school lunches following the federal school lunch eligibility guidelines in place for that year.

IX. "Low income pupil plan" means a plan from school districts with more than one school for elementary or high school showing how the low income pupil adequacy grant supplement is spent in each school to increase opportunities for low income pupils to obtain a constitutionally adequate education and the proportion of the spending in each school for the low income pupil adequacy grant supplement compared to the proportion of low income pupils in each school in the district.

X. "Municipality" means any town, city, or place.

XI. "Tax effort per pupil" means the equalized education tax rate for a municipality based on equalized assessed valuation that is required to raise \$1,000 per pupil above that provided by the adequate education block grant in this subdivision and other non-municipal sources. Pupil counts are based on the average daily membership in residences, as defined in paragraph II.

198:39 Education Trust Fund Created. The treasurer shall establish an education trust fund in the treasury. Moneys in such

fund shall not be used for any purpose other than to distribute adequate education block grants to municipalities, make payments to municipalities to cap their tax effort per pupil under this subdivision, make supplemental adequacy grants under RSA 198:51, and to reimburse the state for any borrowing necessary to implement this subdivision. The state treasurer shall deposit into this fund:

- I. The full amount of the statewide education property tax under RSA 76-A.
- II. The full amount of the sales tax under RSA 77-F.
- III. All moneys due the fund in accordance with RSA 284:21-j.
- IV. Any other moneys appropriated to the education trust fund from the general fund.
- V. Any other moneys due the fund in accordance with law.

198:40 Investment of Fund. The fund shall be nonlapsing. The treasurer shall invest that part of the fund which is not needed for immediate distribution in short-term interest-bearing investments. The income from these investments shall be returned to the fund.

198:41 Determination of Annual Grant Amounts for the Elementary Pupil Adequacy Grant and the High School Pupil Adequacy Grant.

- I. For the 2000 tax year based on attendance in the 1998-1999 school year, the elementary pupil adequacy grant shall be \$4,500 per pupil as measured by average daily membership in residence and the high school pupil adequacy grant shall be \$4,500 per pupil as measured by average daily membership in residence.
- II. For all tax years following 2000, the grant amount for both the elementary pupil adequacy grant and the high school pupil adequacy grant shall be determined by adjusting both grant amounts, for the year immediately preceding, by the consumer price index using the latest 12-month consumer price index available to increase or decrease the grant amount as required. The department of education shall determine the new grant amounts by October 1 of each year.

198:42 Determination of the Maximum Tax Effort per Pupil. The maximum tax effort per pupil is set at the equalized rate of \$5 using the latest available equalization survey for equalized value.

198:43 Supplemental Distributions to Cap Tax Effort per Pupil. Any municipality for which there is a dollar amount needed under RSA 198:44, I(c) for any fiscal year shall be entitled to a quarterly supplemental distribution over the next school year equal to that amount which would have reduced the municipality's tax effort per pupil, in the immediately preceding tax year, as defined in RSA 76-A:1, IX, to a rate of \$5 based on equalized assessed valuation.

198:44 Determination of the Annual Adequate Education Block Grant for Each Municipality for Each Tax Year.

- I. The adequate education block grant to be distributed annually by the state to each municipality with resident pupils is determined by the sum of the following 3 dollar amounts:
 - (a) The dollar amount obtained by multiplying the elementary pupil adequacy grant amount set by the department of education for the tax year times the average daily membership in residence in grades K-8 for the last completed school year, plus the elementary pupil adequacy grant times projected average daily membership for kindergartens newly established in the current year.
 - (b) The dollar amount obtained by multiplying the high school pupil adequacy grant amount set by the department of education for the tax year times the average daily membership in residence in grades 9-12 for the last completed school year.
 - (c) The dollar amount needed to reduce the municipality's tax effort per pupil to an equalized rate of \$5 for education spending greater than provided by the educational trust fund and all other non-municipal sources for the last completed school year.
- II. The department of revenue administration shall determine the adequate education block grant for each municipality by November 1 of each year for the tax year for the year following.

198:45 Distribution Schedule of Adequate Education Block Grant. The adequate education block grant determined in RSA 198:44 shall be distributed to each municipality from the education trust fund in 4 equal payments on July 1, October 1, January 1, and April 1 of each school year.

198:46 Use of Funds.

I. Municipalities shall apply the entire amount of aid received under RSA198:45 to education. Nothing in this subdivision shall prevent school districts from adopting budgets which authorize expenditures in excess of those supported with funds from the education trust fund, subject to the provisions of RSA 198:43.

II. On or before June30 of each year, the individual with fiscal responsibility in each municipality shall submit a statement to the commissioner of education that the adequate education block grant received under RSA 198:45 was applied entirely to education. The statement shall include the following: *"I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete."*

198:47 Maintenance of Local Control. Distributions under RSA 198:45 depend only on average daily membership in residence and the pupil adequacy grant amounts as determined in this subdivision and are independent of how the municipalities decide to spend the distributions or other funds they may raise for education. Notwithstanding any other provision of law, nothing in this subdivision is intended in any way to limit or control how school districts operate or spend their budgets.

198:48 Determination of Total Funds to be Raised Annually by the Statewide Education Property Tax and to be Deposited in the Education Trust Fund. The total amount of funds to be raised by the statewide education property tax and to be deposited in the education trust fund is the annual sum of all the adequate education block grants for all municipalities determined by the department of revenue administration in RSA 198:45.

198:49 Duties of the Department of Education and the Board of Education.

I. The department of education shall:

(a) On or before September 30 of each year, collect from the school districts final data concerning all aspects of student attendance for the school year ending June 30 of that year, necessary to establish the average daily membership and average daily membership in residence for that year.

(b) Submit to the department of revenue administration all data necessary to establish the tax rate for the statewide education property tax under RSA 76-A:2.

(c) On or before September 30 of each year, collect from school districts final data concerning all aspects of federal school lunch eligibility in grades K-4 for the school year ending June 30 of that year necessary to establish the number and percent of resident students in each municipality eligible for free and reduced cost school lunches under the federal school lunch guidelines for the school year ending June 30. School districts shall provide this eligibility data by surveying all resident pupils in grades K-4 regardless of their participation in the school lunch program.

II. The board of education shall adopt rules necessary to the proper administration of this subdivision.

198:50 Submission of Data by School Districts.

I. Every school district shall submit all attendance and school lunch eligibility information required by the department of education under this subdivision on or before September 30 of each year. The department shall withhold distribution of state funds to any municipality in noncompliance with this section.

II. Each report submitted under paragraph I shall include a certification, signed by the chairperson of the school district's governing body or the chairperson of the board of trustees of approved public academies, that states: "I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate and complete."

198:51 Low Income Pupil Plan Required From Multi-school School Districts; Approval Required to Obtain Low Income Pupil Adequacy Grant Supplement.

I. Each school district with one or more schools covering grades K-8 and grades 9-12 shall submit a low income pupil plan to the department of education by July 15 of each year beginning in 2000.

II. The department of education shall approve or disapprove of low income pupil plans by September 30 of each year. Low income pupil plans which are not approved may be resubmitted for approval. The department of education and the state board of education shall adopt rules, pursuant to RSA 541-A, on the criteria for approval of low income pupil plans.

III. Any district which fails to receive approval for its low income pupil plan by April 1 of each year shall be ineligible for a low income pupil adequacy grant supplement beginning July 1 of such year.

198:52 Supplementary Adequacy Grants to Ensure an Adequate Education under Special Circumstances.

I. In recognition that the adequate education block grant cannot ensure a constitutionally adequate education under special limited circumstances where districts face unavoidable emergencies, special pupil needs, and high costs, districts may make special application to the department of education for annual supplementary grants from the education trust fund to pay for:

- (a) Meeting the needs of special needs pupils where the percent of resident special needs pupils is 20 percent or more higher than the state average and where the additional costs are not met by any other program.
- (b) Costs for any programs required by the state minimum standards and transportation where the per pupil costs are unavoidably 20 percent or more higher than the state average and cannot be offset with per pupil costs which are lower than the state average in other program areas.
- (c) Demonstrated deferred maintenance and purchase of buildings and equipment before the inception of this chapter that prevent adequacy in the current school year for districts for which the modified equalized assessed value per resident pupil as determined by the department is less than the state average.
- (d) Accidental damage to buildings and equipment.

II. Grant applications must be received by the department of education by August 1 of each year to be included in the adequate education block grant distributed beginning the following July 1. The department of education shall act on the grants and inform the department of revenue administration and the state treasurer of the amounts approved to be raised for the education trust fund and paid to each municipality by September 30.

III. The department of education shall adopt rules, pursuant to RSA 541-A, relative to:

- (a) Grant application forms.
- (b) Methods for determining whether a district meets the criteria required in paragraph I.
- (c) Any other procedures necessary for administration of the supplementary adequacy grant program under this section.

5 New Subparagraph; Education Trust Fund. Amend RSA 6:12, I by inserting after subparagraph (vvv) the following new subparagraph:

(www) Money received under RSA 76-A, RSA 77-F, and from the sweepstakes fund, which shall be credited to the education trust fund under RSA 198:39.

6 Gender Reference Change. Amend the introductory paragraph of RSA 21-J:3 to read as follows:

In addition to the powers, duties, and functions otherwise vested by law, including RSA 21-G, in the commissioner of the department of revenue administration, ~~he~~ **the commissioner** shall:

7 Duties of Commissioner. Amend RSA 21-J:3, V to read as follows:

V. Exercise general supervision over the administration of the assessment and taxation laws of the state, **the appraisal for ad valorem taxation purposes of property within the state**, and over all assessing officers in the performance of their duties, except the board of tax and land appeals, to the end that all assessments of property be made in compliance with the laws of the state.

8 Duties of Commissioner. Amend RSA 21-J:3, XIII to read as follows:

XIII. Equalize annually the valuation of the property in the several towns, cities, and unincorporated places in the state by adding to or deducting from the aggregate valuation of the property ~~as assessed~~ in towns, cities, and unincorporated places such sums as will bring such valuations to the true and market value of the property, including the equalized value of property formerly taxed pursuant to the provisions of RSA 72:7; 72:15, I, V, VII, VIII, IX, X, and XI; 72:16; 72:17; 73:26; 73:27; and 73:11 through 16 inclusive, which were relieved from taxation by the laws of 1970, 5:3; 5:8; 57:12; and 57:15, the equalized valuation of which is to be determined by the amount of revenue returned in such year in accordance with RSA 31-A, and by making such

adjustments in the value of other property from which the towns, cities, and unincorporated places receive taxes ***or payments in lieu of taxes*** as may be equitable and just, so that any public taxes that may be apportioned among them shall be equal and just. ***In carrying out the duty to equalize the valuation of property, the commissioner shall follow the procedures set forth in RSA21-J:9-a.***

9 New Paragraph; Duties of Commissioner. Amend RSA 21-J:3 by inserting after paragraph XXIV the following new paragraph:

XXV. Petition the board of tax and land appeals to issue an order for reassessment of property pursuant to the board's powers under RSA 71-B:16 - 19 whenever, in the commissioner's belief, the valuation of property for equalization purposes in a particular city, town, or unincorporated place is disproportional to the valuation for equalization purposes in other cities, towns, or unincorporated places in the state.

10 Division of Property Appraisal; Department of Revenue Administration. RSA 21-J:9 is repealed and reenacted to read as follows:

21-J:9 Division of Property Appraisal. There is established within the department the division of property appraisal, under the supervision of a classified director of property appraisal who shall be responsible for the following functions, in accordance with applicable laws:

I. Assisting and supervising municipalities and appraisers in appraisals and valuations as provided in RSA 21-J:10 and RSA 21-J:11.

