

State of New Hampshire HOUSE RECORD

**First Year of the 158th Session of the General Court
Calendar and Journal of the 2003 Session**

Vol. 25

Concord N.H

Friday, March 21, 2003

No. 26

Contains: Amendments for March 25, 26 and 27

HOUSE CALENDAR

**ALL LEGISLATORS ARE ASKED TO BRING THIS CALENDAR
FOR USE ON
TUESDAY, MARCH 25, WEDNESDAY, MARCH 26 AND THURSDAY, MARCH 27**

TUESDAY, MARCH 25 AMENDMENTS (LISTED IN NUMERICAL ORDER)

2003-0696h

Amendment to HB 60

Proposed by the Committee on Fish and Game - C

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

AN ACT changing the name of the advisory committee on shore fisheries and relative to the definition of shellfish and a rulemaking exemption for certain rules relating to marine species.

Amend the bill by replacing all after section 4 with the following:

5 Sanitary Production And Distribution Of Food; Definition of Shellfish. RSA 143:20 is repealed and reenacted to read as follows:

143:20 Definition. In this subdivision, “shellfish” means:

I. Oysters, clams, or mussels, whether:

- (a) Shucked or in the shell;
- (b) Fresh or frozen; or
- (c) Whole or in part; and

II. Scallops in any form, except when the final product form is the adductor muscle only.

6 Authority for Regulating Taking, Inspection and Processing of Marine Species; Rulemaking Exception. Amend RSA 211:62, V to read as follows:

V. Rules pertaining to marine species managed under the Atlantic States Marine Fisheries Compact under RSA 213 ***shall comply with RSA 541-A except where, at the discretion of the executive director and in order to conform with an Atlantic States Marine Fisheries Compact, the adoption of a rule must be met sooner than the time periods allowed under RSA 541-A for a rule adopted under the procedures listed in RSA 541-A:3. Such rules*** shall be exempt from the rulemaking requirements of RSA 541-A. The executive director may adopt such ***exempt*** rules after notice and hearing as determined by the executive director to be practicable. Rules adopted ~~[under this paragraph]~~ ***by this procedure*** shall be filed with the director of legislative services and with the joint legislative committee on administrative rules.

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

AMENDED ANALYSIS

This bill changes the name of the advisory committee on shore fisheries to the advisory committee on marine fisheries.

The bill modifies the definition of shellfish and clarifies the fish and game department’s rulemaking exemption for rules relating to marine species under the Atlantic States Marine Fisheries Compact.

2003-0830h

Amendment to HB 107

Proposed by the Committee on Ways and Means - C

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

1 Charitable Organization; Definition. Amend the introductory paragraph of RSA 287-E:1, V to read as follows:

V. “Charitable organization” means any ~~[bona fide religious, charitable, civic, veterans, or fraternal]~~ ***non-profit*** organization which shall have been registered with the secretary of state for at least 2 years and in existence and organized under the laws of this state for at least 2 years in a town or city in this state, and which possesses a tax exempt status under Internal Revenue Code 501(c)(3), 501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) or is covered under a group ruling issued by the Internal Revenue Service under authority of those sections. To be eligible for licensure under this chapter, a charitable organization shall do all of the following:

2 New Paragraph; Community Benefit Report. Amend RSA 287-E:9 by inserting after paragraph VII the following new paragraph:

VIII. Each calendar year, every non-profit organization shall report to the attorney general on how the proceeds from the bingo operations and the sale of lucky 7 tickets are benefiting the community, including the amount and destination of net proceeds.

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

AMENDED ANALYSIS

This bill changes the definition of charitable organization to include any non-profit organization registered with the state. This bill also requires that non-profit organizations licensed to conduct bingo games report to the attorney general each calendar year concerning how gaming is benefiting the community.

2003-0558h

Amendment to HB 112-FN

Proposed by the Committee on Fish and Game - C

Amend RSA 208:1-a, II-a as inserted by section 2 of the bill by replacing it with the following:

II-a. Any permit lottery established under paragraph II shall include a bonus point system as a weighing factor to benefit applicants not drawn in the annual moose permit lottery. Beginning with the 2003 lottery, the moose permit lottery shall allow a person to accumulate one point for each consecutive year that person legally purchases an application for a permit but is not selected to receive a permit. Each point entitles that applicant to one chance in the lottery. A person’s accumulated points shall be non-transferable and shall be forfeited if, in any year, that person is selected to receive a permit or that person fails to purchase a new chance.

2003-0720h

Amendment to HB 119

Proposed by the Committee on Election Law - C

Amend the bill by replacing sections 1 and 2 with the following:

1 New Section; Periodic Maintenance and Verification of Checklists; Evidence of Change of Domicile. Amend RSA 654 by inserting after section 37 the following new section:

654:37-a Evidence of Change of Domicile. If the supervisors of the checklist have received reliable documentary evidence that a voter whose name is on the checklist has left the town or city, they shall strike that name from the checklist at the next session for the correction of the checklist. They shall retain for 5 years the evidence, or copies of the evidence, as proof of their reasoning in striking the name from the checklist.

2 Removing Names from Checklist, Notice Required; Exception Added. Amend RSA 654:44, II to read as follows:

II. The provisions of this section do not apply to the removal of the names of persons for whom the supervisors have received a report of transfer or death as provided in RSA 654:36 or 654:37, ***nor to the removal of names of persons for whom the supervisors have received evidence of change of domicile as provided in RSA 654:37-a***, nor to the removal of names during the period for verification of the checklist as provided in RSA 654:38 or 654:39, nor to the removal of names of persons for whom they have received a notice from a duly authorized board of registration from a community outside New Hampshire stating that a person whose name is on the checklist of the town or ward in New Hampshire has registered to vote outside New Hampshire.

AMENDED ANALYSIS

This bill requires the supervisors of the checklist to remove the name of a voter from the checklist upon receiving reliable documentary evidence that the voter has left the town or city.

2003-0175h

Amendment to HB 122

Proposed by the Majority of the Committee on Judiciary

Amend the bill by replacing section 2 with the following:

2 New Sections; Right of Accused; Jury Instruction. Amend RSA 519 by inserting after section 23 the following new sections:

519:23-a Right of Accused. In all criminal proceedings where the defendant has made a timely request, the court shall explicitly instruct the jury in accordance with RSA 519:23-b of its inherent right to disregard the law as well as the facts and to nullify.

519:23-b Text of Jury Instruction. The court instruction provided for in RSA 519:23-a shall be substantially as follows:

“The test you must use is this: If you have a reasonable doubt as to whether the state has proved any one or more of the elements of the crime charged, you must find the defendant not guilty. However, if you find that the state has proved all of the elements of the offense charged beyond a reasonable doubt, you should find the defendant guilty. Ladies and gentlemen of the jury, the words for these instructions are chosen carefully. I emphasize the word “should” because you as jurors have the absolute right to decline to enter a verdict which could do violence to your conscience, even if you find that the state has proven its case beyond a reasonable doubt. On the contrary, if you find that the state has failed to prove any element of the crime beyond a reasonable doubt, you must find the defendant not guilty.”

AMENDED ANALYSIS

The bill states that a criminal defendant has a right that the court instruct the jury of its inherent right to disregard the law and the facts in controversy and to nullify.

2003-0629h

Amendment to HB 123

Proposed by the Committee on Children and Family Law - R

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

1 Adoption; Notice to Person Claiming Paternity and Hearing to Determine Right to Consent. Amend RSA 170-B:5-a, I to read as follows:

I. The following persons shall be given notice by the court and shall have the right to request a hearing to prove paternity:

(a) A person named by the natural mother in an affidavit ***given in conjunction with her relinquishment or consent to adoption or*** filed with the court, prior to the mother voluntarily relinquishing her rights pursuant to RSA 170-B:8, the mother consenting to an adoption pursuant to RSA 170-B:9, or the mother’s parental rights being involuntarily terminated.

(b) The natural or legal father, if his identity is known by the court, the adoption agency which is legal guardian of the child, or the proposed adoptive parents or their attorney, prior to the mother voluntarily relinquishing her rights pursuant to RSA 170-B:8, the mother consenting to an adoption pursuant to RSA 170-B:9, or the mother’s parental rights being involuntarily terminated.

(c) A person who claims to be the father and ***who is named in a petition for paternity or legitimization filed in the immediate jurisdiction in which the child was born, or*** who has filed notice of his claim of paternity with the office of child support enforcement ***in New Hampshire or in the state where the child was born or where the mother resides, and*** upon the forms supplied thereby. The notice form shall indicate the claimant’s willingness and intent to support the child to the best of his ability. The notice form may be filed prior to the birth of the child but must be filed prior to the mother’s rights being voluntarily relinquished pursuant to RSA 170-B:8, the mother consenting to an adoption pursuant to RSA 170-B:9, or involuntarily terminated. Failure to file the notice prior to this time shall bar the alleged father from thereafter bringing an

action to establish his paternity of the child, and shall constitute an abandonment of said child and a waiver of any right to a notice of hearing in any adoption proceeding concerning the child.

(d) A person who is openly living with the child or the child's mother ~~and~~ **or** providing financial support to the mother or child at the time any action under this chapter is initiated and who is holding himself out to be the child's father prior to the mother voluntarily relinquishing her rights pursuant to RSA 170-B:8, the mother consenting to an adoption pursuant to RSA 170-B:9, or the mother's parental rights being involuntarily terminated.

2 Adoption; Withdrawal of Consent. Amend RSA 170-B:10 to read as follows:

170-B:10 Withdrawal of Consent.

I. A consent to adoption by a parent, including a minor parent, or by a legal guardian executed and acknowledged in accordance with the provisions of RSA 170-B:9, ~~[cannot]~~ **may not** be withdrawn after the entry of the interlocutory decree of adoption unless ~~[it shall have been]~~ **the consent was** obtained by fraud or duress.

II. A consent to adoption may not be withdrawn prior to the entry of an interlocutory decree of adoption unless the court finds, after notice and opportunity to be heard is afforded separately to the petitioner, the person seeking the withdrawal, and the agency placing a minor for adoption, provided that the agency shall be present at all hearings, that the withdrawal is in the best interest of the person to be adopted and the court orders the withdrawal.

III. A consent to adoption by a parent, including a minor parent, or by a legal guardian shall be irrevocable after the entry of the final decree of adoption.

IV. A parent wishing to withdraw ~~[such]~~ consent to an adoption **as provided in paragraphs I and II** shall notify the court in writing where the consent was taken. **An order granting the withdrawal of consent shall vacate the other parent's consent and shall reinstitute that parent's right to notice of further proceedings concerning the child.**

3 Effective Date. This act shall take effect January 1, 2004.

2003-0477h

Amendment to HB 134-FN

Proposed by the Committee on Judiciary - C

Amend RSA 491:20-c as inserted by section 2 of the bill by replacing it with the following:

491:20-c Proceedings. In proceedings heard by marital masters:

I. No party shall pay a fee additional to court filing fees.

II. The marital master shall give notice to the parties at the beginning of the proceeding that he or she is a marital master and not a judge.

2003-0849h

Amendment to HB 139

Proposed by the Committee on Education - R

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

AN ACT relative to the collection and reporting of school drop-out, suspension, and expulsion data and relative to the deadlines for submitting certain reports to the department of education.

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

1 Delivery of an Adequate Education; Reporting of Certain Data. Amend RSA 193-E:3 to read as follows:

193-E:3 Delivery of an Adequate Education.

I. By April 1, 2000, each school district shall report to the department of education its data for the previous 12 months on its school and district performance indicators **in a uniform manner**. The requirements for data keeping and the form of the report shall be established in accordance with rules adopted by the state board of education. **The state board of education or the commissioner of the department of education shall ensure the accuracy and completeness of such data and shall take enforcement or other actions when necessary, including verification checks, for the purpose of enforcing the provisions of this section.**

(a) Performance indicators shall include the following areas:

(1) Attendance and **annual** drop-out rates **and cumulative drop-out rates of eighth graders who do not graduate from high school**.

(2) School environment indicators, such as safe-schools data.

(3) Proportion of graduating students going on to post-secondary education, military service, and the workplace.

(4) Performance on state tests administered pursuant to RSA 193-C and other standardized tests administered at local option.

(5) Beginning December 1, 2004, and every year thereafter, expulsion and suspension rates, including in-house suspensions and partial day suspensions, which shall be reported for each school year.

(b) In addition, local districts shall report on locally developed performance indicators and assessment measures.

II. No later than December 1 **of each year**, the department of education shall issue a report on the condition of education statewide and on a district-by-district and school-by-school basis **for all students for the previous school year, and beginning December 1, 2005, and every year thereafter, such data shall be disaggregated by the student**

subgroups specified in the No Child Left Behind Act of 2001. This report shall include demographic and student performance data including, but not limited to, school and district performance on state tests administered pursuant to RSA 193-C, other standardized tests administered at local option by at least 25 percent of school districts, data provided under paragraph I, as well as other relevant statistics. Comparisons with state averages and with the condition of each district and school in comparison with previous years shall be provided, including, but not limited to, statewide rankings of each district and school on the state tests administered pursuant to RSA 193-C and on other standardized tests administered at local option by at least 25 percent of school districts. The report shall be organized and presented in a manner that is easily understood by the public and that assists each school district with the identification of trends, strengths, and weaknesses and the development of its local education improvement and assessment plan.

2 Statistical Reports. RSA 189:28 is repealed and reenacted to read as follows:

189:28 Statistical Reports; Failure to File Report.

I. School boards of every school district or city, and the board of trustees of approved public academies, shall, on or before September 1 in each year, submit to the department of education those statistical reports necessary to compute the average daily membership of pupils attending each school district, and the average daily membership of pupils resident in each school district. Information relating to the fall enrollment, drop-outs, teacher and administrator census, and average teacher salary, as of October 1 of each school year, shall be submitted to the department of education on or before October 15.

II. The information needed to determine compliance with performance or accountability measures of the school district or city under RSA 193-E:3, or the No Child Left Behind Act of 2001, shall be submitted to the department of education in a timely manner as determined by the department of education. If the department of education requests verification of information submitted, the school district or city shall provide corrected information or verification within 10 business days of such request. A school district or city shall maintain files of all records, data, and other information submitted pursuant to this section for not less than 5 years from the date of submission. The state board of education shall have access to such records, data, and information for the purpose of verifying the accuracy of reported information.

III. Each statistical report submitted under this section shall include a certification, signed by the superintendent of the school district, 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." The statistical report shall also 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, that, to the best of my knowledge, all of the information contained in this document is true, accurate, and complete."

IV. The commissioner of the department of education may grant a school district or city up to a 30-day extension of the reporting deadline set forth in paragraph I. The commissioner of the department of education shall notify the governing body of the school district or city that all state aid to education and all federal aid, if the report is required by federal law, shall be withheld until such time as complete and accurate information is submitted.

3 Submission of Data. Amend RSA 198:45 is repealed and reenacted to read as follows:

198:45 Submission of Data. School boards of every school district or city, and the board of trustees of approved public academies shall submit all records, data, or other information required under this subdivision in accordance with the provisions of RSA 189:28.

4 Penalty for Failure to File Report. RSA 198:4-f is repealed and reenacted to read as follows:

198:4-f Penalty for Failure to File Report. A school district or city shall file the report due under RSA 198:4-d, III no later than September 1 of each year. For just cause, the commissioner of the department of education may grant a school district or city up to a 30-day extension to this reporting deadline. The commissioner may further extend the deadline when unusual or unforeseen circumstances prevent a school district or a city from submitting the required report before the expiration of the extension provided in this section. The commissioner shall notify the governing body of the school district or city that all state aid to education shall be withheld until complete and accurate information is submitted.

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

AMENDED ANALYSIS

This bill provides for the collection and reporting of certain school drop-out, suspension, and expulsion data and makes certain changes to the deadlines for school districts and cities to submit certain reports to the department of education.
2003-0816h

Amendment to HB 162

Proposed by the Committee on Environment and Agriculture - R

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

1 Remedy and Penalties for Injuries Done by Dogs; Killing Dogs Legalized. Amend RSA 466:28 to read as follows:

466:28 Killing Dogs Legalized. Any person may kill a dog that suddenly assaults ~~the~~ a person while such person is peaceably walking or riding without the enclosure of its owner or keeper; and any person may kill a dog that is found out of the enclosure or immediate care of its owner or keeper worrying, wounding, or killing sheep, lambs, fowl, or other domestic animals, ***provided that such sheep, lambs, fowl, or other domestic animals are on the property of their owner.***

2 Effective Date. This act shall take effect January 1, 2004.

AMENDED ANALYSIS

This bill provides for the legalized killing of dogs who wound or kill certain domestic animals provided such domestic animals are on the property of their owner.

2003-0548h

Amendment to HB 175

Proposed by the Majority of the Committee on Judiciary - R

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

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

AN ACT relative to membership of attorneys in the New Hampshire Bar Association and lobbying by the Bar Association.

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

1 New Subdivision; State Bar Association. Amend RSA 311 by inserting after section 7-f the following new subdivision:
State Bar Association

311:7-g State Bar Association Membership; Vote Required.

I. The supreme court, pursuant to its power to regulate the practice of law under this chapter and its continuing supervisory authority over attorneys practicing before courts of this state, may assess fees for the purpose of regulating the practice of law and for maintaining a professional conduct committee.

II. The supreme court may require all persons engaged in the practice of law in this state to be members of the New Hampshire Bar Association; provided that the members of the Bar Association have approved the requirement pursuant to paragraph III.

III. The board of governors of the New Hampshire Bar Association shall place on the ballot with the election of officers of the Association, the following question: "Shall membership in the New Hampshire Bar Association be required for all attorneys licensed to practice in this state?" An affirmative vote of a majority of those voting on the question, shall allow for the requirement by the supreme court under paragraph II. Approval by the membership under this paragraph shall be valid for a 5-year period beginning on the date of the affirmative vote.

311:7-h Bar Association Legislative Activities.

I. The New Hampshire Bar Association, if membership is mandatory for attorneys under RSA 311:7-g, shall be prohibited from using any part of dues paid by its members for the purpose of lobbying or influencing the general court on any matter, except as provided in paragraph III.

II. If membership in the New Hampshire Bar Association is mandatory for attorneys under RSA 311:7-g, no person shall be permitted to engage in legislative activities on behalf of the New Hampshire Bar Association for the purpose of lobbying or influencing the general court on any matter, except as provided in paragraph III.

III. The Bar Association may use a part of dues paid by its members, and may engage a person to lobby or influence the legislature on its behalf provided the Association:

(a) Limits its activities before the general court to those matters which are directly related to the regulation of the legal profession and improving the quality of legal services available to the people of the state. The scope of such permissible activities shall be narrowly defined; and

(b) Has determined that substantial unanimity exists within the bar as a whole in agreement with the position taken on a matter.

IV. Nothing in the section shall prevent officers and members of the Bar Association from appearing before the general court to express their views as individuals, as members of voluntary associations, or as representatives of clients.

V. Any member of the New Hampshire Bar Association, if membership is mandatory for attorneys under RSA 311:7-g, may refuse to pay that portion of the Bar Association dues that are used for lobbying or influencing the legislature or other political matters.

311:7-i Severability. If any provision of this subdivision or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provisions or application, and to this end the provisions of this subdivision are severable.

2 Effective Date. This act shall take effect July 1, 2003.

AMENDED ANALYSIS

This bill requires a vote at least every 5 years by licensed attorneys to authorize the supreme court to continue the requirement for mandatory membership in the New Hampshire Bar Association. The bill also defines when the New Hampshire Bar Association may lobby the general court.

2003-0498h

Amendment to HB 184

Proposed by the Committee on Judiciary - C

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

1 Descent, Distribution, and Advancements; Distribution Upon Intestacy. RSA 561:1 is repealed and reenacted to read as follows:

561:1 Distribution Upon Intestacy. The real estate and personal estate of every person deceased, not devised or bequeathed, subject to any homestead right, and liable to be sold by license from the court of probate in cases provided by law, and personally remaining in the hands of the administrator on settlement of his or her account, shall descend or be distributed by decree of the probate court:

I. If the deceased is survived by a spouse, the spouse shall receive:

(a) If there is no surviving issue or parent of the decedent, the entire intestate estate;

(b) If there are surviving issue of the decedent all of whom are issue of the surviving spouse also, and there are no other issue of the surviving spouse who survive the decedent, the first \$250,000, plus $\frac{1}{2}$ of the balance;

(c) If there are no surviving issue of the decedent but the decedent is survived by a parent or parents, the first \$250,000, plus $\frac{3}{4}$ of the balance of the intestate estate;

(d) If there are surviving issue of the decedent all of whom are issue of the surviving spouse also, and the surviving spouse has one or more surviving issue who are not the issue of the decedent, the first \$150,000, plus $\frac{1}{2}$ of the balance of the intestate estate;

(e) If there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse, the first \$100,000, plus $\frac{1}{2}$ of the intestate estate.

II. The part of the intestate estate not passing to the surviving spouse under paragraph I, or the entire intestate estate if there is no surviving spouse, passes as follows:

(a) To the issue of the decedent equally if they are all of the same degree of kinship to the decedent, but if of unequal degree, then those of more remote degree take by representation.

(b) If there are no surviving issue, to the decedent's parent or parents equally.

(c) If there are no surviving issue or parent, to the brothers and sisters and the issue of each deceased brother or sister by representation; if there is no surviving brother or sister, the issue of brothers and sisters take equally if they are all of the same degree of kinship to the decedent, but if of unequal degree then those of more remote degree take by representation.

(d) If there are no surviving issue, parent or issue of a parent but the decedent is survived by one or more grandparents, one half of the estate passes to the paternal grandparents if both survive or to the surviving paternal grandparent if one paternal grandparent is deceased and the other half passes to the maternal grandparents in the same manner; or if only one grandparent survives, such grandparent shall receive the entire estate.

(e) If there are no surviving issue, parent, issue of a parent, or grandparent but there are issue of the decedent's grandparent who survive, one half of the estate passes to the issue of the paternal grandparent who are not beyond the fourth degree of kinship to the decedent and said issue shall take equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation, and the other half passes to the issue of the maternal grandparent who are not beyond the fourth degree of kinship and said issue shall take equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; provided, however, that if there are no issue of the decedent's grandparent within the fourth degree of kinship to the decedent on either the paternal or maternal side, the entire estate passes to the issue on the other side who are not beyond the fourth degree of kinship to the decedent and said issue shall take equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation.

(f) No portion of a decedent's intestate estate shall pass to any person who is of the fifth or greater degree of kinship to the decedent.

(g) If there is no taker under the provisions of this section, the intestate estate passes to the state of New Hampshire.

III. All determinations of survivorship shall be made in accordance with the provisions of RSA 563.

2 Repeal. RSA 561:3, relative to representation, is repealed.

3 Applicability. This act shall apply to persons dying on or after January 1, 2004.

4 Effective Date. This act shall take effect January 1, 2004.

2003-0521h

Amendment to HB 185

Proposed by the Committee on Judiciary - C

Amend RSA 551:10 as inserted by section 1 of the bill by replacing it with the following:

551:10 Child Not Named. If any person shall die testate leaving a child born or adopted after the date of the will, or, if there are codicils, the date of the most recent codicil thereto, and if such child is not provided for or referred to therein, that child shall take the portion of the testator's estate to which he or she would have been entitled if the testator had died intestate unless it appears to the probate court that the omission was intentional and not occasioned by accident or mistake; provided, however, that if the will provides for another child or children, the pretermitted child shall take no more than the largest bequest or devise to a child named in such will.

2003-0791h

Amendment to HB 205

Proposed by the Committee on Criminal Justice and Public Safety - C

Amend RSA 106-B:14, III as inserted by section 2 of the bill by replacing it with the following:

III.(a) The general court hereby approves and ratifies the National Crime Prevention and Privacy Compact, 42 U.S.C. sections 14611-14616, as it existed on January 1, 2002, and the compact shall remain in effect until legislation is enacted renouncing or rescinding the compact.

(b) Criminal history information shall be made available according to the provisions of the National Crime Prevention and Privacy Compact.

(c) The commissioner of the department of safety shall execute, administer, and implement the compact on behalf of the state, and may adopt rules, pursuant to RSA 541-A, as necessary for the national exchange of criminal history records for noncriminal justice purposes.

(d) Nothing in this paragraph shall alter the duties and responsibilities of the commissioner of the department of safety regarding the dissemination of criminal history records within the state of New Hampshire.

Amend the bill by replacing section 3 with the following:

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

2003-0555h

Amendment to HB 208

Proposed by the Committee on Criminal Justice and Public Safety - C

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

1 Change of Name. Amend RSA 547:3-i, II to read as follows:

II. Before the probate court may grant a change of name for a person who is incarcerated, or on probation or parole, or for a person who is required, pursuant to RSA 651-B, to register as a sexual offender or an offender against children and who is no longer subject to supervision by the department of corrections, the petitioner shall make a compelling showing that a name change is necessary. For a person who is incarcerated, or on probation or parole, the petitioner shall serve a copy of the petition, **pursuant to RSA 547:29**, on the department of corrections. For a person who is required to register as a sexual offender or an offender against children and who is no longer subject to supervision by the department of corrections, the petitioner shall serve a copy of the petition, **pursuant to RSA 547:29**, on the department of safety. **Upon ruling on the petition, the probate court shall issue a copy of its order to the department of corrections or, if the petitioner is no longer subject to the supervision of the department of corrections, to the department of safety.**

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

AMENDED ANALYSIS

This bill requires the probate court to issue a copy of any order on a petition for a name change made by an individual who is on probation or parole, or for a person who is required to register as a sexual offender or as an offender against children, to the department of corrections or to the department of safety.

2003-0702h

Amendment to HB 210-FN-A

Proposed by the Committee on Finance - R

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

AN ACT relative to passenger tramway registration fees and relative to carnival or amusement ride fees.

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

1 Passenger Tramway Registration Fees. Amend RSA 225-A:16 to read as follows:

225-A:16 Fees. The application for registration shall be accompanied by the applicable annual fees [~~provided, however, that when an operator operates either a chair lift, skimobile, gondola, or aerial tramway during both a summer and winter season, the annual fee shall be 1 1/2 times the annual fee for the respective lift~~] **to cover the costs of administering this chapter**. The fees for registration shall be set by the board, **with the approval of the commissioner of safety**, by rule adopted pursuant to RSA 541-A.

2 Carnival-Amusement Operators; Decal Required. Amend RSA 321-A:4 to read as follows:

321-A:4 Decal Required. No person shall operate a carnival or amusement ride without a decal issued by the commissioner. The commissioner [~~may~~] **shall** by rule, adopted pursuant to RSA 541-A, establish a reasonable fee for decals to cover the costs of administering this chapter. An operator shall apply for a decal to the commissioner on a form furnished by [~~him~~] **the commissioner** and containing such information as [~~he~~] **the commissioner** may require. No such decals shall be issued by the commissioner until proof of adequate insurance on each such ride, as provided in RSA 321-A:5, III, is certified by the owner or operator to the commissioner and the applicable fee has been paid.

3 Passenger Tramway Registration Fees; Expiration and Adoption of Rule. Notwithstanding any other provision of law, the passenger tramway safety board rule adopted pursuant to RSA 225-A:16 setting passenger tramway registration fees shall expire June 30, 2003. The passenger tramway safety board, with the approval of the commissioner of safety, shall set new passenger tramway registration fees pursuant to RSA 225-A:16, as amended by this act. In developing the fees required by RSA

225-A:16, the passenger tramway safety board and the commissioner of safety shall act jointly to assure that the fees cover the costs of administering RSA 225-A.

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

AMENDED ANALYSIS

This bill:

I. Provides that passenger tramway registration fees shall cover the costs of administering the passenger tramway safety laws.

II. Requires that the commissioner of safety approve the passenger tramway registration fees set by the passenger tramway safety board.

III. Requires that the commissioner of safety to establish fees for carnival or amusement ride decals.

2003-0164h

Amendment to HB 211

Proposed by the Committee on Municipal and County Government - C

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

1 Town Clerk Total Fund Deposit Requirement; Fees. RSA 41:25 is repealed and reenacted to read as follows:

41:25 Fees.

I. Town clerks shall be entitled to a minimum fee of \$2 for recording a bill of conditional sale, a personal property mortgage or for a copy of any public records in his or her custody except copies of vital statistics, for recording writs of attachment, discharging a mortgage on the margin of a record or for recording an assignment thereof, provided, however, that each town, at the annual town meeting, may determine the rate and amount of compensation, in lieu of statutory fees, in combination with a portion of statutory fees or just statutory fees, to be allowed to the town clerk for his services.

II. Town clerks shall deposit all fees received with the town treasurer or in a municipal account controlled by the town treasurer at least monthly, or as directed by the selectmen, for the use of the town. In the event that any portion of the town clerk's compensation consists of statutory fees, the clerk shall submit an invoice for the amount of those fees to the treasurer, who shall pay out that amount to the clerk, notwithstanding RSA 32.

2 Duties of the Treasurer. Amend RSA 41:29, I to read as follows:

I. The town treasurer shall have custody of all moneys belonging to the town, and shall pay out the same only upon orders of the selectmen, or, in the case of a conservation fund established pursuant to RSA 36-A:5, upon the order of the conservation commission, or in the case of a heritage commission fund established pursuant to RSA 674:44-a upon the order of the heritage commission, or in the case of fees held pursuant to RSA 673:16, II, upon the order of the local land use board or its designated agent, or in the case of a recreation revolving fund established pursuant to RSA 35-B:2, upon the order of the recreation or park commission, **or in the case of fees deposited by the town clerk pursuant to RSA 41:25, upon the invoice of the town clerk**, or other board or body designated by the town to expend such a fund.

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

2003-0761h

Amendment to HB 222

Proposed by the Committee on Executive Departments and Administration - C

Amend the bill by replacing section 5 with the following:

5 Effective Date. This act shall take effect July 31, 2003.

2003-0606h

Amendment to HB 228

Proposed by the Committee on Transportation - C

Amend RSA 264:25, I as inserted by section 1 of the bill by replacing it with the following:

I. The driver of a vehicle who knows or should have known that he or she has just been involved in any accident which resulted in death[.] **or personal injury [or damages] shall immediately stop such vehicle at the scene of the accident and shall give to any responding police officer arriving at the scene of the accident, or immediately to a police officer at the nearest police station, the driver's name and address, driver's license number, the registration number of the vehicle, and the name and address of each occupant. The driver of a vehicle who knows or should have known that he or she has just been involved in any accident which resulted in damage** to property, shall immediately stop such vehicle at the scene of the accident and give to the driver or owner of any other vehicle involved in said accident, [and to any person injured,] and to the owner of any property damaged, the driver's name and address, driver's license number, the registration number of the vehicle, and the name and address of each occupant. [If by reason of injury, absence or removal from the place of the accident, or other cause, such injured person, or driver of such other vehicle, or owner of the property damaged, or any of them, is unable to understand or receive the information required in this section, such information shall be given to any uniformed police officer arriving at the scene of the accident or immediately to a police officer at the nearest police station.]

Any person driving a vehicle which is in any manner involved in an accident or any person who owns a vehicle which was illegally parked when it was involved in an accident shall within 15 days after such accident report in writing to the division the

facts required hereunder together with a statement of the circumstances if any person is injured or killed, or if damage to property is in excess of \$1,000, unless the accident is investigated by a police officer, in which case a report filed by such officer shall satisfy the requirements of this section; provided, however, that any person not otherwise required by this paragraph to file a report, who owns a vehicle which was involved in an accident, may file a report as provided by this paragraph. Voluntary intoxication shall not constitute a defense in the matter of knowledge under the provisions of this section. All reports, filed as required in this paragraph, shall be in the form prescribed by the director and shall contain information to enable the division to determine whether the requirements for the deposit of security under RSA 264:3 are inapplicable by reason of the existence of insurance or other exceptions specified in that chapter. If such driver is physically or mentally incapable of making such report, the owner of the vehicle involved in such accident or the owner's representative shall, after learning of the accident, forthwith make such report. The driver or the owner shall furnish such additional relevant information as the division shall require. The provisions of this section shall be of general application and shall not be restricted to a way as defined in RSA 259. ***Nothing in this section is intended to prohibit a driver from leaving the scene of an accident involving death or personal injury for the purpose of obtaining immediate medical assistance or emergency services in behalf of any person involved in the accident, provided that the driver complies with the requirements of this section immediately after obtaining the necessary medical assistance or emergency services.***

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 4:

2 Off Highway Recreational Vehicles; Financial Responsibility and Conduct After an Accident. Amend RSA 215-A:28, I to read as follows:

I.(a) All provisions, including the penalties, suspensions, and prohibitions of the New Hampshire financial responsibility law, and the provisions of statutes relative to the operation of a motor vehicle, shall apply to an OHRV being operated upon a public highway.

(b) The operator of an OHRV involved in an accident resulting in death or injury to a person or damage to property in excess of \$500, ***or*** the owner of the OHRV having knowledge of the accident, should the operator be incapacitated, shall report the accident immediately to the nearest police officer or nearest police station and shall file a report of the accident with the department of fish and game and the department of safety within 5 days on forms prescribed by the department of fish and game.

3 New Paragraph; Off Highway Recreational Vehicles; Penalty for Conduct After an Accident. Amend RSA 215-A:28 by inserting after paragraph IV the following new paragraph:

V. Any operator or owner who fails to comply the requirements of RSA 215-A:28, I(b) or RSA 215-A:28, III following an accident involving damage to property shall be guilty of a misdemeanor. Any operator or owner who fails to comply the requirements of RSA 215-A:28, I(b), RSA 215-A:28, III, or RSA 215-A:28, IV following an accident involving death or personal injury shall be guilty of a class B felony. Any operator or owner who provides information required by RSA 215-A:28, I(b), RSA 215-A:28, III, or RSA 215-A:28, IV following an accident, knowing or having reason to know such information is false, shall be guilty of a class B felony.

AMENDED ANALYSIS

This bill requires the driver of a vehicle that has been involved in an accident which resulted in death or personal injury to provide driver and vehicle information to the police. This bill also establishes penalties for failure to report an OHRV accident. 2003-0432h

Amendment to HB 245

Proposed by the Committee on Children and Family Law - C

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

1 Annulment, Divorce and Separation; Support and Custody of Children; Custody Decision Based on Welfare of Child. Amend RSA 458:17, VI to read as follows:

VI. In making any order relative to such custody, the court shall not give any preference to either parent of the children because of the parent's sex. ~~[The court may take into consideration any preference shown by said children.]~~ ***The paramount and controlling consideration in deciding child custody is the overall welfare of the child, and there is no one formula for all cases, each case being determined by its particular facts. Considerable weight may be given to the stated preference of a mature minor, provided that preference was not unduly influenced.*** If the court determines that it is in the best interest and welfare of the children, it shall in its decree grant reasonable visitation privileges to a party who is a stepparent of the children or to the grandparents of the children pursuant to RSA 458:17-d. Nothing in this paragraph shall be construed to prohibit or require an award of custody to a stepparent or grandparent if the court determines that such an award is in the best interest of the child.

2 Effective Date. This act shall take effect January 1, 2004.

AMENDED ANALYSIS

This bill clarifies that child custody decisions are case-specific, based on the overall welfare of the child, and may take into consideration the preference of a mature minor.

2003-0287h

Amendment to HB 258

Proposed by the Committee on Executive Departments and Administration - C

Amend RSA 188-F:5, II-a as inserted by section 4 of the bill by replacing it with the following:

II-a. The commissioner shall nominate ~~[for appointment by]~~ **with the approval and confirmation of** the board of trustees, an unclassified director of financial management. The director shall serve at the pleasure of the board of trustees. The director shall be qualified to hold that position by reason of education and experience **and shall report to the commissioner**. The director shall be responsible for **leadership and supervision of** the following functions:

- (a) ~~Human resources, employee relations, and payroll.~~
- ~~(b)~~ Accounts payable, including purchasing.
- ~~(c)~~ **(b)** Accounts receivable, including tuition and student fees.
- ~~(d)~~ **(c)** Financial analyses and financial control, including budget development and expenditure management.
- ~~(e)~~ **(d)** Financial management of grants and development funds.
- ~~(f)~~ **(e)** Computer support services for financial and student management.

Amend RSA 188-F:5, I as inserted by section 4 of the bill by replacing it with the following:

I. The ~~[governor and council]~~ **board of trustees** shall appoint a commissioner of regional community-technical colleges, who shall be the chief executive officer of the department. The commissioner shall be qualified by education and experience and shall have a 4-year term. ~~[The salary of the commissioner shall be that established in RSA 94.]~~

Amend RSA 188-F:3-a, I (l) as inserted by section 7 of the bill by replacing it with the following:

- (l) One member from the house of representatives, appointed by the speaker of the house.

AMENDED ANALYSIS

This bill authorizes the board of trustees to appoint and fix the compensation of the commissioner, deputy commissioner, director of financial management, and presidents of the community-technical college system and amends the duties of the board of trustees of the community-technical college system. The bill also adds a member of the house of representatives and a member of the senate to the board of trustees for the regional community-technical colleges.

2003-0725h

Amendment to HB 259

Proposed by the Committee on Commerce - C

Amend RSA 358-A:2, XIII as inserted by section 1 of the bill by replacing it with the following:

XIII. Selling gift certificates having a face value of less than \$100 to purchasers which contain expiration dates. Gift certificates having a face value of \$100 or more shall expire when escheated to the state as abandoned property pursuant to RSA 471-C. ~~[This paragraph shall not apply to gift certificates for which monetary consideration is not given or that are distributed to a consumer for promotional purposes. Nor shall this paragraph apply to season passes or coupons that are nonrefundable and nonredeemable.]~~ **Dormancy fees, latency fees, or any other administrative fees or service charges that have the effect of reducing the total amount for which the holder may redeem a gift certificate are prohibited. This paragraph shall not apply to season passes.**

2003-0112h

Amendment to HB 261

Proposed by the Committee on Ways and Means - R

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

- 3 Financial Reports. Amend RSA 287-E:24, I to read as follows:

I. A charitable organization shall submit a complete financial report for each license issued under RSA 287-E:20 to the commission **within 105 days from the date of issue and every 90 days thereafter, or** within 15 days after the expiration date of the license, **whichever occurs first**.

2003-0831h

Amendment to HB 262

Proposed by the Committee on Ways and Means - C

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

- 1 Operation of Games of Chance. RSA 287-D:2-b, VI is amended to read as follows:

VI. No person who has been convicted of ~~[any criminal offense]~~ **a felony or class A misdemeanor within the previous 10 years which has not been annulled by a court, or a class B misdemeanor within the past 5 years which has not been annulled by a court**, or who has violated any of the statutes or rules governing charitable gambling in the past in this or any other state shall operate a game of chance licensed under this chapter, or rent, lease, sublease, or otherwise provide any hall or game of chance paraphernalia for the conduct of games of chance licensed under this chapter.

- 2 License Applications. Amend RSA 287-E:5, V (c) to read as follows:

(c) That neither the applicant nor any member of the charitable organization who will be participating in the operation of the bingo games **and sale of lucky 7 tickets** has been convicted of ~~[any crime]~~ **a felony or class A misdemeanor within the previous 10 years which has not been annulled by a court, or a class B misdemeanor within the past 5**

years which has not been annulled by a court, or has violated the statutes or rules governing charitable gambling.

3 Operation of Bingo Games and Sale of Lucky 7. Amend RSA 287-E:7, VI to read as follows:

VI. No person who has been convicted of ~~[any criminal offense]~~ ***a felony or class A misdemeanor within the previous 10 years which has not been annulled by a court, or a class B misdemeanor within the past 5 years which has not been annulled by a court***, or who has violated any of the statutes or rules governing charitable gambling in the past in this or any other state shall operate a bingo game ***or participate in the sale of lucky 7 tickets*** licensed under this chapter, or rent, lease, sublease, or otherwise provide any hall or bingo paraphernalia for the conduct of bingo licensed under this chapter.

4 Effective Date. This act shall take effect January 1, 2004.

2003-0900h

Amendment to HB 280-FN

Proposed by the Committee on Ways and Means - C

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

1 Purpose. The purpose of this act is to provide a sustainable and fiscally responsible funding mechanism to support the continuation of a statewide program for poison information that meets certification standards developed by the American Association of Poison Control Centers. The general court recognizes that the poison information center is an important emergency medical telephone service which complements and enhances the purposes of other emergency public health and safety efforts in New Hampshire.

2 Health and Human Services; Poison Information and Control. RSA 126-A:49 is repealed and reenacted to read as follows:

126-A:49 Poison Information and Treatment.

I. The commissioner shall develop or designate a statewide poison information center which meets certification standards developed by the American Association of Poison Control Centers. The poison information center so established and designated by the commissioner shall provide New Hampshire residents with information and emergency medical consultation on a daily, 24-hour basis. Funding for this program may be included in the budget for the department of health and human services, and shall be from the assessment authorized by paragraph II. The commissioner shall file an annual report with the health and human services oversight committee established pursuant to RSA 126-A:13 as to whether the designated poison information center provides services in such manner as to ensure continued accreditation by the American Association of Poison Control Centers and on the department's efforts to identify and accept additional funds. The commissioner shall attempt to obtain and shall accept in the name of the state any and all donations, grants, or fees, both real and personal, from any governmental unit or public agency, or third-party payors, or from any institution, person, firm, or corporation given specifically for the purpose of funding this program and the commissioner shall receive, utilize, and dispose of all such donations and grants consistent with the purpose or conditions of the donation or grant. The health and human services oversight committee shall, no later than July 1, 2007, review the accreditation standards of the American Association of Poison Control Centers to determine whether it is appropriate to continue to require the poison information center to meet such standards.

II. The commissioner shall determine the annual cost for the poison information center under paragraph I; such cost to be decreased by the amount of funding raised by grants, fees, donations and other sources enumerated under paragraph I. Each licensed insurer shall be assessed in proportion to the number of its covered lives by the insurance commissioner. The amount to be raised shall then be determined by multiplying the ratio of the number of covered lives to the cost of the funding for the poison information center. For the purposes of this paragraph:

(a) "Covered lives" shall have the same meaning as defined in RSA 404-G:2, V.

(b) "Health insurance" shall have the same meaning as defined in RSA 404-G:2, VII.

(c) "Licensed insurer" means any entity licensed pursuant to RSA 402, RSA 420-A, or RSA 420-B. "Licensed insurer" shall not include the New Hampshire Individual Health Plan Benefit Association.

III. The insurance commissioner shall remit the assessments charged pursuant to paragraph II on a monthly basis to the department of health and human services, which shall be forwarded to the state treasurer for deposit in the poison information center fund. Such fund shall be continually appropriated to the department of health and human services and shall not lapse. The moneys in the account shall not be used for any purpose other than the poison information center developed or designated pursuant to RSA 126-A:49.

3 New Subparagraph; State Treasurer; Poison Information Center Fund. Amend RSA 6:12, I by inserting after subparagraph (IIIIIIII) the following new subparagraph:

(mmmmmmmm) Moneys received under RSA 126-A:49, II, which shall be credited to the poison information center fund established in RSA 126-A:49, III.

4 Health and Human Services; Poison Information and Control. Amend RSA 125:9, IX to read as follows:

IX. Develop or designate a statewide ~~[program for]~~ poison information ~~[and treatment]~~ ***center*** under RSA 126-A:49 ***by soliciting proposals and selecting a vendor.***

5 Initial Budget for Poison Information Center. For the purposes of initiating the budget for the poison information

center, the commissioner of health and human services shall submit an initial budget to the legislative fiscal committee for final approval.

6 Health and Human Services; Poison Information and Control; References to Surcharge and Accreditation Review Eliminated. RSA 126-A:49 is repealed and reenacted to read as follows:

126-A:49 Poison Information and Treatment. The commissioner shall develop or designate a statewide poison information center which meets certification standards developed by the American Association of Poison Control Centers. The poison information center so established and designated by the commissioner shall provide New Hampshire residents with information and emergency medical consultation on a daily, 24-hour basis. Funding for this program may be included in the budget for the department of health and human services. The commissioner shall file an annual report with the health and human services oversight committee established pursuant to RSA 126-A:13 as to whether the designated poison information center provides services in such manner as to ensure continued accreditation by the American Association of Poison Control Centers and on the department's efforts to identify and accept additional funds. The commissioner shall attempt to obtain and shall accept in the name of the state any and all donations, grants, or fees, both real and personal, from any governmental unit or public agency, or third-party payors, or from any institution, person, firm, or corporation given specifically for the purpose of funding this program and the commissioner shall receive, utilize, and dispose of all such donations and grants consistent with the purpose or conditions of the donation or grant.

7 Repeal. RSA 6:12, I(mmmmmmmmm), relative to the poison information center fund, is repealed.

8 Effective Date.

I. Sections 6 and 7 of this act shall take effect July 1, 2007.

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

AMENDED ANALYSIS

This bill establishes the poison information center assessment on covered lives as a funding mechanism to continue the statewide program for poison information and treatment which meets certification standards developed by the American Association of Poison Control Centers.

The assessment is repealed in 2007.

2003-0515h

Amendment to HB 287

Proposed by the Committee on Judiciary - C

Amend paragraph I of section 2 of the bill by replacing it with the following:

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

- (a) Three members of the house of representatives, appointed by the speaker of the house.
- (b) Three members of the senate, appointed by the president of the senate.
- (c) Two dentists, appointed by the New Hampshire Dental Society.
- (d) Two physicians, appointed by the New Hampshire Medical Society.
- (e) Two attorneys, appointed by the New Hampshire Trial Lawyers Association.
- (f) Two members of the public, appointed by the governor.
- (g) One representative of the Medical Liability Insurance Carriers, appointed by the insurance commissioner.
- (h) One representative of the Joint Underwriters Association, appointed by the insurance commissioner.
- (i) Two representatives of the New Hampshire Hospital Association, appointed by such association.

2003-0609h

Amendment to HB 298

Proposed by the Committee on Children and Family Law - R

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

AN ACT relative to physical child custody decisions.

