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No. 1

Contains: Retained Bill Amendments

HOUSE CALENDAR

RETAINED BILL AMENDMENTS

ALL LEGISLATORS ARE ASKED TO BRING THIS CALENDAR FOR USE ON WEDNESDAY,
JANUARY 7, 2004

WEDNESDAY, JANUARY 7 AMENDMENTS

(LISTED IN NUMERICAL ORDER)

2003-0528h

Amendment to CACR 2

Proposed by the Committee on Education - R

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

RELATING TO: the legislature's authority concerning the content, extent, beneficiaries, level and source of funding of public education.

PROVIDING THAT: the legislature shall have exclusive authority to determine the content, extent, beneficiaries, level and source of funding of public education.

Amend the resolution by replacing paragraph I with the following:

I. That article 83 of the second part of the constitution be amended to read as follows:

[Art.] 83. [Encouragement of Literature, etc.; Control of Corporations, Monopolies, etc.]

Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people: *Provided, nevertheless, that the legislature shall have exclusive authority under this article to determine, either directly, or through a delegation of power to local school districts, or both, the content, extent, beneficiaries, and level and source of funding of public education and* that no money raised by taxation shall ever be granted or applied for the use of the schools of institutions of any religious sect or denomination. Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it. The size and functions of all corporations should be so limited and regulated as to prohibit fictitious capitalization and provision should be made for the supervision and government thereof. Therefore, all just power possessed by the state is hereby granted to the general court to enact laws to prevent the operations within the state of all persons and associations, and all trusts and corporations, foreign or domestic, and the officers thereof, who endeavor to raise the price of any article of commerce or to destroy free and fair competition in the trades and industries through combination, conspiracy, monopoly, or any other unfair means; to control and regulate the acts of all such persons, associations, corporations, trusts, and officials doing business within the state; to prevent fictitious capitalization; and to authorize civil and criminal proceedings in respect to all the wrongs herein declared against.

Amend the bill by replacing section IV with the following:

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

"Are you in favor of amending article 83 of the second part of the constitution for the purpose of establishing that it is the prerogative of the people, acting through their democratically elected bodies, the legislature and local school authorities, to determine education policy and set education funding levels, by adding the following highlighted language:

[Art.] 83. [Encouragement of Literature, etc.; Control of Corporations, Monopolies, etc.]

Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people: *Provided, nevertheless, that the legislature shall have exclusive authority under this article to determine, either directly, or through a delegation of power to local school districts, or both, the content, extent, beneficiaries, and level and source of funding of public education and* that no money raised by taxation shall ever be granted or applied for the use of the schools of institutions of any religious sect or denomination. Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it. The size and functions of all corporations should be so limited and regulated as to prohibit fictitious capitalization and provision should be made for the supervision and government thereof. Therefore, all just power possessed by the state is hereby granted to the general court to enact laws to prevent the operations within the state of all persons and associations, and all trusts and corporations, foreign or domestic, and the officers thereof, who endeavor to raise the price of any article of commerce or to destroy free and fair competition in the trades and industries through combination, conspiracy, monopoly, or any other unfair means; to control and regulate the acts of all such persons, associations, corporations, trusts, and officials doing business within the state; to prevent fictitious capitalization; and to authorize civil and criminal proceedings in respect to all the wrongs herein declared against."

AMENDED ANALYSIS

This constitutional amendment concurrent resolution gives the legislature exclusive authority to determine either directly, or through delegation to local school districts, the content, extent, beneficiaries, level, and source of funding of public education.
2003-2504h

Amendment to CACR 5
Proposed by the Committee on Judiciary - R

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

RELATING TO: the rulemaking authority of the supreme court.

PROVIDING THAT: the supreme court may adopt rules, that the general court may regulate these matters by statute, and that in the event of a conflict between a statute and a rule, the statute, if otherwise valid, shall prevail over the rule.

Amend the resolution by replacing all after the resolving clause with the following:

I. That part II, article 73-a of the constitution be repealed and reenacted in order to clarify that both the judiciary and the legislature have the authority to regulate court practices and procedures and to resolve potential conflicts that may arise, so that it reads as follows:

[Art.] 73-a. [Court Practices and Procedures.] The chief justice of the supreme court shall be the administrative head of all the courts in the state. The chief justice shall have the power, with the concurrence of a majority of the other supreme court justices, to make rules of general application regulating court administration and the practice, procedure, and admissibility of evidence, in all courts in the state. The legislature shall have a concurrent power to regulate the same matters by statutes of general application, except that such legislative enactments may not abridge the judiciary's necessary adjudicatory functions. In the event of a conflict between a rule promulgated by the judiciary and a statute enacted by the legislature, the statute, if not otherwise contrary to this constitution shall prevail over the rule.

II. That the above amendment proposed to the constitution be submitted to the qualified voters of the state at the state general election to be held in November, 2004.

III. That the selectmen of all towns, cities, wards and places in the state are directed to insert in their warrants for the said 2004 election an article to the following effect: To decide whether the amendments of the constitution proposed by the 2004 session of the general court shall be approved.

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

"Are you in favor of repealing and reenacting part II, article 73-a of the constitution in order to clarify that both the judiciary and legislature have the authority to regulate court practices and procedures and to resolve potential conflicts that may arise so that it reads as follows:

[Art.] 73-a. [Court Practices and Procedures.] The chief justice of the supreme court shall be the administrative head of all the courts in the state. The chief justice shall have the power, with the concurrence of a majority of the other supreme court justices, to make rules of general application regulating court administration and the practice, procedure, and admissibility of evidence, in all courts in the state. The legislature shall have a concurrent power to regulate the same matters by statutes of general application, except that such legislative enactments may not abridge the judiciary's necessary adjudicatory functions. In the event of a conflict between a rule promulgated by the judiciary and a statute enacted by the legislature, the statute, if not otherwise contrary to this constitution shall prevail over the rule."

V. That the secretary of state shall print the question to be submitted on a separate ballot or on the same ballot with other constitutional questions. The ballot containing the question shall include 2 squares next to the question allowing the voter to vote "Yes" or "No." If no cross is made in either of the squares, the ballot shall not be counted on the question. The outside of the ballot shall be the same as the regular official ballot except that the words "Questions Relating to Constitutional Amendments proposed by the 2004 General Court" shall be printed in bold type at the top of the ballot.

VI. That if the proposed amendment is approved by 2/3 of those voting on the amendment, it becomes effective when the governor proclaims its adoption.

AMENDED ANALYSIS

This constitutional amendment concurrent resolution provides that the supreme court may adopt rules of general application and that the general court may also regulate these matters by statutes of general application, provided that the general court may not abridge the judiciary's necessary adjudicatory functions. The resolution also provides that in the event of a conflict between a statute and a rule, the statute shall prevail over the rule, if not contrary to the provisions of the constitution.

2003-2562h

Floor Amendment to CACR 5
Proposed by Rep. Sorg

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

RELATING TO: the rulemaking authority of the supreme court.

PROVIDING THAT: the supreme court may adopt rules to regulate court administration and the practice, procedure, and admissibility of evidence in all courts of the state; that the general court may regulate these matters by statute; and that in the event of a conflict between a rule and a statute, the statute shall prevail.

Amend the resolution by replacing paragraph I with the following:

I. That article 73-a of the second part of the constitution be repealed and reenacted to read as follows:

[Art.] 73-a [Court Practices and Procedures.] The chief justice of the supreme court shall be the administrative head of all

courts in the state. In such capacity, the chief justice shall have the power, with the concurrence of a majority of the members of the supreme court, to regulate court administration and the practice, procedure, and admissibility of evidence in all courts of the state by rules of prospective general application. The legislature shall have concurrent power to regulate the same matters by statute. In the event of a conflict between any such rule and any such statute, the statute shall prevail over the rule, anything else in this constitution to the contrary notwithstanding.

Amend the resolution by replacing paragraph IV with the following:

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

“Are you in favor of repealing and reenacting part II, article 73-a of the constitution in order to clarify that both the judiciary and legislature have the authority to regulate court practices and procedures and that conflicts will be resolved in favor of the legislature:

[Art.] 73-a [Court Practices and Procedures.] The chief justice of the supreme court shall be the administrative head of all courts in the state. In such capacity, the chief justice shall have the power, with the concurrence of a majority of the members of the supreme court, to regulate court administration and the practice, procedure, and admissibility of evidence in all courts of the state by rules of prospective general application. The legislature shall have concurrent power to regulate the same matters by statute. In the event of a conflict between any such rule and any such statute, the statute shall prevail over the rule, anything else in this constitution to the contrary notwithstanding.”

AMENDED ANALYSIS

This constitutional amendment concurrent resolution provides that the supreme court may adopt rules to regulate court administration and the practice, procedure, and admissibility of evidence in all the courts of the state, and that the legislature may also regulate these matters by statute. The resolution also provides that in the event of a conflict between a statute and a rule, the statute shall prevail.

2003-2368h

Amendment to CACR 9

Proposed by the Minority of the Committee on Judiciary - R

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

RELATING TO: 10-year terms for state judges.

PROVIDING THAT: all state judges appointed on or after January 1, 2005 be commissioned for 10-year terms, which may be renewed.

Amend the bill by replacing paragraph II with the following:

II. That article 73 of the second part of the constitution be amended to read as follows:

[Art.] 73. [Tenure of Office to be Expressed in Commissions; Judges to Hold Office During Good Behavior~~[-etc.]~~ **for 10-year Terms; Removal.**] The tenure that all commissioned officers shall have by law in their offices shall be expressed in their respective commissions, and all judicial officers duly appointed, commissioned and sworn, shall hold their offices during good behavior except those for whom a different provision is made in this constitution. The governor with consent of the council may remove any commissioned officer for reasonable cause upon the address of both houses of the legislature, provided nevertheless that the cause for removal shall be stated fully and substantially in the address and shall not be a cause which is a sufficient ground for impeachment, and provided further that no officer shall be so removed unless he shall have had an opportunity to be heard in his defense by a joint committee of both houses of the legislature. **All judges appointed on or after January 1, 2005 shall be duly commissioned and sworn to 10-year terms and shall hold their offices during good behavior; except for those judicial officers for whom a different provision is made in this constitution. A judge appointed on or after January 1, 2005 may be reappointed, commissioned, and sworn to subsequent 10-year terms.**

Amend the bill by replacing paragraph IV - VI with the following:

IV. That the selectmen of all towns, cities, wards and places in the state are directed to insert in their warrants for the said 2004 election an article to the following effect: To decide whether the amendments of the constitution proposed by the 2004 session of the general court shall be approved.

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

“To provide for 10-year, renewable judicial terms, are you in favor of amending article 35 of the first part of the Constitution and article 73 of the second part of the Constitution to read as follows:

[Art.] 35. [The Judiciary; Tenure of Office, etc.] It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, that the judges of the supreme judicial court should hold their offices so long as they behave well and for any term appointed; subject, however, to such limitations, on account of age, as may be provided by the constitution of the state; and that they should have honorable salaries, ascertained and established by standing laws.” and

[Art.] 73. [Tenure of Office to be Expressed in Commissions; Judges to Hold Office During Good Behavior for 10-year Terms; Removal.] The tenure that all commissioned officers shall have by law in their offices shall be expressed in their respective commissions, and all judicial officers duly appointed, commissioned and sworn, shall hold their offices during good behavior

except those for whom a different provision is made in this constitution. The governor with consent of the council may remove any commissioned officer for reasonable cause upon the address of both houses of the legislature, provided nevertheless that the cause for removal shall be stated fully and substantially in the address and shall not be a cause which is a sufficient ground for impeachment, and provided further that no officer shall be so removed unless he shall have had an opportunity to be heard in his defense by a joint committee of both houses of the legislature. All judges appointed on or after January 1, 2005 shall be duly commissioned and sworn to 10-year terms and shall hold their offices during good behavior; except for those judicial officers for whom a different provision is made in this constitution. A judge appointed on or after January 1, 2005 may be reappointed, commissioned, and sworn to subsequent 10-year terms.”

VI. That the secretary of state shall print the question to be submitted on a separate ballot or on the same ballot with other constitutional questions. The ballot containing the question shall include 2 squares next to the question allowing the voter to vote “Yes” or “No.” If no cross is made in either of the squares, the ballot shall not be counted on the question. The outside of the ballot shall be the same as the regular official ballot except that the words “Questions Relating to Constitutional Amendments proposed by the 2004 General Court” shall be printed in bold type at the top of the ballot.

AMENDED ANALYSIS

This constitutional amendment-concurrent resolution provides that all state judges appointed on or after January 1, 2005 shall be commissioned for 10-year terms, which may be renewed.

2003-2512h

Amendment to HB 53

Proposed by the Committee on Transportation - C

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

AN ACT relative to the sale of salvage and rebuilt vehicles.

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

□ Title and Registration; Dismantling or Destruction of Vehicle; Notice of Rebuilt Vehicle on Registration. Amend RSA 261:22 to read as follows:

261:22 Dismantling or Destruction of Vehicle.

I. Any owner who sells or in any manner disposes of a vehicle as salvage, or who scraps, dismantles or destroys a vehicle, shall immediately cause the certificate of title and any other information or supporting documents the director reasonably requires to be mailed or delivered to the department for cancellation. Should the vehicle be rebuilt, a certificate of title or registration shall not again be issued without first obtaining approval of the director, who shall cause such vehicle to be inspected for verification of the vehicle identification number and bills of sale or title for major component parts used to rebuild the vehicle. When necessary, a new vehicle identification number shall be attached to the vehicle and shall take precedence over any other number that may be engraved on or attached to the vehicle. Any new title **and registration** issued shall contain the legend “rebuilt vehicle.”

II. Any insurance firm or representative thereof who shall declare a motor vehicle other than an exempt vehicle as provided in RSA 261:3 as having been a total loss shall make application for a salvage certificate of title within 20 days of the total loss payment. Such application shall be accompanied by:

(a) Any certificate of title;

(b) Any other information and documents the director reasonably requires to establish ownership of the vehicle and the existence or nonexistence of security interest in it; and

(c) The required fee of \$10.

III. The department shall file each application received and when satisfied as to its genuineness and regularity and when satisfied that the applicant is entitled to the issuance of a salvage certificate of title shall issue a salvage certificate of title of the vehicle to the owner. The salvage certificate of title shall serve as proof of ownership and shall contain a legend indicating that the vehicle has been declared a total loss. The department may adopt rules relative to the circumstances, if any, under which a salvage certificate of title should reflect any legend pertaining to recovered theft.

IV. If a vehicle upon which a salvage certificate of title has been issued by the department after the vehicle has been declared a total loss because physically or economically impractical to repair is rebuilt and restored for highway operation, the owner shall not apply for title or registration again until the vehicle has been inspected by the director or his authorized representative. The inspection of the vehicle shall include verification of the vehicle identification number and bills of sale or titles for major component parts used to rebuild the vehicle. The department shall also issue a decal bearing the legend “salvage vehicle” which the title bureau investigator shall affix to the vehicle on the rear of the left front door post. Each “salvage vehicle” decal shall include a statement indicating that removing the decal or causing the decal to be removed is a misdemeanor under RSA 261:22, V.

IV-a. Before selling to any buyer any used vehicle, the title to which is required to be marked “salvage” pursuant to this section, **or the title and the registration to which is required to be marked “rebuilt” pursuant to this section**, the seller shall disclose to the buyer in writing that the vehicle is a salvage vehicle and the reasons for such designation. Failure to comply with the provisions of this paragraph shall constitute an unfair or deceptive act or practice under RSA 358-A:2.

V. It shall be a misdemeanor for any person to remove or cause to be removed a "salvage vehicle" decal from a motor vehicle to which it has been affixed pursuant to paragraph IV. A bona fide purchaser for value of a motor vehicle which is not properly accompanied by the disclosure required by RSA 261:22, IV-a, or from which the seller has removed or caused to be removed a "salvage vehicle" decal in violation of this paragraph may rescind the purchase within 3 business days after receiving a certificate of title disclosing that the vehicle is a salvage vehicle ***or receiving a certificate of title or registration disclosing that the vehicle be a rebuilt vehicle.***

VI. For purposes of this section, a total loss vehicle shall mean either an unrecovered stolen vehicle or one which has sustained damage or injury so extensive that it is physically or economically impractical to repair.

AMENDED ANALYSIS

This bill requires the title and registration for a rebuilt vehicle to indicate that it is a "rebuilt vehicle."
2003-1353h

Amendment to HB 72

Proposed by the Committee on Environment and Agriculture - R

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

❑ Sale of Animals and Pets; Administrative Fines. RSA 437:9 is repealed and reenacted to read as follows:
437:9 Penalty.

I. Any person who violates this subdivision shall be guilty of a misdemeanor.

II. Any person or owner who violates any of the provisions of this subdivision or rule adopted under it may also be subject to an administrative fine levied by the commissioner not to exceed \$1,000 for each violation.

III. In addition, once a license has been revoked under the provisions of RSA 437:3, the department may require that all animals and birds located on the premises for which such license was revoked shall be removed by the licensee from such premises within 3 working days after the revocation and be relocated to a safe and sanitary place approved by the department.

❑ Health Certificate for Cats; Administrative Fines. RSA 437:13-a, VI is repealed and reenacted to read as follows:

VI.(a) Any person who violates this subdivision shall be guilty of a misdemeanor.

(b) In addition, any person or owner who violates any of the provisions of this subdivision or rule adopted under it may be subject to an administrative fine levied by the commissioner not to exceed \$1,000 for each violation.

❑ Breeder's Health Certificate; Administrative Fines. RSA 466:6-a, VI is repealed and reenacted to read as follows:

VI.(a) Any person who violates this subdivision shall be guilty of a misdemeanor.

(b) In addition, any person or owner who violates any of the provisions of this subdivision or rule adopted under it may be subject to an administrative fine levied by the commissioner not to exceed \$1,000 for each violation.

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

AMENDED ANALYSIS

This bill provides uniform penalties for violations of animal health certificate law.
2003-2495h

Amendment to HB 85-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 the budget adoption procedure in political subdivisions which have adopted official ballot voting.

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

❑ Use of Official Ballot; Operating Budget. Amend RSA 40:13, IX-XI to read as follows:

IX.(a) "Operating budget" as used in this subdivision means "budget," as defined in RSA 32:3, III, exclusive of "special warrant articles," as defined in RSA 32:3, VI, and exclusive of other appropriations voted separately.

(b) ***"Default budget" as used in this subdivision means the amount of the same appropriations as contained in the operating budget authorized for the previous year, reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, and reduced by one-time expenditures contained in the operating budget. For the purposes of this paragraph, one-time expenditures shall be appropriations not likely to recur in the succeeding budget, as determined by the governing body of the local political subdivision.***

X. If no operating budget article is adopted, the local political subdivision either shall be deemed to have approved ~~the same appropriations as contained in the operating budget authorized for the previous year, reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, or reduced by one-time expenditures contained in the operating budget,~~ ***the default budget*** or the governing body may hold a special meeting pursuant to paragraph XVI to take up the issue of a revised operating budget only; provided that RSA 31:5 and RSA 197:3 shall not apply to such a special meeting. If no operating budget article is adopted the estimated revenues shall nevertheless be deemed to have been approved. ~~[For the purposes of this paragraph, one-time expenditures shall be appropriations not likely to recur in the succeeding budget, as determined by the governing body of the local political subdivision].~~

XI. The ~~[amount of the previous year's operating budget, as adjusted pursuant to paragraph X,]~~ ***default budget*** shall be

disclosed ~~[to the voters at the first session]~~ **at the first budget hearing held pursuant to RSA 32:5 or RSA 197:6. The governing body shall demonstrate how the default budget amount was determined by showing the appropriations contained in the operating budget authorized for the previous year and the reductions and increases made pursuant to paragraph IX(b) on a default budget form created by the department of revenue administration.** This amount shall not be amended by the legislative body. However, this amount may be adjusted by the governing body, acting on relevant new information at any time before the ballots are printed, **provided the governing body completes an amended default budget form.** The wording of the second session ballot question concerning the operating budget shall be as follows: "Shall the (local political subdivision) raise and appropriate as an operating budget, not including appropriations by special warrant articles and other appropriations voted separately, the amounts set forth on the budget posted with the warrant or as amended by vote of the first session, for the purposes set forth therein, totaling \$_____? Should this article be defeated, the ~~[operating]~~ **default** budget shall be \$_____, which is the same as last year, with certain adjustments required by previous action of the (local political subdivision) or by law; or the governing body may hold one special meeting, in accordance with RSA 40:13, X and XVI, to take up the issue of a revised operating budget only."

2 Municipal Budget Law; Budget Preparation. Amend RSA 32:5, VII to read as follows:

VII.(a) The governing body shall post certified copies of the budget with the warrant for the meeting. In the case of towns, the budget shall also be printed in the town report made available to the legislative body at least one week before the date of the annual meeting. A school district or village district may vote, under an article inserted in the warrant, to require the district to print its budget in an annual report made available to the district's voters at least one week before the date of the annual meeting. Such district report may be separate or may be combined with the annual report of the town or towns within which the district is located.

(b) The governing body in official ballot referenda jurisdictions operating under RSA 40:13 shall post certified copies of the default budget form or any amended default budget form with the proposed operating budget and the warrant.

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

AMENDED ANALYSIS

This bill provides for certain changes to the budget adoption procedure in political subdivisions which have adopted official ballot voting.

2003-0288h

Amendment to HB 133-LOCAL

Proposed by the Committee on Education - R

Amend the bill by replacing section 2 with the following:

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

2003-2534h

Amendment to HB 230

Proposed by the Committee on Legislative Administration - C

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

AN ACT establishing a committee to study how to improve the processes of the joint legislative committee on administrative rules and making certain revisions to RSA 541-A, the Administrative Procedure Act.

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

1 Committee Established. There is established a committee to study how to improve the processes of the joint legislative committee on administrative rules.

2 Membership and Compensation.

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

(a) Five members of the house of representatives, appointed by the speaker of the house of representatives, including at least one member of the legislative administration committee, one member of the executive departments and administration committee, and one member from the joint legislative committee on administrative rules.

(b) Five 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 solicit input on and consider:

I. The development of a process to record a clear statement of legislative intent on every bill sent out of a house or senate committee with a favorable report; such process may involve requiring a purpose clause to be included in every bill in the form of either chapter law or statute, requiring a statement of intent to be included in every bill file, requiring a statement of intent to be included in each house committee report, or requiring all house hearings and executive sessions to be recorded.

II. The development of a formal process for ensuring that the joint legislative committee on administrative rules receives input from the appropriate policy committees on proposed rules; such process may involve the establishment of a rules review subcommittee within each policy committee of the house and senate and/or participation by a policy committee member prior to the agency public comment period.

III. Adopting methods to provide for an expedited rulemaking process to adopt rule changes with minimal impact, including the adoption or revision of forms used by agencies.

IV. Expanding the membership of the joint legislative committee on administrative rules and establishing subcommittees of the committee.

V. Developing a RSA 541-A training program for members newly appointed to the joint legislative committee on administrative rules and an educational program on rules for all house members.

VI. Methods for ensuring uniformity in granting rulemaking authority and avoiding overbroad rulemaking authority provisions. Such methods may involve the development of guidelines for policy committees or bill drafters to follow.

VII. Revising RSA 541-A relative to fiscal impact statement requirements.

VIII. The processes for rulemaking employed by the agencies that are exempt from the provisions of RSA 541-A, and the effectiveness of this approach towards rulemaking.

IX. Revisions to the drafting and procedure manual.

X. Revising RSA 541-A to permit the electronic filing of documents at various stages of the rulemaking process.

XI. Such other related issues as the committee deems appropriate.

④ Sources of Information. The committee may solicit information and testimony from the rules staff of the office of legislative services, the rulemaking administrators at the department of administrative services, agency rulemaking coordinators, and any other source that the committee deems appropriate.

⑤ 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.

⑥ Report. The committee shall report its findings, any recommendations for proposed legislation and any specific recommendations for implementing procedures designed to improve rulemaking that do not require statutory changes. Such report shall be submitted 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, 2004.

⑦ Administrative Procedure Act; Amending Conditional Approval Process. Amend RSA 541-A:13, V(a) to read as follows:

(a) If the committee objects to the final proposal as filed or as amended pursuant to paragraph II, it shall so inform the agency. In lieu of a preliminary objection, the committee may vote to conditionally approve the rule with an amendment, provided that the committee specifies in its conditional approval the language of the amendment to address the basis for a preliminary objection. The committee shall notify the agency in writing of its conditional approval. Within ~~[14]~~ **30** days of the meeting, ***or in the case of a board or commission, 7 days following its next regularly scheduled meeting***, the agency shall submit a written explanation to the committee in the form of a letter and an annotated text of the final proposed rule detailing how the rule has been amended in accordance with the conditional approval. The written explanation shall be signed by the individual holding rulemaking authority, or, if a body of individuals holds rulemaking authority, by a voting member of that body, provided that a quorum of the body has approved. Failure to submit a written explanation in accordance with the conditional approval and this paragraph shall cause the conditional approval to be deemed a committee vote to make a preliminary objection on the date of the conditional approval. If the office of legislative services determines that the agency has amended the rule in accordance with the conditional approval and this paragraph, the office of legislative services shall promptly send written confirmation of compliance to the agency. The agency may then adopt the rule as amended.

⑧ New Section; Administrative Procedure Act; Expedited Repeal of Rules. Amend RSA 541-A by inserting after section 19 the following new section:

541-A:19-a Expedited Repeal of Rules.

I. An agency may repeal any rules using the expedited procedures of this section and without meeting the requirements of RSA 541-A:5-7 and RSA 541-A:9-14 if:

(a) The proposed repeal has been approved by the official or the group of individuals with rulemaking authority.

(b) The rule proposed for repeal encompasses at least a full rules section, as described in the drafting and procedure manual for administrative rules pursuant to RSA 541-A:8.

(c) The repeal is not being proposed for purposes of being superseded later by adoption of a new rule with a text amended from the repealed rule.

(d) The repeal of the rule pursuant to this section does not deprive a person of any right, duty, or privilege of that person which is protected by the due process provisions of the state or federal constitutions.

II. Notice of an agency's intent to repeal a rule shall include:

(a) The name and address of the agency.

(b) The statutory rulemaking authority for the rule.

(c) The rule number and title.

(d) An explanation of the reason for the proposed repeal.

(e) The name, address, electronic address, and telephone number of an individual in the agency able to answer questions about the proposed repeal and to arrange for reasonable accommodation for persons with disabilities wishing to

attend the public comment hearing.

(f) The date, time, and location of the public comment hearing.

III. The notice required by paragraph II shall be:

(a) Published in the rulemaking register and in a newspaper of daily statewide circulation.

(b) Filed with the director of legislative services no later than 7 calendar days before the date of publication in the rulemaking register.

(c) Published in a newspaper of daily statewide circulation no later than the date of publication in the rulemaking register.

IV. At the same time that the notice required by RSA 541-A:19-a, III is filed, the agency shall file the text of the rule to be repealed with the director of legislative services.

V. There shall be a public comment hearing on the proposed repeal no sooner than 7 calendar days after the date of publication of the notice in the rulemaking register. There shall be a period for the submission to the agency of written or electronic public comment ending on the 3rd calendar day after the date of the public comment hearing. Copies of the text of the rules subject to repeal shall be available at the public comment hearing.

VI. If on the basis of public comment the official or the group of individuals with rulemaking authority determines that the rule should not be repealed, the agency shall so notify the director of legislative services and the rule shall not be repealed.

VII. The proposed repeal shall be placed on the agenda of the committee for review at the first regularly scheduled or special meeting at least 5 calendar days after the close of the period for written or electronic comment described in paragraph V.

V. The committee may approve or object to the repeal. The committee may object to the repeal if the repeal is:

(a) Beyond the authority of the agency;

(b) Contrary to the intent of the legislature; or

(c) Deemed by the committee not to meet the requirements of paragraph I.

VIII. If the committee objects to the repeal, the repeal shall not be adopted. The committee's objection shall not preclude the agency from repealing the rule by meeting the requirements of RSA 541-A:3.

IX. If the committee approves the repeal, the agency may adopt the repeal and file a statement of the repeal with the director of legislative services. The repeal shall be effective as of 12:01 a.m. on the day after filing of the statement or as of 12:01 a.m. on the date specified by the agency, or such other date and time as specified, provided that the filing occurs before such effective date and time.

9 New Paragraph; Administrative Procedure Act; Waiver by Director of Legislative Services. Amend RSA 541-A:40 by inserting after paragraph III the following new paragraph:

IV. Notwithstanding any other provision of this chapter, the director of legislative services, after consultation with the chair and vice-chair of the joint legislative committee on administrative rules, may, for good cause shown, waive any deadline contained in any provision of this chapter.

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

AMENDED ANALYSIS

The bill:

I. Establishes a committee to study how to improve the processes of the joint legislative committee on administrative rules.

II. Amends the conditional rules approval process.

III. Establishes an expedited repeal process for administrative rules.

IV. Authorizes the director of legislative services to waive rulemaking deadlines in certain cases.

2003-2478h

Amendment to HB 243

Proposed by the Majority of the Committee on Transportation - R

Amend the bill by replacing section 1 with the following:

☐ Repeal. RSA 266:59, III, relative to modification of motor vehicle exhaust system, is repealed.

AMENDED ANALYSIS

This bill repeals a limitation on the modification of motor vehicle exhaust systems.