II. Appraising state-owned forest and recreation land under RSA 227-H and RSA 216-A.

III. Annually determining the total equalized valuation of properties in the cities and towns and unincorporated places according to the requirements of RSA21-J:9-a.

IV. Preparing a standard appraisal manual which may be used by assessing officials, and holding meetings throughout the state with such officials to instruct them in appraising property.

11 New Section; Equalization Procedure. Amend RSA 21-J by inserting after section 9 the following new section:

21-J:9-a Equalization Procedure. The following procedures shall apply in determining the equalization of property within the cities, towns, and unincorporated places as required by RSA21-J:3, XIII:

I. The commissioner shall annually conduct a sales-assessment ratio study which shall include arm's length sales or transfers of property that occurred 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made.

II. In determining the arm's length sales or transfers that are included in the sales-assessment ratio study, the commissioner may use a randomly selected sample of such sales and transfers the size of which shall be determined by the total taxable parcels in the city, town, or unincorporated place.

III. If less than 2 percent of the total taxable parcels in a city, town, or unincorporated place has been transferred by an arm's length sale or transfer during the 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made, the commissioner may choose one or more of the following options:

(a) Include appraisals of any of the taxable property of such city, town, or unincorporated place in the sales-assessment ratio study. Such appraisals shall be based on full and true market value pursuant to RSA 75:1 and shall be performed by department appraisers. The property to be appraised shall be selected by the commissioner.

(b) Consider recent equalization ratio activity in adjoining cities, towns, or unincorporated places.

(c) Include arm's length sales or transfers in the city, town, or unincorporated place, within 2-1/2 years preceding April 1 of the year preceding the tax year for which such equalization is made.

IV. The commissioner shall use the inventory of property transfers authorized by RSA74:18 in determining the equalized value of property and may consider such other evidence as may be available to the commissioner on or before the time the final equalized value is determined.

12 Appraisals of Property for Ad Valorem Tax Purposes. RSA 21-J:11 is repealed and reenacted to read as follows:

21-J:11 Appraisals of Property For Ad Valorem Tax Purposes.

I. Every person, firm, or corporation intending to engage in the business of making appraisals on behalf of a municipality for tax assessment purposes in this state shall notify the commissioner of that intent in writing. No person, firm, or corporation engaged in the business of making appraisals of taxable property for municipalities and taxing districts shall enter into any contract or agreement with any town, city, or other governmental division without first submitting the proposed contract or agreement to the commissioner for examination and approval and submitting to the commissioner evidence of financial responsibility and professional capability of personnel to be employed under the contract.

II. The commissioner, at no expense to the municipality, shall monitor appraisals of property and supervise appraisers as follows:

(a) Assure that appraisals comply with all applicable statutes and rules;

(b) Assure that appraisers are complying with the terms of any appraisal contract;

(c) Review the accuracy of appraisals by inspection, evaluation, and testing, in whole or in part, of data collected by the appraisers; and

(d) Report to the governing body on the progress and quality of the municipality's appraisal process.

III. The commissioner shall adopt rules under RSA 541-A relative to the provisions required of all contracts for appraisal services and the methodology for inspection, evaluation, and testing of data for the purposes of appraisal monitoring.

13 Reports Required. Amend the introductory paragraph of RSA 21-J:34 to read as follows:

The governing body of each city, town, unincorporated town, unorganized place, school district, and village district, and the clerk of each county convention shall submit to the commissioner of revenue administration the following reports necessary to compute and establish ***the state education tax rate and*** the tax rate for each city, town, unincorporated town, unorganized place, school district, village district, and county. The commissioner shall adopt rules under RSA 541-A establishing the form and content of these reports:

14 New Paragraph; Reports Required. Amend RSA 21-J:34 by inserting after paragraph XIV the following new paragraph:

XV. A report filed by the assessing officials of each city, town, and unincorporated place shall certify sales-assessment information necessary for the department to conduct the annual sales-assessment ratio study required by RSA21-J:9-a. This report shall be filed within 45 days after receipt from the department.

15 Board of Tax and Land Appeals; Authority. Amend RSA 71-B:5, II to read as follows:

II. To hear and determine ~~[any]~~ appeals ***by towns*** relating to the ~~[equalization of valuation performed]~~ ***equalized valuation of property determined*** by the commissioner of revenue administration pursuant to RSA 21-J:3, XIII. Any town aggrieved by ~~[an]~~ ***its*** equalized valuation as determined by the commissioner of revenue administration must appeal to the board in writing within 30 days of ~~[the town's notification]~~ ***notice of [the] its final*** equalized valuation by the commissioner. ***The board shall hear and make a final ruling on such appeal within 45 days of its receipt by the board. The board's decision on such appeal shall be final and not appealable.***

16 New Paragraph; Order for Reassessment. Amend RSA 71-B:16, IV to read as follows:

IV. When a complaint is filed with the board alleging that all of the taxable real estate or taxable property in a taxing district should be reassessed or newly assessed for any reason, provided that such complaint must be signed by at least 50 property taxpayers or 1/3 of the property taxpayers in the taxing district, whichever is less[-]; ***or***

V. When the commissioner of revenue administration files a petition with it pursuant to RSA 21-J:3, XXV.

17 New Section; Inventory of Property Transfers. Amend RSA 74 by inserting after section 17 to following new section:

74:18 Inventory of Property Transfers.

I. In order to properly equalize the value of property under RSA 21-J:3, XIII, an inventory of property transfers shall be filed with the department of revenue administration and with the municipality where the property is located for each transfer of real

estate or interest in real estate. Each form may include the following information:

- (a) The buyer and seller's names and post transaction addresses and the name and address of a contact person if the buyer or seller is a trust or corporation.
- (b) A description of the exact location of the property by town, street, and the assessor's map, lot, and block number.
- (c) The acreage included in the sale.
- (d) An accurate description of the property included in the sale, the neighborhood where the property is located, and the type and style of the property sold.
- (e) The buyer's ownership interest in the property.
- (f) The sale price, date of transfer, and the amount mortgaged.
- (g) The description of the type of transfer that has taken place.
- (h) The amount of personal property included in the sale price.
- (i) Whether the property was previously occupied and whether the property will serve as the buyer's primary residence.
- (j) The financing arrangements made to purchase the property to be answered at the option of the buyer.
- (k) Whether any concessions were made in the sale.
- (l) Whether the property was in current use.
- (m) Whether land use taxes were considered in the sale.
- (n) The buyer's dated signature certifying that the information indicated on the form is true.

II. The inventory of property transfers required by this section shall be filed with the department of revenue administration and with the municipality where the property is located by the purchaser, grantee, assignee, or transferee, no later than 30 days from the recording of the deed at the register of deeds or transfer of real estate, whichever is later. Persons required to file the inventory of property transfers who willfully fail to file or willfully make false statements on the forms shall be guilty of a violation.

III. No deed, recording a transfer of real estate or any interest in real estate, executed before October 1, 1995, shall be required to comply with this section.

IV. Failure to comply with this section shall not be construed to cloud title.

V. Any information provided to the department pursuant to this section shall be exempt from the right-to-know law, RSA 91-A.

18 Reference Change. Amend RSA 193:1, I(c) to read as follows:

(c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student's educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186-C:18 and ~~[RSA 198:27-37]~~ **adequate education block grants under RSA 198:44.**

19 Reimbursement Anticipation Notes. 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 **and a municipality may incur debt in anticipation of reimbursement under RSA 198:45.** The governing body, after 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 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.

20 Sweepstakes. RSA 284:21-j is repealed and reenacted to read as follows:

284:21-j Establishment. The state treasurer shall credit all moneys received from the sweepstakes commission, and interest received on such moneys, to a special fund from which the treasurer shall pay all expenses of the commission incident to the administration of this subdivision and RSA287-E. Any balance left in such fund after such expenses are paid shall be deposited in the education trust fund established under RSA198:39.

21 Transition. As of July 1, 1999, all funds, from any source derived, which would be distributed as foundation aid shall be deposited in the education trust fund under RSA 198:39.

22 Transitional Tax Rates.

I. Notwithstanding any other provision of law, for the property tax years ending March30,2000, and March 30, 2001 only, for each municipality in the state the department of revenue administration shall determine the property tax rate which would be applicable in the municipality as the law existed on June 30, 1999. For the purposes of this section such rate shall be termed "old rate." For the same tax years the department of revenue administration shall determine the property tax rate which would be applicable statewide due to the provisions of this act. For the purposes of this section, such rate shall be termed "new rate."

II. For the property tax year ending March 30, 2000:

(a) In those municipalities in which the old rate is less than the new rate, the property tax rate shall be set at the old rate increased by 1/3 of the difference between the old rate and the new rate.

(b) In those municipalities in which the old rate is greater than the new rate, the property tax rate shall be set at the old rate decreased by 1/3 of the difference between the old rate and the new rate.

(c) If required, the adequate education block grant shall be prorated according to the percentage of revenue raised by the 1/3 difference in rates.

III. For the property tax year ending March 30, 2001:

(a) In those municipalities in which the old rate is less than the new rate, the property tax rate shall be set at the old rate increased by 2/3 of the difference between the old rate and the new rate.

(b) In those municipalities in which the old rate is greater than the new rate, the property tax rate shall be set at the old rate decreased by 2/3 of the difference between the old rate and the new rate.

IV. For the property tax year ending March 30, 2002, the property tax rates throughout the state of New Hampshire shall be uniform and proportional in accordance with this act.

23 Appropriation; Education Trust Fund. The sum of \$1 is appropriated to the education trust fund for the fiscal year ending June 30, 2000.

24 Bonds Authorized. To provide funds for the appropriation made in section 22 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of \$1 and for said purpose may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-A. Payments of principal and interest of the bonds and notes shall be made from the education trust fund established in RSA 198:39. The bonds shall be 5-year bonds.

25 Repeal. The following are repealed:

I. RSA 78:20, relative to the applicability of the tobacco tax.

II. RSA 194-B:11, VIII, relative to foundation aid in relation to charter and open enrollment schools.

III. RSA 198:1-3, relative to required annual district property taxes.

IV. RSA 198:15-i - 15-t, relative to the kindergarten incentive program, kindergarten aid and alternative kindergarten programs, and the kindergarten construction program.

V. RSA 198:21, V, relative to the applicability of foundation aid and child benefit service grant recipients in the calculation of average daily membership.

VI. RSA 198:22, V, relative to the applicability of foundation aid and dual enrollment grant recipients in the calculation of average daily membership.

VII. RSA 198:27-37, relative to foundation aid and alternative foundation aid.

26 Effective Date.

I. Section 2 of this act shall take effect April 1, 1999.

II. Section 19 of this act shall take effect July 1, 1999 at 12:01 a.m.

III. The remainder of this act shall take effect July 1, 1999.

AMENDED ANALYSIS

This bill establishes a statewide education property tax and a 3 percent sales tax to fund an education trust fund to pay for state-mandated education and funding for kindergarten. The distribution to the municipalities shall be made on an equal per pupil basis, based on the average daily membership of the municipalities by grade. Municipalities may supplement education spending as they deem appropriate.

The bill permits a property taxpayer whose total statewide property taxes on up to \$100,000 of equalized value of the homestead are in excess of 10 percent of the taxpayer's household income to apply to the municipality for property tax relief of the difference not in excess of \$2,250.