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

1 Findings. The legislature finds and declares that it is the public policy of this state that frequent and continuing contact between minor children and both parents after the parents have separated or dissolved their marriage is ordinarily beneficial to the children. The legislature also finds that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

2 Domestic Relations; Support and Custody of Children; Joint Physical Custody Awards. Amend RSA 458:17, III to read as follows:

III. For the purposes of RSA 458:17, II "joint legal custody" shall include all parental rights with the exception of physical custody which shall be awarded as the court deems most conducive to the benefit of the children. ***Upon the request of either party, the court shall make findings relative to the basis for an award of physical custody.***

3 Effective Date. This act shall take effect January 1, 2004.

AMENDED ANALYSIS

This bill provides that, upon the request of either party, the court shall make findings relative to the basis for a physical

child custody decision.
2003-0736h

Amendment to HB 302-FN

Proposed by the Committee on Executive Departments and Administration - R

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

AN ACT relative to the funding and use of the retirement system special account.

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

☐ Retirement System; Special Account. Amend RSA 100-A:16, II(h) to read as follows:

(h) There shall be a special account for additional benefits held by the board of trustees. ***Beginning July 1, 2003, the special account shall be subdivided into [4] components representing the 4 retirement system member classifications, as defined in RSA 100-A:1, with each component subdivided proportionally between employees of the state and employees of the political subdivisions of the state. The balance of the special account attributed to each component as of June 30, 2003 shall be subdivided between state and political subdivision classifications based upon the actuarial liabilities of the member and retiree groups.*** Beginning with the fiscal year ending June 30, 1990, the amount credited annually to the special account shall be determined as follows:

(1) Each component of the special account shall first be credited with all the earnings of that component for the fiscal year.

(2) All of the earnings of the remaining assets of the retirement system which are in excess of the assumed rate of return plus 1/2 of one percent added to such rate shall be allocated to the 4 member classifications. The assumed rate of return shall be determined by the board of trustees.

(3) Any funds held in special reserve as of June 30, 1996, shall be transferred to the respective component of the special account according to the following schedule:

(i) One-half of the funds held in special reserve as of June 30, 1996.

(ii) One-half of the remaining funds as of June 30, 1997, plus earnings from July 1, 1996 to June 30, 1997.

(iii) All remaining funds as of June 30, 1998, plus earnings from July 1, 1997, to June 30, 1998.

(4) [Repealed.]

(5) None of the assets held in the special account shall be used in the actuarial determination of the rate percent of normal contribution as set forth in subparagraphs (b), (c) and (d).

(6) [Repealed.]

(7) The actuarial cost of all legislation enacted during each fiscal year and calling for funding from the special account shall be withdrawn from the respective components of the special account, as of June 30 of each year, after funds are credited to the special account as provided in this subparagraph.

The special account shall be used only to fund or partially fund additional benefits as follows: first, to provide supplemental allowances, or COLAs, pursuant to RSA 100-A:41-a ***within a 3-year, 5 percent COLA reserve*** and, second, to the extent that funds may be available in the special account ***in excess of the 3-year 5 percent COLA reserve***, to provide additional benefits to retired members and beneficiaries of the retirement system ***with the specific approval of the appropriate policy committees and approval of the general court.***

☐ Effective Date. This act shall take effect July 1, 2003.

AMENDED ANALYSIS

This bill provides for the subdivision of the retirement system special account components into a state employee portion and a political subdivision employee portion.

This bill also adds requirements for the approval and use of retirement system funds in the special account for supplemental benefits.

2003-0809h

Amendment to HB 311

Proposed by the Majority of the Committee on Municipal and County Government - R

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

AN ACT repealing the obligation to provide persons applying for a marriage license with a list of family planning services and with brochures on fetal alcohol syndrome and the human immunodeficiency virus.

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

☐ Repeal. The following are repealed:

I. RSA 132:2, XI, relative to the brochure on fetal alcohol syndrome, prepared by the department of health and human services, for persons applying for a marriage license.

II. RSA 141-F:3, XIII, relative to the informational brochure concerning the human immunodeficiency virus, prepared by the department of health and human services, for persons applying for a marriage license.

III. RSA 457:23, II and III, relative to the requirement that a person applying for a marriage license receive a brochure concerning fetal alcohol syndrome and the human immunodeficiency virus.

IV. RSA 457:28-a, relative to the list of family planning services provided by the town clerk to persons applying for a marriage license.

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

AMENDED ANALYSIS

This bill repeals the requirement that the town clerk distribute family planning service lists and brochures on fetal alcohol syndrome and human immunodeficiency virus to marriage license recipients.

The bill also repeals the requirement that the department of health and human services prepare pamphlets relative to fetal alcohol syndrome and human immunodeficiency virus for distribution to persons applying for a marriage license.

2003-0397h

Amendment to HB 316-FN

Proposed by the Committee on Commerce - C

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

1 Accident and Health Insurance; Coverage for Dental Procedures; Medical or Hospital; Group; Age for Covered Service Increased. Amend RSA 415:18-g, I(a) to read as follows:

(a) Is a child under the age of [4] 6 who is determined by a licensed dentist in conjunction with a licensed physician to have a dental condition of significant dental complexity which requires certain dental procedures to be performed in a surgical day care facility or hospital setting; or

2 Accident and Health Insurance; Coverage for Dental Procedures; Dental Offices; Age for Covered Service Increased.

Amend RSA 415:18-h, I(a) to read as follows:

(a) Is a child under the age of [4] 6 who is determined by a licensed dentist in conjunction with a licensed physician to have a dental condition of significant complexity which requires the child to receive general anesthesia for the treatment of such condition; or

3 Health Service Corporations; Coverage for Dental Procedures; Age for Covered Service Increased. Amend RSA 420-A:17-b, I(a) to read as follows:

(a) Is a child under the age of [4] 6 who is determined by a licensed dentist in conjunction with a licensed primary care physician to have a dental condition of significant dental complexity which requires certain dental procedures to be performed in a surgical day care facility or hospital setting; or

4 Health Maintenance Organizations; Coverage for Dental Procedures; Age for Covered Service Increased. Amend RSA 420-B:8-ee, I(a) to read as follows:

(a) Is a child under the age of [4] 6 who is determined by a licensed dentist in conjunction with a licensed primary care physician to have a dental condition of significant dental complexity which requires certain dental procedures to be performed in a surgical day care facility or hospital setting; or

5 Effective Date. This act shall take effect January 1, 2004.

AMENDED ANALYSIS

This bill requires insurers to cover anesthesia provided in conjunction with certain dental procedures for children under 6 years of age. Current law mandates such coverage for children under 4 years of age.

2003-0547h

Amendment to HB 332-FN

Proposed by the Committee on Election Law - C

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

1 New Section; Political Advertising; Prerecorded Political Messages. Amend RSA 664 by inserting after section 14 the following new section:

664:14-a Prerecorded Political Messages.

I. In this section, "prerecorded political message" means a prerecorded audio message delivered by telephone by:

(a) A candidate or political committee; or

(b) Any person when the content of the message expressly or implicitly advocates the success or defeat of any party, measure, or person at any election, or contains information about any candidate or party.

II. No person shall deliver a prerecorded political message unless the message contains, or a live operator provides immediately after telephone contact, the following information:

(a) The name of any organization or organizations the person is calling on behalf of.

(b) The name of the person or organization paying for the delivery of the message and the name of the fiscal agent, if applicable.

III. No person shall deliver a prerecorded political message to any telephone number on the person's do not call list, or on any state or federal do not call list, or to any telephone number which has otherwise been the subject of a request that no further prerecorded political messages be delivered by the person to the telephone number.

IV. Violators of this section shall not be subject to penalties under RSA 664:21, V, but shall be subject to an administrative fine of \$250 per incident up to a total of \$50,000.

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

AMENDED ANALYSIS

This bill requires that certain identifying information accompany prerecorded political telephone messages.
2003-0814h

Amendment to HB 357-FN

Proposed by the Committee on Children and Family Law -C

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

1 New Section; Alternative Method of Support Enforcement for Dependent Children; Child Support Insurance Settlement Intercept. Amend RSA 161-C by inserting after section 3-d the following new section:

161-C:3-e Child Support Insurance Settlement Intercept. The department may provide certain information to public agencies or its contracted agents in order to intercept insurance settlement payments or judgments claimed by individuals who are subject to a child support lien pursuant to RSA 161-C and who owe past-due support. The department may identify such individuals by name, last 4 digits of the individual's social security number or other taxpayer identification number, date of birth, last known address, employer, or any combination thereof. Any information provided by the department in accordance with this section shall remain the property of the state of New Hampshire and shall be purged by any public agency or contracted agent receiving said information upon completion of the data match exchange. The department may perform an audit to insure that any public agency or contracted agent has purged said information. The specific penalty for failure to purge the information shall be set forth in any contract or agreement between the department and any public agency or contracted agent made pursuant to this section. Any transaction cost incurred by the department related to the data match exchange shall be directly recovered by the department from any insurance settlement or judgment proceeds. Insurance settlement payments for casualty loss to personal or real property and past or future medical treatment shall be exempt from this section upon documentation that such individual either previously paid for the repair or replacement of the damaged property or paid or has assigned payment for past or future medical treatment prior to the insurance settlement payment being received by such individual or that such individual has legally assigned the insurance settlement payment for said purpose. Any settlement, payment, or judgment received under the provision of this section shall be held by the department for 60 days prior to its release or distribution unless otherwise agreed to by the parties.

2 Alternative Method of Support Enforcement for Dependent Children; Exemptions; Certain Payments for Casualty Loss Exempt. Amend RSA 161-C:11, I to read as follows:

I. Except as provided in paragraph II of this section, any property otherwise exempt from trustee process, attachment and execution shall be exempt from an order to withhold and deliver, administrative seizure and disposition, and lien and foreclosure. ***Payments for casualty loss to personal or real property and past or future medical treatment shall be exempt from this section upon documentation that such individual either previously paid for the repair or replacement of the damaged property or paid or has assigned payment for past or future medical treatment prior to the insurance settlement payment being received by such individual or that such individual has legally assigned the insurance settlement payment for said purpose.***

3 Effective Date. This act shall take effect 60 days after its passage.
2003-0612h

Amendment to HB 360-FN-A-LOCAL

Proposed by the Committee on Finance - R

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

AN ACT establishing a civil legal services fund consisting of court filing fee surcharges for the purpose of establishing and operating a New Hampshire Legal Assistance office in Nashua and relative to a New Hampshire Legal Assistance pilot project on serving the near-poor.

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

1 Civil Legal Services Fund; Filing Fee Surcharge; New Hampshire Legal Assistance. There is established in the office of the state treasurer a separate fund to be known as the civil legal services fund. The sum of \$6 shall be added to each entry fee collected in the supreme, superior, district, family and probate courts, but not in small claims cases filed pursuant to RSA 503, and these sums shall be deposited in the fund. The amounts collected in this fund shall be distributed to New Hampshire Legal Assistance for the costs of establishing and operating an office in the city of Nashua to provide civil legal services to low-income persons in the city of Nashua and the surrounding area. These civil legal services include services related to such issues as housing, social security and other government benefits, health care, domestic violence, and consumer issues. New Hampshire Legal Assistance shall report to the judicial council as to its use of these funds in accordance with RSA 525-A:1.

2 Pilot Project on Serving the Near-Poor; New Hampshire Legal Assistance. For the 2004-2005 biennium, New Hampshire Legal Assistance shall conduct a pilot project in Hillsborough county under which it will raise its net income eligibility ceiling from 125 percent to 187.5 percent of the federal poverty guidelines, for the purpose of providing legal services to a segment of New Hampshire residents who have heretofore been ineligible for services, but in many cases cannot afford to hire a lawyer. New Hampshire Legal Assistance shall report to the judicial council, the chairpersons of the house and senate

judiciary and finance committees, the speaker of the house, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before December 1, 2004 as to the results of this project as of that date.

③ Repeal. Sections 1 and 2 of this act, relative to the civil legal services fund and the pilot project on serving the near-poor, are repealed.

④ Effective Date.

I. Section 3 of this act shall take effect July 1, 2005.

II.. The remainder of this act shall take effect July 1, 2003.

AMENDED ANALYSIS

This bill establishes a civil legal services fund consisting of court filing fee surcharges for a 2-year period for the purpose of establishing and operating a New Hampshire Legal Assistance office in Nashua. The bill also requires New Hampshire Legal Assistance to conduct a pilot project on serving the near-poor and to report on the results of that project to the judicial council, the legislature, and the governor.

2003-0792h

Amendment to HB 364-FN

Proposed by the Committee on Election Law - C

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

① New Section; Political Expenditures and Contributions; Political Advertising; Use of Automatic Telephone Dialing Systems. Amend RSA 664 by inserting after section 16-a the following new section:

664:16-b Use of Automatic Telephone Dialing Systems.

I. In this section:

(a) "Automatic telephone dialing system" means any automatic terminal equipment which stores or produces numbers to be called randomly or sequentially and which delivers a prerecorded message to the number called without assistance of a live operator.

(b) "Caller identification information" means:

(1) The telephone listing number and/or name of the customer from whose telephone instrument a telephone number is dialed; or

(2) Other information that may be used to identify the specific originating number or originating location of a wire or electronic communication transmitted by a telephone instrument.

(c) "Per-call blocking" means a telecommunications service that prevents the transmission of caller identification information to a called party on an individual call if the calling party acts affirmatively to prevent the transmission of the caller identification information.

(d) "Per-line blocking" means a telecommunications service that prevents the transmission of caller identification information to a called party on every call unless the calling party acts affirmatively to release the caller identification information.

(e) "Solicitation" means the unrequested initiation of a telephone call to a residential telephone subscriber for the purposes of political advertising; or to gain a pledge, promise, or contribution in circumstances where there is no pre-existing relationship between the caller and the person called; or to obtain information, data, or opinions relating to a party, measure, or candidate.

II.(a) Any person, except a candidate using his or her own voice, intending to use an automatic telephone dialing system for solicitation in this state shall, at least 5 business days prior to using the system, register with the department of state the information required by paragraph III. At the time of filing, the registrant shall also pay to the department a fee established by the secretary of state.

(b) The registrant shall be responsible for providing timely identification and automatic disconnect in accordance with paragraphs IV and V.

(c) All transmissions shall be randomly generated in unequal intervals, and shall not infiltrate any emergency lines, such as police, fire, or ambulance lines, which are either 911 circuits or 7-digit telephone numbers designated as emergency lines.

III. Each registration pursuant to subparagraph II(a) shall contain the following information:

(a) The name and address of the registrant, including the name under which the registrant is doing or intends to do business and the name under which the registrant is registered pursuant to RSA 664:3.

(b) The complete street addresses of all locations from which the registrant will be conducting its activities.

IV. Any automatic telephone dialing system used in this state shall be operated so that the system will automatically disconnect or release within 10 seconds after the called party hangs up.

V. Any solicitation message made through the use of an automatic telephone dialing system shall disclose immediately after telephone contact:

(a) The name of the person, company, and/or organization making the call.

(b) The purpose of the call and the party, measure, or candidate whose success or defeat the caller is advocating, if

any.

(c) The name of the person or organization paying for the delivery of the message, and the name of the fiscal agent, if applicable.

VI. No person using an automated telephone dialing system or any other method for solicitation in this state shall use any method, including per-call blocking or per-line blocking, that prevents caller identification information for the telephone solicitor's lines used to make telephone calls to a residential telephone subscriber from being shown by a device capable of displaying caller identification information. The caller identification information displayed shall contain a telephone number at which the telephone solicitor may receive telephone calls if the telephone solicitor leaves a message on a telephone answering device or uses an automatic telephone dialing system that plays a recorded message when a connection is completed to a telephone number.

VII. Violators of this section shall not be subject to penalties under RSA 664:21, V, but shall be subject to an administrative fine of \$250 per incident up to a total of \$50,000.

2 Effective Date. This act shall take effect upon its passage.
2003-0599h

Amendment to HB 384

Proposed by the Committee on Commerce - R

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

AN ACT relative to financial affidavits in domestic relations cases.

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

1 New Section; Annulment, Divorce, and Separation; Procedure; Financial Affidavits. Amend RSA 458 by inserting after section 15-a the following new section:

458:15-b Financial Affidavits. All financial affidavits filed under this chapter shall be confidential and accessible only to the parties, their attorneys, the guardian ad litem, department of health and human services employees responsible for child support administration, and state and federal officials for the purpose of carrying out their official functions. A person who receives or obtains a financial affidavit may not disclose it to anyone other than those persons authorized in this section.

2 Applicability. Section 1 of this act, relative to financial affidavits, shall apply to all proceedings under RSA 458 filed or brought forward on or after October 1, 2003.

3 Effective Date. This act shall take effect October 1, 2003.

AMENDED ANALYSIS

This bill provides that financial affidavits in domestic relations cases are confidential and accessible only to the parties, their attorneys, the guardian ad litem, and state and federal officials.

2003-0258h

Amendment to HB 389

Proposed by the Committee on Criminal Justice and Public Safety - C

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

AN ACT relative to victim impact statements and deleting the prohibition on funding certain positions in the office of victim/witness assistance with funds from the victims' assistance fund.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 Office of Victim/Witness Assistance; Prohibition on Funding Deleted. Amend 1993, 358:88 to read as follows:

358:88 Office of Victim/Witness Assistance; Funding of Positions. Notwithstanding any other provision of law to the contrary, salary and benefits moneys from any existing vacancy in the department of justice may be used to fund the positions in PAU 02, 04, 02, 07, class lines 10, 14 and 60. ~~[These positions shall not be funded with moneys from the victims' assistance fund.]~~

AMENDED ANALYSIS

The bill provides that a victim of a crime or attempted crime may designate a representative to assist the victim in making an impact statement to the court and that the victim impact statement may include injuries, harm, or damages that were not fully determined or discovered at the time the information or indictment was filed. The bill also deletes a portion of a 1993 session law prohibiting the funding of certain positions in the office of victim/witness assistance with funds from the victims' assistance fund.

2003-0601h

Floor Amendment to HB 399

Proposed by Rep. Dupuis - R

Amend the bill by replacing sections 2 and 3 with the following:

2 Referendum. A special referendum vote shall be held on October 14, 2003 for the purpose of voting on the question with respect to the separation of East Derry from the town of Derry. For the purposes of this referendum election, persons resident and legally registered to vote in the town of Derry are eligible to vote on the question of the separation of East Derry from the

town of Derry. For the purposes of this section, the town shall call for a meeting and provide notice pursuant to RSA Chapter 669 for the purpose of conducting such vote. The town of Derry moderator and supervisor of the checklist shall oversee this referendum vote. The meeting shall be warned by posting of notices 14 days prior to the date of the meeting. Notices shall be posted in accordance with the provisions of RSA 39:5. This checklist shall be used at the meeting for the purpose of the vote and posted in accordance with law.

3 Effective Date of Separation. If a 3/5 majority of those voting in the town of Derry approves the question in the special referendum election, section 1 of this act takes effect with respect to the separation of East Derry from the town of Derry and East Derry shall be incorporated as the town of East Derry on July 1, 2004.

2003-0779h

Amendment to HB 401

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

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

1 Approval for Large Groundwater Withdrawals; Large Groundwater Withdrawal Review Committee. RSA 485-C:21, III - VI are repealed and reenacted to read as follows:

III. The applicant shall submit a final report to the department which shall include aquifer testing analysis. Copies of the final report shall be forwarded by certified mail by the applicant to the chair of the large groundwater withdrawal review committee, governing bodies of each municipality and each supplier of water within the anticipated zone of contribution to the well.

IV. Following the submission of the final report, accepted by the department as complete, the department shall hold a public hearing on the application in the municipality in which the proposed withdrawal is to be made upon the request of the governing body of any municipality, supplier of water within the anticipated zone of contribution, or the chair of a large groundwater withdrawal review committee, provided that such a hearing is requested within 15 days of their receipt of the final report.

V. The department shall hold the public hearing within 30 days after the request of the governing body of any municipality, supplier of water within the anticipated zone of contribution, or the chair of a large groundwater withdrawal review committee. Notice of the hearing shall be made by the applicant and shall be published twice in 2 different weeks, the last publication to be 7 days before the hearing, in one newspaper of general circulation throughout the state and another newspaper of general circulation in the municipalities within the anticipated zone of contribution. The notice shall also be posted in 2 public places in the municipalities.

VI. The applicant, the governing body of each municipality, the large groundwater review committee, and each supplier of water within the anticipated zone of contribution to the well may submit comments to the department relative to the proposed withdrawal within 45 days after the public hearing in the municipality or, if no hearing is requested, within 45 days after the receipt of the final report by the municipality, large groundwater review committee, and water suppliers. If the comments relative to the application make recommendations to the department, the department shall specifically consider such recommendations and shall issue written findings with respect to each issue raised that is contrary to the decision of the department.

VII. Rehearings and appeals from a decision of the department under this section shall be in accordance with RSA 21-O:14.

VIII. A municipality in which a large commercial withdrawal of groundwater is proposed may establish a large groundwater withdrawal review committee to make recommendations to the department concerning the approval of the large groundwater withdrawal.

(a) The members of the committee shall be as follows:

(1) Three members appointed by the governing body of the municipality where the withdrawal is proposed, one of whom shall be a member of the municipality's planning board.

(2) Two members from each of the other municipalities in the zone of contribution, appointed by the governing body of their municipalities, one of whom shall be a member of the municipality's planning board.

(b) The committee shall be formed within 60 days after the municipalities within the anticipated zone of contribution receive the preliminary application from the applicant.

(c) Upon formation, the committee shall notify the department and provide it with the chairperson's contact information.

(d) The department shall provide all information concerning the application for the large commercial groundwater withdrawal to the review committee chairperson and shall meet with the committee one time within 15 days of receiving a request for a meeting.

(e) The committee may hold one or more public information session regarding the proposed withdrawal.

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

2003-0823h

Amendment to HB 402

Proposed by the Committee on Transportation - C

Amend the bill by replacing section 1 with the following:

❑ Child Passenger Restraints Required. Amend RSA 265:107-a, I to read as follows:

I. No person shall drive a motor vehicle on any way while carrying as a passenger a person less than 18 years of age unless such person is wearing a seat or safety belt which is properly adjusted and fastened or, if the person is less than [4] **6** years of age ***or is less than 55 inches in height***, unless such person is properly fastened and secured by a child passenger restraint which is in accordance with the safety standards approved by the United States Department of Transportation in 49 C.F.R. section 571.213. ***Except as provided in paragraph II***, no person shall drive a motor vehicle on any way while carrying as a passenger a person less than 18 years of age unless the motor vehicle was designed for and equipped with the passenger restraints specified above.

AMENDED ANALYSIS

This bill makes the child passenger restraint requirement apply to a person less than 6 years of age or less than 55 inches in height. The requirement currently applies to persons less than 4 years of age.

2003-0451h

Amendment to HB 410

Proposed by the Committee on Criminal Justice and Public Safety - C

Amend the bill by replacing section 1 with the following:

1 Purpose. The purpose of this act is to provide sufficient protection to employers to allow a free exchange of information to ensure the suitability of persons hired by criminal justices agencies for sensitive police or corrections employment.

Amend RSA 188-F:32-d, I(a) as inserted by section 2 of the bill by replacing it with the following:

(a) "Criminal justice agency" means a police department, sheriff's office, the police standards and training council, the department of safety, the fish and game department, the liquor commission, or any other state law enforcement agency, or the administrative office of the courts.

Amend RSA 188-F:32-d, V as inserted by section 2 of the bill by replacing it with the following:

V. The immunity provided in paragraph IV shall also apply to any criminal justice agency or its authorized agents who reject an applicant as not morally or temperamentally fit for police employment on the basis of a background investigation, criminal history or military discharge information, polygraph or psychological testing, and shares that information with another prospective criminal justice employer.

2003-0828h

Amendment to HB 413-LOCAL

Proposed by the Committee on Municipal and County Government - C

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

AN ACT relative to certain appeals proceedings when the taxpayer prevails.

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

❑ Department of Revenue Administration; Appeals for Redetermination or Reconsideration. Amend RSA 21-J:28-b, VI to read as follows:

VI. The board or court may grant such relief as may be just and equitable and may order the state treasurer to pay the taxpayer the amount of relief granted with interest at the rate established under RSA 21-J:28. ~~Upon all appeals which are denied, costs and attorney's fees may be taxed against the taxpayer at the discretion of the board or court; but the board or court may not tax costs against the state.~~ ***The board or court may award reasonable costs and attorney's fees to the prevailing party, provided the prevailing party shows substantially unjustified action.***

❑ Board of Tax and Land Appeals; Attorney's Fees. Amend RSA 71-B:9 to read as follows:

71-B:9 Administration of Oaths, Subpoenas, etc.; Fees. The board shall have authority to administer oaths and to compel the attendance of witnesses to proceedings before it. The board shall have the power to subpoena and subpoena duces tecum. Witnesses compelled to appear shall be paid the same fee and mileage that are paid to witnesses in the superior court of the state. A subpoena or subpoena duces tecum of the board may be served by any person designated in the subpoena or subpoena duces tecum to serve it. Any testimony given by a person duly sworn shall be subject to the pains and penalties of perjury. All applications or petitions to the board for which no filing fee has been otherwise specified by statute shall be accompanied by a \$65 filing fee. Costs ***and attorney's fees*** may be taxed as in the superior court.

❑ Effective Date. This act shall take effect January 1, 2004.

AMENDED ANALYSIS

This bill allows reasonable costs and attorney's fees to be assessed against the state when a taxpayer prevails in an appeal for redetermination or reconsideration of an assessment or demand for payment by the department of revenue administration, provided the taxpayer shows substantially unjustified action.

2003-0570h

Amendment to HB 415

Proposed by the Committee on Criminal Justice and Public Safety - R

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

AN ACT raising the age of the speedy trial requirement from 13 years of age to 16 years of age in sexual assault cases involving minors and relative to the exclusive authority of the state over the regulation of firearms, ammunition, and components thereof.

Amend the bill by replacing all after section 1 with the following:

2 New Subdivision; State Jurisdiction; State Authority Over Firearms and Ammunition. Amend RSA 159 by inserting after section 25 the following new subdivision:

State Jurisdiction

159:26 Firearms and Ammunition; Authority of the State.

I. To the extent consistent with federal law, the state of New Hampshire shall have authority and jurisdiction over the sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation, or other matter pertaining to firearms, firearms components, ammunition, or firearms supplies in the state. Except as otherwise specifically provided by statute, no ordinance or regulation of a political subdivision may regulate the sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation, or other matter pertaining to firearms, firearms components, ammunition, or firearms supplies in the state. Nothing in this section shall be construed as affecting a political subdivision's right to adopt zoning ordinances for the purpose of regulating firearms businesses in the same manner as other businesses.

II. Upon the effective date of this section, all municipal ordinances and regulations relative to the sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation, or other matter pertaining to firearms, firearm components, ammunition, or firearms supplies shall be null and void.

3 Effective Date.

I. Section 1 of this act shall take effect January 1, 2004.

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

AMENDED ANALYSIS

This bill raises the age requirement for speedy trial in sexual assault cases involving minors from 13 years of age to 16 years of age and establishes the exclusive authority of the state over the regulation of firearms, ammunition, and components thereof. 2003-0542h

Amendment to HB 418

Proposed by the Committee on Commerce - C

Amend RSA 651:5, II as inserted by section 1 of the bill by replacing it with the following:

II. Any person whose arrest has resulted in a finding of not guilty, or whose case was dismissed or not prosecuted, may petition for annulment of the arrest record at any time in accordance with the provisions of this section. ***Immediately upon court order issuing upon a finding of not guilty or when the case is dismissed or not prosecuted, the defendant may immediately file a petition for annulment of record. If this petition is filed immediately following an acquittal in court, the court shall inquire of the state if it has no objection. If it does not, the court may immediately act upon the petition for annulment of the record of arrest, immediately granting the same if the court deems it appropriate to do so.***

2003-0913h

Amendment to HB 420

Proposed by the Committee on Resources, Recreation and Development - C

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

1 New Section; ATV and Trail Bike Operation on State Lands; Rockingham Recreational Trail. Amend RSA 215-A by inserting after section 43 the following new section:

215-A:44 Rockingham Recreational Trail.

I. No person shall operate an OHRV on any portion of the Rockingham recreational trail west of Route 28 when it is not snow-covered.

II. No person shall use the parking lot at the Windham depot along the Rockingham recreational trail during the period from ½ hour after sunset to ½ hour before sunrise.

III. The department of resources and economic development shall provide sanitary facilities at the parking area in Windham along the Rockingham recreational trail when the trail is snow-covered

2 Effective Date. This act shall take effect 90 days after its passage.

AMENDED ANALYSIS

This bill:

I. Prohibits operation of an OHRV on the Rockingham recreational trail west of Route 28 when it is not snow-covered.

II. Prohibits using the parking lot at the Windham depot along the Rockingham recreational trail during the period from ½ hour after sunset to ½ hour before sunrise.

III. Requires the department of resources and economic development to provide sanitary facilities at the parking area in Windham along the Rockingham recreational trail when the trail is snow-covered.

2003-0843h

Amendment to HB 423
Proposed by the Committee on Commerce - C

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

❑ Safe Deposit Boxes; Delivery to the State; Public Auction, Public Sale and Internet Auction. RSA 385:4 is repealed and reenacted to read as follows:

385:4 Delivery to State. At the expiration of 5 years after the removal of the contents of such safe or box, the corporation shall sell all the property or articles of value set out in said written statements at public auction, public sale, or nationally recognized internet auction. For a public auction, a notice of the time and place of sale shall be published once weekly for 3 consecutive weeks, the last such publication being no less than 10 days before the public auction, in a newspaper published in the place where the auction is held, or having a general circulation in such place. For a public sale, a notice of the location and date for viewing the property or articles of value, and the deadline for accepting sealed bids shall be published once weekly for 3 consecutive weeks, the last such publication being no less than 10 days before the deadline for accepting bids, in a newspaper published in the place where the viewing is held, or having a general circulation in such place.

❑ Safe Deposit Boxes; Disposition of Proceeds; Public Auction, Public Sale, and Internet Auction. Amend RSA 385:5 to read as follows:

385:5 Disposition of Proceeds. From the proceeds of said sale the corporation shall deduct all its charges for rental up to the time of opening said box or safe, the cost of opening, further cost of safekeeping all its contents and any costs of said public auction, **public sale, or nationally recognized internet auction** and shall hold the net cash proceeds from such public auction, **public sale, or internet auction**, subject to the provisions of RSA 471-C. The corporation shall maintain a statement of all charges deducted from the proceeds of said **public auction, public sale, or nationally recognized internet auction** which shall be signed by ~~[the president, treasurer or superintendent]~~ **an officer** of said corporation and verified before a notary public or justice of the peace.

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

AMENDED ANALYSIS

This bill adds public sale and nationally recognized internet auction to public auction, as a means for disposing of the contents of safe deposit boxes with longstanding unpaid rents. This bill substitutes "an officer of the corporation" for the president, treasurer, or superintendent as a witness in the final disposition of proceeds from the sale.

2003-0826h

Amendment to HB 424
Proposed by the Committee on Municipal and County Government - C

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

AN ACT relative to a net asset qualification for the elderly property tax exemption, and clarifying certain references in property tax exemptions.

Amend the bill by replacing section 4 with the following:

❑ Property Taxation; Adoption or Modification of Elderly Exemption; Net Assets for Married Persons. Amend RSA 72:39-b, I(c) to read as follows:

(c) The wording of the question shall be: "Shall we modify the elderly exemptions from property tax in the town (city) of _____, based on assessed value, for qualified taxpayers, to be as follows: for a person 65 years of age up to 75 years, (here insert dollar amount); for a person 75 years of age up to 80 years, (here insert dollar amount); for a person 80 years of age or older (here insert dollar amount). To qualify, the person must have been a New Hampshire resident for at least 5 **consecutive** years, own the real estate individually or jointly, or if the real estate is owned by such person's spouse, they must have been married **to each other** for at least 5 **consecutive** years. In addition, the taxpayer must have a net income of not more than (here insert a dollar amount not less than \$13,400) or, if married, a combined net income of less than (here insert a dollar amount not less than \$20,400); and own net assets not in excess of (here insert a dollar amount not less than \$35,000 excluding the value of the person's residence) **or, if married, combined net assets not in excess of (here insert a dollar amount of \$35,000 or greater) excluding the value of the residence.**" Under no circumstances shall the amounts of the exemption for any age category be less than \$5,000. **The combined net asset amount for married persons shall apply to a surviving spouse until the sale or transfer of the property by the surviving spouse or until the remarriage of the surviving spouse.**

AMENDED ANALYSIS

This bill:

I. Allows for the adoption by municipalities of a married persons' net asset qualification for purposes of the elderly exemption. Such combined net asset qualification shall apply to a surviving spouse until the sale or transfer of the property, or until the remarriage of the surviving spouse.

II. Clarifies references to consecutive years of residence and married persons in certain property tax exemption statutes.

2003-0880h

Amendment to HB 431

Proposed by the Majority of the Committee on Commerce - R

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 New Section; Trustees of Estates; Exemption from Rule Against Perpetuities. Amend RSA 564 by inserting after section 23 the following new section:

564:24 Exemption from Rule Against Perpetuities.

I. The common law rule against perpetuities shall not apply to any disposition of property or interest therein, created after the effective date of this section, if:

(a) The instrument making the disposition or creating the interest contains a provision which expressly exempts the instrument from the application of the rule against perpetuities; and

(b) The trustee, or other person to whom the power is properly granted or delegated, has the power under the governing instrument, applicable statute, or common law, to sell, mortgage, or lease property for any period of time beyond the period that is required for an interest created under the governing instrument to vest in order to be valid under the rule against perpetuities.

II. This section shall also apply to a trust or a trustee of a trust as defined in RSA 564-A:1.

2003-0585h

Amendment to HB 446

Proposed by the Committee on Municipal and County Government - C

Amend the bill by replacing section 1 with the following:

1 Building Permits. RSA 676:12 is repealed and reenacted to read as follows:

676:12 Building Permits to be Withheld in Certain Cases.

I. The building inspector shall not issue any building permit within the 120 days prior to the annual or special town or village district meeting if:

(a) Application for such permit is made after the first legal notice of proposed changes in the building code or zoning ordinance has been posted pursuant to the provisions of RSA 675:7; and

(b) The proposed changes in the building code or the zoning ordinance would, if adopted, justify refusal of such permit.

II. After final action has been taken on the proposed changes in the building code or zoning ordinance, the building inspector shall issue or refuse to issue a permit which has been held in abeyance under this section pursuant to a final action under this section.

III. The provisions of paragraph I shall not be applicable in a city or in a county in which there are located unincorporated towns or unorganized places unless the governing body of the city or the county votes by majority vote to be subject to the provisions of such paragraph.

IV. The building inspector may be authorized by the local legislative body to issue a temporary occupancy permit not to exceed 30 days, which may be extended at the discretion of the building inspector.

V. No building permit shall be denied on the grounds of uncompleted streets or utilities when the construction of such streets or utilities has been secured to the municipality by a bond or other security approved by the planning board pursuant to RSA 674:36, III or RSA 674:44, IV; provided, however, that on land which is part of a subdivision plat or site plan, no building shall be used or occupied prior to the completion of required streets and utilities, except upon such terms as the planning board may have authorized as part of its decision approving the plat or site plan.

VI. The provisions of paragraph I shall not apply to any plat or application which has been formally accepted by the planning board pursuant to RSA 676:4, I(b) prior to the first legal notice of a proposed change in a building code or zoning ordinance or any amendment thereto. No proposed subdivision or site plan review or zoning ordinance or amendment thereto shall affect a plat or application formally accepted by the planning board pursuant to RSA 676:4, I(b) so long as said plat or application was accepted prior to the first legal notice of said change or amendment.

AMENDED ANALYSIS

This bill limits the requirement that the building inspector withhold a building permit application to the first legal notice of proposed changes in the building code or zoning ordinance or 120 days, whichever is shorter.

2003-0868h

Amendment to HB 447

Proposed by the Committee on Children and Family Law - C

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

1 New Section; Uniform Act on Paternity; Limitation on Child Support. Amend RSA 168-A by inserting after section 3 the following new section:

168-A:3-a Limitation on Retroactive Support Award. If the child is 3 months old or older, the father's liability for past education and support under RSA 168-A:1 is limited to amounts accrued from the date of service of the petition on the father or, if the court finds that the father is willfully avoiding service, from such date as the court determines is just and equitable.

There is no limitation on retroactive support if the child is less than 3 months old.

2 Effective Date. This act shall take effect January 1, 2004.

2003-0766h

Amendment to HB 451

Proposed by the Minority of the Committee on Commerce - R

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

AN ACT relative to the transfer of the name associated with a historic property.

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

1 Trade Names; Registration; Name Associated with Historic Property. Amend RSA 349:1, III to read as follows:

III. The secretary of state shall decline to register any trade name similar or likely to be confused with or mistaken for any trade name or for any registration as described in paragraph I or II of this section or any name reserved under RSA 293-A, 304-A, 304-B:2, or 304-C:4 unless:

(a) The holder or holders of the name gives written consent to use the same or deceptively similar name; **or**

(b) The individual, corporation, or other business entity satisfies the secretary of state that it purchased a historic property and the name to be registered is historically associated with the property. In this subparagraph, historic property means property listed in the National Register of Historic Places, property formally determined to be eligible for the National Register of Historic Places, or property listed or formally determined to be eligible for listing in the state register of historic places, in accordance with established procedures of the division of historical resources.

2 New Hampshire Business Corporations Act; Corporate Name; Name Associated with Historic Property. Amend RSA 293-A:4.01(c)(3) to read as follows:

(3) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state; **or**

(4) The corporation satisfies the secretary of state that it purchased a historic property and the name to be used or reserved is historically associated with the property. In this subparagraph, historic property means property listed in the National Register of Historic Places, property formally determined to be eligible for the National Register of Historic Places, or property listed or formally determined to be eligible for listing in the state register of historic places, in accordance with established procedures of the division of historical resources.

3 New Hampshire Business Corporation Act; Procedure for and Effect of Administrative Dissolution; Name Associated with Historic Property. Amend RSA 293-A:14.21, (d) to read as follows:

(d) The secretary of state shall not permit any other individual, corporation, or other business entity to assume the same name or a deceptively similar name, of a corporation administratively dissolved under this section, or any trade name registered by such corporation pursuant to RSA 349, for a period of 120 days following the notice of administrative dissolution without the written consent of such corporation; **except that an individual, corporation, or other business entity that purchases a historic property may immediately assume the name historically associated with the historic property. In this subparagraph, historic property means property listed in the National Register of Historic Places, property formally determined to be eligible for the National Register of Historic Places, or property listed or formally determined to be eligible for listing in the state register of historic places, in accordance with established procedures of the division of historical resources.**

4 Uniform Partnership Act; Name of Registered Limited Liability Partnership; Name Associated with Historic Property. Amend RSA 304-A:45, III to read as follows:

III. An applicant for a registered limited liability partnership or foreign registered limited liability partnership may apply to the secretary of state for authorization to use a same name or deceptively similar name to one or more of the names described in subparagraphs (a) through (h) and the secretary of state shall authorize the use of the name applied for if:

(a) The holder or holders of the name gives consent in writing; **or**

(b) The registered limited liability partnership satisfies the secretary of state that it purchased a historic property and the name to be used or reserved is historically associated with the property. In this subparagraph, historic property means property listed in the National Register of Historic Places, property formally determined to be eligible for the National Register of Historic Places, or property listed or formally determined to be eligible for listing in the state register of historic places, in accordance with established procedures of the division of historical resources.

5 Uniform Limited Partnership Act; Name; Name Associated with Historic Property. Amend RSA 304-B:2, II to read as follows:

II. The name of each limited partnership as set forth in its certificate of limited partnership shall not be the same as or deceptively similar to the name of any of those entities listed under RSA 293-A:4.01(b), without the written consent of such entities, which consent shall be filed with the secretary of state, **except that no consent shall be required if the limited**

partnership satisfies the secretary of state that it purchased a historic property and the name to be used or reserved is historically associated with the property. In this paragraph, historic property means property listed in the National Register of Historic Places, property formally determined to be eligible for the National Register of Historic Places, or property listed or formally determined to be eligible for listing in the state register of historic places, in accordance with established procedures of the division of historical resources.

6 Limited Liability Companies; Name Set Forth in Certificate; Name Associated with Historic Property. Amend RSA 304-C:3 to read as follows:

304-C:3 Name Set Forth in Certificate. The name of each limited liability company as set forth in its certificate of formation:

I. Shall contain the words "limited liability company" or the abbreviation "L.L.C." or similar abbreviation[;].

II. May contain the name of a member or manager[;].

III. Shall not be the same as or deceptively similar to the name of any of those entities listed under RSA 293-A:4.01(b), without the written consent of such entities, which consent shall be filed with the secretary of state~~[-and]~~, ***except that no consent shall be required if the limited liability company satisfies the secretary of state that it purchased a historic property and the name to be used or reserved is historically associated with the property. In this paragraph, historic property means property listed in the National Register of Historic Places, property formally determined to be eligible for the National Register of Historic Places, or property listed or formally determined to be eligible for listing in the state register of historic places, in accordance with established procedures of the division of historical resources.***

IV. May contain the following words: "company," "association," "club," "foundation," "fund," "institute," "society," "union," "syndicate," "limited" or "trust" or abbreviations of like import.

7 Limited Liability Companies; Procedure for and Effect of Administrative Dissolution; Name Associated with Historic Property. Amend RSA 304-C:53, IV to read as follows:

IV. The secretary of state shall not permit any other individual, corporation, limited liability company or other business entity to assume the same name or a deceptively similar name, of a limited liability company administratively dissolved under this section, or any trade name registered by such limited liability company pursuant to RSA 349, for a period of 120 days following the notice of administrative dissolution without the written consent of such limited liability company; ***except that an individual, corporation, limited liability company or other business entity that purchases a historic property may immediately assume the name historically associated with the historic property. In this paragraph, historic property means property listed in the National Register of Historic Places, property formally determined to be eligible for the National Register of Historic Places, or property listed or formally determined to be eligible for listing in the state register of historic places, in accordance with established procedures of the division of historical resources.***

8 Effective Date. This act shall take effect January 1, 2004.

AMENDED ANALYSIS

This bill permits a business entity that purchases a historic property to immediately assume the name historically associated with the historic property.

2003-0833h

Amendment to HB 464-FN

Proposed by the Majority of the Committee on Criminal Justice and Public Safety - R

Amend the bill by replacing section 1 with the following:

1 New Section; Breach of Peace; Drug or Underage Alcohol House Party. Amend RSA 644 by inserting after section 17 the following new section:

644:18 Facilitating a Drug or Underage Alcohol House Party.

I. A person shall be guilty of a misdemeanor for facilitating a drug or underage alcohol house party if such person owns or has control of the occupied structure, dwelling, or curtilage, where a drug or underage alcohol house party is held and such person knowingly permits the occurrence of the party.

II. A person shall be guilty of a misdemeanor for facilitating a drug or underage alcohol house party if such person, with a purpose that a drug or underage alcohol house party occur, agrees with one or more persons to host such party at any occupied structure, dwelling, or curtilage, and an overt act in furtherance of the agreement is committed by any party to the agreement.

III. It is an affirmative defense to prosecution under this section if a person gives timely notice to a law enforcement official of the occurrence of the drug or underage alcohol house party or engages in other conduct designed to prevent the occurrence of such party, or takes action to terminate such party once underway, provided in so doing, that person exercises due care to ensure the safety of the party's participants.

IV. In this section, "drug or underage alcohol house party" means a gathering of 5 or more people under the age of 21 at any occupied structure, dwelling, or curtilage, where at least one person under the age of 21 unlawfully possesses or consumes an alcoholic beverage or controlled drug. "Occupied structure" has the same meaning as in RSA 635:1, and "dwelling" and "curtilage" have the same meaning as in RSA 627:9.

V. The provisions of this section shall not apply to the use of alcoholic beverages at legally protected religious observances or activities, or to those persons using a controlled drug under a physician's care where the use of the drug is consistent with the directions of a physician.

2003-0737h

Amendment to HB 466

Proposed by the Committee on Municipal and County Government - C

Amend RSA 72:27-a, I(a) and (b) as inserted by section 1 of the bill by replacing them with the following:

(a) In a town, other than a town that has adopted a charter pursuant to RSA 49-D, the question shall be placed on the warrant of a special or annual town meeting, by the governing body or by petition pursuant to RSA 39:3.

(b) In a city or town that has adopted a charter pursuant to RSA 49-C or RSA 49-D, the legislative body may consider and act upon the question in accordance with its normal procedures for passage of resolutions, ordinances, and other legislation. In the alternative, the legislative body of such municipality may vote to place the question on the official ballot for any regular municipal election.

2003-0902h

Amendment to HB 467

Proposed by the Committee on Municipal and County Government - C

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

AN ACT allowing towns or cities to increase the property tax credit for service-connected total disability, and relative to the date for filing for exemptions and tax credits.

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

☐ Tax Credit for Service-Connected Disability; Optional Amount Increased. Amend RSA 72:35 to read as follows:

72:35 Tax Credit for Service-Connected Total Disability.

I. Any person who has been honorably discharged or an officer honorably separated from the military service of the United States and who has total and permanent service-connected disability, or who is a double amputee or paraplegic because of service-connected injury, or the surviving spouse of such a person, shall receive a **standard** yearly tax credit in the amount of \$700 of property taxes on the person's residential property.

I-a. The optional tax credit for service-connected total disability, upon adoption by a city or town pursuant to RSA 72:35-a, shall be an amount from \$701 up to \$2,000. The optional tax credit for service-connected total disability shall replace the standard tax credit in its entirety and shall not be in addition thereto.

I-b. Either the standard tax credit for service-connected total disability or the optional tax credit for service-connected total disability shall be subtracted each year from the property tax on the person's residential property. However, the surviving spouse of a resident receiving the tax credit for service-connected disability may have the amount subtracted from the property tax on any real property in the same municipality where the surviving spouse is a resident.