2003-2458h

Amendment to HB 264

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

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

☐ State Representative Districts. RSA 662:5 is repealed and reenacted to read as follows:

662:5 State Representative Districts. The state is divided into districts for the choosing of state representatives, each of which may elect the number of representatives set forth opposite the district, as follows:

I. Belknap County

District No. 1

Center Harbor

New Hampton

	Sanbornton	
	Tilton	3
District No. 2	Laconia Wards 1-6	
	Meredith	7
District No. 3	Alton	
	Barnstead	
	Belmont	
	Gilford	7
District No. 4	Gilmanton	1

II. Carroll County

District No. 1	Bartlett	
	Chatham	
	Conway	
	Hale's Location	
	Hart's Location	
	Jackson	4
District No. 2	Albany	
	Eaton	
	Madison	1
District No. 3	Freedom	
	Ossipee	
	Sandwich	
	Tamworth	3
District No. 4	Moultonborough	
	Tuftonboro	
	Wolfeboro	4
District No. 5	Brookfield	
	Effingham	
	Wakefield	2

III. Cheshire County

District No. 1	Alstead	
	Gilsum	
	Marlow	
	Nelson	
	Roxbury	
	Stoddard	
	Sullivan	
	Surry	
	Walpole	
	Westmoreland	4
District No. 2	Keene Wards 1-5	7
District No. 3	Chesterfield	
	Hinsdale	
	Winchester	4
District No. 4	Fitzwilliam	
	Richmond	1
District No. 5	Harrisville	
	Marlborough	
	Swanzey	
	Troy	4
District No. 6	Dublin	
	Jaffrey	
	Rindge	4

IV. Coos County

District No. 1	Atkinson & Gilmanton Academy Grant	
	Cambridge	
	Clarksville	

District No. 2	Colebrook	
	Columbia	
	Dix’s Grant	
	Dixville	
	Dummer	
	Errol	
	Erving’s Location	
	Millsfield	
	Odell	
	Pittsburg	
	Second College Grant	
	Stewartstown	
	Wentworth’s Location	2
	Bean’s Grant	
	Carroll	
	Chandler’s Purchase	
	Crawford’s Purchase	
	Cutt’s Grant	
	Dalton	
	Gorham	
District No. 3	Green’s Grant	
	Hadley’s Purchase	
	Jefferson	
	Kilkenny	
	Lancaster	
	Low and Burbank’s Grant	
	Martin’s Location	
	Northumberland	
	Pinkham’s Grant	
	Randolph	
	Sargent’s Purchase	
	Stark	
	Stratford	
	Thompson and Meserve’s Purchase	
	Whitefield	5
	Bean’s Purchase	
	Berlin Wards 1-4	
	Milan	
	Shelburne	
	Success	4
V. Grafton County		
District No. 1	Littleton	
District No. 2	Lyman	2
	Bethlehem	
District No. 3	Franconia	1
	Bath	
	Easton	
District No. 4	Landaff	
	Lincoln	
	Lisbon	
	Livermore	
	Monroe	
	Sugar Hill	
	Waterville Valley	2
District No. 5	Thornton	
	Woodstock	1
District No. 5	Benton	

	Haverhill	
	Piermont	
	Warren	2
District No. 6	Campton	
	Ellsworth	
	Orford	
	Rumney	
	Wentworth	2
District No. 7	Hebron	
	Plymouth	2
District No. 8	Alexandria	
	Ashland	
	Bridgewater	
	Bristol	
	Groton	
	Holderness	3
District No. 9	Hanover	
	Lyme	4
District No. 10	Canaan	
	Dorchester	
	Enfield	
	Grafton	
	Orange	3
District No. 11	Lebanon Wards 1-3	4
VI. Hillsborough County		
District No. 1	Antrim	
	Hancock	
	Hillsborough	
	Windsor	3
District No. 2	Bennington	
	Deering	
	Francestown	
	Greenfield	2
District No. 3	Greenville	
	New Ipswich	
	Peterborough	
	Sharon	4
District No. 4	Lyndeborough	
	Mont Vernon	
	New Boston	
	Temple	
	Wilton	4
District No. 5	Brookline	
	Hollis	
	Mason	4
District No. 6	Amherst	
	Milford	8
District No. 7	Goffstown	
	Weare	8
District No. 8	Manchester Ward 1	3
District No. 9	Manchester Ward 2	3
District No. 10	Manchester Ward 3	3
District No. 11	Manchester Ward 4	3
District No. 12	Manchester Ward 5	3
District No. 13	Manchester Ward 6	3
District No. 14	Manchester Ward 7	3
District No. 15	Manchester Ward 8	3

District No. 16	Manchester Ward 9	3
District No. 17	Manchester Wards 10, 11, and 12	8
District No. 18	Bedford	6
District No. 19	Litchfield	
	Merrimack	11
District No. 20	Nashua Ward 1	3
District No. 21	Nashua Ward 2	3
District No. 22	Nashua Ward 3	3
District No. 23	Nashua Wards 4 and 6	6
District No. 24	Nashua Ward 5	3
District No. 25	Nashua Wards 7 and 8	6
District No. 26	Nashua Ward 9	3
District No. 27	Hudson	
	Pelham	11

VII. Merrimack County

District No. 1	Danbury	
	New London	
	Wilmot	2
District No. 2	Franklin Wards 1-3	
	Hill	3
District No. 3	Newbury	
	Sutton	1
District No. 4	Hopkinton	
	Warner	
	Webster	3
District No. 5	Bradford	
	Henniker	2
District No. 6	Andover	
	Boscawen	
	Canterbury	
	Loudon	
	Northfield	
	Salisbury	6
District No. 7	Chichester	
	Pembroke	3
District No. 8	Allenstown	
	Epsom	
	Hooksett	
	Pittsfield	8
District No. 9	Concord Wards 1, 2, and 3	4
District No. 10	Concord Wards 4, 8, 9, and 10	5
District No. 11	Concord Wards 5, 6, and 7	4
District No. 12	Bow	
	Dunbarton	3

VIII. Rockingham County

District No. 1	Candia	
	Deerfield	
	Northwood	
	Nottingham	5
District No. 2	Raymond	3
District No. 3	Auburn	
	Londonderry	9
District No. 4	Salem	
	Windham	12
District No. 5	Derry	11
District No. 6	Atkinson	2
District No. 7	Chester	

	Danville	
	Sandown	4
District No. 8	Hampstead	
	Kingston	
	Plaistow	7
District No. 9	Brentwood	
	Epping	
	Fremont	4
District No. 10	East Kingston	
	Newton	2
District No. 11	Newfields	
	Newmarket	3
District No. 12	Exeter	
	North Hampton	
	Stratham	8
District No. 13	Hampton Falls	
	Kensington	
	Seabrook	
	South Hampton	4
District No. 14	Hampton	5
District No. 15	Newington	
	Portsmouth Wards 1-5	7
District No. 16	Greenland	1
District No. 17	New Castle	
	Rye	2

IX. Strafford County

District No. 1	Rochester Wards 1-6	9
District No. 2	Rollinsford	
	Somersworth Wards 1-5	5
District No. 3	Barrington	
	Farmington	
	Middleton	
	Milton	
	New Durham	
	Strafford	8
District No. 4	Dover Wards 1 and 2	3
District No. 5	Dover Wards 3 and 4	3
District No. 6	Dover Wards 5 and 6	3
District No. 7	Durham	
	Lee	
	Madbury	6

X. Sullivan County

District No. 1	Cornish	
	Grantham	
	Plainfield	2
District No. 2	Croydon	
	Goshen	
	Newport	
	Springfield	
	Washington	3
District No. 3	Sunapee	1
District No. 4	Claremont Wards 1-3	
	Lempster	
	Unity	5
District No. 5	Acworth	
	Charlestown	
	Langdon	2

2 Application. The changes in state representative districts established by this act shall not affect constituencies or terms of office of representatives presently in office. The state representative districts established by this act shall be in effect for the purpose of electing representatives at the 2004 state general election. If there shall be a vacancy in a state representatives district for any reason prior to the 2004 state general election, the vacancy shall be filled by and from the same state representative district that existed for the 2002 state general election. No provision of this act shall affect in any manner any of the proceedings of the membership of the house of representatives of the general court that assembled for a biennial session in January 2003.

3 Effective Date. This act shall take effect 60 days after its passage.
2003-2430h

Amendment to HB 265

Proposed by the Committee on Commerce - R

Amend RSA 420-K:1 as inserted by section 1 of the bill by replacing it with the following:

420-K:1 Purpose of Chapter. The purpose of this chapter is to reduce waste, medical errors, inconsistent care, and misallocation of resources in the state's health care delivery system by instituting a pilot program that encourages health carriers to develop health benefit plans and provider payment policies that promote a better alignment of financial incentives with health care quality improvement and efficiency.

Amend RSA 420-K:4 through 420-K:6 as inserted by section 1 of the bill by replacing them with the following:

420-K:4 Eligibility for Waiver of Statutory or Regulatory Requirements. A health carrier seeking to offer a health benefit plan that will promote a better alignment of financial incentives with health care quality improvement and efficiency shall be eligible, pursuant to RSA 420-K:5, to apply to the commissioner for a waiver or modification of specified statutory or regulatory requirements relating to such health benefit plan. To be eligible for the waiver, the carrier shall demonstrate to the commissioner that the design of the health benefit plan and the provider payment policies associated with the health benefit plan will meet at least 4 of the following standards:

- I. Encourages providers to actively manage the care of patients with chronic health conditions or more complicated conditions and to treat such patients in accordance with evidence-based best practice guidelines.
- II. Provides an opportunity for providers to share in the benefits of quality improvement and efficiency enhancements.
- III. Provides the opportunity and incentive for covered persons and purchasers to recognize cost and quality differences in health care and make their decisions accordingly.
- IV. Aligns financial incentives with the implementation of care processes based on evidence-based best practices and the achievement of better patient outcomes.
- V. Aligns financial incentives with the implementation of programs for reducing medical errors and improving patient safety that are based on evidence-based best practices.
- VI. Enables providers to coordinate care for patients across settings and over time.
- VII. Creates financial incentives for providers to make resource allocation decisions based on established practice benchmarks.

420-K:5 Waiver Authority.

I. A health carrier offering or intending to offer a health benefit plan that meets the requirements of RSA 420-K:4 may apply to the commissioner for a waiver or modification of specified statutory or regulatory provisions concerning mandatory coverage requirements or network adequacy standards as they apply to such health benefit plan. The commissioner shall hold a public hearing on the proposed plan and after public hearing may grant such waiver or modification request upon a determination that:

- (a) The health benefit plan and associated provider payment policies meet the requirements of RSA 420-K:4;
- (b) The waiver or modification is a significant component of, and integral to, the effort to better align financial incentives with health care quality improvement and efficiency; and
- (c) The health benefit plan establishes qualitative and quantitative benchmarks for measuring provider performance and the success of the payment mechanism in increasing compliance with evidenced-based practice guidelines.

II. The authority to grant waivers under this section on newly issued policies shall cease on July 1, 2007.

420-K:6 Rulemaking Authority. The commissioner may, in accordance with RSA 541-A, adopt rules as are necessary or proper to implement the waiver provisions of RSA 420-K:5.

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

2 Repeal. RSA 420-K, relative to aligning health care payment policies with quality improvement, is repealed.

3 Effective Date.

I. Section 2 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 a pilot program to allow health benefit plans which offer better alignment of financial incentives with health care quality improvement to apply to the commissioner for a waiver of certain requirements. The pilot program is

repealed on July 1, 2007.

This bill is a request of the insurance department.

2003-2374h

Amendment to HB 266

Proposed by the Majority of the Committee on Transportation - R

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

AN ACT requiring youth bicyclists to wear protective headgear.

Amend the bill by replacing section 2 with the following:

2 New Paragraph; Riding on Bicycles; Headgear. Amend RSA 265:144 by inserting after paragraph IX the following new paragraph:

X. No person less than 16 years of age may operate or ride upon a bicycle unless he or she wears protective headgear of a type approved by the commissioner of health and human services.

Amend the bill by deleting sections 3-4 and renumbering the original section 5 to read as 3.

AMENDED ANALYSIS

This bill requires youth bicyclists to wear protective headgear.

2003-2530h

Amendment to HB 285

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 warrant article recommendations in towns which have adopted the official ballot referendum form of meeting.

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

1 Budget Preparation. RSA 32:5, V is repealed and reenacted to read as follows:

V. When any purpose of appropriation, submitted by a governing body or by petition, appears in the warrant as part of a special warrant article:

(a) The article shall contain a notation of whether or not that appropriation is recommended by the governing body, and, if there is a budget committee, a notation of whether or not it is recommended by the budget committee;

(b) If the article is amended at the first session of the meeting in an official ballot referendum municipality, the governing body and the budget committee, if one exists, may revise its recommendation on the amended version of the special warrant article and the revised recommendation shall appear on the ballot for the second session of the meeting provided, however, that the 10 percent limitation on expenditures provided for in RSA 32:18 shall be calculated based upon the initial recommendations of the budget committee.

(c) Defects or deficiencies in these notations shall not affect the legal validity of any appropriation otherwise lawfully made; and,

(d) All appropriations made under special warrant articles shall be subject to the hearing requirements of paragraphs I and II of this section.

2 Limitations of Appropriations. Amend the introductory paragraph of RSA 32:18 to read as follows:

32:18 Limitation of Appropriations. In any municipality electing this subdivision, or any district wholly within a town electing this subdivision, the total amount appropriated at any annual meeting shall not exceed by more than 10 percent the total amount recommended by the budget committee for such meeting. ***In official ballot referendum municipalities, the recommendation of the budget committee made for the first session of the meeting shall be used for determining the 10 percent limitation.*** These totals shall include appropriations contained in special warrant articles. Money may be raised and appropriated for purposes included in the budget or in the warrant and not recommended by the budget committee, but not to an amount which would increase the total appropriations by more than the 10 percent allowed under this paragraph. The 10 percent increase allowable under this paragraph shall be computed on the total amount recommended by the budget committee less that part of any appropriation item which constitutes fixed charges. Fixed charges shall include appropriations for:

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

AMENDED ANALYSIS

This bill allows the budget committee or the governing body to change a recommendation of a budget article if the article has been amended.

2003-2438h

Amendment to HB 359

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

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

1 State Senate Districts. RSA 662:3 is repealed and reenacted to read as follows:

662:3 State Senate Districts. The senate shall divide the state into 24 districts for the choosing of state senators, each of which may elect one senator. The districts shall be adopted by senate concurrent resolution, which shall be forwarded by the

senate to the secretary of state for implementation at the next biennial election.

2 State Representative Districts. RSA 662:5 is repealed and reenacted to read as follows:

662:5 State Representative Districts. The house of representatives shall divide the state into districts for the choosing of state representatives, each of which may elect the number of representatives designated by the house for the district. The districts shall be adopted by house concurrent resolution, which shall be forwarded by the house of representatives to the secretary of state for implementation at the next biennial election.

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

AMENDED ANALYSIS

This bill requires the senate and house of representatives to apportion their districts by resolution.

2003-2480h

Amendment to HB 366

Proposed by the Majority of the Committee on Science, Technology and Energy - R

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

1 New Paragraphs; Definitions. Amend RSA 149-M:51 by inserting after paragraph IV the following new paragraphs:

IV-a. "Mercury relay" means a mercury-added product or device that opens or closes electrical contacts to effect the operation of other devices in the same or another electrical circuit, including mercury displacement relays, mercury wetted reed relays and mercury contact relays.

IV-b. "Mercury switch" means a mercury-added product or device that opens or closes an electrical circuit or gas valve, including mercury float switches actuated by rising or falling liquid levels, mercury tilt switches actuated by a change in the switch position, mercury pressure switches actuated by a change in pressure, mercury temperature switches actuated by a change in temperature and mercury flame sensors. "Mercury switch" does not include a mercury-added thermostat.

IV-c. "Mercury thermostat" means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating or air-conditioning equipment.

2 New Paragraphs; Mercury-Added Products; Restrictions. Amend RSA 149-M:53 by inserting after paragraph III the following new paragraphs:

IV.(a) Beginning July 1, 2006, no person shall sell or distribute the following mercury-added products:

- (1) Barometer;
- (2) Esophageal dilator, bougie tube or gastrointestinal tube;
- (3) Flow meter;
- (4) Hydrometer;
- (5) Hygrometer or psychrometer;
- (6) Manometer;
- (7) Pyrometer;
- (8) Sphygmomanometer; or
- (9) Thermometer, except as provided in paragraph II.

(b) This paragraph shall not apply if use of the product is required under federal law or federal contract specification or if the only mercury-added component in the product is a button cell battery.

V.(a) Beginning July 1, 2006, no person shall sell or distribute a mercury switch, mercury relay or mercury thermostat individually or as a product component. This prohibition does not apply if the switch, relay or thermostat is used to replace a switch, relay or thermostat that is a component in a larger product in use prior to July 1, 2006 and one of the following applies:

- (1) The larger product is used in manufacturing; or
- (2) The switch, relay, or thermostat is integrated and not physically separate from other components of the larger product.

(b) This paragraph does not apply to the sale of a mercury switch, relay, or thermostat if its use is required under federal law or federal contract specification. This paragraph does not apply to thermostats used to sense and control temperature as part of a manufacturing process, or used by blind or visually impaired persons.

VI. The manufacturer or user of a product or products covered by paragraphs IV and V may apply for an exemption by filing a written petition with the commissioner of environmental services. The commissioner may grant an exemption with or without conditions upon finding that:

- (a) A system exists for the proper collection, transportation and processing of the product at the end of its life; and
- (b) One of the following applies:

(1) Use of the product provides a net benefit to the environment, public health or public safety when compared to available non-mercury alternatives; or

(2) Technically feasible non-mercury alternatives are not available at comparable cost.

VII. Prior to approving an exemption, the commissioner shall consult with the member states of the interstate clearinghouse established under RSA 149-M:56. The commissioner shall be as consistent as possible with the member states in granting exemptions. Exemptions shall not exceed 5 years and may be renewed upon written application if the commissioner

finds that the mercury-added product continues to meet the criteria of paragraphs VI and VII and the manufacturer or other persons comply with the conditions of its original approval.

③ Limitations on the Use of Mercury. Amend RSA 149-M:54, II to read as follows:

II. Understands that mercury is toxic and that the purchaser will store ~~[and], use [it appropriately so that no person is exposed to the mercury],~~ **and otherwise handle and dispose of it in accordance with state and federal law;** and

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

AMENDED ANALYSIS

This bill establishes certain restrictions on the sale, distribution, and use of mercury-added products.

2003-2551h

Floor Amendment to HB 366

Proposed by Reps. Phinizy and P. Allen - R

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

AN ACT relative to mercury reduction and the disposal of mercury-added products.

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

① New Paragraphs; Definitions. Amend RSA 149-M:51 by inserting after paragraph IV the following new paragraphs:

IV-a. "Mercury relay" means a mercury-added product or device that opens or closes electrical contacts to effect the operation of other devices in the same or another electrical circuit, including mercury displacement relays, mercury wetted reed relays and mercury contact relays.

IV-b. "Mercury switch" means a mercury-added product or device that opens or closes an electrical circuit or gas valve, including mercury float switches actuated by rising or falling liquid levels, mercury tilt switches actuated by a change in the switch position, mercury pressure switches actuated by a change in pressure, mercury temperature switches actuated by a change in temperature and mercury flame sensors. "Mercury switch" does not include a mercury-added thermostat.

IV-c. "Mercury thermostat" means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating or air-conditioning equipment.

② New Paragraphs; Mercury-Added Products; Restrictions. Amend RSA 149-M:53 by inserting after paragraph III the following new paragraphs:

IV.(a) Beginning July 1, 2006, no person shall sell or distribute the following mercury-added products:

- (1) Barometer;
- (2) Esophageal dilator, bougie tube or gastrointestinal tube;
- (3) Flow meter;
- (4) Hydrometer;
- (5) Hygrometer or psychrometer;
- (6) Manometer;
- (7) Pyrometer;
- (8) Sphygmomanometer; or
- (9) Thermometer, except as provided in paragraph II.

(b) This paragraph shall not apply if use of the product is required under federal law or federal contract specification or if the only mercury-added component in the product is a button cell battery.

V.(a) Beginning July 1, 2006, no person shall sell or distribute a mercury switch, mercury relay or mercury thermostat individually or as a product component. This prohibition does not apply if the switch, relay or thermostat is used to replace a switch, relay or thermostat that is a component in a larger product in use prior to July 1, 2006 and one of the following applies:

- (1) The larger product is used in manufacturing; or
- (2) The switch, relay, or thermostat is integrated and not physically separate from other components of the larger product.

(b) This paragraph does not apply to the sale of a mercury switch, relay, or thermostat if its use is required under federal law or federal contract specification. This paragraph does not apply to thermostats used to sense and control temperature as part of a manufacturing process, or used by blind or visually impaired persons.

VI. The manufacturer or user of a product or products covered by paragraphs IV and V may apply for an exemption by filing a written petition with the commissioner of environmental services. The commissioner may grant an exemption with or without conditions upon finding that:

- (a) A system exists for the proper collection, transportation and processing of the product at the end of its life; and
- (b) One of the following applies:

- (1) Use of the product provides a net benefit to the environment, public health or public safety when compared to available non-mercury alternatives; or
- (2) Technically feasible non-mercury alternatives are not available at comparable cost.

VII. Prior to approving an exemption, the commissioner shall consult with the member states of the interstate clearinghouse established under RSA 149-M:56. The commissioner shall be as consistent as possible with the member states in

granting exemptions. Exemptions shall not exceed 5 years and may be renewed upon written application if the commissioner finds that the mercury-added product continues to meet the criteria of paragraphs VI and VII and the manufacturer or other persons comply with the conditions of its original approval.

3 Limitations on the Use of Mercury. Amend RSA 149-M:54, II to read as follows:

II. Understands that mercury is toxic and that the purchaser will store ~~[and], use [it appropriately so that no person is exposed to the mercury],~~ **and otherwise handle and dispose of it in accordance with state and federal law;** and

4 New Section; Disposal of Mercury-added Products. Amend RSA 149-M by inserting after section 57 the following new section:

149-M:58 Disposal Ban. Owners and operators of solid waste landfills, transfer stations, and incinerators may develop programs to sort, collect, and recycle or dispose of mercury-added products in accordance with applicable laws and regulations, and beginning January 1, 2006:

I. No person shall knowingly dispose of mercury-added products in solid waste landfills, transfer stations, or incinerators.

II. Except as otherwise provided by this section, every person who discards solid waste within the state shall separate mercury-added products from that solid waste for recycling or disposal as a hazardous waste. Any contractor who replaces or removes mercury-added products shall assure the proper separation and recycling or the disposal as a hazardous waste of any discarded mercury-added product.

III. After proper separation of mercury-added products, each person who discards that waste shall either:

(a) Set that waste in a designated area for collection by a hauler who shall deliver that waste to a facility that is legally authorized and permitted to accept that waste; or

(b) Deliver that waste to a facility that is legally authorized and permitted to accept that waste.

IV. Owners and operators of solid waste transfer, incineration, and landfill facilities shall not be found to have knowingly accepted or disposed of mercury-added products if, at a minimum, the facility has implemented all of the following mechanisms as required:

(a) Posting of signs at the facility providing notice of the prohibition against the disposal and incineration of mercury-added products.

(b) Written notification to, or agreements with, the facility's customers, providing notice of the prohibition against the disposal and incineration of mercury-added products.

(c) Implementation of a procedure, approved by the department, for periodically monitoring incoming wastes to detect the presence of mercury-added products at the facility and for separating out observed mercury-added products for return to the generator, recycling, or disposal as a hazardous waste.

(d) Provide customers with information about collection programs or facilities that are permitted to accept mercury-added products for recycling or disposal as a hazardous waste.

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

AMENDED ANALYSIS

This bill establishes certain restrictions on the sale, distribution, and use of mercury-added products.

This bill also prohibits the disposal of mercury-added products after January 1, 2006.

2003-2509h

Amendment to HB 403

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 requiring a person found not guilty of certain sexual offenses by reason of insanity to register as a criminal offender.

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

1 Registration of Criminal Offenders; Definitions. Amend the introductory paragraph to RSA 651-B:1, III to read as follows:

III. "Sexual offender" means a person who ~~[has been convicted]~~ **is required to register as a result** of any violation or attempted violation of:

2 Registration of Criminal Offenders; Definitions. Amend the introductory paragraph to RSA 651-B:1, V to read as follows

V. "Offender against children" means a person who ~~[has been convicted]~~ **is required to register as a result** of any violation or attempted violation of:

3 New Paragraph; Registration of Criminal Offenders; Definitions. Amend RSA 651-B:1 by inserting after paragraph VI the following new paragraph:

VII. "Required to register" means that a sexual offender or offender against children was charged with an offense or an attempt to commit an offense listed in this chapter that resulted in one of the following outcomes:

(a) Conviction for the offense; or

(b) A finding of not guilty by reason of insanity.

4 Registration of Criminal Offenders; Release of Certain Sexual Offenders into the Community. Amend RSA 651-B:3, I to

read as follows:

I. Upon release of any sexual offender or offender against children ~~[after conviction]~~ **required to register**, whether on probation, parole, conditional or unconditional release, completion of sentence, **release from secure psychiatric care**, or for any other reason, the official in charge of such release shall notify the offender of the offender's duty to report under this chapter. The offender shall acknowledge in writing that he has received such notice. The official shall obtain the address at which the offender expects to reside upon release and shall report such address to the department. The department shall inform the local law enforcement agency where the offender expects to reside. The division shall enter the information concerning the offender's release and notification in the LENS system.

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

(a)(1) Any person required to be registered under this chapter shall 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;]~~ **as required under RSA 651-B:3** or within 30 days after the person's date of establishment of residence in New Hampshire if ~~[convicted elsewhere]~~ **the person is required to register as a result of an offense committed in another jurisdiction**. 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.

6 Registration of Criminal Offenders; Duration of Registration. Amend RSA 651-B:6 to read as follows:

651-B:6 Duration of Registration.

I. Any sexual offender ~~[convicted]~~ **required to register as a result** of a violation or attempted violation of RSA 632-A:2, 632-A:3, or 645:1, III, and any offender against children ~~[convicted]~~ **required to register as a result** of a violation or attempted violation of RSA 169-B:41, II, 633:1, 633:2, 639:2, 639:3, III, 645:2, II, 649-A:3, I, 649-B:3, 649-B:4, or 650:2, II, or of an equivalent offense in an out-of-state jurisdiction, shall be registered for life.

II. Any sexual offender ~~[convicted]~~ **required to register as a result** of a violation or attempted violation of RSA 632-A:4 ~~[-I(a)]~~ or RSA 645:1, II, and any offender against children ~~[convicted]~~ **required to register as a result** of a violation or attempted violation of RSA 633:3 or 645:2, I, or of an equivalent offense in an out-of-state jurisdiction, shall be registered for a 10-year period from the date of release ~~[following conviction]~~, provided that any such registration period shall not run concurrently with any registration period resulting from a subsequent ~~[conviction]~~ **violation or attempted violation of an offense for which the person is required to register**.

III. Notwithstanding the provisions of paragraph II, any sexual offender or offender against children who ~~[has been convicted]~~ **is required to register as a result** of more than one offense listed in RSA 651-B:1, III or RSA 651-B:1, V, or who is sentenced to an extended term of imprisonment pursuant to RSA 651:6, I(b) shall be registered for life.

7 Registration of Criminal Offenders; Availability of Information to the Public. Amend RSA 651-B:7, II-III 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]~~ **are required to register as a result** 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-III.
- (3) RSA 632-A:3, II, provided that the age difference between the convicted individual and the victim was more than 3 years at the time of the offense.
- (4) RSA 632-A:3, III.
- (5) RSA 645:1, II-III.
- (6) Any offense described in RSA 651-B:1, V.

(b)(1) The list described in subparagraph (a) shall include:

- (A) The name, address, and date of birth of the registered individual.
- (B) The offense for which the individual ~~[was convicted]~~ **is required to register**.
- (C) The date and court of the ~~[conviction]~~ **adjudication on the offense** for which the individual is

registered.

(D) Outstanding arrest warrants, and the information listed in subparagraphs (b)(1)(A)-(C), for any sexual offender or offender against children who has not complied with the obligation to register under this chapter.

(E) A photograph or physical description of the individual, if available.

(2) Where such information is available, the list may also include:

- (A) The date and court of the individual's other convictions, if any.
- (B) Information on the profile of the victim or victims of the individual's offense or offenses.
- (C) The method of approach utilized by the individual.

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

III. At periodic intervals, not less frequently than once each month, the commissioner of the department of corrections ~~[and]~~, the superintendent of each county department of corrections, **and the commissioner of the department of health and**

human services shall forward to the division a statement identifying every offender who is confined in a facility under their control who ~~[has committed]~~ **is required to register as a result of** an offense described in subparagraph II(a), and who is eligible at that time for any unsupervised work detail, **release into the community following secure psychiatric care**, or other assignment which may bring the offender into contact with members of the public. These statements shall include the information set forth in subparagraphs II(b)(1)(A), (B), and (C), and may also include the information set forth in subparagraphs II(b)(2)(A)-(D). In no event shall the statements include the identity of any victim. These statements shall be incorporated by the division into the list maintained under paragraph II.

8 Registration of Criminal Offenders; Availability of Information. Amend RSA 651-B:7, VI (a) to read as follows:

VI.(a) Notwithstanding the provisions of this section, any individual required to be registered whose name and information is contained on the list described in subparagraph II(a) and who has been convicted of any violation or attempted violation of RSA 632-A:2, III or RSA 632-A:3, II, provided that the age difference between the convicted individual and the victim was ~~[more than]~~ 3 years **or less** at the time of the offense and the person has no prior convictions requiring registration under RSA 651-B:2, may file with the clerk of the superior court for the county in which the judgment was rendered an application for review of the public registration requirement contained in RSA 651-B:7. This application shall not be filed prior to the completion of all the terms and conditions of the sentence and in no case earlier than 10 years after the date of release following conviction. After review of the application, the court may schedule a hearing.

9 Registration of Criminal Offenders; Penalty. Amend RSA 651-B:9, I-III to read as follows:

I. A sexual offender or offender against children **who is required to register under this chapter and** who negligently fails to comply with the requirements of this chapter shall be guilty of a violation.

II. A sexual offender or offender against children **who is required to register under this chapter and** who knowingly fails to comply with the requirements of this chapter shall be guilty of a misdemeanor.

III. A sexual offender or offender against children previously convicted of a misdemeanor pursuant to paragraph II **who is required to register under this chapter and** who knowingly fails to comply with the requirements of this chapter shall be guilty of a class B felony.

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

AMENDED ANALYSIS

This bill clarifies the law regarding registration as a criminal offender and also requires a person found not guilty of committing certain sexual offenses by reason of insanity to register as a criminal offender.

2003-2526h

Amendment to HB 422

Proposed by the Committee on Judiciary - C

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

1 Supreme Court Justices; Method for Choosing Replacement Justices for Disqualified Justices.

Amend RSA 490:3 to read as follows:

490:3 Disqualification; Temporary Justices.

I. The provisions as to the disqualification of justices of the superior court apply to justices of the supreme court. Whenever a justice of the supreme court shall be disqualified or otherwise unable to sit in any cause or matter pending before such court, the chief or senior associate justice of the supreme court may assign another justice to sit according to the provisions of paragraph II of this section.

II. Upon the retirement, disqualification, or inability to sit of any justice of the supreme court, the chief justice or senior associate justice of the supreme court may assign a justice of the supreme court who has retired from regular active service **or, if a retired supreme court justice is unavailable, shall assign a full-time justice from the superior, district, or probate court who has retired from regular active service** to sit during supreme court sessions while the vacancy continues~~[-or he may notify the chief justice or senior associate justice of the superior court of such vacancy. Upon such notification, the chief justice or senior associate justice of the superior court shall provide the supreme court for each day of sitting during a session while the vacancy shall continue with the names of 2 or more superior court justices in regular active service or who are retired and are not otherwise disqualified. The chief justice or senior associate justice of the supreme court may then assign a justice to sit temporarily on the court from among those superior court justices whose names have been provided].~~ **The selection of a retired supreme, superior, district, or probate court justice shall be on a random basis. However if no retired supreme, superior, district, or probate court justice is available, then the selection of a replacement justice shall be made on a random basis from a pool of full-time justices of the superior, probate, and district courts. The clerk of the supreme court shall maintain a list of judges who are willing to serve as temporary supreme court judges.**

III. A justice assigned to sit temporarily on the supreme court pursuant to paragraph II of this section shall have all the authority of a supreme court justice to hear arguments, render decisions, and file opinions. No justice shall be assigned to sit on the supreme court in the determination of any cause or matter upon which ~~[he]~~ **the justice** has previously sat or for which ~~[he]~~ **such justice** is otherwise disqualified nor without ~~[his]~~ **such justice's** consent.

2 Effective Date. This act shall take effect January 1, 2005.
2003-2532h

Amendment to HB 426

Proposed by the Committee on Municipal and County Government - C

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

1 Commissioner of Revenue Administration; Municipal Assessments; Reference Corrected. Amend RSA 21-J:3, XXVI to read as follows:

XXVI. Review and report each municipality's assessments once within every 5 years pursuant to RSA 21-J:11-a[~~-H~~].

2 Revenue Administration; Rulemaking; Appraisers. Amend RSA 21-J:13, VI(a) and (b) to read as follows:

(a) Evidence of the [~~financial responsibility and~~] professional capability of personnel to be employed under contract under RSA 21-J:11; and

(b) The content of the contract to be approved under RSA 21-J:11, **as provided in RSA 71-B.**

3 Certification of Assessors; Reference Corrected. Amend RSA 21-J:14-f, II to read as follows:

II. No person, except boards of assessors and selectmen making appraisals pursuant to RSA 75:1, shall make appraisals of a municipality for tax assessment purposes without first obtaining the certification required by this section. Certification is non-assignable and cannot be transferred. Any person who willfully fails to obtain certification as provided in this section shall be subject to the penalties imposed under RSA [~~21-J:39~~] **21-J:39, IV.**

4 Certified Appraisers; Criminal Penalties. Amend RSA 21-J:39, IV(c) to read as follows:

(c) Any person who violates subparagraph (a) or (b) shall be guilty of [~~violation~~] **class B misdemeanor.**

5 Tax Maps; Scale; Updating. Amend RSA 31:95-a, II-IV read as follows:

II.(a) The scale on a tax map shall be meaningful and adequately represent the land contained on the map, taking into consideration the urban or rural character of the land. The scale shall be sufficient to allow the naming and numbering of, and the placement of dimensions within, **if possible**, the parcel represented in the individual plat.

(b) Nothing in this paragraph shall apply to any city or town which, prior to the imposition of such scale requirements, has drawn a tax map, appropriated funds or contracted with any person or firm to prepare a tax map or expended funds in the initial phase of preparing a tax map.

III. Each parcel shall be identified by a map and parcel number and shall be indexed alphabetically by owner's name and numerically by parcel number.

IV. Tax maps shall be [~~continually~~] updated **at least annually** to indicate ownership and parcel size changes.

6 Board of Tax and Land Appeals; Petitions for Reassessment. Amend RSA 71-B:5, V to read as follows:

V. To hear and determine petitions filed by the commissioner of revenue administration pursuant to RSA [~~21-J:11-a, H(b)~~] **21-J:3, XXV.** The board shall give such petitions priority for scheduling hearings and for final rulings. In addition to the [~~standards utilized~~] **review** by the commissioner of revenue administration in the [~~certification of assessments~~] **assessment report** pursuant to RSA 21-J:11-a, the board shall consider the criteria in [~~a~~] RSA 71-B:16-a. The board's decision on such petitions shall be final, subject to appeal to the supreme court. Any appeal shall be filed with the clerk of the supreme court within 20 days after the date the decision is issued. The supreme court shall give any appeal it hears under this section priority in the court calendar.