The bill also provides for a 3-year transitional period to phase-in the new rate for the statewide education property tax.

1999-0276h

Floor Amendment to HB 108-FN-A-LOCAL

Proposed by Rep. Mirski

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

AN ACT rejecting certain ruling of the supreme court in Claremont I and Claremont II.

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

1 Preamble. The legislature finds that:

I. In order to preserve the taxing authority reserved to the people of New Hampshire by the state constitution and in order to preserve the power granted the legislature to represent the interests of the people, the legislature rejects those aspects of the Claremont I and Claremont II rulings which require the state to "guarantee" funding of a constitutionally adequate education. Article 28 of part I of the New Hampshire constitution requires that:

"No subsidy, charge, tax, impost or duty, shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature, or authority derived from that body."

II. To accede to the court's Claremont I ruling - reaffirmed in Claremont II - that the state "guarantee" funding of a constitutionally adequate education would be to concede that education spending should always preempt spending for public safety, public health, disaster relief, public welfare, job creation, infrastructure improvements, criminal justice, the judiciary and the courts, pollution control, recreation, natural resources and the environment, public parks, and the administration of government itself.

III. To concur with the court that education funding be "guaranteed" would be to remove 1/3 or more of all current public spending from meaningful public debate.

IV. To concur with the court would be to deny the people's constitutional right, under part I, article 28, to vote on which of those services of government are most important to them and to determine to what extent elected services are worthy of financial sacrifice.

V. To concur with the court that the people and their elected representatives must approve education funding as mandated by

the court would cause the legislature to deny the people and their representatives the right to vote and would cause the legislature to become complicit in the extinction of representative government in New Hampshire.

VI. As constitutional officers, members of the legislature are compelled to support the constitution of New Hampshire. Legislators are compelled by the constitution to maintain constitutional separation of powers and to insure that the cost of government not be imposed on the people without their consent. The legislature finds that the court's holding that the state "guarantee" education funding irresolvably conflicts with part I, article 28.

VII. If allowed to stand, the supreme court's rulings will materially affect the separation and balance of power among the 3 branches of government in ways which transcend taxes and spending.

VIII. The court's rulings shift the power of government from the people to unelected bureaucracies appointed by the governor. The legislature believes that as the debate over what constitutes educational adequacy plays out, judges, rather than the people, will define and redefine what constitutes educational adequacy. The legislature further finds that by removing from the people the right to freely determine education funding the court grants itself and state bureaucracies unwarranted and unconstitutional influence over the disposition of what presently amounts to more than a billion dollars of spending statewide.

IX. The court's transference of powers belonging to the people, to the judiciary, and to the state's bureaucracies, is unconstitutional because the constitution prohibits the judicial and executive branches of government from exercising legislative authority.

X. The court's requirement that "adequate education's" appetite for appropriations be satisfied before the needs of any other state or municipal service will cause the funding demands of "adequate education" to dominate virtually all future public and legislative debate to the detriment of all other matters of public policy.

XI. Since funding of education will be required regardless of the state of the economy, during recessions educators and those employed within the state's education bureaucracy will be guaranteed their livelihoods while taxpayers suffer lost jobs. The legislature further finds that in order to guarantee education funding during recessions or whenever state revenues fail to meet expectations, state taxes and fees will either have to be increased or state services cut. Should taxes fail to be raised during future recessions, the legislature finds that state employees in all areas of government other than education may have to be laid off or dismissed in order to accommodate funding shortfalls.

XII. By elevating educators to privileged economic status, the supreme court aborts the fundamental intent of government articulated in part I, article 10 of the New Hampshire constitution which states that "Government ..." is "... instituted for the common benefit, protection, and security, of the whole community and not for the private interest or emolument of any one man, family or class of men ...".

XIII. If permitted to stand, the "state must guarantee funding" component of the Claremont I and II decision's will convert the New Hampshire house of representatives, the most representative legislature in the world, to an institution utterly subservient to forces beyond its control.

XIV. Education funding disparities between New Hampshire towns and cities must be resolved. Nevertheless, the legislature finds that it is constitutionally prohibited from considering any resolution of educational funding disparities which would diminish, in any way, the fundamental right of the people to determine how or for what purpose they should be taxed.

2 Statement of Intention to Reject Those Portions of the Supreme Court's Claremont I and Claremont II Rulings Which Require the State to "Guarantee" Funding of a Constitutionally Adequate Education.

I. The legislature finds that:

(a) In Claremont School District v. Governor, 138 N.H. 186, 635 A.2d 1375 (1993) (Claremont I) the supreme court reversed the trial court's dismissal of the petition for declaratory and injunctive relief which challenged the method by which education is funded in New Hampshire, holding that "...it was the state's duty to provide a constitutionally adequate public education and to guarantee adequate funding...". The supreme court reasserted this view in Claremont II, basing its interpretation on the language of part II, article 83, of the New Hampshire constitution which states that it is the "...duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country..." The "...duty...to cherish..." the court said "... commands that the state support public schools."

(b) The supreme court further opined in Claremont II that since RSA 198:1-7 obligates the imposition of a school property tax in order to raise funds for education and since the court's interpretation of part II, article 83 requires the state to provide and fund education, the school property tax is, by its very nature, a state tax. The court concluded that since the statewide imposition of the school property tax results in tax disparities between communities, those disparities cause the school property tax to fail the constitutional requirement imposed by part II, article 5 that state taxes be proportionately levied.

(c) The people of New Hampshire granted the New Hampshire house of representatives and senate the exclusive constitutional authority to legislate on their behalf. That authority was given the legislature, with the understanding, that the power granted the general court and the authority granted the executive and judicial branches derives exclusively from the people and is limited in scope and application by the 39 articles which comprise part I of the New Hampshire constitution, its bill of rights. The constitution's bill of rights tempers all authority granted government in part II which defines New Hampshire's form of government.

(d)(1) The New Hampshire supreme court ruling of December 17, 1997 declaring present school-funding methodology unconstitutional is itself a clear violation of the constitution. It fails to heed the explicit words of part I, article 28 of the New Hampshire constitution which requires that:

"No subsidy, charge, tax, impost, or duty, shall be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature, or authority derived from that body."

(2) The court does not have the power to mandate the tax which its ruling requires, given that part I, article 28 expressly prohibits the creation of any pretext by which the power to tax or impose charges of any kind upon the people might be wrested from "...the people, or their representatives in the legislature".

(3) As representatives of the people, legislators are individually and collectively required to assert the rights of the people when their rights are infringed. Given the supreme court's usurpation of the people's power to tax, it is now the responsibility of the legislature to right this grievous wrong.

(e) The supreme court's reasoning concerning the Claremont I and Claremont II decisions fails to recognize and abide by the limitations imposed by part I of the constitution upon the power and authority granted government in part II of the constitution, particularly with regard to taxes and how they shall be levied. Neither the judicial branch nor the executive branch can usurp the right of the people, "...or their representatives in the legislature..." with regard to either the election of funding priorities or the allocation of financial responsibility. The selection of governmental priorities worthy of financial sacrifice is solely the province of the people and their elected representatives to the general court.

(f) The fault with the New Hampshire supreme court's decision is that its interpretation of part II, article 83 imposes an obligation upon the people of New Hampshire to expend funds and to tax themselves in ways not freely determined by them. The New Hampshire supreme court does not possess the power to impose funding obligations upon the people of New Hampshire. The funding obligations which are inextricably a part of the Claremont I and Claremont II rulings create a pretext for levying either a tax, charge, subsidy, impost, or duty upon the people in order to meet the obligations which the court has contrived. Since the constitution expressly prohibits the creation of any pretext which could require the people of New Hampshire to tax themselves, it follows that the supreme court's interpretation of part II, article 83 which creates such a pretext is fundamentally unconstitutional.

II. Therefore, since the holding of the supreme court in Claremont I to the effect that the state must guarantee funding, is unconstitutional on its face, the rationale and conclusions which follow and which are based upon that wrongful holding fail as well. For this reason, the legislature rejects the rulings of the New Hampshire supreme court in both the Claremont I and Claremont II cases to the extent that they require the state to "guarantee" funding of any sort and asserts that the legislature is constitutionally prohibited from complying with such rulings. The legislature cannot permit the judicial branch to usurp the fundamental right of the people to act freely with regard to choosing which of the financial burdens of government they wish to assume. For the legislature to act otherwise would be to reincarnate, validate, and reimpose the practice of taxation without representation, a practice which the adoption in the year 1784 of part I, article 28, of the bill of rights of the New Hampshire constitution was meant to cure.

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

AMENDED ANALYSIS

This bill states that the legislature rejects the supreme court's Claremont I and Claremont II rulings to the extent to which the

rulings require the state to "guarantee" funding of an adequate legislation, on the grounds that imposition upon the legislature of such a requirement is unconstitutional under part I, article 28 of the New Hampshire constitution.

1999-0285h

Floor Amendment to HB 108 FN-A-LOCAL

Proposed by Rep. Corbin

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

AN ACT declaring the New Hampshire supreme court's Claremont II decision to be an unconstitutional violation of the separation of powers mandate under part I, article 37 of the New Hampshire constitution.

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

1 Statement of Findings and Intent; Affirmation by the Legislature of the Constitutionality of the Current Tax Structure.

I. The members of the executive and legislative branches of the state of New Hampshire, having made and subscribed an oath to God and to the state and its constitution, or alternatively, by affirming under the pains and penalties of perjury, their allegiance to the state of New Hampshire and its constitution pursuant to part II, article 84 of said constitution, hereby find that the decision of the New Hampshire supreme court nullifying the use of the current property tax structure as the means for funding public education is an unconstitutional violation of the separation of powers mandate under part I, article 37 of the New Hampshire constitution.

II. In furtherance of this position, the legislature finds that under part I, article 28 of the New Hampshire constitution, the legislature possesses the sole authority to create laws, and that under part I, article 29 of said constitution, the legislature possesses the sole authority to suspend laws. Moreover, the legislature finds additional constitutional support for its position as follows:

- (a) Part I, article 1, relative to the origin and object of government.
- (b) Part I, article 2 relative to individual property rights.
- (c) Part I, article 6 relative to local control of education, both religious and secular.
- (d) Part I, article 12, relative to the consent of the governed on taxation.
- (e) Part I, article 28, relative to the consent of the people, or their representatives in the legislature, prior to the establishment or imposition of a tax.
- (f) Part I, article 28-a, relative to the prohibition on unfunded mandates.
- (g) Part I, article 31 and part II, article 2, relative to the authority of the legislature to make laws.
- (h) Part II, article 83, relative to the New Hampshire supreme court's inconsistent and unsupported interpretation of "cherish" to mean "to require payment for" within the context of this article.

III. The legislature hereby finds and declares that the current tax structure shall be legally binding until such time as the legislature may vote to change it. The legislature further finds that any attempt by the supreme court, or any other lower court, to interrupt or discontinue funding to the cities and towns, and their school districts, shall be met with the filing of articles of impeachment.

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

AMENDED ANALYSIS

This bill sets forth a legislative declaration, supported by constitutional findings, that the New Hampshire supreme court's Claremont II decision nullifying the current tax structure is an unconstitutional violation of the separation of powers mandate under part I, article 37 of the New Hampshire constitution.

Floor Amendment to HB 109-FN-A-L which is Laid On Table.

Proposed by Rep. Mirski

The amendment (1999-0275h) is identical to that proposed for HB 108-FN-A-L

Floor Amendment to HB 109-FN-A-L which is Laid On Table.