II. The **standard or optional** tax credit ~~[in paragraph I]~~ **under this section** may be applied only to property which is occupied as the principal place of abode by the disabled person or the surviving spouse. The tax credit may be applied to any land or buildings appurtenant to the residence or to manufactured housing if that is the principal place of abode.

III.(a) Any person applying for the **standard or optional** tax credit ~~[granted in paragraph I]~~ **under this section** shall furnish to the assessors or selectmen certification from the United States Department of Veterans' Affairs that the applicant is rated totally and permanently disabled from service connection. The assessors or selectmen shall accept such certification as conclusive on the question of disability unless they have specific contrary evidence and the applicant, or the applicant's representative, has had a reasonable opportunity to review and rebut that evidence. The applicant shall also be afforded a reasonable opportunity to submit additional evidence on the question of disability.

(b) Any decision to deny an application shall identify the evidence upon which the decision relied and shall be made within the time period provided by law.

(c) Any tax credit shall be divided evenly among the number of tax payments required annually by the town or city so that a portion of the tax credit shall apply to each tax payment to be made.

~~[IV.(a) Upon its adoption by a city or town as provided in RSA 72:35-a, any person who has been honorably discharged or an officer honorably separated from the military service of the United States and who has total and permanent service-connected disability, or who is a double amputee or paraplegic because of service-connected injury, or the surviving spouse of such a person, shall receive a yearly tax credit in the amount of \$1,400 of property taxes on the person's residential property.~~

~~(b) The tax credit in subparagraph (a) may be applied only to property which is occupied as the principal place of abode by the disabled person or the surviving spouse. The tax credit may be applied to the taxes due on any land or buildings appurtenant to the residence or to manufactured housing, if that is the principal place of abode.~~

~~(c) Applications for this credit shall be made in the manner prescribed by paragraph III. Any tax credit shall be divided evenly among the number of tax payments required annually by the town or city so that a portion of the tax credit shall apply to each tax payment to be made.]~~

2] Optional Tax Credit for Service Connected Disability; Procedure for Adoption. RSA 72:35-a is repealed and reenacted to read as follows:

72:35-a Procedure for Adoption; Optional Tax Credit for Service Connected Disability.

I. Any town or city may adopt the provisions of RSA 72:35, I-a for an optional tax credit for service-connected total disability in an amount from \$701 up to \$2,000 in the following manner:

(a) In a town, other than a town that has adopted a charter pursuant to RSA 49-D, the question shall be placed on the warrant of a special or annual town meeting, by the governing body or by petition pursuant to RSA 39:3.

(b) In a city or town that has adopted a charter pursuant to RSA 49-C or RSA 49-D, the legislative body may consider and act upon the question in accordance with its normal procedures for passage of resolutions, ordinances, and other legislation. In the alternative, the legislative body of such municipality may vote to place the question on the official ballot for any regular municipal election.

II. The vote shall specify the provisions of the optional tax credit for service-connected total disability provided in RSA 72:35 and the amount of the optional credit to be granted. The credit shall take effect in the tax year beginning April 1 following its adoption.

III. A municipality may change or rescind the optional credit provided by RSA 72:35 in the manner described in paragraph I.

3] Application for Exemptions or Tax Credits; Filing Date Changed in 2005. Amend RSA 72:33 to read as follows:

72:33 Application for Exemption or Tax Credit.

I. ~~[Except as provided in RSA 72:33-b,]~~ No person shall be entitled to the exemptions~~[- deferrals,]~~ or tax credits provided by RSA 72:28, 29-a, 30, 31, 32, 35, 36-a, 37, 37-a, 37-b, ~~[38-a,]~~ 39-b, 62, 66, and 70 unless the person has filed with the selectmen or assessors, by ~~[March 1 following the date of notice of tax under RSA 72:1-d]~~ **April 15 preceding the setting of the tax rate**, a permanent application therefor, signed under penalty of perjury, on a form approved and provided by the commissioner of revenue administration, showing that the applicant is the true and lawful owner of the property on which the exemption~~[- deferral,]~~ or tax credit is claimed and that the applicant was duly qualified upon April 1 of the year in which the exemption~~[- deferral,]~~ or tax credit is first claimed, or, in the case of financial qualifications, that the applicant is duly qualified at the time of application. The form shall include the following and such other information deemed necessary by the commissioner:

(a) Instructions on completing and filing the form, including an explanation of the grounds for requesting tax exemptions, ~~[deferrals,]~~ and credits pursuant to RSA 72.

(b) Sections for information concerning the applicant, the property for which the relief is sought, and other properties owned by the person applying.

(c) A section explaining the appeal procedure and stating the appeal deadline in the event the municipality denies the tax relief request in whole or in part.

(d) A place for the applicant's signature with a certification by the person applying that the application has a good faith basis and the facts in the application are true.

I-a. If any person, otherwise qualified to receive an exemption or credit, shall satisfy the selectmen or assessors that he or she was prevented by accident, mistake or misfortune from filing a permanent application or amended permanent application on or before April 15 of the year in which he or she desires the exemption to begin, said officials may receive the application at a later date and grant an exemption or credit for that year; but no such application shall be received or exemption or credit granted after the local tax rate has been approved for that year.

II. Any person who changes residence after filing such a permanent application shall file an amended permanent application on or before December 1 immediately following the change of residence. The filing of the permanent application shall be sufficient for said persons to receive these exemptions or tax credits on an annual basis so long as the applicant does not change residence~~[- provided, however, that towns and cities may require an annual application for the tax deferral authorized for the elderly and disabled by RSA 72:38-a].~~

III. If the selectmen or assessors are satisfied that the applicant has willfully made any false statement in the application to obtain an exemption or tax credit, they may refuse to grant the exemption or tax credit.

IV. ~~[Repealed.]~~

V. In addition to the above requirements, applicants for exemption who claim ownership pursuant to RSA 72:29, V shall file with their application an additional statement signed under penalty of perjury, on a form approved and provided by the commissioner of revenue administration, showing they meet the requirements of RSA 72:29, V.

VI. The assessing officials may require applicants for any exemption or tax credit to file the information listed in RSA 72:34, or the statement required by RSA 72:33, V periodically but no more frequently than annually. Failure to file such periodic statements may, at the discretion of the assessing officials, result in a loss of the exemption or tax credit for that year.

4] Investigation of Application. Amend the introductory paragraph of RSA 72:34, I to read as follows:

I. On receipt of an application provided for in RSA 72:33 **or RSA 72:38-a**, the selectmen or assessors shall examine it as to the right to the tax exemption, tax deferral or tax credit, the ownership of the property listed, and, if necessary, the

encumbrances reported.

5 New Paragraph; Tax Deferral for the Elderly or Disabled. Amend RSA 72:38-a by inserting after paragraph II the following new paragraph:

II-a. No person shall be entitled to the deferral under this section unless the person has filed with the selectmen or assessors, by March 1 following the date of notice of tax under RSA 72:1-d a permanent application therefor, signed under penalty of perjury, on a form approved and provided by the commissioner of revenue administration, showing that the applicant is the true and lawful owner of the property on which the deferral is claimed and that the applicant is duly qualified at the time of application. Any person who changes residence after filing such a permanent application shall file an amended permanent application on or before December 1 immediately following the change of residence. The filing of the permanent application shall be sufficient for said persons to receive a deferral on an annual basis so long as the applicant does not change residence; provided, however, that towns and cities may require an annual application for the tax deferral authorized for the elderly and disabled by this section. The form shall include the following and such other information deemed necessary by the commissioner:

(a) Instructions on completing and filing the form, including an explanation of the grounds for requesting a deferral.

(b) Sections for information concerning the applicant, the property for which the relief is sought, and other properties owned by the person applying.

(c) A section explaining the appeal procedure and stating the appeal deadline in the event the municipality denies the tax relief request in whole or in part.

(d) A place for the applicant's signature with a certification by the person applying that the application has a good faith basis and the facts in the application are true.

6 Repeal; 2005. RSA 72:33-b, relative to the optional date for filing for elderly exemptions, is repealed.

7 Effective Date.

I. Sections 1 and 2 of this act shall take effect April 1, 2003.

II. The remainder of this act shall take effect April 1, 2005.

AMENDED ANALYSIS

This bill allows towns and cities to adopt an optional property tax credit for service-connected total disability in an amount from \$701 up to \$2,000.

This bill also, effective April 1, 2005, changes the filing date for applications for all exemptions or tax credits, and repeals the additional optional filing date for the elderly exemption.

2003-0728h

Amendment to HB 470

Proposed by the Committee on Commerce - C

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

1 New Section; Health Insurers; Providers. Amend RSA 400-A by inserting after section 15-a the following new section: 400-A:15-b Confidentiality of Provider's Personal Information.

I. Health insurers and other third party payors shall not display a medical provider's home address, date of birth, or social security number on documents provided to subscribers for the purpose of claim payment unless the provider has provided that information for the purposes of claim payment.

II. The provisions of this section shall apply to group hospital and medical expense policies subject to RSA 415, group health service plan contracts issued pursuant to RSA 420-A, and to health maintenance organization policies and plans issued pursuant to RSA 420-B.

2 Effective Date. This act shall take effect January 1, 2004.

AMENDED ANALYSIS

The bill requires health insurers to keep a provider's personal information confidential.

2003-0734h

Amendment to HB 481

Proposed by the Committee on Commerce - C

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

AN ACT establishing a committee to study the pricing of milk products.

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

1 Committee Established. There is established a committee to study the pricing of milk products.

2 Membership and Compensation.

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

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

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

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

3 Duties. The committee shall investigate and report on:

I. All factors that contribute to the pricing of dairy products.

II. Unfair methods of competition and unfair trade practices in the receiving, purchase, transportation, handling, distribution, or sale of milk or milk products.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2003.

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

AMENDED ANALYSIS

This bill establishes a committee to study the pricing of milk products.

2003-0294h

Amendment to HB 486

Proposed by the Committee on Children and Family Law - C

Amend the bill by inserting after the enacting clause the following and renumbering the original sections 1-2 to read as 2-3, respectively:

1 Alternative Method of Child Support Enforcement for Dependent Children; Access to Financial Records by Department of Health and Human Services Attorneys in Abuse and Neglect Proceedings. Amend RSA 161-C:3-a, IV to read as follows:

IV. Any records established or information collected pursuant to the provisions of this chapter shall be made available only to the commissioner and the attorney general and their authorized designees, attorneys employed by the office of child support, attorneys responsible for the administration of RSA 546-B, ***attorneys employed by the department in RSA 169-C proceedings***, the client or the client's authorized representative and courts or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department. Such records and information shall be available and used only for purposes directly connected with ***the*** establishment, enforcement, or modification of child support, ***the location and notification of parents in RSA 169-C proceedings***, and the administration of this chapter. The records and information made available to the client or the client's authorized representative shall not include information provided to the department that is prohibited from release by federal law, state statute, state case law, or by contract or agreement between the department and another entity if such contract or agreement prohibits release of such information.

AMENDED ANALYSIS

This bill permits attorneys employed by the department of health and human services in abuse and neglect cases to access certain financial records and the repository of parent locator information maintained by the office of child support enforcement.

This bill is a request of the department of health and human services.

2003-0610h

Amendment to HB 506

Proposed by the Committee on Commerce - C

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

AN ACT relative to health club membership initiation fees and renewal practices.

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

1 Health Clubs; Maximum Initiation Fees. Amend RSA 358-I:2, VI to read as follows:

VI. Any initiation fee shall not exceed [25] ***100*** percent of an annualized monthly fee.

2 Health Clubs; Length of Membership Contract; Automatic Renewal. Amend RSA 358-I:5, I to read as follows:

I. No term contract for health club services shall be for a term of more than one year, nor shall any health club term contract contain an automatic renewal clause ***for a period greater than one month***. A contract may provide for a renewal option for continued membership, but any such renewal must be accepted in writing by a buyer and is effective only upon payment of the renewal price. Under no circumstances may a contract for health club services be renewed more than 90 days before the contract's expiration date. The annualized price of the buyer's first term contract or membership option with a seller may not exceed the annualized price of any subsequent term contract or other membership option with the seller by more than 25 percent.

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

AMENDED ANALYSIS

This bill provides that a health club initiation fee shall not exceed 100 percent of an annualized monthly fee. The bill also permits health club membership contracts to contain a month-to-month automatic renewal clause.

2003-0427h

Amendment to HB 507

Proposed by the Committee on Commerce - C

Amend the bill by inserting after section 6 the following and renumbering the original sections 7-10 to read as 8-11, respectively:

7 Adoption of Rules; Standards for Processing Group Disability Benefit Claims. Amend RSA 415-A:6 to read as follows:
415-A:6 Adoption of Rules.

I. Rules promulgated pursuant to this chapter shall be subject to notice and hearing pursuant to RSA 541-A. When a rule adopted pursuant to this chapter so provides, a policy of insurance issued subsequent to the rule's effective date and any optionally renewable policy of insurance renewed subsequent to the rule's effective date which does not comply with the rule shall, not less than 60 days after the rule's effective date, be construed, and the insurer or corporation shall be liable, as if the policy did comply with the rule.

II. *The commissioner shall adopt rules to establish specific standards for processing benefit claims under group disability plans that shall be consistent with and not more restrictive than the United States Department of Labor Benefit Claims Procedure Regulation, 29 CFR 2560.503, as existing and thereafter amended, that sets standards for group disability plans under the Employee Retirement Income Security Act of 1974.*

Amend the bill by replacing all after section 10 with the following:

11 Applicability. This act shall take effect upon the earlier of the following:

I. The effective date of the rules adopted under RSA 415-A:6, II, as inserted by section 7 of this act.

II. January 1, 2004.

12 Effective Date.

I. Section 11 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect as provided in section 11 of this act.

AMENDED ANALYSIS

This bill removes disability benefits or disability plans from certain statutes that set minimum requirements for employee benefit plan procedures pertaining to the filing of benefit claims, notification of benefit determinations, and appeal of adverse benefit determinations.

This bill also directs the insurance commissioner to adopt rules to establish standards for processing benefit claims under group disability plans.

2003-0777h

Amendment to HB 509

Proposed by the Committee on Transportation - C

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

1 Motor Vehicle Records; Access by Insurance Companies. Amend RSA 260:14, IV(a)(2) to read as follows:

(2) Insurance companies authorized to write automobile ***and personal excess liability*** insurance policies in this state, or by self-insured entities, or their authorized agents, for use in connection with claims investigation activities, anti-fraud activities, rating, or underwriting.

2 Effective Date. This act shall take effect January 1, 2004.

AMENDED ANALYSIS

This bill gives personal excess liability insurance companies the same access to motor vehicle records that is given to automobile insurance companies.

2003-0318h

Amendment to HB 515

Proposed by the Committee on Fish and Game - R

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

AN ACT excluding certain agreements between fish and game licensees and landowners from the right-to-know law.

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

1 New Section; Fish and Game Licenses; Licensee Agreements with Private Landowners; Exclusion from Right-to Know.

Amend RSA 214 by inserting after section 12 the following new section:

214:12-a Licensee Agreements with Private Landowners; Exclusion from Right-to Know. Any agreement or record between a private landowner and a person issued a fish and game license under this title, which is provided to, or held by, the department or its staff, shall be maintained confidentially and shall not be considered a public record for purposes of RSA 91-A.

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

AMENDED ANALYSIS

This bill requires that an agreement or record between a private landowner and a fish and game license holder, which is provided to, or held by, the fish and game department, shall be maintained confidentially and shall not be considered a public record under the right-to-know law.

2003-0854h

Amendment to HB 524-FN

Proposed by the Committee on Criminal Justice and Public Safety - C

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

AN ACT relative to the annulment of certain domestic violence offenses.

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

1 Sentences; Annulment of Criminal Records. Amend RSA 651:5, III to read as follows:

III. Except as provided in RSA 265:82-c or in paragraphs V and VI, any person convicted of an offense may petition for annulment of the record of arrest, conviction and sentence when the petitioner has completed all the terms and conditions of the sentence and has thereafter been convicted of no other crime, except a motor vehicle offense classified as a violation other than driving while intoxicated under RSA 265:82, for a period of time as follows:

(a) For a violation, one year, unless the underlying conviction was for an offense specified under RSA 259:39.

(b) For a class B misdemeanor except as provided in subparagraph ~~[(f)]~~ **(g)**, 3 years.

(c) For a class A misdemeanor except as provided in subparagraph ~~[(f)]~~ **(g)**, 3 years.

(d) For a class A misdemeanor under RSA 173-B:9, III, 6 years.

~~[(d)]~~ **(e)** For a class B felony except as provided in subparagraph (g), 5 years.

~~[(e)]~~ **(f)** For a class A felony, 10 years.

~~[(f)]~~ **(g)** For sexual assault under RSA 632-A:4, 10 years.

~~[(g)]~~ **(h)** For felony indecent exposure or lewdness under RSA 645:1, II, 10 years.

2 Annulment of Criminal Records; Firearms-related Offenses. Amend RSA 651:5, V to read as follows:

V. No petition shall be brought and no annulment granted in the case of any violent crime, of any crime of obstruction of justice, **or any crime that constitutes a domestic violence misdemeanor as defined in 18 U.S.C. section 921(a)(33)(A) (ii)**, or of any offense for which the petitioner was sentenced to an extended term of imprisonment under RSA 651:6.

3 Effective Date. This act shall take effect January 1, 2004.

AMENDED ANALYSIS

This bill provides that class A misdemeanor convictions for domestic violence offenses shall not qualify for annulment for at least 6 years after completion of the terms of the sentence and that a domestic violence misdemeanor shall not be eligible for annulment.

2003-0848h

Amendment to HB 543

Proposed by the Committee on Executive Departments and Administration - C

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

AN ACT relative to increasing the membership of the board of accountancy and relative to appeals of board decisions.

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

1 Board of Accountancy; Two Members Added. Amend RSA 309-B:4, I(a) to read as follows:

I.(a) There is hereby created the New Hampshire board of accountancy, which shall have responsibility for the administration and enforcement of this chapter. The board shall consist of ~~[5]~~ **7** members, all of whom shall be residents of this state appointed by the governor with the approval of council. ~~[Three]~~ **Four** members shall be holders of certificates under RSA 309-B:5 or corresponding provisions of prior law; one member shall be a public accountant who is a holder of a currently valid registration, and ~~[one member]~~ **2 members** shall be ~~[a]~~ public ~~[member]~~ **members**, who ~~[is]~~ **are** not, and never ~~[was, a member]~~ **were, members** of the accounting profession, or the ~~[spouse]~~ **spouses** of such ~~[a person]~~ **persons**, but who ~~[has]~~ **have**, or ~~[has]~~ **have** had, professional or practical experience in the use of accounting services and financial statements so as to be qualified to make judgments about the qualifications and conduct of persons and firms subject to regulation under this chapter. The one position to be occupied by a public accountant shall instead be occupied by a public member after the number of public accountants holding currently valid public accountant registrations drops below 25.

2 Board of Accountancy; Appeals. Amend RSA 309-B:12, X to read as follows:

X. Any person or firm adversely affected by any order of the board entered after a hearing under this section may appeal such order by filing a written petition with the superior court in the county in which the respondent resides or, if not a resident of this state, in the county in which the respondent has a place of business or resident agent. The petition shall be filed within 30 days after the entry of the order. The respondent shall exhaust all applicable administrative procedures before periodical review may commence. The procedures for review and the scope of the review shall be ~~[as specified in RSA 541-A, the New Hampshire Administrative Procedure Act]~~ **pursuant to RSA 541.**

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

AMENDED ANALYSIS

This bill provides for the appointment of 2 new members to the board of accountancy. The bill also clarifies the appeal procedure for decisions of the board.

2003-0735h

Amendment to HB 546

Proposed by the Committee on Commerce - C

Amend RSA 415:6-j, III as inserted by section 2 of the bill by replacing it with the following:

III. A new uniform prescription drug information card, as required under this section, shall be issued by an insurer upon enrollment of new members and when reissuing a new card to current members when there is a change in the certificate

holder's pharmacy coverage that affects data contained on the card.

Amend RSA 415:18-n, III as inserted by section 3 of the bill by replacing it with the following:

III. A new uniform prescription drug information card, as required under this section, shall be issued by an insurer upon enrollment of new members and when reissuing a new card to current members when there is a change in the certificate holder's pharmacy coverage that affects data contained on the card.

Amend RSA 420-J:7-b, VII as inserted by section 4 of the bill by replacing it with the following:

VII. A new uniform prescription drug information card, as required under paragraph V, shall be issued by health benefit plan upon enrollment of new members and when reissuing a new card to current members when there is a change in the covered person's pharmacy coverage that affects data contained on the card.

2003-0698h

Amendment to HB 547

Proposed by the Committee on Science, Technology and Energy - C

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

AN ACT relative to the duties of the oversight committee on telecommunications and relative to the membership of the Mount Washington Commission.

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

1 Mount Washington Commission Members. Amend RSA 227-B:3, I-II to read as follows:

I. ~~Five~~ **Six** members shall be appointed by the governor with the consent of the council, one of whom shall be a member of the house of representatives and one ***of whom shall be*** a member of the senate.

II. One member from each of the following groups shall be appointed through the concurrence of their boards of directors: the Mount Washington Auto Road; the Mount Washington Observatory; ~~Mount Washington TV, Inc.;~~ and the Mount Washington Cog Railway.

2 Duties of the Oversight Committee on Telecommunications; Cable Television. RSA 374:22-j, XIV is repealed and reenacted to read as follows:

XIV. Monitoring all aspects of the cable television industry, including, but not limited to, a-la-carte programming, television violence, tiering issues, Federal Communications Commission regulations and changes, compliance, public access television, access, and build-out.

3 Duties of the Oversight Committee on Telecommunications; Telephone Surcharges. Amend RSA 374:22-j, XVI to read as follows:

XVI. Examining the assessment of surcharges on ~~pay~~ **all** telephone use.

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

AMENDED ANALYSIS

This bill modifies the duties of the oversight committee on telecommunications and requires the governor to appoint an additional member to the Mount Washington Commission.

2003-0721h

Amendment to HB 553

Proposed by the Minority of the Committee on Children and Family Law - R

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

AN ACT relative to civil unions.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as section 3:

2 Marriages; Effect of Marriage; Same-Sex Marriage Not Recognized. Amend RSA 457:3 to read as follows:

457:3 Effect of Marriage. Every marriage contracted by parties within the degrees prohibited by RSA 457:1 and 457:2 is incestuous and void, and the issue of such marriage shall be deemed children born of unwed parents; provided, however, that any ***such*** marriage, legally contracted outside of this state by persons not domiciled in this state and valid in the jurisdiction where contracted, shall be recognized as valid in this state for all purposes if or once the said contracting parties are or become permanent residents of this state subsequent to such marriage and the issue of any such marriage shall be legitimate. ***Nothing in this section shall permit the recognition of a same-sex marriage or civil union in this state.***

AMENDED ANALYSIS

This bill provides that a civil union shall not be recognized in New Hampshire for any purpose.

2003-0884h

Amendment to HB 558

Proposed by the Committee on Ways and Means - C

Amend the bill by replacing section 1 with the following:

1 New Subparagraph; Bingo; Financial Reports; Consultant Information. Amend RSA 287-E:9, III by inserting after subparagraph (e) the following new subparagraph:

(f) The name and address of any person, or business entity, who provided consulting, accounting, management, or other similar services to the organization for the operation of bingo.

2003-0679h

Amendment to HB 562

Proposed by the Committee on Science, Technology and Energy - C

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

AN ACT relative to an additional duty of the air pollution advisory committee.

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

1 New Subparagraph; Air Quality. Amend RSA 125-J:11, III by inserting after subparagraph (b) the following new subparagraph:

(c) The effectiveness of department initiatives to assist communities in monitoring and improving their air quality.

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

AMENDED ANALYSIS

This bill adds an additional duty to the air pollution advisory committee.

2003-0444h

Amendment to HB 568-LOCAL

Proposed by the Committee on Education - C

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

1 Pupils; Legal Residence of Homeless Children. RSA 193:12, IV is repealed and reenacted to read as follows:

IV. The term "homeless children and youths" means individuals who lack a fixed, regular, and adequate nighttime residence, and shall include the following:

(a) Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement.

(b) Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.

(c) Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings.

(d) Migratory children, as defined in 20 U.S.C. 6399 who qualify as homeless because such children are living in circumstances as described in subparagraphs (a)-(c).

2 Pupils; Legal Residence of Homeless Children. Amend RSA 193:12, VI to read as follows:

VI. The ~~superintendent~~ **commissioner of the department of education, or designee** shall decide residency issues under this section. If more than one school district is involved in a residency dispute or the parents who live apart cannot agree on the residence of a minor child, the respective superintendents shall jointly make such decision. In those instances when an agreement cannot be reached in a timely manner, the commissioner of **the department of education, or designee** shall make a determination and such determination shall be final. ***In any case, a written explanation shall be provided to the parties of record and a copy of such explanation shall be kept on file by the department of education.*** No school district shall deny a pupil attendance or implementation of an existing individual education plan. A pupil shall remain in attendance in the pupil's school of origin during the pendency of a determination of residency and shall be counted in the average daily membership in residence in the district of residence. In this paragraph, "school of origin" means the school the child attended when permanently housed or the school in which the child was last enrolled. Notwithstanding the provisions of RSA 21-N:11, III any person aggrieved by a determination of the commissioner may appeal such determination to a court of competent jurisdiction.

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

AMENDED ANALYSIS

This bill changes the definition of legal residency for homeless children and youths and provides that disputes regarding residency shall be resolved by the commissioner of the department of education, or a designee.

2003-0653h

Amendment to HB 593-FN-LOCAL

Proposed by the Committee on Environment and Agriculture - R

Amend RSA 149-M:9, XIII as inserted by section 1 of the bill by replacing it with the following:

XIII.(a) No permit issued by the department to a town with a population of 5000 persons or fewer shall require the town to clean up a closed public facility if the town:

(1) Monitors the closed facility in accordance with requirements established in RSA 485-C and RSA 149-M and rules adopted by the department.

(2) Continues to show, through monitoring devices, that the closed facility is having no adverse impact on the environment.

(3) Has filed a closure plan with the department by June 30 of the calendar year in which the facility is scheduled

to close.

(b) A town which complies with the requirements of subparagraph (a) shall not lose its grant funding under this chapter.

AMENDED ANALYSIS

This bill exempts towns with a population of 5,000 or fewer from cleaning up a closed public solid waste facility as long as it is monitored, the monitoring shows that it has no adverse impact on the environment, a closure plan is filed with the department. A town which complies with these requirements shall not lose its grant funding under RSA 149-M.

2003-0887h

Amendment to HB 596-FN

Proposed by the Committee on Commerce - C

Amend RSA 420-G:12-a, IV as inserted by section 1 of the bill by deleting it.

2003-0926h

Floor Amendment to HB 603-FN-LOCAL

Proposed by Rep. Campbell

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

AN ACT requiring school districts to pay a portion of per pupil costs directly to parents or legal guardians of pupils who opt out of attendance at a local public school.

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

1 New Section; School Money; Payment of Per Pupil Costs. Amend RSA 198 by inserting after section 41 the following new section:

198:41-a Payment of Per Pupil Costs.

I. Notwithstanding any provision of law in RSA 198:38-61 to the contrary, a school district shall issue a check in an amount equal to 50 percent of the most recently available average base cost per pupil of an adequate education as determined under RSA 198:40, and as modified in this section, to the parent or legal guardian of any child who is enrolled in a government run school in the child's resident school district and opts not to attend such school. Such payments shall be made no later than 14 days after the end of each school year and shall be issued directly to the parent or legal guardian of any child enrolled as described in this section.

II.(a) To be eligible to receive payment under this section, a parent or legal guardian of any child shall enroll the child in a school in the child's resident school district, and shall notify school officials, at least 65 days prior to the start of the school year, that such child shall be opting out of attendance at a school within the child's resident school district.

(b) Beginning July 1, 2003, and every fiscal year thereafter, the number of pupils who enroll in the resident school district but opt out of attendance under this section and who were not, prior to July 1, 2003, counted in the statewide weighted average daily membership in residence, shall be added to the fiscal year 2004 statewide weighted average daily membership in residence. Each fiscal year, newly enrolled pupils who opt out of attendance under this section and who were not counted in the average daily membership in residence in a previous fiscal year, shall be counted by the department of education in the average daily membership in residence of the child's resident school district for the purpose of calculating adequate education grants. The total number of pupils, including newly registered pupils who opt out, plus the total weighted average daily membership in residence shall be divided into the cost of an adequate education grant multiplied by the total statewide weighted average daily membership in residence. This new per pupil cost of an adequate education shall be the basis of the adequate education grant amount.

III. The parent or legal guardian of a pupil attending a government run school in a school district other than the pupil's resident school district shall be eligible to receive payment under this section.

IV. The commissioner of the department of education shall adopt rules pursuant to RSA 541-A, to implement this section.

V. Nothing in this section shall be construed to limit or restrict in any way the right of any parent or legal guardian of a child to pursue alternative educational programs.

2 School Money; Definitions. Amend RSA 198:38, X to read as follows:

X. "Average daily membership in residence" and "resident pupils" mean the average daily membership in residence as defined in RSA 189:1-d, IV, **and shall include pupils who enroll in a government run school in the pupil's resident school district but opt out of attendance at such school pursuant to RSA 198:41-a, II(b)**, except that no kindergarten pupil shall count as more than 1/2 day attendance per calendar day.

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

AMENDED ANALYSIS

This bill requires school districts to pay a portion of per pupil costs directly to parents or legal guardians of pupils who opt out of attendance at a local public school.

2003-0732h

Amendment to HB 605-FN

Proposed by the Committee on Election Law - C

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

1 New Section; Election Procedure; Prohibited Acts; Interference With Communications. Amend RSA 659 by inserting after section 40 the following new section:

659:40-a Interference With Communications. Any person who, on the day of any election, knowingly blocks, or solicits another person to block, the access of any candidate or committee to communications equipment or services with the intent of interfering with campaign activity shall be guilty of a class A misdemeanor.

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

2003-0818h

Amendment to HB 615-FN**Proposed by the Committee on Criminal Justice and Public Safety - C**

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

1 Registration of Criminal Offenders; Duty to Report. Amend RSA 651-B:4, I to read as follows:

I.(a)(1) Any person required to be registered under this chapter shall ~~[be required to]~~ report such person's current mailing address, place of residence or temporary domicile, and place of employment or schooling to the local law enforcement agency within 30 days after the person's release from custody following conviction, or within 30 days after the person's date of establishment of residence in New Hampshire if convicted elsewhere. Such report shall also be made annually within 30 days after each anniversary of the person's date of birth~~[-]~~ and additionally within 30 days after any change of address or place of residence.

(2) Such person shall also be required to submit to a photograph taken by the law enforcement agency each time the person is required to report to the law enforcement agency under this section.

(b) Any nonresident sexual offender or offender against children who enters this state for the purpose of employment, with or without compensation, or to attend any public or private educational institution for a period exceeding 14 consecutive days or for an aggregate period of time exceeding 30 days during any calendar year ~~[is required to]~~ ***shall*** report to the local law enforcement agency having jurisdiction over the place of employment or school within 10 days of the nonresident offender entering the state for employment or schooling, and additionally within 10 days after any change of place of employment or schooling. In the event a nonresident offender required to register under this paragraph does not have a principal place of employment, the offender shall register with the department in Concord. Upon the nonresident offender's initial registration, the local law enforcement agency or the department shall notify the offender of the offender's duty to report under this chapter. The offender shall report the address of the offender's place of employment or schooling while in the state, the address where the offender resides out of state, and other information required by department rules adopted in accordance with RSA 651-B:8. Such report shall also be made annually within 30 days after each anniversary of the person's date of birth, and additionally within 10 days after any change of address or place of employment or schooling.

2 Registration of Criminal Offenders; Record of Information Disclosure. Amend RSA 651-B:7 IV(a) as follows:

IV.(a) The division shall provide a copy of the list described in this section to each local law enforcement agency at periodic intervals, through written, electronic, computerized, or other accessible means, but in no event less frequently than once each month. The list shall be made available to interested members of the public upon request to a local law enforcement agency. The department of safety may make the list available to interested members of the public through the use of the department's official public Internet access site. The department shall adopt rules, pursuant to RSA 541-A, establishing procedures for the collection of information described in this section, the transmission of the information from the division to the local law enforcement agencies, and the conditions under which the list shall be made available to the public. These rules shall enable the public to request information about a named individual or about all listed individuals residing or confined in the state. The rules ~~[shall]~~ ***may*** also include provisions for ~~[identifying and maintaining a record of the parties to whom information from the list has been disclosed, and may also provide for]~~ the imposition of a reasonable fee to defray the administrative costs of collecting the information and making the information available to the public.

3 Registration of Criminal Offenders; Availability of Information. RSA 651-B:7, II is repealed and reenacted to read as follows:

II.(a) The division shall maintain a separate list of all individuals registered pursuant to this chapter who have been convicted of any violation or attempted violation of one of the following offenses, or of any law of another state or the federal government reasonably equivalent to one of the following offenses:

- (1) RSA 632-A:2, I(l).
- (2) RSA 632-A:2, II.
- (3) RSA 632-A:3, II-III.
- (4) RSA 645:1, II.
- (5) RSA 645:1, III.
- (6) Any offense described in RSA 651-B:1, V.

(b) The list described in subparagraph (a) shall include:

- (1) The name and address of the registered individual;
- (2) A photograph of the registered individual, if available;
- (3) A physical description of the registered individual, if available;
- (4) The offense for which the registered individual was convicted;
- (5) The date and court of the conviction for which the individual is registered and the date and court of the registered individual's other convictions, if any;
- (6) Information on the victim or victims of the registered individual's offense or offenses; and
- (7) The method of approach to the victim utilized by the registered individual.

(c) In no event shall the list include the identity of any victim.

4 Applicability. The provisions of this act shall apply to any person required to be registered pursuant to RSA 651-B:2 as of the effective date of this act.

5 Effective Date. This act shall take effect 60 days after its passage.
2003-0839h

Amendment to HB 617

Proposed by the Committee on Executive Departments and Administration - C

Amend the introductory paragraph of RSA 317-A:7-a as inserted by section 4 of the bill by replacing it with the following:

317-A:7-a License by Endorsement. Licensure by endorsement may be considered by the board for each applicant who holds a current, unrestricted license and registration certificate to practice dentistry or dental hygiene and who submits to the board the required credentials if, for the 3 years immediately preceding the application, the applicant:
2003-0834h

Amendment to HB 620-FN

Proposed by the Committee on Children and Family Law - C

Amend RSA 463:7-a, II(a) as inserted by section 4 of the bill by replacing it with the following:

(a) That consent is being given voluntarily and knowingly the court may thereupon grant the petition if it further determines that the parent has consented to the granting of the petition; that a minor 14 years or older has no objection; and that the standards for guardianship under RSA 463:8, V or VII have otherwise been met.

Amend the bill by replacing section 9 with the following:

9 New Paragraph; Termination of Guardianships. Amend RSA 463:15 by inserting after paragraph V the following new paragraph:

VI. Notwithstanding paragraph V, a time or condition limited guardianship under RSA 463:8, VII shall terminate upon submission of evidence to the court that the conditions necessitating guardianship have been removed or met. Any party may request a hearing. If neither party requests a hearing, the court may, prior to acting on the evidence, conduct a hearing, with notice to the parent, guardian and other individuals specified in RSA 463:6.

Amend RSA 463:17-a, V as inserted by section 11 of the bill by replacing it with the following:

V. Counsel appointed by the court pursuant to this chapter shall be compensated pursuant to RSA 490:26-f.
2003-0694h

Amendment to HB 627-FN

Proposed by the Majority of the Committee on Election Law - R

Amend the bill by replacing section 1 with the following:

1 County Attorneys; Election, Vacancies. Amend RSA 7:33 to read as follows:

7:33 Election; Vacancies. There shall be a county attorney for each county, who shall be a member of the New Hampshire bar, elected biennially by the ~~[inhabitants]~~ **voters** of the county. If the county attorney is absent at any term of court or unable to discharge the duties of the office, the superior court, acting as a body, shall appoint a county attorney, who shall be a member of the New Hampshire bar, for the time being and allow said appointee such compensation for his **or her** services as they think reasonable.

Amend the bill by replacing section 3 with the following:

3 Powers and Duties of Towns; Emergency Borrowing; Method. Amend RSA 31:11 to read as follows:

31:11 Method. The power may be exercised in cities by a 2/3 vote of the city councils. It may be exercised by the selectmen of towns and the governing boards of districts without vote of the ~~[inhabitants]~~ **voters** in town or district meeting. Provided, that no sum in excess of \$100,000 shall be so borrowed without vote of the city, town, or district.

Amend the bill by replacing sections 6 and 7 with the following:

6 Cities and Wards; General Elections. Amend RSA 44:7 to read as follows:

44:7 General Elections. All meetings of the ~~[inhabitants]~~ **voters** for the election of county, state, or United States officers, who are voted for by the people, shall be held in their respective wards at the time legally appointed for those elections respectively.

7 Cities and Wards; Local Elections; Times. Amend RSA 44:11 to read as follows:

44:11 Times. The meeting of the ~~[inhabitants]~~ **voters** of each ward for the election of city and ward officers shall be held on

such day as may be fixed by law or by ordinance of the city council but in no event shall it be held in conjunction with a biennial election; and all ward and city officers who are chosen by the people shall hold their respective offices for the term and from the day fixed by law or ordinance, and until others are appointed in their stead. The prohibitions in this section shall not apply to a special election held to fill a vacancy for the office of a city or a ward officer.

Amend RSA 52:4, I as inserted by section 16 of the bill by replacing it with the following:

I. No village district shall raise or appropriate money, or reduce or rescind any appropriation of money previously authorized, at any special meeting of the ~~[inhabitants]~~ **voters** thereof except by vote by ballot, nor unless the ballots cast at such meeting shall be equal in number to at least 1/2 of the number of legal voters of such district at the regular meeting next preceding such special meeting; and if a checklist was used at the last preceding regular meeting the same shall be used to ascertain the number of legal voters in the district; and such checklist, corrected according to law, shall be used at such special meeting upon request of 10 legal voters. In case of an emergency arising in a district for which immediate expenditure of money is necessary, the district through its commissioners may appeal to the superior court for permission to hold a special district meeting which, if granted, shall give said meeting the same authority as the annual district meeting.

Amend the bill by replacing section 22 with the following:

22 Elected for 2-Year Term; County Commissioners. Amend RSA 653:1, VI, (d)-(i) to read as follows:

(d) Cheshire county--one county commissioner by the voters in each county commissioner district; provided that, at the 1980 state general election, no commissioner from district 1 shall be elected, the commissioner from district 2 shall be elected to a 4-year term and the commissioner from district 3 shall be elected to a 2-year term. At each subsequent state general election, 2 commissioners shall be chosen in the county by the ~~[inhabitants]~~ **voters** of the districts in which a commissioner's term is expiring; and, of the commissioners so chosen, one shall serve a 4-year term and one shall serve a 2-year term and both shall hold their offices until their successors are chosen and qualified. Following the 1980 state general election, the 4-year term shall be rotated in sequence starting with district 3.

(e) Sullivan county--one county commissioner from each county commissioner district by all the voters of the county; provided that, at the 1990 state general election, the commissioner from district 1 shall be elected to a 4-year term and the commissioners from districts 2 and 3 shall each be elected to a 2-year term. At each subsequent state general election, 2 commissioners whose terms are expiring shall be elected by all the voters of the county; and, of the commissioners so chosen, one shall serve a 4-year term and one shall serve a 2-year term and both shall hold their offices until their successors are chosen and qualified. Following the 1990 state general election, the 4-year term shall be rotated in sequence starting with district 2.

(f) Belknap county--one county commissioner by the voters in each county commissioner district; provided that, at the 1992 state general election, no commissioner from district 1 shall be elected, the commissioner from district 2 shall be elected to a 4-year term, and the commissioner from district 3 shall be elected to a 2-year term. At each subsequent state general election, 2 commissioners shall be chosen in the county by the ~~[inhabitants]~~ **voters** of the districts in which a commissioner's term is expiring; and, of the commissioners so chosen, one shall serve a 4-year term and one shall serve a 2-year term and both shall hold their offices until their successors are chosen and qualified. Following the 1992 state general election, the 4-year term shall be rotated in sequence starting with district 3.

(g) Rockingham county--one county commissioner by the voters in each county commissioner district; provided that, at the 1992 state general election, the commissioner from district 1 shall be elected to a 4-year term and the commissioners from districts 2 and 3 shall be elected to 2-year terms. At each subsequent state general election, 2 commissioners shall be chosen in the county by the ~~[inhabitants]~~ **voters** of the districts in which a commissioner's term is expiring; and, of the commissioners so chosen, one shall serve a 4-year term and one shall serve a 2-year term and both shall hold their offices until their successors are chosen and qualified. Following the 1992 state general election, the 4-year term shall be rotated in sequence starting with district 2.

(h) Merrimack county--one county commissioner by the voters in each county commissioner district in the county; provided that, at the 1996 state general election, the commissioner from district 1 shall be elected to a 4-year term and the commissioners from districts 2 and 3 shall be elected to 2-year terms. At each subsequent state general election, 2 commissioners shall be chosen in the county by the ~~[inhabitants]~~ **voters** of the districts in the county in which a commissioner's term is expiring; and, of the commissioners so chosen, one shall serve a 4-year term and one shall serve a 2-year term and both shall hold their offices until their successors are chosen and qualified. Following the 1996 state general election, the 4-year term shall be rotated in sequence starting with district 2.

(i) Coos county--one county commissioner by the voters in each county commissioner district; provided that, at the 1996 state general election, the commissioner from district 3 shall be elected to a 4-year term and the commissioners from districts 1 and 2 shall be elected to 2-year terms. At each subsequent state general election, 2 commissioners shall be chosen in the county by the ~~[inhabitants]~~ **voters** of the districts in the county in which a commissioner's term is expiring; and, of the commissioners so chosen, one shall serve a 4-year term and one shall serve a 2-year term and both shall hold their offices until their successors are chosen and qualified. Following the 1996 state general election, the 4-year term shall be rotated in sequence starting with district 1.

Amend the bill by replacing sections 25 and 26 with the following:

25 Voter Registration Form. Amend RSA 654:7 to read as follows:

654:7 Voter Registration Form. A standard registration application form shall be used throughout the state. The registration form shall be [4] ***no larger than*** inches by [6] ***11*** inches [~~and shall be made in triplicate~~]. The secretary of state shall [~~provide for the preparation~~] ***prescribe the form*** of the voter registration [~~form~~] ***card***, which shall be in substantially the following form:

Date _____

VOTER REGISTRATION CARD

(Please print or type)

1. Name _____
Last (suffix) First Full Middle [Initial] Name

2. Address _____
Street Ward Number
Town or City Zip Code

3. Mailing Address if _____
different than in 2 Street Ward Number
Town or City Zip Code

4. Place and Date of Birth _____
Town or City State
Date _____

5. If a naturalized citizen, give name of court where and date when naturalized

6. Place last registered to vote _____
Town or City
Street Ward Number

7. Name under which previously registered, if different from above

8. Party Affiliation (if any) _____
~~I hereby swear, under penalty of perjury, that my permanent established domicile is at the above address, that I am a United States citizen, that I will be 18 years of age or older on election day, and that the information above is true and correct to the best of my knowledge and belief.~~

(Signature of Applicant)]
9. Driver's License Number _____ State _____
If you do not have a valid driver's license, provide the last four digits of your social security number ____ _

My name is _____. I am today registering to vote in the city/town of _____, New Hampshire.
I understand that to vote in this city/town, I must be 18 years of age, I must be a United States citizen, and I must be domiciled in this city/town.
I understand that a person can claim only one state and one city/town as his or her domicile at a time. A domicile is that place, to which upon temporary absence, a person has the intention of returning. By voting today, I am acknowledging that I am not domiciled in any other state or any other city/town. I understand that if I am domiciled in another state or city/town, I may be entitled to vote in elections held within that state or city/town by absentee ballot.
In declaring New Hampshire as my domicile, I am subject to the laws of the State of New Hampshire which apply to all residents, including laws requiring me to register my motor vehicles and apply for a New Hampshire driver's license within 60 days of becoming a resident.
In declaring New Hampshire as my domicile, I realize that I may be forfeiting benefits or rights, including the right to vote in another state.
If I have any questions as to whether I am entitled to vote in this city/town, I am aware that a supervisor of the checklist is available to address my questions or concerns.
I acknowledge that I have read and understand the above qualifications for voting and do hereby swear, under the penalties for voting fraud set forth below, that I am qualified to vote in the above-stated city/town on this day, and, if registering on election day, that I have not voted and will not vote at any other polling place this election."

Date

Signature

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

26 Registering at the Polling Place; Election Day Registration. Amend RSA 654:7-a, II to read as follows:

II. Any person whose name is not on the checklist but who is otherwise a qualified voter shall be entitled to vote by requesting to be registered to vote at the polling place on election day. The voter may then vote at that election. The applicant may be required to produce appropriate proof of qualifications as provided in RSA 654:12. ~~[The applicant shall complete an election day affidavit which shall be prescribed by the secretary of state, and which shall contain the following written oath or affirmation:~~

~~“I do hereby certify under penalty of perjury that to the best of my knowledge, I am a qualified voter, and that I am not disqualified on any ground from voting, and I have not voted and will not vote at any other polling place this election.”~~

(Signature of Applicant]

Amend the bill by replacing sections 29-31 with the following:

29 Determining Qualifications of Applicant. Amend RSA 654:12 to read as follows:

654:12 Determining Qualifications of Applicant.

