

State of New Hampshire HOUSE RECORD

**First Year of the 159th Session of the General Court
Calendar and Journal of the 2005 Session**

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Friday, March 25, 2005

No. 23

Contains: Amendments for March 30 and 31

HOUSE CALENDAR

**ALL LEGISLATORS ARE ASKED TO BRING THIS CALENDAR
FOR USE ON
WEDNESDAY, MARCH 30 AND THURSDAY, MARCH 31**

WEDNESDAY, MARCH 30

AMENDMENTS

(LISTED IN NUMERICAL ORDER)

2005-0883h

Amendment to HB 25-FN-A

Proposed by the Committee on Public Works and Highways - R

Amend paragraph II, B and the total state appropriation paragraph II of section 1 of the bill by replacing them with the following:

B. Bureau of General Services.

1. State House - Rehab Representatives Hall	\$388,000
Less Other*	<u>-12,876</u>
Net state appropriation subparagraph 1	375,124

* Source of other funds in subparagraph 1 is prior bond authorization as amended in sections 16 and 17 of this act.

2. State Library - Install Fire Suppression System	231,000
3. Legislative Office Building - Install De-Icing System	82,000
4. Monadnock Mill - Repoint Defective Masonry	119,500
5. Londergan Hall - Replace Defective Windows	440,000
6. State House and State House Annex – Repoint Granite and Front Steps	115,000
7. NH Hospital Campus - Steam Plant Plan	75,000
8. All State Owned Facilities - Emergency Repairs	100,000

Notwithstanding the provisions of RSA 228, any sums expended for emergency repairs under subparagraph 8 shall not require approval by governor and council.

9. 5 State Owned Buildings - Upgrade Energy Mgmt System	271,000
10. Supreme Court Building – HVAC	230,000
11. Data Center - Replace Computer Room Cooling Units	444,000
12. Legislative Office Building - Replace Chiller	276,000
13. State House Arch - Repoint Masonry	69,500
14. Office Park South, Roadway Design	250,000
15. M.S. Building, Renovation	<u>9,300,000</u>
Total state appropriation subparagraph B	<u>\$12,378,124</u>
Total state appropriation paragraph II	\$15,961,124

Amend paragraph IX of section 1 of the bill by replacing it with the following:

IX. Department of Resources and Economic Development.

A. Statewide Radio System	\$400,000
B. Hampton Beach Seawall Repairs	2,000,000
Less Other*	<u>-2,000,000</u>
Net state appropriation subparagraph B	0

* To provide funds for the appropriation in subparagraph B for Hampton Beach seawall repairs the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of \$2,000,000 and for said purpose may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-A. Notwithstanding the use of funds under RSA 216:3, IV, payments of principal and interest on the bonds and notes shall be made from the Hampton Beach capital improvement fund established in RSA 216:3, IV.

C. Roof Repair and Replacement Statewide	150,000
D. Interior and Exterior Building Repair Statewide	150,000
E. Mount Washington Electrification	540,000
Less Mount Washington Fund*	<u>-300,000</u>
Net state appropriation subparagraph E	240,000

* To provide funds for the appropriation of Mount Washington Funds made in subparagraph E the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of \$300,000 and for said purpose may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-A. Payments of principal and interest on the bonds and notes shall be made from the Mount Washington fund established in RSA 227-B:9.

Total state appropriation paragraph IX

\$940,000

Amend the bill by inserting after section 22 the following and renumbering the original sections 23 and 24 to read as 25 and 26, respectively:

23 Community-Technical College System; Oversight and Reporting Required. The community-technical college system shall provide a report every 180 days to the governor and legislative capital budget overview committee on the progress of each of the capital projects funded from the sum appropriated and authorized in paragraphs III and X, C of section 1 of this act beginning September 30, 2005 until the funds appropriated in paragraphs III and X, C of section 1 are fully expended. Said reports shall include the method of selecting contractors, the current total project cost, funds encumbered, actual expenditures, and estimated completion date for each project.

24 Bureau of Public Works; Construction Inspection Services. The appropriations for those projects which are managed by the bureau of public works, department of transportation, may be expended to fund temporary personnel for the purpose of providing construction inspection services for those projects included in sections 1, 3, and 4 of this act.

Amend paragraph XXX of section 25 of the bill by replacing it with the following:

XXX. The appropriation made to the community-technical college system in 2003, 240:24, for student residence hall – Berlin Campus.

Amend the bill by replacing section 26 with the following:

26 Effective Date.

I. Section 25 of this act shall take effect June 30, 2005.

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

2005-0474h

Amendment to HB 56

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

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

2 Food Service Licensure; Certified Food Protection Manager Defined. Amend RSA 143-A:3, I to read as follows:

I. “Certified food protection manager” means a person who meets the requirements of RSA 143-A:9-c.

I-a. “Commissioner” means the commissioner of the department of health and human services.