Proposed by Rep. Corbin

The amendment (1999-0286h) is identical to that proposed for HB 108-FN-A-L

Floor Amendment to HB 116-FN-A-L

Proposed by Rep. Mirski

The amendment (1999-0274h) is identical to that proposed for HB 108-FN-A-L

Floor Amendment to HB 116-FN-A-L

Proposed by Rep. Corbin

The amendment (1999-0287h) is identical to that proposed for HB 108-FN-A-L

1999-0262h

Floor Amendment to HB 117-FN-A-LOCAL

Proposed by Reps. Kurk, MacGillivray and Thulander

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

AN ACT establishing a uniform education property tax to provide funding for an adequate public education and making an appropriation therefor.

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

1 Intent.

I.(a) The New Hampshire supreme court has ruled that the state has a duty to fund a constitutionally adequate education for public elementary and secondary pupils. The state has long relied upon a system of localized property taxation to fund education, a system to which many have become accustomed and about which economic forces have acquired settled expectations. The court, however, has said that such system violates the constitutional requirement that all taxes levied in the state be proportional and reasonable. A fiscal policy based upon property taxation, according to the court's interpretation, must be "equal in valuation and uniform in rate throughout the state." Acknowledging that reorganization of the revenue raising structure for public elementary and secondary education is now compelled, the general court chooses hereby to do so in a manner that is the least disruptive of settled economic expectation and social fabric of the community.

(b) By this act the general court establishes a fair taxation policy intended to preserve local control of public schools and retain the incentive for parental and local community participation in the education of the children of New Hampshire. Such involvement is essential to the maintenance of the quality of the state's educational institutions which have heretofore produced high scores on comparative measures of educational outcome. The general court recognizes that disparity exists among cities and towns relative to their ability to raise basic expenses of an adequate public education. Assistance, where required, must be supplied. Recognition is also accorded to the principle of home ownership. Homeowners provide a substantial commitment to the communities in which they live, which is essential to the quality of life in New Hampshire.

(c) The following are intended to carry out this legislative purpose:

(1) Impose a uniform state tax at the lowest possible rate consistent with providing funding for educational adequacy throughout the state.

(2) Subsidize with state grants funded from other sources municipalities whose property base is insufficient to support an adequate education.

(3) Preserve and foster home ownership by providing a measure of tax relief to all resident homeowners, with proportionately greater benefit to those of low or moderate means.

II.(a)(1) A statewide property tax levied at a uniform rate upon equalized property values is generally an equitable method for funding an adequate education. However, reorganizing the existing system will inevitably upset to some degree the delicate balance of social and economic forces at work in the state. A uniform state tax rate will increase property taxes in cities and towns with relatively higher property values. The immediate effect of such increase will be felt disproportionately by homeowners with limited means. The tax may also have a dramatic effect upon certain classes of property such as utility property. Utility property is highly susceptible to interjurisdiction assessment variation and exacerbates the disparity among municipalities. An additional potential problem is the specter of competitive underassessment among cities and towns as the effects of the statewide tax begin to be felt.

(2) In cities and towns with relatively higher property values, sharp increases in property taxes may cause business failure where fixed costs increase faster than the ability to recoup them. Commercial rental property owners may find themselves locked in by lease provisions that prevent them from recouping tax increases from tenants, resulting in reduced reinvestment in the property, and potential foreclosure or bankruptcy. Also substantial increases in property tax obligations may cause or permit lenders to foreclose on mortgage notes based on the decreased ability of the borrower to meet the income level required by the lender because of the higher total mortgage payment obligations. Tax capitalization which decreases property values may also cause foreclosures on otherwise performing loans because the regulated lending institution must call the loan to comply with rules and regulations.

(b) The following are intended to mitigate these consequences so far as is practicable:

(1) Provide a phase-in of tax increases over 4 years for those municipalities that will collect more money in property taxes at the statewide rate than is required to fund an adequate education for the municipality.

(2) Provide additional relief to low and moderate income homeowners in high property value cities and towns to level the immediate effect of property tax increases occurring upon implementation of the statewide tax and allow time for the effect of tax capitalization to reallocate property values.

(3) Stabilize valuation of utility property by removing it from the local base for purposes of educational adequacy funding and taxing such property at the state level for distribution through an educational fund.

(4) Forestall the possibility of interjurisdictional assessment variations by increasing the level of state oversight in the equalization process.

2 New Subparagraph; Education Trust Fund. Amend RSA 6:12, I by inserting after subparagraph (vvv) the following new subparagraph:

(www) Money received under RSA 78, RSA 83-D, RSA 83-F, RSA 198:49 and from the sweepstakes fund, which shall be credited to the education trust fund under RSA 198:39.

3 Gender Reference Change. Amend the introductory paragraph of RSA 21-J:3 to read as follows:

In addition to the powers, duties, and functions otherwise vested by law, including RSA 21-G, in the commissioner of the department of revenue administration, ~~he~~ **the commissioner** shall:

4 Duties of Commissioner. Amend RSA 21-J:3, V to read as follows:

V. Exercise general supervision over the administration of the assessment and taxation laws of the state, **the appraisal for ad valorem taxation purposes of property within the state**, and over all assessing officers in the performance of their duties, except the board of tax and land appeals, to the end that all assessments of property be made in compliance with the laws of the state.

5 Duties of Commissioner. Amend RSA 21-J:3, XIII to read as follows:

XIII. Equalize annually the valuation of the property in the several towns, cities, and unincorporated places in the state by adding to or deducting from the aggregate valuation of the property in towns, cities, and unincorporated places such sums as will bring such valuations to the true and market value of the property, including the equalized value of property formerly taxed pursuant to the provisions of RSA 72:7; 72:15, I, V, VII, VIII, IX, X, and XI; 72:16; 72:17; 73:26; 73:27; and 73:11 through 16

inclusive, which were relieved from taxation by the laws of 1970, 5:3; 5:8; 57:12; and 57:15, the equalized valuation of which is to be determined by the amount of revenue returned in such year in accordance with RSA 31-A, and by making such adjustments in the value of other property from which the towns, cities, and unincorporated places receive taxes ***or payments in lieu of taxes*** as may be equitable and just, so that any public taxes that may be apportioned among them shall be equal and just. ***In carrying out the duty to equalize the valuation of property, the commissioner shall follow the procedures set forth in RSA21-J:9-a.***

6 Duties of the Commissioner. Amend RSA 21-J:3, XV to read as follows:

XV. Establish and approve tax rates as required by law ***including the uniform education tax rate.***

7 New Paragraph; Duties of Commissioner. Amend RSA 21-J:3 by inserting after paragraph XXIV the following new paragraph:

XXV. Petition the board of tax and land appeals to issue an order for reassessment of property pursuant to the board's powers under RSA 71-B:16 - 19 whenever, in the commissioner's belief, the valuation of property for equalization purposes in a particular city, town, or unincorporated place is disproportional to the valuation for equalization purposes in other cities, towns, or unincorporated places in the state.

8 Division of Property Appraisal; Department of Revenue Administration. RSA 21-J:9 is repealed and reenacted to read as follows:

21-J:9 Division of Property Appraisal. There is established within the department the division of property appraisal, under the supervision of a classified director of property appraisal who shall be responsible for the following functions, in accordance with applicable laws:

I. Assisting and supervising municipalities and appraisers in appraisals and valuations as provided in RSA 21-J:10 and RSA 21-J:11.

II. Appraising state-owned forest and recreation land under RSA 227-H and RSA 216-A.

III. Annually determining the total equalized valuation of properties in the cities and towns and unincorporated places according to the requirements of RSA21-J:9-a.

IV. Preparing a standard appraisal manual which may be used by assessing officials, and holding meetings throughout the state with such officials to instruct them in appraising property.

9 New Section; Equalization Procedure. Amend RSA 21-J by inserting after section 9 the following new section:

21-J:9-a Equalization Procedure. The following procedures shall apply in determining the equalization of property within the cities, towns, and unincorporated places as required by RSA21-J:3, XIII:

I. The commissioner shall annually conduct a sales-assessment ratio study which shall include arm's length sales or transfers of property that occurred 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made.

II. In determining the arm's length sales or transfers that are included in the sales-assessment ratio study, the commissioner may use a randomly selected sample of such sales and transfers the size of which shall be determined by the total taxable parcels in the city, town, or unincorporated place.

III. If less than 2 percent of the total taxable parcels in a city, town, or unincorporated place has been transferred by an arm's length sale or transfer during the 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made or the commissioner determines the sales are unrepresentative of the property within the municipality, the commissioner may choose one or more of the following options:

(a) Include appraisals of any of the taxable property of such city, town, or unincorporated place in the sales-assessment ratio study. Such appraisals shall be based on full and true market value pursuant to RSA 75:1 and shall be performed by department appraisers. The property to be appraised shall be selected by the commissioner.

(b) Consider recent equalization ratio activity in adjoining cities, towns, or unincorporated places.

(c) Include arm's length sales or transfers in the city, town, or unincorporated place, within 2-1/2 years preceding April 1 of the year preceding the tax year for which such equalization is made.

IV. The commissioner shall use the inventory of property transfers authorized by RSA74:18 in determining the equalized value of property and may consider such other evidence as may be available to the commissioner on or before the time the final equalized value is determined.

10 Appraisals of Property for Ad Valorem Tax Purposes. RSA 21-J:11 is repealed and reenacted to read as follows:

21-J:11 Appraisals of Property For Ad Valorem Tax Purposes.

I. Every person, firm, or corporation intending to engage in the business of making appraisals on behalf of a municipality for tax assessment purposes in this state shall notify the commissioner of that intent in writing. No person, firm, or corporation engaged in the business of making appraisals of taxable property for municipalities and taxing districts shall enter into any contract or agreement with any town, city, or other governmental division without first submitting the proposed contract or agreement to the commissioner for examination and approval and submitting to the commissioner evidence of financial responsibility and professional capability of personnel to be employed under the contract.

II. The commissioner, at no expense to the municipality, shall monitor appraisals of property and supervise appraisers as follows:

(a) Assure that appraisals comply with all applicable statutes and rules;

(b) Assure that appraisers are complying with the terms of any appraisal contract;

(c) Review the accuracy of appraisals by inspection, evaluation, and testing, in whole or in part, of data collected by the appraisers; and

(d) Report to the governing body on the progress and quality of the municipality's appraisal process.

III. The commissioner shall adopt rules under RSA 541-A relative to the provisions required of all contracts for appraisal services and the methodology for inspection, evaluation, and testing of data for the purposes of appraisal monitoring.

11 Reports Required. Amend the introductory paragraph of RSA 21-J:34 to read as follows:

The governing body of each city, town, unincorporated town, unorganized place, school district, and village district, and the clerk of each county convention shall submit to the commissioner of revenue administration the following reports necessary to compute and establish the **uniform education property tax rate and the** tax rate for each city, town, unincorporated town, unorganized place, school district, village district, and county. The commissioner shall adopt rules under RSA541-A establishing the form and content of these reports:

12 New Paragraph; Reports Required. Amend RSA 21-J:34 by inserting after paragraph XIV the following new paragraph:

XV. A report filed by the assessing officials of each city, town, and unincorporated place shall certify sales-assessment information necessary for the department to conduct the annual sales-assessment ratio study required by RSA21-J:9-a. This report shall be filed within 45 days after receipt from the department.