I. When determining the qualifications of an applicant, the supervisors of the checklist, or the town or city clerk, may require the applicant to present proof of citizenship, age, and domicile, as provided in the following categories:

(a) CITIZENSHIP. The supervisors of the checklist, or the town or city clerk, shall accept from the applicant any one of the following as proof of citizenship: the applicant's birth certificate, passport, naturalization papers if the applicant is a naturalized citizen, a citizenship affidavit, or any other reasonable documentation which indicates the applicant is a United States citizen. The citizenship affidavit shall be in the following form:

Date: _____

CITIZENSHIP AFFIDAVIT

Name: _____

Name at birth if different: _____

Place of birth: _____

Date of birth: _____

Date and Place of Naturalization: _____

~~[I swear and affirm that I am a United States citizen.~~

~~— I further swear or affirm, under penalty of perjury, that the information above is true and correct to the best of my knowledge and belief.]~~

I hereby swear and affirm, under the penalties for voting fraud set forth below, that I am a United States citizen and that to the best of my knowledge and belief the information above is true and correct.

(Signature of applicant)

~~[The penalty for perjury is a class B felony with a maximum sentence of imprisonment not to exceed 7 years and/or a fine not to exceed \$4,000.]~~

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

On the date shown above, before me, _____ (print name of notary public, justice of the peace, election officer), appeared _____ (print name of person whose signature is being notarized), (known to me or satisfactorily proven (circle one)) to be the person whose name appears above, and he or she subscribed his or her name to the foregoing affidavit and swore that the facts contained in this affidavit are true to the best of his or her knowledge and belief.

***Notary Public/Justice of the
Peace/Official Authorized by RSA***

659:30

(b) AGE. Any reasonable documentation indicating the applicant is 18 years of age or older.

(c) DOMICILE. Any reasonable documentation which indicates that the applicant has a domicile and intends to maintain a domicile, ~~[for an indefinite period]~~ **as defined in this chapter**, in the town, city or ward in which he **or she** desires to vote, or, **if the applicant does not have reasonable documentation in his or her possession at the place and time of voter registration**, an affidavit ~~[declaring that the applicant has a domicile and intends to maintain a domicile for an indefinite period in the town, city or ward in which he desires to vote.]~~ **in the following form:**

DOMICILE AFFIDAVIT

Date: _____

Name: _____

Current Domicile Address: _____

Street

Ward Number

Town or City

Zip Code

Date when current domicile was established: Month: _____ Year: _____

Place and date of birth: _____

Address of last previous domicile: _____

Street

Ward Number

Town or City

Zip Code

I hereby swear and affirm, under the penalties for voting fraud set forth below, that my established domicile is at the current domicile address I have entered above and that to the best of my knowledge and belief the information above is true and correct.

(Signature of applicant)

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

On the date shown above, before me, _____ (print name of notary public, justice of the peace, election officer), appeared _____ (print name of person whose signature is being notarized), (known to me or satisfactorily proven (circle one)) to be the person whose name appears above, and he or she subscribed his or her name to the foregoing affidavit and swore that the facts contained in this affidavit are true to the best of his or her knowledge and belief.

Notary Public/Justice of the

Peace/Official Authorized by RSA 659:30

II. The supervisors may refuse to add the name of an applicant to the checklist if he **or she** fails to present the evidence **or an affidavit as** required by this section. **Without limiting the acceptance of other forms of proof of domicile or identity deemed reasonable by the supervisors:**

(a) Any one of the following documents is presumptive evidence that the individual seeking to vote meets the domicile requirement, provided the document is currently valid, was issued to or in the name of the applicant, and shows the address the applicant claims as a domicile:

(1) New Hampshire driver's license.

(2) New Hampshire vehicle registration.

(3) Armed services identification, or other photo identification issued by the United States government.

(b) Any one of the following is presumptive evidence of the identity of an applicant sufficient to satisfy the identity requirement for an official authorized by RSA 659:30 to take the oath of an applicant swearing to a citizenship, domicile, or election day affidavit:

(1) Photo driver's license issued by any state or the federal government.

(2) United States passport, armed services identification, or other photo identification issued by the United States government.

(3) Photo identification issued by local or state government, hospital, educational institution, or similar institution.

The address shown on the document need not match the address the applicant is claiming as a domicile. If the identification document is not currently valid, it must have sufficient characteristics of validity to establish that it is more likely than not that the applicant is the person he or she is claiming to be.

(c) The presumptions established in this paragraph may be defeated by evidence establishing that it is

more likely than not that the applicant is not qualified as a voter.

30 Absentee Registration Affidavit. Amend RSA 654:17 to read as follows:

654:17 Absentee Registration Affidavit.

I. The absentee registration affidavit shall be prepared by the secretary of state and shall be in substantially the following form:

Affidavit (Absence from town)

I, _____ do hereby swear or affirm, under [~~penalty of perjury~~] **the penalties for voting fraud set forth below**, the following:

1)(~~a~~) That my legal domicile is in the town of _____, New Hampshire, I will be of the age of 18 years or over on election day and am entitled to vote in the election to be held in said town on _____, [~~19~~] _____ (**date**), except for the fact that my name does not appear on the checklist to be used in said town at such election;

~~[(b) That if I were personally to appear before the supervisors of the checklist of said town in their regular session for the correction of the checklist for said election, I would present the following as proof of domicile _____ (including but not limited to a drivers license, electric bill, passport, or cancelled check);]~~

2) That I do not intend to be present within said town at such time prior to said election as shall enable me personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;

3) That I am temporarily residing in _____ (city and state or city, province, and country);

4) That I hereby enclose one of the following as proof of identity and domicile:

(a) A copy of a current and valid photo identification; or

(b) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter;

5) That I acknowledge that if I do not provide a copy of proof of identity and domicile as required by section 4) above, this application may not be approved; and

~~4)~~ **6) That I hereby make application for the addition of my name to the checklist of said town to be used at said election.**

Signature of Applicant

Date

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

Affidavit (Physical Disability)

I, _____ do hereby swear or affirm, under [~~penalty of perjury~~] **the penalties for voting fraud set forth below**, the following:

1)(~~a~~) That my legal domicile is in the town of _____, New Hampshire, I will be of the age of 18 years or over on election day, and am entitled to vote in the election to be held in said town on _____, [~~19~~] _____ (**date**), except for the fact that my name does not appear on the checklist to be used in said town at such election;

~~[(b) That if I were personally to appear before the supervisors of the checklist of said town in their regular session for the correction of the checklist for said election, I would present the following as proof of domicile _____ (including but not limited to a drivers license, electric bill, passport, or cancelled check);]~~

2) That I am unable by reason of physical disability personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;

3) That I hereby enclose one of the following as proof of identity and domicile:

(a) A copy of a current and valid photo identification; or

(b) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter;

4) That I acknowledge that if I do not provide a copy of proof of identity and domicile as required by section 4) above, this application may not be approved; and

~~3)~~ **5) That I hereby make application for the addition of my name to the checklist of said town to be used at said election.**

Signature of Applicant

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

II. There shall be printed below each of the foregoing affidavits the following affirmation:
Affirmation

I, _____, the undersigned witness, do hereby swear or affirm, under [~~penalty of perjury~~] **the penalties for voting fraud set forth below**, that on the _____ day of _____, [~~19~~]____ (**date**), the above named, _____, having satisfied me as to his **or her** identity, signed the foregoing affidavit in my presence, and did before me swear to (or affirm) the truth of the statements therein contained.

Signature of Witness

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

31 Overseas Citizens Voting; Affidavit. Amend RSA 654:20 to read as follows:
654:20 Affidavit. Any person qualified to vote as an overseas voter in a city or town as provided in RSA 654:3, because he **or she** is domiciled [~~in Canada or Mexico or in any other country~~] outside the [~~continental~~] United States, may apply to the city or town clerk or to the secretary of state for an overseas citizens federal election absentee registration affidavit. Such affidavit shall be prepared by the secretary of state and shall be in substantially the following form:
Affidavit

I, _____, do hereby swear or affirm, under [~~penalty of perjury~~] **the penalties for voting fraud set forth below**, the following:

- 1) That I am a United States citizen;
- 2) That I have been domiciled in Canada or Mexico or any other country outside the continental United States since _____;
(month) (year)
- 3) That I hold a valid passport or card of identity with Registration No. _____ issued by the United States Secretary of State;
- 4) That, immediately prior to my departure from the United States, I was legally domiciled in the state of New Hampshire at the following address:

Street and Number or Rural Route, etc.

City or Town

- 5) That I will be of the age of 18 years or older on election day, have complied with all applicable qualifications and requirements of the state of New Hampshire, and am entitled to vote in the next subsequent federal election to be held in said state;
- 6) That I do NOT maintain a domicile, am NOT registered to vote and am NOT voting in any other state, territory, or possession of the United States, or election district thereof;
- 7) That my party affiliation (if any) is _____
- 8) That my permanent address outside the continental United States is:

Street or Route Number

City, Province, County

- 9) That I hereby make application for the addition of my name to the checklist of _____, New Hampshire, as an overseas citizen living outside the continental United States entitled to vote in any federal election held therein.

Signature of Applicant

Date

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

Amend the bill by replacing section 34 with the following:
34 Nomination by Primary; Form. Amend RSA 655:21 to read as follows:
655:21 Form. Primary petitions shall be made in the following form:

State of New Hampshire
County of _____ss.
City (Town) of _____

I do hereby join in a petition for the printing on the primary ballot of the name of _____ whose domicile is in the

city (town) of _____ (ward, street, and number, if in a city), in the county of _____, for the office of _____ to be voted for on Tuesday, the _____ day of September, [19]_____ (**year**), and certify that I am qualified to vote for a candidate for said office, that I am a registered member of the _____ party, and am not at this time a signer of any other similar petition for any other candidate for the above office; that my domicile is in the city (town) of _____ (ward, street, and number, if in a city), in the county of _____. I certify that to my knowledge the above-named candidate is not a candidate for incompatible offices as defined in RSA 655:10, and that he or she is not a federal employee which makes him or her ineligible to file as a candidate for this office. I further certify that I believe the above-named person is especially qualified to fill said office.

I hereby swear, under [~~penalty of perjury~~] **the penalties for voting fraud set forth below**, that the information above is true and correct to the best of my knowledge and belief.

Print Voter's name

Voter's Signature

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

Amend the bill by replacing sections 37-39 with the following:

37 Absence, Religious Observance, and Disability. Amend RSA 657:7, II to read as follows:

II. Affidavit envelopes of sufficient size to contain the ballots on which shall be printed the following:

(a) Absence from City or Town. A person voting by absentee ballot because of absence from the city or town in which he **or she** is entitled to vote shall fill out and sign the following certificate:

I do hereby certify under the penalties [~~of perjury~~] **for voting fraud set forth below** that I am a duly qualified voter in the city or town of _____, New Hampshire, in ward _____; that I will be absent on election day from said city or town and will be unable to vote in person; that I have carefully read (or had read to me because I am blind) the instructions forwarded to me with the ballot herein enclosed, and that I personally marked the ballot within and sealed it in this envelope (or had assistance in marking the ballot and sealing it in this envelope because I am blind).

(Signature) _____

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

(b) Absence Because of Religious Observance or Physical Disability. A person voting by absentee ballot because of religious observance or physical disability shall fill out and sign the following certificate:

I do hereby certify under the penalties [~~of perjury~~] **for voting fraud set forth below** that I am a duly qualified voter in the city or town of _____, New Hampshire, in ward _____; that I will be observing a religious commitment which prevents me from voting in person or that on account of physical disability I am unable to vote in person; that I have carefully read (or had read to me because I am blind) the instructions forwarded to me with the ballot herein enclosed, and that I personally marked the ballot within and sealed it in this envelope (or had assistance in marking the ballot and sealing it in this envelope because I am blind).

(Signature) _____

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

38 Overseas Voting. Amend RSA 657:8 to read as follows:

657:8 Overseas Voting. Prior to any federal election, the secretary of state shall prepare the following forms in such quantity as he **or she** deems necessary:

I. Overseas citizens federal election absentee ballots as provided in RSA 656:34 for citizens who are domiciled [~~in Canada or Mexico or in any country~~] outside the [~~continental~~] United States.

II. Affidavit envelopes of sufficient size to contain the ballots on which shall be printed the following:

(a) For Voters Who Are Registered.

Overseas Citizen. A person desiring to vote by overseas citizens federal election absentee ballot who is a registered voter in the town or city in which he **or she** desires to vote shall fill out and sign the following certificate:

I do hereby certify under the penalties [~~of perjury~~] **for voting fraud set forth below** that I am a duly qualified overseas citizen voter registered as such in the city or town of _____, New Hampshire; that I have carefully read (or had read to me because I am blind) the instructions forwarded to me with the overseas citizens federal election ballot herein

enclosed, and that I personally marked the ballot within and sealed it in this envelope (or had assistance in marking the ballot and sealing it in this envelope because I am blind).

(Signature)_____

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

(b) For Voters Not Registered. A person desiring to vote by overseas citizens federal election absentee ballot who is not registered as such in the town or city in which he *or she* desires to vote shall fill out and sign the following certificate:

I do hereby certify under ~~[penalty of perjury]~~ ***the penalties for voting fraud set forth below*** that I am a qualified federal overseas voter, that I am at least 18 years of age and a citizen of the United States; and that my last domicile within the United States was in New Hampshire at the following address:

street and number _____

city or town _____

I am not registered to vote in any state and am not voting in any other manner in this election.

Signature of Voter

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

III. Other forms as provided for in RSA 657:7, III, IV and V.

39 Armed Services Voting. Amend RSA 657:9, II to read as follows:

II. Affidavit envelopes of sufficient size to contain the ballots on which shall be printed the following:

(a) For Voters Who Are Registered. A person voting by armed services absentee ballot who is a registered voter in the town or city in which he *or she* desires to vote shall fill out and sign the following certificate:

I do hereby certify under the penalties ~~[of perjury]~~ ***for voting fraud set forth below*** that I am a duly qualified voter in the city or town of _____, New Hampshire, in ward _____; that I will be absent on election day from said city or town and will be unable to vote in person; that I have carefully read (or had read to me because I am blind) the instructions forwarded to me with the ballot herein enclosed, and that I personally marked the ballot within and sealed it in this envelope (or had assistance in marking the ballot and sealing it in this envelope because I am blind).

(Signature)_____

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

(b) For Voters Not Registered. A person voting by armed services absentee ballot who is not registered in the town or city in which he *or she* desires to vote shall fill out and sign the following certificate:

I do hereby certify under ~~[penalty of perjury]~~ ***the penalties for voting fraud set forth below*** that I am a qualified armed services voter under the laws of the state of New Hampshire, that I am at least 18 years of age and a citizen of the United States; and that, immediately prior to my service, my domicile was in New Hampshire at the following address:

street and number _____

city or town _____

I am not registered to vote in any state and am not voting in any other manner in this election.

Signature of Voter

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

Amend the bill by replacing section 44 with the following:

44 Constitutional Conventions; Declaration of Candidacy. Amend RSA 667:10 to read as follows:

667:10 Declaration of Candidacy. On or before the closing date for filing declarations of candidacy with the town or city clerk as provided by RSA 667:8, any candidate for delegate shall file with the town or city clerk a declaration of candidacy in substantially the following form, which shall be prepared and furnished by the secretary of state:

I, _____, candidate for office of delegate to the constitutional convention from District No. _____ of _____ county hereby certify that I am at least 18 years of age; that I am domiciled in ward _____ of the city of _____ (or town or unincorporated place of _____) county of _____ state of New Hampshire; that I am a qualified voter ~~[therein and at the present time am an inhabitant of]~~ ***in*** District No. _____ of _____ county.

Amend the bill by replacing all after section 47 with the following:

48 Town Elections; Absentee Ballot Forms. Amend RSA 669:27, III to read as follows:

III. Envelopes of sufficient size to contain the ballots specified in paragraph I, on which shall be printed the following affidavit:

Absence. A person voting by absentee ballot because of absence from the place in which he *or she* is entitled to vote shall fill out and sign the following certificate:

I do hereby certify, under the penalties ~~[of perjury]~~ **for voting fraud set forth below**, that I am a duly qualified voter in the town (city, village district, school district) of _____, New Hampshire, that I will be absent on election day from said town (city, village district, school district) and will be unable to vote in person; that I have carefully read the instructions forwarded to me with the ballot herein enclosed, and that I personally marked the within ballot and enclosed and sealed it in this envelope.

(Signature) _____

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

Absence Because of Religious Observance or Physical Disability. A person voting by absentee ballot because of religious observance or physical disability shall fill out and sign the following certificate:

I do hereby certify, under the penalties ~~[of perjury]~~ **for voting fraud set forth below**, that I am a duly qualified voter in the town (city, village district, school district) of _____, New Hampshire, that I will be observing a religious commitment which prevents me from voting in person, or that on account of physical disability I am unable to vote in person; that I have carefully read the instructions forwarded to me with the ballot herein enclosed, and that I personally marked the within ballot and sealed it in this envelope.

(Signature) _____

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

49 Election Officer. Amend RSA 652:14 to read as follows:

652:14 Election Officer. "Election officer" shall mean any moderator, **deputy moderator, assistant moderator**, town clerk, **deputy town clerk, city clerk, deputy city clerk**, selectman, supervisor of the checklist, **registrar, deputy registrar**, or inspector of election.

50 Voting Rights of Overseas Citizens. Amend RSA 654:3 to read as follows:

654:3 Voting Rights of Overseas Citizens. Notwithstanding any other provision of law to the contrary, any United States citizen being at least 18 years of age as provided in Article 11 of Part First of the Constitution of New Hampshire, who is domiciled ~~[in Canada or Mexico or in any other country]~~ outside the ~~[continental]~~ United States, shall have the right to register absentee to vote in any federal election in the town or city in New Hampshire in which he *or she* had his *or her* domicile immediately prior to his *or her* departure from the United States, even though he *or she* no longer maintains domicile in said town or city and even though his *or her* intent to return thereto is uncertain, provided:

I. He *or she* complies with all other applicable requirements and qualifications of the state of New Hampshire; and

II. He *or she* is not domiciled and is not registered to vote in any other state or election district of a state or in any territory or possession of the United States; and

III. He *or she* has a valid passport or card of identity issued under the authority of the Secretary of State of the United States.

51 General Voter Registration; Forms to be Forwarded. Amend RSA 654:9 to read as follows:

654:9 Forms to be Forwarded. The provisions of this section shall apply in all cities and in all towns. The town or city clerk shall present to the next meeting of the supervisors of the checklist the ~~[triplicate]~~ **voter** registration forms of all persons making application to ~~[him]~~ **the clerk** since the previous meeting of said supervisors.

52 General Voter Registration; Action by Supervisors. Amend RSA 654:13, I to read as follows:

I. If the supervisors decide to add the name of the applicant to the checklist, then they shall retain the original of the ~~[triplicate]~~ registration form for their own file, forward one copy to the supervisors of the checklist of the city or town of the applicant's last voting address if said address is in the state of New Hampshire, Vermont, Maine, Massachusetts, Connecticut, or Rhode Island, and send another copy to the clerk of their town or city.

53 Overseas Citizens Voting; Effect. Amend RSA 654:23 to read as follows:

654:23 Effect. Unless the supervisors of the checklist shall be of the opinion that the applicant does not qualify as an overseas voter in the city or town as provided in RSA 654:3, domiciled ~~[in Canada or Mexico or in any other country]~~ outside the ~~[continental]~~ United States, they shall, at their next session for the correction of the checklist subsequent to their receipt of such affidavit properly executed, cause his *or her* name to be added to the checklist together with a mark or sign clearly indicating that the application has been entered on the checklist for the purpose of voting in federal elections only. Thereafter, such person shall be entitled to vote by overseas citizens absentee ballot at both federal primary and general elections. If the supervisors decide not to add the name of the applicant to the checklist, they shall send notification to the applicant in writing within 7 days

stating the reason for that denial.

54 New Section; Right to Know Exemption. Amend RSA 654 by inserting after section 31 the following new section:

654:31-a Right to Know Exemption. The information contained on the checklist of a town or city, specifically, the name, street address, town or city, and party affiliation, if any, of registered voters, except as otherwise provided by statute, is public information subject to RSA 91-A. All other information on the voter registration card, absentee registration affidavit, and application for absentee ballot shall be treated as confidential information and the records containing this information shall be exempt from the public disclosure provisions of RSA 91-A, except as provided by statutes other than RSA 91-A. Election officials and law enforcement personnel in furtherance of their official duties may access and may disclose information from the voter registration card, absentee registration affidavits, and applications for absentee ballots, if necessary to resolve a challenge to an individual registering to vote or voting, or if necessary to investigate or prosecute election law violations or any crime. Law enforcement access and use of such records for the investigation or prosecution of crimes unrelated to election law violations shall be limited to the records of the specific individuals who are the subject of the investigation or prosecution.

55 Absentee Voting; Refusal to Certify, Procedure. Amend RSA 657:16 to read as follows:

657:16 Refusal to Certify; Procedure. If he *or she* refuses to certify the application, the town or city clerk shall notify the applicant in writing within 7 days to that effect. ***The town or city clerk shall provide the applicant with an absentee ballot and a notice that the ballot will not be counted unless the applicant submits the documents necessary to complete an absentee registration. The applicant shall be advised in writing what documents, if any, have been received in proper form and which the applicant must submit in the return envelope that contains the absentee ballot affidavit envelope. The town or city clerk shall mark the exterior of the absentee ballot affidavit envelope with the words "Not Registered." If the applicant returns the required documents in proper form with the absentee ballot and if the applicant is found to be qualified, he or she shall be registered and his or her absentee ballot shall be processed in the same manner as the absentee ballot of a previously registered voter. If the ballot is returned without the required documents in proper form, the ballot shall be marked and preserved in the manner set forth by law for successfully challenged absentee ballots.*** The clerk shall preserve the application *of any applicant who is not registered as a voter* until the time [is] set by law for the destruction of the ballots after the election at which time the application shall be destroyed. Any justice of the superior court has jurisdiction in equity upon such notice as he *or she* may order to require that the name of the person making application for an absentee ballot be placed upon the checklist or registered as a member of any party and be sent an absentee ballot.

56 Procedure for Armed Services and Federal Overseas Citizen Voting; Sending Ballots. Amend RSA 657:19 to read as follows:

657:19 Sending Ballots. Upon receipt of a properly executed application for an official armed services absentee ballot or an overseas citizens federal election absentee ballot, whether the form supplied by the secretary of state, the federal post card application, or a written statement containing the information required by RSA 657:4, a town or city clerk shall send the materials provided for in RSA 657:8 or 657:9, as applicable, regardless of whether the applicant appears on the checklist, ***and if the applicant requests that the application be considered an application for an absentee ballot for each subsequent election for federal office through the next 2 regularly scheduled general elections, including primaries, for federal office, the town or city clerk shall provide an absentee ballot to the applicant for each such subsequent election.*** Whenever an armed services voter *or overseas citizen federal voter* requests a state general election ballot prior to October 1 to be mailed to an address [~~in Canada or Mexico or in any other country~~] outside of the [continental] United States, he *or she* shall be sent the same ballot as provided in RSA 656:34. ***No town or city clerk shall refuse to accept or process an otherwise valid voter registration application or absentee ballot application submitted by an absent armed services voter or federal overseas citizen voter on the grounds that the application was submitted before the first date on which the state otherwise accepts or processes such applications for that election submitted by absentee voters. A town or city clerk who does not certify a voter registration application or absentee ballot application shall provide the absent armed services voter or federal overseas citizen voter the reason for not certifying a voter registration application or an absentee ballot application.***

57 Federal Post Card Application. Amend RSA 657:19-a to read as follows:

657:19-a Federal Post Card Application. An armed services voter or federal overseas citizen voter who is domiciled [~~in Canada or Mexico or in any other country~~] outside the [continental] United States qualified to vote in New Hampshire may request an absentee ballot by completing a federal post card application form provided by the United States government, and sending it to the town or city clerk of his *or her* last domicile. The applicant may request an absentee ballot for all elections in which he *or she* is qualified to cast a ballot during the calendar year.

58 New Section; Voting Procedure; Hours of Polling Extended by Order. Amend RSA 659 by inserting after section 26 the following new section:

659:26-a Hours of Polling Extended by Order. In any federal election where hours of polling are extended by a federal or state court order or other order, the moderator or his or her designee shall mark all ballots cast during the extended hours of polling "EH." These extended hours ballots shall be counted in the usual manner, but shall be separated and held apart from

other ballots when stored.

59 Election Procedure; Challenges; Affidavit. Amend RSA 659:30 to read as follows:

659:30 ~~[False]~~ Affidavit. The affidavit of a challenged voter, ***a voter citizenship affidavit, a voter domicile affidavit, or any other affidavit required by the election statutes*** may be sworn before any person authorized by law to administer oaths or before ~~[the moderator, town clerk or any one of the selectmen or supervisors of the checklist. Any person who shall swear falsely in making such affidavit shall be deemed guilty of perjury and shall be punished accordingly]~~ ***any election officer.***

60 Preservation of Absentee Voting Materials, Citizenship Affidavits, and Domicile Affidavits. Amend RSA 659:101 to read as follows:

659:101 Preservation of Absentee Voting Materials, ***Election Day Affidavits, and Domicile Affidavits.*** The affidavit envelopes and application forms processed by the moderator as provided in RSA 659:50, ***and the citizenship affidavits and domicile affidavits as provided in RSA 654:12 and any other documentary proof of qualifications retained by the town or city clerk, the supervisors of the checklist, or other election official*** ~~[shall]~~ ***may*** be preserved in the same manner ~~[as provided in RSA 659:95-100 for the preservation of official state election]~~ ***that*** ballots ***are preserved and may be destroyed one year after the first state general election at which the individual may vote.***

61 Effective Date. This act shall take effect September 1, 2003.

2003-0764h

Amendment to HB 630-FN

Proposed by the Committee on Criminal Justice and Public Safety - C

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

AN ACT relative to enhanced penalties for assault on law enforcement officers, firefighters, emergency medical care providers, and national guard members.

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

1 Extended Term of Imprisonment. Amend RSA 651:6, I(h) to read as follows:

(h) He has knowingly committed or attempted to commit any of the crimes defined in RSA 631 where he knows the victim was, at the time of the commission of the crime, a law enforcement officer, ***firefighter, emergency medical care provider or national guard member*** acting in the line of duty; or

2 Effective Date. This act shall take effect January 1, 2004.

AMENDED ANALYSIS

This bill permits extended terms of imprisonment for persons who commit assault on on-duty law enforcement officers, firefighters, emergency medical care providers, and national guard members.

2003-0691h

Amendment to HB 638-FN

Proposed by the Committee on Ways and Means - C

Amend the bill by replacing section 1 with the following:

1 Oil Import Fee. Amend RSA 146-A:11-b, II to read as follows:

II. Any person who imports or causes to be imported oil into the state, except those using oil pipelines, railroads, and highways to transport oil products between states other than New Hampshire or for international transport of oil products, shall be licensed by the department of safety under this chapter. The annual fee for the license shall be ~~[\$.001]~~ ***\$.00125*** per gallon of oil imported into this state. The fee shall be paid monthly by such person to the department of safety. ~~[and then deposited by]~~ The department of safety ***shall deposit the first \$100,000 of fees paid in each fiscal year into the general fund. The remainder shall be deposited*** into the oil pollution control fund administered by the department of environmental services. Imposition of the fee shall be based on the records of the person and certified as accurate to the department of safety.

AMENDED ANALYSIS

This bill increases the oil import license fee, changes the rate of interest assessed on overdue oil import fees, and repeals underground storage facility permit fees.

This bill also allocates the first \$100,000 of each fiscal year to the general fund.

2003-0635h

Amendment to HB 639-FN-LOCAL

Proposed by the Committee on Municipal and County Government - C

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

AN ACT relative to receiving legislative body approval though warrant articles before a municipality may continue a program initiated under a grant.

Amend the bill by replacing section 1 with the following:

1 New Section; Continuation of Grant Funded Programs. Amend RSA 32 by inserting after section 6 the following new section:

32:6-a Continuation of Grant Funded Programs. If the governing body of a municipality chooses to continue a grant-funded

program or position, after such grant has expired or is reduced, and it is not renewed at the level of financial support under which the program or position was initiated, then the appropriation for the continuance of the program or position shall be made only by warrant article approved by the legislative body.

AMENDED ANALYSIS

This bill requires legislative body approval though warrant articles before a municipality may continue a program initiated under a grant.

2003-0793h

Amendment to HB 646-FN

Proposed by the Committee on Commerce - C

Amend RSA 175:1, XXXI-b as inserted by section 6 of the bill by replacing it with the following:

XXXI-b. "Food service business" means a business kept, used, maintained, advertised, and held out to the public primarily as a place where meals are served. At least 50 percent of the sales of a food service business shall be food consumed on the premises. A food service business with annual food sales of at least \$75,000 shall be exempt from the 50 percent requirement.

Amend RSA 178:12, II as inserted by section 13 of the bill by replacing it with the following:

II. The holder of a beverage manufacturer license may be issued one on-premises license for the manufacturer's premises, providing all requirements of the license are fulfilled. The annual fee for each license issued under this section shall be as required under RSA 178:29.

Amend RSA 178:29, III(c) as inserted by section 13 of the bill by replacing it with the following:

(c) Wholesale distributor license, \$2,500.

Amend RSA 178:29, V(d) as inserted by section 13 of the bill by replacing it with the following:

(d)(1) Wine and liquor representative with 4 or fewer salespersons, \$500.

(2) Wine and liquor representative with 5 or more salespersons, \$1,000.

Amend RSA 179:27-a, I as inserted by section 26 of the bill by replacing it with the following:

I. Notwithstanding any other provision of law, any ~~[on-sale licensee, which maintains a license for a restaurant, as defined by RSA 175:1, XXXIII or LIX, where full course meals are regularly served in conjunction with such]~~ **food service business holding an on-premises** license~~[-]~~ may allow any person who has purchased a full course meal and purchased and partially consumed a bottle of table wine with said meal, to remove such partially consumed bottle from the premises upon departure, provided that the person is not in a state of intoxication as defined in RSA 507-F:1, IV and such bottle of table wine is removed and transported in a manner consistent with paragraph II.

Amend RSA 179:54, I as inserted by section 37 of the bill by replacing it with the following:

I. All new beverage installations on ~~[on-sale]~~ **on-premises** licensees' premises, except in ~~[the part of premises of licensees operating as a full-service restaurant]~~ **food service businesses holding on-premises licenses**, shall have their taps in view of the public.

Amend RSA 180:1, IV as inserted by section 38 of the bill by replacing it with the following:

IV. ~~["Goodwill,"]~~ **"Good will,"** unless otherwise agreed, means earnings before taxes resulting from the wholesale distributor's sale of the beverage manufacturer's~~[-]~~ **or** beverage vendor's~~[-, or beverage vendor importer's]~~ brand or brands of beverages averaged over the wholesale distributor's last 3 fiscal years, or averaged over the wholesale distributor's recent fiscal years in which the wholesaler has had such earnings if fewer than 3 fiscal years.

Amend RSA 180:5 as inserted by section 46 of the bill by deleting paragraph III.

2003-0654h

Amendment to HB 654-FN

Proposed by the Committee on Criminal Justice and Public Safety - C

Amend RSA 634:2, IX as inserted by section 1 of the bill by replacing it with the following:

IX. Any person who is found guilty of criminal mischief under this section because such person is a tenant, or a guest of such tenant, in a rental dwelling who has destroyed, disconnected, or otherwise rendered inoperable any smoke detector in the rental dwelling, or who has attempted the same in a rental dwelling, shall be guilty of a misdemeanor.

AMENDED ANALYSIS

This bill makes a tenant or a guest of such tenant criminally liable for destroying, disconnecting, or rendering inoperable a smoke detector in a rental dwelling and provides that the tenant or guest of such tenant shall be guilty of a misdemeanor.

2003-0655h

Amendment to HB 659-FN

Proposed by the Committee on Criminal Justice and Public Safety - C

Amend the bill by replacing section 1 with the following:

▢ Attendance of Witnesses; Penalty. Amend RSA 516:7 to read as follows:

516:7 Penalty. Every court, justice, and notary, before whom a person has been summoned to appear and testify or to give a deposition, may bring the person neglecting or refusing to appear or to testify or to give ~~[his]~~ **a** deposition, by attachment,

before them, and if, on examination, ~~he~~ **such person** has no reasonable excuse, ~~may find him~~ **such person shall be** guilty of a violation, and may ~~order him~~ **be ordered** to pay costs.

AMENDED ANALYSIS

This bill provides that a person who fails to obey a subpoena or summons shall be guilty of a violation and may be ordered to pay costs.

2003-0870h

Amendment to HB 670-FN

Proposed by the Committee on Executive Departments and Administration - C

Amend the bill by replacing all after section 1 with the following:

2 New Subdivision; Procedure for Release of Personal Information for Research Purposes. Amend RSA 91-A by inserting after section 9 the following new subdivision:

Procedure for Release of Personal Information for Research Purposes

91-A:10 Release of Statistical Tables and Limited Data Sets for Research.

I. In this subdivision:

- (a) "Agency" means each state board, commission, department, institution, officer or other state official or group.
- (b) "Agency head" means the head of any governmental agency which is responsible for the collection and use of any data on persons or summary data.
- (c) "Cell size" means the count of individuals that share a set of characteristics contained in a statistical table.
- (d) "Data set" means a collection of personal information on one or more individuals, whether in electronic or manual files.
- (e) "Direct identifiers" means:
 - (1) Names.
 - (2) Postal address information other than town or city, state, and zip code.
 - (3) Telephone and fax numbers.
 - (4) Electronic mail addresses.
 - (5) Social security numbers.
 - (6) Certificate and license numbers.
 - (7) Vehicle identifiers and serial numbers, including license plate numbers.
 - (8) Personal Internet IP addresses and URLs.
 - (9) Biometric identifiers, including finger and voice prints.
 - (10) Personal photographic images.
- (f) "Individual" means a human being, alive or dead, who is the subject of personal information and includes the individual's legal or other authorized representative.
- (g) "Limited data set" means a data set from which all direct identifiers have been removed or blanked.
- (h) "Personal information" means information relating to an individual that is reported to the state or is derived from any interaction between the state and an individual and which:
 - (1) Contains direct identifiers.
 - (2) Is under the control of the state.
- (i) "Provided by law" means use and disclosure as permitted or required by New Hampshire state law governing programs or activities undertaken by the state or its agencies, or required by federal law.
- (j) "Public record" means records available to any person without restriction.
- (k) "State" means the state of New Hampshire, its agencies or instrumentalities.
- (l) "Statistical table" means single or multi-variate counts based on the personal information contained in a data set and which does not include any direct identifiers.

II. Except as otherwise provided by law, upon request an agency shall release limited data sets and statistical tables of data contained in agency files to requestors for the purposes of research under the following conditions:

- (a) The requestor submits a written application that contains:
 - (1) The following information about the principal investigator in charge of the research:
 - (A) name, address, and phone number;
 - (B) organizational affiliation;
 - (C) professional qualification; and
 - (D) name and phone number of principal investigator's contact person, if any.
 - (2) The names and qualifications of additional research staff, if any, who will have access to the data.
 - (3) A research protocol which shall contain:
 - (A) a summary of background, purposes, and origin of the research;
 - (B) a statement of the general problem or issue to be addressed by the research;
 - (C) the research design and methodology including either the topics of exploratory research or the specific

research hypotheses to be tested;

(D) the procedures that will be followed to maintain the confidentiality of any data or copies of records provided to the investigator; and

(E) the intended research completion date.

(4) The following information about the data or statistical tables being requested:

(A) general types of information;

(B) time period of the data or statistical tables;

(C) specific data items or fields of information required, if applicable;

(D) medium in which the data or statistical tables are to be supplied; and

(E) any special format or layout of data requested by the principal investigator.

(b) The requestor signs a "Data Use Agreement" signed by the principal investigator that contains the following:

(1) Agreement not to use or further disclose the information to any person or organization other than as described in the application and as permitted by the Data Use Agreement without the written consent of the agency.

(2) Agreement not to use or further disclose the information as otherwise required by law.

(3) Agreement not to seek to ascertain the identity of individuals revealed in the limited data set and/or statistical tables.

(4) Agreement not to publish or make public the content of cells in statistical tables in which the cell size is more than 0 and less than 5 unless:

(A) otherwise provided by law; or

(B) the information is a public record.

(5) Agreement to report to the agency any use or disclosure of the information contrary to the agreement of which the principal investigator becomes aware.

(6) A date on which the data set and/or statistical tables will be returned to the agency and/or all copies in the possession of the requestor will be destroyed.

III. The agency head shall release limited data sets and statistical tables and sign the Data Use Agreement on behalf of the state when:

(a) The application submitted is complete.

(b) Adequate measures to ensure the confidentiality of any person are documented.

(c) The investigator and research staff are qualified as indicated by:

(1) Documentation of training and previous research, including prior publications, and

(2) Affiliation with a university, private research organization, medical center, state agency, or other institution

which will provide sufficient research resources.

(d) There is no other state law, federal law, or federal regulation prohibiting release of the requested information.

IV. Within 10 days of a receipt of written application, the agency head, or designee, shall respond to the request.

Whenever the agency head denies release of requested information, the agency head shall send the requestor a letter identifying the specific criteria which are the basis of the denial. Should release be denied due to other law, the letter shall identify the specific state law, federal law, or federal regulation prohibiting the release. Otherwise the agency head shall provide the requested data or set a date on which the data shall be provided.

V. Any person violating any provision of a signed data use agreement shall be guilty of a violation.

VI. Nothing in this section shall exempt any requestor from paying fees otherwise established by law for obtaining copies of limited data sets or statistical tables. Such fees shall be based on the cost of providing the copy in the format requested. The agency head shall provide the requestor with a written description of the basis for the fee; provided, that the fee and the basis for the fee shall be adopted by rule, pursuant to RSA 541-A.

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

2003-0718h

Amendment to HB 671-FN-A

Proposed by the Committee on Executive Departments and Administration - R

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

1 New Chapter; Judicial Retirement Plan. Amend RSA by inserting after chapter 100-B the following new chapter:

CHAPTER 100-C

JUDICIAL RETIREMENT PLAN

100-C:1 Definitions. The following words and phrases as used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

I. "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member.

II. "Actuarial equivalent" means a benefit of equal value when computed at regular interest upon the basis of the mortality tables last adopted by the board of trustees.

III. "Actuary" means:

(a) A member of the American Academy of Actuaries; or

(b) An individual who has demonstrated to the satisfaction of the board of trustees that such individual has the educational background necessary for the practice of actuarial science and has had at least 7 years of actuarial experience.

IV. "Beneficiary" means any person receiving a retirement allowance or other benefit as provided in this chapter.

V. "Board of trustees" or "board" means the board provided for in RSA 100-C:11.

VI. "Creditable service" means prior service plus membership service, as provided in RSA 100-C:4.

VII. "Earnable compensation" means a member's annual salary.

VIII. "Judicial retirement plan" or "plan" means the New Hampshire judicial retirement plan as defined in RSA 100-C:2.

IX. "Member" means any full-time supreme court, superior court, district court, or probate court judge.

X. "Member annuity" means annual payments for life derived from the accumulated contributions of the member.

XI. "Membership service" means service rendered while a member of the judicial retirement plan.

XII. "Predecessor system" means any state retirement plans or systems for judges in effect prior to the date of implementation of the judicial retirement plan by this chapter.

XIII. "Regular interest" means interest at such rate or rates compounded annually as may be set from time to time by the board of trustees.

XIV. "Retirement" means withdrawal from active service with a retirement allowance granted under the provisions of this chapter.

XV. "Retirement allowance" means the sum of the member annuity and the state annuity. All retirement allowances shall be payable in equal monthly installments which shall cease with the last monthly payment prior to death, unless otherwise specifically provided for in this chapter; provided, however, that if the retirement allowance is less than \$10 per month, it may be paid, at the discretion of the board of trustees, in quarterly or semiannual installments due at the midpoint of such period, or in a lump sum of equivalent actuarial value.

XVI. "Retirement system" means the New Hampshire retirement system as defined in RSA 100-A:2.

XVII. "Service" means service as a supreme court, superior court, full-time district court, or full-time probate court justice.

XVIII. "State" means the state of New Hampshire.

XIX. "State annuity" means annual payments for life derived from contributions by the state.

XX. "Terminal funding" shall mean providing the full present value of the total liability for benefit improvement. Unless otherwise specified, the source of terminal funding shall be the special account established under RSA 100-A:13, III(g).

100-C:2 Establishment of Judicial Retirement Plan.

I. The judicial retirement plan is hereby established. It shall be known as the New Hampshire judicial retirement plan, and by such name all of its business shall be transacted, all of its funds invested, and all of its cash, securities and other property held in trust for the purpose for which received. It is intended for all time to meet the requirements of a qualified pension trust within the meaning of section 401(a), and to qualify as a governmental plan within the meaning of section 414(d) of the United States Internal Revenue Code of 1986, as amended. It is a defined benefit plan providing disability, death, and retirement protection to members and their families.

II. The board of trustees shall have the exclusive authority and full power to invest and manage those assets of the judicial retirement plan and may cause any stock or other securities to be registered and held in the name of a nominee without mention of the judicial retirement plan's ownership, provided that no nominee shall have possession of or access to the stock or other securities unless the nominee shall be an officer of a corporate custodian of such stock or other securities, in which case the custodian shall maintain on its books accurate and current records of the New Hampshire judicial retirement plan's interest in such stock or other securities and the custodian shall be strictly liable for all acts or omissions of the nominee in connection with such stock or other securities and the nominee shall be bonded by the custodian.

100-C:3 Membership. Membership in the judicial retirement plan shall be mandatory for any full-time supreme court, superior court, district court, or probate court judge.

100-C:4 Creditable Service.

I. Creditable service at retirement on which the retirement allowance of a member shall be based shall consist only of that membership service since such judge became a member of the judicial retirement plan plus that service credited a member for retirement allowance, if any, under the provisions of former RSA 490:2; RSA 491:2, RSA 502-A:6-a, or RSA 547:2-a in effect on the date of implementation of this chapter.

II. The board shall fix and determine by appropriate rules how much service in any year is equivalent to one year of service, but in no case shall it allow credit for a period of absence without pay of more than a month's duration, nor shall more than one year of service be creditable for all service in a calendar year. Service rendered for the full normal working time in any year shall be equivalent to one year's service.

100-C:5 Service Retirement Benefits.

I. Any member who has at least 10 years of creditable service and is at least 55 years of age, or who has at least 7 years of creditable service and is 70 years of age may retire on a service retirement allowance or a reduced service retirement

allowance, upon written application to the board setting forth on what date, not less than 30 days nor more than 90 days subsequent to the filing of the application, the member desires to be retired. During such period of notification, the member may have separated from service.

II. A member who is at least 65 years of age with 10 years of creditable service may retire on a service retirement allowance equal to 75 percent of the member's final year's salary.

III. A member who is 70 years of age with 7 years of creditable service may retire on a service retirement allowance equal to 45 percent of the member's final year's salary. A member who is 70 years of age shall be granted an additional 10 percent over the 45 percent level for each year of creditable service the member has over 7 years.

IV. A member who is at least 55 years of age with at least 10 years of service may retire on a service retirement allowance equal to 20 percent of the member's final year's salary. A member who is at least 56 years of age with at least 11 years of service may retire on a service retirement allowance equal to 30 percent of the member's final year's salary. A member who is at least 57 years of age with at least 12 years of service may retire on a service retirement allowance equal to 40 percent of the member's final year's salary. A member who is at least 58 years of age with at least 13 years of service may retire on a service retirement allowance equal to 50 percent of the member's final year's salary. A member who is at least 59 years of age with at least 14 years of service may retire on a service retirement allowance equal to 60 percent of the member's final year's salary. A member who is at least 60 years of age with at least 15 years of service may retire on a service retirement allowance equal to 70 percent of the member's final year's salary.

V. Under no circumstance shall any service retirement allowance pursuant to this section exceed 75 percent of the member's final year's salary.

VI. Any member attaining eligibility for 75 percent of the member's final year's salary shall not be required to make employee contributions to the plan pursuant to RSA 100-C:14.

100-C:6 Disability Retirement Benefits. Regardless of a member's length of service, any member who becomes permanently and totally disabled may apply to the board of trustees to retire on a disability retirement allowance not less than 30 nor more than 90 days subsequent to the filing of such application. Such application shall be granted provided that a physician or physicians designated by the board of trustees, after a medical examination of such member, certifies that the member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent, and that such person should be retired. A member's disability retirement allowance shall be equal to 70 percent of the member's final year's salary.

100-C:7 Death Benefits.

I. If a member dies in office, his or her surviving spouse, as long as he or she remains unmarried, or, if the member leaves no spouse, or at the surviving spouse's death or remarriage, then the member's child or children under the age of 18 years and until they respectively reach their eighteenth birthday, shall annually be entitled to 1/2 of the member's final year's salary. In case there is more than one child, the compensation shall be divided equally among them.

II. If such member dies having terminated service as such and having become entitled to benefits pursuant to RSA 100-C:5 or RSA 100-C:6, his or her surviving spouse, as long as he or she remains unmarried, or, if the member leaves no spouse, or at the surviving spouse's death or remarriage, then the member's child or children under the age of 18 years and until they respectively reach their eighteenth birthday, shall annually be entitled to 1/2 the member's final year's salary. In case there is more than one child, the compensation shall be divided equally among them.

100-C:8 Return of Members' Contributions.

I. If a member ceases to be a judge for reasons other than retirement or death, the amount of such member's accumulated contributions shall be paid to such member within 3 months after such member's written request therefor, provided that the member may not file a written request for such payment until at least 30 days from the date the member ceases to be a judge. Upon the refund of such contributions all rights of the member, any beneficiary, and any survivor of the member under this chapter shall terminate.

II. Upon the death of a member in service who does not have a surviving spouse or dependent children, the amount of the member's accumulated contributions shall be paid to any beneficiary or beneficiaries nominated by the member, if living, or otherwise to the member's estate.

III. Upon the death of a member, who does not have a surviving spouse or dependent children, after retirement allowance payments have commenced, any excess amount of the member's accumulated contributions at retirement over the sum of the retirement allowance payments received shall be paid in one sum to the beneficiary or beneficiaries nominated by the member, if living, otherwise to the member's estate.

IV. The return of a member's contributions shall include accrued interest at such rates as the board of trustees may from time to time determine in its discretion.