7 New Paragraph; Rulemaking by Assessing Standards Board. Amend RSA 21-J:14-b by inserting after paragraph I the following new paragraph:

I-a. The assessing standards board shall adopt rules, pursuant to RSA 541-A, relative to the establishment of certification, continuing education, and revocation and suspension standards for assessing officials. The department of revenue administration shall be responsible for the enforcement of those standards.

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

AMENDED ANALYSIS

This bill changes the monitoring and approval of appraisers of taxable property by the commissioner of revenue administration and the assessing standards board.

The bill also allows towns and cities to change the scale and updating of tax maps.

2003-2513h

Amendment to HB 440

Proposed by the Committee on Fish and Game - C

Amend RSA 207:3-c as inserted by section 1 of the bill by replacing it with the following:

207:3-c Use of Firearms in or Across Highway Prohibited. No person shall discharge a firearm in pursuit of wild birds or wild animals from **within 15 feet of the traveled portion of** or across any class I through V public highway of the state [~~including the rights-of-way thereof~~] **or 15 feet from the public right-of-way, whichever is closer to the traveled portion of said highway.** This section shall not apply to those persons holding a special permit pursuant to RSA 207:7-a. Any person convicted of discharging a firearm under the provisions of this section shall be guilty of a violation. **For purposes of this section, "traveled portion" means the portion of public highway normally used by vehicular traffic.**

2003-1509h

Amendment to HB 444
Proposed by the Committee on Judiciary - C

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

AN ACT relative to summoning witnesses from another state in certain actions involving children.

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

1 Adjudicatory Hearing; Witnesses From Another State Summoned to Testify in This State.

Amend RSA 169-B:16, II to read as follows:

II. Following arraignment, the court shall proceed to hear the case in accordance with the due process rights afforded a minor charged with delinquency. The prosecution shall present witnesses to testify in support of the petition and any other evidence necessary to support the petition. The minor shall have the right to present evidence and witnesses on behalf of the minor and to cross-examine adverse witnesses. ***The provisions of RSA 613:3, I, relative to the summoning of out-of-state witnesses, shall apply to the proceedings.***

2 Adjudicatory Hearing; Witnesses From Another State Summoned to Testify in This State. Amend RSA 169-C:18, III to read as follows:

III. The petitioner shall present witnesses to testify in support of the petition and any other evidence necessary to support the petition. The petitioners shall have the right to present evidence and witnesses on their own behalf and to cross-examine adverse witnesses. The admissibility of all evidence in this hearing shall be determined by RSA 169-C:12. ***The provisions of RSA 613:3, I, relative to the summoning of out-of-state witnesses, shall apply to the proceedings.***

3 Adjudicatory Hearing; Witnesses From Another State Summoned to Testify in This State. Amend RSA 169-D:14, II to read as follows:

II. Following the initial appearance the court shall proceed to hear the case in accordance with the due process rights afforded a child alleged to be in need of services. The prosecution shall present witnesses to testify in support of the petition and any other evidence necessary to support the petition. The child shall have the right to present evidence and witnesses on his behalf and to cross-examine adverse witnesses. ***The provisions of RSA 613:3, I, relative to the summoning of out-of-state witnesses, shall apply to the proceedings.***

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

AMENDED ANALYSIS

This bill adds certain actions relative to children to the causes of action which allow the summoning of a witness from another state.

2003-2471h

Amendment to HB 459
Proposed by the Committee on Commerce - C

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

AN ACT relative to the taxation of manufactured housing.

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

1 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".

7 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 makes a change to the definition of security interest in the uniform commercial code.

2003-2378h

Amendment to HB 465

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

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

1 Health Care Facilities; Rulemaking. Amend the introductory paragraph of RSA 151:9, I to read as follows:

I. The commissioner of the department of health and human services shall adopt ~~[rules, pursuant to RSA 541-A]~~ ***a separate set of rules under RSA 541-A, for each classification of health facility based on the care setting and also taking into consideration acuity levels and facility size for those facilities with overnight beds,*** relative to:

2 New Paragraph; Rulemaking; Analysis Required. Amend RSA 151:9 by inserting after paragraph VIII the following new paragraph:

IX.(a) When adopting, readopting, or amending rules relative to health facilities, the commissioner of health and human services shall address the following criteria and shall ensure that all criteria are met:

(1) The number of rules and regulations shall be kept at the minimum level necessary to adequately protect the health and safety of consumers.

(2) Rules shall be appropriate to the setting in which services are delivered and the size of the provider delivering services.

(3) Rules shall strike an appropriate balance between the protection afforded and the cost to implement, considering the cost to both the state and the provider.

(b) Any rule that fails to meet the criteria established in subparagraphs (a)(1)-(3) shall be considered to exceed the statutory authority of the agency, be contrary to legislative intent, and be contrary to public interest, and shall be null and void.

3 Home Health Care Providers; Rulemaking. Amend the introductory paragraph of RSA 151:9-a to read as follows:

151:9-a Rules for Home Health Care Providers. The commissioner of the department of health and human services shall adopt rules~~[pursuant to RSA 541-A]~~ ***under RSA 541-A,*** relative to the licensing of home health care providers ***that are separate from rules relative to other health facilities.*** Such rules shall be subject to the requirements of RSA 151:9, II-V and ***RSA 151:9, IX*** and shall include the following:

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

AMENDED ANALYSIS

This bill clarifies the rulemaking authority of the department of health and human services for health care facilities.

2003-2538h

Amendment to HB 493

Proposed by the Committee on Municipal and County Government - C

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

1 Municipal Budget Law; Definitions. Amend RSA 32:3, V to read as follows:

V. "Purpose" means a goal or aim to be accomplished through the expenditure of public funds. In addition, as used in RSA 32:8 and RSA 32:10, I(e), concerning the limitation on expenditures, a line on the budget form posted with the warrant ***submitted by the budget committee, or the governing body if there is not a budget committee***, or form submitted to the department of revenue administration, or an appropriation contained in ~~a special~~ ***any*** warrant article, shall be considered a single "purpose."

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

2003-2479h

Amendment to HB 503

Proposed by the Committee on Environment and Agriculture - C

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

1 Purpose. The general court acknowledges that providing for the proper disposal of domestic septage at New Hampshire facilities is becoming increasingly difficult for septage haulers serving residents who continue to rely on septic systems. It is clear that additional in-state disposal capacity is needed to handle existing and future septage volumes. Further, the municipal responsibility provisions of RSA 485-A:5-b do not clearly articulate what is intended by the terms "shall provide, or assure access to" a department of environmental services approved facility. This act is intended to clarify terms of compliance, and to further restrict development that generates additional septage in those municipalities without a written agreement, by prohibiting the department from issuing new septic system permits.

2 Water Pollution and Waste Disposal; Municipal Responsibility for Septage. RSA 485-A:5-b is repealed and reenacted to read as follows:

485:5-b Municipal Responsibility.

I. Each municipality shall either provide, or assure access to, a department of environmental services approved septage facility or a department approved alternative option for its residents.

II. For the purposes of paragraph I, "provide, or assure access to" shall mean a written agreement with a recipient facility, or department approved alternative option, indicating that the recipient facility agrees to accept septage generated in that municipality. The municipality shall consider providing sufficient annual capacity equal to the number of households with septic multiplied by the average septic tank capacity of 1000 gallons divided by the average septage pumpout frequency of 5 years.

III. The department of environmental services shall be prohibited from issuing new septic system construction permits in a municipality after July 1, 2010, until the municipality is in compliance with this section.

3 Report. The commissioner of the department of environmental services shall report to the legislature on the current compliance status of all municipalities under the revised terms of RSA 485-A:5-b, on or before July 1, 2006 and July 1 each year thereafter through 2010.

4 Effective Date.

I. RSA 485-A:5-b, II as inserted by section 2 of this act shall take effect January 1, 2006.

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

AMENDED ANALYSIS

This bill clarifies a definition, and prohibits the department of environmental services from issuing new septic system construction permits to any municipality not in compliance after July 1, 2010.

2003-2402h

Amendment to HB 511

Proposed by the Committee on Executive Departments and Administration - C

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

AN ACT transferring authority over the New Hampshire hospital security force to the department of safety.

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

1 Hospital Security Force. Amend RSA 135:41 to read as follows:

135:41 Hospital Security Force. The ~~[superintendent of the New Hampshire hospital]~~ ***commissioner of safety*** is authorized to organize a hospital security force for the purpose of patrolling the hospital's buildings, roads, and grounds of the campus of the state office park south and providing for general security on the campus. The hospital security force shall be under the immediate control of and responsible to the ~~[superintendent of the hospital]~~ ***commissioner of safety***.

2 Authority. Amend the introductory paragraph of RSA 135:42 to read as follows:

135:42 Authority. All security officers of the hospital security force shall ~~[be ex-officio constables and shall]~~ possess general police powers including the power of arrest, but such powers shall extend only to the campus of the state office park south and only to the period during which such members are on official active duty. The only 2 instances where the authority of members of the hospital security force shall extend beyond the campus of the state office park south are:

3 Qualifications and Training. RSA 135:43 is repealed and reenacted to read as follows:

135:43 Qualifications and Training. The commissioner of safety shall adopt rules, pursuant to RSA 541-A, establishing qualifications and requirements for police training for New Hampshire hospital security officers.

4 New Subparagraph; Department of Safety; Rulemaking. Amend RSA 21-P:14, II by inserting after subparagraph (dd) the following new subparagraph:

(ee) Qualifications and police training requirements for New Hampshire hospital security officers under RSA 135:43.

5 Effective Date. This act shall take effect January 1, 2005.

AMENDED ANALYSIS

This bill transfers authority over the New Hampshire hospital security force from the department of health and human services to the department of safety.

2003-2508h

Amendment to HB 516-LOCAL

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

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

AN ACT relative to the standard of review for requests for excavating and dredging permits, and relative to an appropriation for the expansion of the Port of Portsmouth.

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

1 New Paragraph; Excavating and Dredging Permit; Certain Exemptions. Amend RSA 482-A:3 by inserting after paragraph I the following new paragraph:

I-a. In reviewing requests proposed, sponsored, or administered by the department of transportation, the department of environmental services shall presume a public need for the requested project, and that the department of transportation has exercised appropriate engineering judgment in the project's design.

2 Excavating and Dredging Permits; Appeals. Amend RSA 482-A:10, V to read as follows:

V. The council on appeal shall hold a non-evidentiary hearing as provided in its rules. The hearing shall be noticed in accordance with RSA 482-A:8 and RSA 482-A:9. The department shall provide the council with its record of decision upon receiving notice of the hearing. The appeal shall be determined upon the record below. The burden of proof shall be on the party seeking to set aside the department's decision to show that the decision is unlawful or unreasonable. ***On appeal of requests proposed, sponsored, or administered by the department of transportation, the council shall presume a public need for the requested project, and that the department of transportation has exercised appropriate engineering judgment in the project's design.*** All findings of the department upon all questions of fact properly before it shall be prima facie lawful and reasonable.

3 Excavating and Dredging Permits; Appeals. Amend RSA 482-A:10, XI to read as follows:

XI. On appeal to the superior court, the burden of proof shall be upon the party seeking to set aside the decision of the council to show that the decision is unlawful or unreasonable. ***On appeal of requests proposed, sponsored, or administered by the department of transportation, the court shall presume a public need for the requested project, and that the department of transportation has exercised appropriate engineering judgment in the project's design.*** The council's decision shall not be set aside or vacated, except for errors of law, unless the court is persuaded, by a preponderance of the evidence before it, that said decision is unjust or unreasonable.

4 Appropriation; Port Authority. Amend 1991, 351:5, as amended by 1992, 260:20, 1994, 204:1, 2000, 15:1, 2000, 292:10, and 2003, 240:27 to read as follows:

351:5 Appropriation; Port Authority. The expansion of the Port of Portsmouth funded in this section shall include an 11-acre expansion of the north yard of the port, the construction of a 750-foot pier, dredging projects including associated mitigation to maintain channels and harbor, a hydrodynamic study of Hampton and Seabrook, renovation of any commercial fish piers that may be transferred to the port authority, and the rip-rap project on River Street in Seabrook. The sums hereinafter detailed are hereby appropriated for the project specified:

A. Port of Portsmouth Expansion \$18,300,000

Total state appropriation section 5 \$18,300,000

(The funds appropriated in subparagraph A for the Port of Portsmouth expansion shall not be expended, encumbered, or obligated in any way unless an action plan, which shall include construction documents, prepared by the New Hampshire Port Authority shall be approved by the capital budget overview committee, the fiscal committee, and the governor and council. \$1,500,000 of the total amount appropriated herein is hereby released for the purpose of final design and bid documents. \$1,800,000 of the total amount appropriated is designated for wetland mitigation. \$400,000 of the total amount appropriated is designated for the Hampton-Seabrook hydrodynamic study. The remaining \$14,600,000 is designated for construction, renovation, and dredging projects including associated mitigation. This appropriation shall be nonlapsing until the project is completed. The New Hampshire Port Authority shall not encumber, obligate, or expend any funds from this appropriation for renovation or dredging projects without the prior approval of the capital budget overview committee. The total amount that may be expended for renovation and dredging projects including associated mitigation shall not exceed a total of \$1,000,000. In addition, for the biennium beginning July 1, 2003, the sum of [~~\$1,000,000~~] ***\$200,000*** shall be expended for the dredging of

Hampton - Seabrook harbor[~~provided that the Army Corps of Engineers takes responsibility for completion and funding of future harbor dredging projects~~] **prior to March 15, 2004, and the sum of \$800,000 shall be expended prior to the end of the biennium ending June 30, 2005.)**

5 Effective Date.

I. Section 4 of this act shall take effect upon its passage.

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

AMENDED ANALYSIS

This bill changes the standard of review for requests for excavating and dredging permits.

This bill also extends the period in which funds shall be expended for the Port of Portsmouth.

2003-1603h

Amendment to HB 532

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; Procedure; Venue; Notice. RSA 458:9 is repealed and reenacted to read as follows:

458:9 Venue; Notice. All petitions initiated under RSA 168-A, RSA 458, and RSA 458-C shall be brought in the county in which either party lives and before the superior court; and notice thereof shall be given to the respondent as required by this section.

I. If the parties file a joint petition, the petition shall be filed at the appropriate court without further service or notice required.

II. An individual petition shall be filed with the appropriate court, together with the filing fee, by the petitioner. Upon the filing of a petition, the court shall issue orders of notice, attached to the petition, which the petitioner shall then serve on the respondent as provided in this section:

(a) Service within the state shall be made either by:

(i) A sheriff, in hand or by leaving an attested copy of the petition, orders of notice, and an appearance form at the respondent's abode, within 25 days of the date of filing the petition. The return of service shall state the street and number, or some other description, of the abode. The petitioner shall file the return of service with the court as proof of service.

(ii) Certified mail, return receipt requested, restricted delivery, signed by the addressee only. The petitioner shall file the return receipt with the court as proof of service.

(b) Service outside the state shall be made either by:

(i) An officer authorized to make service of process in the state where the respondent lives. Proof of out-of-state service shall be made by a return of the officer under oath, accompanied by an official certificate of his or her official character or authority. The petitioner shall file the return of service with the court as proof of service.

(ii) Certified mail, return receipt requested, restricted delivery, signed by the addressee only. The petitioner shall file the return receipt with the court as proof of service.

III. When the residence of the respondent is not known, the petition shall state the respondent's last known post office address, and the name and post office address of some near relative of the respondent, if any is known to the petitioner, and otherwise the name and post office address of some friend of the respondent, such facts to be verified by the petitioner's personal affidavit filed with the petition. The petitioner shall file the petition with the court together with the name and address of a newspaper published in the city or town nearest to the respondent's last known address. Service shall then be ordered by publication in the newspaper, with publication to be completed not less than 15 days before the return date, and by certified mail addressed to the respondent, care of the relative or friend of the respondent, or otherwise as the court may order. Publication may be waived for good cause upon motion to the court.

2 Reference Change from Libel to Petition. Amend the following RSA provisions by changing "libel" to "petition": RSA 167-B:1; 458:2; 458:5; 458:7-a; 458:11; 458:12; 458:16; 458:16-b; 458:24; 458:34; and 498:16.

3 Reference Change from Libels to Petitions. Amend the following RSA provisions by changing "libels" to "petitions": RSA 458:2, 458:27, and 458-D:7.

4 Sheriffs and Constables; Fees of Sheriffs and Deputy Sheriffs; Reference Change. Amend RSA 104:31, II to read as follows:

II. For service of a bill, libel or petition, \$15; provided that service of a ~~[libel]~~ **petition** with restraining order shall be \$25.

5 Domestic Relations; Special Fund; Reference Change. Amend RSA 458:17-b to read as follows:

458:17-b Special Fund Established. The supreme court shall establish a separate fund in which to deposit a percentage of the entry fee paid to each clerk of superior court in each ~~[libel and]~~ petition in marital cases for the compensation of mediators, appointed pursuant to RSA 458:15-a, and guardians ad litem, appointed pursuant to RSA 458:17-a, when the parents are indigent. The supreme court shall determine by rule the percentage amount of the entry fee for each ~~[libel and]~~ petition to be deposited into the fund, but at no time shall the percentage amount exceed 50 percent of the entry fee for each ~~[libel and]~~

petition. Payments for services provided shall be paid by the judicial council.

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

AMENDED ANALYSIS

This bill:

- I. Removes the requirement that the court provide the respondent with 10 days to accept service of a divorce petition.
- II. Permits in-state and out-of-state service by certified mail.
- III. Changes references to “libel” to “petition”; “libelee” to “respondent”; and “libelant” to “petitioner”.

2003-2524h

Amendment to HB 551

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 the effect of parental refusal to administer psychotropic drugs to their children and establishing a committee to study the prescription and use of psychotropic drugs, including Ritalin, in childcare centers, preschools, and public schools.

1 New Paragraph; Child Protection Act; Protective Custody; Effect of Parent’s Refusal to Administer Psychotropic Drug.

Amend RSA 169-C:6 by inserting after paragraph VII the following new paragraph:

VIII. The refusal of a parent or other person having control of a child to administer or consent to the administration of any psychotropic drug to such child shall not, in and of itself, constitute grounds for the police or a juvenile probation and parole officer to take the child into custody, or for the court to order that such child be taken into custody. However, if the administration of a decreasing dose of the drug is required during withdrawal from the medication, the refusal may constitute grounds for taking the child into protective custody.

2 Purpose. According to the United States Drug Enforcement Agency, New Hampshire has the highest distribution per capita of Methylphenidate, better known as Ritalin, in the United States. Ritalin is a stimulant marketed to help students and young children who are referred to as hyperactive or who have been diagnosed with attention-deficit/hyperactivity disorder (ADHD) to focus on school work in the classroom. Although the drugs are generally considered safe, scientists acknowledge that they do not fully understand how Ritalin and other stimulants affect children’s developing brains. The drugs are not approved for children under 6. Yet, physicians increasingly prescribe such psychotropic medication “off label,” a worrisome trend with potentially disconcerting effects on young children. Generally, Ritalin and similar drugs are regarded as performance enhancing medication, used to keep children less active in educational settings where curriculum demands may be highly academic and accelerated. Further study is needed to determine the biological or medical reasons for administering psychotropic drugs, such as Ritalin, to students in public schools, preschools, and childcare centers and to investigate the research documenting the medications’ effects on their development, progress in school, and health.

3 Committee Established. There is established a committee to study the prescription and use of psychotropic drugs, including Ritalin, in childcare centers, preschools, and public schools.

4 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.

5 Duties. The committee shall:

I. Study the extent of the use of psychotropic drugs, including Ritalin, among children in childcare centers, preschools, and public schools, grades K-12.

II. Study where and under what circumstances, including protocols, referrals, and symptoms, psychotropic drugs are prescribed for children ages infant to 5 years and students in grades K-12.

III. Determine if there are regional or geographic clusters of children on Ritalin and whether any connections exist between the prescription and use of such drugs and a child’s gender or socioeconomic status.

IV. Determine the extent to which psychotropic drugs, including Ritalin, are prescribed or used for behavior control purposes or performance enhancement in controlled settings such as childcare centers, preschools, and elementary classrooms.

V. Investigate allegations that a parent or guardian’s refusal to administer or consent to the administration of any psychotropic medication to his or her child may constitute grounds for taking the child into protective custody.

VI. Examine and document, through a review of scientifically credible research studies, the long-term effects to date, both positive and negative, of the use of psychotropic drugs administered to children from infancy through high school.

VII. Study other issues deemed relevant to the committee’s purpose.

VIII. Solicit information and advice from the commissioners of the departments of education and health and human services, child psychologists and psychiatrists, pediatric neurologists, early childhood specialists or child development specialists from the university of New Hampshire, Keene state college, or Plymouth state college, the New Hampshire Pediatric

Society, the Parent Information Center-New Hampshire, the New Hampshire Children's Alliance, Children and Family Services, and any other organization or individual with relevant information or expertise.

6 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.

7 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, 2005.

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

AMENDED ANALYSIS

This bill provides that a parent's refusal to administer a psychotropic drug to his or her child shall not, in and of itself, provide grounds for the state to take the child into protective custody under RSA 169-C, the child protection act. This bill also establishes a committee to study the prescription and use of psychotropic drugs, including Ritalin, in childcare centers, preschools, and public schools.

2003-2496h

Amendment to HB 559

Proposed by the Committee on Labor, Industrial and Rehabilitative Services - C

Amend RSA 275:61, I and II as inserted by section 1 of the bill by replacing them with the following:

I. "Employee" means any person employed by a public employer except:

- (a) Persons elected by popular vote;
- (b) Persons appointed to office by the chief executive or legislative body of the public employer;
- (c) Persons whose duties imply a confidential relationship to the public employer; or
- (d) Persons in a probationary or temporary status, or employed seasonally, irregularly or on call. For the purposes of

this chapter, however, no employee shall be determined to be in a probationary status who shall have been employed for more than 12 months or who has an individual contract with his employer, nor shall any employee be determined to be in a temporary status solely by reason of the source of funding of the position in which he or she is employed.

II. "Employer" means the state and any political subdivision thereof, the judicial branch of the state, any quasi-public corporation, council, commission, agency or authority, and the state university system.

Amend RSA 275:62, I and II as inserted by section 1 of the bill by replacing them with the following:

I. No employer shall discharge, threaten or, otherwise discriminate against any employee regarding such employee's compensation, terms, conditions, location, or privileges of employment because the employee has exercised the right of free speech including the public discussion of issues of public interest concerning his or her employment.

II. Without in any way limiting the rights and protections afforded to employees under RSA 275-E, the right of protected speech shall not extend to fiduciary relationships, the divulgence of confidential financial information, trade secrets, patents, or the personal or medical records of patients, clients, or other employees without the prior consent of the patient, client, or employee.

AMENDED ANALYSIS

This bill protects a public employee from discharge or discrimination when the public employee has spoken about a matter that is of public interest concerning his or her employment. Protected speech does not include speech that divulges trade secrets, patents, or certain other confidential information, or information from a fiduciary relationship.

2003-2482h

Amendment to HB 612-FN-LOCAL

Proposed by the Committee on Education - R

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

AN ACT making certain changes to the allocation of catastrophic aid expenditures.

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

1 Special Education; State Aid. Amend RSA 186-C:18, III-IV to read as follows:

III.(a) The state board of education through the commissioner, department of education, shall distribute aid available under this paragraph as entitlement to such school districts as have a special education pupil for whose costs they are responsible, for whom the costs of special education in the fiscal year ~~[exceed 3 1/2]~~ **exceeds the sum of 3** times the estimated state average expenditure per pupil for the school year preceding the year of distribution **plus any additional federal funds received by a school district for educationally disabled children, or court-ordered placements, or both.** If in any year, the amount appropriated for distribution as catastrophic special education 186-C:18 aid in accordance with this section is insufficient therefor, the appropriation shall be prorated proportionally based on entitlement among the districts entitled to a grant. If there are unexpended funds appropriated under this paragraph at the end of any fiscal year, such funds shall be distributed for court-ordered placements under RSA 186-C:19-b. **Any funds remaining after distribution for court-ordered**

placements shall be distributed to school districts in proportion to the number of educationally disabled pupils in each school district. The state may designate up to \$250,000 of the funds which are appropriated as required by this paragraph, for each fiscal year, to assist those school districts which, under guidelines established by rules of the state board of education, may qualify for emergency assistance for special education costs. Upon application to the commissioner of education, and approval by the commissioner, such funds may be accepted and expended by school districts in accordance with this chapter; provided, however, that if a school district has received emergency assistance funds for certain educationally disabled children, it shall not receive catastrophic special education aid for those same educationally disabled children. If any of the funds designated for emergency assistance under this paragraph are not used for such emergency assistance purposes, the funds shall be used to assist school districts in meeting catastrophic cost increases in their special education programs as provided by this paragraph.

(b) The school district shall be liable for ~~[3-1/2]~~ **3** times the estimated state average expenditure per pupil for the school year preceding the year of distribution, **plus any additional federal funds received by a school district for educationally disabled children, or court-ordered placements, or both** plus 20 percent of the additional cost, up to ~~[10]~~ **8** times the estimated state average expenditure per pupil for the school year preceding the year of distribution.

(c) The department of education shall be liable for 80 percent of the cost above the ~~[3-1/2]~~ **3** times the estimated state average expenditure per pupil for the school year preceding the year of distribution, **plus any additional federal funds received by a school district for educationally disabled children, or court-ordered placements, or both**, up to ~~[10]~~ **8** times the estimated state average expenditure per pupil for the school year preceding the year of distribution. The department of education shall be liable for all costs in excess of ~~[10]~~ **8** times the estimated state average expenditure per pupil for the school year preceding the year of distribution.

(d) Upon the effective date of this subparagraph, any additional federal special education funds received by school districts shall be dedicated for distribution as catastrophic aid in accordance with this paragraph.

(e) Beginning November 1, 2004, and annually thereafter, the governing body of the school district shall submit a report to the house and senate finance committees detailing all federal special education funds received in the immediately preceding school year including an accounting of how such funds were expended.

IV. The state shall appropriate \$300,000 for each fiscal year to assist special education programs that are statewide in their scope, and that meet the standards for such programs established by the state board of education. Funds under this paragraph shall be administered and distributed by the state board of education through the commissioner.

2 Special Education; State Aid. Amend RSA 186-C:18, VIII to read as follows:

VIII. A school district shall raise, appropriate and expend funds, reflecting the total cost in meeting catastrophic special education student costs as provided under RSA 186-C:18, including the school district and department of education liability. A school district may issue reimbursement anticipation notes as provided for in RSA 198:20-d to be redeemed upon receipt of reimbursement from the state. The department of education shall be liable for the cost of the school districts borrowing of any funds for special education student costs over ~~[3-1/2]~~ **3** times the estimated state average expenditure per pupil for the school year preceding the year of distribution **plus any additional federal funds received by a school district for educationally disabled children, or court-ordered placements, or both.**

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

AMENDED ANALYSIS

This bill changes the formula used to determine liability for catastrophic aid expenses.

2003-2533h

Amendment to HB 618-FN-A

Proposed by the Committee on Municipal and County Government - C

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

AN ACT making technical corrections to certain local property tax laws.

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

1 Elderly Exemption References Changed; Definitions. Amend RSA 72:29, VI to read as follows:

VI. For purposes of RSA 72:28, 29-a, 30, 31, 32, 33, 35, 36-a, 37, 37-a, 37-b, 38-a, ~~[39, 43-b, 43-f, 43-h]~~ **39-a**, 62, 66, and 70, the ownership of real estate, as expressed by such words as "owner", "owned" or "own", shall include those who have equitable title or the beneficial interest for life in the subject property.

2 New Subparagraph; Exemption for Disabled; Residency Requirement. Amend RSA 72:37-b, III by inserting after subparagraph (b) the following new subparagraph:

(c) Has been a New Hampshire resident for at least 5 years.

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

AMENDED ANALYSIS

This bill makes technical corrections to certain local property tax laws allowing for exemptions.

2003-2381h

Amendment to HB 622-FN

Proposed by the Committee on Judiciary - C

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

AN ACT clarifying certain exemptions from the right-to-know law.

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

1 Right-to-Know Law; Exemptions. Amend RSA 91-A:3, II(c)-(e) to read as follows:

(c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the body or agency itself, unless such person requests an open meeting. ***This exemption shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on need, inability to pay or poverty of the applicant.***

(d) Consideration of the acquisition, sale or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.

(e) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the body or agency or any subdivision thereof, or against any member thereof because of his ***or her*** membership in such body or agency, until the claim or litigation has been fully adjudicated or otherwise settled. ***Any application filed for relief, pursuant to law, with any body or board shall not constitute a threatened or filed litigation against any body, board, or agency for the purposes of this subparagraph.***

2 Effective Date. This act shall take effect January 1, 2005.

AMENDED ANALYSIS

This bill clarifies certain exemptions from the right-to-know law relating to reputation and pending claims or litigation.
2003-2382h

Amendment to HB 640-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 New Chapter; Post-Conviction DNA Testing. Amend RSA by inserting after chapter 651-C the following new chapter:

CHAPTER 651-D

POST-CONVICTION DNA TESTING

651-D:1 Definitions. In this chapter:

I. "Department" means the department of safety.

II. "Division" means the division of state police, department of safety.

III. "DNA" means deoxyribonucleic acid.

IV. "DNA sample" means a blood, tissue, or hair follicle sample provided by any person or submitted to the division for analysis or storage or both.

V. "Investigating agency" means the law enforcement agency that investigated a case resulting in a conviction in which biological material was collected as evidence during the course of the investigation.

651-D:2 Post-Conviction DNA Testing of Biological Material.

I. A person in custody pursuant to the judgment of court may, at any time after conviction or adjudication as a delinquent, petition the court for forensic DNA testing of any biological material. The petition shall, under penalty of perjury:

(a) Explain why the identity of the petitioner was or should have been a significant issue during court proceedings.

(b) Explain why, in light of all the circumstances, the requested DNA testing will exonerate the petitioner and demonstrate his or her innocence by proving that the petitioner has been misidentified as the perpetrator of, or accomplice to, the crime for which the petitioner was convicted.

(c) Make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing which is sought.

(d) Explain why the evidence sought to be tested by the petitioner was not previously subjected to DNA testing, or explain how the evidence can be subjected to retesting with different DNA techniques that provide a reasonable probability of reliable and probative results.

II. The court shall notify the office of the attorney general, or the county attorney who prosecuted the case, of a petition made under this section and shall afford an opportunity to respond. Upon receiving notice of a petition made under this section, the attorney general, or county attorney who prosecuted the case, shall take such steps as are necessary to ensure that any remaining biological material obtained in connection with the case or investigation is preserved pending the completion of proceedings under this section.

III. The court may order DNA testing pursuant to an application made under this section upon finding that the petitioner has established each of the following factors by clear and convincing evidence:

(a) The evidence to be tested was secured in relation to the investigation or prosecution that resulted in the petitioner's conviction or sentence, and is available and in a condition that would permit the DNA testing that is requested in the motion.

(b) The evidence to be tested has been subject to a chain of custody sufficient to establish it has not been substituted,

tampered with, replaced, or altered in any material aspect.

(c) Identity was a significant issue in the proceeding that resulted in the petitioner's conviction or sentence, or the petitioner has presented clear and convincing evidence of mistaken identity in a motion for new trial or in a habeas corpus proceeding asserting ineffective assistance of counsel for failing to assert a defense of mistaken identity.

(d) The evidence sought to be tested is material to the issue of the petitioner's identity as the perpetrator of, or accomplice to, the crime.

(e) DNA results of the evidence sought to be tested would be material to the issue of the petitioner's identity as the perpetrator of or accomplice to, the crime that resulted in his or her conviction or sentence.

(f) If the requested DNA testing produces exculpatory results, the testing will constitute new, noncumulative material evidence that will exonerate the petitioner by establishing that he or she was misidentified as the perpetrator or accomplice to the crime.

(g) The evidence sought to be tested was not previously tested using DNA technology or the technology requested was not available at the time of trial.

(h) If DNA or other forensic testing previously was done in connection with the case, the requested DNA test would provide results that are significantly more discriminating and probative on a material issue of identity, and would have a reasonable probability of contradicting prior test results.

(i) The testing requested employs a method generally accepted within the relevant scientific community.

(j) The motion is timely and not unreasonably delayed.

IV. If the court grants the motion for DNA testing, the court's order shall:

(a) Identify the specific evidence to be tested and the DNA technology to be used.