13 New Paragraph; Setting of Tax Rates by Commissioner. Amend RSA21-J:35 by inserting after paragraph I the following new paragraph:

I-a. The commissioner shall calculate the uniform education property tax rate as follows:

(a) Multiply the adjusted per pupil adequate education cost as defined in RSA 198:38, I by the weighted average daily membership in residence as defined in RSA198:38, VI as reported to the department on December 31 pursuant to RSA198:46.

(b) Subtract from the product in subparagraph (a) the total amount appropriated to the department of education from the education trust fund by the legislature;

(c) Add to the sum in subparagraph (b) the total amount of accepted homestead exemptions under RSA 198:50 from the previous year and hardship relief under RSA 198:51 from the year preceding the previous year;

(d) Divide the sum in subparagraph(c) by the total equalized assessed value as determined by the commissioner relative to the most recent annual report of the department. In this paragraph "equalized assessed value" means the sum of the total valuation of each class of property in a municipality reported pursuant to RSA 21-J:34 adjusted by excluding the value of utility property

subject to tax under RSA 83-F, nuclear station property subject to tax under RSA 83-D, and the value of property exempted pursuant to RSA 72:37-b, 72:62, 72:66, and 72:70 and equalized by the commissioner according to the equalization method specified in RSA 21-J:9-a.

14 New Subdivision; Property Tax Transition Grant. Amend RSA 31-A by inserting after section 6 the following new subdivision:

Property Tax Transition Grant

31-A:7 Intent. The general court recognizes the obligations of municipal governments to provide necessary and desirable services to their citizens, including new or expanded programs, and hereby finds that to the extent that changes in state tax policy could have the effect of unduly limiting municipal governments in carrying out their obligations, it is appropriate to provide encouragement and support to those political subdivisions in the form of grants. The general court further recognizes that the hardships attendant to increased taxes that are placed on low income residents and those providing shelter and services to those citizens result in increased burdens on municipal governments in a number of ways including but not limited to difficulty or impossibility of funding new or expanded programs, fewer housing starts and rental property construction for people of modest means and less disposable income being available to the elderly and poor, thereby creating a greater need for municipal assistance. Therefore, the general court finds it to be in the interest of the public weal to establish a property tax transition grant program to ameliorate, in part, such adverse consequences.

31-A:8 Definitions. In this subdivision:

- I. "Commissioner" means the commissioner of the department of revenue administration.
- II. "Municipality" means a city, town or unincorporated place.
- III. "Municipal per capita income" means per capita income as reported by the department of revenue administration for each New Hampshire municipality.
- IV. "State per capita income" means per capita income as reported by the department of revenue administration for the state of New Hampshire.

31-A:9 Determination of Transition Grant. I. The commissioner on or before October 1 shall determine the amount of property tax transition grant for each municipality for the following fiscal year as follows:

- (a) Divide the municipal per capita income for a municipality by state per capita income.
- (b) Subtract 0.6 from the product in subparagraph (a);
- (c) If the result of the subtraction in subparagraph (b) results in an amount less than 0 substitute 0;
- (d) Divide the result of the calculation in subparagraph (c) by 4 and subtract the result from 1.0;
- (e)(i) If the municipality's weighted average daily membership in residence as defined in RSA 198:38, VI is greater than 9, multiply the result in subparagraph (d) by the amount of the municipality's excess education property tax payment determined pursuant to RSA 198:49, I; or
- (ii) If the municipality's weighted average daily membership in residence as defined in RSA 198:38, VI is less than 10, multiply the average of the result in subparagraph (d) for all municipalities whose weighted average daily membership in residence as defined in RSA 198:38, VI is greater than 9 by the amount of the municipality's excess education property tax payment determined pursuant to RSA 198:49, I.

II. The amount in subparagraph I(e) shall not exceed the amount of excess education property tax determined pursuant to RSA 198:49 for the municipality for the corresponding tax year.

31-A:10 Distribution. Upon certification to the state treasurer by the commissioner, distribution of the property tax transition grants determined in RSA 31-A:9 shall be made by the state treasurer from sums appropriated therefor from the general fund. For the fiscal year ending June 30, 2000, such distribution shall be made on June 15, 2000. For fiscal years ending after June 30, 2000, such distribution shall be made at the time or times other payments are returnable to the municipalities pursuant to this chapter.

31-A:11 Biennial Review. The legislature shall biennially review the circumstances of municipalities relative to the intent of this subdivision to determine the need for providing assistance to such municipalities and shall adjust the amounts provided herein as it deems prudent.

15 Board of Tax and Land Appeals; Authority. Amend RSA 71-B:5, II to read as follows:

II. To hear and determine ~~[any]~~ appeals **by towns** relating to the ~~[equalization of valuation performed]~~ ***equalized valuation of property determined*** by the commissioner of revenue administration pursuant to RSA 21-J:3, XIII ***including equalized assessed valuations determined by the commissioner for the purposes of the education property tax.*** Any town aggrieved by ~~[an]~~ ***its*** equalized valuation as determined by the commissioner of revenue administration must appeal to the board in writing within 30 days of ~~[the town's notification]~~ ***notice*** of ~~[the]~~ ***its final*** equalized valuation by the commissioner. ***The board shall hear and make a final ruling on such appeal within 45 days of its receipt by the board. The board's decision on such appeal shall be final and not appealable.***

16 New Paragraph; Order for Reassessment. Amend RSA 71-B:16, IV to read as follows:

IV. When a complaint is filed with the board alleging that all of the taxable real estate or taxable property in a taxing district should be reassessed or newly assessed for any reason, provided that such complaint must be signed by at least 50 property taxpayers or 1/3 of the property taxpayers in the taxing district, whichever is less[-]; or

V. When the commissioner of revenue administration files a petition with it pursuant to RSA 21-J:3, XXV.

17 New Section; Inventory of Property Transfers. Amend RSA 74 by inserting after section 17 the following new section:

74:18 Inventory of Property Transfers.

I. In order to properly equalize the value of property under RSA 21-J:3, XIII, an inventory of property transfers shall be filed with the department of revenue administration and with the municipality where the property is located for each transfer of real estate or interest in real estate. Each form may include the following information:

- (a) The buyer and seller's names and post transaction addresses and the name and address of a contact person if the buyer or seller is a trust or corporation.
- (b) A description of the exact location of the property by town, street, and the assessor's map, lot, and block number.
- (c) The acreage included in the sale.
- (d) An accurate description of the property included in the sale, the neighborhood where the property is located, and the type and style of the property sold.
- (e) The buyer's ownership interest in the property.
- (f) The sale price, date of transfer, and the amount mortgaged.
- (g) The description of the type of transfer that has taken place.
- (h) The amount of personal property included in the sale price.
- (i) Whether the property was previously occupied and whether the property will serve as the buyer's primary residence.
- (j) The financing arrangements made to purchase the property to be answered at the option of the buyer.
- (k) Whether any concessions were made in the sale.
- (l) Whether the property was in current use.
- (m) Whether land use taxes were considered in the sale.
- (n) The buyer's dated signature certifying that the information indicated on the form is true.

II. The inventory of property transfers required by this section shall be filed with the department of revenue administration and with the municipality where the property is located by the purchaser, grantee, assignee, or transferee, no later than 30 days

from the recording of the deed at the register of deeds or transfer of real estate, whichever is later. Persons required to file the inventory of property transfers who willfully fail to file or willfully make false statements on the forms shall be guilty of a violation.

III. No deed, recording a transfer of real estate or any interest in real estate, executed before October 1, 1995, shall be required to comply with this section.

IV. Failure to comply with this section shall not be construed to cloud title.

V. Any information provided to the department or the municipality pursuant to this section shall be exempt from the right-to-know law, RSA 91-A.

18 Education Property Tax. RSA 76:3 is repealed and reenacted to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate calculated by the commissioner of revenue administration pursuant to the authority granted in RSA21-J:35, I-a is hereby imposed on all persons and property taxable pursuant to RSA72 and RSA 73, except such property subject to tax under RSA 82, RSA 83-D and RSA 83-F. Such uniform rate shall be calculated by the commissioner on or before October 1 for the tax year commencing April 1 of the succeeding year.

19 What Taxes Assessed. Amend RSA 76:5 to read as follows:

76:5 What Taxes Assessed. The selectmen shall seasonably assess all state and county taxes for which they have the warrants of the ~~[state]~~ **commissioner of revenue administration** and county treasurers respectively; all taxes duly voted in their towns; and all school~~[-schoolhouse,]~~ and village district taxes authorized by law or by vote of any school or village district duly certified to them; and all sums required to be assessed by RSA 33.

20 Commissioner's Warrant. RSA 76:8 is repealed and reenacted to read as follows:

76:8 Commissioner's Warrant.

I. The commissioner of revenue administration shall annually calculate the proportion of education property tax to be raised by each municipality by multiplying the uniform education property tax rate by the total equalized assessed value of all property in the municipality as determined under RSA21-J:3, XIII and used to calculate the uniform rate under RSA 21-J:35, I-a.

II. The commissioner shall issue a warrant under the commissioner's hand and official seal for the amount computed in paragraph I to the selectmen or assessors of each municipality on or before September1 directing them to assess such sum and pay to the municipality for the use of the school district or districts or to the department of revenue administration for deposit in the education trust fund such sums and at such times as may be prescribed for other taxes assessed by such selectmen or assessors of the municipality.

21 Commissioner's Report. RSA 76:9 is repealed and reenacted to read as follows:

76:9 Commissioner's Report. The commissioner of revenue administration shall report to the governor, the speaker of the house of representatives, the president of the senate, and the commissioner of education each year on or before January 15, a statement of the education property tax warrants to be issued for the tax year commencing April 1 of that year.

22 Information Required. Amend RSA 76:11-a, I to read as follows:

I. The tax bill which is sent to every person taxed, as provided in RSA 76:11, shall show the rate for municipal, ~~[school]~~ **local education, state education,** and county taxes separately, the assessed valuation of all lands and buildings for which said person is being taxed, and the right to apply in writing to the selectmen or assessors for an abatement of the tax assessed as provided under RSA76:16. The department of revenue administration shall compute for each town and city the rates which are to appear on the tax bills and shall furnish the required information to the appropriate town or city.

23 New Section; Tobacco Tax. Amend RSA 78 by inserting after section 31 the following new section:

78:32 Distribution of Funds. Eight percent of the amount collected pursuant to RSA 78:7 shall be deposited in the general fund and the remainder shall be paid over to the state treasurer for deposit in the education trust fund established by RSA 198:39.

24 Administration; Tax on Nuclear Station Property. Amend RSA 83-D:12, I to read as follows:

I. The commissioner of revenue administration shall collect the taxes, interest, additions to tax and penalties imposed under this chapter. The commissioner shall determine the expense of administration of this chapter and shall certify and pay over to the state treasurer ***for deposit in the education trust fund established by RSA 198:39*** the amount of remaining balance of the funds collected under this chapter after the expenses of administration have been deducted.

25 New Chapter; Utility Property Tax. Amend RSA by inserting after chapter 83-E the following new chapter:

CHAPTER 83-F

UTILITY PROPERTY TAX

83-F:1 Definitions. In this chapter:

- I. "Commissioner" means the commissioner of the department of revenue administration.
- II. "Department" means the department of revenue administration.
- III. "Taxable period" means the period beginning April 1, and ending March 31 of the following year.
- IV. "Utility property owner" means any person, partnership, limited liability company, association, corporation or other entity, their trustees or receivers appointed by any court, owning utility property.
- V. "Utility property" means all real estate, buildings and structures, machinery, dynamos, apparatus, poles, wires, fixtures of all kinds and descriptions, and pipe lines located within New Hampshire employed in the generation, production, supply, distribution, transmission, or transportation of electric power or natural gas, crude petroleum and refined petroleum products or combinations thereof, water, or sewage subject to tax under RSA 72:6, 72:7 and 72:8; provided that no electric power fixtures which would otherwise be taxed under this chapter shall be taxed under this chapter if they are employed solely as an emergency source of electric power. "Utility property" shall not include:
 - (a) Water and air pollution control facilities exempt from local property taxation under RSA 72:12-a;
 - (b) Nuclear station property subject to tax under RSA 83-D; and
 - (c) Any other property which is not subject to local property taxation.