3 Food Service Licensure; Definition. Amend RSA 143-A:3, V to read as follows:

V. “Occasional food service establishment” means any food service establishment operated by a private or public organization or institution, whether profit or nonprofit, which prepares food or drink for sale or for service, and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge, no more than ~~[96 hours at no fewer than 3 hours a day]~~ **4 days** during a 30-day period. ***This definition shall not apply to the following non-profit entities which do not offer regularly-scheduled weekday meal service: extracurricular school events; non-profit sporting events; religious activities; or non-profit service organizations.***

4 New Paragraph; Definitions Added. Amend RSA 143-A:3 by inserting after paragraph VI the following new paragraph:

VI-a. “Potentially hazardous food” means:

(a) A food which is natural or synthetic and is in a form capable of supporting the:

- (1) Rapid and progressive growth of infectious or toxigenic microorganisms;
- (2) Growth and toxin production of *Clostridium botulinum*; or
- (3) In raw shell eggs, the growth of *Salmonella enteritidis*; and

(b) Which is further defined by the United States Public Health Service Food Code adopted by the federal Food and Drug Administration.

5 New Subdivision; Food Service Licensure; Requirement of Certain Establishments to Have a Certified Food Protection Manager. Amend RSA 143-A by inserting after section 9-a the following new subdivision:

Food Protection Manager Certification

143-A:9-b Certified Food Protection Manager Requirement.

I.(a) Except as provided in paragraph II, each food service establishment licensed under RSA 143-A serving a potentially hazardous food shall assign at least one employee to be a certified food protection manager.

(b) A food protection manager shall have the responsibility to ensure that appropriate food safety practices are observed. The food protection manager may have supervisory or training responsibilities at the food service establishment.

(c) A food protection manager shall not be required to be on duty during all of the hours of operation of the food service establishment.

II. No person shall use the title "certified food protection manager" or in any way present himself or herself as a certified food protection manager unless he or she holds a current certificate from a certification program which meets the Conference for Food Protection standards for training, testing, and certification.

III. The following establishments shall not be required to assign a person who is a certified food protection manager:

(a) Food service establishments that serve only commercially pre-packaged foods and beverages, commercially pre-cooked potentially hazardous foods that are dispensed in a manner that minimizes contamination of the food, or commercially prepared cold foods not requiring any further preparation and dispensed or packaged immediately to the consumer in a manner that minimizes contamination of the food.

(b) Home food manufacturers and bed and breakfast establishments.

(c) Farm stands as described in RSA 21:34-a.

(d) Public elementary and secondary school cafeterias licensed under this chapter.

IV. Businesses that have multiple food service settings within a single, physical and geographically contiguous location are required to employ only one certified food protection manager.

V. The commissioner may by rule pursuant to RSA 541-A, establish an exemption for other small food service establishments.

143-A:9-c Certified Food Protection Managers. Each certified food protection manager shall:

I. Be at least 18 years of age.

II. Pass a food protection manager certification test, which may be written or oral, that meets the standards of the Conference for Food Protection.

III. Be recertified at least every 5 years.

143-A:9-d Termination of Food Protection Manager; New or Changed Ownership.

I. Upon termination of the employment of a certified food protection manager, the food service establishment where the manager was employed shall have 60 days to assign a new certified food protection manager in accordance with RSA 143-A:9-c.

II. Establishments that are new or have changed ownership shall meet the requirements of this section within 90 days of initial operation.

143-A:9-e Display of Certificate. Food protection manager certificates shall be:

I. Prominently posted in the establishment next to the food service license to operate; and

II. Removed when the certified food protection manager identified in the certificate is no longer employed by the establishment.

6 New Paragraph; Food Service Licensure; Rulemaking. Amend RSA 143-A:9 by inserting after paragraph I-a the following new paragraph:

I-b. The application process for certification of food protection managers, recertification requirements for certified food protection managers, and administrative fines for violations of provisions of this chapter relative to certified food protection managers.

7 Applicability. Notwithstanding RSA 143-A:9-b – RSA 143-A:9-e, no food service establishment licensed under RSA 143-A which serves potentially hazardous food shall be required to assign a person who is a certified food protection manager until July 1, 2006.

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

AMENDED ANALYSIS

This bill:

- (1) Requires food service establishments, unless exempted, to assign at least one full-time employee to be a certified food protection manager.
 - (2) Establishes a definition of certified food protection manager.
 - (3) Grants the commissioner of health and human services certain rulemaking authority.
 - (4) Provides that food service establishments shall not be required to have a certified food protection manager until July 1, 2006.
 - (5) Clarifies the definition of occasional food service establishment in the food service licensure statute.
- 2005-0725h

Amendment to HB 66

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

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

AN ACT regulating mandatory overtime for nurses and assistants.

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

1 New Subdivision; Regulating Mandatory Overtime for Nurses and Assistants. Amend RSA 275 by inserting after section 60 the following new subdivision:
Mandatory Overtime for Nurses and Assistants

275:61 Prohibited Overtime.