100-C:9 Designation of Beneficiaries; Effect. When more than one person is designated by the member as beneficiary under this chapter, the member may provide the portion of the whole sum which each designee shall receive and may also provide that on the death of one of multiple designees the share of that designee shall automatically be added to the share of another or other designees or be payable to the estate of the member.

100-C:10 Maximum Benefit Limitations. Notwithstanding any other provisions of this chapter, the maximum benefit payable to any retired member or beneficiary of the New Hampshire judicial retirement plan shall be limited to such extent as may be necessary to conform to the requirements of sections 401(a)(9) and 415 of the United States Internal Revenue Code of 1986 for a qualified retirement plan.

100-C:11 Administration and Delegation.

I. The judicial retirement plan shall be administered by a board of trustees, which shall be separate from the board of trustees of the New Hampshire retirement system. The board of the judicial retirement plan shall have the exclusive authority and full power to administer and to invest and manage those assets of the judicial retirement plan.

II. The board of trustees of the judicial retirement plan shall consist of 7 members. The governor and council shall appoint 2 trustees, one of whom the governor shall designate to serve as chairman of the board of trustees, and who shall be qualified persons with business experience and not members of the judicial retirement plan, and who shall serve for a term of 3 years and until such trustee's successor is appointed and qualified, except that the original appointment of one of the trustees shall be for a term of one year. The chief justice of the state supreme court, with the advice and consent of the chief justice of the superior court and the administrative justices of the district and probate courts, shall appoint 3 trustees, who shall be active members of the judicial retirement plan, and who shall serve for a term of 3 years and until such trustee's successor is appointed and qualified, except that the original appointment of one of the trustees shall be for a term of one year, and the original appointment of another of the trustees shall be for a term of 2 years. One member of the state senate shall be appointed biennially by the senate president as a trustee of the board, and one member of the house of representatives shall be appointed biennially by the speaker of the house as a trustee of the board.

III.(a) In addition to those other powers conferred herein, the board of trustees shall have exclusive authority and full power, consistent with the board's duties under this chapter, to:

(1) Establish an administrative budget sufficient to exercise the board's powers and to perform the board's duties and, as appropriate and reasonable, draw upon assets of the plan to fund the budget;

(2) Obtain by employment or contract the services necessary to exercise the board's powers and perform the board's duties, including actuarial, auditing, custodial, investment, and legal services; and

(3) Procure and dispose of goods and property necessary to exercise the board's powers and perform the board's duties.

(b) In exercising its authority under this section, the board shall be subject to the fiduciary duties of this chapter, but not to civil service, personnel, procurement, or similar general laws relating to the subjects of subparagraph III(a).

IV. The members of the board of trustees shall serve without compensation but shall be reimbursed for actual and necessary traveling and other expenses and disbursements incurred or made by them in the discharge of their official duties.

V. Each trustee shall be entitled to one vote in the board of trustees. Five trustees shall constitute a quorum for the transaction of any business. Four trustees voting shall be necessary for any resolution or action by the board at any meeting.

VI.(a) The board may engage such administrative services as may be required to transact the business of the judicial retirement plan. The compensation for such services, and all other necessary expenses of the board shall be paid at such rates and in such amounts as the board shall approve. The New Hampshire retirement system may be engaged to provide such administrative services to the judicial retirement plan on such terms as the board of trustees of each plan may both agree.

(b) The board may delegate functions, including the administration of the plan, that a prudent trustee acting in a like capacity and familiar with such matters could properly delegate under the circumstances.

(c) The board shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent, including administrator of the judicial retirement plan;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of this chapter;

and

(3) Periodically reviewing the agent's performance and compliance with the terms of the delegation.

(d) In performing a delegated function, an agent owes a duty to the judicial retirement plan and to its members and beneficiaries to comply with the terms of the delegation and, if a fiduciary, to comply with the duties imposed by this chapter.

(e) A trustee of the board who complies with subparagraphs (b) and (c) shall not be liable to the plan or to its members or beneficiaries for the decisions or actions of the agent to whom the function was properly delegated.

(f) By accepting the delegation of a function from the board, an agent submits to the jurisdiction of the courts of this state.

(g) The board may limit the authority of an agent to further delegate functions under this section.

VII. The board shall keep a record of all of its proceedings. In furtherance of public disclosure:

(a) The board by the plan administrator shall prepare and disseminate:

(1) A summary plan description of the judicial retirement plan;

(2) A summary description of any material modification in the terms of the plan and any material change in the information required to be contained in the summary plan description, to the extent the modification or change has not been integrated into an updated summary plan description;

- (3) An annual disclosure of the plan's financial and actuarial status; and
- (4) An annual report.

(b) The board shall make available for public examination in the principal administrative offices of the plan or in such other places as the board may designate:

- (1) The governing law of the judicial retirement plan;
- (2) The most recent summary plan description;
- (3) Summary descriptions of modifications or changes described in subparagraph (a)(2) that have been provided to members and beneficiaries but have not yet been integrated into the summary plan description;
- (4) The most recent annual disclosure of financial and actuarial status; and
- (5) The most recent annual report.

(c) Upon written request by a plan member, beneficiary, or member of the public, the board by its administrator shall provide a copy of any publication described in subparagraph (b). Except as otherwise provided herein, the board may charge a reasonable fee to cover the cost of providing copies. The board by its administrator shall provide the copies within 30 days after the request or, if a fee is charged, within 30 days after receiving payment.

VIII. The board of trustees shall direct the administrator of the plan to make the following disclosure to members and beneficiaries of the judicial retirement plan:

(a) The administrator shall furnish to each member and to each beneficiary who is receiving benefits under the plan:

- (1) A copy of the most recent summary plan description, along with any summary descriptions of modifications or changes described in paragraph VII(a)(2); within 30 days after a person becomes a member or, in the case of a beneficiary, within 30 days after a person first receives benefits;
- (2) The summary description of any modifications or changes described in paragraph VII(a)(2), within 7 months after the end of the fiscal year of the plan in which a modification or change has been made;
- (3) A copy of an updated summary plan description that integrates all modifications and changes at intervals not exceeding 5 years; and
- (4) The annual report within 7 months after the end of each fiscal year of the plan.

(b) The board by its administrator shall provide to a member or beneficiary a statement containing information that would permit the member or beneficiary to reasonably estimate projected benefits to the extent the information is regularly maintained by the plan. The information may be provided periodically with the annual report or upon written request of the member or beneficiary. The information need not be provided to a member or beneficiary who is currently receiving benefits.

(c) A member who is not currently receiving benefits is entitled without charge to one statement under subparagraph (b) during any fiscal year of the plan. The administrator may charge a reasonable fee to cover the cost of providing additional statements. The administrator shall provide the statements within 30 days of receipt of the member or beneficiary's written request or, if a fee is charged, within 30 days after receiving payment.

(d) A summary plan description and summary description of modifications or changes provided herein must be written in a manner calculated to be understood by the average member and be accurate and sufficiently comprehensive reasonably to inform the members and beneficiaries of their rights and obligations under the plan and shall contain:

- (1) The name of the plan and type of administration;
- (2) The name and business address of the administrator appointed by the board;
- (3) The name and business address of each agent for service of process;
- (4) Citations to the governing law of the judicial retirement plan;
- (5) A description of the plan's requirements concerning eligibility for participation and benefits;
- (6) A description of the plan's provisions providing for nonforfeitable benefits;
- (7) A description of circumstances that may result in disqualification, ineligibility, or denial or loss of benefits;
- (8) A description of the benefits provided by the plan, including the manner of calculating benefits and any benefits provided for spouses and survivors;
- (9) The source of financing of the program;
- (10) The identity of any organization through which benefits are provided;
- (11) The date the fiscal year of the plan ends;
- (12) The procedures to claim benefits under the program and the administrative procedures available under the program for the redress of claims that are denied in whole or in part; and
- (13) Notice of the availability of additional information provided herein.

(e) The board of trustees shall file with the secretary of state a copy of:

- (1) The summary plan and of updated summary plan descriptions at the same time such are first furnished to plan members or beneficiaries pursuant to subparagraph (a)(3);
- (2) Any summary description of modifications or changes within 7 months after the end of the fiscal year in which a modification or change has been made; and
- (3) Disclosures of the plan's financial and actuarial status and its annual report within 7 months after the end of

each fiscal year of the plan.

IX. The board shall make disclosures of the financial and actuarial status of the judicial retirement plan as provided herein.

(a) As used in this paragraph, “qualified public accountant” means:

(1) An auditing agency of this state which has no direct relationship with the functions or activities of the judicial retirement plan or its fiduciaries other than:

(A) Functions relating to this chapter, or

(B) A person who is an independent public accountant, certified or licensed by a regulatory authority of a state.

(b) As used in this paragraph, “related person” of an individual means:

(1) The individual’s spouse or a parent or sibling of the spouse;

(2) The individual’s descendant, sibling, or parent, or the spouse of the individual’s descendant, sibling, or parent;

(3) Another individual residing in the same household as the individual;

(4) A trust or estate in which an individual described in above subparagraphs (1), (2), or (3) has a substantial interest;

(5) A trust or estate for which the individual has fiduciary responsibilities; or

(6) An incompetent, ward, or minor for whom the individual has fiduciary responsibilities.

(c) The annual disclosure of the financial and actuarial status of the plan shall contain:

(1) The name of the plan;

(2) The name and principal business office of the administrator appointed by the board of trustees;

(3) The name and business address of each member of the board of trustees and a brief description of how the trustee was selected;

(4) The name and business address of the plan’s agent for service of process;

(5) The name and business address of each fiduciary;

(6) The current statement of investment objectives and policies of the plan;

(7) Financial statements and notes to the financial statements in conformity with generally accepted accounting principles;

(8) An opinion on the financial statements by a qualified public accountant in conformity with generally accepted auditing standards;

(9) Actuarial schedules and notes to the actuarial schedules in conformity with generally accepted actuarial principles and practices for measuring pension obligations;

(10) An opinion by the actuary that the actuarial schedules are complete and accurate to the best of the actuary’s knowledge, that each assumption and method used in preparing the schedules is reasonable, that the assumptions and methods in the aggregate are reasonable, and that the assumptions and methods in combination offer the actuary’s best estimate of anticipated experience;

(11) A description of any material interest held by any trustee, administrator, or employee who is a fiduciary with respect to the investment and management of assets of the plan, and, if the fiduciary is an individual, by a related person of the beneficiary, in any material transaction with the plan within the last 3 years or proposed to be effected;

(12) A schedule of the rates of return, net of total investment expense, on assets of the plan overall and on assets aggregated by category over the most recent one-year, 3-year, 5-year, and 10-year periods, to the extent available, and the rates of return stated against appropriate benchmarks for assets of the system overall and for each category over each period; and

(13) A schedule of the sum of total investment expense and total general administrative expense paid by the plan for the fiscal year expressed as a percentage of the fair value of assets of the system on the last day of the fiscal year, and an equivalent percentage for the preceding 5 fiscal years.

X. The annual report for the plan shall contain:

(a) The name and business address of each member of the board of trustees;

(b) The financial statements, but not the notes, required by paragraph IX(c)(7);

(c) The actuarial schedules, but not the notes, required by paragraph IX(c)(9);

(d) The schedules described in paragraphs IX(c)(12) and (13);

(e) A brief description of the above statements and schedules;

(f) Other material to summarize fairly and accurately the annual disclosure of the plan’s financial and actuarial status; and

(g) A general notice of the availability of the public, member and beneficiary information provided herein.

100-C:12 Fiduciary Duties of Board of Trustee in Investing and Managing Assets of Judicial Retirement Plan.

I. The members of the board of trustees shall be the trustees of all funds of the judicial retirement plan created under this chapter and shall have full power to invest, and reinvest such funds, subject to all the terms, conditions, limitations, and restrictions herein. Each member of the board of trustees or other fiduciary shall discharge duties with respect to the plan:

- (a) Solely in the interest of its members and beneficiaries;
- (b) For the exclusive purpose of providing benefits to members and beneficiaries and paying reasonable expenses of administering the plan;
- (c) With the care, skill, and caution under the circumstances then prevailing which a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose;
- (d) Impartially, taking into account any differing interests of members and beneficiaries;
- (e) Incurring only costs that are appropriate and reasonable; and
- (f) In accordance with a good-faith interpretation of the law governing the judicial retirement plan.

II. In investing and managing assets of the judicial retirement plan, the board of trustees:

- (a) Shall consider among other circumstances:
 - (1) General economic conditions;
 - (2) The possible effect of inflation or deflation;
 - (3) The expected total return from income and the appreciation of capital;
 - (4) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and
 - (5) The adequacy of funding for the plan based on reasonable actuarial factors;
- (b) Shall diversify the investments of the plan unless the board reasonably determines that, because of special circumstances, it is clearly prudent not to do so;
- (c) Shall make a reasonable effort to verify facts relevant to the investment and management of assets of the plan; and
- (d) May invest in any kind of property or type of investment consistent with the fiduciary provisions of this chapter.

III. The board may return a member or state contribution, or make alternative arrangements for reimbursement, if the board determines the contribution was made because of a mistake of fact or law.

IV. In evaluating the performance of a trustee or other fiduciary of the plan, compliance by the trustee or other fiduciary with those duties and liabilities under this chapter shall be determined in light of the facts and circumstances existing at the time of the trustee or fiduciary's decision or action and not by hindsight; and the board's investment and management decisions shall be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the plan.

V. The board of trustees may insure against liability or losses occurring because of a breach of duty hereunder if the insurance is purchased or provided either by the trustee or fiduciary personally or, on the trustee or fiduciary's behalf, by the state, the plan, the employer whose members participate in the plan, or the trustee or fiduciary's employer.

100-C:13 Method of Financing.

I. All of the assets of the judicial retirement plan shall be credited, according to the purpose for which they are held, between 2 funds, namely, the member annuity savings fund and the state annuity accumulation fund. In making the determinations required under this section for financing the judicial retirement plan, the board shall determine and use an appropriate actuarial funding methodology. The board shall direct the plan's actuary to prepare biennial valuations of the system's assets and liabilities commencing with a valuation prepared as of the date of implementation of this chapter. Such biennial valuation shall be the sole basis for determining the annual contribution requirements of the judicial retirement plan until the next following biennial valuation.

II. Member Annuity Savings Fund.

(a) The member annuity savings fund shall be a fund in which shall be accumulated the contributions deducted from the compensation of members to provide for their member annuities. The board of trustees shall certify to the proper authority responsible for making up the payroll of the judicial branch, and such authority shall cause to be deducted from the compensation of each member, on each and every payroll for each and every payroll period, the percentage of earnable compensation applicable to such member. In determining the amount earnable by a member in a payroll period, the board may consider the rate of compensation payable to such member on the first day of a payroll period as continuing throughout the payroll period and it may omit deduction from compensation for any period less than a full payroll period if such person was not a member on the first day of the payroll period, and to facilitate the making of deductions it may modify the deduction required of any member by such an amount as shall not exceed 1/10 of one percent of the annual earnable compensation upon the basis of which such deduction is made. The amounts deducted shall be reported to the board. Each of such amounts, when deducted, shall be paid to the judicial retirement plan at such times as may be designated by the board and credited to the individual account, in the member annuity savings fund, of the member from whose compensation the deduction was made.

(b) Every member shall be deemed to consent and agree to the deductions provided in this section as a condition of membership.

(c) The accumulated contributions of a member withdrawn by such member, or paid to such member's estate or to such member's designated beneficiary in event of the member's death in service, shall be paid from the member annuity savings fund. Upon the retirement of a member, such member's accumulated contributions shall be transferred from the member annuity savings fund to the state annuity accumulation fund.

III. State Annuity Accumulation Fund.

(a) The state annuity accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all state annuities payable from contributions made by the state, any amounts transferred to the fund from a similar fund under one or more of the predecessor systems, and amounts transferred from the member annuity savings fund and from which shall be paid all benefits payable under the plan other than those payable from the member annuity savings fund.

(b) The contributions of the state for benefits under the judicial retirement plan shall consist of a percentage of the earnable compensation of its members to be known as the "normal contribution," and an additional amount to be known as the "accrued liability contribution." The rate percent of such normal contribution in each instance shall be fixed on the basis of the liabilities of the plan with respect to its members.

(c) Commencing with the valuation as required in paragraph I, the actuary in determining the percentage normal contribution rate may include a projection of the membership, earnable compensation, and assets of the judicial retirement plan from the valuation date to the beginning of the year to which such percentage normal contribution rate is applicable; or the actuary may base such determination on the anticipated level of contribution as is necessary to maintain such reasonable actuarial funded ratio as may be directed by the board of trustees, and for purposes of this determination the actuarial funded ratio shall be the ratio of the fair market value of the judicial retirement plan's assets to the present value of accumulated benefits under the judicial retirement plan for all members, but without regard to any future compensation increase.

(d) Immediately following the actuarial valuation prepared under paragraph I, the board shall have an actuary determine the amount of the unfunded accrued liability as the amount of the total liabilities of the state annuity accumulation fund which is not dischargeable by the total of the funds in hand to the credit of the state annuity accumulation fund, and the normal contributions to be made on account of the members during the remainder of their active service. The amount so determined shall be known as the "unfunded accrued liability". On the basis of the unfunded accrued liability, the board shall have an actuary determine the level annual contribution required to discharge such amount over a period of 20 years from the date of implementation of this chapter.

(e) The total amount payable to the state annuity accumulation fund in each year shall not be less than the normal contribution rate multiplied by the total compensation earnable by all members for such year, plus the amount of the accrued liability contribution necessary to liquidate the unfunded accrued liability as determined by the actuary under subparagraph (d) above.

(f) All interest and dividends earned on the funds of the judicial retirement plan shall be credited to the state annuity accumulation fund. The board shall allow interest at such rate or rates as it shall determine from time to time on the individual accounts of members in the member annuity savings fund and shall annually transfer such interest amount from the state annuity accumulation fund. Such interest shall be compounded monthly or more frequently as the board of trustees may determine and shall be allowed to the date of processing upon termination of active service for any reason including withdrawal, retirement, or death.

(g) There shall be a special account for additional benefits held by the board of trustees. Beginning with the first state fiscal year ending after the date of implementation of the judicial retirement plan, all of the earnings of the judicial retirement plan which are in excess of 9.5 percent shall be allocated to the special account. None of the assets held in the special account shall be used in the actuarial determination of the rate percent of normal contribution as set forth in subparagraphs (b) and (c). The actuarial cost of all legislation enacted during each fiscal year and calling for funding from the special account shall be withdrawn from the special account, as of June 30 of each year, after funds are credited to the special account as provided in this subparagraph. The special account shall be used only to fund or partially fund additional benefits as follows: first, to provide supplemental allowances, or COLAs, pursuant to RSA 100-C:17, and, second, to the extent that funds may be available in the special account, to provide additional benefits to retired members and beneficiaries of the judicial retirement plan.

IV. State Contributions. On or before the first day of October preceding each regular session of the state legislature, the board of trustees shall certify to the commissioner of administrative services the amounts which will become due and payable by the state during the biennium next following to the judicial retirement plan and it shall be the duty of the commissioner of administrative services in preparing the executive budget for each ensuing biennium to include in the budget the amounts so certified which amounts shall be appropriated by the legislature. The amounts so certified under this paragraph shall include the unfunded accrued liability of the judicial retirement plan.

100-C:14 Member Contributions. All member contributions to the judicial retirement plan shall be payable only with respect to membership service, and picked up by the state by means of payroll deduction and shall be treated as employer contributions for purposes of Section 414(h) of the Internal Revenue Code of 1986, as amended. The member contribution rate shall be fixed biennially by the board of trustees and shall be calculated so that the rate percent of earnable compensation deducted is one-half of the annual contribution requirements of the judicial retirement plan as determined in RSA 100-C:13, I. In no year shall the member contribution rate exceed 10 percent of a member's earnable compensation. Once a member attains eligibility for a service retirement allowance equal to 75 percent of the member's final year's salary pursuant to RSA 100-C:5, said member shall not be required to have deductions made from earnable compensation for purposes of this section provided

that the state contributions for such member under RSA 100-C:13, IV shall continue until the member’s retirement.

100-C:15 Exemption From Taxation and Execution.

I. The right of a person to any benefit or to any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the funds created by this chapter, shall be exempted from any state, county, or municipal tax in the state; shall not be subject to execution, trustee process, attachment or any other process whatsoever, legal or equitable; and shall be unassignable except as provided in paragraph II.

II. Notwithstanding any provision of law to the contrary, the right of a person to any benefit or to any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the funds created by this chapter shall be subject to assignment, attachment, and execution to the same extent as such rights under private retirement systems.

100-C:16 Protection Against Fraud. Any person who knowingly makes any false statement or falsifies or permits to be falsified any record or records of the judicial retirement plan in any attempt to defraud the system as a result of such act, shall be guilty of a class B felony if a natural person, or guilty of a felony if any other person. Should any change or error in the records result in any member or beneficiary receiving from the plan more or less than such person would have been entitled to receive had the records been correct, the board of trustees shall have the power to correct such error, and to adjust as far as practicable the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

100-C:17 Supplemental Allowances.

I. On February 1 of each year, the fiscal committee of the general court may approve COLA’s upon certification from the board of the amount of the COLA which may be granted based on the funds available in the special account. The board shall direct an actuary to certify to the fiscal committee the funds available, and any other information required by the committee, including but not limited to any change in the Consumer Price Index-Urban for the year prior to the year in which the allowance is granted. Any such supplemental allowance when granted by the fiscal committee of the general court shall become a permanent addition to the beneficiary’s base retirement allowance, and shall be included in the monthly annuity paid to the retired member, or to the member’s beneficiary if the member is deceased and the beneficiary is receiving an allowance.

II.(a) The granting of any such supplemental allowance, or of any increase in supplemental allowances, shall be contingent on terminal funding of the total actuarial cost thereof at the time of granting. Such terminal funding shall be from the special account established under RSA 100-C:13, III(g).

(b) No supplemental allowance shall be granted or increased if such grant or increase would reduce the funds in the special account to an amount less than zero.

2 Probate Court Judges; Retirement Benefits Reference Removed. Amend RSA 547:2-a to read as follows:

547:2-a Full-Time Judges. A probate judge designated to be full-time pursuant to RSA 491-A:4, IV shall not be permitted to engage in the practice of law to any degree. Full-time probate judges shall receive the salary specified in RSA 491-A:1 ~~and shall be entitled to the same disability and retirement benefits as full-time justices of the district court~~. Full-time judges designated pursuant to RSA 491-A:4, IV shall assist the probate courts in the other counties whenever a probate judge in such other county is disqualified, disabled, or otherwise unable to sit.

3 Judicial Salaries Increased. Amend RSA 491-A:1 to read as follows:

491-A:1 Salaries Established.

The salaries for the positions set forth below shall be as follows:

Chief justice, supreme court	~~[\$116,807]~~ 128,488
Associate justices, supreme court	~~[\$113,266]~~ 124,593
Chief justice, superior court	~~[\$113,266]~~ 124,593
Associate justices, superior court	~~[\$106,187]~~ 116,806
District court justices prohibited from practice pursuant to RSA 502-A:21	~~[\$106,187]~~ 116,806
Probate judges prohibited from practice pursuant to RSA 547:2-a	~~[\$106,187]~~ 116,806

4 Retired Judges and Beneficiaries; Application of Salary Increase. Any judge, or the spouse or beneficiary of any such judge, who retired prior to the effective date of the repeals of RSA490:2, RSA 491:2, RSA 493-A:2, and RSA 502-A:6-a by section 6 of this act or the amendment to RSA 547:2-a by section 2 of this act, shall continue to receive the disability and retirement benefits to which the person is entitled, provided however that the amount of the salary increase for current judges provided in section 3 of this act, which amends RSA 491-A:1, shall not be included in the currently effective salary used for the calculation of the retired judge’s disability or retirement benefit. Any other judicial salary increases shall be used for such calculation.

5 Appropriation. The sum of \$250,000 is hereby appropriated for the fiscal year ending June 30, 2004 to the board of trustees of the judicial retirement system as established in this act. Such sum shall be nonlapsing and shall be used for legal, administrative, and other start-up costs of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

6 Repeal. The following are repealed:

I. RSA 490:2, relative to disability and retirement compensation for supreme court judges.

II. RSA 491:2, relative to disability and retirement compensation for superior court judges.

III. RSA 493-A:2, relative to compensation of judicial referees.

IV. RSA 502-A:6-a, relative to relative to disability and retirement compensation for district court judges.

7 Contingent Implementation of Judicial Retirement Plan. The provisions of section 1 of this act establishing RSA 100-C relating to contributions by members, retirement benefits, and operation of the judicial retirement plan and sections 2, 3, 4, and 6 of this act shall be implemented and made applicable beginning on the latter of July 1, 2004 or 180 days after the date that the board of trustees established in RSA 100-C certifies to the joint legislative fiscal committee of the judicial retirement plan's receipt of a favorable determination letter from the Internal Revenue Service as to the tax qualified status of the plan under section 401(a) of the Internal Revenue Code of 1986 as amended. Such date shall be the date of implementation of the judicial retirement plan. The provisions of RSA 100-C:11 for the appointment of the board and the administration of the duties and responsibilities of the board may begin on the effective date of this act.

8 Effective Date. This act shall take effect July 1, 2003.

AMENDED ANALYSIS

This bill establishes a contributory defined benefit judicial retirement plan and repeals statutory provisions currently determining retirement salaries and benefits of supreme court, superior court, district court, and probate court judges.

The bill also increases the salaries of judges upon the effective date of the contributory judicial retirement plan.

2003-0807h

Amendment to HB 674-FN

Proposed by the Committee on Children and Family Law - C

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

AN ACT relative to legal representation for indigent parties and notification requirements under the Child Protection Act.

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

1 Child Protection Act; Legal Representation for Indigent Parties. Amend RSA 169-C:10, II(a) to read as follows:

II.(a) In cases involving a neglected or abused child under this chapter, where the child's expressed interests conflict with the recommendation for dispositional orders of the guardian ad litem, the court may appoint an attorney to represent the interests of the child. In any case of neglect or abuse brought pursuant to this chapter, the court shall appoint an attorney to represent an indigent parent **or indigent stepparent residing in the home** alleged to have neglected or abused his or her child **or stepchild**. In addition, the court ~~may~~ **shall** appoint an attorney to represent an indigent parent not alleged to have neglected or abused his or her child if ~~[the parent is a household member and]~~ such independent legal representation is necessary to protect the parent's interests. The court shall not appoint an attorney to represent any other persons involved in a case brought under this chapter.

2 Child Abuse and Neglect Proceedings; Protective Custody; Notification of Non-custodial Parent. Amend RSA 169-C:6, II-V to read as follows:

II. If a police or juvenile probation and parole officer removes a child under paragraph I above, the officer:

(a) Shall inform the court forthwith whereupon continued protective custody pending a hearing may be ordered by the court;

(b) May take the child to a child protection services worker of the department; or

(c) May place the child in a foster home; if a child is placed directly in a foster home, the department shall be notified of the incident and where the child is placed within 24 hours, unless there is a physician involved and treating the child and the child is or will be taken to and admitted to a hospital; and

(d) Shall, when the child is removed from an individual other than a parent or a person legally responsible for the child, make every reasonable effort to inform ~~[the parent]~~ **both parents** or other ~~[person]~~ **persons** legally responsible for the child's care where the child has been taken.

III. Any police or juvenile probation and parole officer or other individual acting in good faith pursuant to this section, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of such removal or placement.

IV. The court shall hold a hearing on the matter within 24 hours of taking the child into protective custody, Sundays and holidays excluded. Notice shall be given to **both parents and** all parties designated by the petitioner or the court.

V. If a child is found by a child protection services worker of the department to be in imminent danger in such circumstances or surroundings and where immediate removal appears necessary to protect the child from such imminent danger, the department's child protection services worker shall contact a judge or clerk immediately for an order to remove the child. **Prior to any order authorizing foster placement, the child protective service worker shall inform the judge of efforts to locate any non-custodial parent or other relatives for temporary placement.**

3 Effective Date. This act shall take effect January 1, 2004.

AMENDED ANALYSIS

This bill requires the court to appoint an attorney for an indigent stepparent residing in the home alleged to have abused a stepchild in a child abuse or neglect case.

The bill also establishes new requirements for notice of protective custody hearings.
2003-0798h

Amendment to HB 676-FN

Proposed by the Committee on Resources, Recreation and Development - C

Amend RSA 482:79-b, V as inserted by section 2 of the bill by replacing it with the following:

V. The department shall reach a decision by September 30, following the public hearing, on whether or not it will change the current management practice or whether further evaluation is required before a final decision can be reached. If the department decides that further evaluation is required, then the department shall provide the basis for its decision and shall specify the scope of the evaluation to be performed, establish the time at which the final decision will be issued, and specify how the lake level is to be managed in the interim period

2003-0865h

Amendment to HB 680-FN

Proposed by the Committee on Commerce - C

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

AN ACT establishing a committee to study service contracts and repealing the law regarding legal services insurance.

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

1 Committee Established. There is established a committee to study service contracts, including prepaid legal services contracts.

2 Membership and Compensation.

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

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

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

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

3 Duties. The committee shall study service contracts, including prepaid legal services contracts.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2003.

6 Reference Deletion. Amend RSA 404-D: 3, I to read as follows:

I. This chapter shall apply to direct life insurance policies, health insurance policies, ~~[legal services insurance policies,]~~ annuity contracts, and contracts supplemental to life and health insurance policies and annuity contracts issued by persons authorized to transact insurance in this state at any time. The term health insurance is intended to include "accident and health" insurance, "sickness and accident" insurance, **and** "disability" insurance ~~[and for the purposes of this chapter shall also include "legal services insurance" as defined by RSA 415-C].~~

7 Repeal. RSA 415-C, relative to legal services insurance, is repealed.

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

AMENDED ANALYSIS

This bill establishes a committee to study service contracts, including prepaid legal services contracts.

This bill also repeals the law regarding legal services insurance.

2003-0388h

Amendment to HB 684-FN

Proposed by the Committee on Commerce - C

Amend RSA 412:2, I(c) as inserted by section 1 of the bill by replacing it with the following:

(c) To any combination of any of the foregoing insurance, on risks or operations located in this state.

Amend RSA 412:2, II(d) as inserted by section 1 of the bill by replacing it with the following:

(d) Insurance on vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under ocean marine, as determined by the commissioner.

Amend RSA 412:5, I as inserted by section 1 of the bill by replacing it with the following:

I. Every insurer and advisory organization shall file policy forms, endorsements, and other contract language covered by this chapter and RSA 264, for a waiting period of 30 days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed 30 days if written notice or electronic notice is given within the initial 30-day waiting period to the insurer or advisory organization which made the filing that additional time is needed for the consideration of the filing. Upon written application by the insurer or advisory organization, the commissioner may authorize a filing which has been reviewed to become effective before the expiration of the waiting period or extension thereof. A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or

extension thereof. Every policy issued by an insurer on an unapproved form shall constitute a separate violation under RSA 412:40.

Amend the subdivision heading preceding RSA 412:8 by replacing it with the following:

Forms Regulation - Motor Vehicle Insurance

Amend RSA 412:15, I as inserted by section 1 of the bill by replacing it with the following:

I. Rates shall not be excessive, inadequate, or unfairly discriminatory.

(a) A rate in a competitive market is not excessive.

(b) A rate in a noncompetitive market is excessive if it is likely to produce a profit that is unreasonably high for the insurance provided or if expenses are unreasonably high in relation to services rendered.

(c) A rate is inadequate if:

(1) The rate is unreasonably low for the insurance provided and the continued use of the rate endangers the solvency of the insured using it; or unless

(2) The rate is unreasonably low for the insurance provided and the use of the rate by the insurer has, or if continued will have, the effect of substantially lessening competition or the tendency to create monopoly in any market.

(d) Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory if it is averaged broadly among persons insured under a group, franchise or blanket policy or a mass marketed plan. In this paragraph, a mass marketed plan means a method of selling property-liability insurance wherein:

(1) The insurance is offered to employees of particular employers or to members of particular associations or organizations or to persons grouped in other ways, except groupings formed principally for the purpose of obtaining such insurance; and

(2) The employer, association or other organization, if any, has agreed to, or otherwise affiliated itself with, the sale of such insurance to its employees or members.

Amend the introductory paragraph of RSA 412:16, III as inserted by section 1 of the bill by replacing it with the following:

III. Every insurer shall file or incorporate by reference to material that has been filed with or approved by the commissioner, at the same time as the filing of the rate, all supplementary rating and supporting information to be used in support of or in conjunction with a rate. The information furnished in support of a filing may include or consist of a reference to:

Amend RSA 412:25 as inserted by section 1 of the bill by replacing it with the following:

412:25 Advisory Organizations; Filing Requirements. Every advisory organization shall file with the commissioner before the effective date every statistical plan, all prospective loss costs, provisions for special assessments and all supplementary rating information and every change or amendment or modification of any of the foregoing proposed for use in this state. Such filings shall be subject to the provisions of RSA 412:16 and RSA 412:19 and other provisions of this chapter relating to filings made by insurers.

2003-0759h

Amendment to HB 690-FN

Proposed by the Committee on Criminal Justice and Public Safety - C

Amend RSA 539:9, I as inserted by section 1 of the bill by replacing it with the following:

I. Whoever shall knowingly cut, fell, destroy, injure, contaminate, carry away, tamper with, or vandalize any legal crop or legal crop bearing tree or plant, cropland, pasture, or pasture land, or aid in such action without permission of the owner, shall forfeit to the person injured no less than 3 times and no more than 10 times the market value or repair cost.

AMENDED ANALYSIS

This bill provides civil and criminal penalties for intentionally damaging legal crops.

2003-0857h

Amendment to HB 694-FN

Proposed by the Committee on Commerce - C

Amend the introductory paragraph of RSA 541-D:3, I as inserted by section 1 of the bill by replacing it with the following:

I. Every tobacco product manufacturer whose cigarettes are sold in this state whether directly or through a distributor, retailer or similar intermediary or intermediaries shall execute and deliver on a form prescribed by the attorney general a certification to the attorney general no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either is a participating manufacturer, or is in full compliance with RSA 541-C.

Amend RSA 541-D:4, I and II as inserted by section 1 of the bill by replacing them with the following:

I. Any non-resident or foreign non-participating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of the Master Settlement Agreement and RSA 541-C, may be served in any manner authorized by law. Such service shall

constitute legal and valid service of process on the non-participating manufacturer. The non-participating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of such agent to and to the satisfaction of the attorney general.

II. The non-participating manufacturer shall provide notice to the attorney general 30 calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent no less than 5 calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the non-participating manufacturer shall notify the attorney general of said termination within 5 calendar days and shall include proof to the satisfaction of the attorney general of the appointment of a new agent.

Amend RSA 541-D:5, II as inserted by section 1 of the bill by replacing it with the following:

II. As provided under RSA 21-J:14, XII, the commissioner is authorized to disclose to the attorney general or designee any information received under this chapter and requested by the attorney general or designee for purposes of determining compliance with and enforcing the provisions of this chapter. The commissioner and attorney general shall share with each other the information received under this chapter, and may share such information with other federal, state or local agencies only for purposes of enforcement of this chapter, the Master Settlement Agreement, RSA 541-C, or corresponding laws of other states.

Amend RSA 541-D:6 as inserted by section 1 of the bill by replacing it with the following:

541-D:6 Penalties and Other Remedies.

I. In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that any person has violated RSA 541-D:3, III or any rule adopted pursuant thereto, the commissioner may revoke or suspend the license of any stamping agent in the manner provided by RSA 78:6. Each stamp affixed and each offer to sell cigarettes in violation of RSA 541-D:3, III shall constitute a separate violation. For each violation hereof, the commissioner may also impose a civil penalty in an amount not to exceed the greater of 500 percent of the retail value of the cigarettes sold or \$5,000 upon a determination of violation of RSA 541-D:3, III or any rules adopted pursuant thereto. Such penalty shall be imposed in the manner provided by RSA 78.

II. Any cigarettes that have been sold, offered for sale, or possessed for sale in this state, in violation of RSA 541-D:3, III shall be deemed contraband under RSA 78:16 and such cigarettes shall be subject to seizure and forfeiture as provided in such section, and all such cigarettes so seized and forfeited shall be destroyed and not resold.

III. The attorney general, on behalf of the commissioner, may seek an injunction to restrain a threatened or actual violation of RSA 541-D:3, III, 541-D:5, I, or 541-D:5, IV, by a stamping agent and to compel the stamping agent to comply with such provisions. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees.

Amend the bill by inserting after section 1 the following and renumbering the original sections 2-4 to read as 3-5, respectively:

2 New Paragraph; Confidentiality of Department Records. Amend RSA 21-J:14 by inserting after paragraph XI the following new paragraph:

XII. Department records, files, or information obtained by the commissioner or other department employee under the provisions of RSA 78, RSA 541-C, or RSA 541-D may be disclosed to the attorney general, or designee, and other federal, state, or local agencies as provided under RSA 541-D:5, II.

2003-0557h

Amendment to HB 699-FN

Proposed by the Committee on Transportation - C

Amend the bill by replacing sections 1-2 with the following:

1 New Paragraph; Review of Fees for Removal and Impoundment; Items in Vehicle. Amend RSA 262:35-a by inserting after paragraph II the following new paragraph:

III. Any time that a person is storing a vehicle pursuant to the provisions of this subdivision, the person may remove any items from within the vehicle that are not a part of or accessories to the vehicle. The person may hold any such items, other than wallets, purses, legal documents, car seats, eyeglasses, medicine, or medical equipment, pending payment of any fees due under this subdivision. If fees remain unpaid after 60 days, the person may dispose of the items.

2 Abandoning a Vehicle; Penalty. Amend RSA 262:40-c to read as follows:

262:40-c Abandoning a Vehicle; Penalty. No person shall abandon a motor vehicle, registered or unregistered, on any way or on any property other than his *or her* own without the permission of the owner or lessee of said property or, in the case of public property, of the police department having jurisdiction over the property. For the purposes of this section, a vehicle shall be considered abandoned if it has been left for more than 24 hours without the appropriate permission being given. The last owner of record of a motor vehicle found abandoned, as shown by the files of the department, shall be deemed prima facie to have been the owner of such motor vehicle at the time it was abandoned and to have been the person who abandoned the motor vehicle or caused or procured its abandonment. Any person who violates the provisions of this section shall be guilty of a

violation **and shall be subject to a fine of not less than \$100 and not more than \$500**, and may be subject to the loss of driver's license and registration as provided in RSA 263:56 and RSA 261:179. The court may assess costs of abandoning a vehicle, including but not limited to, towing and storage costs, against any person convicted of abandoning a vehicle in violation of this section, and the director ~~may~~ **shall** suspend the driver's license of any person who has not paid such costs.

3 Effective Date. This act shall take effect January 1, 2004.

2003-0892h

Amendment to HB 705

Proposed by the Committee on Ways and Means - C

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

AN ACT establishing a committee to study the application of the communications services tax to the provision of Internet services and relative to the rate of the communications services tax and the property tax exemption for wooden poles and conduits.

Amend the bill by replacing section 1 with the following:

1 Committee Established. There is established a committee to study the application of the communications services tax to the provision of Internet services.

Amend the bill by replacing section 3 with the following:

3 Duties. The committee shall study the application of the communications services tax to the provision of Internet services.

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

6 Rate of Tax for Biennium Ending June 30, 2005; Intrastate and Interstate Communications Services Tax.

Notwithstanding RSA 82-A:3 and RSA 82-A:4, for the period beginning July 1, 2003 and ending June 30, 2005, the rate of tax shall be 7 percent on the gross charge for communications services purchased at retail from a retailer.

7 Prospective Repeal Date Extended for Exemption of Wooden Poles and Conduits Under RSA 72:8-b. Amend 1998, 304:6, I as amended by 1999, 163:7 and 2001, 158:2 to read as follows:

I. Section 5 of this act shall take effect July 1, ~~2003~~ **2005**.

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

AMENDED ANALYSIS

This bill establishes a committee to study the application of the communications services tax to the provision of Internet services.

The bill also establishes the rate of the communications services tax for the biennium ending June 30, 2005 and extends a property tax exemption for certain wooden poles and conduits until July 1, 2005.

2003-0788h

Amendment to HB 709-FN

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

Amend RSA 151-F:2 as inserted by section 1 of the bill by replacing it with the following:

151-F:2 Appointment of Receiver. The probate court, upon petition of the department, as hereinafter provided, shall appoint a receiver for any facility; provided, that the court finds that an emergency exists or that the facility is operating without a license, or the department has denied, revoked, or refused to renew a license, or has initiated license denial, revocation, or nonrenewal procedures and the lives, health, safety or welfare of the residents cannot be adequately assured pending the full hearing and decision on the matter.

Amend RSA 151-F:3, I as inserted by section 1 of the bill by replacing it with the following:

I. The department may bring an action in the probate court, after notification to the charitable trust division, department of justice, requesting the appointment of a receiver to operate a facility. Before the department brings such an action, the administrator of a facility designated by the commissioner shall be informed that the department intends to bring such an action and shall be informed of the reasons for the decision to bring such an action. The administrator shall have at least 5 years experience as a nursing home or other residential care facility administrator. The administrator may submit his or her recommendations concerning the facility proposed for receivership within 2 business days after receiving the above information. After the 2-day period, the department, in its sole discretion may bring an action in the probate court. Prior to any hearing for the appointment of a receiver, the department shall file, and the court shall consider, an affidavit made under oath describing the results of any investigation conducted by the department, including a statement of any findings with respect to the resident's petition and the reasons for not filing an action pursuant to this section, and shall append thereto the 2 most recent reports of deficiencies in that facility. Nothing in this chapter shall be construed as abrogating or superseding any common law or statutory right of any person to bring an action requesting appointment of a receiver to operate a facility.

Amend RSA 151-F:4, II as inserted by section 1 of the bill by replacing it with the following:

II. The receiver shall apply the current revenues of the facility to current operating expenses and, subject to the following provisions, to debts incurred by the licensee prior to the appointment of the receiver. The receiver shall ask the court for direction in the treatment of debts incurred prior to this appointment where such debts appear extraordinary, of

questionable validity, or unrelated to the normal and expected maintenance and operation of the facility, or where payment of such debts will interfere with the purposes of the receivership. Priority shall be given by the receiver to expenditures for current, direct resident care, including nursing care, medications, social services, dietary services, and housekeeping.

Amend RSA 151-F:4, VI as inserted by section 1 of the bill by replacing it with the following:

VI. In the event that a receiver appointed under RSA 151-F:3 does not have sufficient capital to advance for major repairs or improvements, the receiver may petition the court for permission to apply to the department for a loan. Notice shall be given to the owner of the real estate, the licensee, the department, and to any mortgagee and other secured parties and lienholders of record. The court shall after hearing, authorize the receiver to apply for such assistance if it determines that the facility should not be closed, and the commissioner certifies that the repair or improvement is necessary to prevent or remove jeopardy to patients or to minimally qualify the facility for participation in the medicaid or Medicare program; or it determines that the facility should be closed and the commissioner certifies that the repair or improvement is necessary to prevent jeopardy to residents for the limited period of time that they are awaiting transfer. The purposes of this paragraph shall be to protect residents and to prevent the closure of facilities which, given proper management, are likely to be viable operations. This section shall not be construed as a method of financing major repairs or capital improvements to facilities which have been abandoned because the licensee has been unable to secure financing by conventional means. Upon court approval, application for financial assistance shall be made to the department, which shall administer such funds as the legislature may appropriate for this purpose. The court may set a reasonable rate of interest to be paid by the receiver to the department. In no case shall funds advanced by the department under this paragraph exceed funds available in the department's civil monetary penalty fund.

Amend RSA 151-F:7, V as inserted by section 1 of the bill by replacing it with the following:

V. The receivership shall be reviewed after 30, 60, and 90 days by the probate court. If the receivership has not been terminated within 90 days of the appointment of the receiver, the court shall, after hearing, order either that the facility shall be closed, after an orderly transfer of the residents to appropriate alternative placements; or the facility shall be sold, under reasonable terms approved by the court, to a new owner approved for licensure by the department. The receivership period may be extended only with the agreement of all of the parties involved or as necessary to protect the health and safety of the residents.

2003-0889h

Amendment to HB 711-FN

Proposed by the Committee on Commerce - C

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

1 New Paragraph; Definitions; "Branch Office" Added. Amend RSA 361-A:1 by inserting after paragraph II the following new paragraph:

II. "Branch office" means a business location within this state of a person required to be licensed under this chapter. "Branch office" does not include a person's principal office location.

2 New Paragraph; Definitions; "Commissioner" Inserted in Alphabetical Order. Amend RSA 361-A:1 by inserting after paragraph III the following new paragraph:

III-a. "Commissioner" means the bank commissioner.

3 New Paragraph; Definitions; "Principal Office" Added. Amend RSA 361-A:1 by inserting after paragraph VIII the following new paragraph:

VIII-a. "Principal office" means the main office location of a person required to be licensed under this chapter.

4 Licensing of Sales Finance Companies and Retail Sellers Required; Requirements Added. RSA 361-A:2, II – VI are repealed and reenacted to read as follows:

II.(a) The application for such license shall be in writing, under oath and in the form prescribed by the commissioner. The application shall contain the name of the applicant; date of incorporation, if incorporated; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees and principal officers; the trade name, if any, under which the applicant proposes to conduct such business; and such other pertinent information as the commissioner may require.

(b) Every applicant for licensing under this chapter shall file with the commissioner, in such form as the commissioner prescribes by rule, irrevocable consent appointing the commissioner to receive service of any lawful process in any non-criminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order under this chapter, and such person has not filed a consent to service of process under this section and personal jurisdiction over such person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to such person's appointment of the commissioner to receive service of any lawful

process. Service may be made by leaving a copy of the process in the office of the commissioner along with \$5, but is not effective unless:

(1) The plaintiff, who may be the attorney general in a suit, action, or proceeding instituted by him or her, forthwith sends a notice of the service and a copy of the process by registered mail to the defendant or respondent at such person's last address on file with the commissioner; and

(2) The plaintiff's affidavit of compliance with this paragraph is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(c) If a person holds a valid license under this section and is in compliance with this chapter and the rules thereunder, such licensee may renew the license by paying the required fee to the banking department on or before December 1 for the ensuing year that begins on January 1. Failure to renew the license shall result in the license terminating on December 31.