83-F:2 Tax Imposed. For taxable periods beginning April 1, 1999, a tax is imposed upon the value of utility property at the rate for the education property tax set by the commissioner under RSA 76:3 for the same period, to be assessed annually as of April 1, and every year thereafter, and paid in accordance with this chapter.

83-F:3 Determination of Value. On or before December 1 of the tax year, the commissioner shall determine the value of utility property for the purposes of this chapter by appraising such property at its full and true value. Notice of such determination shall be given to the taxpayer within 15 days of the commissioner's determination.

83-F:4 Persons Liable. The tax imposed by this chapter shall be assessed upon each person with an ownership interest in utility property, in the proportion that such person's ownership interest bears to the entirety of the ownership in the property.

83-F:5 Returns and Declarations.

- I. On or before January 15 each year, each utility property owner shall file with the commissioner of revenue administration, on a form prescribed by the commissioner, a return based on the valuation for April 1 of the prior year. The return shall be accompanied by the payment of such amount as has not been prepaid in accordance with paragraph III of this section. If the return shows an additional amount to be due, such additional amount is due and payable at the time the return is filed. If such return shows an overpayment of the tax due, a credit against a subsequent payment or payments due, to the extent of the overpayment, shall be allowed.
- II. On or before April 15 of each year, each utility property owner liable to pay the tax imposed by this chapter shall file with the department, on a form prescribed by the commissioner, a statement setting forth the amount of such person's ownership interest as of April 1. The statement shall include such additional information as the commissioner shall require and shall be signed by an authorized representative, subject to the pains and penalties of perjury.
- III. For taxable periods ending before April 1, 2000, each utility property owner liable to pay the tax shall, in addition, file a

declaration on or before July 1, 1999 of the estimated tax to be assessed as of April 1 in the current taxable period, based on the equalized value of utility property used in the department's equalization report for April 1, 1998 accompanied by payment of 1/3 of the estimated tax due. Additional payments of 1/3 of the estimated tax shall be made on September 15, 1999 and December 15, 1999.

IV. For taxable periods ending after March 31, 2000, at the time the statement required by paragraph II is filed, each person liable for the tax shall, in addition, file a declaration of the estimated tax to be assessed as of April 1 in the current taxable period, based on the tax assessed for the preceding taxable year, accompanied by payment of 1/4 of the estimated tax due. Additional payments of 1/4 of the estimated tax shall be made on June 15, September 15 and December 15.

V. As of June 1 of each year the principal owner of utility property shall file a list of the changes made to the utility property since the prior April 1. This statement shall include such additional information as the commissioner shall require and shall be signed by an authorized representative, subject to the pains and penalties of perjury.

VI. Taxes and estimated taxes not paid when due shall be subject to appropriate penalties and interest under RSA 21-J.

83-F:6 Records.

I. Every person liable for tax under RSA 83-F:4 shall:

- (a) Keep such records as may be necessary to determine the amount of such person's liability under this chapter.
- (b) Preserve such records for the period of at least 3 years or until any litigation or prosecution under this chapter is finally determined.
- (c) Make such records available for inspection by the commissioner or authorized agents, upon demand, at reasonable times during regular business hours.

II. Whoever violates any of the provisions of this section shall be subject to the penalties imposed under RSA 21-J:39.

83-F:7 Administration.

I. The commissioner shall collect the taxes, interest, additions to tax and penalties imposed under this chapter. The commissioner shall determine the expense of administration of this chapter and shall certify and pay over to the state treasurer for deposit in the education trust fund established by RSA 198:39 the amount of remaining balance of the funds collected under this chapter after the expenses of administration have been deducted.

II. The commissioner is authorized to contract for the services of utility appraisers as needed for the proper administration of this chapter. Such contract expenses shall be deemed an expense of administration.

III. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

- (a) The administration of the tax imposed under RSA 83-F:2;
- (b) The valuation of utility property required under RSA 83-F:3; and
- (c) The recovery of any tax, interest on tax, or penalties imposed by RSA 83-F.

IV. The commissioner may institute actions in the name of the state to recover any tax, interest on tax, additions to tax or the penalties imposed by this chapter.

V. In the collection of the tax imposed by this chapter, the commissioner may use all of the powers granted to tax collectors under RSA 80 for the collection of taxes. The commissioner shall also have all of the duties imposed upon the tax collectors by RSA 80 that are applicable to the commissioner. The provisions of RSA 80:26 shall apply to the sale of land for the payment of taxes due under this chapter, and the state treasurer is authorized to purchase the land for the state. If the state purchases the land, the state treasurer shall certify the purchase to the governor, and the governor shall draw a warrant for the purchase price out of any money in the treasury not otherwise appropriated.

83-F:8 Appeals. Utility property taxpayers aggrieved by the determination by the commissioner of the value of utility property pursuant to RSA 83-F: 3 may appeal such valuation within 30 days of notification of such determination to the board of tax and land appeals or the superior court of the county in which the taxpayer resides or has a place of business. Appeals other than

appeals of valuation shall be made according to the procedure and subject to the time limits provided for other taxes administered by the department under RSA 21-J.

83-F:9 Exemption from Local Taxation. Persons and property subject to taxation under this chapter shall not be subject to tax under RSA 76:3; provided, however, that nothing in this chapter shall be construed to exempt such persons or property from local school, municipal, district or county taxation under RSA 76.

26 Extent. Amend RSA 85:1 to read as follows:

85:1 Who May Issue. The state treasurer *or the commissioner of revenue administration*, and each county and town treasurer, may issue extents under their hands and seals respectively, in cases authorized by law, and such extents shall be deemed to be executions against the person and property.

27 New Subdivisions; Education Trust Fund; Excess Tax Payment, Homestead Exemption and Hardship Relief. Amend RSA 198 by inserting after section 37 the following new subdivisions:

Education Trust Fund

198:38 Definitions. In this subdivision:

I. "Adjusted per pupil adequate education cost" means the amount determined by the legislature as provided by RSA 198:41 adjusted by multiplying such sum by the total average daily membership in residence for the state and dividing the product of such multiplication by total weighted average daily membership in residence for the state.

II. "Adequate education grant" means the total amount of the annual grant calculated according to RSA 198:42 by the department and made to a municipality by the state from the education trust fund.

III. "Average daily membership in residence" means "average daily membership in residence" as defined in RSA 189:1-d, IV. For purposes of this section, kindergarten pupils shall not be counted.

IV. "Elementary pupil" means a pupil in grades 1 through 8.

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

VI. "Weighted average daily membership in residence" means average daily membership in residence adjusted for weighted pupils.

VII. "Weighted pupil" means a resident pupil who has been assigned to one of the following classifications, based on the type of education the pupil received. The weights assigned to a high school pupil and to a high school pupil enrolled in a state approved vocational program reflect the differences in educational costs between these classifications when compared to the average current operating expenditure to educate a resident elementary pupil. The weights assigned to an educationally disabled child reflect the differences in education costs among the classifications of educationally disabled children when compared to the average current operating expenditure to educate a resident pupil in grades one through 12 who is not educationally disabled and not a high school pupil enrolled in a state approved vocational program. The following classifications of pupils shall carry the following weights:

(a) An elementary pupil, not educationally disabled as defined in RSA 186-C:2, I, 1.0;

(b) A high school pupil, not educationally disabled as defined in RSA 186-C:2, I and not enrolled in a state approved vocational program, 1.21;

(c) A high school pupil enrolled in a state approved vocational program, 2.01;

(d) An educationally disabled child as defined in RSA 186-C:2, I, in one of the following types of programs:

(1) In-district, placed within a self-contained special education classroom, 2.57;

(2) In-district, without placement in a self-contained special education classroom, 2.12;

(3) An out-of-district day placement, 7.08;

(4) A residential placement, 8.72;

(5) A pre-school day placement, 3.37;

(e) The weight of each pupil participating in the free and reduced school lunch program shall be the amount shown in subparagraphs (a)-(d), multiplied by 1.1.

198:39 Education Trust Fund Created. The state treasurer shall establish an education trust fund in the treasury. Moneys in such fund shall not be used for any purpose other than to distribute adequate education grants to municipalities pursuant to RSA 198:43. The state treasurer shall deposit into this fund immediately upon receipt:

I. The full amount of excess education property tax payments from the department of revenue administration pursuant to RSA 198:49.

II. All moneys due the fund in accordance with RSA 284:21-j.

III. Funds collected and paid over to the state treasurer by the department of revenue administration pursuant to RSA 83-F:7, I.

IV. Funds collected and paid over to the state treasurer by the department of revenue administration pursuant to RSA 78:32.

V. Funds collected and paid over to the state treasurer by the department of revenue administration pursuant to RSA 83-D:12, I.

VI. The school portion of any revenue sharing funds distributed pursuant to RSA 31-A from funds collected under RSA 77-A.

VII. Any other moneys appropriated from the general fund.

198:40 Investment of Fund. The fund shall be nonlapsing. The treasurer shall invest that part of the fund which is not needed for immediate distribution in short-term interest-bearing investments. The income from these investments shall be returned to the fund.

198:41 Determination of Per Pupil Adequate Education Cost.

I. For the biennium beginning July 1, 1999, the cost shall be \$3,700.

II. For the biennium beginning July 1, 2001, and every biennium thereafter, the cost per pupil shall be established by the general court.

198:42 Determination of Adequate Education Grant.

I. The department of education shall determine the amount of the adequate education grant for each municipality as follows:

(a) Multiply the adjusted per pupil adequate education cost by the weighted average daily membership in residence for the municipality as reported on December 31 pursuant to RSA 198:46;

(b) Subtract the amount of the education property tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:9 for the next tax year; and

(c) Add the sum of the total amount of homestead exemptions taken pursuant to RSA 198:50 for the municipality for the current tax year plus the total amount of additional hardship abatements granted by the selectmen pursuant to RSA 198:51 for the previous tax year.

II. The department shall determine the grant in paragraph I for each municipality by October 1 of each year for the state's fiscal year following.

198:43 Distribution Schedule of Adequate Education Grant. The adequate education grant determined in RSA 198:42 shall be distributed to each municipality from the education trust fund in 4 equal payments on July 1, September 1, January 1, and April 1 of each school year. The department shall certify the amount of each grant to the state treasurer and direct the payment thereof to the municipality. Each municipality receiving a payment shall, within 10 days of receipt, pay the money over to the municipality's school district or districts.

198:43-a Additional Pupil Adequate Education Grant.