(b) If the court ordered different testing than requested by the petitioner, the court shall explain why the different test was ordered.

(c) Designate New Hampshire state police forensic laboratory to conduct the test.

(d) Designate a laboratory accredited by the American Society of Crime Laboratories Directors Laboratory Accreditation Board (ASCLD/LAB), unless the petitioner and the attorney general or county attorney agree on the laboratory to conduct the test, if the New Hampshire state police forensic laboratory cannot conduct the DNA testing ordered by the court.

V. The cost of DNA testing ordered under this section shall be paid by the petitioner, or by the state, if the petitioner is indigent as determined by the court. The court may appoint counsel for an indigent petitioner under this section.

VI. (a) If the results of DNA testing conducted under this section are unfavorable to the petitioner, the court shall dismiss the application and in cases where the petitioner was convicted of a sexual offense, the court shall forward the test results to the New Hampshire state prison, sex offender program.

(b) In addition to any other substantive or procedural remedies provided by applicable law, if the results of DNA testing conducted under this section are favorable to the petitioner, the court shall order a hearing and shall enter any order that serves the interests of justice, including an order vacating and setting aside the judgment, discharging the petitioner if the petitioner is in custody, resentencing the petitioner, or granting a new trial.

VII. Nothing in this chapter shall be construed to limit the circumstances under which a person may obtain DNA testing or other post-conviction relief under any other provision of state or federal law.

651-D:3 Preservation of Biological Material for DNA Testing.

I. The investigating agency shall preserve any biological material obtained in connection with a criminal or delinquency investigation or prosecution for 5 years from the date of conviction or adjudication, or as long as any person connected with that case or investigation remains in custody, whichever is longer.

II. The investigating agency may, however, petition the court to destroy or otherwise dispose of biological material after 5 years even if a person connected with the case is still in custody. If the investigating agency petitions the court to destroy evidence before the person is released from custody, the investigating agency must serve a copy of the petition to destroy biological evidence on the person who remains in custody, any counsel of record, and the prosecuting agency. The investigating agency may destroy biological material after 90 days of filing a petition, unless the investigating agency receives:

(a) A court order preventing the destruction of biological evidence; or

(b) A motion to preserve biological evidence on the grounds that the person in custody intends to file a petition for post-conviction DNA testing pursuant to RSA 651-D:2 within 180 days of the motion to preserve.

651-D:4 DNA Testing and Analysis.

I. The DNA testing and analysis under this chapter shall be performed under the direction of the division, following procedures in conformance with the federal "DNA Identification Act of 1994". Identifying characteristics of the resulting DNA profile shall be stored and maintained by the division consistent with division policy.

II. The division shall prescribe procedures to be used in the collection, submission, identification, analysis, storage and disposition of DNA samples and all DNA information obtained pursuant to this chapter.

III. The division may contract with third parties for the purposes of this chapter. Any DNA sample sent to third parties for analysis shall be coded to maintain confidentiality concerning the donor of the sample.

IV. A certificate and the results of the analysis shall be admissible in any court as evidence of the facts stated in the analysis.

2 Effective Date. This act shall take effect upon its passage.
2003-2539h

Amendment to HB 643-FN
Proposed by the Committee on Finance - C

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

AN ACT relative to the family division of the courts.

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

1 Intent. It is the intent of the general court that a family division of the courts be implemented statewide in a manner which most expeditiously achieves the goal of providing enhanced services to parties involved in cases relating to divorce, custody, children, domestic violence, and other family law matters. The general court finds that this area of law requires the skills and attention of experienced and committed individuals who are dedicated to serving families and to the appropriate, timely resolution of family law cases in a manner which best services the public interest. The goals of the family division are the respectful treatment of all citizens by justices, marital masters and other family division staff, the prompt and fair resolution of family issues by justices and marital masters specially selected and trained to deal effectively with such issues, the use of alternative dispute resolution to reduce the adversarial nature of proceedings involving families, and the assignment of all family matters of a single family to one family division justice or marital master located in a family division that is geographically accessible to the family.

2 New Subdivision; Family Division Established. Amend RSA 490 by inserting after section 32 the following new subdivision:

Family Division

490:33 Family Division. The family division of the courts operating in Rockingham and Grafton counties, pursuant to 1995, 152, shall become a permanent component of the judicial branch on the effective date of this subdivision.

490:34 Jurisdiction. Notwithstanding any law to the contrary, for Grafton county and Rockingham county, jurisdiction over the following matters shall be exclusively exercised through the family division as jurisdiction was previously exercised in the superior, district, and probate courts:

I. Petitions and libels of divorce, and petitions of nullity of marriage, alimony, custody of children, support, and to establish paternity.

II. Actions for support or custody for children of unwed parties.

III. Actions under RSA 169-B, relating to delinquent children.

IV. Actions under RSA 169-C, relating to abused and neglected children.

V. Actions under RSA 169-D, relating to children in need of services.

VI. Actions under RSA 173-B, relating to protection of persons from domestic violence except for concurrent jurisdiction with the superior and district courts to enter temporary protective orders under RSA 173-B:6.

VII. The adoption of children.

VIII. The guardianship of the person of minors.

IX. The termination of parental rights.

X. The change of names of persons who apply therefor in matters relating to jurisdiction in paragraphs I-IX.

490:35 Equity. Notwithstanding any law to the contrary, the family divisions in Grafton county and Rockingham county shall have the powers of courts of equity in cases where subject matter jurisdiction lies with the family division. Suits in equity where subject matter jurisdiction lies with the family division including, but not limited to, petitions and libels of divorce, and petition of nullity of marriage, alimony, custody of children, support, and other similar proceedings may be heard upon oral testimony or depositions, or both, or when both parties consent, or service having been made and a notice of the time and place of the hearing having been given, when both parties appear. Such suits may be heard by any justice of the family division at any time, but nothing contained in this section shall be construed as limiting the power of the family division to have issues of fact framed and tried by a jury, according to the rules in equity, or the course of such proceedings at common law.

3 New Subparagraph; Duty Added. Amend 2002, 250:2, II by inserting after subparagraph (c) the following new subparagraph:

(d) Recommendations for expanding the family division of the courts. In developing its recommendations, the task force shall consider the recommendations in the Report of the Resolution of Family Issues in the Courts Study Committee, dated January 15, 1995. The task force shall also consider any more recent studies and reports on the family division, including recommendations made by any commission established to study the operations of the family division in Grafton county.

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

AMENDED ANALYSIS

This bill makes the family division of the courts currently operating as a pilot program in Grafton and Rockingham counties a permanent component of the judicial branch.

The bill also requires the task force on family law to study and make recommendations on expanding the family division statewide.

2003-2511h

Amendment to HB 645-FN-A-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 the reimbursement of certain property taxes paid by qualifying private education institutions for the purpose of educational scholarship grants.

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

1 New Paragraph; Property Tax Exemption; School Dormitories, Dining Rooms, Kitchens. Amend RSA 72:23 by inserting after paragraph IV the following new paragraph:

IV-a. To the extent property taxes are due and paid on the value of the dormitories, dining rooms, and kitchens of schools, seminaries of learning, colleges, academies and universities pursuant to paragraph IV, the schools, seminaries of learning, colleges, academies, and universities which qualify as provided in RSA 188-D:43 shall be eligible for reimbursement of a portion of the property tax paid.

2 New Paragraph; Postsecondary Education Commission; Rulemaking. Amend RSA 188-D:8-a by inserting after paragraph III the following new paragraph:

IV. The procedure for application, method of disbursement, and administration of funds in the property tax reimbursement and educational scholarship fund under RSA 188-D:43.

3 New Subdivision; Property Tax Reimbursement and Educational Scholarship Fund. Amend RSA 188-D by inserting after section 42 the following new subdivision:

Property Tax Reimbursement and Educational Scholarship Fund

188-D:43 Property Tax Reimbursement and Educational Scholarships. The postsecondary education commission shall administer a program for the granting of educational scholarship funds in the form of property tax reimbursement to qualifying private, secondary and postsecondary, educational institutions in this state as follows:

I. A private educational institution that pays property taxes on the value of the dormitories, dining rooms, and kitchens pursuant to RSA 72:23, IV, and which has New Hampshire residents comprising more than 10 percent of its boarding students, may apply for and, within the available funds, receive a reimbursement of such property taxes paid for the purpose of funding educational scholarships at the institution, as determined by rules of the postsecondary education commission adopted under RSA 188-D:8-a, IV.

II. Any property tax reimbursement granted under this section shall be for the purpose of providing educational scholarships at the educational institution.

III. The grant amount shall be limited to the amount of educational scholarship funds provided to New Hampshire students by the educational institution.

IV. Grants from the available funds under RSA 188-D:44 shall be awarded in proportion to the amount of reimbursement requested in applications of all qualifying educational institutions.

188-D:44 Fund Established. There is hereby established a special fund to be known as the property tax reimbursement and educational scholarship fund. The fund shall consist of such moneys received and deposited pursuant to RSA 471-C:31, III for the purposes of this subdivision. The fund shall be managed by the state treasurer and shall be continually appropriated to the postsecondary education commission for the purposes of this subdivision.

4 Custody and Escheat of Unclaimed and Abandoned Property; Certain Income Appropriated to Educational Scholarship Fund. Amend RSA 471-C:31, III to read as follows:

III. Property delivered from out-of-state holders *and the income earned from the working capital fund* shall ~~[escheat to the general fund]~~ **be deposited in the property tax reimbursement and educational scholarship fund established in RSA 188-D:44.**

5 New Subparagraph; State Accounts; Application of Receipts. Amend RSA 6:12, I(b) by inserting after subparagraph (222) the following new subparagraph:

(223) Moneys received under RSA 471-C:31, III, which shall be deposited in the property tax reimbursement and educational scholarship fund established in RSA 188-D:44.

6 Effective Date. This act shall take effect July 1, 2005.

AMENDED ANALYSIS

This bill establishes a program to be administered by the postsecondary education commission for the reimbursement of certain property taxes paid by qualifying private education institutions for the purpose of educational scholarship grants.

2003-2375h

Amendment to HB 651-FN

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 the purchase of prior service credit by certain political subdivision employee members, and repealing certain provisions permitting additional contributions.

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

1 Retirement System; Political Subdivision Employees; Purchase of Certain Prior Service Credit. Amend RSA 100-A:28 to read as follows:

100-A:28 Limitation on Membership. This retirement system and the provisions hereof shall not apply to any person benefited by or entitled to participate under any other provisions of law which provides wholly or in part at the expense of the state or any other employer, for retirement benefits for employees, teachers, permanent policemen, and permanent firemen employed by the state or such other employer, their widows or other dependents, with respect to the same period of service for which they are eligible for benefits under the terms of this chapter. The provisions of this section shall not apply to any person participating in, or receiving or eligible to receive benefits under the old-age and survivors insurance provisions of Title II of the federal Social Security Act, as amended or under a retirement arrangement federally tax-qualified under sections 403(b) or 457 of the United States Internal Revenue Code of 1986, as amended. ***The provisions of this section shall not apply with respect to the purchase of prior service credit under RSA 100-A:3, VI by any person who had participated in or deemed eligible to receive benefits under a retirement arrangement funded, wholly or in part, by contributions from a political subdivision of the state, or an agency or instrumentality of a political subdivision of the state; provided, that such arrangement shall first be terminated in full, but in no event later than December 31, 2004; and, further provided, that the benefits thereunder shall be distributed in their entirety to eligible participants and beneficiaries in accordance with the terms and conditions of such terminated retirement arrangement.***

2 Repeal. RSA 100-A:16, I(c), relative to additional contributions by or on behalf of a member, is repealed.

3 Effective Date.

I. Section 2 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect July 1, 2004.

AMENDED ANALYSIS

This bill allows certain political subdivision employee members of the retirement system to purchase prior service credit where the member participated in a local retirement plan. The bill also repeals the provisions for making additional contributions for the benefit of a member's retirement allowance.

2003-2485h

Amendment to HB 656-FN

Proposed by the Committee on Judiciary - C

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

AN ACT establishing a commission to study the operations of the family division court in Grafton county.

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

1 Purpose. The purpose of this act is to establish a commission to determine whether the operations of the family division court in Grafton county, established by 1995, 152, fulfill the legislative purposes as stipulated in 1995, 152:1, the purpose statement of the chapter law.

2 Commission Established. There is established a commission to study the operations of the family division court in Grafton county.

3 Membership and Compensation.

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

(a) Three members of the house of representatives, 2 of whom shall be members of the judiciary committee, appointed by the speaker of the house.

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

(c) Two district court judges, one who regularly sits on the family division court and one who does not regularly sit on the family division court, appointed by the administrative judge of the district courts.

(d) Two chiefs of police from towns or cities within Grafton county, appointed by the Grafton County Police Chiefs Association.

(e) One family court case manager, appointed by the supervisory judge of the Grafton county family division court.

(f) Two attorneys with extensive experience practicing both in the Grafton county family division court and in at least one other county which does not have a family division court, one of whom shall reside in Grafton county, appointed by the President of the New Hampshire Bar Association.

(g) Two current members of the task force on family law established in 2002, 250:1, one of whom shall be appointed by the chairperson of the task force and one of whom shall be appointed by the speaker of the house.

(h) One employee of the division for children, youth and families who has experience with family courts, appointed by the commissioner of health and human services.

(i) One juvenile parole and probation officer with work experience in Grafton county, appointed by the commissioner of health and human services.

(j) Two public members, who reside in Grafton county and are knowledgeable of family court operations.

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

4 Duties. The commission shall study the operations of the family division court in Grafton county to determine if the family division court in Grafton county is meeting the purposes for which it was originally established. The commission shall make a recommendation for continuing or abolishing the family division court in Grafton county and, if the recommendation is for continuing the family division court, shall include in its report further recommendations on making the family division court a workable alternative to regular court in a rural setting.

5 Chairperson; Quorum. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named house member. The first meeting of the commission shall be held within 45 days of the effective date of this section.

6 Report. The commission 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, 2004.

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

AMENDED ANALYSIS

This act establishes a commission to study the operations of the Grafton county family division court.
2003-2519h

Amendment to HB 664-FN

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

Amend RSA 160-C:3, II-h as inserted by section 1 of the bill by replacing it with the following:

II-h. The commissioner shall not issue a license under this section unless the commissioner is satisfied that:

(a) The application is complete in all respects.

(b) The applicant, and any principal controlling owners, directors, natural persons who are members of any business entity, or officers disclosed pursuant to paragraphs II-f and II-g, are at least 21 years of age.

(c) In the case of corporate, limited liability company, or partnership applicants controlled by persons who do not reside in the United States, the proposed business would not be managed in a manner which would unduly hinder the commissioner from exercising the commissioner's regulatory responsibilities. Inaccessibility of relevant records or unresponsiveness to inquiries which result from foreign control shall be grounds for revoking or suspending a license which has already been granted.

Amend RSA 160-C:3 as inserted by section 1 of the bill by deleting RSA 160-C:3, II-i and II-j.

Amend RSA 160-C:3, III as inserted by section 1 of the bill by replacing it with the following:

III. The state license may be issued to an applicant who, at the time such license is issued, possesses a permit issued in accordance with the provisions of Title 18, United States Code, governing fireworks, and a permit issued pursuant to RSA 160-C:3, I. No license shall be issued for the sale of permissible fireworks unless the applicant establishes that it will locate its business in a permanent structure which meets all applicable fire safety codes, building codes, zoning codes, and the requirements of local ordinances. No license for the sale of permissible fireworks shall be issued to any person who has been convicted of any offense involving fireworks or explosives within the 2-years prior to the application or who has been found to have violated any fireworks or explosives laws, rules, or regulations within the 2 years prior to the application. No license shall be issued to any person under 21 years of age.

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

4 Permissible Fireworks Review Committee; Meetings. Amend RSA 160-C:13, II to read as follows:

II. The committee shall meet at least once per calendar year, prior to October 1, ***and 30 days prior to any testing and approval conducted pursuant to RSA 160-C:13, II, or earlier at the discretion of the chairperson, to ensure that testing and approval guidelines are finalized, safety preparations are complete, and issues relative to the division of labor are addressed. In addition, the committee shall meet at the request of 3 or more members of the committee.***

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

AMENDED ANALYSIS

This bill:

I. Changes the requirements for obtaining a state license to sell permissible fireworks.

II. Prohibits the retail sale of firecrackers and bottle rockets.

III. Provides the commissioner of the department of safety with rulemaking authority relative to the licensing of persons responsible for the use of flame, pyrotechnics, or special effects before an audience.

IV. Changes the meeting requirements of the permissible fireworks review committee.

2003-2547h

Amendment to HB 697-FN

Proposed by the Committee on Public Works and Highways - C

Amend the bill by replacing sections 3-7 with the following:

3 Application for License; Licensing of Distributors. Amend RSA 260:36 to read as follows:

260:36 Application for License; Licensing of Distributors. It shall be unlawful for any person to sell or use motor fuel upon which the road toll imposed and collected under this subdivision has not been paid, unless the person is the holder of a valid license to engage in business as a distributor of motor fuels. To procure a motor fuel distributor license, an application, signed subject to prosecution for unsworn falsification and accompanied by a bond, shall be filed with the department in such form as the commissioner may prescribe. Once approved, the department shall issue a license certificate valid only for the distributor in whose name issued. The license shall be unassignable and shall remain in full force and effect ***on a fiscal year basis from July 1 through June 30 [until] unless*** cancelled, suspended, or revoked. ***The license shall be renewable upon completion of an application renewal form, provided that the distributor is in good standing with the division.*** The department shall furnish each distributor, monthly, a list of current licenses issued under this section.

4 Motor Fuel and Petroleum Products Transporter; License. Amend RSA 260:42, IV to read as follows:

IV. The commissioner shall issue a license certificate when the application has been accepted and approved, and all other conditions and requirements of this subdivision have been fully complied with. The license shall be valid only for the transporter in whose name it is issued. The license shall not be assignable and shall remain in full force and effect ***on a fiscal year basis from July 1 through June 30 [until] unless*** cancelled, suspended, or revoked. ***The license shall be renewable upon completion of an application renewal form, provided that the transporter is in good standing with the division.***

5 Motor Fuel and Petroleum Products Transporter; Penalty. Amend RSA 260:42, VI to read as follows:

VI.(a) Any person who fails, neglects, or refuses to file the monthly report required by this section shall be assessed a penalty of ~~[\$50]~~ ***\$500***. Such penalty shall immediately accrue and shall bear interest as specified in RSA 260:40-a.

(b) Any person who fails to report a delivery of petroleum fuel or petroleum products within the time period specified in this section shall be assessed a penalty of \$500 or \$50 per unreported delivery, whichever is greater. Such penalty shall immediately accrue and shall bear interest as specified in RSA 260:40-a.

6 New Section; Road Tolls; Retail Dealer Inspections. Amend RSA 260 by inserting after section 42 the following new section:

260:42-a Retail Dealer Inspections.

I. Every retail dealer shall be subject to reasonable inspections during the regular business hours of the retail dealer. Inspections may consist of the review of records of motor fuel and petroleum products, including:

- (a) Purchases of product;
- (b) Opening and closing inventory readings; and
- (c) Pump meter readings.

II. Any person authorized by the department is hereby given the authority, during the usual business hours of the day, to enter any retail dealer's premises for the purpose of making an inspection or investigation as deemed necessary by the department. If the owner or occupant refuses to permit such inspection, the commissioner or the commissioner's authorized officers may apply under oath for a search warrant as provided in RSA 595-B.

7 New Section; Road Tolls; Retention of Records by Retail Dealers. Amend RSA 260 by inserting after section 43 the following new section:

260:43-a Retention of Records by Retail Dealers, and Transporters. Each retail dealer shall maintain and keep for a period of 4 years records of motor fuel and petroleum products, including purchases of product, opening and closing inventory readings, and pump meter readings.

Amend the bill by replacing all after section 9 with the following:

10 Road Tolls; Penalties. RSA 260:55 is repealed and reenacted to read as follows:

260:55 Penalties.

I.(a) The term "person," as used in this section, shall include, but not be limited to, a natural person, a corporation, a limited liability company, a partnership, a professional association, an officer or employee of a corporation, a member, officer, or employee of a partnership, or a trustee, member, or employee of a trust who as such trustee, member, or employee is under a duty either to perform or to refrain from performing the act with respect to which the violation occurs. This section shall apply to persons acting in any fiduciary capacity.

(b) The term "wilfully," as used in this section, shall have the same meaning as provided in RSA 626:2, IV.

II. With respect to any road toll, penalty, or interest imposed by this subdivision, no person shall:

(a) Wilfully attempt in any manner to evade any tax or the payment thereof.

(b) Wilfully fail to collect, truthfully account for, and pay over any road toll, penalty, or interest which such person is required to collect, account for, and pay over to the department.

(c) Wilfully fail to make a return, report, or declaration, to keep records, or to supply any information, which such

person is required to do under this subdivision or under rules adopted under authority of this subdivision, to make such return, report, or declaration, to keep such records, or to supply such information, at the time or times required by statute or rules.

(d) Make and submit to the department any return, report, statement, or other document, that is incomplete due to wilful omissions.

(e) Wilfully make and submit to the department any return, report, statement, or other document that he or she does not believe to be true and correct as to every material matter.

(f) Aid or assist in, or procure, counsel, or advise the preparation of or presentation under, or in connection with any matter arising with respect to the road tolls imposed under this subdivision, a return, affidavit, claim, or other document, which the person knows is fraudulent or false as to any material matter, whether or not such falsity or fraud is with the knowledge and consent of the person authorized or required to present such return, affidavit, claim, or document.

(g) Wilfully simulate, or falsely or fraudulently execute or sign, any bond, license, permit, or other document required by the department with respect to motor fuel laws, or by any rule adopted relative to such laws, or wilfully procure such documents to be falsely or fraudulently executed or advise, aid in, or connive at such execution.

(h) Wilfully remove, deposit, or conceal, or direct the removing, depositing, or concealing of any goods, chattels, or commodities for, or in respect to, any road toll which is or is to be imposed, or any property upon which levy is authorized by law, with intent to evade the assessment or collection of any road toll, penalty, or interest.

(i) Wilfully deliver or disclose to the department any list, return, account, statement, declaration, or other document, known by him or her to be fraudulent or to be false as to any material matter.

(j) Wilfully corrupt or by force or threat of force, including any threatening letter or communication, endeavor to obstruct or impede an officer or employee of the state acting in an official capacity under this subdivision, or in any other way corrupt or by force or threats of force, including any threatening letter or communication, obstruct or impede, or endeavor to obstruct or impede, the due administration of any tax administered by the department. The term "threats of force," as used in this subparagraph, means threats of bodily harm to the officer or employee of the department or to a member of his or her family.

(k) Wilfully accepts delivery of motor fuel upon which the road tolls have not been paid, unless such motor fuel is exempt under the law from the payment of road tolls.

III.(a) Any natural person who violates subparagraph II(a), (b), (e), (f), or (j) shall be guilty of a class B felony and shall be fined as provided in paragraph IV and subject to the penalties provided in RSA 651:2. Any other person who violates subparagraph II(a), (b), (e), (f), or (j) shall be guilty of a felony and shall be fined as provided in paragraph IV and subject to the penalties provided in RSA 651:2.

(b) Any natural person who violates subparagraph II(c), (d), (g), (h), (i), or (k) shall be guilty of a misdemeanor and shall be fined as provided in paragraph IV and subject to the penalties provided in RSA 651:2. Any other person who violates subparagraph II(c), (d), (g), (h), (i), or (k) shall be guilty of a misdemeanor and shall be fined as provided in paragraph IV and subject to the penalties provided in RSA 651:2.

IV. In addition to any penalties provided in RSA 651:2, any person convicted under this section shall be subject to a criminal penalty of at least 10 percent, but not more than 30 percent, of the outstanding road toll.

V. The motor fuel licenses issued to any distributor by the department shall be revoked upon the conviction of the distributor of any crime under this section. Such convicted distributors shall be ineligible to renew or obtain any motor fuel license issued by the department for a period of at least 5 years from the date of conviction.

11 Road Tolls; Determining Amount. Amend RSA 260:38, I to read as follows:

I. For the purpose of determining the amount of road toll imposed and to be collected under this subdivision, ***the sole proprietor, president, managing partner, chief executive officer, or equivalent thereof, of each distributor shall on or before the twentieth day of each calendar month render a return to the department on forms prescribed and furnished by the commissioner, and shall certify under the pains and penalties of perjury that the return is true, accurate, and complete in all material respects.*** The return shall show the total number of gallons sold and used in the state during the previous calendar month together with such other information as the commissioner may require for the reasonable administration of this subdivision. Each distributor shall accompany the return with a check payable to the state treasurer for the total amount of road toll shown by such return to be due.

12 Road Tolls; Determining Amount. Amend RSA 260:38, III to read as follows:

III. Each person manufacturing alcohol, ethanol, methanol, or any other product within the state of New Hampshire for use in gasohol shall obtain a license and, on or before the twentieth day of each calendar month, ***the sole proprietor, president, managing partner, chief executive officer, or equivalent thereof, of said person shall*** render a return to the commissioner on forms prescribed and furnished by the commissioner, ***and shall certify under the pains and penalties of perjury that the return is true, accurate, and complete in all material respects.*** The return shall show the total number of gallons sold to distributors of gasohol, or to persons purchasing the product for the purpose of resale to the distributors, together with such other information as the commissioner may require for the reasonable administration of this subdivision.

13 Road Tolls; Penalty Waiver. Amend RSA 260:42, VII to read as follows:

VI. The commissioner is authorized to waive any *civil* penalty and interest when it is proved to the commissioner's satisfaction that the failure to file a monthly report on time ***or to report all deliveries of petroleum fuel or petroleum products within the time period specified in this section*** was not ~~[willful]~~ *wilful*.

14 Effective Date. This act shall take effect July 1, 2004.
2003-2475h

Amendment to HB 698-FN

Proposed by the Committee on Public Works and Highways - C

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

□ Evasion of Tolls and Charges. RSA 236:31 is repealed and reenacted to read as follows:

236:31 Evasion of Tolls and Charges.

I. For purposes of this section:

(a) "Department" means the department of transportation.

(b) "Driver" means driver as defined in RSA 259:25.

(c) "Electronic toll collection system" means a system for electronically transmitting information from a device on a motor vehicle to receiving equipment located in a toll collection facility, in order to charge a valid electronic toll account holder the appropriate toll or charge for use of the highway or bridge.

(d) "Electronic toll collection monitoring system" means a system whereby a vehicle sensor is placed in a location to work in conjunction with an electronic toll collection system to produce at least one photograph, microphotograph, videotape, recorded image, or written record of a portion of the vehicle when the vehicle is used or operated in violation of the electronic toll collection system rules. "Electronic toll collection monitoring system" shall also include any other technology that identifies a vehicle by a photographic, electronic, or other method.

(e) "License" means license as defined in RSA 259:48.

(f) "Owner" means owner as defined in RSA 259:72.

(g) "Pay" means the transfer of funds in cash or by instructions to a financial service allowing withdrawal by debit or credit to an account maintained to satisfy the obligation to pay a toll or charge established by law for use of a highway or bridge in this state.

(h) "Violation" means to fail, neglect, or refuse to pay the toll or charge for the use of a bridge, highway, or part thereof, by a motor vehicle.

II. No person shall fail, neglect, or refuse to pay the toll or charge for the use of any bridge, highway, or part thereof; or use, or attempt to use, any device or method which results in an electronic toll collection monitoring system being unable to accurately assess or collect the toll or charge due or to detect the non-payment of the toll or charge. Any person violating this section shall be subject to the provisions of this section and to an order of suspension pursuant to RSA 263:56-f.

III. The owner of a vehicle using a bridge or highway subject to a toll or charge shall be responsible for payment of the toll and charges due, plus any administrative fees the department assesses in accordance with its rules, and to an order of suspension under RSA 263:56-f, unless:

(a) The vehicle was taken without owner's consent, pursuant to RSA 262:12, or was a stolen vehicle at the time of the violation and the owner provides to the department, or its designee, upon receipt of notice of a violation of this section, a copy of a report of the unauthorized taking or theft made to a law enforcement agency; or

(b) The vehicle was leased or rented to another person, and the owner submits to the department, or its designee, a copy of the rental agreement, lease, or other contract document covering the vehicle on the date of the violation with the name and address of the renter or lessee clearly legible; at which time the renter or lessee of the vehicle on the date of the violation shall be deemed to be the owner of the vehicle for the purposes of this section, and shall be subject to the notice and order of suspension under RSA 263:56-f.

IV. Notwithstanding RSA 237:16-d, the department shall adopt rules under RSA 541-A for the implementation of a system to detect, record, verify, and administratively enforce violations of this section. The rules shall include:

(a) The criteria used to establish that a toll or charge has not been paid.

(b) A procedure to promptly resolve inadvertent violations in the accounts of electronic toll system customers otherwise in good standing.

(c) A procedure for processing all other violations of this section, which shall require the department, or its designee, to send by regular mail, or other agreed upon method, an advisory and payment request to the owner of the vehicle, within 30 days of the date of the violation. The advisory and payment request shall notify the owner of the date, time, and location of the alleged violation, give the owner the opportunity to resolve the alleged violation by payment of the toll or charge due and a reasonable administrative fee, and advise the owner that failure to pay the required toll or charge and administrative fee within 60 days of the date of the violation shall cause the department to file a report with the department of safety, division of motor vehicles, seeking an order of suspension pursuant to RSA 263:56-f.

(d) A schedule of administrative fees to be imposed upon those who violate this section. Such administrative fees shall be set from time to time in an amount sufficient to permit the department to fully recover its costs, and the costs incurred

by the department of safety, to administer, maintain, and upgrade the violation enforcement system. All funds received under this section shall be deposited in the turnpike fund. The department of transportation may, with the approval of the fiscal committee of the general court and the governor and council, draw from the turnpike fund to administer the electronic toll system.

V. Any electronic toll collection monitoring equipment acquired, operated by, or used by the department, or its designee, shall be designed to make a record of the front, or rear, or both, portions of the vehicle, including any registration plates affixed to the vehicle. Such equipment shall not be designed to produce a photograph, microphotograph, videotape, or other recorded image of the face of the operator or any passenger in the motor vehicle, unless the production of such image is unavoidable because the operator or passenger is not in a passenger compartment, as on a motorcycle.

VI. The department, and any designee of the department, shall maintain the confidentiality of all information acquired in connection with the administration and enforcement of toll evasion, including but not limited to credit and account data, photographs or other images, and all personally identifying information obtained relative to owners of vehicles. Such information shall not be a public record subject to disclosure under RSA 91-A and shall be used solely for enforcement of this section.

2 New Paragraph; Owner; Electronic Toll Collection. Amend RSA 259:72 by inserting after paragraph IV the following new paragraph:

V. For the purposes of the provisions of this title relative to electronic toll collection, any person holding title to a vehicle, or having the exclusive right to the use thereof under a written rental or lease agreement, for any period of time.

3 New Section; Suspension for Evasion of Electronic Toll Collection System. Amend RSA 263 by inserting after section 56-e the following new section:

263:56-f Suspension for Evasion of Electronic Toll Collection System.

I. Upon receiving a report from the commissioner of the department of transportation or designee, that the owner of a vehicle, as defined in RSA 236:31, has violated the terms of RSA 236:31, the director shall notify the owner in writing by first class mail that the owner's driving privileges, registration, resident plates, or motor vehicle registration privileges may be suspended on the date which is 30 days from the date of notification unless the toll and any administrative fees assessed by the department of transportation are paid. The director shall also notify the owner that he or she may request an administrative hearing before the suspension takes effect. A request for a hearing shall be in writing. A request for a hearing received by the division more than 30 days from the date the notice is issued shall be denied as untimely.

II.(a) The director shall, pursuant to RSA 541-A, adopt by rule, a uniform administrative fine schedule for each separate violation that shall not exceed:

- (1) \$250 for a first offense.
- (2) \$500 for a second offense within a 12-month period.
- (3) \$1,000 for a third or subsequent offense within a 12-month period.

(b) No fine shall take effect unless approved by the commissioner. The commissioner shall have the authority to modify the amount of the fine assessed. Notwithstanding any other law to the contrary, all administrative fines collected under this section shall be deposited into the turnpike fund.

III. The director shall adopt rules under RSA 260:5 establishing a uniform administrative hearing process.

IV.(a) The scope of the hearing shall be limited to:

- (1) Whether the owner has paid all tolls and administrative fees owed to the department of transportation;
- (2) Whether the report from the department of transportation correctly identified the owner of the vehicle at the time of the incident; or

(3) Whether the vehicle, identified as having violated the duty to pay a toll, had been reported as taken without the owner's consent, pursuant to RSA 262:12, or stolen to a law enforcement agency in a timely manner.