III. Sales finance company license applicants shall at the same time file with the commissioner a \$25,000 surety bond to the state for the use of the state and any person who may have a cause of action against the principal in the bond under the provisions of this chapter, and conditioned that the principal will conform to and abide by each provision of this chapter and will pay to the state and to any such person any sum that may become due or owing under this chapter from the principal of the bond to the state or to such person. Recovery against the bond may be made by the state after due notice and hearing in accordance with the provisions of RSA 541-A, and by any such person who may have obtained a final judgment in a court of competent jurisdiction naming said principal. The surety bond shall be continuous and shall include a provision requiring the surety to give written notice to the commissioner 20 days in advance of the cancellation or termination of the bond. Every bond shall provide that no recovery may be made against the bond unless the state makes a claim for recovery or the person brings suit naming the principal within 6 years after the act upon which the recovery or suit is based.

IV. Each initial and renewal retail seller application shall be accompanied by a nonrefundable application fee of \$50 for the principal place of business of the licensee and the sum of \$30 for each branch of such licensee maintained in this state.

V. Each initial and renewal sales finance company application shall be accompanied by a nonrefundable application fee of \$350 for the principal place of business of the licensee within this state or outside of this state, and the sum of \$100 for each branch of such licensee maintained in this state. A person required to obtain a license under the provisions of this section shall not be required to obtain a license as a retail seller.

VI. Sums collected under this chapter shall be payable to the state treasurer as restricted revenue and credited to the appropriation for the commissioner, consumer credit administration division.

VII. Each license shall specify the location of the office or branch and shall be conspicuously displayed there in a public area. In case such location is changed, the commissioner shall endorse the change of location on the license without charge.

VIII.(a) Upon the filing of the complete application for a sales finance company license and payment of the required application fee, if the bank commissioner determines that the applicant's financial resources and responsibility, experience, personnel, and record of past or proposed conduct warrant the public's confidence and that the business will be operated lawfully, honestly, and fairly within the purposes of this chapter, the commissioner shall enter an order approving such application and shall issue a license to the applicant and shall issue licenses to the applicant's branches to engage in the business of a sales finance company under and in accordance with the provisions of this chapter. Each sales finance company license shall expire on December 31 of each calendar year.

(b) Upon the filing of a complete application for a retail seller license and payment of the required application fee, if the commissioner determines that the applicant's experience and record of past or proposed conduct warrant the public's confidence and that the business will be operated lawfully, honestly and fairly within the purposes of this chapter, the commissioner shall enter an order approving such application and shall issue a license to the applicant and shall issue licenses to the applicant's branches to engage in the business of a retail seller under and in accordance with the provisions of this chapter. Each retail seller license shall expire on December 31 of each calendar year.

(c) No license issued under this chapter shall be transferable or assignable.

IX. No licensee shall transact any business provided for by this chapter under a trade name or any other name different from the name stated in its license or branch office license without immediately notifying the commissioner, who shall then amend the license accordingly.

X. No license shall be issued to any person whose principal place of business is located outside of this state unless that person designates an agent residing within this state for service of process.

XI. Each license issued under the provisions of this chapter shall state the name and address of the principal office of the licensee and, if the license is a branch office license, the name and address of the branch office location for which that license is issued.

XII. Retail sellers and sales finance companies licensed under this chapter are under a continuing obligation to update information on file with the commissioner. If any information filed with the commissioner becomes materially inaccurate, the retail seller and sales finance company licensee must promptly submit to the commissioner an amendment to its application records that will correct the information on file with the commissioner. An amendment shall be considered to be filed promptly

if the amendment is filed within 30 days of the event that requires the filing of the amendment.

5 Annual Report; Financial Statement Added. Amend RSA 361-A:2-b to read as follows:

361-A:2-b Annual Report.

I. **(a)** Each sales finance company licensee shall file, under oath, an annual report with the [bank] commissioner on or before February 1 each year concerning operations for the preceding year or license period ending December 31 upon a form prescribed by the [bank] commissioner. ~~[Whenever a licensee operates 2 or more licensed offices or whenever 2 or more affiliated licensees operate licensed offices, then a composite report of such group of licensed offices may be filed in lieu of individual reports.]~~

(b) *Each sales finance company shall also file, under oath, its financial statement with the commissioner within 90 days from the date of its fiscal year end. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall include a balance sheet, income statement, statement of changes in owners' equity, a cash flow statement and note disclosures. If the financial statement is not audited, a certification statement shall be attached and signed by a duly authorized officer of the sales finance company. The certification statement shall state that the financial statement is true and accurate to the best of the officer's belief and knowledge.*

(c) *In lieu of the requirements of subparagraph (b), publicly traded licensees may submit copies of their most recent Securities and Exchange Commission 10K and 10O statement.*

II. The [bank] commissioner shall publish an analysis of the information required ~~[under this section]~~ **in the sales finance company's annual report** as part of the [bank] commissioner's annual report.

III. Any [licensee] **sales finance company** failing to file **either the annual report or the financial statement** required by this section within the time prescribed shall pay to the [bank] commissioner a penalty of \$25 for each calendar day the **annual report or financial statement** is overdue. ~~[If a licensee elects to file a composite report and the composite report is not filed on or before February 1 as required in this section, the penalty prescribed in this section shall apply separately for each license and branch license included in the composite report.]~~

IV. In addition to the annual report **and financial statement** required by this section, the [bank] commissioner may require such regular or special reports as the commissioner deems necessary to the proper supervision of licensees under this chapter.

V. A licensee who files an annual report under this section which fails to disclose or materially ~~[underdiscloses]~~ **misstates** retail installment contracts made during the reporting year may, after **notice and** opportunity for hearing pursuant to RSA 541-A, be subject to a fine of not more than \$1,000 and to license revocation or suspension pursuant to RSA 361-A:3.

6 Suspension or Revocation of Licenses; Show Cause Order Added; Nonexistent Businesses Added. RSA 361-A:3 is repealed and reenacted to read as follows:

361-A:3 Suspension or Revocation of Licenses.

I. The commissioner may, by order, deny, suspend, or revoke any license or application if the commissioner finds that the order is in the public interest and the applicant, or licensee, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant or licensee:

(a) Has filed an application for licensing which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) Has made a false or misleading statement to the commissioner or in any reports to the commissioner;

(c) Has made fraudulent misrepresentations, has circumvented or concealed, through whatever subterfuge or device, any of the material particulars required to be stated or furnished to a borrower under the provisions of this chapter;

(d) Has failed to supervise its agents, managers or employees;

(e) Is the subject of an order entered within the past 5 years by this state, any other state, or federal regulator denying, suspending, or revoking licenses or registration;

(f) Is permanently, preliminarily, or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of lending or collection activities;

(g) Is not qualified on the basis of such factors as experience, knowledge and financial integrity;

(h) Has engaged in dishonest or unethical practices in the conduct of making retail installment transactions or collecting on retail installment contracts;

(i) Has violated this chapter or any rule or order thereunder or has violated applicable federal laws or rules thereunder; or

(j) For other good cause shown.

II. If a licensee is a partnership, association, corporation, or entity however organized it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed association or corporation or any member of a licensed partnership has so acted or failed to act in behalf of said licensee as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for supervision of its branch offices and for the acts of

any or all of his or her employees while acting as his or her agent if such licensee, after actual knowledge of said acts, retained the benefits, proceeds, profits or advantages accruing from said acts or otherwise ratified said acts.

III. Any license revocation, suspension, or unfavorable action by the department on a license shall comply with the provisions of RSA 541-A. An aggrieved licensee may, pursuant to RSA 541-A and RSA 541, appeal an unfavorable action by the department. The department may take action for immediate suspension of a license, pursuant to RSA 541-A.

IV. [Repealed.]

V. If the commissioner finds that any licensee or applicant for license is no longer in existence or has ceased to do business as a retail seller or sales finance company, or cannot be located after reasonable search, the commissioner may by order revoke the license or deny the application. The commissioner may deem abandoned and withdraw any application for licensure made pursuant to this chapter, if any applicant fails to respond in writing within 180 days to a written request from the commissioner requesting a response. Such request shall be sent via certified mail to the last known address of the applicant that is on file with the commissioner.

7 Cease and Desist Orders; Grounds Added. Amend RSA 361-A:3-a to read as follows:

361-A:3-a Cease and Desist Orders. Whenever the commissioner has reasonable cause to believe that any person is engaging in the business of a sales finance company or retail seller without obtaining a license as provided in this chapter, **or has engaged or is about to engage in any act or practice constituting a violation of this chapter, or any rule or order under this chapter**, the commissioner may, in addition to all actions provided for in this chapter, enter an order requiring such person to cease and desist from such violation. If any person refuses to obey such order, an action may be brought by the commissioner or by the attorney general on the commissioner's behalf in any superior court in this state to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance of such violation. In any such action, an order or judgment may be entered awarding a temporary or permanent injunction, and awarding the commissioner or the attorney general or both costs in bringing such action. The court shall have the power to enforce obedience to such injunction, in addition to all the court's customary powers, by a fine not exceeding \$10,000 or by imprisonment, or both.

8 Consumer Inquires; Certain Terms Replaced. Amend RSA 361-A:4-a to read as follows:

361-A:4-a Consumer Inquiries.

I. Consumer complaints naming [licensees] **retail sellers or sales finance companies** under this chapter, which are filed in writing with the office of the [bank] commissioner, shall be forwarded via certified or registered mail to the [licensee] **retail seller or sales finance company** for response within 10 days of receipt by the department. [Licensees] **Retail sellers or sales finance companies** shall, within 30 days after receipt of such complaint, send a written acknowledgment thereof to the consumer and the banking department. Not later than 60 days following receipt of such complaint, the [licensee] **retail seller or sales finance company** shall conduct an investigation of the complaint and either:

(a) Make appropriate corrections in the account of the consumer and [transmit] **submit** to the consumer and the banking department written notification of such corrections, including documentary evidence thereof; or

(b) [Transmit] **Submit** a written explanation or clarification to the consumer and the banking department which sets forth, to the extent applicable, the reasons why the licensee believes its actions are correct, including copies of documentary evidence thereof.

II. A [licensee] **retail seller or sales finance company** who fails to respond to consumer complaints as required by this section within the time prescribed shall pay to the commissioner the sum of \$50 for each day such response is overdue. For purposes of this section, the date of [transmission] **submission** shall be the date such response is [postmarked] **received by the banking department**.

III.(a) [Licensees] **Retail sellers or sales finance companies** who, because of extenuating circumstances beyond the control of the [licensee] **retail seller or sales finance company**, are unable to comply with the time frames prescribed in this section, may make written request to the commissioner for a waiver of such time frames. Waivers shall not be granted or considered unless the request for the waiver:

(1) Is received by the banking department within 50 days following the [licensee's] **retail seller's or sales finance company's** receipt of the complaint;

(2) Specifies the reason for the request; and

(3) Specifies a date certain by which the [licensee] **retail seller or sales finance company** shall comply with the provisions of this section.

(b) Requests for waivers shall be either granted or denied within 5 days of receipt by the banking department.

IV. [Repealed.]

9 Powers of Bank Commissioner; Rules, Forms, Orders, Penalty Abatement, Added; Grounds for Acting Added. Amend RSA 361-A:5 to read as follows:

361-A:5 Powers of [Bank] Commissioner.

I. The [bank] commissioner shall have the power to issue a subpoena to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before the commissioner in any matter over which the commissioner has jurisdiction, control or supervision pertaining to the provisions of this chapter. The commissioner shall have

the power to administer oaths and affirmation to any person whose testimony is required. If any person shall refuse to obey any such subpoena or to give testimony or to produce evidence as required thereby, any justice of the superior court may, upon application and proof of such refusal, order the issuance of a subpoena, or subpoena duces tecum, out of the superior court, for the witness to appear before the superior court to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the superior court, the clerk shall issue such subpoena, as directed, requiring the person to whom it is directed to appear at the time and place therein designated. If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the ~~[bank]~~ commissioner may apply to any justice of the superior court who, after proof of such refusal, shall issue such citation, directed to any sheriff, for the arrest of such person, and, upon such person's being brought before such justice, proceed to a hearing of the case. The court shall have power to enforce obedience to such subpoena, and the answering of any question and the production of any evidence that may be proper, by a fine not exceeding \$10,000 or by imprisonment, or by both.

II. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the administration and enforcement of this chapter.

III. The commissioner may prepare, alter, or withdraw such forms as are necessary to comply with the provisions of this title.

IV. The commissioner may issue, amend, or rescind such orders as are reasonably necessary to carry out the provisions of this chapter.

V. The commissioner may, for good cause shown, abate all or a portion of delinquency penalties assessed under this chapter.

VI. All actions taken by the commissioner pursuant to this chapter shall be taken only when the commissioner finds such action necessary or appropriate to the public interest or for the protection of consumers and consistent with the purposes fairly intended by the policy and provisions of this title.

10 New Paragraphs; Examinations; Recovery of Cost Added. Amend RSA 361-A:6-a by inserting after paragraph IV the following new paragraphs:

V. Every person being examined, and all of the officers, directors, employees, agents, and representatives of such person shall make freely available to the commissioner or his or her examiners the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination and shall facilitate the examination.

(a) Upon receipt of a written report of examination, the licensee shall have 30 days or such additional reasonable period as the commissioner for good cause may allow, within which to review the report, recommend any changes and set forth in writing the remedial course of action the licensee will pursue to correct any reported deficiencies outlined in the report.

(b) If so requested by the person examined, within the period allowed in subparagraph (a), or if deemed advisable by the commissioner without such request, the commissioner shall hold a closed hearing relative to the report and shall not file the report in the department until after such closed hearing and issuance of his or her order thereon. If no such closed hearing has been requested or held, the examination report, with such modifications, if any, thereto as the commissioner deems proper, shall be accepted by the commissioner and filed upon expiration of the review period provided for in subparagraph (a). The report shall be accepted and filed within 6 months after final hearing.

(c) All reports pursuant to this section shall be privileged and although filed in the department as provided in subparagraph (b) shall not be for public inspection. The comments and recommendations of the examiner shall also be confidential information and shall not be available for public inspection.

VI. In any investigation to determine whether any person has violated or is about to violate this chapter or any rule or order under this chapter, upon the commissioner's finding that the person violated this chapter or a rule or order under this chapter, or the person charged with the violation being found in default, the commissioner shall be entitled to recover the cost of the investigation, in addition to any other penalty provided for under this chapter.

11 Advertising; Sales Finance Company Replaced with Person. Amend RSA 361-A:10-a, I to read as follows:

I. No ~~[sales finance company]~~ **person** shall advertise, print, display, publish, distribute, or broadcast or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner whatsoever any statement or representation with regard to the rates, terms, or conditions for the lending of money under the provisions of this chapter which is false, misleading, or deceptive. Any reference to the amount of a loan shall refer to the original principal amount. Any statement so made of the amount of an installment, or the rate or amount of interest charges required for any loan, shall comply with the provisions of the federal Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.).

12 New Paragraphs; Penalties; Penalties Added. Amend RSA 361-A:11 by inserting after paragraph III the following new paragraphs:

IV. Any person, other than the consumer, who holds or is a party to, in any manner, a retail installment contract that is not in compliance with this chapter may, upon notice and opportunity for hearing, be subject to penalty under this chapter.

V. Any person who knowingly violates any rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to suspension or revocation of any registration or license, or imposition of an administrative fine not to exceed \$2,500 for each violation in lieu of or in addition to such suspension

or revocation as may be applicable under this title for violation of the provision to which a rule or order relates. Each of the acts specified shall constitute a separate violation.

VI. Any person who negligently violates any rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or imposition of an administrative fine not to exceed \$1,500 for each violation in lieu of or in addition to such suspension or revocation as may be applicable under this title for violation of the provision to which a rule or order relates. Each of the acts specified shall constitute a separate violation.

VII. Any person who, either knowingly or negligently, violates any provision of this chapter may, upon notice and opportunity for hearing, and in addition to any such other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, including forfeiture of any application fee, or imposition of an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and each such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed.

VIII. Every person who directly or indirectly controls a person liable under this section, every partner, principal executive officer or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act constituting the violation, and every licensee or person acting as a common law agent who materially aids in the acts constituting the violation, either knowingly or negligently, may, upon notice and opportunity for hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed. No person shall be liable under this paragraph who shall sustain the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist.

13 New Section; Records and Filings. Amend RSA 361-A by inserting after section 12 the following new section:

361-A:13 Records and Filings.

I. A document is filed when it is received by the commissioner. If any filing deadline date falls on a weekend or on a New Hampshire state or federal legal holiday, the due date shall be automatically extended to the next business day following such weekend or holiday.

II. Electronic filings, when received by the commissioner, are deemed filed, and are prima facie evidence that a filing has been duly authorized and made by the signatory on the application or document, are admissible in any civil or administrative proceeding under this chapter, and are admissible in evidence in accordance with the rules of superior court in any action brought by the attorney general under this chapter.

III. A licensee may maintain its records in electronic format if, upon request, the licensee provides the commissioner with:

(a) A full explanation of the programming of any data storage or communications systems in use; and

(b) Information from any books, records, electronic data processing systems, computers or any other information storage system in the form requested by the commissioner.

14 Change from Bank Commissioner to Commissioner. Amend the following RSA provisions by replacing "bank commissioner" with "commissioner": 361-A:2-a, I; 361-A:4; 361-A:6; 361-A:6-a, I; and 361-A:8-a, I.

15 Repeal. RSA 361-A:1, XIV, relative to the definition of commissioner, is repealed.

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

2003-0867h

Amendment to HB 718-FN

Proposed by the Committee on Criminal Justice and Public Safety - C

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

AN ACT relative to endangering the welfare of a minor and relative to criminal responsibility for the commission of certain acts.

Amend the bill by replacing section 1 with the following:

1 Criminal Responsibility; Immaturity. Amend the introductory paragraph of RSA 628:1, II to read as follows:

II. A person 13 years of age or older may be held criminally responsible for the following offenses ~~[if the person's case is transferred to the superior court under the provisions of RSA 169-B:24]~~:

AMENDED ANALYSIS

This bill:

I. Deletes the juvenile transfer requirement and provides that a person 13 years of age or older may be held criminally responsible for certain offenses.

II. Adds a one-year, discovery rule, statute of limitations for the prosecution of any offense which is delayed as a result of destruction or falsification of evidence or witness tampering.

II. Provides that endangering the welfare of a child or incompetent which results in the death, serious bodily injury, or

sexual assault of the child or incompetent shall be a class B felony.

2003-0815h

Amendment to HB 735-FN

Proposed by the Committee on Executive Departments and Administration - C

Amend the bill by replacing sections 1 and 2 with the following:

□ New Chapter; Access to Prescription Drugs. Amend RSA by inserting after chapter 161-J the following new chapter:

CHAPTER 161-K

ACCESS TO PRESCRIPTION DRUGS

161-K:1 Definitions: In this chapter:

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

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

III. "Division" means the division of elderly and adult services, department of health and human services.

IV. "Qualified medicare beneficiaries" means medicare beneficiaries with incomes equal to or below 100 percent of the federal poverty level who are eligible for medicaid assistance for the part A and part B medicare premiums and for medicare deductibles and co-insurance requirements as set forth in section 1905(p)(1) of Title XIX of the Social Security Act.

V. "Specified low-income medicare beneficiaries" means medicare beneficiaries who have incomes greater than 100 percent of the federal poverty level and less than and equal to 120 percent of the federal poverty level and meet the requirements set forth in section 1902(a)(10)(E)(iii) of Title 19 of the Social Security Act.

161-K:2 Medicaid Rx Senior Eligibility Expansion Program Established.

I. There is hereby established the medicaid Rx senior eligibility expansion program. To be eligible for the program, an individual shall:

(a) Be a U.S. citizen or a lawfully admitted alien;

(b) Be a state resident;

(c) Be at least 65 years of age or an individual between the ages of 19 and 64 who is otherwise eligible for benefits under Title II of the Social Security Act (Federal Old Age, Survivors, and Disability Insurance);

(d) Meet the definition of a qualified medicare beneficiary or a specified low-income medicare beneficiary as set forth in subparagraph (c); and

(e) Be ineligible for and/or not receiving a prescription drug benefit through a medicare supplemental policy or any other third party payer prescription benefit.

II. Individuals eligible for the medicaid Rx senior eligibility expansion program shall be entitled to the medicaid prescription drug coverage as provided to medicaid recipients as set forth in Title XIX of the Social Security Act.

III. Individuals eligible for the program established under this subdivision shall be provided a benefit of not more than \$2,000 per year and shall be subject to a \$5 copayment per prescription.

161-K:3 Administration.

I. The medicaid Rx senior eligibility expansion program shall be administered by the division. The department shall apply for a federal medicare 1115 demonstration waiver from the Secretary of Health and Human Services to expand medicaid eligibility for the purposes of prescription drug coverage to qualified medicare beneficiaries and specified low-income medicare beneficiaries under the medicaid Rx senior eligibility expansion program.

II. The commissioner shall make an annual report beginning one year after the effective date of this chapter to the general court relative to the effectiveness of the medicaid Rx senior disability eligibility program.

□ New Subdivision; Medicaid Best Practices. Amend RSA 167 by inserting after section 97 the following new subdivision: Medicaid Best Practices

167:98 Medicaid Best Practices.

I. The department of health and human services shall identify medicaid patients who require ongoing and expensive care and develop interventions to improve their health, functional status and independence in an effort to promote adherence to best medical practices. The department shall encourage health plans and health care systems participating in the medicaid program to:

(a) Conduct patient needs assessments upon enrollment.

(b) Develop individual, patient-centered plans.

(c) Use case management incorporating evidence-based practice guidelines.

II. The department shall make an annual report beginning one year after the effective date of this section to the oversight committee established in RSA 126-A:13, relative to the effectiveness of this subdivision.

AMENDED ANALYSIS

This bill requires the department of health and human services to establish certain programs to increase access to prescription drugs for seniors.

This bill requires the department of health and human services to encourage health plans and health care systems participating in the medicaid program to use case management incorporating evidence-based practice guidelines.

The bill also establishes a 3-year task force to study increasing access to prescription drug medicines.
2003-0782h

Amendment to HB 744

Proposed by the Minority of the Committee on Commerce - R

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

1 New Section; Uninsured Motorists. Amend RSA 417 by inserting after section 4 the following new section:

417:4-a Uninsured Motorists. No insurance carrier or its agents shall make a claim, or any threat of adverse legal action, including notice of possible revocation or suspension of a driver's license, against an uninsured motorist with respect to the accident which forms the basis of such claim or action in the absence of a court judgment or a determination of a reasonable possibility of judgment against such uninsured motorist by the department of safety, pursuant to RSA 264 and the expiration of any period of appeal thereof.

2 Effective Date. This act shall take effect January 1, 2004.

AMENDED ANALYSIS

This bill prohibits an insurance carrier from making a claim, including notice of possible revocation or suspension of a driver's license against an uninsured motorist with respect to an accident which forms the basis of such claim in the absence of a court judgment or a determination of reasonable possibility of judgment against such motorist by the department of safety.

2003-0924h

Amendment to HB 748

Proposed by the Committee on Resources, Recreation and Development - R

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

AN ACT making changes to the laws governing off highway recreational vehicles and the multi-use statewide trail system.

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

1 Definition Clarified. Amend RSA 215-A:1, I to read as follows:

I. "Accompanied by", **or "accompany"** means when a person is within sight and when actual physical direction and control can be effected.

2 Sound Level Lowered; ATVs included. Amend RSA 215-A:12, IV to read as follows:

IV. No person shall operate in this state a trail bike **or all terrain vehicle** which produces a sound level in excess of [99] **96** decibels on the A scale, when measured in accordance with the provisions of the Society of Automotive Engineers Recommended Practice ANSI/SAE, J-1287, Mar 82, "Measurement of Exhaust Sound Levels of Stationary Motorcycles".

3 Registration Fees; Department of Resources and Economic Development Funds. Amend RSA 215-A:23, VI(b) to read as follows:

(b) Grants-in-aid shall be granted to OHRV clubs and political subdivisions for the construction and maintenance of **public use** OHRV trails and facilities. The bureau shall make grants on such terms as it deems necessary and shall determine what trails and facilities shall be eligible. Notwithstanding the provisions of this subparagraph, a landowner who grants permission for a grant-in-aid trail to be located on his or her property shall retain the right to establish the inclusive dates during which OHRV operation shall be permitted. Use of trails on private land shall extend only to the specific type of OHRV permitted by the landowner.

4 Registration Fees; Department of Resources and Economic Development Funds; Land Purchase Account Amend RSA 215-A:23, VII(c) to read as follows:

(c) Land purchases, easements, [and] rights-of-way, **and new construction**. A separate account shall be established into which \$2 of each resident trail bike and other OHRV registration fee appropriated for administration of the bureau under RSA 215-A:23, I(b) and \$2 of each nonresident trail bike and other OHRV registration fee appropriated for administration of the bureau under RSA 215-A:23, III(b) shall be deposited to be used only for land purchases, easements, [and] rights-of-way, **and new construction** for ATV or trail bike trail and facility development.

5 Accident Reports; Bureau of Trails. Amend RSA 215-A:28, IV to read as follows:

IV. Any person who is knowingly involved in any accident involving personal injury with an OHRV shall report said accident to the nearest police officer or police station. A report of said accident shall be filed forthwith by said police officer or police station with the department of safety, **the bureau of trails**, and the fish and game department in such form as the executive director may prescribe.

6 OHRV Operation. RSA 215-A:29, I-III are repealed and reenacted to read as follows:

I. No person shall operate an OHRV on land not owned or leased by such person or such person's parent, grandparent, or guardian unless such person:

(a) If under 14 years of age, is accompanied at all times by a person at least 18 years of age who has met the conditions of subparagraph (b); and

(b) If 12 years of age or older, has either:

(1) Successfully completed an OHRV training program, the recognition of which has not been suspended or otherwise disallowed by law; or

(2) Is licensed to drive a vehicle in accordance with RSA 263, or in accordance with the law of another state or a province of Canada, provided the person would be eligible for a driver's license in this state.

II.(a) Except as further specified in subparagraph (b), it shall be prima facie evidence that any person at least 18 years of age who travels with a person under 14 years of age shall be legally responsible for the OHRV operation of such person and shall be liable according to law for personal injury or property damage to others which may result from such person's operation.

(b) When more than one person at least 18 years of age is traveling with a person under 14 years of age, and if any of the following persons over 18 years of age are present, then only such persons shall be legally responsible and liable under this paragraph:

(1) Parents or guardians, or

(2) Any person who has otherwise been given or assumed the responsibility for supervising the person under 14 years of age at the time of OHRV operation.

(c) Any person legally responsible and liable under this paragraph shall accompany the person under 14 years of age at all times of OHRV operation.

(d) Except as provided in RSA 215-A:30, IV, an organizer of an event or contest shall be responsible for ensuring that each participant under 14 years of age is accompanied at all times.

III. A person 12 years of age or older operating an OHRV shall carry evidence of compliance with subparagraph I(b) in the form of a valid driver's license or evidence of successfully completing an OHRV training program. The person shall present such evidence to any law enforcement officer who is empowered to enforce this chapter, upon demand of such law enforcement officer.

III-a. The provisions of paragraphs I and III shall not apply to any person participating in an OHRV training program. The provisions of paragraph II shall not apply to any person teaching an OHRV training program.

7 Events; Exceptions. RSA 215-A:30, II is repealed and reenacted to read as follows:

II. Unregistered OHRVs may be operated as part of an organized, commercial OHRV event or contest that takes place on property owned by the organizer of such event or contest, without a permit being obtained under paragraph I.

III. The OHRV training and driver's license requirements of RSA 215-A:29, I(b) and III shall not apply to any person participating in an organized event or contest permitted under this section or in an event not requiring a permit as provided for in paragraph II.

IV. The provisions of RSA 215-A:29, I(a) and II shall not apply relative to any person under 14 years of age participating in an organized event or contest, where the organizer of the event or contest has obtained landowner permission and procured a permit from the executive director for such type of activity in the same manner and under the same terms as provided in paragraph I. The organizer of the permitted event or contest shall be responsible for maintaining conditions that have the effect of ensuring actual physical direction and control over participants under 14 years of age.

8 Closing or Zoning of Trail. Amend RSA 215-A:42, III to read as follows:

III. The bureau may not permanently close a trail under paragraph II to ATV or trail bike use ***except upon a request made to the commissioner of resources and economic development to act under RSA 216-F:2, III, and not*** without first holding a public hearing in the local area in which the trail is located. Such hearing shall be ***noticed to the requesting party and the governing body of the affected municipalities and*** advertised at least 14 days prior to the hearing in a newspaper of statewide circulation and also in any local newspapers to the cities and towns in which the state property is located.

9 New Trail Screening Process. Amend RSA 215-A:43, II, (d) – (f) to read as follows:

(d) The ~~[proposal is compatible with]~~ ***bureau has given due consideration to*** local planning and zoning ordinances.

(e) The proposed trail does not pass through a parcel with deed restrictions.

(f) The ~~[proposal is compatible with]~~ ***bureau has given due consideration to local*** noise and obnoxious use ordinances.

10 Bureau of Trails; Internet Reference. Amend RSA 215-A:43, III to read as follows:

III. The bureau shall hold at least one meeting to inform the public and local cities and towns of the plan and layout for a proposed ATV or trail bike trail, consistent with the fine filter criteria in paragraph II, and to provide an opportunity for the public to comment. Information on the plan and layout shall be made available to the public at a place in the local area in which the proposed trail is to be located, at the bureau's office in Concord, and on ~~[the]~~ ***a public accessible*** Internet ***site maintained by the bureau***. The meeting and the places to obtain the information on the plan and layout shall be advertised at least 14 days prior to the meeting in a newspaper of statewide circulation and also in any local newspapers to the cities and towns in which the state property is located.

11 New Paragraph; State Rail Trails Use Exempted. Amend RSA 215-A:43 by inserting after paragraph IV the following new paragraph:

V. This section shall not apply to the change in use designation of rail trails to include ATV and trail bike use.

12 Statewide Trail System; Advisory Committee; Membership Changed. Amend RSA 216-F:5, I to read as follows:

I. The commissioner shall appoint a New Hampshire statewide trail system advisory committee, for the purposes of

advising the director of parks and recreation on matters related to the New Hampshire statewide trail system. The members shall equally represent the different trail interests involved and the general public. This committee shall include, but not be limited to, representation from the following: the bureau of trails; department of fish and game; office of state planning; department of transportation; governor's commission on disability; New Hampshire Snowmobile Association; a representative of ~~[wheel vehicle users]~~ **Granite State ATV Association**; Appalachian Mountain Club; New Hampshire Municipal Association; Society for the Protection of New Hampshire Forests; the New Hampshire Heritage Trail; **the New Hampshire Farm Bureau Federation**; **the New Hampshire Horse Council, Inc.**; a representative of landowners; and the bicycle trail coordinator from the department of transportation.

13 New Section; Statewide Trail System; Best Management Practices; Limit on Expenditures. Amend RSA 216-F by inserting after section 5 the following new section:

216-F:6 Best Management Practices; Limit on Expenditures. The commissioner of the department of resources and economic development shall identify and publish best management practices for erosion control during trail maintenance and construction. The practices shall be based on the type of activity that is occurring or may occur on a trail, site conditions such as terrain, soil type, and water presence and flow. State funds shall only be expended for work on wheeled OHRV trails that are constructed and maintained in accordance with the best management practices.

14 Municipal Noise Ordinances Encouraged. In recognition of the fact that a large portion of the complaints that are raised against wheeled OHRVs operating in the state is associated with unacceptable noise levels experienced by persons on lands abutting the area of operation, the general court hereby encourages municipalities to enact noise ordinances under existing statutory authority of RSA 31:39 and RSA 47:17.

15 Repeal. RSA 215-A:19, VIII, relative to the refund of OHRV fines after completing a training program, is repealed.

16 Effective Date. This act shall take effect July 1, 2003.

AMENDED ANALYSIS

This bill makes various changes to the laws governing off highway recreational vehicles and the statewide trail system.
2003-0659h

Amendment to HB 749

Proposed by the Committee on Criminal Justice and Public Safety - C

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

AN ACT relative to the description in a criminal complaint of the party accused.

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

1 Jurisdiction and Procedure; Complaints. Amend RSA 592-A:7 to read as follows:

592-A:7 Complaints. Criminal proceedings before a district or municipal court shall be begun by complaint, signed and under oath, addressed to such court, briefly setting forth, by name or description, the party accused and the offense ~~[with which he is]~~ charged. ***The description of the accused may include an identifiable ridge skin impression or a DNA profile.***

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

AMENDED ANALYSIS

This bill provides that a description of the accused in a criminal complaint may include an identifiable ridge skin impression or a DNA profile.

2003-0852h

Amendment to HB 753

Proposed by the Minority of the Committee on Executive Departments and Administration - R

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

AN ACT establishing the fourth Monday in April as General John Stark and Molly Stark Day.

Amend RSA 4:13-l as inserted by section 2 of the bill by replacing it with the following:

4:13-l General John Stark and Molly Stark Day. The governor shall annually proclaim the fourth Monday in April as General John Stark and Molly Stark Day and shall urge cities and towns throughout the state to observe this day in commemoration of General Stark's gallant and illustrious service to New Hampshire and his country and Molly Stark's courageous service to the troops and to the Revolutionary War effort.

AMENDED ANALYSIS

This bill establishes the fourth Monday in April as General John Stark and Molly Stark Day.

2003-0341h

Amendment to HB 758-FN

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

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

1 New Paragraph; Eligibility for Assistance. Amend RSA 167:4 by inserting after paragraph III the following new paragraph:

IV.(a) It is hereby found and determined by the general court that the medicaid eligibility laws of this state are in need of amendment to assure that otherwise ineligible individuals are prevented from artificially impoverishing themselves to receive

benefits to which they are not otherwise entitled and to facilitate recovery of improperly obtained benefits and to assure the fiscal integrity of the funds appropriated for medicaid.

(b) Notwithstanding any provision of law to the contrary, for purposes of medicaid eligibility, investment in annuities shall be limited to those annuities that:

- (1) Are actuarially sound as measured against the Social Security Administration Life Expectancy tables as amended;
- (2) Provide equal or nearly equal payments for the duration of the device and which exclude "balloon" style final payments; and
- (3) Provide state of New Hampshire secondary or contingent beneficiary status ensuring payment if the individual predeceases the duration of the annuity, an amount equal to the medicaid expenditure made by the state of New Hampshire on the individual's behalf.

(c) The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, relative to the proper administration of this paragraph.

2 Effective Date. This act shall take effect 60 days after its passage.
2003-0703h

Amendment to HB 763-FN

Proposed by the Majority of the Committee on Judiciary - R

Amend RSA 132:27 through 132:30 as inserted by section 2 of the bill by replacing them with the following:

132:27 Waiver of Notice.

I. No notice shall be required under RSA 132:26 if:

- (a) The attending abortion provider certifies in the pregnant minor's medical record that the abortion is necessary to prevent the minor's death and there is insufficient time to provide the required notice; or
- (b) The person or persons who are entitled to notice certify in writing that they have been notified.

II. If such a pregnant minor elects not to allow the notification of her parent or guardian or conservator, any judge of a court of competent jurisdiction shall, upon petition, or motion, and after an appropriate hearing, authorize an abortion provider to perform the abortion if said judge determines that the pregnant minor is mature and capable of giving informed consent to the proposed abortion. If said judge determines that the pregnant minor is not mature, or if the pregnant minor does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without notification of her parent, guardian, or conservator would be in her best interests and shall authorize an abortion provider to perform the abortion without such notification if said judge concludes that the pregnant minor's best interests would be served thereby.

(a) Such a pregnant minor may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court-appointed counsel, and shall, upon her request, provide her with such counsel.

(b) Proceedings in the court under this section shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interest of the pregnant minor. In no case shall the court fail to rule within 7 calendar days from the time the petition is filed. A judge of the court who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

(c) An expedited confidential appeal shall be available to any such pregnant minor for whom the court denies an order authorizing an abortion without notification. The court shall make a ruling within 7 calendar days from the time of the docketing of the appeal. An order authorizing an abortion without notification shall not be subject to appeal. No filing fees shall be required of any such pregnant minor at either the trial or the appellate level. Access to the trial court for the purposes of such a petition or motion, and access to the appellate courts for purposes of making an appeal from denial of the same, shall be afforded such a pregnant minor 24 hours a day, 7 days a week.

132:28 Penalty. Performance of an abortion in violation of this subdivision shall be a misdemeanor and shall be grounds for a civil action by a person wrongfully denied notification. A person shall not be held liable under this section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant minor regarding information necessary to comply with this section are bone fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

132:29 Severability. If any provision of this subdivision or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or applications of this subdivision which can be given effect without the invalid provisions or applications, and to this end, the provisions of this subdivision are severable.

AMENDED ANALYSIS

This bill prohibits any abortion provider from performing an abortion on certain minors or incompetent females without giving 48 hours' written notice, in person or by certified mail, to a parent or guardian. The bill provides a procedure for alternate notice in certain circumstances.

This bill also establishes a procedure for waiver of the notice in certain circumstances.
2003-0891h

Amendment to HB 768

Proposed by the Committee on Resources, Recreation and Development - C

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

AN ACT establishing a committee to study the flow in the Connecticut River and the effect of the flow on water levels in Lake Francis and the Connecticut Lakes, and to study the use of certain state-owned property along the Baker River.

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

1 Committee Established. There is established a committee to study the flow in the Connecticut River and the effect of the flow on water levels in Lake Francis and the Connecticut Lakes, and to study the use of certain state-owned property along the Baker River.

2 Membership and Compensation.

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

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

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

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

3 Duties. The committee shall study the flow in the Connecticut River, its effect on Lake Francis and the Connecticut Lakes, and its effect on the dams that generate power from the flow in the river. The committee shall develop a recommendation for the minimum water level to be maintained at the Murphy Dam on Lake Francis to balance the competing needs of conservation, recreation, agriculture, and power production. The committee shall also study the need for a flood control and recreation dam and lake, known as the "Baker River Watershed Multiple Use Project Site 7" on the South Branch of the Baker River in Wentworth and shall examine the options for management of certain state-owned property along the Baker River that has been acquired for the project.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2003.

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

AMENDED ANALYSIS

This bill establishes a committee to study the flow in the Connecticut River and the effect of the flow on water levels in Lake Francis and the Connecticut Lakes, and to study the use of certain state-owned property along the Baker River.

2003-0763h

Amendment to HB 776

Proposed by the Committee on Judiciary - C

Amend RSA 329:26-a as inserted by section 1 of the bill by replacing it with the following:

329:26-a Emergency Obstetrical Care; Immunity From Civil Liability. A physician credentialed to provide obstetrical care who renders emergency obstetrical care in a licensed health care facility to a female in active labor where the female has not previously been cared for in connection with the pregnancy by such physician, person in the group practice, a midwife, physician assistant or advanced registered nurse practitioner with whom the physician has an agreement to attend the labor and delivery, shall not be liable for any damages or injuries caused by conduct prior to the rendering of the emergency-obstetrical care. The immunity granted under this section shall apply only to the emergency medical care provided.

2003-0752h

Amendment to HB 778-LOCAL

Proposed by the Committee on Municipal and County Government - R

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

1 Manchester School Department. The city of Manchester, New Hampshire may incorporate the school district as a department of the city and the mayor shall have control over the form and procedures for preparation and adoption of the school department budget, subject to a referendum provided for in section 2.

2 Referendum. The provisions of section 1 of this act shall take effect upon ratification by a 2/3 vote of the voters present and voting by ballot at the regular annual election in the city of Manchester, and the mayor shall certify within 10 days to the secretary of state the results of said referendum.

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

AMENDED ANALYSIS

This bill enables the city of Manchester to incorporate the Manchester School District as a department of the city, subject to voter approval.

2003-0825h

Amendment to HB 787-FN-A**Proposed by the Committee on Science, Technology and Energy - C**

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

AN ACT relative to forest products promotion, establishing a forest products utilization charge, and requiring the department of resources and economic development to convene a task force.

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

1 Findings. The general court finds that the New Hampshire forest products industry is a significant component of the state's economy. As such, an economically healthy forest products industry is important to the economic well-being of the state. The low-grade forest products market is a key part of the forest products industry, therefore every effort should be made to promote viable uses of low-grade forest products.

2 Intent. It is the intent of the general court that the program established under sections 4-10 of this act, and funded from system benefits charges and other electric charge revenues, shall serve as a temporary means to assist in maintaining the low-grade forest products market by providing payments, within a restricted amount of funding, to make it economically feasible for eligible wood-fired generation facilities to operate during the term of the program. It is also the intent of the general court that a more permanent solution to sustaining the low-grade forest products market be developed by all concerned parties in the near future.

3 Forestry; Policy, Definitions, and Administration; Forest Products Promotion. Amend RSA 227-G by inserting after section 3 the following new section:

227-G:3-a Forest Products Promotion. The department shall develop a program to promote the New Hampshire forest products industry. The department's program shall support the operation of viable existing or new industries and companies in New Hampshire that use low-grade forest products.

4 Definitions. In sections 4-10 of this act:

I. "Average rate" means the sum of all revenues received or to be received by an eligible facility for eligible kilowatt-hours produced and sold during a production period, whether from sales to the New England Independent System Operator, sales under any contract, or sales pursuant to statutory mandates other than this act, divided by the eligible kilowatt-hours produced and sold during that production period.

II. "Billing cycle" means the regular period for which the eligible facility was paid for its electrical output for sales under its rate order.

III. "Capacity rating" means the output potential of a wood-fired, qualifying small power production facility as set forth in the commission Docket DR 89-148 settlement agreement of August 5, 1992 by and among Public Service Company of New Hampshire, the commission, and 6 therein listed New Hampshire wood-fired power facilities which, among other matters, settled the amount of capacity and energy output which could be produced under their respective rate orders.

IV. "Commission" means the New Hampshire public utilities commission.

V. "Department" means the department of resources and economic development.

VI. "Eligible facility" means any wood-fired, qualifying small power production facility for which the commission issued an order between November 1, 2001 and November 30, 2001 releasing the facility from all or part of its obligation under a rate order to sell energy or energy and capacity from the facility at specified long-term rates.

VII. "Eligible kilowatt-hours" means the number of kilowatt-hours produced by an eligible facility in a production period, up to the facility's kilowatt-hour limit, reduced by those kilowatt-hours required to be produced under a privately-negotiated legal obligation existing on December 31, 2001, or then existing and later amended, and produced during the production period.

VIII. "Forest products utilization rate" means \$0.06 per kilowatt-hour, unless adjusted by the commission under section 8 of this act.

IX. "Fund" means the forest products utilization fund established under section 10 of this act.

X. "Kilowatt-hour limit" means the number of kilowatt-hours that an eligible facility could produce during a production period if operated at 100 percent of its capacity rating.

XI. "Participant" means the owner of an eligible facility that has been enrolled in the forest products utilization program in accordance with the provisions of this act.

XII. "Production costs" means the sum of:

(a) The participant's reasonable and prudent fuel, maintenance, operation, and administration costs incurred by or properly chargeable to the participant, without duplication, for the operation and maintenance of the eligible facility, including, without limitation, payments for fuel, additives or chemicals and transportation costs related thereto, salaries, benefits to employees, taxes other than those based upon the participant's income, insurance, consumables, payments under any lease, payments pursuant to agreements for the management, operation, and maintenance of the eligible facility, legal fees and expenses paid by the participant in connection with the management, operation, and maintenance of the eligible facility, fees paid in connection with obtaining, transferring, maintaining, or amending any permits or otherwise complying with any requirements or any local, state, or federal governmental authority with jurisdiction over the eligible facility, and general and

administrative expenses, depreciation, utilities, transmission costs, ash handling and disposal, expenditures or reserves for repairs, capital replacement, and major maintenance, and all other costs properly allocable to the eligible facility.

(b) A return on investment, at the rate determined by the commission pursuant to paragraph V of section 8 of this act, on the eligible facility's depreciated net book value of plant in service.

(c) The cost to the participant of participating in any proceedings before the commission, including the reasonable and prudent fees and expenses of its counsel and experts.

XIII. "Production period" means a period corresponding to a billing cycle during which the electrical output is produced.

XIV. "Rate order" means a commission-approved long-term power sales order respecting a particular eligible facility and issued as part of the state's implementation of the Public Utility Regulatory Policies Act of 1978.

5 Forest Products Utilization Program. There is hereby established a forest products utilization program in which eligible facilities may be voluntarily enrolled. The term of enrollment shall be through midnight, December 31, 2006, unless earlier terminated pursuant to paragraph IV of section 8 of this act. Eligibility verification by the department and acceptance by signature under section 6 of this act shall be a legally enforceable obligation upon both the department and the participant for the foregoing term to abide by the provisions of sections 4-10 of this act and the terms of the enrollment approval document, to the extent the enrollment approval document is in conformance with sections 4-10 of this act.

6 Enrollment.

I. An owner of an eligible facility may apply to the department to become enrolled in the forest products utilization program by providing, to the satisfaction of the department, the following information:

(a) A statement of the eligibility of the facility, as determined solely by the definition of eligible facility under paragraph VI of section 4 of this act;

(b) The billing cycle and associated production periods of the eligible facility;

(c) The capacity rating, kilowatt-hour limit, and the kilowatt-hour production requirements of any privately-negotiated legal obligation existing on December 31, 2001, or then existing and later amended, including a copy of such, to be used to compute the eligible kilowatt-hours for the eligible facility;

(d) A statement of the fuel required to be combusted at the eligible facility under any agreements associated with the termination of its rate order and copies of all such agreements; and

(e) Adequate credit security to ensure payment of any payments required pursuant to paragraph II of section 7 of this act and section 9 of this act.