I. A municipality whose average daily membership in residence for a school year, as determined after the completion of that school year, exceeds the average daily membership in residence used to compute the adequate education grant for that year by more than 8 percent, shall receive an additional pupil adequate education grant. The department of education shall determine the amount of the grant for each municipality which qualifies as follows:

- (a) Multiply the adjusted per pupil adequate education cost by:
 - (b) The amount by which the average daily membership in residence for the current school year, as determined at the completion of the school year, exceeds 1.08 times the average daily membership in residence used to compute the adequate education grant for that year.
- II. The school district or districts to which the municipality belongs shall supply the necessary information to the department to calculate the amount of the additional adequate education grant by September 30 after the completion of the school year. After verification of the information, the department shall certify the amount of the grant to the state treasurer and direct the payment thereof to the municipality. Each municipality receiving a payment shall, within 10 days of receipt, pay the money over to the municipality's school district or districts.

198:43-b Supplemental Education Grant.

I. In this section:

- (a) "Adjusted per pupil supplemental education amount" means \$400, multiplied by the total average daily membership in residence for the state and divided by the total weighted average daily membership in residence for the state.
- (b) "Municipal assessed property per student" means the total equalized assessed value as determined in RSA 21-J:35, I-a(d) of all property in the municipality as determined under RSA 21-J:3, XIII, divided by the weighted average daily membership in residence for the municipality as determined in RSA 198:46.
- (c) "State assessed property per student" means the total equalized assessed value as determined in RSA 21-J:35, I-a(d) of all property in all municipalities in the state and all properties subject to taxation under RSA 83-F, divided by the total weighted average daily membership in residence for the state.

II. In addition to the adequate education grant and additional pupil adequate education grant, school districts in which, at the time the adequate education grant is calculated, municipal assessed property per student is less than state assessed property per student shall be entitled to a supplemental education grant. The department of education shall determine the amount of the supplemental education grant for each qualifying municipality as follows:

- (a) Multiply the adjusted per pupil supplemental education amount times the weighted average daily membership in residence for the municipality;
- (b) Multiply this product by one minus the result of dividing the municipal assessed property per student by the state assessed property per student.

III. The department of education shall determine the grant in paragraph II for each municipality by January 15 of each year for the state's fiscal year following. The supplemental education grant shall be distributed to each municipality at the same time and by the same procedures as the adequate education grant as described in RSA 198:43.

198:44 Additional Education Expenditures. Nothing in this subdivision shall prevent school districts from adopting budgets which authorize expenditures in excess of those supported with funds from the education trust fund.

198:45 Maintenance of Local Control. Distributions under RSA 198:43 depend only on average daily membership in residence and the per pupil adequacy cost amounts as determined in this subdivision and are independent of how the municipalities decide to spend the distributions or other funds they may raise for education. Municipalities may designate one or more school districts to directly receive their grants by filing a revocable notice of such designation with the state treasurer. Notwithstanding any other provision of law, nothing in this subdivision is intended in any way to limit or control how school districts operate or spend their budgets.

198:46 Duties of the Department of Education and the Board of Education.

I. The department of education shall on or before September 30, of each year, collect from the school districts final data concerning all aspects of student attendance for the school year ending June 30, of that year, necessary to establish the average

daily membership, average daily membership in residence, and weighted average daily membership in residence, including the municipality of residence for each pupil for that year. The department of education shall report by December 31 to the speaker of the house of representatives, the senate president to be used for purposes of determination by the legislature of the appropriation to the education trust fund. A copy of such report shall, at the same time, be given to the department of revenue administration.

II. The board of education shall adopt rules necessary to the proper administration of this subdivision.

198:47 Submission of Data by School Districts. Every school district shall submit all attendance information required by the department of education under this subdivision on or before September 30 of each year. A \$1,000 per day penalty shall be imposed on any school district that fails to submit attendance data in the time required by law unless waived for good cause by the commissioner of education. School districts penalized under this section shall not charge such penalty to the municipality or municipalities.

198:47-a Legislative Oversight Committee.

I. An oversight committee shall be established consisting of:

- (a) The chairperson of the house education committee, or a designee.
- (b) The chairperson of the senate education committee, or a designee.
- (c) Three members of the house of representatives, appointed by the speaker of the house.
- (d) Three members of the senate, appointed by the senate president.
- (e) The chairperson of the house finance committee, or a designee.
- (f) The chairperson of the senate finance committee, or a designee.

II. The chair of the oversight committee shall rotate biennially between the chairperson of the house finance committee and the chairperson of the senate finance committee. The first chairperson shall be the chairperson of the house finance committee. A member shall only serve while a member of the general court. The members shall not be compensated but shall receive mileage at the legislative rate when carrying out their duties.

III. The oversight committee shall examine the goals, purposes, organization, operation, and financing of the state's program to provide a constitutionally adequate education, and it shall evaluate and make recommendations for the continued provisions and improvement of the program. Among the initial issues the committee shall consider and examine are:

- (a) The so-called "market basket" approach to determining the cost of an adequate education;
- (b) The appropriateness of a fixed or variable statewide property tax rate; and
- (c) Methods for accelerating the collection and reporting of average daily membership in residence data, and improving the accuracy of such data as it originates from the initial reporting source.

IV. The oversight committee shall review the development and implementation of the program to ensure that they are in accordance with legislative policy.

V. The oversight committee shall submit a report to the general court by November 1, of each odd-numbered year. Copies of the report shall be submitted to the governor, the senate finance and education committees, the house finance and education committees, the department of education, the department of revenue administration and to any other individual or organization as the committee deems advisable.

Excess Tax Payment, Homestead Exemption and Hardship Relief

198:48 Definitions. In this subdivision:

- I. "Commissioner" means the commissioner of the department of revenue administration.
- II. "Equalized assessed value" means "equalized assessed value" as defined in RSA 21-J:35, I-a(d).

III. "Homestead" means the dwelling owned by a claimant or in the case of a multi-unit dwelling, the portion of the dwelling which is used as the claimant's principal place of residence and the claimant's domicile for purposes of RSA 654:1. "Homestead" shall not include land and buildings taxed under RSA 79-A or land and buildings or the portion of land and buildings rented or used for commercial or industrial purposes. In this paragraph the term "owned" includes a vendee in possession under a land contract and one or more joint tenants or tenants in common.

IV. "Homestead value" means the net local assessed value of the homestead increased or decreased by dividing such value by the equalization ratio for the municipality for the previous year determined in accordance with RSA 21-J:9-a except that homestead value in municipalities which have completed a revaluation of property within the previous year shall be computed at full value.

V. "Household income" means the sum of the adjusted gross income for federal income tax purposes of the claimant and any member of the claimant's household who resides in the homestead for which claim is made.

198:49 Excess Education Property Tax Payment.

I. Except as provided in paragraph IV, municipalities whose education property tax or education property tax plus adequate education grant exceeds the amount necessary to fund an adequate education determined by RSA 198:42, I(a) shall collect and remit such excess amount less the amount of any homestead exemptions under RSA 198:50 and hardship relief abatements granted by the selectmen under RSA 198:51 to the department of revenue administration on or before June 30, of the year following the close of the tax year in which the excess occurs.

II. The amount of such excess to be remitted shall not include any income derived from the investment of funds by the town treasurer under RSA 41:29. Any funds remaining after full payment of the excess tax required in paragraph I shall become available for the unrestricted use by the municipality.

III. The commissioner shall collect from the selectmen the excess tax and pay over to the state treasurer the amount of funds collected under this subdivision for deposit in the education trust fund established by RSA 198:39.

IV. The commissioner shall calculate the excess amount owed by each municipality pursuant to paragraph I for the tax year 1999. Notwithstanding any other provision of this section, municipalities shall only collect and remit to the department of revenue administration not more than the following percentage of the tax year 1999 excess amount, less the amount of any property tax transition grant distribution to the municipality pursuant to RSA 31-A:10, during the tax years 1999-2001:

(a) In tax year 1999, 25 percent.

(b) In tax year 2000, 50 percent.

(c) In tax year 2001, 75 percent.

198:50 Homestead Exemption.

I. A homestead exemption from education property tax imposed under RSA 76:3 in an amount not to exceed the lesser of 25 percent of the homestead value or \$40,000, adjusted by the consumer price index for New England published by the United States Department of Labor for each succeeding year, rounded to the nearest \$1,000, is hereby granted to any claimant qualifying under this section.

II. A qualifying claimant is a person who:

(a) Owns a homestead or interest in a homestead subject to the education property tax, and

(b) Files a claim for exemption certifying homestead ownership with the selectmen on or before July 1 of the tax year for which claim is made. Claims filed after July 1 shall not be considered timely for the current tax year, but shall be considered filed for the following tax year.

III. If a homestead is owned by 2 or more persons as joint tenants or tenants in common, and one or more of such joint owners do not principally reside at such homestead, the homestead exemption applies to the proportionate share of the homestead value that reflects the ownership percentage of the claimant. If more than one person files claims for exemption relative to a single tax parcel, the aggregate amount of the exemptions claimed shall not exceed the amount of exemption allowable for such parcel if only one person had filed a claim.

IV. If a homestead for which exemption is claimed is part of single tax parcel upon which is located other dwelling units or other

significant nonresidential uses, the homestead exemption shall be claimed only on that portion of the homestead value of the tax parcel attributable to the homestead dwelling.

V. Claims shall be accepted as filed unless the selectmen have good reason to believe that any part of the claim is inaccurate or erroneous. Accepted homestead exemption claims shall continue from year to year without necessity for refiling unless there is a change in ownership or use of the property.

VI. On or before August 1 the selectmen shall report accepted claims to the department of revenue administration and the department of education.

198:51 Education Property Tax Hardship Relief.

I. As provided herein eligible claimants shall be granted hardship relief, in addition to the homestead exemption provided in RSA 198:50, for 4 tax years following the enactment of RSA 76:3.

II. An eligible hardship relief claimant is a person who

(a) Qualifies for the homestead exemption in RSA 198:50;

(b) Realizes in the first year after the effective date of the education property tax a net increase in property taxes as a result of the imposition of RSA 76:3, exclusive of the local portion of school, municipal and county taxes, and after application of the homestead exemption, which exceeds 20 percent of the school portion of such claimant's local property taxes for the tax year ended March 31, 1999; and

(c) Realizes total household income of less than 75 percent of median total household income of all New Hampshire residents in the year in which the claim for relief is made.

III. The selectmen shall abate a portion of the net increase in an eligible hardship relief claimant's property taxes, exclusive of the local portion of school, municipal and county taxes, and after application of the homestead exemption, which portion is to be calculated as follows:

(a) Deduct the local school, municipal and county tax portion and the amount of the homestead exemption from the claimant's total current tax bill;

(b) Subtract the amount of the claimant's school property taxes for the tax year ended March 31, 1999 from the sum computed in subparagraph (a) to determine the net increase;

(c) Multiply the net increase computed in subparagraph (b) by one of the following percentages to determine the amount of the abatement:

(1) In the first year after the effective date of RSA 76:3, 50 percent of the net increase;

(2) In the second year after the effective date of RSA 76:3, 25 percent of the net increase;

(3) In the third year after the effective date of RSA 76:3, 10 percent of the net increase; and

(4) In the fourth year after the effective date of RSA 76:3, 10 percent of the net increase.

IV. Claims for hardship relief shall be filed with the selectmen on or before March 1 following the date of notice of tax under RSA 76:1-a.

V. If the selectmen have reason to suspect the accuracy of a claim for hardship relief, they may request that the claimant provide copies of any of the following, as needed to verify income. Any documents submitted shall be considered confidential, handled so as to protect the privacy of the claimant, and returned uncopied to the claimant after a decision is made on the claim. The documents are:

(a) Federal income tax form; and

(b) State interest and dividends tax form.

RSA 359-C shall not apply to the documents requested for verification under this paragraph.