(b) A notice of violation may be based in whole or in part upon inspection of any photographic or other recorded image of a vehicle using the bridge or highway subject to a toll or charge. The written certification of any person employed by or under contract with the department of transportation that the notice is so based shall be admissible in any hearing held hereunder and shall create a rebuttable presumption that the owner is liable for such violation.

V. The driving privileges, resident plates, and motor vehicle registration of any vehicle, if applicable, of an owner shall be reinstated upon:

- (a) Notice to the director from the department of transportation that all tolls, fees, and fines have been paid; and
- (b) Payment to the director of a fee of \$100 for license or driving privilege restoration, and \$25 for each motor vehicle registration restored. Such restoration fees shall be in lieu of any other reinstatement fees. All funds received under this subparagraph shall be deposited in the highway fund.

VI. The department shall draw against the turnpike fund to administer the electronic toll collection system, up to the limits of the reinstatement fees and administrative fines deposited therein as a result of enforcement actions taken pursuant to this section. In the event that the amounts available in the turnpike fund for this purpose are insufficient to meet the actual and reasonable costs of the department as a result of administering the enforcement actions taken pursuant to this section, the

department may draw from the turnpike fund to recover such insufficiency and for any new positions that may be required by the department to administer the enforcement actions of this section; provided, that any withdrawals shall first be approved by the fiscal committee of the general court and by the governor and council.

4 New Paragraph; Records and Certification; Evasion of Electronic Toll Collection. Amend RSA 260:14 by inserting after section III the following new paragraph:

III-a. Except for a person's photograph, computerized image and social security number, motor vehicle records may be made available to the department of transportation for the enforcement of the electronic toll collection, pursuant to RSA 236:31. Any records received under to this section shall not be further transferred or otherwise made available to any non-governmental agency that is not a contracting agent of the department of transportation for the enforcement of electronic toll collection.

5 Implementation of Electronic Toll Collection System; Applicability. The commissioner of the department of transportation shall certify to the commissioner of the department of safety that a toll facility has in place the equipment, procedures, and trained staff required to implement the electronic toll collection and enforcement system before violations as set forth under this act may be assessed at the facility.

6 Effective Date. This act shall take effect upon its passage.
2003-2400h

Amendment to HB 712-FN

Proposed by the Committee on Executive Departments and Administration - C

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

AN ACT: establishing a committee to study methods of improving data collection and service delivery relative to home and community-based long-term care services.

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

1 Committee Established. There is established a committee to study methods of improving data collection and service delivery relative to home and community-based long-term care services.

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. The committee shall solicit input from representatives of organizations, including but not limited to:

- (a) The New Hampshire Institute for Health Policy and Practice at the university of New Hampshire.
- (b) County human services departments.
- (c) The Community Services Council of New Hampshire.
- (d) The division of elderly and adult services, department of health and human services.
- (e) The office of state planning and energy programs.
- (f) Providers of services for the Home and Community-Based Care for the Elderly and Chronically Ill program (HCBC-ECI).
- (g) The department of insurance.

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

3 Duties. The committee shall:

I. Study computer-based case management systems and costs related to implementation of such systems.

II. Identify gaps in service in various regions across the state and how to track such gaps.

III. Review the findings of the committee to study the development of home and community-based long-term supports for the elderly and adults with disabilities (2002, 55), and consider its recommendations for future legislation.

IV. Develop strategies for ensuring that the appropriate providers are aware of the provisions of RSA 151-E:7, pertaining to needs assessments for applicants for nursing facility services, and that clients are provided such assessments, and information and assistance, as set forth in RSA 151-E:9 prior to entering nursing homes.

V. Identify the cost data that would be most useful and meaningful and determine the most appropriate method for obtaining such data, including the basis for each cost, from providers for the Home and Community-Based Care for the Elderly and Chronically Ill Program to assist the state in adopting reimbursement rates that would support appropriate levels of staffing.

VI. Review the need for a consumer guide on long-term care insurance and the type of information that should be included in such a guide. Information considered for publication in a consumer guide shall include, but shall not be limited to: a list of all of the companies that sell long-term care insurance in the state, and the number of complaints and valid complaints filed against each company relative to its long-term care products. If it is determined that a consumer guide should be published, the committee shall determine the appropriate agency to develop, publish, and disseminate such guide.

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, 2004.

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

AMENDED ANALYSIS

This bill establishes a committee to study methods of improving data collection and service delivery relative to home and community-based long-term care services.

2003-2541h

Amendment to HB 713-FN

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 the penalty for violating a zoning ordinance, relative to governmental land uses, and relative to notice of zoning rehearings.

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

1 Fines and Penalties; Second Offense. Amend RSA 676:17, I and II to read as follows:

I. Any person who violates any of the provisions of this title, or any local ordinance, code, or regulation adopted under this title, or any provision or specification of any application, plat, or plan approved by, or any requirement or condition of a permit or decision issued by, any local administrator or land use board acting under the authority of this title[; and

~~(a)]~~ shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person[;]; **and**
~~(b)]~~ shall be subject to a civil penalty not to exceed \$275 **for the first offense and \$550 for subsequent offenses** for each day that such violation is found to continue after the conviction date or after the date on which the violator receives written notice from the municipality that the violator is in violation, whichever is earlier.

II. In any legal action brought by a municipality to enforce, by way of injunctive relief as provided by RSA 676:15 or otherwise, any local ordinance, code or regulation adopted under this title, or to enforce any planning board, zoning board of adjustment or building code board of appeals decision made pursuant to this title, or to seek the payment of any fine levied under paragraph I, the municipality ~~[may]~~ **shall** recover its costs and reasonable attorney's fees actually expended in pursuing the legal action if it is found to be a prevailing party in the action. For the purposes of this paragraph, recoverable costs shall include all out-of-pocket expenses actually incurred, including but not limited to, inspection fees, expert fees and investigatory expenses.

2 Governmental Land Uses; Local Governing Body or Planning Board Hearing and Comments. Amend RSA 674:54, II to read as follows:

II. The state, university system, county, town, city, school district, or village district shall give written notification to the governing body and planning board, if such exists, of a municipality of any proposed governmental use of property within its jurisdiction, which constitutes a ~~[substantial]~~ change in use or a ~~[substantial]~~ new use. Written notification shall contain plans, specifications, explanations of proposed changes ~~[available at the time]~~, a statement of the governmental nature of the use as set forth in paragraph I, and a proposed construction schedule. Such notification shall be provided at least 60 days prior to the beginning of construction. Either the governing body or planning board of the municipality ~~[may]~~ **shall** conduct a public hearing relative to the proposed governmental use. Any such hearing shall be held within 30 days after receipt of notice by the governing body or planning board. A representative of the governmental entity which provided notice shall be available to present the plans, specifications, and construction schedule, and to provide explanations. The governing body or planning board ~~[may]~~ **shall** issue nonbinding written comments relative to conformity or nonconformity of the proposal ~~[with]~~ **to** normally applicable land use regulations to the sponsor of the governmental use within 30 days after the hearing.

3 Governmental Land Use; Local Land Use Regulations. Amend RSA 674:54, II-a to read as follows:

II-a. Any use, construction, or development of land occurring on governmentally owned or occupied land, but which is not a governmental use as defined in paragraph I, shall be fully subject to **all** local land use regulations.

4 Motion for Rehearing; Notice Required. Amend RSA 677:2 to read as follows:

677:2 Motion for Rehearing of Board of Adjustment, Board of Appeals, and Local Legislative Body Decisions. Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor; and the board of adjustment, a board of appeals, or the local legislative body, may grant such rehearing if in its opinion good reason therefor is stated in the motion. This 30-day time period shall be counted in calendar days beginning with the date upon which the board voted to approve or disapprove the application; provided however, that if the moving party shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 144 hours of the vote pursuant to RSA 676:3, II, the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefor, within 30 days after the date on which

the written decision was actually filed. If the decision complained against is that made by a town meeting, the application for rehearing shall be made to the board of selectmen, and, upon receipt of such application, the board of selectmen shall hold a rehearing within 30 days after receipt of the petition. Following the rehearing, if in the judgment of the selectmen the protest warrants action, the selectmen shall call a special town meeting. ***Notice of any rehearing shall be provided in accordance with RSA 676:7.***

5 Repeal. RSA 75:11, V, requiring assessing officials to file with the register of deeds a list of residences located in an industrial or commercial zone which are eligible for special appraisal, is repealed.

6 Effective Date.

I. Sections 1 and 4 of this act shall take effect January 1, 2005.

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

AMENDED ANALYSIS

This bill:

I. Establishes a higher civil penalty for second and subsequent violations of a zoning ordinance and provides that a prevailing municipality shall recover the costs and attorney's fees it incurred in pursuing the violation.

II. Requires the planning board or the governing body of a municipality to hold a public hearing on any proposed governmental land use and requires the body to issue nonbinding written comments relative to the conformity or nonconformity of the proposal to normally applicable land use regulations.

III. Makes nongovernmental use, construction, or development of governmentally owned or occupied land, subject to all local land use regulations.

IV. Repeals the provision of the law which requires assessing officials to file with the register of deeds a list of residences located in an industrial or commercial zone which are eligible for special appraisal.

V. Requires that when a zoning order or decision is granted a rehearing, abutters shall be notified in the same manner as for the original hearing.

2003-2501h

Amendment to HB 727-FN-LOCAL

Proposed by the Committee on Education - C

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

AN ACT establishing a legislative oversight committee for the school administrative unit system.

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

1 New Sections; School Administrative Units; Legislative Oversight Committee. Amend RSA 194-C by inserting after section 10 the following new sections:

194-C:11 Legislative Oversight Committee. An oversight committee shall be established consisting of:

I. The chairperson of the house education committee, or a designee.

II. The chairperson of the senate education committee, or a designee.

III. One member of the house of representatives, appointed by the speaker of the house of representatives.

IV. One member of the senate, appointed by the senate president.

V. One member of the house finance committee, appointed by the speaker of the house of representatives.

VI. One member of the senate finance committee, appointed by the senate president.

194-C:12 Duties of the Legislative Oversight Committee. The oversight committee shall monitor the process of organization and withdrawal of school districts from school administrative units and shall oversee the general operation, creation, or dissolution of school administrative units. The committee shall submit an annual report to the speaker of the house of representatives, the president of the senate, and the state board of education summarizing its findings.

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

AMENDED ANALYSIS

This bill establishes a legislative oversight committee to oversee the school administrative unit system.

2003-2396h

Amendment to HB 729-FN

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 Paragraph; Barbering, Cosmetology and Estheticians; Definition Added. Amend RSA 313-A:1 by inserting after paragraph VIII the following new paragraph:

VIII-a. "Fitzpatrick scale" means the following scale for classifying the 6 skin types, based on the skin's reaction to the first 10 to 45 minutes of sun exposure after the winter season:

Skin Type Sunburning and Tanning History

1 Always burns easily; never tans

2 Always burns easily; tans minimally

3 Burns moderately; tans gradually

4 Burns minimally; always tans well

5 Rarely burns; tans profusely

6 Never burns; deeply pigmented.

2 New Paragraphs; Barbering, Cosmetology and Estheticians; Definitions Added. Amend RSA 313-A:1 by inserting after paragraph IX the following new paragraphs:

XI-a. "Operator" means a person age 18 or older who has received training through a program approved by the board in the safe operation of tanning devices, operates the tanning device, controls the length of the exposure to UV light, and instructs the consumer in the proper use of the device.

XI-b. "Phototherapy device" means equipment that emits UV radiation and is used by licensed health care professionals in the treatment of disease.

3 New Paragraphs; Barbering, Cosmetology and Estheticians; Definition Added. Amend RSA 313-A:1 by inserting after paragraph XIII the following new paragraphs:

XIV. "Tanning device" includes any equipment, including a sunlamp, tanning booth, and tanning bed, that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers and is used for the tanning of human skin. The term also includes any accompanying equipment, including protective eyewear, timers, and handrails.

XV. "Tanning facility" means any location, place, area, structure or business which provides access to a tanning device for a fee, membership dues or any other compensation.

XVI. "Ultraviolet (UV) radiation" means electromagnetic radiation with wavelengths between 200 nanometers and 400 nanometers.

4 Board Member Changed. Amend RSA 313-A:2, I to read as follows:

I. There shall be a board of barbering, cosmetology, and esthetics consisting of 7 members as follows: one licensed barber, one licensed cosmetologist, one licensed esthetician, one licensed manicurist, one licensed cosmetology school owner who shall be a resident of New Hampshire or a designee of such owner who shall be a licensed cosmetologist and a resident of New Hampshire, **one owner of a registered tanning facility** and [2] 1 public ~~[members]~~ **member**; each to be appointed by the governor with the consent of the council to a term of 5 years. No board member shall be appointed to more than 2 consecutive terms. Only board members provided for in this paragraph shall have the authority to vote in board determinations.

5 New Paragraph; Board Duties; Complaints. Amend RSA 313-A:7 by inserting after paragraph II the following new paragraph:

II-a. Maintain a telephone line or an electronic mail address for the purpose of accepting consumer complaints;

6 Board Rulemaking; Ethical Violations. Amend RSA 313-A:8, VI to read as follows:

VI. Ethical and professional standards required to be met by each holder of a license to practice under this chapter and how disciplinary actions by the board shall be implemented for violations of these standards **or for any violation of this chapter**;

7 Rulemaking; Reference Added. Amend RSA 313-A:8, XVII to read as follows:

XVII. A schedule of administrative fines for violations of this chapter under RSA 313-A:22, III(e) **and (f)** and procedures for the payment of such fines.

8 New Paragraph; Rulemaking Added; Tanning Facilities. Amend RSA 313-A:8 by inserting after paragraph X the following new paragraph:

X-a. The regulation of tanning facilities including:

(a) Sanitation and hygiene standards to be met and maintained by tanning facilities.

(b) Standards for approving the training curricula and programs used for training tanning device operators.

(c) Registering tanning facilities.

(d) Standards for the inspection of tanning facilities.

(e) Standards for the consumer consent form required under RSA 313-A:30, IV.

9 New Subparagraph; Disciplinary Proceedings. Amend RSA 313-A:22, I by inserting after subparagraph (b) the following new subparagraph:

(c) In an action concerning a registered tanning facility, upon written complaint from any person which charges a registered tanning facility or operator has violated any provision of RSA 313-A:26-34.

10 Administrative Fines. Amend RSA 313-A:22, III(e) to read as follows:

(e) By imposing an administrative fine not to exceed \$500 for each offense **committed by a licensee of the board**. Each violation shall constitute a separate offense. The fine shall be paid to the board which shall forward it to the state treasurer to be deposited into the general fund.

11 New Subparagraph; Administrative Fines; Tanning Facility Operation. Amend RSA 313-A:22, III by inserting after subparagraph (e) the following new subparagraph:

(f) In an action concerning a registered tanning facility, by imposing an administrative fine not to exceed \$250 for each offense upon any person who violates any provision of RSA 313-A:26-34 or rules adopted pursuant to such subdivision. Any administrative fine imposed under this subparagraph shall not preclude the imposition of further penalties or

administrative actions under this chapter. The fine shall be paid to the board which shall forward it to the state treasurer to be deposited into the general fund.

12 New Paragraph; Disciplinary Proceedings; Appeals. Amend RSA 313-A:22 by inserting after paragraph III the following new paragraph:

IV. Appeals and rehearings from a decision of the board shall be made pursuant to RSA 541-A.

13 New Subdivision; Registration of Tanning Facilities. Amend RSA 313-A by inserting after section 25 the following new subdivision:

Registration of Tanning Facilities

313-A:26 Advisory Committee Established. There is hereby established the tanning facility advisory committee. The committee shall consist of 2 physicians, licensed under RSA 329, appointed by the New Hampshire Medical Society, 2 tanning facility owners, appointed by the Indoor Tanning Association of America or its successor organization, and one member of the board, appointed by the chairman of the board, who shall serve as the chairman of the advisory committee. Members shall serve without compensation. The committee shall meet at least twice a year. The committee shall:

I. Advise the board relative to matters pertaining to the regulation of tanning facilities.

II. Advise and assist the board in the development of administrative rules necessary for the implementation of this division;

III. Make recommendations on methods for the appropriate inspection of tanning facilities and methods to monitor compliance with state and federal regulations; and

IV. Advise and assist the board in identifying programs and curricula available in the state for the training of operators and developing standards for the approval of such programs.

313-A:27 Compliance with Law.

I. Every tanning device used by a tanning facility shall comply with all applicable federal and state laws and regulations, including those promulgated by the Federal Trade Commission and the US Food and Drug Administration.

II. The board shall enforce this chapter against a person who adulterates or misbrands a tanning device. The board may investigate a person accused of adulterating or misbranding a tanning device.

313-A:28 Registration of Tanning Facility.

I. It shall be unlawful for any person to engage in the business of operating a tanning facility unless the facility is registered in accordance with this chapter and the registration of such facility is current and valid.

II. Any person, corporation, partnership, association, or other entity operating or intending to open or operate a tanning facility within this state shall file registration statement annually with the board in accordance with rules adopted under RSA 541-A. Such registration statement shall be required for each facility location, shall be duly signed and verified, and shall be posted in a prominent location at the tanning facility. Such registration statement shall include, but not be limited to, the name and the business address of the applicant; if an individual, the name under which the business will be conducted; if a partnership, the name and business address of each member thereof; the name under which the business is to be conducted; if a corporation, the name of the corporation and the name and business address of each of the officers of the corporation; and the place, including the complete mailing address and physical address, where the business is to be conducted. Registration statements shall also list the number and type of tanning devices at each tanning facility location.

313-A:29 Registration Fee Required. No person shall operate a tanning facility without paying an annual registration fee established by the board. Registration fees received from each tanning facility shall be deposited into the general fund.

313-A:30 Operational Requirements.

I. Operators shall have sufficient knowledge in the operation of the tanning devices, including but not limited to:

(a) Requirements of this section and of 21 CFR 1040.20;

(b) Proper use of U.S.F.D.A. Recommended Exposure Schedule;

(c) Procedures for correct operation of the tanning facility/device;

(d) Recognition of injuries and the facility's procedures for handling such injuries from overexposure to ultraviolet radiation;

(e) Manufacturer's procedures for operation and maintenance of the tanning device;

(f) Proper use of protective eyewear;

(g) Emergency procedures in case of injury;

(h) Effects of UV radiation, acute and chronic exposure, biological effects and health risks;

(i) Photosensitizing agents; and

(j) Recognition of the 6 skin types and the Fitzpatrick Scale.

II. Operators shall be trained in all of the areas listed in paragraph I. Training shall be received through curricula and programs approved by the board. A tanning facility shall maintain a list of the facility's operators who have been trained in accordance with this section. Such list shall include the date of the training and shall be available for inspection by the board.

III. Operators shall obtain proof of age from each tanning device user pursuant to RSA 313-A:31, I.

IV. Operators shall read aloud and shall provide each tanning device user with a written consent statement containing

the wording listed below and the Fitzpatrick Scale. In the event that the user is under the age of 18, this wording shall be read to the user's parent or guardian. Operators shall obtain the signature of the user or parent or guardian on the written consent prior to the initial exposure to the tanning device. The consumer consent form shall include the following wording in at least size 12 font:

"DANGER - ULTRAVIOLET RADIATION

Follow instructions.

Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin injury and allergic reactions.

Repeated exposure may cause premature aging of the skin and skin cancer.

Wear protective eyewear. Failure to use protective eyewear may result in severe burns or long-term injury to the eyes.

Medication or cosmetics may increase your sensitivity to the ultraviolet radiation.

Consult a physician before using sunlamp or tanning equipment if you are using medications or have a history of skin problems or believe yourself to be especially sensitive to sunlight."

V. Upon notification by a consumer of a complaint or an alleged tanning injury, a registrant shall provide information to the consumer about how complaints may be filed with the board.

VI. The tanning facility registrant shall maintain a record for each individual tanning device user which shall include dates exposed, length of exposure and signed consent form. Records shall be maintained for a minimum of 3 years or 3 years past the age of majority of the client.

313-A:31 Tanning of Minors.

I. No person under the age of 18 shall be allowed to utilize a tanning device at a tanning facility without the written consent of that person's parent or legal guardian. Proof of age shall be satisfied with a driver license or other government issued identification containing date of birth and a photograph of the individual. This consent requirement shall be satisfied only if the parent or legal guardian is physically present at the time of the initial use of the tanning device; the responsible adult signs a document declaring that they are the parent or legal guardian of the minor and attesting to the age of the minor. The consent of the parent or legal guardian shall be valid for 12 subsequent uses of the tanning device by the minor.

II. No minors under the age of 14 shall be allowed to utilize a tanning device at a tanning facility without a written order from a physician licensed under RSA 329. Persons using a tanning facility under the provisions of this paragraph shall be accompanied by a parent or legal guardian for every use of the tanning facility.

313-A:32 Suspension of Operation. Upon finding a facility in violation of any of the provisions of RSA 313-A:26-34, the board may order the owner of a tanning facility to suspend operation of the facility. Such suspension shall remain in effect until the owner submits proof of compliance with any deficiencies identified by the board. Failure to suspend operation of a tanning facility in accordance with a board order shall be subject to a civil penalty of up to \$500 for each day that the facility remains in operation after issuance of the board order.

313-A:33 Exemption. This subdivision shall not apply to a phototherapy device used by or under the supervision of a licensed health care professional for treatment of disease.

313-A:34 Unregistered Tanning Facilities. Upon notification by the board, operating an unregistered tanning facility shall result in a fine of \$100 per day, for every day the facility remains in operation after 7 business days from the date notification was issued.

14 Repeal RSA 313-A:8, VII, relative to rulemaking authority for matters of administration.

15 Prospective Repeal. RSA 313-A:26, relative to the tanning facility advisory committee, is repealed.

16 Effective Date.

I. Section 15 of this act shall take effect January 1, 2008.

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

AMENDED ANALYSIS

This bill requires the board of barbering, cosmetology and esthetics to regulate tanning facilities.

2003-2557h

Amendment to HB 730-FN-LOCAL

Proposed by the Committee on Labor, Industrial and Rehabilitative Services - C

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

AN ACT establishing a committee to study workers' compensation benefits for firefighters, rescue workers, and safety workers who contract certain communicable diseases.

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

1 Committee Established. There is established a committee to study the feasibility and cost of providing workers' compensation benefits for firefighters, rescue workers, and safety workers who contract certain communicable diseases.

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 the feasibility and cost of providing workers' compensation benefits for firefighters, rescue workers, and safety workers who contract certain communicable diseases.

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, 2004.

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

AMENDED ANALYSIS

This bill establishes a committee to study the feasibility and cost of providing workers' compensation benefits for firefighters, rescue workers, and safety workers who contract certain communicable diseases.

2003-2523h

Amendment to HB 760-FN-A

Proposed by the Minority of the Committee on Ways and Means - R

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

AN ACT increasing the cigarette tax for certain purposes.

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

1 Cigarette Tax Increased. Amend RSA 78:7 to read as follows:

78:7 Tax Imposed. A tax upon the retail consumer is hereby imposed at the rate of ~~[52 cents]~~ **\$1.52** for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all cigarettes sold at retail in this state. The payment of the tax shall be evidenced by affixing stamps to the smallest packages containing the cigarettes in which such products usually are sold at retail. The word "package" as used in this section shall not include individual cigarettes. No tax is imposed on any transactions, the taxation of which by this state is prohibited by the Constitution of the United States.

2 Distribution of Funds. Amend RSA 78:32 to read as follows:

78:32 Distribution of Funds.

I.(a) The commissioner shall determine the additional amount of revenue produced by any additional tax in excess of 37 cents **and less than 53 cents** for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all ~~[tobacco products]~~ **cigarettes** sold at retail in this state imposed by RSA 78:7 and shall certify such amount to the state treasurer by October 1 of each year for deposit in the education trust fund established by RSA 198:39.

~~[H]~~(b) The commissioner shall make quarterly estimates of the amount of additional revenues that will be produced by such increase in tax rate for the next fiscal year and shall certify such amount to the state treasurer for deposit in the education trust fund established by RSA 198:39. Such estimates shall be certified on June 1, September 1, December 1, and March 1 of each year.

II. The commissioner shall determine the additional amount of revenue produced by any additional tax in excess of 52 cents for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all cigarettes sold at retail in this state imposed by RSA 78:7 and shall certify such amount to the state treasurer by June 30 of each year for deposit as follows:

(a) The sum of no less than \$7,800,000 shall be deposited in the tobacco use prevention fund established pursuant to RSA 126-K:15.

(b) A sum of no less than \$10,000,000 shall be deposited in the general fund.

(c) The remainder of the amount shall be deposited in the education trust fund, established by RSA 198:39.

3 Applicability. Section 1 of this act shall apply to all persons licensed under RSA 78:2. Such persons shall inventory all taxable cigarettes in their possession and file a report of such inventory with the department of revenue administration on a form prescribed by the commissioner within 20 days after the effective date of this act. The tax rate effective July 1, 2003 shall apply to such inventory and the difference, if any, in the amount paid previously on such inventory and the current effective rate of tax shall be paid with the inventory form. The inventory form shall be treated as a tax return for the purpose of computing penalties under RSA 21-J.

4 Tobacco Use Prevention Fund. Amend RSA 6:12, I(b)(67) to read as follows:

(67) Moneys received under RSA 126-K:15 **and RSA 78:32, II(a)**, which shall be credited to the tobacco use prevention fund.

5 Tobacco Use Prevention Fund. Amend the introductory paragraph of RSA 126-K:15 to read is follows:

126-K:15 Tobacco Use Prevention Fund. There is hereby established in the office of the state treasurer a fund to be known

as the tobacco use prevention fund. Of tobacco settlement funds received by the state of New Hampshire, \$3,000,000 annually, commencing with fiscal year 2001, shall be deposited in the tobacco use prevention fund. ***The sum of \$7,800,000 from tobacco tax revenues shall be deposited annually in the fund, pursuant to RSA 78:32, II(a).*** Moneys in this fund shall be nonlapsing and continually appropriated, beginning with fiscal year 2001, for tobacco use prevention and cessation programs, which shall include but not be limited to:

6 Reference Change; Education Trust Fund. Amend RSA 198:39, I(d) to read as follows:

(d) Funds collected and paid over to the state treasurer by the department of revenue administration pursuant to RSA 78:32, ***I and II(c)***, relative to tobacco taxes.

7 General Fund Appropriations Reductions for Department of Health and Human Services Repealed. 2003, 318:9, relative to general fund appropriations reductions for the department of health and human services, is hereby repealed.

8 Effective Date.

I. Section 7 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 30 days after its passage.

AMENDED ANALYSIS

This bill increases the cigarette tax. Under this bill, the increased amount is to be used for the tobacco use prevention fund, to replace general fund appropriation reductions for the department of health and human services in fiscal years 2004 and 2005, and for property tax relief under the education trust fund.

2003-0293h

Amendment to HB 761

Proposed by the Committee on Municipal and County Government - C

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

AN ACT enabling towns to adopt subdivision and site plan review regulations that require innovative land use controls on certain lands when supported by the master plan, making a change in an innovative land use control, and relative to the preliminary review of subdivisions.

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

1 Innovative Land Use Controls; Transfer of Development Rights; Density Added. Amend RSA 674:21, I(d) to read as follows:

(d) Transfer of ***density and*** development rights.

2 Innovative Land Use Controls; Use When Supported by Master Plan. Amend RSA 674:21, II to read as follows:

II. An innovative land use control adopted under RSA 674:16 ***may be required when supported by the master plan and*** shall contain within it the standards which shall guide the person or board which administers the ordinance. An innovative land use control ordinance may provide for administration, including the granting of conditional or special use permits, by the planning board, board of selectmen, zoning board of adjustment, or such other person or board as the ordinance may designate. If the administration of the innovative provisions of the ordinance is not vested in the planning board, any proposal submitted under this section shall be reviewed by the planning board prior to final consideration by the administrator. In such a case, the planning board shall set forth its comments on the proposal in writing and the administrator shall, to the extent that the planning board's comments are not directly incorporated into its decision, set forth its findings and decisions on the planning board's comments.

3 Power to Regulate Subdivisions; Preliminary Review Added. Amend RSA 674:35, I to read as follows:

I. A municipality may by ordinance or resolution authorize the planning board ***to require preliminary review of subdivisions, and*** to approve or disapprove, in its discretion, plats, and to approve or disapprove plans showing the extent to which and the manner in which streets within subdivisions shall be graded and improved and to which streets water, sewer, and other utility mains, piping, connections or other facilities within subdivisions shall be installed.

4 New Subparagraph; Innovative Land Use Controls Required. Amend RSA 674:36, II by inserting after subparagraph (l) the following new subparagraph:

(m) Require innovative land use controls on lands when supported by the master plan.

5 New Subparagraph; Site Plan Review Regulations; Requirement for Innovative Land Use Controls Permitted. Amend RSA 674:44, II by inserting after subparagraph (h) the following new subparagraph:

(i) Require innovative land use controls on lands when supported by the master plan.

6 Board's Procedures on Plats; Election to Forego Preapplication Review Removed. Amend RSA 676:4, II(c) to read as follows:

(c) ~~[The applicant may elect to forego or engage in preapplication review or either phase thereof as provided in subparagraphs (a) and (b).]~~ Preapplication review shall be separate and apart from formal consideration under paragraph I, and the time limits for acting under subparagraph I(c) shall not apply until formal application is submitted under subparagraph I(b).

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

AMENDED ANALYSIS

This bill:

I. Adds density rights to innovative land use controls.

II. Enables towns to require innovative land use controls on certain lands, when supported by the master plan.

III. Gives planning boards the power to require preliminary subdivision review.

IV. Removes an applicant's option to forego a preapplication review when such review is required by subdivision regulations.

2003-1897h

Amendment to HB 767-FN

Proposed by the Committee on Election Law - R

Amend RSA 664:14, VI as inserted by section 2 of the bill by replacing it with the following:

VI. Notwithstanding any other provision of this section, any advertising in support of or in opposition to a candidate by a political committee ***shall comply with this paragraph. If the advertising is*** not authorized by the candidate or candidate committee, ***the advertising*** shall so state and shall identify the sponsor of the advertisement. All such political advertising [~~broadcast on television~~] shall include the statement: "This advertisement has been paid for by (name of sponsor) and has not been authorized by any candidate." Such statement shall be made both aurally and visually ***if broadcast on television***. The visual presentation ***on television*** shall be clearly legible and shall use letters equal to or greater than 12 percent of the vertical picture height and shall be broadcast for not less than 4 seconds at the conclusion of the advertisement.

Amend the bill by replacing section 4 with the following:

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

AMENDED ANALYSIS

This bill expands the definition of "communication" for purposes of political advertising to include Internet, telephone, and facsimile, and requires a disclaimer for advertising that is not political advertising, but which mentions or depicts a candidate.

2003-2415h

Amendment to HB 781-FN-A

Proposed by the Committee on Executive Departments and Administration - C

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

1 New Subdivision; Office of Corrections Ombudsman. Amend RSA 21-H by inserting after section 15 the following new subdivision:

Office of Corrections Ombudsman

21-H:16 Purpose. The position of corrections ombudsman is established to provide for an autonomous unclassified employee to conduct independent investigations of complaints filed by employees and inmates of the department of corrections.

21-H:17 Office of Corrections Ombudsman Established; Qualifications.

I. There is hereby established the office of corrections ombudsman which shall be administratively attached to the department of administrative services pursuant to RSA 21-G:10. The primary office shall not be physically located at any department of corrections site.

II. The principal executive officer of the office shall be the corrections ombudsman who shall be appointed by the governor with the consent of the council for a term of 5 years. The ombudsman may be re-appointed to serve additional terms. The governor and council may remove the ombudsman only as provided by RSA 4:1.

III. The corrections ombudsman shall be a person of recognized knowledge, judgment, objectivity, and integrity, and shall be qualified to hold the position by reason of education and experience. This may include advanced education in criminal justice, law, or other relevant areas, or experience in security and investigations in the military, corrections, or law enforcement.

IV. The salary of the corrections ombudsman shall be as specified in RSA 94:1-a.

21-H:18 Duties of the Corrections Ombudsman. The corrections ombudsman shall be responsible for:

I. Receiving, investigating, and referring complaints or problems received from inmates of the department of corrections, employees of the department of corrections, members of the general court, and the general public.