II. The department shall expeditiously verify the eligibility of the facility based on the definition of eligible facility under paragraph VI of section 4 of this act. If eligibility cannot be verified, the department shall expeditiously notify the applicant in writing and provide a reasonable opportunity for the facility to respond to the department's determination or remedy the basis of any such determination. If eligibility is verified, the department shall expeditiously issue an enrollment approval document for signature on behalf of the eligible facility that details the following:

(a) The enrollment period is through midnight, December 31, 2006, unless earlier terminated pursuant to paragraph IV of section 8 of this act;

(b) The billing cycle and the associated production periods to be used;

(c) The composition of the fuel to be burned based on any agreements the applicant was required to submit under subparagraph I(d);

(d) The method by which eligible kilowatt-hours and the average rate shall be calculated in accordance with this act;

(e) Documentation requirements for payment submittals; and

(f) Any required credit security measures.

III. Enrollment in the program shall commence upon receipt by the department of the document signed on behalf of the eligible facility. The document shall become void if not returned to the department within 30 days of issuance, unless an extension is granted by the department. The department shall forward a copy of the signed document to the commission within 3 days of receipt.

7 Payment Process.

I. The participant shall submit to the department, on a billing cycle basis, a statement containing:

(a) The calculation, in accordance with the method required by the enrollment approval document, of the number of eligible kilowatt-hours produced during the production period as taken from the eligible facility's meter reading and invoices to purchasers;

(b) The calculation of the average rate for the production period;

(c) The calculation of any payments due in accordance with paragraph II; and

(d) A statement that the fuel burned during the production period complies with all agreements the eligible facility may have on such fuel composition and a quantification of such fuel amounts. With each statement submitted, the eligible facility shall submit a certification documenting that at least 85 percent of the wood combusted and attributable to eligible kilowatt-hours during the period was obtained from suppliers, procurers, or sources located in this state.

II. The department shall review and verify the calculations submitted. If the average rate is less than the forest

products utilization rate, then the department shall make payment to the participant from the fund, to the extent moneys are available, in an amount equal to the positive difference between the average rate and the forest products utilization rate multiplied by the eligible kilowatt-hours. If the average rate is greater than the forest products utilization rate, then an amount equal to 50 percent of the positive difference between the average rate and the forest products utilization rate multiplied by the eligible kilowatt-hours shall be paid by the participant to the department. Any payment due under this paragraph shall be timely made using the same time for payment used under the eligible facility's terminated rate order.

8 Adjustment of Forest Products Utilization Rate.

I. Within 30 days of a participant's enrollment in the forest products utilization program, the commission shall commence a proceeding, that shall include an adjudicative proceeding, to adjust, if needed, the forest products utilization rate that shall apply to the participant's eligible facility, as provided for in paragraph II. The participant shall be subject to the same requirements that a public utility is subject to in a rate proceeding or an adjudicative proceeding before the commission, including, but not limited to, the provisions of RSA 365:6, RSA 365:10, RSA 365:12, RSA 365:14, RSA 365:15, RSA 365:16, RSA 365:17, RSA 365:18, RSA 365:21, RSA 365:29, RSA 365:38, 365:41-44, and RSA 366. Within 30 days of a participant's enrollment in the forest products utilization program, the participant shall file with the commission such information as necessary to comply with the commission's rules applicable to a public utility regarding rate case filing requirements, in the form and detail as specified therein, or as modified by the commission. Such filing shall include written testimony and all documentation in support of the participant's calculations of its average rate and production costs, along with such written attestation as required by commission rule.

II. The commission shall, as it can best determine and if needed, adjust the forest products utilization rate that shall apply to the participant's eligible facility to provide revenues that will be equivalent to the production costs for eligible kilowatt-hours during the term of enrollment, provided such adjustment does not increase the rate above the initial rate established in paragraph VIII of section 4 of this act. The commission may include an automatic adjustment mechanism to apply to the rate to account for future changes in productions costs, based on a generally recognized economic indicator that measures inflationary pressures in the region. Such automatic adjustment mechanism may increase the rate above the initial rate established in paragraph VIII of section 4 of this act. The commission shall conclude its responsibilities under this paragraph within 6 months of the participant's completed filing required by paragraph I.

III. As part of the proceeding, the commission shall make a public interest determination based solely on whether the following conditions are likely to occur:

- (a) Payments received by the participant under the program will preserve New Hampshire jobs related to the low-grade forest products industry, not including those within the eligible facility; and
- (b) The price of the fuel used by the eligible facility will be comparable to the market price as a whole for such type of fuel.

IV. If the public interest conditions in paragraph III are not likely to occur, then the commission shall notify the department of its determination and the department shall terminate the participant's enrollment in the program.

V. The commission shall, by order, establish a return on investment rate of up to 10 percent to be used for determining the participant's production costs.

9 Review of Sales Revenue. The eligible facility shall provide written notice to its suppliers and procurers to seek to obtain such supply from in-state locations, where it can be done so in a commercially reasonable manner. A participant shall, within reasonable and prudent business practices, maximize sales revenue for eligible kilowatt-hours produced during the term of enrollment. The commission may from time to time, up until 4 months after a participant's enrollment in the program ends, review the participant's sales revenue to determine compliance with this requirement. If the commission determines that a participant has not complied, the commission shall notify the department and shall require the participant to repay to the department any amount received in excess of the amount that would have been received had sales revenue been appropriately maximized. The participant shall make such repayment to the department in equal monthly installments over a period of 12 months, beginning on the date 15 days after the commission's determination. In any review before the commission under this paragraph, the participant shall be subject to the same requirements that a public utility is subject to in a similar review before the commission.

10 Forest Products Utilization Fund Established.

I. There is hereby established in the office of the treasurer the forest products utilization fund. This nonlapsing, revolving special fund shall be continually appropriated to the department only for the purposes specified in this act. The state treasurer shall invest the moneys in the fund as provided by law. Interest received on investments made by the state treasurer shall be credited to the fund.

II. Any payments made by the department to an eligible facility under this act shall be drawn from the fund. Any payments made by an eligible facility to the department under this act shall be deposited in the fund. The treasurer may accept deposits into the fund from other sources not specifically referred to in this act. This paragraph shall not apply to any transactions that occur under paragraph VII after closure of the fund under paragraph VIII.

III. Each public utility having a system benefits charge, including any public utility where authorization for such

charges arises at any time during the existence of the program created under section 5 of this act shall pay to the department, by the 15th of each month for deposit in the fund, \$0.0001 per kilowatt-hour distributed to its customers in the prior month; payments shall be made for all electricity distributed by the utility for the period that any eligible facility is enrolled in the program. Notwithstanding any other provision of law, the commission shall allow any such public utility to be reimbursed through that portion of revenues collected from its existing system benefits charge and allocated to energy efficiency programs by the commission.

IV. Each public utility not having a system benefits charge and each municipal electric system furnishing electric utility service shall assess a charge on the utility bill of their customers in the amount of \$0.0001 per kilowatt-hour distributed to its customers during the period that any eligible facility is enrolled in the program created under section 5 of this act or until such time as a system benefits charge is authorized for the public utility. The public utility or municipal electric system shall collect such charge and forward the revenue to the department for deposit in the fund.

V. The provisions of paragraphs III and IV shall be suspended if the balance in the fund reaches or exceeds \$1,100,000. The requirements shall be reinstated if the balance declines to \$750,000 or less.

VI. The department shall not be obligated to make payments to any participant in excess of moneys available in the fund. In the event of insufficient funds, the department shall make partial payments, if possible, and shall make full payments for past due amounts, as expeditiously as possible, when sufficient funds are available.

VII. If, after all required payments have been made into the fund, there are insufficient funds available at the conclusion of the program created under section 5 of this act to pay all claims submitted by eligible facilities, the department shall prorate such claims on an equitable basis and make payment from the available funds. Any unpaid claims surviving the conclusion of the program will not be paid unless funds, which should have been paid into the fund prior to the program conclusion, are later paid to the department.

VIII. Moneys remaining in the fund after all payments due under sections 7 and 9 of this act have been made shall be returned pro rata to the public utilities and municipal electric systems. The public utilities and the municipal electric systems that assessed a charge under paragraph IV shall credit the returned amounts to the benefit of their ratepayers. Public utilities and municipal electric systems who made payments from the system benefits charge shall use the returned funds for any purposes for which a system benefits charge may be used under RSA 374-F:3, VI, as determined by the commission. The department shall disburse such remaining moneys as directed by the commission, at which time the state treasurer shall close the fund account.

11 Eligibility Under Nox Budget Trading Program. Notwithstanding the definition of "renewable energy projects" under administrative rule Env-A 3203.49, any multi-purpose set-aside account established under the NOx Budget Trading Program by the department for renewable energy sources shall include any eligible facility as defined in paragraph VI of section 4 of this act that is enrolled in the forest products utilization program. Any owner of such a facility shall file a request under the trading program for the allocation of NOx allowances. Any allowances received shall be sold by the owner with the intent of maximizing sales revenues. Such revenues shall be deposited in the forest products utilization fund established under section 10.

12 Task Force to Promote the Low-Grade Forest Products Market. The department of resources and economic development shall convene a task force to identify and develop means of promoting a sustainable low-grade forest products market in the state. The department shall work with all interested parties, including the New Hampshire business finance authority, the New Hampshire industrial research center, the community development finance authority, the office of state planning, county and municipal economic development agencies, and the governor's office. The department shall submit an interim report by November 1, 2003 and a final report by November 1, 2004, detailing its efforts, along with any recommendations for legislation, to the speaker of the house of representatives, the senate president, the house science, technology and energy committee, the senate energy and economic development committee, and the state library.

13 Repeal. Sections 4-11 of this act, relative to the forest products utilization program, are repealed.

14 Effective Date.

I. Section 13 of this act shall take effect July 1, 2008.

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

AMENDED ANALYSIS

This bill:

I. Establishes a forest products utilization program to make payments to certain wood-fired power production facilities.

II. Establishes per-kilowatt-hour charges on electric distribution to fund the forest products utilization program.

2003-0365h

Amendment to HB 796-FN-LOCAL Proposed by the Committee on Commerce - C

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

□ Property Tax; Manufactured Housing. Amend RSA 72:7-a to read as follows:

72:7-a Manufactured Housing.

I. Manufactured housing suitable for use for domestic, commercial or industrial purposes is taxable **as real estate** in the town in which it is located on April 1 in any year if it was brought into the state on or before April 1 and remains here after June 15 in any year; except that manufactured housing as determined by the commissioner of revenue administration, registered in this state for touring or pleasure and not remaining in any one town, city or unincorporated place for more than 45 days, except for storage only, shall be exempt from taxation. This paragraph shall not apply to manufactured housing held for sale or storage by an agent or dealer.

I-a. Manufactured housing suitable for use for domestic, commercial or industrial purposes is taxable **as real estate** in the town, city or unincorporated place to which it is brought and located after April 1 and before the following January 1, provided that said manufactured housing remains in said town, city or unincorporated place for more than 10 weeks, except for storage only, and further provided a tax has not been assessed on it elsewhere in the state for that year. The tax shall be for the pro rata part of the tax year remaining when said manufactured housing became located in the town, city or unincorporated place. The selectmen or assessors may so require and it shall be an obligation of the owner to file with the selectmen or assessors a true and correct inventory of the property subject to taxation under this paragraph within 15 days of the location of the manufactured housing in such form as the commissioner of revenue administration may prescribe.

II. There shall be a lien for uncollected taxes upon any manufactured housing suitable for use for domestic, commercial or industrial purposes that has been taxed pursuant to paragraphs I and I-a. Said lien shall take precedence over all other liens and encumbrances upon said manufactured housing and shall continue in force until 1-½ years from the assessment of the tax. ~~[The tax collector shall file with the town or city clerk, and with the register of deeds for the county in which the manufactured housing is then located, a copy of a document stating the existence of any such lien, the amount of the uncollected taxes secured by the lien, the name and address of the person liable for the tax as of the date of its assessment, and a description of the manufactured housing upon which the tax has been assessed. The town or city clerk shall keep a file of such documents, which shall be open to public inspection. Upon payment, release, or satisfaction of the lien, the tax collector shall file a notice thereof with the town or city clerk and with the register of deeds. There shall be no fees chargeable for any such filings with the town or city clerk.]~~ ***Such taxes shall be subject to the collection procedures set forth in RSA 80 for real estate taxes.***

2] New Section; Proceedings Against Real Estate; Manufactured Housing; Mortgage. Amend RSA 80 by inserting after section 18 the following new section:

80:18-a Definition; Mortgage; Manufactured Housing. In this chapter, “mortgage” shall include a security interest in manufactured housing created and perfected as authorized by RSA 477:44, IV. A mortgagee shall include a holder of such a security interest.

3] Personal Property Lien; Manufactured Housing Removed. Amend RSA 454-C:3, II to read as follows:

II. Except as otherwise provided in RSA 454-C:7, and only as to federal[;] **and** state[; ~~and manufactured housing~~] tax liens, whenever any such lien, or a full release of any such lien, is filed with a city or town clerk, the clerk shall within 2 business days transmit to the secretary of state, by mail or other medium prescribed or authorized by the secretary of state, a copy of, or an electronic record of all information contained in, the notice of filing of lien or notice of full release of lien submitted by the person or agency filing the lien or release pursuant to RSA 454-C:2. The term “business day” as used in the preceding sentence shall mean a day on which the clerk’s office is open for business. Only the notice itself or electronic record thereof shall be so transmitted, not the other lien documentation filed with the notice. The secretary of state within 3 business days of such receipt shall enter an image of the notice or the information contained therein in the index, and shall periodically transmit to each such clerk an acknowledgment of receipt of such notices or electronic records. Pursuant to the statutes providing for the filing of each type of lien listed in RSA 454-C:1, I, no such liens other than federal[;] **and** state[; ~~and manufactured housing~~] tax liens will be filed with city or town clerks subsequent to the effective date of this chapter.

4] Personal Property Lien Index; Transition Period; Manufactured Housing Removed. Amend RSA 454-C:7, IV to read as follows:

IV. Notwithstanding the provisions of RSA 454-C:3, whenever a full release of any pre-effective-date federal[;] **or** state[; ~~or manufactured housing~~] tax lien is filed with a town or city clerk, and (in the case of federal tax liens) a notice of filing of such lien or electronic record thereof has not previously been transmitted to the secretary of state pursuant to paragraph II, such clerk shall remove the lien being released from the file, and shall not forward the notice of full release to the secretary of state; and whenever a full release of any pre-effective-date lien of any type is filed with the secretary of state, and information regarding such lien has not previously been entered in the index pursuant to paragraph III, the secretary of state shall remove the lien being released from the file, and shall not enter an image of the notice of full release, or the information contained therein, in the index.

5] Secretary of State; Removal of Manufactured Tax Lien Index. The secretary of state shall remove from the consolidated lien index maintained pursuant to RSA 454-C:1 all information pertaining to manufactured housing tax liens filed and maintained prior to the repeal by this act of RSA 454-C:1, I(j). Such removal shall not be deemed to invalidate any such lien.

6] Uniform Commercial Code; General Definitions; Security Interest. Amend RSA 382-A:1-201(37) to read as follows:

(37) “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment

intangible, or a promissory note in a transaction that is subject to Article 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 2-401 is not a “security interest”, but a buyer may also acquire a “security interest” by complying with Article 9. Except as otherwise provided in Section 2-505, the right of a seller or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods is not a “security interest”, but a seller or lessor may also acquire a “security interest” by complying with Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2-401) is limited in effect to a reservation of a “security interest”.

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

- (a) the original term of the lease is equal to or greater than the remaining economic life of the goods,
- (b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,
- (c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or
- (d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that

- (a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,
- (b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,
- (c) the lessee has an option to renew the lease or to become the owner of the goods,
- (d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or
- (e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection (37):

- (x) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee’s reasonably predictable cost of performing under the lease agreement if the option is not exercised;

- (y) “Reasonably predictable” and “remaining economic life of the goods” are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

- (z) “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

A rent-to-own agreement, as defined in RSA 358-P:2, V, shall not create or be construed as a “security interest”.

☐ Repeal. RSA 454-C:1, I(j), relative to the index of manufactured housing tax liens, is repealed.

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

AMENDED ANALYSIS

This bill provides that manufactured housing shall be taxed and treated as real estate, and eliminates the separate manufactured housing tax lien system.

The bill also makes a change to the definition of security interest in the uniform commercial code.

2003-0784h

Amendment to HB 798

Proposed by the Committee on Commerce - C

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

1 Estate Planning by Guardian. Amend RSA 464-A:26-a, III(f) and (g) to read as follows:

(f) The ward's prior estate planning action, including significant life-time gifts, will, beneficiary designations, joint ownership, or trusts; ~~and~~

(g) The ward's family situation, including the family members who would inherit from the ward if the ward dies intestate;

(h) Whether the gift is intended to reduce the ward's assets or income in order to qualify him or her for medicaid or other governmental benefits;

(i) The ward's housing situation during the 12 months prior to the filing of the petition and the impact of

the proposed gift on the ward's housing, including whether the proposed gift will leave the ward with sufficient assets and resources to maintain his or her housing; and

(j) A description of the care and services that the ward requires and is currently receiving, and the impact of any proposed gift on the ward's access to care and services.

2 Estate Planning by Guardian. Amend RSA 464-A:26-a, V to read as follows:

V.(a) Before authorizing the guardian to make lifetime gifts or to plan for the testamentary distribution of the ward's estate, the probate court must find, by a preponderance of the evidence, that:

~~[(a)]~~ (1) The proposed gifts and/or testamentary plan are consistent with the ward's wishes; ~~[(a)]~~

~~[(b)]~~ (2) The testamentary distribution of the ward's estate will minimize taxation and/or facilitate distribution of the ward's estate to family, friends, or charities who would be likely recipients of gifts from the ward.

(b) No proposed gift shall be approved by the court unless the court finds by clear and convincing evidence, that:

(1) The proposed gift will not adversely affect the ward's housing options, access to care and services, general welfare, or quality of life;

(2) The proposed gift does not create any risk that the ward will be deprived of sufficient assets to cover his or her needs during any period of medicaid ineligibility that would result from the proposed gift.

(3) The proposed gift will not result in premature or unnecessary nursing home placement or institutionalization of the ward, or compromise the ward's access to care or services in the least restrictive setting in which his or her needs can be met.

VI. The probate court, prior to authorizing a lifetime gift, shall appoint a guardian ad litem if:

(a) The guardian is a beneficiary of a proposed gift that is not in accordance with the ward's personal history of making or joining in the making of lifetime gifts or an estate plan established prior to the guardianship; or

(b) The circumstances of the proposed gift benefit the guardian personally or otherwise create a potential conflict of interest between the ward's interests and the guardian's personal interests.

VII. The department of health and human services, county attorney, and the department of justice shall be notified and shall have the opportunity to address the court in any proceeding under this section if:

(a) There is a concern that the proposed gift will pose a risk that the ward will be deprived of sufficient assets to cover his or her needs during any period of ineligibility that would result from the proposed gift.

(b) There is a concern that the ward has been the victim of a crime or has been or is at risk of being abused, neglected, or exploited within the meaning of RSA 161-F:43.

3 Powers of Attorney; Disability or Incompetence of Principal. Amend RSA 506:6, V to read as follows:

V.(a) An attorney in fact is not authorized to make gifts, *pursuant to the durable power of attorney*, to the attorney in fact or to others unless:

(1) The durable power of attorney explicitly authorizes ~~[such]~~ gifts;

(2) The proposed gift will not exceed \$40,000 or 25 percent of the aggregate value of the estate during any calendar year, whichever is greater, unless the durable power of attorney expressly authorizes gifts in excess of this amount, or the gift is approved in advance by the court upon a determination that the gift is authorized in accordance with RSA 506:7, III(e);

(3) The proposed gift will not adversely affect the principal's housing options, access to care or services, general welfare, or quality of life, unless such an effect was clearly intended by the principal, as evidenced by the language of the durable power of attorney or surrounding facts and circumstances, or arises as a necessary implication from the conferred powers;

(4) Any gift to the agent is explicitly authorized in the durable power of attorney, is in accordance with the principal's personal history of making or joining in the making of lifetime gifts prior to the principal's incapacity or is approved in advance by the court upon a determination that the gift is authorized in accordance with RSA 506:7, III(e).

(b) This paragraph shall not in any way impair the right or power of the principal, by express words in the power of attorney, to further authorize, expand or limit the authority of any agent to make gifts of the principal's property.

4 Powers of Attorney. Amend RSA 506:6, VI-VIII to read as follows:

VI. The following disclosure statement, signed by the principal, ~~[may]~~ **shall** accompany a durable power of attorney:
INFORMATION CONCERNING THE DURABLE POWER OF ATTORNEY
THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT YOU SHOULD KNOW THESE IMPORTANT FACTS:

Notice to the Principal: As the "Principal," you are using this Durable Power of Attorney to grant power to another person (called the "Agent" or "Attorney in Fact") to make decisions, including, but not limited to, decisions concerning your money,

property, or both, and to use your money, property, or both on your behalf. If this written Durable Power of Attorney does not limit the powers that you give to your Agent, your Agent will have broad and sweeping powers to sell or otherwise dispose of your property, and to spend your money without advance notice to you or approval by you. Under this document, your agent will continue to have these powers after you become incapacitated, and unless otherwise indicated your Agent will have these powers before you become incapacitated. You have the right to retain this Power and not to release this Power until you instruct your attorney or any other person who may hold this Power of Attorney to so release it to your Agent pursuant to written instructions. You have the right to revoke or take back this Durable Power of Attorney at any time, so long as you are of sound mind. If there is anything about this Durable Power of Attorney that you do not understand, you should seek professional advice. _____

Principal

The language required by this paragraph shall not confer any powers to the agent that are not otherwise contained in the durable power of attorney.

VII. An agent, prior to acting in the capacity of agent, ~~may~~ **shall** execute and affix to the power of attorney an acknowledgment in substantially the following form:

I, _____, have read the attached power of attorney and am the person identified as the Agent for the Principal. I hereby acknowledge that when I act as Agent or "attorney in fact," I am given power under this Durable Power of Attorney to make decisions about money, property, or both belonging to the Principal, and to spend the Principal's money, property, or both on the Principal's behalf, in accordance with the terms of this Durable Power of Attorney. This Durable Power of Attorney is valid only if the Principal is of sound mind when the Principal signs it. When acting in the capacity of Agent, I am under a duty (called a "fiduciary duty") to observe the standards observed by a prudent person, which means the use of those powers that is reasonable in view of the interests of the Principal and in view of the way in which a person of ordinary judgment would act in carrying out that person's own affairs. If the exercise of my acts is called into question, the burden will be upon me to prove that I acted under the standards of a fiduciary. As the Agent, I am not entitled to use the money or property for my own benefit or to make gifts to myself or others unless the Durable Power of Attorney specifically gives me the authority to do so. As the Agent, my authority under this Durable Power of Attorney will end when the Principal dies and I will not have authority to manage or dispose of any property or administer the estate unless I am authorized to do so by a New Hampshire Probate Court. If I violate my fiduciary duty under this Durable Power of Attorney, I may be liable for damages and may be subject to criminal prosecution. If there is anything about this Durable Power of Attorney, or my duties under it, that I do not understand, I understand that I should seek professional advice.

Agent

VIII. Nothing in paragraphs V-VII of this section shall render ineffective a durable power of attorney validly executed under New Hampshire law ***in effect at the time of execution, provided, that any gift that is not in compliance with subparagraphs V(a)(2) through (4) shall require prior court authorization in accordance with RSA 506:7, III(e).***

5 New Subparagraph; Powers of Attorney; Limitations on the Agent. Amend RSA 506:7, III by inserting after subparagraph (d) the following new subparagraph to read as follows:

(e) To determine that particular gifts or other transactions are authorized. In determining the authority of an agent to make a gift, the court shall consider:

- (1) Evidence of the principal's intent;
- (2) The principal's personal history of making or joining in the making of lifetime gifts;
- (3) The principal's estate plan;
- (4) The principal's foreseeable obligations and maintenance needs and the impact of the proposed gift on the agent's housing options, access to care and services, general welfare and quality of life;
- (5) The income, gift, estate or inheritance tax consequences of the transaction;
- (6) Whether the proposed gift creates any risk that the principle will be deprived of sufficient assets to cover his or her needs during any period of medicaid ineligibility that would result from the proposed gift; and
- (7) Whether the proposed gift will result in premature or unnecessary nursing home placement or institutionalization of the principal, or compromise the principal's access to care or services in the least restrictive setting in which his or her needs can be met.

6 Powers of Attorney; Limitations on the Agent. Amend RSA 506:7, IV to read as follows:

IV.(a) The court may hold hearings, ***issue injunctions***, make orders and decrees, and take other actions that are necessary or proper in making determinations ***and providing relief*** on matters presented by a petition filed under paragraph III.

(b) When a gift or transfer made by an agent is challenged in a petition filed under paragraph III of this section, the gift or transfer shall be presumed to be lawful if the durable power of attorney is accompanied by the disclosure statement and acknowledgement drafted in accordance with RSA 506:6, VI and VII, and explicitly authorizes such gifts or transfers ***as set forth in RSA 506:6, V***. However, if the petitioner establishes that the agent made a transfer for less than adequate

consideration, and the transfer is not explicitly authorized by a durable power of attorney drafted in accordance with RSA 506:6, VI and VII, the agent shall be required to prove by a preponderance of evidence that the transfer was authorized and was not a result of undue influence, fraud, or misrepresentation.

7 New Paragraphs; Powers of Attorney; Limitations on the Agent. Amend RSA 506:7 by inserting after paragraph VI the following new paragraphs:

VII. The probate court, prior to authorizing a lifetime gift in a proceeding under this section, shall appoint a guardian ad litem if:

(a) The agent is a beneficiary of a proposed gift that is not in accordance with the principal's personal history of making or joining in the making of lifetime gifts or an estate plan established prior to the principal's incapacity; or

(b) The circumstances of the proposed gift benefit the agent personally or otherwise create a potential conflict of interest between the principal's interests and the agent's personal interests.

VIII. The department of health and human services, county attorney, and the department of justice shall be notified and shall have the opportunity to address the court in any proceeding under this section if:

(a) There is a concern that the proposed gift will pose a risk that the ward will be deprived of sufficient assets to cover his or her needs during any period of medicaid ineligibility that would result from the proposed gift.

(b) There is concern that the principal has been the victim of a crime or has been or is at risk of being abused, neglected or exploited within the meaning of RSA 161-F:43.

8 Effective Date. This act shall take effect January 1, 2004.
2003-0805h

Amendment to HB 806

Proposed by the Committee on Municipal and County Government - C

Amend RSA 72:38-b, VI(a) and (b) as inserted by section 3 of the bill by replacing them with the following:

(a) In a town, other than a town that has adopted a charter pursuant to RSA 49-D, the question shall be placed on the warrant of a special or annual town meeting, by the governing body or by petition pursuant to RSA 39:3.

(b) In a city or town that has adopted a charter pursuant to RSA 49-C or RSA 49-D, the legislative body may consider and act upon the question in accordance with its normal procedures for passage of resolutions, ordinances, and other legislation. In the alternative, the legislative body of such municipality may vote to place the question on the official ballot for any regular municipal election.

2003-0590h

Amendment to HB 807-FN

Proposed by the Committee on Commerce - C

Amend the bill by replacing sections 2 and 3 with the following:

2 Paid Solicitor; Charitable Trusts; Fee Increased. Amend RSA 7:28-c, II to read as follows:

II. A paid solicitor shall register with the attorney general prior to engaging in any solicitation. Applications for registration or re-registration shall be in writing, under oath, in the form prescribed by the attorney general, and shall be accompanied by a fee of [~~\$200~~] **\$500**. The application shall contain such information as the attorney general shall require. Each registration is valid for one year and may be renewed for additional one-year periods upon application and payment of the fee.

3 Solicitor's Notice; Charitable Trusts; Fee Increased. Amend RSA 7:28-c, IV to read as follows:

IV. Prior to the commencement of each solicitation campaign, the paid solicitor shall file with the attorney general a completed "solicitation notice" on forms prescribed by the attorney general. The solicitation notice shall include a copy of the contract described in paragraph IV of this section, the projected dates when soliciting shall commence and terminate, the location and telephone number from where the solicitation shall be conducted, the name and residence address of each person responsible for directing and supervising the conduct of the campaign, a statement as to whether the paid solicitor shall at any time have custody of contributions, and a full description of the charitable program for which the solicitation campaign is being carried out. The charitable trust on whose behalf the paid solicitor is acting shall certify that the solicitation notice and accompanying material are true and complete to the best of its knowledge. The solicitation notice shall be accompanied by a fee of [~~\$75~~] **\$200**.

2003-0756h

Amendment to HB 811

Proposed by the Committee on Judiciary - R

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

AN ACT relative to limiting the liability of manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from misuse.

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

1 Purpose. The purpose of this act is to:

I. Prohibit civil liability causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition for the harm caused by the criminal or unlawful use of their products by others.

II. Preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

2 New Section; Liability Limitation for Manufacturers, Distributors, Dealers, or Importers of Firearms or Ammunition. Amend RSA 508 by inserting after section 20 the following new section:

508:21 Liability Limited; Manufacturers, Distributors, Dealers, or Importers of Firearms or Ammunition.

I. In this section:

(a) "Manufacturer" means:

(1) A person who is engaged in a business to import, make, produce, create, or assemble a qualified product, and who designs or formulates, or has engaged another person to design or formulate, a qualified product.

(2) A seller of a qualified product, but only with respect to an aspect of the product that is made or affected when the seller makes, produces, creates, or assembles and designs or formulates an aspect of the product made by another person.

(3) Any seller of a qualified product who represents to a user of a qualified product that the seller is a manufacturer of the qualified product.

(b) "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(c) "Qualified product" means a firearm or ammunition or a component part of a firearm or ammunition, manufactured in compliance with federal and state law, that has been shipped or transported in intrastate, interstate, or foreign commerce.

(d) "Qualified civil liability action" means a civil action, in law or in equity, brought by any person against a manufacturer or seller or a trade association of a qualified product, for damages resulting from the criminal or unlawful use of a qualified product by the person or a third party, but shall not include an action brought against a manufacturer, seller, or trade organization convicted of a felony under state or federal law, by a party directly harmed by the felonious conduct.

(e) "Seller" means, with respect to a qualified product, a person who:

(1) In the course of a business conducted for that purpose sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a qualified product in the stream of commerce.

(2) Installs, repairs, refurbishes, reconditions, or maintains an aspect of a qualified product that is alleged to have resulted in damages.

(f) "Trade association" means a federal, state, or local trade association which has one or more members which are manufacturers or sellers of a qualified product.

II. A qualified civil liability action shall not be brought in any state court.

3 Effective Date. This act shall take effect January 1, 2004.

AMENDED ANALYSIS

This bill limits the liability of manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from misuse.

2003-0771h

Amendment to HB 816

Proposed by the Committee on Commerce - C

Amend the bill by replacing sections 9 and 10 with the following:

9 Securities; Investigations and Subpoenas; Application by Secretary of State. Amend RSA 421-B:22, III to read as follows:

III. In the event that a person refuses to obey a subpoena issued to him **or her** or any order or determination the secretary of state is authorized to make, the superior court, upon application by the attorney general **or secretary of state or any officer designated by the secretary of state**, may issue to the person an order directing him **or her** to appear before the attorney general **or secretary of state**, or the officer designated by him **or her**, ~~there to~~ to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

10 Securities; Cease and Desist Orders; Injunctions; Receivers. Amend RSA 421-B:23 to read as follows:

421-B:23 Cease and Desist Orders; Injunctions; Receivers.

I. Whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order under this chapter:

(a) The secretary of state shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. **The order shall be served at the last known address of such person. Service of the order and publication of the order in a newspaper of general circulation in the area of the last known address of such person shall serve to duly notify the person of the order and of the right to a hearing on the order.** A hearing shall be held not later than 10 days after the request for such hearing is received by the secretary of state after which and within 20 days of the date of the hearing the secretary of state shall

issue a further order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be conducted in accordance with the rules adopted pursuant to this chapter. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him *or her* upon consideration of the cease and desist order, the allegations of which may be deemed to be true. If the person to whom a cease and desist order is issued fails to request a hearing within 30 calendar days of receipt of such order, ***but in any case no later than 60 calendar days from the issuance of the order***, then such person shall likewise be deemed in default, and the order shall, on the thirty-first day ***from the receipt of the order and no later than the sixty-first day from the issuance of the order***, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the secretary of state, for good cause shown. The secretary of state may adopt rules of procedure concerning all proceedings conducted pursuant to this section;

(b) The attorney general *or secretary of state or his or her designee* may, with or without prior administrative action by the secretary of state, bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted ~~[and a receiver may be appointed for the defendant or the defendant's assets]~~. ***In addition, the court may issue an order for other appropriate or ancillary relief, to include an asset freeze, accounting, writ of attachment, writ of general or specific execution, and an appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets.*** The court shall not require the attorney general *or secretary of state* to post a bond; and

(c) The attorney general *or secretary of state or his or her designee* may bring an action ~~[in the name of the state]~~ for injunctive relief and civil penalties for violations of any provision of this chapter. In any action brought by the attorney general *or secretary of state or his or her designee*, the civil penalties shall not exceed \$5,000 for each violation in the case of knowing violations, or \$2,500 for each violation in the case of negligent violations, and each of the acts specified shall constitute a separate violation. The action may be brought in the superior court of the county in which the defendant resides or has his *or her* principal place of business, or, with the consent of the parties or if the defendant is a nonresident and has no place of business within the state, in the superior court of Merrimack county.

II. In a proceeding in superior court under this section where the state prevails, the secretary of state and the attorney general shall be entitled to recover all costs and expenses of investigation, and the court shall include the costs in its final judgment.

Amend RSA 421-A:3 as inserted by section 17 of the bill by replacing it with the following:

421-A:3 Requirement of Financial Disclosure. No offeror shall make a takeover bid unless as soon as practicable on the date of commencement of the takeover bid ~~[he]~~ ***the offeror*** files with the secretary of state and the target company a registration statement containing the information required by RSA 421-A:4 and publicly discloses the material terms of the offer, ***including the total number and class of securities sought in the offer and the type and amount of consideration offered to security holders.*** The registration statement filed with the secretary of state shall be accompanied by such fees as may be prescribed under RSA 421-A:9. ***The offeror shall provide the target company with any amendments or revisions to the registration statement at the same time that such amendments or revisions are filed with the secretary of state.***

Amend the bill by inserting after section 18 the following and renumbering the original section 19 to read as 20:

19 Disclosure of Security Takeovers; Scheduling of Public Hearing; Offeror and Target Companies As Parties. Amend RSA 421-A:5 to read as follows:

421-A:5 Scheduling of Public Hearing. Within 20 days after the filing of a registration statement pursuant to this chapter, the secretary of state shall commence his investigation and order a hearing, if he determines a hearing is necessary or appropriate for the protection of offerees in this state, for the purpose of determining compliance with the requirements of this chapter and whether the offeror has provided full and fair disclosure to the offerees of all material information concerning the takeover bid including the filing of a complete and accurate registration statement. Any ~~[initial]~~ hearing shall ***include the offeror and the target company as parties, and shall*** commence within 25 days after the filing of a registration statement.

AMENDED ANALYSIS

This bill:

- I. Narrows the definition of agent to exclude certain individuals who provide the secretary of state with securities notice filings.
- II. Defines broker-dealer and agent responsibility with respect to the suitability of recommended securities.
- III. Inserts authorization to charge \$100 per diem and other expenses related to a securities broker examination.
- IV. Shortens the time period in which the secretary of state may consider a license application withdrawn for lack of information.
- V. Clarifies and makes technical corrections to the filing requirements for the registration of securities.
- VI. Authorizes the secretary of state or the attorney general to perform certain investigatory and enforcement functions relative to securities regulation.
- VII. Increases the fine for violation of a cease and desist order.

VIII. Provides that the offeror and target company shall be parties to any public hearing relative to a security takeover.
This bill is a request of the department of state.

2003-0877h

Amendment to HB 817 Proposed by the Committee on Commerce - C

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

❑ Definitions; “Branch Office.” RSA 397-A:1, II is repealed and reenacted to read as follows:

II. “Branch office” means a business location within this state of a person required to be licensed under this chapter.

Branch office does not include a person’s principal office location.

❑ New Paragraph; Definitions; “Commissioner.” Amend RSA 397-A:1 by inserting after paragraph II the following new paragraph:

II-a. “Commissioner” means the bank commissioner.

❑ New Paragraph; Definition; “Principal Office” Added. Amend RSA 397-A:1 by inserting after paragraph X the following new paragraph:

X-a. “Principal office” means the main office location of a person required to be licensed under this chapter.

❑ License Application; Requirements; Investigation; Net Worth Statement, Service of Process Added. Amend RSA 397-A:5 to read as follows:

397-A:5 License Application; Requirements; Investigation.

I. To be considered for licensing, each person shall complete and file with the banking department one verified application ~~[required]~~ **prescribed** by the ~~[bank]~~ commissioner. At a minimum, the application shall state the primary business address of the applicant, the address of its principal office and all branch offices located or to be located within the state, and a list of the principal owners, officers, and directors of the applicant. The applicant shall submit any other information that the ~~[bank]~~ commissioner may require.

II.(a). The license issued for the licensee’s principal place of business shall be referred to as a “principal office license.” Each additional license issued for first mortgage lending activity occurring in a location ***in this state that is*** separate from the licensee’s principal place of business shall be referred to as a “branch office license.” If the applicant or licensee desires to make or broker first mortgage loans in more than one location ~~[within this state]~~, the ~~[bank]~~ commissioner, upon favorable action on the applicant’s principal office license, shall issue a branch office license for each location where the business of making or brokering first mortgage loans is to be conducted.

(b) Each license application shall be accompanied by a nonrefundable application fee of \$250 for each separate office location ~~[within this state]~~ to be licensed. Sums collected under this chapter shall be payable to the state treasurer as restricted revenue and credited to the appropriation for the ~~[bank]~~ commissioner, consumer credit administration division.

(c) Each applicant shall be required to submit to the banking department detailed financial information sufficient for the ~~[bank]~~ commissioner to determine the applicant’s ability to conduct the business of a mortgage banker or a mortgage broker with financial integrity. ~~[At a minimum,]~~ ***The application shall include a statement of net worth. Net worth statements provided in connection with a license application under this section shall be subject to review and verification during the course of any examination or investigation conducted under the authority of RSA 397-A:12.*** Each mortgage banker applicant ~~[must]~~ ***shall*** demonstrate a net worth of \$100,000 ~~[in cash or marketable securities or]~~ ***or post a continuous surety bond*** in ~~[said]~~ ***the*** amount ~~[as determined by rules adopted by the bank commissioner. At a minimum,]~~ ***of \$100,000.*** Each mortgage broker, or any person ***required to be licensed by this section and*** not funding a loan, shall ~~[provide]~~ ***post a continuous surety bond*** in the amount of \$20,000 to the ~~[bank]~~ commissioner. ~~[Net worth statements provided in connection with a license application under this section shall be subject to review and verification during the course of any examination or investigation conducted under the authority of RSA 397-A:12.]~~ ***Surety bonds shall include a provision requiring the surety to give written notice to the commissioner 20 days in advance of the cancellation or termination of the bond. Every bond shall provide that no recovery may be made against the bond unless the state makes a claim for recovery or the person brings suit naming the principal within 6 years after the act(s) upon which the recovery or suit is based.***

III. ***Every applicant for licensing under this chapter shall file with the commissioner, in such form as the commissioner prescribes by rule, irrevocable consent appointing the commissioner to receive service of any lawful process in any non-criminal suit, action or proceeding against the applicant or the applicant’s successor, executor, or administrator which arises under this chapter or any rule or order under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order under this chapter, and such person has not filed a consent to service of process under this section and personal jurisdiction over such person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to such person’s appointment of the commissioner to receive service of any lawful process. Service may***

be made by leaving a copy of the process in the office of the commissioner along with \$5, but is not effective unless:

(1) The plaintiff, who may be the attorney general in a suit, action or proceeding instituted by him or her, forthwith sends a notice of the service and a copy of the process by registered mail to the defendant or respondent at such person's last address on file with the commissioner, and

(2) The plaintiff's affidavit of compliance with this paragraph is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

IV.(a) Upon the applicant's filing of the **complete** application and payment of the required fee, the [bank] commissioner shall have, in accordance with RSA 541-A:29, up to 120 days to investigate and determine whether the applicant's financial resources, experience, personnel, and record of past or proposed conduct warrant the public's confidence and the issuance of a license.

(b) The [bank] commissioner shall determine whether the applicant's proposed interest rates and fees are in accordance with the interest rates and fees charged by other first mortgage lenders, and whether said rates and fees will promote a free and competitive market.

5 License Term; Renewal; Procedure Changed. RSA 397-A:8, II is repealed and reenacted to read as follows:

II. If a person holds a valid license under this section and is in compliance with this chapter and the rules thereunder, such licensee may renew the license by paying the required fee to the banking department on or before December 1 for the ensuing year that begins on January 1. Failure to renew the license shall result in the license terminating on December 31.

6 New Paragraph; Change in Name; Ownership; Location; Obligation to Update. Amend RSA 397-A:10 by inserting after paragraph III the following new paragraph:

IV. Persons licensed under this chapter are under a continuing obligation to update information on file with the commissioner. If any information filed with the commissioner becomes materially inaccurate, the licensee must promptly submit to the commissioner an amendment to its application records that will correct the information on file with the commissioner. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

7 Record Keeping; Fine Added. Amend RSA 397-A:11, II to read as follows:

II. Those licensees that maintain their files in another state are required to return such files to their principal New Hampshire office or the office of their New Hampshire agent for examination no later than 21 calendar days after being requested to do so by the banking department. ***Failure to provide files and documents within the time established by this paragraph shall subject a licensee or person to a fine of \$50 per day for each day after 21 days the files and documents are not produced. Failure to provide files and documents within 60 days after being requested to do so by the banking department shall be sufficient cause for license revocation, suspension, or denial.***

8 Examinations; All Licensees. Amend RSA 397-A:12, III to read as follows:

III. The affairs and records [~~within this state~~] of every licensee shall be subject at any time to such periodic, special, regular, or other examination by the banking department with or without notice to the licensee. All books, papers, files, related material, and records of assets of the licensee shall be subject to the banking department's examination.

9 New Paragraphs; Examinations; Recovery of Costs Added. Amend RSA 397-A:12 by inserting after paragraph V the following new paragraphs:

VI. In any investigation to determine whether any person has violated or is about to violate this chapter or any rule or order under this chapter, upon the commissioner's finding that the person violated this chapter or a rule or order under this chapter, or the person charged with the violation being found in default, the commissioner shall be entitled to recover the cost of the investigation, in addition to any other penalty provided for under this chapter.

VII. Every person being examined, and all of the officers, directors, employees, agents, and representatives of such person shall make freely available to the commissioner or his examiners, the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination and shall facilitate the examination.

VIII. Upon receipt of a written report of examination, the licensee shall have 30 days or such additional reasonable period as the commissioner for good cause may allow, within which to review the report, recommend any changes and set forth in writing the remedial course of action the licensee will pursue to correct any reported deficiencies outlined in the report.

IX. If so requested by the person examined, within the period allowed in paragraph VIII, or if deemed advisable by the commissioner without such request, the commissioner shall hold a closed hearing relative to the report and shall not file the report in the department until after such closed hearing and issuance of his order thereon. If no such closed hearing has been requested or held, the examination report, with such modifications, if any, as the commissioner deems proper, shall be accepted by the commissioner and filed upon expiration of the review period provided for in paragraph VIII. The report shall be accepted and filed within 6 months after the final hearing thereon.

X. All reports pursuant to this section shall be absolutely privileged and although filed in the department as provided in paragraph IX shall nevertheless not be for public inspection. The comments and recommendations of the examiner shall also be deemed confidential information and shall not be available for public inspection.

10 Annual Report; Financial Statement Added. Amend RSA 397-A:13 to read as follows:

397-A:13 Annual Report.

I. Each licensee shall file, under oath, an annual report with the banking department on or before February 1 each year concerning operations for the preceding year or license period ending December 31 upon the form prescribed by the banking department. Whenever a licensee operates 2 or more licensed offices or whenever 2 or more affiliated licensees operate licensed offices, then a composite report of such group of licensed offices may be filed in lieu of individual reports.

II. *Each licensee shall also file, under oath, its financial statement with the commissioner within 90 days from the date of its fiscal year end. The financial statement shall be prepared in accordance with generally accepted accounting principles with appropriate note disclosures. A first mortgage banker's financial statement shall include a balance sheet, income statement, statement of changes in owners' equity, and a cash flow statement. A first mortgage broker's financial statement shall include a balance sheet or a statement of net worth. If the financial statement filed under this section is not audited, a certification statement shall be attached and signed by a duly authorized officer of the licensee. The certification statement shall state that the financial statement is true and accurate to the best of the officer's belief and knowledge.*

III. The banking department shall publish its analysis of the information required ~~under this section~~ *in the licensee's annual report* as a part of ~~its~~ *the commissioner's* annual report.

~~III.~~ IV. Any licensee failing to file *either the annual report or the financial statement* required by this section within the time prescribed may be required to pay to the banking department a penalty of \$25 for each calendar day the *annual report or financial statement* is overdue. ~~[If a licensee elects to file a composite report and the composite report is not filed on or before February 1 as required in this section the penalty prescribed in this section shall apply separately for each license and branch license so violating.]~~ The penalties *for failure to file an annual report that are* prescribed by this paragraph shall not apply to mortgage brokers licensed under this chapter who earned no money from purchasing, placing or selling first mortgage loans during the preceding year and who indicate such in writing to the banking department on or before February 1.

~~IV.]~~ V. In addition to the annual report *and financial statement*, the banking department may require such additional regular or special reports as it may deem necessary to the proper supervision of licensees under this chapter.