VI. The commissioner shall each year publish a taxpayer information release denoting the median household income for New Hampshire residents based upon the most recent figure published by the United States Bureau of the Census for the category "median household income by state."

198:52 Rulemaking; Forms.

I. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the administration of this subdivision.

II. The commissioner shall approve and provide forms relative to the following:

- (a) Reporting and remitting excess education property tax by municipalities;
- (b) Claims for homestead exemption; and
- (c) Claims for hardship relief.

III. Claim forms shall include the following:

- (a) Instructions on completing and filing the form;
- (b) Sections for information concerning the claimant, the claimant's household, the property for which exemption or relief is sought and such other information as is reasonably necessary to determining the accuracy of the claim;
- (c) Instructions on appeal procedure and time limits relative to such appeals;
- (d) A place for the claimant's signature with a certification by the claimant that the claim is made in good faith and that the facts contained in the claim are true.

198:53 Penalties. The preparation or filing of homestead exemption or hardship relief claims that are false shall be subject to the provisions of RSA 21-J:39, relative to criminal penalties.

198:54 Appeals.

I. Whenever the selectmen or assessors refuse to grant a claimant either a homestead exemption or an education property tax hardship relief request, the claimant may appeal in writing, on or before September 1 following the date of notice of tax under RSA 72:1-d, to the board of tax and land appeals or the superior court.

II. When a taxpayer appeals the denial of a claim to the superior court or board of tax and land appeals, the court or board may reverse or affirm, wholly or partly, or may modify the decision brought up for review when there is an error of law or when the court or board finds the selectmen's action to be arbitrary or unreasonable.

28 Reference Change. Amend RSA 193:1, I(c) to read as follows:

(c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student's educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186-C:18 and ~~[RSA 198:27-37]~~ **adequate education grants under RSA 198:42.**

29 Reimbursement Anticipation Notes; Version Effective Until July 1, 1999. 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, **and a municipality may incur debt in anticipation of reimbursement under RSA 198:43.** The governing body, after receiving authorization for borrowing from the legislative body, may elect 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.

30 Reimbursement Anticipation Notes; July 1, 1999 Version. 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 **and a municipality may incur debt in anticipation of**

reimbursement under RSA 198:43. The governing body, after 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 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.

31 Sweepstakes. RSA 284:21-j is repealed and reenacted to read as follows:

284:21-j Establishment. The state treasurer shall credit all moneys received from the sweepstakes commission, and interest received on such moneys, to a special fund from which the treasurer shall pay all expenses of the commission incident to the administration of this subdivision and RSA287-E. Any balance left in such fund after such expenses are paid shall be deposited in the education trust fund established under RSA198:39.

32 Transition. As of July 1, 1999, all funds, from any source derived, which would be distributed as foundation aid shall be deposited in the education trust fund under RSA 198:39.

33 Removing Reference to Foundation Aid. Amend RSA 198:21, V to read as follows:

V. No pupil counted by any school district for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be ~~[included in average daily membership for the purposes of foundation aid or]~~ counted for the purposes of grants pursuant to RSA 198:22.

34 Removing Reference to Foundation Aid. Amend RSA 198:22, V to read as follows:

V. No pupil counted by any school for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year by the same district be ~~[included in average daily membership for the purposes of foundation aid or]~~ counted for the purpose of grants pursuant to RSA 198:21.

35 Payment in Lieu of Taxes. Amend RSA 227-H:17 to read as follows:

227-H:17 Payment in Lieu of Taxes. The commissioner of revenue administration shall adopt rules, pursuant to RSA 541-A, relative to forms for application to the commissioner of revenue administration for payment for lost taxes. ~~[In any year in which no state tax is levied.]~~ Any town in which national forest lands and land held by the state for operation and development as state forestland, as defined by the department for the purposes of this section, are situated, whether acquired by gift, devise, purchase, or in any other manner, may apply, by its selectmen, to the commissioner of revenue administration on forms provided by the commissioner, annually before September 1, for the payment of an amount not exceeding the taxes for all purposes which such town might have received from taxes on such lands in such year had such lands been taxable. In the event that the amount appropriated in any biennium shall be insufficient for the purposes under this section, then the towns entitled to benefits under this section shall be reimbursed proportionately, unless otherwise subsequently ordered by the legislature.

36 Special Transition Rules. The following special transition rules shall apply to the implementation of this act in the first fiscal year following enactment:

I. The commissioners of revenue administration and education shall use weighted average daily membership in residence as defined in RSA 198:38, VI established on or before June 30, 1997 in all calculations required by RSA 21-J: 35, I-a and RSA 198:42, I.

II. "Equalized assessed value" as defined in RSA 21-J:35, I-a(d) shall be based upon the amounts reported in the 1997 equalization survey published by the department of revenue administration.

III. For purposes of calculating the uniform education property tax rate as required by RSA21-J:35, I-a the commissioner of revenue administration shall use the following amounts:

(a) The total amount to be subtracted pursuant to RSA 21-J:35, I-a(b) shall be \$220,406,192; and

(b) The total amount to be added pursuant to RSA 21-J:35, I-a(c) shall be \$43,274,656.

IV. For the school year 1999/2000, the adequate education grant determined in RSA 198:42 shall be distributed to each municipality from the education trust fund in 4 payments as follows:

(a) On July 1, 1999, and September 1, 1999, $\frac{1}{4}$ the total adequate education grant without including any homestead exemption amounts;

(b) On January 1, 2000 and April 1, 2000, $\frac{1}{4}$ the total adequate education grant including $\frac{1}{2}$ of the total accepted homestead exemption amounts. The department shall certify the amount of each grant to the state treasurer and direct the payment thereof to the municipality.

V. For the tax year 1999, claims for a homestead exemption shall be filed with the selectmen on or before September 1, 1999.

VI. For the tax year 1999, selectmen shall report accepted claims for the homestead exemption to the department of revenue administration and the department of education by December 1, 1999.

VII. Notwithstanding any other provision of law, the commissioner of revenue administration shall calculate the uniform education property tax rate for the April 1, 1999 tax year and issue the warrants required by RSA 76:8 on or before 30 days after the effective date of this act.

VIII. Notwithstanding any other provision of law, the commissioner of education shall determine the amount of the adequate education grant for each municipality pursuant to RSA198:42 for the 1999/2000 school year on or before 30 days after the effective date of this act.

IX. Notwithstanding any other provision of law, the commissioner of revenue administration shall calculate the property tax transition grant for each municipality for the fiscal year ending June 30, 2000 on or before 30 days after the effective date of this act.

37 Position Established; Appropriations.

I. To carry out the financial and educational reporting requirements of this act, there is hereby established within the department of education a full-time temporary position of systems development specialist IV, labor grade 25, for the 15 month period ending June 30, 2000.

II. The sum of \$69,500 is hereby appropriated to the department of education to fund the position created in paragraph I, including salary, benefits, rent, supplies, and travel. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

III. The sum of \$1,000,000 for the biennium ending June30, 2001, is hereby appropriated to the department of revenue administration to fund the upgrade of municipal computer systems, to provide additional municipal personnel, to provide in-service training of municipal officials and taxpayer education programs, and to fund other administrative costs necessary to carry out the financial purposes of this act in accordance with part 1, article 28-a of the New Hampshire constitution. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

IV. The sum of \$2,000,000 for the biennium ending June30, 2001, is hereby appropriated to the department of revenue administration to fund the costs necessary to implement this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

V. The sum of \$100,000 for the biennium ending June 30, 2001 is hereby appropriated to the department of education to fund the costs necessary to upgrade school districts' computer systems to carry out the reporting responsibilities of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

VI. The sum of \$220,406,192 is hereby appropriated from the education trust fund created under RSA 198:39 to the department of education for each year of the biennium ending June 30, 2001 for the purpose of funding the requirements of RSA198:43.

VII. The sum of \$44,564,832 is hereby appropriated to the state treasurer for each year of the biennium ending June 30, 2001 for the purpose of funding the requirement of RSA 31-A:10. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

38 Special Provision for Foundation Aid. Notwithstanding the repeal pursuant to section 41 of this act of RSA 198:27-37, relative to foundation aid and alternative foundation aid, the payment of foundation aid which would have been made in April 1999 pursuant to RSA 198:31 before such section was repealed, shall be calculated by the department of education and distributed to the recipients as if such repeal had not occurred.

39 Utility Property Valuation Study Committee Established.

I. There is established a committee to study utility property valuation issues.

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

(a) Five members of the house of representatives, appointed by the speaker of the house of representatives, at least one of whom shall be a member of the finance committee, at least one of whom shall be a member of the municipal and county government committee, and at least one of whom shall be a member of the science, technology and energy committee. The speaker of the house of representatives may appoint three other members, if deemed necessary, as alternates.

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

III. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

IV. The committee's duties shall include but not be limited to:

(a) Determining the most appropriate means of evaluating utility property for taxation purposes, and determining to what extent the "unit method" should be used for this purpose.

(b) Determining the extent to which utility property is evaluated consistently from one municipality to another.

(c) Determining the most appropriate means of evaluating nuclear station property.

(d) Determining the most appropriate means of taxing telecommunications services and evaluating property used for providing these services.

V. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be held within 90 days of the effective date of this section. Five members of the committee shall constitute a quorum.

VI. 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, 1999.

40 Severability. If any provision of this act or the application thereof to any person or circumstance is deemed invalid, the invalidity does not affect the other provisions or applications of the act which can be given effect without the invalid provisions or applications and to this end the provisions of this act are severable.

41 Repeal. The following are repealed:

I. RSA 78:20, relative to the applicability of the tobacco tax.

II. RSA 78-B:10-a, relative to the real estate transfer questionnaire.

III. RSA 21-J:3, XXIII, relative to the commissioner of revenue administration's duty to determine local per capita income for purposes of foundation aid.

IV. RSA 21-J:13, XI, relative to the form and content of the real estate transfer questionnaire.

V. RSA 194-B:11, VIII, relative to foundation aid in relation to charter and open enrollment schools.

VI. RSA 198:1-3, relative to required annual district property taxes.

VII. RSA 198:21, V, relative to the applicability of foundation aid and child benefit service grant recipients in the calculation of average daily membership.

VIII. RSA 198:22, V, relative to the applicability of foundation aid and dual enrollment grant recipients in the calculation of average daily membership.

IX. RSA 198:27-37, relative to foundation aid and alternative foundation aid.

X. 1998, 389:15, 16, and 17 relative to educational funding commitments and funding for local education betterment.

42 Effective Date.

I. Sections 23, 31 and 41, X of this act shall take effect July 1, 1999.

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

AMENDED ANALYSIS

This bill creates a state education property tax at a uniform rate to provide support to communities for an adequate education. It allows homeowners a homestead exemption for their primary residence and provides additional hardship relief to low income homeowners whose school property taxes are substantially increased as result of this tax.

The bill establishes a dedicated trust fund, to be funded by revenues from a state utility property tax, the tobacco tax and other sources, for the purpose of making distributions to municipalities with insufficient property base to raise adequate education funds on their own and to compensate municipalities for the homestead exemption and hardship relief.

The bill also repeals foundation aid, phases in the excess education property tax payments to be made by municipalities, and creates a property tax transition grant program in revenue sharing.

Floor Amendment to HB 117-FN-A-L

Proposed by Rep. Mirski

The amendment (1999-0273h) is identical to that proposed for HB 108-FN-A-L

Floor Amendment to HB 117-FN-A-L

Proposed by Rep. Corbin

The amendment (1999-0284h) is identical to that proposed for HB 108-FN-A-L