II. Upon the corrections ombudsman's own initiative, investigating allegations of harassment and issues related to inmate health or safety.

III. Investigating acts or omissions of department of corrections personnel acting in an official capacity including their compliance with policies and procedures directives adopted by the department.

21-H:19 Staff. The ombudsman shall be authorized to hire clerical support staff necessary for the office to carry out its functions.

21-H:20 Access to Information. Upon request, the corrections ombudsman shall have access to all information, records, and documents in the possession of the department of corrections which the ombudsman deems necessary to conduct the investigation. The department shall assist the ombudsman in obtaining the necessary releases of those documents which are restricted or privileged under law. Upon request, the ombudsman shall be granted entrance to inspect at any time any premises under the control of the department of corrections.

21-H:21 Investigative Process.

I.(a) Upon receiving a complaint from an inmate, department of corrections personnel, a member of the general court, or the general public, and deciding to investigate the complaint, the ombudsman shall notify the complainant and the department of corrections of the existence of the complaint. If the ombudsman declines to investigate, the ombudsman shall notify the complainant in writing of the reasons for the decision. In any case, the ombudsman shall advise a complainant to pursue all administrative remedies available to the complainant prior to the ombudsman beginning an investigation. An ombudsman may commence an investigation prior to the completion of the administrative remedy process.

(b) In the case of sexual harassment or sexual assault cases, a copy of the initial complaint filed with the department shall be forwarded by the department to the ombudsman immediately upon its filing providing that the complainant agrees. The ombudsman shall not be obliged to act upon that initial complaint, but shall retain a copy of such complaint on file at least until the matter is finalized.

(c) The ombudsman may utilize any resources deemed appropriate during the course of the investigation of a complaint.

II. (a) Any written correspondence from the complainant to the ombudsman, and any written correspondence from the ombudsman to the complainant shall be delivered immediately and unopened.

(b) The ombudsman shall maintain confidentiality with respect to all matters under investigation including the identity of the complainant and respondent, and any persons from whom information related to the investigation is acquired, except as necessary in performing the duties of the office.

III. Upon conclusion of an investigation the ombudsman may:

(a) Make recommendations to the department of corrections regarding action to be taken.

(b) Refer the case to the county attorney, attorney general, or to the human resources office of the department of corrections, as the ombudsman deems appropriate.

(c) Notify the legislature concerning desirable statutory changes.

IV. Investigative proceedings conducted by the ombudsman shall not be considered public proceedings under RSA 91-A:1-a, and any associated minutes or records shall not be considered public records under RSA 91-A:4.

V. The ombudsman may publish conclusions, recommendations and suggestions and transmit them to the governor, or to the legislature or any of its committees.

21-H:22 Immunity. No civil action or proceeding shall be commenced against the ombudsman for any act or omission performed pursuant to the provisions of this chapter unless the act or omission is actuated by malice or is grossly negligent, nor shall the ombudsman be compelled to testify in any court or state agency proceeding with respect to any matter involving the exercise of the ombudsman's official duties except as may be necessary to enforce the provisions of this chapter.

21-H:23 Annual Report. The ombudsman shall annually submit a written report summarizing the investigative activities conducted by the office of the ombudsman during that year. Such report shall include any recommendations for legislative action and shall be submitted to the governor and the chairpersons of the policy committees in the house and senate with jurisdiction over the department.

2 Compensation of State Officers; Corrections Ombudsman. Amend RSA 94:1-a, I(b) by inserting in Grade EE the following:

EE Department of corrections corrections ombudsman

3 New Paragraph; Access to Public Records and Meetings; Exemption. Amend RSA 91-A:5 by inserting after paragraph VI the following new paragraph:

VII. Records of investigative proceedings conducted by the office of corrections ombudsman.

4 Appropriation. There is hereby appropriated the sum of \$75,000, for the fiscal year ending June 30, 2006, to the office of corrections ombudsman for the purposes of funding the costs of hiring part-time clerical staff, and purchasing office equipment and supplies necessary for the operation of the office. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

5 Applicability; Availability of Federal Funds. This act shall take effect July 1, 2005, or on the date that the commissioner of the department of administrative services certifies to the secretary of state and the director of the office of legislative services that federal funds sufficient to implement this act are available, whichever is earlier.

6 Effective Date.

I. Sections 1-4 of this act shall take effect as provided in section 5 of this act.

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

AMENDED ANALYSIS

This bill establishes the office of corrections ombudsman which shall be administratively attached to the department of administrative services and includes a \$75,000 appropriation for the fiscal year ending June 30, 2006.

This bill is a request of the study committee established in 2001, 217 (HB361).

2003-2550h

Floor Amendment to HB 803-FN-A-LOCAL Proposed by Reps. Patten, Brundige, Lockwood and Kenison

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

AN ACT relative to the establishment of municipal economic development and revitalization districts by municipalities.

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

1 Establishment of Districts; Limitations. Amend RSA 162-K:5, I and II to read as follows:

I. The total acreage included in any one development district when designated shall not exceed ~~[1-1/2]~~ **5** percent of the total acreage of the municipality, and when added to the total current acreage within the development districts for which bonds remain outstanding shall not exceed ~~[3]~~ **10** percent of the total acreage of the municipality.

II. The total assessed value of taxable real property of any one development district when designated shall not exceed ~~[5]~~ **8** percent of the most recent total assessed value of taxable real property in the municipality, and when added to the current total assessed value of taxable real property within development districts for which bonds remain outstanding, shall not exceed ~~[40]~~ **16** percent of the most recent total assessed value of taxable real property in the municipality.

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

AMENDED ANALYSIS

This bill changes the limitations for municipalities that may create a municipal economic development and revitalization district under RSA 162-K.

2003-2552h

Amendment to HB 812

Proposed by the Committee on Public Works and Highways - C

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

1 Purchase or Transfer of Airports. RSA 422:19 is repealed and reenacted to read as follows:

422:19 Purchase or Transfer of Airports.

I. All registered privately owned airports open to the public within the state offered for sale by its owner after July 2, 1989, shall be offered for sale to the state of New Hampshire in the first instance. The state of New Hampshire, acting through the commissioner with the approval of governor and council and the long range capital planning and utilization committee, shall have a right to match any verifiable bona fide offer made for such airports within the limits of funds available to the director for this purpose. The state shall have 90 days from the date of notification by owner that said airport is for sale to serve notice of intent to acquire under this section and to notify the long range capital planning and utilization committee.

II. Airports purchased under this section shall be held and maintained as airports in the statewide airport system and shall be offered for sale or transfer to a local municipality, county, or airport authority. If the state is unable to sell or transfer an airport to a local municipality, county, or airport authority within 5 years, the property shall be offered for sale or lease to any party for any purpose.

III. The commissioner shall request and maintain through the budget process, bonding authority in the amount of \$5,000,000 for purchase of airports or option to purchase in accord with this chapter.

IV. The state of New Hampshire, acting through the director, with the approval of the commissioner, shall present a request for a proposed purchase under this section or a public taking under RSA 4:29, to the long range capital planning and utilization committee for its approval.

V. The long range capital planning and utilization committee shall have 30 days after receipt of the request to render its decision on an airport acquisition.

VI. After approval of an airport acquisition by the long range capital planning and utilization committee, the commissioner shall seek final approval of the airport acquisition from the governor and executive council. As part of the approval process, the executive council shall hold a public hearing, within 30 days after approval by the long range capital planning and utilization committee, or comment in the municipality where the airport facility is located and shall render a decision within 30 days after the hearing.

2 Report Required. The director of the division of aeronautics, department of transportation, and the aviation users advisory board shall study and prepare a report on the preservation of privately-owned airports, in coordination with municipalities. The director of the division of aeronautics shall submit the report, on or before November 1, 2004, to the members of the long range planning and utilization committee, the governor, and the executive council.

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

AMENDED ANALYSIS

This bill establishes new requirements for state acquisition of airports in New Hampshire.

The bill also requires the director of the division of aeronautics and the aviation users advisory board to prepare a report on the preservation of privately owned airports, in coordination with municipalities.

2003-2522h

Amendment to HCR 11

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

Amend the resolution by replacing all after the title with the following:

Whereas, the original 13 States, including New Hampshire, ratified the Constitution of the United States of America upon

the unanimous understanding and condition, later explicitly recognized in the Tenth Amendment to the Constitution, that the United States of America was delegated only such powers as were contained in the Constitution, and that powers not granted were withheld; and

Whereas, the original 13 States, including New Hampshire, ratified the Constitution of the United States of America upon the unanimous understanding and condition, later explicitly recognized in the Tenth Amendment to the Constitution, that each State reserved and retained all of its sovereignty not delegated to the United States of America in the Constitution; and

Whereas, all States subsequently admitted to the Union have entered upon the selfsame understanding and condition; and

Whereas, any purported act of the Government of the United States of America, or any Branch, Department, or officer thereof, in violation of the Constitution of the United States of America is not a valid statute, executive order, judicial decision, or law in any sense; binds no one; confers no rights and imposes no duties; is, in legal contemplation, as inoperative as though it had never been issued; and can have no force of effect within the jurisdiction of any State, including New Hampshire; and

Whereas, the Constitution of the United States of America delegates or otherwise grants no power to the Government of the United States of America, or any Branch, Department, or officer thereof, to compel, force, on in any manner require, or to induce by the offer of or the threat of withholding benefits, any of the several States, including New Hampshire, to follow, agree or accede to, acquiesce in, or in any other way consider itself legally bound by or required to enforce or to allow or suffer to be enforced within its jurisdiction any purported statute, executive order, judicial decision, or other mandate of whatsoever title, description, or nature, supposedly emanating from the Government of United States of America, or any Branch, Department, or officer thereof, that violates the Constitution of the United States of America, by exceeding the powers or disregarding the disabilities set out explicitly or implicitly therein, or in any other way; and

Whereas, none of the several States, including New Hampshire, can forfeit, lose, or in any way compromise to any degree its reserved sovereignty, as explicitly recognized in the Tenth Amendment to the Constitution, because any other States, through their State Governments or their Representatives or Senators in the Congress of the United States, may from time to time have sought to have enacted or issued, followed, agreed or acceded to, acquiesced in, or in any other way considered themselves legally bound by or required to enforce or to allow or suffer to be enforced within their jurisdictions any purported statute, executive order, judicial decision, or other mandate of whatsoever title, description, or nature, supposedly emanating from the Government of United States of America, or any Branch, Department, or officer thereof, that violated the Constitution of the United States of America, by exceeding the powers or disregarding the disabilities set out explicitly or implicitly therein, or in any other way; and

Whereas, the people of New Hampshire cannot forfeit, lose, or in any way compromise to any degree the rights they retain, as explicitly recognized in the Declaration of Independence, the body of the Constitution of the United States of America, and the First through the Tenth, the Thirteenth, and other Amendments to the Constitution of the United States of America, as well as elsewhere, because the people of any other State, through their State Governments or their Representatives or Senators in the Congress of the United States, may from time to time have sought to have enacted or issued, followed, agreed or acceded to, acquiesced in, or in any other way considered themselves legally bound by or required to allow or suffer to be enforced within their States any purported statute, executive order, judicial decision, or other mandate of whatsoever title, description, or nature, supposedly emanating from the Government of United States of America, or any Branch, Department, or officer thereof, that violated the Constitution of the United States of America, by exceeding the powers or disregarding the disabilities set out explicitly or implicitly therein, or in any other way; now, therefore, be it

Resolved by the House of Representative's, the Senate concurring:

That, from this day forward, the State of New Hampshire's General Court as representative of the people thereof shall deem and treat as null, void, and in legal contemplation as inoperative as though it had never been issued any and every statute, executive order, judicial decision, or other mandate of whatsoever title, description, or nature, purportedly emanating from the Government of United States of America, or any Branch, Department, or officer thereof, that violates the Constitution of the United States of America, by exceeding the powers or disregarding the disabilities set out explicitly or implicitly therein, or in any other way; and

That, from this day forward, whenever any statute, executive order, judicial decision, or other mandate of whatsoever title, description, or nature, purportedly emanating from the Government of United States of America, or any Branch, Department, or officer thereof, or any entity contracted to, shall violate the Constitution of the United States of America as determined by the New Hampshire General Court, by exceeding the powers or disregarding the disabilities set out explicitly or implicitly therein, or in any other way, and shall thereby infringe upon the sovereignty, powers, and rights reserved to and retained by the State of New Hampshire and the people thereof, as explicitly recognized in the Ninth and Tenth Amendments to the Constitution, New Hampshire may, as circumstances warrant, exercise its constitutional authority to nullify the aforesaid unconstitutional acts; and

That, should the Supreme Court of the United States uphold on grounds manifestly inconsistent with the Constitution of the United States of America the supposed validity of any statute, executive order, judicial decision, or other mandate of whatsoever title, description, or nature, purportedly emanating from the Government of United States of America, or any Branch, Department, or officer thereof, and challenged as to its unconstitutionality by the State of New Hampshire's General Court as

aforesaid, then New Hampshire's General Court shall consider itself free to take whatever other action, in the exercise of its sovereign discretion, it determines shall comport with the Constitution of the United States of America, in order to interpose itself between the people of New Hampshire and the enforcement of such unconstitutional statute, executive order, judicial decision, or other mandate, or any judicial decision purportedly upholding the same.

2003-2426h

Amendment to SB 19-FN

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

Amend RSA 485-C:14-b, II as inserted by section 1 of the bill by replacing it with the following:

II. Notification shall be made in writing within 45 days after the department receives analytical data indicating the presence of the contamination. Each property owner or public water supplier shall be notified at least once upon the discovery of contamination in an area. The commissioner shall provide the notification and shall provide additional notification as the extent of contamination at a site is further determined and remediation occurs.

Amend the bill by replacing section 2 with the following:

2 Department of Environmental Services Report; MTBE. The commissioner of the department of environmental services shall report to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library by July 1, 2004 relative to the status of department's plan to opt out of the MTBE additive to gasoline program by January 1, 2004, pursuant to RSA 485:16-b.

Amend the bill by replacing section 4 with the following:

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

2003-2490h

Amendment to SB 74-FN-A-LOCAL

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

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

1 Motor Vehicles; Preparation of Documents. Amend RSA 261:152 to read as follows:

261:152 Preparation of Documents.

I. Permits shall be in the form prescribed by the director and shall be issued with such duplicates as ~~he~~ **the director** shall determine. The town clerk shall prepare forms for permits and applications for registration of vehicles as required by RSA 261:52. Said forms shall be prepared by typewriter **or in an electronic format**. Distribution of such documents shall be made as determined by the director. For preparation of the forms hereunder the town clerk shall receive a fee of \$1 for each application. The fee shall be paid by the applicant for registration and shall be in addition to any other fees required hereunder. The term "town clerk" as used in this section shall include the person in a city who has been designated by the city government to issue such documents.

II. This paragraph shall apply only to towns that have adopted a records management and records preservation fund under RSA 31:95-c, II (c). Permits shall be in the form prescribed by the director and shall be issued with such duplicates as the director shall determine. The town clerk shall prepare forms for permits and applications for registration of vehicles as required by RSA 261:52. Said forms shall be prepared by typewriter or in an electronic format. Distribution of such documents shall be made as determined by the director. For preparation of the forms hereunder the town clerk shall receive a fee of \$2 for each application. Fifty cents of this amount shall be used to support records management and records preservation programs in local government adopted pursuant to RSA 31:95-c and RSA 31:95-d, and \$.50 shall be deposited in the local government records management improvement fund established under RSA 5:48. The fee shall be paid by the applicant for registration and shall be in addition to any other fees required hereunder. The term "town clerk" as used in this section shall include the person in a city who has been designated by the city government to issue such documents.

2 New Subparagraph; Special Revenue Funds; Records Management and Records Preservation. Amend RSA 31:95-c, II by inserting after subparagraph (b) the following new subparagraph:

(c) Provide records management and records preservation plan from funds received by town clerk under RSA 261:152, II, provided that an up-to-date records management plan has been approved by the local legislative body at an annual meeting.

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

2003-2491h

Amendment to SB 95-FN-LOCAL

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 relative to workforce housing within municipalities.

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

1 Innovative Land Use Controls; Inclusionary Zoning; Workforce Housing. Amend RSA 674:21, IV(a) to read as follows:

(a) "Inclusionary zoning" means land use control regulations which provide a voluntary incentive or benefit to a

property owner in order to induce the property owner to produce housing units which are affordable to persons or families of low and moderate income, ***or which require that workforce housing units be included in any housing development that contains more than a specified number of total dwelling units.*** Inclusionary zoning includes, but is not limited to, density bonuses, growth control exemptions, and a streamlined application process.

2 New Subparagraph; Workforce Housing Defined. Amend RSA 674:21, IV by inserting after subparagraph (b) the following new subparagraph:

(c) "Workforce housing" means housing which is affordable to a household with income of 80 percent or less of the median income of the metropolitan area or county in which the housing is located, adjusted for the number of persons in the household, as published annually by the U. S. Department of Housing and Urban Development in the Federal Register.

3 Regional Planning Commissions; General Powers and Duties. RSA 36:47, II is repealed and reenacted to read as follows:

II. For the purpose of assisting municipalities in complying with RSA 674:2, III(l), each regional planning commission may compile a regional housing needs assessment, which shall include an assessment of the regional need for housing for persons and families of all levels of income. The regional housing needs assessment shall be updated every 5 years and made available to all municipalities in the planning region. The regional housing needs assessment shall include an assessment of the regional need for workforce housing, as defined in RSA 674:21, IV(c), which shall be developed in accordance with a methodology developed by the office of state planning and energy programs in consultation with the New Hampshire housing finance authority.

4 New Paragraph; Office of State Planning and Energy Programs; Responsibilities for Assistance; Workforce Housing. Amend RSA 4-C:8 by inserting after paragraph IV the following new paragraph:

V. Assist municipalities by:

(a) Developing, in conjunction with the New Hampshire housing finance authority, a recommended uniform methodology for the development of the regional housing needs assessment under RSA 36:47, II.

(b) Providing guidelines for the development of municipal master plans that promote the development of workforce housing.

5 Allocation of Financial Grants. For 3 years, beginning July 1, 2004, priority for financial grants to regional planning commissions made pursuant to RSA 4-C:8, I, shall be given to grant requests which are for the purpose of enhancing a regional planning commission's ability to provide technical assistance to municipalities for the development of workforce housing.

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

AMENDED ANALYSIS

This bill authorizes municipal land use ordinances to be used for the creation of workforce housing. This bill also requires the office of state planning and energy programs and regional planning commissions to provide certain technical assistance. 2003-2518h

Amendment to SB 95-FN-LOCAL

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

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

1 Findings and Statement of Purpose.

I. The state of New Hampshire is experiencing an acute shortage of housing that is affordable to a large number of working households.

II. The acute shortage of housing affordable to working households poses a grave threat to the state's continued economic growth. It presents a serious barrier to the expansion of the state's labor force, undermines state efforts to foster a productive and self-reliant workforce, and adversely impacts the ability of many communities to host new businesses.

III. Achieving a balanced supply of housing, which requires increasing the supply of workforce housing, serves a statewide public interest, and constitutes an urgent and compelling public policy goal.

IV. The New Hampshire supreme court, in *Britton v. Chester* (134 N.H. 439 (1991)) has established requirements for the exercise of municipal regulatory powers as they impact the development of workforce housing.

V. The purpose of this act is to codify and clarify the requirements established in *Britton v. Chester* and provide additional guidance regarding compliance with those requirements to local officials and the public.

2 New Chapter; Workforce Housing. Amend RSA by inserting after chapter 674 the following new chapter:

CHAPTER 674-A

WORKFORCE HOUSING

674-A:1 Definitions. In this chapter:

I. "Accessory apartment" means a separate dwelling unit designed for occupancy by no more than 2 people created largely within an existing single family home, which does not increase the overall size of the structure by more than 33 percent.

II. "Multi-family housing" means a building or structure containing 6 or more dwelling units, each designed for occupancy by an individual household.

III. "Municipal land use ordinances" means zoning, subdivision, site plan review, growth management, impact fee, and

other such municipal ordinances and by-laws.

IV. "Realistic opportunities for the development of workforce housing" means opportunities to develop economically viable workforce housing within the framework of the municipality's land use ordinances. The collective impact of all such ordinances on a proposal for the development of workforce housing shall be considered in determining whether opportunities for the development of workforce housing are realistic.

V. "Reasonable opportunities for the development of workforce housing" means a sufficient amount of vacant, developable land on which workforce housing is permitted; or in municipalities which are largely built up, a sufficient area that is reasonably available for lawful development or redevelopment as workforce housing.

VI. "Workforce housing" means housing which is affordable to a household with income of no more than 80 percent of the median income of the metropolitan area or county in which the housing is located, adjusted for the number of persons in the household, as published annually by the U. S. Department of Housing and Urban Development in the Federal Register. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than 2 bedrooms, shall not constitute workforce housing for the purposes of this chapter. For the purpose of this chapter, the following types of housing shall be considered workforce housing:

(a) Owner-occupied housing (including condominium units) in which at least 25 percent of the units:

(1) Are initially purchased by a family earning no more than 80 percent of the median income for a family of 4 for the county or metropolitan area, as published by the U.S. Department of Housing and Urban Development from time-to-time, where the total cost of mortgage principal and interest, property taxes, association fees, and homeowner's insurance does not exceed 33 percent of the maximum allowed income of the purchaser. Calculation of housing costs shall be based on current taxes, a 30-year fixed rate mortgage, a 5 percent down payment, and prevailing mortgage rates within the area; and

(2) For which there are deed restrictions or some other legally binding commitment requiring that the home be sold to a family earning no more than 80 percent of median income as set forth in subparagraph (1) for a period of not less than 15 years; or for which there is an equity-sharing arrangement by which a homeowner who sells the premises less than 15 years after purchasing it, contributes a share of the equity in said home to a non-profit workforce housing development organization, in accordance with written standards promulgated by the New Hampshire housing finance authority.

(b) Any housing subsidized by the state or federal government under any program to assist the creation of rental units in which all of the units are affordable to families earning 80 percent or less of median family income, as defined in the state or federal subsidy program. In order to qualify as workforce housing under this subparagraph, the developer must make a binding commitment that such units will remain affordable for not fewer than 30 years.

(c) Any subsidized or non-subsidized rental housing project in which the owner makes a legally-binding commitment for at least 20 years to maintain the rent in at least 25 percent of the dwelling units at no more than 30 percent of the income of a family earning 60 percent or less of the median income adjusted for family size for the county or metropolitan area in which the dwelling unit is located, as determined annually by the U.S. Department of Housing and Urban Development and to rent the rent-restricted units to such families.

(d) Manufactured housing, as defined in RSA 674:31, which is placed in a manufactured housing park, as defined in RSA 205-A:1, in which the park owner makes a legally binding commitment for at least 20 years, that for at least 25 percent of the dwelling units that the lot rent plus the mortgage principal and interest will not exceed 30 percent of the income of a family of 4 earning 80 percent of median family income for the county or metropolitan area in which the housing is located, as determined annually by the U.S. Department of Housing and Urban Development and to rent the rent-restricted units to such families. Calculation of housing costs shall be based on a 20-year fixed rate mortgage, 20 percent down payment, and prevailing mortgage rates for manufactured housing within the area.

(e) Accessory apartments.

(f) Apartments created by the conversion of single family houses into dwellings with 3 or more separate dwelling units.

674-A:2 Municipal Workforce Housing Opportunities.

I. Municipal land use ordinances shall afford reasonable and realistic opportunities for the siting of workforce housing including multi-family workforce housing.

II. When the provisions of RSA 674:1, VI require a legally binding commitment from the developer or owner, the municipality may require that during the entire period of the rent/cost restrictions, the developer or owner shall contract with the developer's choice of the following in order to monitor compliance and report to the municipality on an annual basis:

(a) The New Hampshire Housing Finance Authority.

(b) A professional property management firm in which no ownership interest is held by the owner of the workforce housing being monitored or any officer, director, or partner in such workforce housing.

(c) A certified public accounting firm.

(d) Local public housing authority.

674-A:3 Appeal of Local Decisions.

I. Any person whose application to develop workforce housing, as defined in RSA 674-A:1, VI, is denied or is approved

with conditions or restrictions which have a substantial adverse impact on the viability of the proposed workforce housing development may bring an action in the superior court to obtain permission to develop the proposed workforce housing. The petition to the court shall set forth how the denial is due to the municipality's failure to comply with the municipal workforce housing requirements of RSA 674-A:2 or how the conditions or restrictions of approval have a substantial adverse impact on the viability of the proposal.

II. Except as provided in this section, the provisions of RSA 677 shall apply to appeals filed under this chapter.

III. A hearing on the merits shall be held within 6 months of the date on which the action was filed unless counsel for the parties agree to a later date, or the court so orders for good cause.

IV.(a) The court shall grant judgment for the plaintiff and the municipality shall be ordered to issue the necessary permits to enable the plaintiff's project to proceed, notwithstanding the non-compliance of the proposed project with any municipal land use ordinance, if the plaintiff establishes by a preponderance of the evidence that:

(1) He or she has applied in good faith for approval of a proposal to create workforce housing, and that such application has been denied, or approved with conditions or restrictions that have a substantial adverse impact on the viability of the proposal;

(2) The land use regulations of the municipality fail to comply with the requirements of RSA 674-A:2;

(3) The proposed housing complies with the statewide building code, set forth in RSA 155-A:1, IV and RSA 155-A:2, II; and

(4) The proposed development would not increase the number of year-round dwelling units in the municipality by more than 40 in a municipality with fewer than 2,000 year-round dwelling units at the time the proposal is submitted to the planning board, or more than 2 percent in all other municipalities;

(5) The proposed development would be located in an area that permits residential uses; and

(6) The proposed development is not located on property that has been designated by the state or federal government or the municipality for historic preservation or environmental protection,

(b) Unless the municipality establishes that:

(1) The proposed project fails to comply with standards that are necessary to adequately provide for:

(A) water supply;

(B) sewage disposal and ground water protection;

(C) wetlands protection;

(D) roads and traffic safety;

(E) fire and life safety protection; and

(F) buffering of architecturally inconsistent development.

(2) The municipality's decision rejecting or modifying plaintiff's proposal is necessary to protect other substantial public interests in health or safety and that the public interests clearly outweigh the need for the workforce housing project;

674-A:4 Appeals. An appeal of superior court orders issued under RSA 674-A:3 shall be to the supreme court under the rules of said court.

3 Regional Planning Commissions; General Powers and Duties. RSA 36:47, II is repealed and reenacted to read as follows:

II. For the purpose of assisting municipalities in complying with RSA 674:2, III(l), each regional planning commission shall compile a regional housing needs assessment, which shall include an assessment of the regional need for housing for persons and families of all levels of income. The regional housing needs assessment shall be updated every 5 years and made available to all municipalities in the planning region. The regional housing needs assessment shall include an assessment of the regional need for workforce housing, as defined in RSA 674-A:1, VI, which shall be developed in accordance with a methodology developed by the office of state planning and energy programs in consultation with the New Hampshire housing finance authority.

II-a. Subject to available state funding, each regional planning commission shall review the local land use regulations of any municipality in its region within 6 months of receiving a written request from the planning board, selectmen, or city council and make suggestions concerning the exclusionary effects of the ordinances and the ordinances' compliance with the municipality's obligation under RSA 674-A:2. As part of such review the regional planning commissioner shall make recommendations concerning ways in which the ordinances could be changed to bring the municipality into compliance.

4 Innovative Land Use Controls; Inclusionary Zoning; Workforce Units Required. Amend RSA 674:21, IV(a) to read as follows:

(a) "Inclusionary zoning" means land use control regulations which provide a voluntary incentive or benefit to a property owner in order to induce the property owner to produce housing units which are affordable to persons or families of low and moderate income, **or which require that workforce housing units be included in any housing development that contains more than a specified number of total dwelling units.** Inclusionary zoning includes, but is not limited to, density bonuses, growth control exemptions, and a streamlined application process.

5 New Paragraph; Office of State Planning and Energy Programs; Responsibilities for Assistance; Workforce Housing.

Amend RSA 4-C:8 by inserting after paragraph IV the following new paragraph.

V. Assist municipalities by:

- (a) Making available, upon request from a municipality, data produced or collected by state, local, or federal government agencies in determining its need for workforce housing.
- (b) Developing, in conjunction with the New Hampshire housing finance authority, a recommended uniform methodology for the development of the regional housing needs assessment required by RSA 36:47, II.
- (c) Providing guidelines for the development of municipal master plans that promote the development of workforce housing.

6 Allocation of Financial Grants. For 3 years, beginning July 1, 2004, priority for financial grants to regional planning commissions made pursuant to RSA 4-C:8, I, shall be given to grant requests which are for the purpose of enhancing a regional planning commission's ability to provide technical assistance to municipalities in meeting their legal obligations to provide realistic and reasonable opportunities for the development of workforce housing.

7 Effective Date.

I. Section 2 of this act shall take effect June 1, 2005.

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

AMENDED ANALYSIS

This bill requires municipal land use ordinances to provide for the creation of workforce housing and provides an expedited appeal for projects that are denied. It also requires the office of state planning and energy programs and regional planning commissions to provide certain technical assistance.

2003-2468h

Amendment to SB 99

Proposed by the Committee on Commerce - C

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

AN ACT relative to compliance with federal law in the making of first and second mortgage loans.

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

1 New Paragraph; Definitions; "HOEPA." Amend RSA 397-A:1 by inserting after paragraph III the following new paragraph:

III-a. "HOEPA" means the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. section 1639 et. seq., as amended.

2 New Paragraph; License Application; Requirements; HOEPA Compliance. Amend RSA 397-A:5 by inserting after paragraph IV the following new paragraph:

V. Licensees shall comply with the provisions of HOEPA at all times.

3 New Paragraph; Definitions; "HOEPA." Amend RSA 398-A:1 by inserting after paragraph III the following new paragraph:

III-a. "HOEPA" means the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. section 1639 et. seq., as amended.

4 Revocation; Violation of HOEPA. Amend RSA 398-A:1-b, I (a) to read as follows:

(a) Has violated any provisions of this chapter, ~~or~~ rules or orders thereunder, **or the provisions of HOEPA;**

5 Effective Date. This act shall take effect January 1, 2005.

AMENDED ANALYSIS

This bill requires first and second mortgage brokers to comply with the provisions of the Home Ownership and Equity Protection Act of 1994, 15 U.S. C. section 1639 et. seq., as amended.

2003-2377h

Amendment to SB 128-FN

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 the advisory committee assisting the secretary of state in administering the vital records improvement fund.

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

1 New Subparagraph; Advisory Committee, Member Added. Amend RSA 5-C:24, I by inserting after subparagraph (l) the following new subparagraph:

(m) The secretary of state, or designee.

2 Advisory Committee; Terms of Members. Amend RSA 5-C:24, II to read as follows:

II. The members of the committee shall choose a chairperson by majority vote. ***The chairperson shall serve for a term of one year, but may be reconfirmed by majority vote for as long as the chairperson remains a member.***

Members of the advisory committee shall serve 2-year terms and no ***appointed*** member shall serve more than 2 consecutive terms. The city and town clerk members shall serve staggered terms ~~[and initially one town clerk and one city clerk shall serve~~

~~for 2 years and one town clerk and one city clerk shall serve for 3 years].~~

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

AMENDED ANALYSIS

This bill adds a member to the advisory committee assisting the secretary of state in administering the vital records improvement fund. The bill also clarifies the terms of the members of the advisory committee.

2003-2393h

Amendment to SB 176

Proposed by the Committee on Municipal and County Government - C

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

1 Registers of Deeds; Recording of Plats. Amend RSA 478:1-a to read as follows:

478:1-a Recording of Plats.

I. No register of deeds shall file or record a plat of a subdivision, or a plat prepared for the purpose of showing existing property lines, if such plat has not been prepared and certified by a licensed land surveyor, since July 1, 1981, or by a registered land surveyor between January 1, 1970 and June 30, 1981, and any such filing or recording shall be void. For the purposes of this section the definition of the word "subdivision" shall be that contained in RSA 672:14. *A "plat" for the purpose of this section shall be a map of a specific land area whose boundaries are defined by metes and bounds. A plat may show:*

(a) Newly created parcels, streets, alleys, and easements as in a subdivision; or

(b) A lot-line-adjustment or site plan depicting existing parcels defined by legal descriptions contained in deeds, grants, or other legal documents.

II. Each register of deeds shall establish a policy for providing adequate space, on the plat, for recording the registry plan number and recording information.