11 Advertising; "Licensed by the New Hampshire Banking Department" Added. Amend RSA 397-A:14-a, III to read as follows:

III. Any advertisement, printing, display, publication, distribution, or broadcast offering loans governed by this chapter shall clearly and conspicuously contain the ~~[valid and existing license number issued]~~ *disclosure, "Licensed by the New Hampshire banking department" [under this chapter]*. Failure to comply with the provisions of this paragraph shall constitute sufficient cause for license revocation, suspension, or denial.

12 Consumer Inquiries; Licensee's Response; Date of Transmission Changed. Amend RSA 397-A:15-a, II to read as follows:

II. A licensee who fails to respond to consumer complaints as required by this section within the time prescribed shall pay to the commissioner the sum of \$50 for each day such response is overdue. For purposes of this section, the date of transmission shall be the date such response is ~~[postmarked]~~ *received by the commissioner*.

13 License Revocation; Suspension; Appeal; Show Cause Order, Opportunity for Hearing Added. RSA 397-A:17, I and II are repealed and reenacted to read as follows:

I. The commissioner may issue an order requiring the person to whom any license has been granted to show cause why the license should not be revoked. The order shall give reasonable notice of the opportunity for a hearing and shall state the reasons for the issuance of the order. The commissioner may by order, upon due notice and opportunity for hearing, assess penalties, deny, suspend or revoke a license if it is in the public interest and the applicant or licensee, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant or licensee:

- (a) Has violated any provision of this chapter or rules thereunder;
- (b) Has not met the standards established in this chapter;
- (c) Has accepted or processed loan applications transmitted or brokered by a mortgage broker who is not licensed, and is not exempt from licensing, under this chapter;
- (d) Has filed an application for licensing which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;
- (e) Has made a false or misleading statement to the commissioner or in any reports to the commissioner;
- (f) Has made fraudulent misrepresentations, has circumvented or concealed, through whatever subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to a borrower under the provisions of this chapter;
- (g) Has failed to supervise its agents, managers, or employees;
- (h) Is the subject of an order entered within the past 5 years by this state, any other state, or federal regulator

denying, suspending or revoking licenses or registration;

- (i) Is permanently, preliminarily, or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of lending or collection activities;
- (j) Is not qualified on the basis of such factors as experience, knowledge, and financial integrity;
- (k) Has engaged in dishonest or unethical practices in the conduct of the business of making or collecting mortgage loans;
- (l) Has violated applicable federal laws or rules thereunder; or
- (m) For other good cause shown.

II. The banking department may, upon due notice and **opportunity for a** hearing, suspend any license for a period not exceeding 30 days, pending investigation by the banking department.

14 New Paragraphs; License Revocation; Suspension; Appeal; Entities; Licensee or Applicant not in Existence. Amend RSA 397-A:17 by inserting after paragraph V the following new paragraphs:

VI. If a licensee is a partnership, association, corporation or entity however organized, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed association or corporation or any member of a licensed partnership has so acted or failed to act in behalf of said licensee as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for supervision of its branch offices and for the acts of any or all of his or her employees while acting as his or her agent if such licensee, after actual knowledge of said acts, retained the benefits, proceeds, profits or advantages accruing from said acts or otherwise ratified said acts.

VII. If the commissioner finds that any licensee or applicant for license is no longer in existence or has ceased to do business as a first mortgage broker or first mortgage banker, or cannot be located after reasonable search, the commissioner may by order revoke the license or deny the application. The commissioner may deem abandoned and withdraw any application for licensure made pursuant to this chapter, if any applicant fails to respond in writing within 180 days to a written request from the commissioner requesting a response. Such request shall be sent via certified mail to the last known address of the applicant that is on file with the commissioner.

15 Violations; Cease and Desist Order. Amend RSA 397-A:18 to read as follows:

397-A:18 Violations.

I. The banking department may issue and serve upon any licensee or person over whom it has jurisdiction a complaint setting forth charges whenever the department is of the opinion that the licensee or person is violating or has violated any provision of this chapter **or any rule or order under this chapter**.

II. The banking department may issue a cease and desist order against any licensee or person who it has reasonable cause to believe is in violation of the provisions of this chapter **or any rule or order under this chapter**. Delivery of such order shall be by hand or registered mail at the principal office of the licensee or other person. ***The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. A hearing shall be held not later than 10 days after the request for such hearing is received by the commissioner after which and within 20 days of the date of the hearing the commissioner shall issue a further order vacating the cease and desist order or making it permanent as the facts require. All hearings shall comply with 541-A. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him or her upon consideration of the cease and desist order, the allegations of which may be deemed to be true. If the person to whom a cease and desist order is issued fails to request a hearing within 30 calendar days of receipt of such order, then such person shall likewise be deemed in default, and the order shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown.***

~~[III. If, within 15 business days after being served with a cease and desist order, the licensee or other person fails or refuses to comply or obtain a valid license, such failure shall constitute a violation of the order and this chapter.]~~

16 Administration by Commissioner; Rulemaking; Basis for Actions. Amend RSA 397-A:20 to read as follows:

397-A:20 Administration by [Bank] Commissioner; Rulemaking.

I. The [bank] commissioner shall administer and enforce the provisions of this chapter.

II. Pursuant to RSA 541-A, the [bank] commissioner may adopt such rules as he or she deems necessary to the administration and enforcement of this chapter. Such rules shall be consistent with the provisions of this chapter, and may include, but shall not be limited to, the following:

- (a) The application form for licensees required under RSA 397-A:5.
- (b) The form of license issued to licensees under RSA 397-A:6.
- (c) Annual reports required by RSA 397-A:13.
- (d) Personal disclosure statements to meet the requirements of RSA 397-A:5, III.

III. The commissioner may prepare, alter, or withdraw such forms as are necessary to comply with the provisions of this title.

IV. The commissioner may issue, amend, or rescind such orders as are reasonably necessary to carry out the provisions of this chapter.

V. The commissioner may, for good cause shown, abate all or a portion of delinquency penalties assessed under this chapter.

VI. All actions taken by the commissioner pursuant to this chapter shall be taken only when the commissioner finds such action necessary or appropriate to the public interest or for the protection of consumers and consistent with the purposes fairly intended by the policy and provisions of this title.

17 Penalties; Knowing Violation, Negligent Violation Added. Amend RSA 397-A:21 to read as follows:

397-A:21 Penalty.

I. Any person who violates any provision of this chapter shall be guilty of a misdemeanor for each violation if a natural person, or guilty of a felony if any other person.

II. Any person who knowingly violates any rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to suspension or revocation of any registration or license, or imposition of an administrative fine not to exceed \$2,500 for each violation in lieu of or in addition to suspension or revocation, as may be applicable under this title, for violation of the provision to which such rule or order relates. Each of the acts specified shall constitute a separate violation.

III. Any person who negligently violates any rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or the imposition of an administrative fine not to exceed \$1,500 for each violation, in lieu of or in addition to suspension or revocation, as may be applicable under this title, for violation of the provision to which such rule or order relates. Each of the acts specified shall constitute a separate violation.

IV. Any person who, either knowingly or negligently, violates any provision of this chapter may, upon notice and opportunity for hearing, and in addition to any such other penalty provided for by law, be subject to suspension, revocation or denial of any registration or license, including forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and each such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed.

V. Every person who directly or indirectly controls a person liable under this section, every partner, principal executive officer or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act constituting the violation, and every licensee or person acting as a common law agent who materially aids in the acts constituting the violation, either knowingly or negligently, may, upon notice and opportunity for hearing, and in addition to any other penalty provided for by law, be subject to suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or the imposition of an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed. No person shall be liable under this paragraph who shall sustain the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist.

18 Records and Filings. RSA 397-A:22 is repealed and reenacted to read as follows:

397-A:22 Records and Filings.

I. A document is filed when it is received by the commissioner. If any filing deadline date falls on a weekend or on a New Hampshire state or federal legal holiday, the due date shall be automatically extended to the next business day following such weekend or holiday.

II. Electronic filings, when received by the commissioner, are deemed filed, and are prima facie evidence that a filing has been duly authorized and made by the signatory on the application or document, are admissible in any civil or administrative proceeding under this chapter, and are admissible in evidence in accordance with the rules of superior court in any action brought by the attorney general under this chapter.

III. A licensee may maintain its records in electronic format if, upon request, the licensee provides the commissioner with:

(a) A full explanation of the programming of any data storage or communications systems in use; and

(b) Information from any books, records, electronic data processing systems, computers or any other information storage system in the form requested by the commissioner.

19 New Section; Severability. Amend RSA 397-A by inserting after section 22 the following new section:

397-A:23 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application and to this end the provisions of this chapter are severable.

20 Change from "Bank Commissioner" to "Commissioner." Amend the following RSA provisions by replacing "bank

commissioner” with “commissioner”: 397-A:6; 397-A:7; 397-A:10, I; 397-A:10-a, I; 397-A:15-a, I.

21 Definitions; “Commissioner” Added. Amend RSA 397-B:1 to read as follows:

397-B:1 Definitions. In this chapter:

I. ***“Commissioner” means the bank commissioner.***

II. “First mortgage loan” shall have the same meaning as provided in RSA 397-A:1, III.

[H:] III. “Mortgage servicing company” means an individual, partnership, corporation, association, or other entity however organized and wherever located which, for itself or on behalf of the holder of a first mortgage loan, records such payments on its books and records and performs such other administrative functions as may be necessary to properly carry out the mortgage holder’s obligations under the mortgage agreement including, when applicable, the receipt of funds from the mortgagor to be held in escrow for payment of real estate taxes and insurance premiums and the distribution of such funds to the taxing authority and insurance company.

[H:] IV. “Mortgagor” means any person or persons obligated to repay a first mortgage loan.

22 Administration by Commissioner; Rulemaking; Orders, Basis for Actions Added. Amend RSA 397-B:3 to read as follows:

397-B:3 Administration by [Bank] Commissioner; Rulemaking.

I. The [bank] commissioner shall administer and enforce the provisions of this chapter and, pursuant to RSA 541-A, shall adopt such rules as the commissioner deems necessary to the administration and enforcement of this chapter.

II. ***The commissioner may prepare, alter, or withdraw such forms as are necessary to comply with the provisions of this title.***

III. ***The commissioner may issue, amend, or rescind such orders as are reasonably necessary to carry out the provisions of this chapter.***

IV. ***The commissioner may require such regular or special reports as the commissioner deems necessary to the proper supervision of licensees under this chapter.***

V. ***The commissioner may, for good cause shown, abate all or a portion of delinquency penalties assessed under this chapter.***

VI. ***All actions taken by the commissioner pursuant to this chapter shall be taken only when the commissioner finds such action necessary or appropriate to the public interest or for the protection of consumers and consistent with the purposes fairly intended by the policy and provisions of this title.***

VII. ***If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a mortgage servicing company, or cannot be located after reasonable search, the commissioner may by order revoke the registration or deny the application. The commissioner may deem abandoned and withdraw any application for registration made pursuant to this chapter, if any applicant fails to respond in writing within 180 days to a written request from the commissioner requesting a response. Such request shall be sent via certified mail to the last known address of the applicant that is on file with the commissioner.***

VIII. ***The commissioner may issue an order requiring the person to whom any registration has been granted to show cause why the registration should not be revoked. The registration may be revoked for violations of this chapter or any rule or order thereunder. The commissioner may issue a cease and desist order against any registrant or person whom he or she has reasonable cause to believe is in violation of the provisions of this chapter or any rule or order under this chapter. Delivery of such orders shall be by hand or registered mail at the principal office of the licensee or other person. The orders shall be calculated to give reasonable notice of the right of the person to request a hearing on the order and shall state the reasons for the entry of the order. A hearing shall be held not later than 10 days after the request for such hearing is received by the commissioner after which and within 20 days of the date of the hearing the commissioner shall issue a further order vacating the revocation or cease and desist order or making it permanent as the facts require. All hearings shall comply with 541-A. If the person to whom a revocation or cease and desist order is issued fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him or her upon consideration of the revocation or cease and desist order, the allegations of which may be deemed to be true. If the person to whom a revocation or cease and desist order is issued fails to request a hearing within 30 calendar days of receipt of such order, then such person shall likewise be deemed in default, and the order shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown.***

IX. ***The commissioner may by order deny, suspend, or revoke any registration or application if the commissioner finds that the order is in the public interest and the applicant or registrant, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant or registrant:***

(a) ***Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement***

which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) Has made a false or misleading statement to the commissioner or in any reports to the commissioner;

(c) Has failed to supervise its agents, managers, or employees;

(d) Is the subject of an order entered within the past 5 years by the state, any other state, or federal regulator denying, suspending or revoking licenses or registration;

(e) Is permanently, preliminarily, or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of mortgage servicing or collection activities;

(f) Has engaged in dishonest or unethical practices in the conduct of the business of servicing or collecting mortgage loans;

(g) Has violated this chapter or any rule or order thereunder or has violated applicable federal laws or rules thereunder; or

(h) For other good cause shown.

23 Registration; Fees; Term; Renewal; Service of Process Added. Amend RSA 397-B:4 to read as follows:

397-B:4 Registration; Fees; Term; Renewal.

I. Any mortgage servicing company which services first mortgage loans secured by real property located in the state of New Hampshire shall be required to register with the banking department by filing a registration statement on a form prescribed by the [bank] commissioner and paying an original registration fee of \$100. Each such registration shall expire on [August] **December** 31 of each calendar year. A registration may be renewed by filing a renewal statement on a form prescribed by the bank commissioner and paying a renewal registration fee of \$50, on or before, [August 31 of each calendar] **December 1 for registration for the ensuing** year. Sums collected under this chapter shall be payable to the state treasurer as restricted revenue and credited to the appropriation of the [bank] commissioner, consumer credit administration division.

II. *Every applicant for registration under this chapter shall file with the commissioner, in such form as the commissioner prescribes by rule, irrevocable consent appointing the commissioner to receive service of any lawful process in any non-criminal suit, action or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order under this chapter, and such person has not filed a consent to service of process under this section and personal jurisdiction over such person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to such person's appointment of the commissioner to receive service of any lawful process. Service may be made by leaving a copy of the process in the office of the commissioner along with \$5, but is not effective unless:*

(1) The plaintiff, who may be the attorney general in a suit, action or proceeding instituted by him or her, forthwith sends a notice of the service and a copy of the process by registered mail to the defendant or respondent at such person's last address on file with the commissioner, and

(2) The plaintiff's affidavit of compliance with this paragraph is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

24 Penalties; Knowing and Negligent Violation, Parties Subject to License Suspension Added. Amend RSA 397-B:6 to read as follows:

397-B:6 Penalties.

I. Any mortgage servicing company which violates any provision of RSA 397-B:5 shall be liable to the mortgagor for:

[H-](a) Any penalties, interest or other charges levied by the taxing authority or insurance company as a result of such violation; and

[H-](b) Any actual damages suffered by the mortgagor as a result of such violation, including, but not limited to, late payment penalties and associated interest, and any amount which would have been paid by an insurer for a casualty or liability claim had the insurance policy not been cancelled for nonpayment by the mortgage servicing company; and

[H-](c) In the case of any successful action to enforce the foregoing liability, the costs of the action together with reasonable attorney's fees as determined by the court.

II. *Any person who knowingly violates any rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to suspension or revocation of any registration or license, or the imposition of an administrative fine not to exceed \$2,500 for each violation, in lieu of or in addition to such suspension or revocation, as may be applicable under this title, for violation of the provision to which such rule or order relates. Each of the acts specified shall constitute a separate violation.*

III. *Any person who negligently violates any rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to suspension, revocation, or*

denial of any registration or license, including the forfeiture of any application fee, or the imposition of an administrative fine not to exceed \$1,500 for each violation, in lieu of or in addition to such suspension or revocation, as may be applicable under this title, for violation of the provision to which such rule or order relates. Each of the acts specified shall constitute a separate violation.

IV. *Any person who, either knowingly or negligently, violates any provision of this chapter may, upon notice and opportunity for hearing, and in addition to any such other penalty provided for by law, be subject to suspension, revocation, or denial of any registration or license, including forfeiture of any application fee, or imposition of an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and each such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed.*

V. *Every person who directly or indirectly controls a person liable under this section, every partner, principal executive officer or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act constituting the violation, and every licensee or person acting as a common law agent who materially aids in the acts constituting the violation, either knowingly or negligently, may, upon notice and opportunity for hearing, and in addition to any other penalty provided for by law, be subject to suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or imposition of an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed. No person shall be liable under this paragraph who shall sustain the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist.*

25 Surrender; "Bank" Removed Before "Commissioner". Amend RSA 397-B:8, I to read as follows:

I. Registrants under this chapter who cease to engage in the business of servicing mortgage loans in this state at any time during a registration year for any cause, including but not limited to bankruptcy, registration revocation, or voluntary dissolution, shall surrender such registration in person or by registered or certified mail to the [bank] commissioner within 15 calendar days of such cessation, and shall cause to be published in a newspaper of general circulation in the state a notice to such effect. The bank commissioner shall adopt rules in accordance with RSA 541-A relative to such notice.

26 Investigations; Subpoenas; Injunctions; Costs Added. Amend RSA 397-B:9 to read as follows:

397-B:9 Investigations; Subpoenas; Injunctions.

I. The banking department may make such public or private investigations within or outside of this state as it deems necessary to determine compliance with this chapter and the rules adopted pursuant to it. The expense of such investigation shall be chargeable to and paid by the mortgage servicing company. Sums collected under this section shall be payable to the state treasurer as restricted revenue and credited to the appropriation for the [bank] commissioner, consumer credit administration division.

II. For the purpose of any investigation under this chapter, the banking department shall have the power to subpoena witnesses and administer oaths in any adjudicative proceedings, and to compel, by subpoena duces tecum, the production of all books, records, files, and other documents and materials relevant to its investigation.

III. Whenever the [bank] commissioner has reason to believe that any mortgage servicing company has been engaged or is engaged in an alleged violation of this chapter, the commissioner may request the attorney general to seek an order from a court having jurisdiction for an injunction temporarily or permanently restraining and enjoining the continuance of such act or acts.

IV. Any action taken by the banking department or [bank] commissioner under this chapter shall not be considered as a limitation of a mortgagor's ability to seek such relief as may be provided by any statute or at common law.

V. *In any investigation to determine whether any person has violated or is about to violate this chapter or any rule or order under this chapter, upon the commissioner's finding that the person violated this chapter or a rule or order under this chapter, or the person charged with the violation being found in default, the commissioner shall be entitled to recover the cost of the investigation, in addition to any other penalty provided for under this chapter.*

27 Records and Filings. RSA 397-B:11 is repealed and reenacted to read as follows:

397-B:11 Records and Filings.

I. A document is filed when it is received by the commissioner. If any filing deadline date falls on a weekend or on a New Hampshire state or federal legal holiday, the due date shall be automatically extended to the next business day following such weekend or holiday.

II. Electronic filings, when received by the commissioner, are deemed filed, and are prima facie evidence that a filing has been duly authorized and made by the signatory on the application or document, are admissible in any civil or administrative proceeding under this chapter, and are admissible in evidence in accordance with the rules of superior court in any action brought by the attorney general under this chapter.

III. A licensee may maintain its records in electronic format if, upon request, the licensee provides the commissioner with

- (a) a full explanation of the programming of any data storage or communications systems in use; and
- (b) information from any books, records, electronic data processing systems, computers or any other information storage system in the form requested by the commissioner.

28 New Section; Severability. Amend RSA 397-B by inserting after section 11 the following new section:

397-B:12 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application and to this end the provisions of this chapter are severable.

29 Definitions. RSA 398-A:1 is repealed and reenacted to read as follows:

398-A:1 Definitions. In this chapter:

- I. "Borrower" shall include any legal successor to the borrower's rights or obligations.
- II. "Branch office" means a business location within this state of a person required to be licensed under this chapter. Branch office does not include a person's principal office location.
- III. "Commissioner" means the bank commissioner.
- IV. "Lender" means any person making a loan secured by a mortgage as described in this chapter and shall include any legal successor to the rights of the lender.
- V. "Loan" means any loan of money or goods or forbearance of money and goods or choses in action.
- VI. "Principal office" means the main office location of a person required to be licensed under this chapter.
- VII. "Second mortgage banker" means a person not exempt under RSA 398-A:10 who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly:
 - (a) Makes or originates second mortgage loans as payee on the note evidencing the loan; or
 - (b) Advances, or offers to advance, or makes a commitment to advance the banker's own funds for second mortgage loans, or closes second mortgage loans with the banker's own funds; or
 - (c) Otherwise engages in the business of funding second mortgage loans.
- VIII. "Second mortgage broker" means a person not exempt under RSA 398-A:10 who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly:
 - (a) Acts as an intermediary, finder, or agent of a lender or borrower for the purpose of negotiating, arranging, finding, or procuring second mortgage loans, or commitments for second mortgage loans; or
 - (b) Offers to serve as agent for any person in an attempt to obtain a second mortgage loan; or
 - (c) Offers to serve as agent for any person who has money to lend for a second mortgage loan.
- IX. "Second mortgage loan" means a loan which is secured in whole or in part by a mortgage upon any interest in real property used as a dwelling with accommodations for not more than 4 families, which property is subject to the lien of one or more prior mortgages.

30 License Required; Requirements Added. Amend RSA 398-A:1-a to read as follows:

398-A:1-a License Required.

I. No person shall engage in the business of second mortgage loans unless ~~he~~ **the person** ~~[or his broker, agent or other representative]~~ first obtains a license as provided herein, except when the person lending money is the seller of the real estate upon which the second mortgage is to be taken as security. ~~[A person shall not be deemed to be in the business of second mortgage home loans if he or she makes not more than 4 second mortgage loans in a calendar year].~~ **A person who is licensed under RSA 397-A to broker first mortgage loans may obtain a license under this chapter to broker second mortgage loans by filing a notice and paying the fee required by RSA 398-A:1-a, III. A person who is licensed under RSA 397-A as a mortgage banker may obtain a second mortgage loan license under this chapter to make second mortgage loans by filing a notice and paying the fee required by RSA 398-A:1-a, III.**

II. The application for such license shall be in writing, under oath and in the form prescribed by the bank commissioner.

III. The **non-refundable** license fee for each calendar year or part thereof shall be \$250 **for the principal office and \$250 for each branch office.**

IV. Upon the filing of ~~[such]~~ **a complete** application and the payment of said fee, the commissioner shall investigate the interest to be imposed by the applicant in comparison with the interest generally charged by other lenders in the community in which the business of the applicant is to be conducted, and if he **or she** shall find:

- (a) The financial responsibility, experience, character and general fitness of the applicant are such as to command the confidence of the public and to warrant the belief that the business will be operated lawfully, honestly and fairly within the purposes of this chapter; and ~~[that]~~
- (b) The applicant has available for use in such business at ~~[the]~~ **each** location specified in the application at least \$25,000, or has such amount available, or actually invested in loans made under this chapter~~[-]~~ and ~~[that]~~
- (c) Allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted~~[-]~~ he **or she** shall enter an order approving such application, **shall issue**

licenses to the applicant's principal and branch offices, and shall deliver [a license] the licenses to the applicant for a period which shall expire the December 31 following the date of its issuance. Each license shall state the name and address of the licensee and shall be conspicuously posted in the licensee's place of business. The license shall not be transferable or assignable. No licensee shall transact any business provided for by this chapter under [any other trade name unless he shall have a separate license therefor] a trade name or any other name different from the name stated in its license unless the license reflects the trade name in addition to the licensee's legal name. If the commissioner shall not so find, he ***or she*** shall enter an order denying such application and immediately notify the applicant of the denial~~[-returning the license fee]~~. Before the corporate or trade name under which the licensed business is conducted is changed, the licensee shall give notice to the commissioner who shall amend the license accordingly without cost.

V. ~~[The applicant shall also, at the same time file with the commissioner a surety company bond to the state, in the sum of \$5,000, to be approved by the commissioner, for the use of the state and of any person who may have a cause of action against the principal in said bond under the provisions of this chapter and conditioned that he will conform to and abide by each provision of this chapter and will pay to the state and to any such person any sum that may become due or owing to the state or to such person from said principal under and by virtue of the provisions hereof.]~~ ***No license shall be issued to any person whose principal place of business is located outside of this state unless that person designates an agent residing within this state for service of process.***

VI. Each license issued under the provisions of this chapter shall state the name and address of the principal office of the licensee and, if the license is a branch office license, the name and address of the branch office location for which that license is issued.

VII. If a person holds a valid license under this section and is in compliance with this chapter and the rules thereunder, such licensee may renew the license by paying the required fee to the banking department on or before December 1 for the ensuing year that begins on January 1. Failure to renew the license shall result in the license terminating on December 31.

VIII. Persons making second mortgage home loans who are licensed under this chapter are under a continuing obligation to update information on file with the commissioner. If any information filed with the commissioner becomes materially inaccurate, the licensee must promptly submit to the commissioner an amendment to its application records that will correct the information on file with the commissioner. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

31 Revocation; Show Cause Order, Actions by Another, Appeal, Licensee or Applicant not in Business; Cease and Desist Order Added. RSA 398-A:1-b is repealed and reenacted to read as follows:

398-A:1-b Revocation.

I. The commissioner may by order, upon notice and opportunity for a hearing, deny, suspend or revoke a license if it is in the public interest and the applicant or licensee, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant or licensee:

(a) Has violated any provisions of this chapter, or rules or orders thereunder;

(b) Does not meet the standards established in RSA 398-A:1-a, IV. The licensee shall have a right of appeal to the board of trust company incorporation;

(c) Has filed an application for licensing which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(d) Has made a false or misleading statement to the commissioner or in any reports to the commissioner;

(e) Has made fraudulent misrepresentations, has circumvented or concealed, through whatever subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to a borrower under the provisions of this chapter;

(f) Has failed to supervise its agents, managers or employees;

(g) Is the subject of an order entered within the past 5 years by this state, any other state, or federal regulator denying, suspending or revoking licenses or registration;

(h) Is permanently, preliminarily, or temporarily enjoined by any court of competent jurisdiction from in engaging in or continuing any conduct or practice involving any aspect of lending or collection activities;

(i) Is not qualified on the basis of such factors as experience, knowledge, and financial integrity;

(j) Has engaged in dishonest or unethical practices in the conduct of the business of making or collecting mortgage loans;

(k) Has violated this chapter or any rule or order thereunder or has violated applicable federal laws or rules thereunder; or

(l) For other good cause shown.

II. The commissioner may issue an order requiring the person to whom any license has been granted to show cause why

the license should not be revoked. The order shall be calculated to give reasonable notice of the opportunity for hearing, and shall state the reasons for the issuance of the order. A license may be suspended or revoked by the commissioner for violation of this chapter or any rule or order thereunder, for violation of applicable federal laws, or for other good cause shown.

III. If a licensee is a partnership, association, corporation or entity however organized, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed association or corporation or any member of a licensed partnership has so acted or failed to act in behalf of said licensee as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for supervision of its branch offices and for the acts of any or all of its employees while acting as its agent if such licensee, after actual knowledge of said acts, retained the benefits, proceeds, profits or advantages accruing from said acts or otherwise ratified said acts.

IV. Any license revocation, suspension, or unfavorable action by the department on a license shall comply with the provisions of RSA 541-A. An aggrieved licensee may, pursuant to RSA 541-A and RSA 541, appeal an unfavorable action by the department. The department may take action for immediate suspension of a license, pursuant to RSA 541-A.

V. If the commissioner finds that any licensee or applicant for license is no longer in existence or has ceased to do business as a retail seller or sales finance company, or cannot be located after reasonable search, the commissioner may by order revoke the license or deny the application. The commissioner may deem abandoned and withdraw any application for licensure made pursuant to this chapter, if any applicant fails to respond in writing within 180 days to a written request from the commissioner requesting a response. Such request shall be sent via certified mail to the last known address of the applicant that is on file with the commissioner.

VI. The commissioner may issue a cease and desist order against any licensee or person who it has reasonable cause to believe is in violation of the provisions of this chapter or any rule or order under this chapter. Delivery of such order shall be by hand or registered mail at the principal office of the licensee or other person. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. A hearing shall be held not later than 10 days after the request for such hearing is received by the commissioner after which and within 20 days of the date of the hearing the commissioner shall issue a further order vacating the cease and desist order or making it permanent as the facts require. All hearings shall comply with 541-A. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him or her upon consideration of the cease and desist order, the allegations of which may be deemed to be true. If the person to whom a cease and desist order is issued fails to request a hearing within 30 calendar days of receipt of such order, then such person shall likewise be deemed in default, and the order shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown.

32 Examinations; Subpoena Power, Reports Added. Amend RSA 398-A:1-c to read as follows:

398-A:1-c Examinations.

I. For the purpose of discovering violations of this chapter and the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.) the commissioner may, either personally or by any person designated by the commissioner, at any time, investigate the loans and business of any licensee and of any person, partnership, or corporation by whom any such loan shall be made, whether such person, partnership, or corporation shall act, or claim to act, as principal, agent, or broker, or under or without the authority of this chapter; and for that purpose the commissioner shall have free access to the books, papers, records, and vaults of all such persons, partnerships, and corporations. The commissioner shall also have authority to examine, under oath, all persons whose testimony the commissioner may require, relative to such loans or business.

II. *The commissioner shall have the power to issue a subpoena to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before the commissioner in any matter over which the commissioner has jurisdiction, control or supervision pertaining to the provisions of this chapter. The commissioner shall have the power to administer oaths and affirmation to any person whose testimony is required. If any person shall refuse to obey any such subpoena or to give testimony or to produce evidence as required thereby, any justice of the superior court may, upon application and proof of such refusal, order the issuance of a subpoena, or subpoena duces tecum, out of the superior court, for the witness to appear before the superior court to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the superior court, the clerk shall issue such subpoena, as directed, requiring the person to whom it is directed to appear at the time and place therein designated. If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the commissioner may apply to any justice of the superior court who, after proof of such refusal, shall issue such citation, directed to any sheriff, for the arrest of such person, and, upon such person's being brought before such justice, proceed to a hearing of the case. The court shall have power to enforce obedience to such subpoena, and the answering of any question and the production of any evidence that may be proper, by a fine not exceeding \$10,000 or by imprisonment, or by both.*

III. *The commissioner may require such regular or special reports or other information as the commissioner may deem necessary to the proper supervision of licensees under this chapter.*

IV. *Those licensees or persons that maintain their files and business documents in another state shall*

appoint a New Hampshire agent and shall return such files and documents to their principal New Hampshire office or the office of their New Hampshire agent for examination no later than 21 calendar days after being requested to do so by the banking department. Failure to provide files and documents within the time established by this paragraph shall subject a licensee or person to a fine of \$50 per day for each day after 21 days the files and documents are not produced. Failure to provide files and documents within 60 days after being requested to do so by the banking department shall be sufficient cause for license revocation, suspension, or denial or other penalties under this chapter.

33 Costs; Costs Against Person in Violation Added. Amend RSA 398-A:1-d to read as follows:

398-A:1-d Cost.

I. The commissioner may make such an examination of the affairs, business, office, and records of any licensee. The expense of such examination shall be chargeable to and paid by the institution. The procedure for such payment shall be the same as for payments by institutions for cost of examinations under RSA 383:11. Sums collected under this chapter shall be payable to the state treasurer as restricted revenue and credited to the appropriation for the [bank] commissioner, consumer credit administration division.

II. In any investigation to determine whether any person has violated or is about to violate this chapter or any rule or order under this chapter, upon the commissioner's finding that the person violated this chapter or a rule or order under this chapter, or the person charged with the violation being found in default, the commissioner shall be entitled to recover the cost of the investigation, in addition to any other penalty provided for under this chapter.

III. Every person being examined, and all of the officers, directors, employees, agents and representatives of such person shall make freely available to the commissioner or the commissioner's examiners the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination and shall facilitate the examination.

IV. Upon receipt of a written report of examination, the licensee shall have 30 days or such additional reasonable period as the commissioner for good cause may allow, within which to review the report, recommend any changes, and set forth in writing the remedial course of action the licensee will pursue to correct any reported deficiencies outlined in the report.

V. If requested by the person examined, within the period allowed in paragraph IV, or if deemed advisable by the commissioner without such request, the commissioner shall hold a closed hearing relative to the report and shall not file the report in the department until after such closed hearing and issuance of the commissioner's order thereon. If no such closed hearing has been requested or held, the examination report, with such modifications, if any, to the report as the commissioner deems proper, shall be accepted by the commissioner and filed upon expiration of the review period provided for in paragraph IV. The report shall in any event be accepted and filed within 6 months after the final hearing thereon.

VI. All reports pursuant to this section shall be absolutely privileged and, although filed in the department as provided in paragraph V, shall not be for public inspection. The comments and recommendations of the examiner shall also be deemed confidential information and shall not be available for public inspection.

34 Report; Financial Statement Added. Amend RSA 398-A:1-e to read as follows:

398-A:1-e Report.

I. Each licensee shall file with the commissioner on or before February 1 of each year a report under oath concerning the business and operations for the preceding calendar year ending December 31 in the form prescribed by the commissioner. [Whenever a licensee operated 2 or more licensed offices or whenever 2 or more affiliated licensees operated licensed offices, then a composite report of such group of licensed offices may be filed in lieu of individual reports.] The commissioner shall publish an analysis of the information required under this section as a part of his or her annual report. Any licensee failing to file the report required by this section within the time prescribed shall pay to the commissioner the sum of \$25 for each calendar day the report is overdue. [If a licensee elects to file a composite report and such composite report is not filed on or before February 1 as required under this section, the penalty prescribed in this section shall apply separately for each license held.]

II. Each licensee shall also file, under oath, its financial statement with the commissioner within 90 days from the date of its fiscal year end. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall include a balance sheet, income statement, statement of changes in owners' equity, a cash flow statement and note disclosures. If the financial statement is not audited, a certification statement shall be attached and signed by a duly authorized officer of the sales finance company. The certification statement shall state that the financial statement is true and accurate to the best of the officer's belief and knowledge. Any licensee failing to file the financial statement required by this section within the time prescribed shall pay to the commissioner the sum of \$25 for each calendar day the report is overdue.

35 Consumer Inquiries; Response to Consumer Complaint; Date of Transmission Changed. Amend RSA 398-A:6-a, II to read as follows:

II. A licensee who fails to respond to consumer complaints as required by this section within the time prescribed shall pay to the commissioner the sum of \$50 for each day such response is overdue. For purposes of this section, the date of transmission shall be the date such response is ~~[postmarked]~~ **received by the commissioner.**

36 Penalties; Knowing and Negligent Violation, Actions by Another, Added. Amend RSA 398-A:7-a to read as follows:
398-A:7-a Penalty.

I. Any person who wilfully violates any provision of this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person, for each such violation.

II. *Any person who knowingly violates any rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to suspension or revocation of any registration or license, or imposition of an administrative fine not to exceed \$2,500 for each violation in lieu of or in addition to suspension or revocation, as may be applicable under this title, for violation of the provision to which such rule or order relates. Each of the acts specified shall constitute a separate violation.*

III. *Any person who negligently violates any rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or imposition of administrative fine not to exceed \$1,500 for each violation in lieu of or in addition to suspension or revocation, as may be applicable under this title, for violation of the provision to which such rule or order relates. Each of the acts specified shall constitute a separate violation.*

IV. *Any person who, either knowingly or negligently, violates any provision of this chapter may, upon notice and opportunity for hearing, and in addition to any such other penalty provided for by law, be subject to suspension, revocation or denial of any registration or license, including forfeiture of any application fee, or imposition of an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and each such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed.*

V. *Every person who directly or indirectly controls a person liable under this section, every partner, principal executive officer or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act constituting the violation, and every licensee or person acting as a common law agent who materially aids in the acts constituting the violation, either knowingly or negligently, may, upon notice and opportunity for hearing, and in addition to any other penalty provided for by law, be subject to suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or imposition of an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed. No person shall be liable under this paragraph who shall sustain the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist.*

37 Rulemaking Authority; Orders, Basis for Actions, Added. Amend RSA 398-A:13 to read as follows:
398-A:13 Rulemaking Authority.

I. The ~~[bank]~~ commissioner shall adopt rules, pursuant to RSA 541-A, **relative to the administration and enforcement of this chapter** governing institutions which make second mortgage loans within the state of New Hampshire ~~[relative]~~ **including but not limited** to the following:

~~[F-]~~(a) The application forms for licenses under RSA 398-A:1-a.

~~[H-]~~(b) The reports required by RSA 398-A:1-e.

~~[H-]~~(c) Procedures for responding to consumer concerns and inquiries.

~~[IV. Repeated:]~~

II. *The commissioner may prepare, alter, or withdraw such forms as are necessary to comply with the provisions of this title.*

III. *The commissioner may issue, amend, or rescind such orders as are reasonably necessary to carry out the provisions of this chapter.*

IV. *The commissioner may, for good cause shown, abate all or a portion of delinquency penalties assessed under this chapter.*

V. *All actions taken by the commissioner pursuant to this chapter shall be taken only when the commissioner finds such action necessary or appropriate to the public interest or for the protection of consumers and consistent with the purposes fairly intended by the policy and provisions of this title.*

38 New Section; Records and Filings. Amend RSA 398-A by inserting after section 13 the following new section:
398-A:14 Records and Filings.

I. A document is filed when it is received by the commissioner. If any filing deadline date falls on a weekend or on a New Hampshire state or federal legal holiday, the due date shall be automatically extended to the next business day following

such weekend or holiday.

II. Electronic filings, when received by the commissioner, are deemed filed, and are prima facie evidence that a filing has been duly authorized and made by the signatory on the application or document, are admissible in any civil or administrative proceeding under this chapter, and are admissible in evidence in accordance with the rules of superior court in any action brought by the attorney general under this chapter.

III. A licensee may maintain its records in electronic format if, upon request, the licensee provides the commissioner with

(a) a full explanation of the programming of any data storage or communications systems in use; and

(b) information from any books, records, electronic data processing systems, computers or any other information storage system in the form requested by the commissioner.

39 Change from "Bank Commissioner" to "Commissioner." Amend the following RSA provisions by replacing "bank commissioner" with "commissioner": 398-a:1-f; 398-A:6-a, I; 398-A:11; and 398-A:12.

40 Repeal. The following are repealed:

I. RSA 397-A:4, VIII, relative to exemptions from the licensing of nondepository first mortgage bankers and brokers.

II. RSA 398-A:10, VIII, relative to exemptions from the regulation of second mortgage home loans.

41 Effective Date. This act shall take effect 30 days after its passage.

2003-0600h

Amendment to HB 825

Proposed by the Committee on Criminal Justice and Public Safety - C

Amend the bill by replacing section 3 with the following:

3 Duties. The committee shall study methods of safely reducing the prison population in the state and any other issues involving the prison population.

Amend the bill by replacing section 5 with the following:

5 Report. The committee shall issue an interim report of 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, 2003, and shall issue a final report on or before November 1, 2004.

2003-0423h

Amendment to HB 829

Proposed by the Committee on Election Law - C

Amend the bill by replacing section 1 with the following:

1 Manchester and Nashua; Ward Boundaries. For purposes of elections for state senator and state representative conducted after the effective date of this act in districts established by the supreme court in Below v. Gardner, No. 2002-0243 (June 24, 2002) and Burling v. Chandler, No. 2002-0210 (July 26, 2002), ward boundaries for senate and representative districts in Manchester and representative districts in Nashua shall be the ward boundaries established by those cities in their respective charters.

AMENDED ANALYSIS

This bill requires that state senate and representative elections in Manchester and representative districts in Nashua be conducted in accordance with the ward lines established in their city charters

2003-0434h

Amendment to HCR 14

Proposed by the Majority of the Committee on Ways and Means - R

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

A RESOLUTION declaring the directives of the judicial branch in the Claremont cases that the legislative and executive branches define an "adequate education," adopt "standards of accountability," and "guarantee adequate funding" of a public education are not binding on the legislative and executive branches.

Amend the resolution by replacing all after the title with the following:

Whereas, under part 1, article 37 of the constitution of the state of New Hampshire, the 3 essential powers of the government of this state, the legislative, the executive and the judicial, are to be kept as separate from and independent of each other as the nature of a free government will admit; and

Whereas, only by a consistent and strict adherence to a separation of the powers of the 3 branches of the government can the rights of the people set forth in part 2 of the constitution be preserved, and the form of government set forth in part 2 be maintained; and

Whereas, the language of part 1, article 37 applies with equal force to the judicial as to the legislative and executive branches; and

Whereas, were part 1, article 37 to apply with less force to the judicial than to the legislative and executive branches, the legislative and executive branches would be inferior to, subordinate to, and dependent upon the judicial branch, and our system of government would be oligarchical and not republican; and

Whereas, it is the duty of the executive and legislative branches, pursuant to the oaths taken by their members under part 2, article 84, no less than it is of the judicial branch, pursuant to the oaths taken by its members, not to contravene any portion of the constitution, and to be vigilant for and to oppose any contravention by another branch; and

Whereas, upon the occurrence of a palpable attempt on the part of the judicial branch to exercise any authority inconsistent with the judicial function, it is the right and duty of the legislative and executive branches to intervene to the extent deemed by them necessary, within the scope of their enumerated powers, to oppose and defeat such exercise, thereby to safeguard the fundamental principle of our form of government that each of its 3 branches should be confined to its constitutional limits; and

Whereas, in its decisions in the Claremont school funding cases, the judicial branch unambiguously directed the legislative and executive branches to pass laws “implementing” an “adequate education” based upon “seven criteria articulated by the Supreme Court of Kentucky,” and to pass laws establishing “standards of accountability,” and unambiguously stated that it reserved for itself the ultimate authority to determine the sufficiency of these laws; and

Whereas, for the judiciary to rule that the constitution of New Hampshire requires the legislature and executive branches to enact into law a certain definition of an “adequate education” or a definition of an “adequate education” based upon or incorporating certain criteria or parameters, or to enact into law any definition of an “adequate education” at all, adds legislative and executive powers to those of the judicial and unconstitutionally involves the judicial branch in the core policy-making functions of the legislative and executive branches; and

Whereas, for the judiciary to rule that the constitution of New Hampshire requires the legislature and executive branches to enact into law “standards of accountability,” adds legislative and executive powers to those of the judicial and unconstitutionally involves the judicial branch in the core policy-making functions of the legislative and executive branches; and

Whereas, in its decisions in the Claremont school funding cases, the judicial branch unambiguously directed the legislative and executive branches to fund public education and unambiguously directed the legislative and executive branches how to do so; and

Whereas, for the judiciary to rule that the constitution of New Hampshire requires the legislature and executive branches to enact into law a certain system for funding public education or a system for funding public education based upon or incorporating certain criteria or parameters, or that the legislative and executive branches are required to enact into law any system at all for funding public education, adds legislative and executive powers to those of the judicial and unconstitutionally involves the judicial branch in the core policy-making functions of the legislative and executive branches; and

Whereas, at no time over the course of the 2 centuries of New Hampshire’s statehood prior to the Claremont decisions did the judicial branch ever assert any authority to control, direct, or shape the educational policies to be pursued by the legislative and executive branches in terms of “adequacy” or any other qualitative measure; and

Whereas, at all times over the course of the 2 centuries of New Hampshire’s statehood prior to the Claremont decisions, the judicial branch confined its review of statutory enactments and administrative actions respecting education to the constitutionality of the challenged statute or action and never considered the “adequacy” or any other qualitative measure of the statute or action.

Whereas, for the legislative and executive branches to treat as binding upon them any ruling by the judicial branch directing them to enact definitions agreeable to the judicial branch of “adequate education,” or “systems of accountability” or to enact a particular system for funding public education, would attenuate the republican form of government established by part 2 of the New Hampshire constitution, and be subversive of representative government; and

Whereas, the scope of part 2, article 83 is not limited to cherishing the interest of public schools alone, but expressly encompasses as well cherishing the interest of literature, the sciences, and all seminaries; and further expressly states there to be a duty to “encourage,” “countenance” and “inculcate” many other pursuits and virtues as well; and

Whereas, by its very terms, and in accordance with its original understanding, part 2, article 83 applies equally to the many matters therein enumerated, and the historical record is clear that it was left to the legislative branch to decide which of these matters, if any, would be funded from the public purse and, consistent with the fundamental principle of the separation of powers, these legislative decisions were not subjected to judicial review; and

Whereas, acceptance by the legislative and executive branches of the judiciary’s directives in the Claremont decisions would not merely be to surrender to the judiciary a portion of the legislative and executive power to set educational policy, but to set a precedent by which the judiciary may justify the exercise of legislative and executive policy-making powers over any number of other matters; and

Whereas, the Claremont directives that the legislative and executive branches must enact a certain definition of an “adequate education,” and “systems of accountability” and a certain system of funding public education constitute a palpable exercise by the judicial branch of powers not granted to it by the constitution of New Hampshire, and the legislative and executive branches have the right and are duty bound to prevent the exercise of such powers in order to maintain within their respective limits the three branches of the government of this state; and

Whereas, the judicial branch is not constitutionally empowered to direct the legislative and executive branches to define an “adequate education;” and

Whereas, the judicial branch is not constitutionally empowered to direct the legislative and executive branches to adopt

“standards of accountability;” and

Whereas, the judicial branch is not constitutionally empowered to direct the legislative and executive branches to “guarantee adequate funding” of public education; now therefor, be it

Resolved by the House of Representatives, the Senate concurring:

That the legislature, having fully considered the foregoing enumeration of constitutional principles and having fully considered the foregoing enumeration of deficiencies inherent to the Claremont rulings, finds that the directives of the judicial branch in the Claremont cases that the legislative and executive branches define an “adequate education,” adopt “standards of accountability,” and “guarantee adequate funding” of a public education are not binding on the legislative and executive branches.

AMENDED ANALYSIS

This house concurrent resolution declares the directives of the judicial branch in the Claremont cases that the legislative and executive branches define an “adequate education,” adopt “standards of accountability,” and “guarantee adequate funding” of a public education are not binding on the legislative and executive branches.