III. The register of deeds shall refuse for recording any map that does not meet the definition of a plat under paragraph I and any plat that does not contain the information or meet the specifications required by this section. Construction plans, construction details, and maps that do not define the limits or extent of legal rights or interest in land shall not be recorded.

IV. All plats shall be drawn with the following sizes: 8.5" x 11," 11" x 17," 17" x 22," 22" x 34," or such specifications and sizes as may be required by the register of deeds. The material composition of the plats shall be suitable for electronic scanning and archiving by the register of deeds.

V. All plats shall have a minimum of 1/2 inch margins on all sides.

VI. All text and dimensions shall be legible for reproduction, and the text sizes shall be no smaller than .08 of an inch for mechanical drafting and 1/8 inch for hand drafting.

VII. All certifications, seals, and approval blocks shall have original dates and signatures in a legible, permanent black ink.

VIII. All title blocks shall be located in the lower right hand corner, when possible, and shall indicate the following:

(a) Type of survey, such as a boundary survey, subdivision, American Land Title Association (ALTA) survey, or lot line adjustment.

(b) Owner of record.

(c) Title of plat or development.

(d) Tax map number.

(e) Name of the town in which the parcel is located.

(f) Plat and revision dates.

IX. All plats shall have a scale both as a written and graphic representation.

X. All plats shall have a north arrow with reference to magnetic grid or astronomic north, as applicable. The north arrow shall be labeled with its reference direction.

XI. Shading over any text shall not be permitted on any plat. Cross hatching or other hatching at a scale large enough not to interfere with text legibility, before and after reproduction, may be permitted.

XII. No lines, whether hatching, boundary lines, or topographic contours shall obstruct or interfere with the legibility, either before or after reproduction, of any bearings, dimensions, or text.

XIII. The minimum line widths on plats shall not be smaller than .01 inches.

2 Repeal. RSA 478:13-a, relative to recording of plans, is repealed.

3 Effective Date. This act shall take effect January 1, 2005.

2003-2432h

Amendment to SB 199

Proposed by the Committee on Executive Departments and Administration - R

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

1 Nurse Practice Act. RSA 326-B is repealed and reenacted to read as follows:

CHAPTER 326-B NURSE PRACTICE ACT

326-B:1 Purpose. In order to safeguard life, health and public welfare of the people of New Hampshire and in order to protect the people of the state from the unauthorized, unqualified, and improper application of services by individuals in the practice of nursing, it is necessary that a regulatory authority be established and adequately funded. To further this policy, the practice of nursing shall be regulated through the New Hampshire board of nursing, and such board shall have the power to enforce the provisions of this chapter.

326-B:2 Definitions.

I. "Advanced registered nurse practitioner (ARNP)" means a registered nurse currently licensed in New Hampshire who is additionally licensed by the board in one or more practice specialties pursuant to RSA 326-B:13.

II. "Board" means the New Hampshire board of nursing established in RSA 326-B:3.

III. "Certified graduate nurse (CGN)" means those graduate nurses exempted by chapter 265, laws of 1959 and certified prior to January 1, 1975.

IV. "Contact hour" means a minimum of 50 minutes of organized learning.

V. "Continuing competence" means integrated learning designed to enhance nursing knowledge, judgment and skills beyond those achieved during the education or other preparation required to qualify for initial licensing.

VI. "Delegation" means the transfer of authority for the performance of a specific task from a licensed nurse authorized to perform the task to someone who does not have that authority when such transfer is authorized by this chapter or the rules adopted by the board.

VII. "Licensed nursing assistant" means an individual who holds a current license to provide client care under the direction of a registered nurse or licensed practical nurse.

VIII. "Licensed practical nurse (LPN)" means an individual who holds a current license to practice practical nursing as defined in paragraph XII.

IX. "Medication nursing assistant" means a licensed nursing assistant holding a currently valid certificate authorizing the delegation to the nursing assistant of tasks of medication administration.

X. "Nursing" means assisting clients or groups of clients to attain or maintain optimal health by implementing a strategy of care to accomplish defined goals and by evaluating responses to nursing care and medical treatment. Nursing includes basic health care that helps both clients and groups of clients cope with difficulties in daily living associated with their actual or potential health or illness status and also those nursing activities that require a substantial amount of scientific knowledge or technical skill. Nursing also includes, but is not limited to:

(a) Promoting an environment conducive to well being.

(b) Planning and implementing independent nursing strategies and prescribed treatment in the prevention and management of illness, injury, disability and achievement of a dignified death.

(c) Providing health counseling and teaching.

(d) Collaborating on aspects of the health regimen.

(e) Advocating for the client.

XI. "Nursing-related activities" means client care provided by a licensed nursing assistant directed by an ARNP, an RN, or an LPN.

XII. "Practical nursing" means the practice of nursing as defined in paragraph VIII by a nurse who:

(a) Uses sound nursing judgment based on preparation, knowledge, skills, understanding, and past nursing experience.

(b) Works under the direction of a registered nurse, advanced registered nurse practitioner, dentist or physician.

(c) Functions as a member of a health care team and contributing to the assessment, planning, implementation and evaluation of client care.

XIII. "Registered nurse (RN)" means an individual who holds a current license to practice registered nursing as defined in paragraph XIV.

XIV. "Registered nursing" means the application of nursing knowledge, judgment, and skill drawn from broad in-depth education in the biological, psychological, social, and physical sciences in assessing and diagnosing the health status of a client, and in planning, implementing and evaluating client care which promotes the optimum health, wellness and independence of the individual, the family and the community.

326-B:3 Board of Nursing.

I. The board of nursing shall be composed of 11 members to be appointed by the governor with the consent of the council. Any interested individual, association, or entity may make recommendation to the governor. The members of the board shall include 5 registered nurses, one of whom shall be an advanced registered nurse practitioner, 2 licensed practical nurses, 2 licensed nursing assistants, and 2 representative members of the public. The terms of members shall be staggered as determined by the governor and council. All terms shall be for 3 years, and no member of the board shall be appointed to more than 2 consecutive terms.

II. Each registered nurse member shall be a resident of this state, licensed in good standing under the provisions of this chapter, currently engaged in the practice of nursing as a registered nurse, and shall have had no fewer than 5 years of experience as a registered nurse, at least 3 of which shall have immediately preceded appointment. Registered nurse members of the board shall represent the various areas of nursing practice including education, administration, and clinical practice.

III. The licensed practical nurse members of the board shall be residents of this state, licensed in good standing under the provisions of this chapter, currently engaged in the practice of nursing, and shall have had no fewer than 5 years of experience as a licensed practical nurse, at least 3 of which shall have immediately preceded the date of appointment.

IV. The licensed nursing assistant members of the board shall be residents of, and licensed in good standing in, New Hampshire, and currently engaged in nursing-related activities. These members shall have a minimum of 5 years of experience as a licensed nursing assistant, at least 3 of which shall have immediately preceded the date of their appointment.

V. The public members shall be residents of the state of New Hampshire who are not, and never have been, members of the nursing profession or the spouse of any such person. The public members shall not have, and shall never have had, a material financial interest in either the provision of nursing services or an activity directly related to nursing, including the representation of the board or its predecessor or the profession for a fee at any time during the 5 years preceding the date of appointment.

VI. No more than one board member shall be associated with a particular agency, corporation or other enterprise or subsidiary at one time.

VII. Each member of the board shall be compensated at the rate of \$100 for attendance at a regular board meeting and \$50 for each other day actually engaged in official duties of the board, and shall be reimbursed for actual and necessary expenses incurred in the discharge of official duties, including travel at the state employee mileage rate.

VIII. An appointee to a full term on the board shall be appointed by the governor with the consent of the council before the expiration of the term of the member being succeeded and shall become a member of the board on the first day following the appointment expiration date of the previous appointee. Appointees to unexpired portions of full terms shall become members of the board on the day following such appointment, and shall serve the unexpired term and then be eligible to serve 2 full 3-year terms.

IX. The governor may remove any member from the board for neglect of any duty under RSA 326-B:4 or for incompetence or unprofessional or dishonorable conduct. Any person may file a complaint against a board member with the department of health and human services. The provisions of RSA 4:1 controlling the removal of public officials from office shall be followed in dismissing board members.

X. All members of the board and its agents or employees shall enjoy immunity from individual civil liability while acting within the scope of their duties as board members, agents or employees, as long they are not acting in a wanton or reckless manner.

XI. Board meetings shall be open to the public. In accordance with RSA 91-A:3 the board may conduct part of a meeting in nonpublic session.

XII. The New Hampshire board of nursing shall be administratively attached, under RSA 21-G:10, to the department of health and human services.

326-B:4 Powers and Duties of the Board.

I. The board shall have the power to:

- (a) Regulate the practice of nursing and take disciplinary action authorized by this chapter.
- (b) Adopt, amend, and repeal administrative rules as authorized by this chapter.
- (c) Appoint and employ a qualified registered nurse to serve as executive director.
- (d) Delegate to the executive director those activities which expedite the functions of the board, including the employment of professional and support staff, investigators, legal counsel, and other personnel necessary for the board to carry out its functions.
- (e) Employ or contract with any entity for the purpose of administering examinations authorized by this chapter.
- (f) Gather and report to the public statistical information regarding, but not limited to, the education and licensure of nurses and nursing assistants.
- (g) Maintain membership in national organizations advancing the practice of nursing.
- (h) Provide consultation and conduct conferences, forums, studies, and research on nursing education and practice.

II. The board shall have the duty to:

- (a) Interpret and enforce the provisions of this chapter and of the rules implementing it.
- (b) Maintain a record of all persons and education programs regulated by the board.
- (c) Determine and collect reasonable fees authorized by this chapter.
- (d) Administer the state registry for nursing assistants in compliance with the Omnibus Budget Reconciliation Act of 1987, sections 1819 and 1919 of the Social Security Act.

326-B:5 Criminal Record Checks.

I. Every applicant for initial licensure or license renewal or reinstatement under this chapter shall submit to the board a

notarized criminal conviction record release authorization form, as provided by the division of state police, which authorizes the release of his or her criminal conviction record to the board pursuant to RSA 106-B:14.

II. Upon receipt of a notarized criminal conviction record release authorization form from the board or from an applicant for licensure or license renewal or reinstatement under this chapter, the division of state police shall conduct a criminal conviction record check pursuant to RSA 106-B:14 and provide the results to the board.

III. The board shall review the criminal record information prior to making a licensing decision and shall maintain the confidentiality of all criminal conviction records received pursuant to this section.

326-B:6 Administration By Executive Director.

I. The executive director shall have at least the following qualifications:

- (a) Be eligible for licensure to practice as a registered nurse in this state; and
- (b) Hold a master's degree in nursing or hold a master's degree in a related field and a baccalaureate degree in nursing.

II. The executive director shall be responsible for:

- (a) The performance of the administrative responsibilities of the board.
- (b) Employment of personnel needed to carry out the functions of the board.
- (c) The performance of any other duties the board may direct.

326-B:7 Collection and Expenditure of Funds. The board shall receive and expend funds provided such funds are received and expended for the pursuit of the objectives authorized by this chapter. Fees, fines and administrative charges other than those collected pursuant to RSA 326-B:8 shall be deposited in the general fund.

326-B:8 Nursing Assistant Fees and Fines; Continual Appropriation.

I. The nursing assistant fund is established in the state treasury and continually appropriated to the board of nursing which shall administer the fund. The fund shall be used only for administration of the nursing assistant component and expenses relating to that component.

II. All fees, charges, and fines relating to nursing assistants shall be credited to the fund.

326-B:9 Fees; Charges.

I. The board shall charge fees for the issuance, renewal, and reinstatement of all licenses, specialty licenses and certificates authorized by this chapter. The board shall recover at least 125 percent of its direct expenses through licensee fees, fines and administrative charges.

II. The board may provide the following services and make administrative charges for them:

- (a) The administration of examinations required by this chapter.
- (b) Verification of licensure status.
- (c) The sale of lists of licensees who have given their written authorization to have their names included on such

lists.

- (d) The actual costs of a criminal conviction record check required pursuant RSA 326-B:5.

326-B:10 Public Hearings on Fees.

I. The board shall be exempt from the requirements, procedures and provisions of RSA 541-A with respect to the establishment of fees.

II. The board shall review all fees established under this chapter on a biannual basis. The board shall hold at least one public hearing on all proposed changes to such fees. All interested parties shall be afforded reasonable opportunity to testify and to submit data, views or arguments in writing or in electronic format, relative to proposed fee changes. All materials submitted in writing shall be signed by the person who submits them. The board shall post the date, time and location of the public hearing and the cut-off date for the submission of written testimony at least 20 days prior to the hearing date. Such posting shall be on the board's website and in the newsletter published by the board. Copies of the proposed fee changes shall be available to the public at least 5 days prior to the hearing. A period of at least 10 days after the hearing shall be provided for the submission of materials in writing or electronic format.

III. Each hearing shall be attended by a quorum of the board. A public comment hearing on fees may be postponed in the event of inclement weather or a lack of a quorum of the board. If such hearing is postponed, the board shall provide at least 5 days' notice of the rescheduled hearing.

IV. The board shall consider all public input that has been submitted under the provisions of this section when voting on any changes to fees established under this chapter.

326-B:11 Rulemaking Authority.

I. The board shall adopt rules in accordance with RSA 541-A on the following topics:

(a) Application procedures and eligibility requirements, in addition to those set forth in this chapter, for the issuance of all initial, temporary and renewal licenses, specialty licenses and certificates issued by the board, including the issuance of such licenses to applicants holding a currently valid license or other authorization to practice in another jurisdiction.

(b) Application procedures and eligibility requirements, in addition to those set forth in this chapter, for the reinstatement of licenses after lapse and after disciplinary action.

(c) Approval of national certifying bodies issuing specialty certifications required for licensure as an advanced registered nurse practitioner.

(d) The standards to be met by education programs designed to prepare applicants to qualify for licensure or certification in any of the disciplines regulated by the board, including the time period within which noncompliance must be corrected before such approval is withdrawn.

(e) The standards to be met by education programs designed to prepare LPNs in intravenous therapy and by programs designed to prepare LNAs to perform tasks not addressed in the basic curriculum required for licensure.

(f) The determination of disciplinary sanctions authorized by this chapter, including the determination of administrative fines.

(g) The administration of examinations authorized by this chapter, and the manner in which information regarding the contents of any licensing examinations may be disclosed, solicited, or compiled.

(h) Ethical standards for the practice of nursing and nursing-related activities.

(i) Continuing competence requirements.

(j) Designations that may be used by persons regulated by the board and retired persons regulated by the board.

326-B:12 Scope of Practice; Advanced Registered Nurse Practitioner.

I. Only those licensees duly authorized under RSA 326-B:13 shall perform those common customary advanced nursing practices noted in this section. ARNPs are authorized to prescribe medications in the ARNP formulary established by the joint health council. The ARNP shall be competent as set forth below to practice independently in accordance with a scope of practice established by national standards in the following specialty areas:

(a) Certified nurse midwife.

(b) Pediatric nurse practitioner.

(c) Family nurse practitioner.

(d) Women's health nurse practitioner.

(e) Adult nurse practitioner.

(f) Geriatric nurse practitioner.

(g) School nurse practitioner.

(h) Psychiatric/mental health nurse practitioner.

(i) Emergency/trauma nurse practitioner.

(j) Neo-natal nurse practitioner.

(k) Certified registered nurse anesthetist.

(l) Acute care nurse practitioner.

(m) Community health nurse practitioner.

(n) Reproductive health nurse practitioner.

(o) Oncology nurse practitioner.

(p) Palliative care nurse practitioner.

(q) Wound care nurse practitioner.

II. The ARNP shall have the ability to:

(a) Elicit and record physical and mental health status, psychosocial history, including review of bodily systems.

(b) Perform physical examination.

(c) Initiate appropriate diagnostic tests to screen or evaluate the care-recipient's current health status.

(d) Assess findings of history, review of systems, physical examination and diagnostic tests, and formulate a diagnosis prior to implementing a treatment regimen.

(e) Identify health problems and learning needs of the care recipient.

(f) Plan, teach, promote, and manage physical and mental health-care in a continuous program.

(g) Implement and manage treatment regimens and administer, prescribe, dispense and procure pharmacological agents.

(h) Arrange appropriate referrals.

(i) Initiate appropriate emergency treatment in life-threatening or unusual situations in order to stabilize the care-recipient.

(j) Provide other functions within the ARNPs scope of practice for which the ARNP is educationally and experientially prepared.

326-B:13 Advanced Registered Nurse Practitioner; Specialty License.

I. The board may issue one or more specialty licenses to applicants meeting the qualifications stated in paragraph III. Holding one or more currently valid specialty licenses qualifies the holder as an advanced registered nurse practitioner.

II. An applicant for licensure in a specialty shall:

(a) Hold a currently valid license as a registered nurse;

(b) Submit a completed application for specialty licensure and pay the specialty license fee;

(c) Have graduated after July 1, 2004 with a master's degree earned in an advanced registered nurse practitioner education program accredited by a national accrediting body or have graduated before July 1, 2004 from an advanced registered nurse practitioner education program accredited by a national accrediting body; and

(d) Be currently certified by a board-approved national certifying body in the specialty for which the applicant was educated.

III. An applicant for renewal of a specialty license issued after September 30, 1984 shall:

(a) Submit a completed application for renewal and pay the renewal fee;

(b) Hold, and have since first specialty licensure maintained, a currently valid license as a registered nurse;

(c) Be, and have since first specialty licensure continued to be, certified by a board-approved national certifying body;

(d) Meet any continuing competence requirements set by the board; and

(e) Meet any continuing education requirements established under this chapter.

IV. An applicant for renewal of a specialty license issued before September 30, 1984 shall meet the requirements of paragraph III except that the applicant shall not be required to be and continue to have been certified by a board-approved national certifying body.

V.(a) An advanced registered nurse practitioner shall have plenary authority to possess, compound, prescribe, administer, and dispense and distribute to clients controlled and non-controlled drugs in accordance with the formulary established by the joint health council and within the scope of the ARNP's practice as defined by this chapter.

(b) Such plenary authority may be denied, suspended, or revoked by the board after notice and the opportunity for hearing, upon proof that the authority has been abused.

326-B:14 Joint Health Council.

I.(a) The joint health council shall consist of 9 members as follows: 3 licensed, practicing advanced registered nurse practitioners, appointed by the board of nursing; 3 licensed, practicing physicians who work with advanced registered nurse practitioners, appointed by the board of medicine; and 3 licensed clinical pharmacists who are practicing clinical pharmacists, appointed by the board of pharmacy. In no case shall a member of the joint health council be a member of the member's appointing board.

(b) The chairmanship of the council shall rotate annually among the appointees of the 3 respective boards.

Administrative expenses shall be assumed, and administrative support services provided, by the board of nursing.

(c) Members of the council shall be appointed for 3-year terms and shall serve no more than 2 terms.

II. The council shall meet not less than once every 3 months to discuss matters pertinent to the ARNP formulary and matters of mutual concern to the board of medicine, the board of nursing and the board of pharmacy, unless there are no agenda items. Any council member may submit items to be considered by the council. Any council member may request that an item submitted for consideration by the council include relevant scientific information from recognized professional publications. A denial of a request to include a drug in the formulary or a decision to further restrict a drug already approved by the council shall be issued in writing and shall include relevant scientific information from recognized professional publications.

III. The duties of the joint health council shall include, but not be limited to, determining the type of ARNP formulary, exclusionary, inclusionary or other, and adding to or altering the list of controlled and non-controlled molecular entities in the ARNP formulary. The council shall render decisions on such additions or alterations within 3 months of initial consideration unless there is a request for additional scientific information. Appeals of decisions shall be submitted to the council in writing for further deliberation by the council. The ARNP formulary shall be updated at least annually and shall be available in paper and electronic format from the board of nursing, the board of medicine, and the board of pharmacy.

IV. Meetings of the joint health council shall be open to the public and conducted in accordance with the provisions of RSA 91-A. Meetings shall be conducted in a building owned or leased by the state and situated in Concord. Notice of the time and place of each meeting shall be posted in the house and senate calendars at least 30 days prior to the meeting date.

326-B:15 Scope of Practice; Registered Nurse.

I. Practice as a registered nurse means the full scope of nursing, with or without compensation or personal profit, that incorporates caring for all clients in all settings; is guided by nursing standards and evidence-based practice guidelines developed by a nationally-recognized authority and approved by the board, and shall be limited to:

(a) Providing comprehensive nursing assessment of the health status of clients, families, groups and communities.

(b) Collaborating with a health care team to develop an integrated client-centered plan of health care.

(c) Developing a plan of nursing strategies to be integrated within the client-centered health care plan that establishes nursing diagnoses, setting goals to meet identified health care needs, prescribing nursing interventions, and implementing nursing care through the execution of independent nursing strategies and prescribed medical regimen.

(d) Delegating and assigning nursing interventions to implement the plan of care.

(e) Providing for the maintenance of safe and effective nursing care rendered directly or indirectly.

(f) Promoting a safe and therapeutic environment.

(g) Providing health teaching and counseling to promote, attain and maintain the optimum health level of clients, families, groups and communities.

- (h) Advocating for clients, families, groups and communities by attaining and maintaining what is in the best interest of the client or group.
- (i) Evaluating responses to interventions and the effectiveness of the plan of care.
- (j) Communicating and collaborating with other health care professionals in the management of health care and the implementation of the total health care regimen within and across care settings.
- (k) Acquiring and applying critical new knowledge and technologies to practice domain.
- (l) Managing, supervising and evaluating the practice of nursing.
- (m) Teaching the theory and practice of nursing.
- (n) Participating in the development of policies, procedures and systems to support the client.
- (o) Other nursing services that require education and training prescribed by the board and in conformance with national nursing standards.

Additional nursing services shall be commensurate with the registered nurse's experience, continuing education and demonstrated competencies.

III. Each registered nurse is accountable to clients, the nursing profession and the board for complying with the requirements of this act and the quality of nursing care rendered, and for recognizing limits of knowledge and experience and planning for management of situations beyond the nurse's experience.

326-B:16 Scope of Practice; Licensed Practical Nurse.

I. Practice as a licensed practical nurse means a directed scope of nursing practice, with or without compensation or personal profit, under the supervision of a registered nurse, advance registered nurse practitioner, licensed physician or other health care provider authorized by the state to delegate health care activities and functions. Such practice is guided by nursing standards developed by a nationally-recognized authority and approved by the board, and shall be limited to:

- (a) Collecting data and conducting focused nursing assessments of the health status of clients.
- (b) Planning nursing care episode for clients with stable conditions.
- (c) Participating in the development and modification of the comprehensive plan of care for all types of clients.
- (d) Implementing appropriate aspects of the strategy of care within the LPN scope of practice.
- (e) Participating in nursing care management through delegating, assigning and directing nursing interventions that may be performed by others, including other LPNs, that do not conflict with this chapter.
- (f) Maintaining safe and effective nursing care rendered directly or indirectly.
- (g) Promoting a safe and therapeutic environment.
- (h) Participating in health teaching and counseling to promote, attain and maintain the optimum health level of clients.
- (i) Serving as an advocate for the client by communicating and collaborating with other health service personnel.
- (j) Participating in the evaluation of client responses to interventions.
- (k) Communicating and collaborating with other health care professionals.
- (l) Providing input into the development of policies and procedures.
- (m) Other nursing services that require education and training prescribed by the board and in conformance with national nursing standards.

Additional nursing services shall be commensurate with the licensed practical nurse's experience, continuing education and demonstrated licensed practical nurse competencies.

II. Each nurse is accountable to clients, the nursing profession, and the board for complying with the requirements of this chapter and the quality of nursing care rendered and for recognizing limits of knowledge and experience and planning for management of situations beyond the nurse's expertise.

III. Licensed practical nurses who have successfully completed the curriculum of a board-approved LPN intravenous therapy course may administer intravenous solutions under the direction of a physician or dentist, or as delegated by a registered nurse. LPNs shall be instructed that they are accountable and responsible for activities delegated to them. LPNs shall only perform intravenous therapy for clients that are 13 years old or older.

326-B:17 Qualifications for Licensure to Practice as a Registered Nurse or a Licensed Practical Nurse.

I. An applicant for licensure to practice as a registered nurse or a licensed practical nurse who has never been licensed or who holds a currently valid license issued by a foreign jurisdiction other than a Canadian jurisdiction shall:

- (a) Submit a completed application and pay the license fee.
- (b) Be a graduate of a board-approved nursing education program or a program that is determined by the board to be comparable to a board-approved nursing education program.
- (c) Pass a national examination approved by the board.
- (d) Be of a good character as character relates to the practice of nursing.
- (e) Have complied with continuing competence requirements, if applicable.

II. An applicant for licensure to practice as a registered nurse or a licensed practical nurse who holds or has held a license issued by another state shall meet the requirements of paragraph I, except that an applicant who has passed a national

examination approved by the board shall not be required to take the examination again.

III. An applicant for licensure to practice as a registered nurse or a licensed practical nurse who received nursing education in Canada and was never licensed by any state shall:

(a) Meet the requirements of paragraph I; or

(b) Meet the requirements of paragraph I (a), (d) and (e), have graduated from a Canadian nursing education program, and demonstrate that:

(1) Between the years 1939 and 1970 the applicant passed the English version of the National League for Nursing Board Test Pool Examination;

(2) Between the years 1970 and 1980 the applicant took the English version of the Canadian Nurses' Association testing service 5-part examination and received a minimum passing score of 350 in each of the following topics: medical nursing, surgical nursing, pediatric nursing, maternity nursing, and psychiatric nursing; or

(3) Since the year 1980 the applicant took the English version of the Canadian Nurses' Association testing service comprehensive examination and received a minimum passing score of 400.

326-B:18 Scope of Practice; Licensed Nursing Assistant. Practice as a licensed nursing assistant means a scope of nursing assistant practice, with or without compensation or personal profit, under the supervision of the RN, ARNP, or LPN, as defined in RSA 326-B.

I. A licensed nursing assistant is responsible for competency in the nursing assistant curriculum approved by the board. Licensed nursing assistants are authorized to administer medication when they hold a currently valid certificate of medication administration and under the circumstances established by the board through rules adopted pursuant to RSA 541-A.

II. Following successful completion of the curriculum, a nursing assistant shall be able to:

(a) Form a relationship, communicate, and interact effectively with individuals and groups.

(b) Demonstrate comprehension related to individuals' emotional, mental, physical, and social health needs through skillful, direct nursing-related activities.

(c) Assist individuals to attain and maintain functional independence in a home or health-care facility.

(d) Exhibit behaviors supporting and promoting care-recipients' rights.

(e) Demonstrate observational and documenting skills required for reporting of people's health, safety, welfare, physical and mental condition, and general well-being.

(f) Provide safe nursing-related activities under the supervision of a registered or licensed practical nurse.

III. Licensed nursing assistants may perform tasks not addressed in the basic curriculum required for licensure if they obtain additional training in the performance of such tasks through programs approved by the board. Additional tasks can be delegated provided:

(a) The task has been properly delegated to the nursing assistant by the supervising licensed nurse pursuant to RSA 326-B:22.

(b) The task has not been made exempt from nursing assistant practice under this chapter.

(c) The policies of the employing health care facility allow the delegation of the task to a LNA.

326-B:19 Qualifications for Licensure to Practice as a Licensed Nursing Assistant.

I. An applicant for licensure to practice as a licensed nursing assistant who is not licensed in any other state shall:

(a) Submit a completed application and pay the license fee established by the board;

(b) Be a graduate of a board-approved nursing assistant education program or a program that is determined by the board to be comparable to a board-approved nursing assistant education program;

(c) Pass a national or regional examination approved by the board;

(d) Be of a good character as character relates to the practice of nursing-related activities; and

(e) Have complied with continuing competence requirements, if applicable.

II. An applicant for licensure to practice as a licensed nursing assistant who holds a current and valid license or other authorization to practice nursing-related activities in another state shall meet the requirements of paragraph I, except that the applicant shall either have passed a national or regional examination approved by the board or passed the last examination taken for licensure or other authorization to practice in any other state. The applicant shall submit verification of current and valid licensure or other authorization to practice issued by another state. The applicant shall not have committed in any other state acts or omissions which are grounds for disciplinary action under this chapter and for which the board determines that insufficient restitution was made or insufficient disciplinary action taken by the disciplining state.

326-B:20 Qualifications; Medication Nursing Assistant.

I. Practice as a medication nursing assistant means a scope of nursing assistant practice, with or without compensation or personal profit, as a licensed nursing assistant who holds a currently valid certification authorizing the delegation of medication administration under the supervision of the RN, ARNP or LPN as defined in RSA 326-B.

II. A medication nursing assistant shall be proficient in the following methods of medication administration:

(a) Topical.

(b) Oral.

- (c) Nasal.
- (d) Ocular.
- (e) Auricular.
- (f) Vaginal.
- (g) Rectal.
- (h) Gastrostomy or jejunostomy tube.

326-B:21 Certificate of Medication Administration for Licensed Nursing Assistants.

I. The board may issue a certificate of medication administration to a currently licensed nursing assistant who:

- (a) Has participated in and completed a board-approved medication administration education program;
- (b) Has passed an examination approved by the board; and
- (c) Has paid the certification fee.

II. Certification may be renewed on a biennial basis in accordance with RSA 326-B:26.

326-B:22 Delegation of Nursing Activities and Tasks.

I. A nurse holding a currently valid license as a registered nurse or a practical nurse may delegate specific nursing activities and tasks under the circumstances, and in accordance with the constraints, set forth in this section. The following licensees shall have the authority to delegate tasks of client care:

- (a) Any currently licensed registered nurse or advanced registered nurse when practicing registered nursing; and
- (b) Any currently licensed practical nurse when practicing practical nursing directed by an ARNP, RN, dentist, or physician.

II. Licensed nursing assistants shall not delegate tasks of client care.

III. This section applies to the delegation of tasks of client care by all licensees except for licensees exempted by RSA 326-B:43.

IV. Any individual shall be eligible to receive the delegation of a task of client care not involving the administration of medication only if such individual has competence to perform the specific task. For tasks of client care involving the administration of medication, the following persons shall be eligible to be delegates:

- (a) Currently licensed registered nurses and advanced registered nurse practitioners;
- (b) Currently licensed practical nurses when:
 - (1) The method of medication administration is not intravenous; or
 - (2) The method of medication administration is intravenous, only in compliance with RSA 326-B:16, III;
- (c) Unlicensed assistive personnel who have competence to perform the specific task to be delegated;
- (d) Currently licensed nursing assistants when they hold a certificate of medication administration issued in

accordance with the provisions of this chapter.

V. The following limitations on the delegation of tasks of client care shall apply:

- (a) No delegation shall be made of any task of client care which is not within the competence of the delegating licensee.
- (b) A registered nurse or licensed practical nurse shall not delegate any task of client care for which the delegate does not have competence.
- (c) A delegation of a task of client care involving the administration of medication shall specify:
 - (1) The medication to be administered.
 - (2) The dosage, route, and time of the medication to be administered.
 - (3) The client to whom the medication is to be administered.

VI. Before delegating a task of client care, a delegating licensee shall determine:

- (a) The intended delegate's competence to perform the task; and
- (b) In the case of an intended delegation to a licensed nursing assistant of a task involving the administration of medication, the status of the nursing assistant's license and certificate of medication administration.

VII. In exercising such discretion in delegation as is permitted by this chapter a licensee intending to delegate a task of client care shall take into account:

- (a) The degree of the intended delegate's competence to perform the task;
- (b) Whether the client is stable; and
- (c) Whether the client's nursing needs are currently changing.

VIII. A delegating licensee shall introduce the delegate to the client.

IX. A delegating licensee shall supervise the delegate's performance of the delegated task. Such supervision shall be continual or intermittent as warranted by the following:

- (a) The complexity of the delegated task of client care.
- (b) The condition of the client.
- (c) The degree of the competence of the delegate.
- (d) The familiarity of the delegate with the environment in which the task is to be performed.

X. A delegating licensee shall reevaluate the nature of the supervision as often as the condition of the client changes.

XI. A delegating licensee shall rescind a delegation if:

- (a) An evaluation shows that the client's condition has changed in a way that renders the delegation no longer safe or appropriate;
- (b) The delegate proves unwilling or incompetent to perform the delegated task;
- (c) The client objects to the delegation; or
- (d) The delegating licensee is no longer able to supervise the performance of the delegated task.

XII. When rescinding a delegation, the licensee shall communicate the rescission clearly to the delegate to whom the task was originally delegated and to the administrative supervisor of the delegate, if any.

XIII. A licensee shall report to the board the fact of anyone's attempting to coerce the delegation of a task of client care in violation of RSA 326-B:24, II.

XIV. A licensee to whom a specific task of client care has been delegated shall:

- (a) Perform that task in accordance with this chapter and its implementing rules.
- (b) Wear a badge showing the delegate's name and title when performing the delegated task of client care; and
- (c) Report to the board the fact of any delegation which the delegate believes to be beyond the competence of the delegate.

326-B:23 Delegation; Administration of Medication.

I. A nurse holding a currently valid license as a registered nurse or a practical nurse may delegate tasks involving the administration of medication to a licensed nursing assistant holding a currently valid certificate as a medication nursing assistant under the circumstances, and in accordance with the constraints, set forth in this section.

II. A licensed nursing assistant shall perform a task involving the administration of medication if:

- (a) The task has been delegated to the licensed nursing assistant by a licensed nurse in accordance with the provisions of this chapter; and
- (b) The delegation is not prohibited by this section.

III. A licensed nursing assistant shall not perform a task involving the administration of medication if:

- (a) The task requires the determination of the client's need for the medication, the calculation of the dosage of the medication, or the conversion of dosage;
- (b) The delegating nurse is unavailable to monitor the progress of the client and the effect on the client of the medication; or
- (c) The client is not stable or has changing nursing needs.

IV. A licensee intending to delegate, or having delegated, a task involving medication administration to a licensed nursing assistant shall comply with the requirements of this chapter.

V. A licensee who, having delegated a task involving medication administration to a licensed nursing assistant, has any reason to believe that the delegate may have made an error in the administration of medication shall:

- (a) Immediately ascertain whether the error occurred; and
- (b) If the error occurred or its occurrence can not be immediately ascertained, take the following steps:
 - (1) Inform the administrator of the facility, institution, or agency in which the error occurred;
 - (2) Document the error in the client's clinical record;
 - (3) Complete any report required by the policies or rules of the facility, institution, or agency within the required time period;
 - (4) Determine whether immediate action is required to be taken with respect to the delegation of tasks to the licensed nursing assistant who made the error; and
 - (5) Maintain a record of errors in medication administration and actions taken by the delegating licensee for medication nursing assistant program site review.

VI. A licensed nursing assistant who has any reason to believe that he or she has made an error in the administration of medication shall:

- (a) Immediately report to the following people a possible or known error in the administration of medication:
 - (1) The licensee who delegated the task involving the administration of medication; and
 - (2) The licensed nursing assistant's immediate supervisor in the facility, institution or agency in which the error occurred, if such supervisor is someone other than the delegating licensee; and
- (b) Assist the delegating licensee and the immediate supervisor in the setting in which the error occurred in the completion of any document for reporting error which may be required to be completed.

326-B:24 Delegation; Circumstances Not Subject to Disciplinary Action.

I. A licensee who delegates or has delegated a specific nursing activity or task in compliance with this chapter shall not be subject to disciplinary action because of the performance of the person to whom the nursing activity or task is or was delegated.

II. No person may coerce a registered nurse or licensed practical nurse into compromising client safety by requiring the

nurse to delegate a nursing activity or task when the nurse determines that it is inappropriate to do so. A licensee shall not be subject to disciplinary action for refusing to delegate nursing activities or tasks or refusing to provide training related to such delegation when the licensee has determined that such delegation may compromise client safety.

326-B:25 Duration of Initial Licenses. All initial licenses, other than temporary licenses, are valid from the date of issuance until midnight of the date of birth of the licensee in the year following the year in which the license was issued unless their validity has been continued in accordance with RSA 326-B:26, III.

326-B:26 Biennial Renewal of Licenses; Lapsed Licenses.

I. All license renewals shall be on a biennial basis.

II. Any person licensed under this chapter who intends to continue practicing nursing or nursing-related activities shall, by midnight on his or her date of birth in the renewal year, complete continuing education requirements, complete continuing competence requirements, pay the renewal fee and submit a completed application for license renewal. The payment of the renewal fee and the completed application must be at the board's office no later than midnight on the applicant's date of birth in the renewal year. The board shall mail a renewal application form with instructions to each licensee at the address on file with the board at least 30 days before the licensee's application deadline. However, failure by the licensee to receive the application form with instructions shall not relieve the licensee of the obligation to meet the deadline. The board shall not renew any license issued under this chapter unless it is satisfied that the applicant for renewal is of good character, as character relates to nursing or nursing-related activities.

III. If an applicant for license renewal has met the requirements of paragraph II, a license previously issued to the applicant under this or a predecessor chapter shall continue valid and in effect pending the decision by the board on the application for renewal.

IV. If an applicant for license renewal has not met the requirements of paragraph II, any license previously issued to the applicant under this or a predecessor chapter shall lapse at midnight of the applicant's date of birth in the renewal year. A holder of a lapsed license shall not practice nursing or nursing-related activities until the license has been reinstated.

V. Application for reinstatement of a license lapsed under this section shall include payment of a reinstatement fee and be made, and granted or denied, in accordance with rules adopted by the board pursuant to RSA 541-A.

326-B:27 Temporary Licensure.

I. The board may issue temporary licenses valid for no more than 180 days to applicants described in paragraph II, and may renew such temporary licenses in accordance with rules adopted pursuant to RSA 541-A. A temporary license shall become void on the date the board denies the permanent license sought by the holder of the temporary license.

II. The following applicants for licensure as registered nurses or practical nurses may be issued temporary licenses:

(a) Unlicensed applicants for licensure under paragraph I and applicants for licensure under RSA 326-B:17, III who have met all requirements for licensure except that they have not yet taken the required examination or the results of the examination are not yet available to the board.

(b) If they can demonstrate proficiency in English, currently foreign-licensed applicants for licensure under RSA 326-B:17, I who have met all requirements for licensure except that they have not yet taken the required examination or the results of the examination are not yet available to the board.

(c) Applicants for licensure under RSA 326-B:17, II who have met all of the requirements of that paragraph and are awaiting the board's decision on their application for permanent licensure.

(d) Applicants for licensure under RSA 326-B:17, II who have met all requirements except for any continuing competence requirements applicable to them.

III. Applicants described in paragraph II who have received temporary licenses shall practice only under the supervision of a registered nurse currently licensed in New Hampshire.

326-B:28 Obligations of Licensees.

I. In response to board inquiries relevant to a licensee's status or practice of nursing or nursing-related activities, each licensee shall provide complete and truthful information.

II. Each licensee shall notify the board if a license is lost or stolen.

III. Each licensee shall notify the board of a change of name or address as soon as such change occurs.

IV. Each licensee shall report to the board those acts or omissions which are violations of this chapter or grounds for disciplinary action.

326-B:29 Continuing Education. Applicants for license renewal and license reinstatement after lapse shall complete continuing education as follows:

(a) An LNA, shall complete 12 contact hours of continuing education in programs approved by the board each year; provided that licensees who hold a certificate of medication administration, shall complete at least 4 hours of those 12 contact hours in medication administration.

(b) An LPN or an RN, shall complete 30 contact hours of continuing education every 2 years; or

(c) An ARNP, in addition to the continuing education requirements to renew or reinstate a license as an RN, shall complete 30 contact hours of continuing education every 2 years; 20 contact hours of which shall be specific to the specialty for

which renewal or reinstatement is sought, and 5 contact hours of which shall be training in pharmacology appropriate to the specialty for which license renewal or reinstatement is sought.

326-B:30 Continuing Competence.

I. Applicants for first licensure, license renewal, or license reinstatement after lapse shall have or maintain continuing competence in their area of licensure and may be required to achieve and demonstrate such competence as a condition of licensure, license renewal or license reinstatement.

II. In addition, individuals seeking reinstatement of their licenses after disciplinary denial of license renewal, disciplinary suspension or disciplinary revocation or seeking the removal of disciplinary limitations placed on their licenses may be required to achieve and demonstrate continuing competence as a condition of license reinstatement or the removal of limitations.

326-B:31 Education Programs.

I. The board shall approve, disapprove, and withdraw approval for education programs intended to prepare students for licensure or for certification. An educational institution or other entity conducting such an education program shall comply with rules consistent with paragraphs II and III and adopted by the board pursuant to RSA 541-A.

II. With respect to the education programs named in paragraph I, the board is authorized to establish:

- (a) Minimum qualification of faculty and administrators.
- (b) The content of the curriculum.
- (c) The minimum number of hours of instruction and clinical work.
- (d) Any standards to be met for successful completion of the programs which may be additional to any required by the entities conducting the programs.
- (e) Procedures for initial, full, and conditional approval of the programs by the board.
- (f) Qualifications for entrance into education programs intended to prepare licensed nursing assistants to become medication nursing assistants, which qualifications may be additional to any required by the entities conducting the programs.
- (g) Application procedures for entrance into education programs intended to prepare licensed nursing assistants to become medication nursing assistants, which procedures may be additional to any required by the entities conducting the programs.
- (h) Administrative organization of education programs intended to prepare licensed nursing assistants to become medication nursing assistants.
- (i) The content of, and standards for passing, examinations administered by education programs intended to prepare licensed nursing assistants to become medication nursing assistants.

III. Education programs shall include:

- (a) Curricular topics consistent with the knowledge and skills required for the licensure or certification and for the practice for which they are designed to prepare.
- (b) Instruction administered and organized in accordance with established educational principles.
- (c) Content relating to the biological, physical, social, behavioral and nursing and medical sciences.

IV. The board shall periodically survey all education programs intended to prepare students for licensure or certification under this chapter to determine compliance with this section and the rules adopted by the board. If an education program is in overall compliance, the board shall grant initial, full or conditional approval.

V. If the board determines that an education program does not comply with the requirements of this section and the rules adopted by the board, the board shall notify the education program of the specific areas of non-compliance.

VI. The board shall withdraw approval from any education program failing to correct specified areas of non-compliance within a time period established by rules adopted by the board, provided that such action shall be taken only after consultation with representatives of the program.

VII. Any education program conducted in another state shall be deemed to be an education program approved by the board if that program meets the requirements for approval established by this section and the boards, rules and the program has been approved by the regulatory authority of its state.

326-B:32 Duty to Warn of Violent Acts of Client; Civil Liability.

I. Any licensee, or person working under the supervision of a licensee to provide services that are customary and necessary for diagnosis or treatment, has a duty to warn of, or to take reasonable precautions to provide protection from, a client's violent behavior when the client has communicated to the registered nurse practitioner or the person working under an advanced registered nurse licensee, or person working under the supervision of a licensee, a serious threat of physical violence against a clearly identified or reasonably identifiable victim or victims, or a serious threat of substantial damage to real property.

II. The duty may be discharged by the licensee, or a person working under the supervision of a licensee to provide services that are customary and necessary for diagnosis or treatment by making reasonable efforts to communicate the threat to the victim or victims, notifying the police department closest to the client's or potential victim's residence, or obtaining civil commitment of the client to the state mental health system.

III. No monetary liability or cause of action based on breach of client privacy, confidentiality or any other ground shall arise from an act or communication done in a good faith effort to discharge a duty in accordance with paragraph II.

326-B:33 Duties of Licensees Relating to Reports of Sexual Relations.

I. In this section:

(a) "Former client" means a person who was diagnosed or treated by a licensee of the board within the 2 years prior to the sexual relations in question.

(b) "Sexual relations" means the intentional touching of any part of the client's body, or any verbal or non-verbal communication, for the purpose of sexual arousal or gratification of either party.

II. If, during the course of diagnosis or treatment by a licensee, a client alleges that another counselor or health care practitioner licensed by the board of nursing or any other state licensing or certifying agency has engaged with the client in sexual relations, the licensee shall have a duty to inform the client that the act reported by the client may be unprofessional or unethical and may subject the actor to disciplinary action by the actor's licensing or certifying agency.

III. No liability for breach of client confidentiality, slander or defamation, or other civil or criminal liability, shall arise from the disclosure by a licensee of information related to reported sexual relations between a client and any licensee of a state licensing or certifying agency when the disclosure is made in good faith and made to the board of nursing or any other state licensing or certifying agency

IV. If the client of a licensee on the client's own initiative reports to the board of nursing sexual relations with a licensee of another state agency, the licensee shall provide support and advocacy to the client, either directly or indirectly through referral.

326-B:34 Privileged Communications Between Licensees and Their Clients.

I. Confidential communications between licensees and their clients are placed on the same basis as those provided by law between physician and patient, and, except as otherwise provided by law, no licensee shall be required to disclose such privileged communications. Confidential communications between a client of a licensee and any person working under the supervision of such licensee to provide services that are customary and necessary for diagnosis and treatment are privileged to the same extent as would be the same communications between the supervising licensee and the client.

II. This section shall not apply to disciplinary proceedings conducted by:

(a) The board under this chapter;

(b) The board of examiners of nursing home administrators under RSA 151-A:11; or

(c) Any other statutorily created health care occupational licensing board conducting disciplinary proceedings.

III. This section shall not apply to hearings conducted pursuant to RSA 135-C or RSA 464-A.

IV. This section shall also not apply to the release of blood samples and the results of laboratory tests for blood alcohol content taken from a person who is under investigation for driving a motor vehicle while such person was under the influence of intoxicating liquors or controlled drugs. The use and disclosure of such information shall be limited to the official criminal proceedings.

326-B:35 Confidentiality of Information. Any reports, information or records provided to the board by an individual, agency, facility, institution, or organization pursuant to this chapter shall be confidential insofar as the reports, information or records identify or permit identification of any client. However, the board may disclose confidential information:

I. When required to do so by this chapter or any other law.

II. When the information is relevant, during an adjudicative hearing or informal conference before the board.

III. In an agreement to settle a matter subject to adjudicative hearing, when the information constitutes or pertains to the basis of board action.

326-B:36 Emergency Treatment; Assisting the Board; Immunity From Civil Liability.

I. No person authorized to practice under this chapter or under the laws of any other state who, in good faith, renders emergency care at the scene of an emergency, which occurs both outside the place and the course of employment, shall be liable for any civil damages as a result of acts or omissions in rendering such emergency care, or as a result of any act or failure to act to provide or arrange for further medical treatment or care.

II. Any person acting in good faith shall be immune from civil liability to a licensee or an applicant for licensure for making any report or other information available to the board or assisting the board in carrying out any of its duties.

326-B:37 Disciplinary Action; Misconduct.

I. In order to assure the citizens of New Hampshire a reasonable standard of nursing care the board may undertake investigations and disciplinary proceedings:

(a) Upon its own initiative.

(b) Upon written complaint of any person which charges that a licensee has committed any acts of misconduct under paragraph III of this section and which specifies the grounds for such complaint.

(c) Upon notification by the licensing authority of another jurisdiction that a licensee's license has been disciplined in that jurisdiction.

II. The board shall conduct an investigation of any person licensed by the board who has had brought against him or her

3 reservable claims, written complaints, or actions for medical injury, or any combination thereof, which pertain to 3 different acts or events within any consecutive 5-year period. For the purpose of this paragraph, medical injury means any adverse, untoward or undesired consequences arising out of or sustained in the course of professional services rendered by a licensee, whether resulting from negligence, error or omission in the performance of such services; from rendition of such services without informed consent or in breach of warranty or in violation of contract; from failure to diagnose; from premature abandonment of a patient or of a course of treatment; from failure properly to maintain equipment or appliances necessary to the rendition of such services; or otherwise arising out of or sustained in the course of such services.

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

(a) Knowingly or negligently, whether or not intentionally, providing inaccurate material information to the board or failing to provide complete and truthful material information upon inquiry by the board, including during the process of license application.

(b) Conviction of a felony or any criminal act, not including traffic offenses, or failure to report such conviction within 30 days.

(c) Unethical or unprofessional conduct, including sexual relations with a client as defined in RSA 326-B:33.

(d) Failure to provide care with reasonable skill, safety and regard for patient rights, with or without actual patient injury.

(e) Actual or potential inability to render care with reasonable skill and safety by reason of illness, use of alcohol, drugs, chemicals, or any other material, or as a result of mental or physical conditions.

(f) Disciplinary action by a licensing authority in another jurisdiction.

(g) Failure to take appropriate action to safeguard individuals from incompetent counselors and health care practitioners, whether or not they are licensed in this state.

(h) Violations of any provision of this chapter, any substantive rule adopted by the board pursuant to RSA 541-A, or any other state or federal statute or substantive rule reasonably related to the licensee's ability to safely practice nursing or nursing-related activities.

IV. The board may refuse to renew or reinstate a license on disciplinary grounds, or take disciplinary action in any one or more of the following ways:

(a) By reprimand or by suspension, limitation, conditions or probation of a license for a period of time as determined reasonable by the board.

(b) By revocation of a license.

(c) By requiring licensees to participate in educational or rehabilitative programs in the area or areas in which they have been found deficient or incompetent.

(d) By requiring the licensee to submit to the care, counseling, or treatment of a physician, counseling service, health care facility, professional assistance program, or any comparable person or facility approved by the board.

(e) By requiring the person to practice under the direct supervision of a registered nurse for a period of time specified by the board.

(f) By imposition, after notice and the opportunity for hearing, of fines not to exceed \$1,000 for each violation or, in the case of a continuing violation, \$100 for each day the violation continues.

V. In cases involving imminent danger to public health, safety, or welfare, the board may order the immediate suspension of a license pending an adjudicative proceeding. The board shall commence this adjudicative proceeding not later than 10 working days after the date of the board order suspending the license. The licensee may waive the 10-day commencement requirement to allow for additional time to prepare for a hearing. If the licensee waives the requirement, the license shall remain suspended until the completion of the hearing. A record of the proceeding shall be made by a certified shorthand court reporter provided by the board. Unless expressly waived by the licensee, board failure to commence an adjudicative proceeding within 10 working days shall mean that the suspension order is automatically vacated. The board shall not again suspend the license for the same conduct which formed the basis of the vacated suspension without granting the licensee prior notice and an opportunity for an adjudicative proceeding.

VI. Every individual, agency, facility, institution or organization that employs licensed nursing personnel within the state shall report to the board within 30 days any action by a licensee that willfully violates paragraph II. The board shall have authority, after notice and the opportunity for hearing, to impose civil penalties of up to \$1,000 per violation upon persons found to have willfully violated the reporting requirements of this paragraph.

326-B:38 Investigations and Hearings.

I. The board shall investigate possible misconduct by licensees and other matters governed by the provisions of this chapter. Investigations shall be conducted with or without the issuance of a board order setting forth the general scope of the investigation. Board investigations and any information obtained by the board pursuant to such investigations shall be exempt from the public disclosure provisions of RSA 91-A, unless such information subsequently becomes part of a public disciplinary hearing. However, the board may disclose information acquired in an investigation to law enforcement or health licensing agencies in this state or any other jurisdiction, or in accordance with specific statutory requirements or court orders.

II. The board may appoint legal counsel, health care advisors or other investigators to assist with any investigation and with adjudicative hearings.

III. The form taken by an investigation is a matter within the discretion of the board. The board may conduct investigations on an ex parte basis.

IV.(a) The board may administer oaths or affirmations, preserve testimony, and issue subpoenas for witnesses, documents and things, relative to investigations or adjudicative hearings, except that subpoenas for records issued pursuant to paragraph V may be issued at any time.

(b) The board may serve a subpoena on any licensee by certified mail, but shall serve a subpoena on any other person in accordance with the procedures and the fee schedules established by the superior court.

(c) A person licensed by the board shall not be entitled to a witness fee or mileage expenses for travel within the state related to his or her appearance at a hearing or investigatory proceeding.

(d) In order to be valid any subpoenas issued by the board, except one issued to a licensee, shall be annotated "Fees guaranteed by the New Hampshire board of nursing."

(e) A minimum of 48 hours notice shall be given for compliance with a subpoena issued under this paragraph.

V. The board may at any time subpoena a licensee's health care records, employment records and nursing education academic records in the possession of its licensees, nursing education programs licensed by the board or hospitals, and other health care providers and facilities regulated in this state, except that it may not subpoena quality assurance records of health facilities licensed under RSA 151. Subpoenas shall be served by certified mail or personal delivery to the address currently on file with the board in the case of delivery to a licensee. No witness or other fee shall be required. A minimum of 15 days' advance notice shall be allowed for complying with a subpoena issued under this paragraph.

VI. Complaints of licensee misconduct shall be in writing and shall be treated as petitions for the commencement of a disciplinary hearing. The board shall determine whether a complaint alleges misconduct sufficient to support disciplinary proceedings. If the board determines that it does, the board shall forward a copy of the complaint to the licensee complained against within 5 business days of its determination. If the board determines that it does not, the board shall send the complainant a written notice of dismissal of the complaint. Some or all of the allegations in a complaint may be consolidated with another complaint or with issues the board wishes to investigate or hear on its own motion. If an investigation of a complaint results in an offer of settlement by the licensee, the board may settle the allegations against the licensee without the consent of a complainant, provided that material facts are not in dispute.

VII. At any time during an investigation of a complaint, and without issuing a subpoena, the board may mail a copy of a complaint to the licensee named in the complaint, and may require in a written request that the licensee and the licensee's employer provide detailed and good faith written responses to allegations identified by the board and also provide copies of all records concerning any client identified in the complaint. The licensee and others receiving inquiries from the board shall respond within a reasonable time period of not less than 15 days as the board may specify. This procedure may also be used in connection with matters the board has undertaken to investigate on its own motion.

VIII. The board may hold adjudicative hearings concerning allegations of misconduct or other matters within the scope of this chapter. Such hearings shall be public proceedings. Any member of the board other than the public members, or any other qualified person appointed by the board, shall have authority to preside at such a hearing and to issue oaths or affirmations to witnesses.

IX. The board shall give the respondent and the complainant, if any, at least 15 days' written notice of the date, time and place of a hearing, except as otherwise provided in this chapter. Such notice shall comply with RSA 541-A and include an itemization of the issues to be heard, and, in the case of a disciplinary hearing, a statement as to whether the action has been initiated by a written complaint or upon the board's own motion, or both. If a written complaint is involved, the notice shall provide the complainant with a reasonable opportunity to intervene as a party. Such notice shall be sent by certified mail return receipt requested to the complainant and to the respondent at the address provided by respondent currently on file at the board offices. Notice mailed in compliance with this section shall be deemed served.

X. The board may at any time dispose of allegations in a complaint, investigation, or disciplinary hearing by settlement, default or consent order, by issuing an order of dismissal for failing to state a proper basis for disciplinary action or by summary judgment order based upon undisputed material facts. In disciplinary hearings, the board may hold pre-hearing conferences which shall be exempt from the provisions of RSA 91-A, but any final disciplinary action or decision which occurs without holding a public hearing shall be publicly released at the time it is served upon the parties.

XI. Final disciplinary actions and other adjudicative decisions made by the board shall be reduced to writing and served upon the parties. Such decisions shall not be released to the public until they are served upon the parties.

XII. Any person appearing at a board hearing or investigation may be represented by legal counsel, or other representative but the board shall have no obligation or authority to appoint or provide such representation.

XIII. The board shall hear any complaint not resolved at or prior to a preliminary hearing.

XIV. In the case of sanctions for discipline in another jurisdiction, the decision of the other jurisdiction's disciplinary authority may not be collaterally attacked and the board may impose any of the sanctions set forth in this chapter, but shall

provide notice and an opportunity to be heard if it intends to impose sanctions above those imposed by the other jurisdiction.

326-B:39 Rehearing; Appeals.

I. Any person who has been refused a license by the board or has been disciplined by the board shall have the right to petition for a rehearing within 30 days after the original decision.

II. Appeals from a decision on rehearing shall be by appeal pursuant to RSA 541.

III. No sanction shall be stayed by the board during an appeal.

326-B:40 Injunctive Relief. The attorney general, the board of nursing, any citizen, or the prosecuting attorney of any county or municipality where the act occurs may maintain an action to enjoin a person not currently licensed to do so from practicing, or purporting to practice, nursing or nursing-related activities. The action to enjoin shall not replace any other civil, criminal, or regulatory remedy. An injunction without bond is available to the board.

326-B:41 Unlawful Acts. It shall be unlawful for any person or entity to:

I. Sell or fraudulently obtain or furnish any nursing diploma, license or record, or to aid and abet in such an act;

II. Practice as a licensee under this chapter when the license to do so has been revoked or suspended or when the license to do so has lapsed;

III. Use, in connection with the individual's name, any designation tending to imply licensure as a registered nurse, practical nurse or nursing assistant unless so licensed under this chapter; or

IV. Represent or imply that the person or entity is conducting a nursing education program or a program for the education of nursing assistants which has been approved by the board when the program has not been so approved.

V. Disclose, solicit or compile information regarding the contents of any licensing examinations relative to this chapter except as authorized by the board.

326-B:42 Persons Licensed Under Previous Laws. Any person, including a CGN, authorized to practice nursing by authority of this state as of the effective date of this section shall continue to be licensed under the provisions of this chapter and shall be eligible for license renewal pursuant to this chapter.

326-B:43 Exemptions. The provisions of this chapter shall not prohibit or limit:

I. The employment in federal government institutions and agencies of nurses who are members of federal agencies and are currently licensed in some state of the United States;

II. The practice of nursing by persons enrolled in nursing programs acceptable to the board when such practice is part of their program of study;

III. The furnishing of nursing assistance in an emergency;

IV. Nursing services by any certified unlicensed graduate nurse who has been engaged in this state in nursing the sick for hire without assuming in any way to be a registered nurse, as a bona fide occupation previous to July 1, 1959 and who was certified prior to January 1, 1975;

V. Nursing services by any one when done in accordance with the practice of the religious principles or tenets of any well-recognized church or denomination which relies upon prayer or spiritual means alone for healing;

VI. The practice of nursing in this state by any currently licensed nurse of another state engaged to accompany and care for a person passing through or temporarily residing in this state, during the period of one engagement not to exceed 2 months.

VII. The administration of medications, by any person employed, or under contract, to provide direct care to clients receiving community-based services pursuant to RSA 135-C or RSA 171-A, provided that persons delivering such care who administer medications shall have successfully completed a medication administration educational program conducted by a registered nurse and approved by the board under rules adopted pursuant to RSA 541-A. The commissioner of health and human services, in consultation with the board, shall adopt rules establishing criteria for the administration of medications, and for the process of approving a registered nurse to conduct the medication administration educational program.

326-B:44 Midwifery Not the Practice of Nursing. Midwives certified under RSA 326-D, and practicing midwifery as defined by RSA 326-D:2, V, shall not be construed as practicing nursing under this chapter.

326-B:45 Direct Care in Community-Based Services. The administration of medications, by non-licensees to individuals receiving community-based services pursuant to RSA 135-C or RSA 171-A shall not be construed as practicing nursing.

2 Nursing Assistant Fund. Amend RSA 6:12, I(bb), to read as follows:

(bb) Money received under RSA ~~[326-B:29]~~ **326-B:8**, which shall be credited to the board of nursing's nursing assistant fund.

3 Residential Care and Facility Licensing; Disciplinary Actions; Report to Board of Nursing Added.

151:6-b Report of Disciplinary Action. Every facility administrator, or designee, for any health care facility licensed under this chapter shall report to the board of medicine **or the board of nursing** any disciplinary or adverse action~~[-]~~ **taken against a licensee of the board. Such report shall be made** within 30 days after such action is taken~~[-, including]~~. **Actions reported shall only involve misconduct sufficient to support disciplinary proceedings by the board and shall include all** situations in which allegations of misconduct are settled by voluntary resignation without adverse action~~[-, against a person licensed by the board]~~.

4 Residential Care and Facility Licensing; Rules. Amend RSA 151:9, I(k) to read as follows:

(k) Procedures for reviewing documentation of the mandatory completion of a state approved program under RSA ~~[326-B:4-a]~~ **326-B** for assistants to nurses in facilities licensed under RSA 151:2, who may not assume the responsibility of the position of an assistant to nurses prior to completion of the appropriate course required by this chapter.

5 Privileged Communication. Amend RSA 316-A:27 to read as follows:

316-A:27 Privileged Communications. The confidential relations and communications between any person licensed under provisions of this chapter and such licensed person's patient are placed on the same basis as those provided by law between attorney and client, and, except as otherwise provided by law, no such doctor of chiropractic shall be required to disclose such privileged communications. Confidential relations and communications between a patient and any person working under the supervision of a doctor of chiropractic that are customary and necessary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with such supervising doctor of chiropractic. This section shall not apply to disciplinary hearings or actions conducted under RSA 316-A:22, relative to the board of chiropractic examiners, RSA ~~[326-B:12]~~ **326-B**, relative to the board of nursing, RSA 151-A:11, relative to the board of examiners of nursing home administrators, or any other statutorily created medical occupational licensing board conducting disciplinary proceedings. This section shall not apply to hearings conducted pursuant to RSA 135-C:27-54.

6 Pharmacies; Definitions. Amend RSA 318:1, I-a to read as follows:

I-a. "Advanced registered nurse practitioner" means a person licensed to practice as an advanced registered nurse practitioner in this state pursuant to RSA ~~[326-B:10]~~ **326-B:13**.

7 Pharmacies; Possessing Prescription Drugs. Amend RSA 318:42, VII (b) to read as follows:

(b) The drugs appear on the current formulary approved pursuant to RSA ~~[326-B:10, H]~~ **326-B**.

8 Controlled Drug Act; Definitions. Amend RSA 318-B:1, I-b to read as follows:

I-b. "Advanced registered nurse practitioner" means a person licensed to practice as an advanced registered nurse practitioner in this state pursuant to RSA ~~[326-B:10]~~ **326-B:13**.

9 Occupational Therapists; Authorizations. Amend RSA 326-C:2, I to read as follows:

I. Consultation and evaluation by an occupational therapist may be performed without a referral. Initiation of occupational therapy services to individuals with medically related conditions shall be based on a referral from a physician or physician assistant licensed by the state board of medicine, an advanced registered nurse practitioner licensed under RSA ~~[326-B:10]~~ **326-B:13**, a chiropractor licensed under RSA 316-A, an optometrist licensed under RSA 327, or any other qualified health care professional who, within the scope of the professional's licensure, is authorized to refer for health care services.

10 Respiratory Care Practice Act; Definitions. Amend RSA 326-E:1, V to read as follows:

V. "Nurse practitioner" means a person licensed to practice as an advanced registered nurse practitioner in this state pursuant to RSA ~~[326-B]~~ **326-B:13**.

11 Mental Health Practice; Definitions. Amend RSA 330-A:2, VIII to read as follows:

VIII. "Psychotherapist" means a psychologist, clinical social worker, pastoral psychotherapist, clinical mental health counselor, or marriage and family therapist licensed under this chapter who performs or purports to perform psychotherapy. This definition shall include psychiatrists licensed as physicians under RSA 329 and advanced registered nurse practitioners licensed under RSA ~~[326-B:10]~~ **326-B:13** as psychiatric nurse practitioners.

12 Mental Health Practice; Penalties. Amend RSA 330-A:23, I to read as follows:

I. Except as provided in RSA 330-A:34, it shall be unlawful for any person to be engaged in mental health practice unless that person is licensed by the board, working as a candidate under the direct supervision of a person licensed by the board, or engaged in the practice of other mental health services as an alternative provider as defined in RSA 330-A:2, I. The license or the registration of such person shall be current and valid. It shall be unlawful for any person to practice as or to refer to oneself as a psychologist, a pastoral psychotherapist, a clinical social worker, a clinical mental health counselor, or a marriage and family therapist, or use the word "psychotherapist," or any variation thereof, in such person's title unless that person is licensed by the board or working as a candidate under the direct supervision of a person licensed by the board. Psychiatrists licensed under RSA 329 and psychiatric nurse practitioners licensed under RSA ~~[326-B:10]~~ **326-B:13** may refer to themselves as psychotherapists.

13 Mental Health Practice; Persons Exempted. Amend RSA 330-A:34, I (e) to read as follows:

(e) The psychotherapy activities and services of physicians licensed under RSA 329, and advanced registered nurse practitioners, licensed under RSA ~~[326-B:10]~~ **326-B:13**.

14 Insurance; Coverage for Mental or Nervous Conditions. Amend RSA 415:18-a, V (d) to read as follows:

(d) "Psychiatric/mental health advanced registered nurse practitioner" means an individual who is licensed as an advanced registered nurse practitioner in psychiatric mental health nursing under RSA ~~[326-B:10]~~ **326-B:13**, who is defined by and whose scope of practice is described under the rules adopted pursuant to RSA 326-B, and who is a licensed registered nurse, educationally prepared in nursing at a minimum of the master's level, and certified in the specialty by a recognized national certifying agency, such as the American Nurses Credentialing Center.

15 Effective Date. This act shall take effect July 1, 2004.

AMENDED ANALYSIS

This bill revises the law governing the occupational regulation of nurses by the board of nursing.