I. A registered nurse, licensed practical nurse, or a licensed nursing assistant licensed under RSA 326-B shall not be disciplined, or lose any right, benefit, or privilege for refusing to work more than 12 consecutive hours, except as provided in paragraph II. A nurse may be disciplined for refusing mandatory overtime in a case when overtime is required under paragraph II. Any nurse who is mandated to work more than 12 consecutive hours, as permitted by this subdivision, shall be allowed at least 8 consecutive hours of off-duty time immediately following the worked overtime.

II. The prohibition against mandatory overtime shall not apply to:

- (a) A nurse participating in surgery, until the surgery is completed;
- (b) A nurse working in a critical care unit, until another employee beginning a scheduled work shift relieves him or her;
- (c) A public health emergency; or
- (d) A nurse covered by a collective bargaining agreement containing provisions addressing the issue of mandatory overtime.

275:62 Special Agreement. Employers shall be exempted from the provisions of RSA 275:61 by written agreement between the employer and employee, made without coercion or pressure, provided the agreement is submitted to the commissioner of the department of labor. The agreement may be terminated by the employee by written notice to the employer and the commissioner of the department of labor. Said termination shall be effective 14 days after notice is provided.

275:63 Penalties. Any employer who willfully violates any provision of this subdivision shall be subject to a civil penalty under RSA 273:11-a.

2 Effective Date. This act shall take effect January 1, 2006.

AMENDED ANALYSIS

This bill regulates mandatory overtime for nurses and assistants and provides civil penalties.

2005-0065h

Amendment to HB 68

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

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

1 Disorderly Conduct; Noise. Amend RSA 644:2, III(a) to read as follows:

(a) Making ***or allowing to be made*** loud or unreasonable noises in a public place, or making ***or allowing to be made*** loud or unreasonable noises in a private place which can be heard in a public place or other private places, which noises would disturb a person of average sensibilities; or

2 New Subparagraph; Disorderly Conduct; Noise. Amend RSA 644:2, IV by inserting after subparagraph (b) the following new subparagraph:

(c) When noise under subparagraph II(f) or III(a) is emanating from a residence or its curtilage, or from a vehicle or its sound system, and can be plainly heard from a distance of 50 feet or more, a law enforcement officer shall be considered a person of average sensibilities for purposes of determining whether there is a breach of the peace, public inconvenience, annoyance, or alarm, and the officer may take enforcement action to abate such noise upon detecting the noise, or upon receiving a complaint from another person. Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 5:

3 Disorderly Conduct; Gender Neutral Language Added. Amend the introductory paragraph of RSA 644:2, II to read as follows:

II. He ***or she***:

4 New Subparagraph; Disorderly Conduct; Noise; Knowingly Causing. Amend RSA 644:2, II by inserting after subparagraph (e) the following new subparagraph:

(f) Knowingly causes a breach of the peace, public inconvenience, annoyance, or alarm by allowing loud or unreasonable noises to be made in a private place under his or her control, which can be heard in a public place or other private places, which noises would disturb a person of average sensibilities.

AMENDED ANALYSIS

This bill allows a law enforcement officer to take enforcement action to abate loud or unreasonable noises with or without a complaint from another person.

2005-0875h

Amendment to HB 69

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

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

AN ACT relative to large groundwater withdrawals.

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

1 Approval for Large Groundwater Withdrawals; Municipal Information. Amend RSA 485-C:21, II to read as follows:

II. Applications for approval of water withdrawals of 57,600 gallons or more per day shall be filed with the department ~~in~~ ***on*** a form approved by the department. A preliminary report submitted by a public water system pursuant to department rules shall be an application for purposes of this section. Copies of the application ***and any subsequent materials submitted to the department*** shall be forwarded by certified mail by the applicant to the governing bodies of each municipality and each supplier of water within the anticipated zone of contribution to the well. ***The department shall provide the governing body of each municipality with copies of any mailed correspondence sent to the applicant. The department shall provide the applicant with copies of any***

mailed correspondence sent to or received from the governing body of a municipality.

2 New Paragraph; Approval for Large Groundwater Withdrawals; Hearing. Amend RSA 485-C:21 by inserting after paragraph V the following new paragraph:

V-a. Upon the request of the governing body of a municipality within the anticipated zone of contribution, the department shall hold a public hearing, after receipt of the final report, and prior to a final decision. The department shall notify the municipalities within 10 days of receiving the final report. The municipalities shall have 15 days within which to request a public hearing. Notice and response to hearing requests shall be the same as that required under paragraph IV.

3 Appeals. RSA 485-C:21, VI is repealed and reenacted to read as follows:

VI. Decisions of the department may be appealed in accordance with RSA 21-O:7, IV.

4 New Paragraph; Public Record. Amend RSA 485-C:21 by inserting after paragraph VI the following new paragraph:

VII. Records of public hearings shall be available pursuant to RSA 91-A.

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

AMENDED ANALYSIS

This bill:

I. Requires the department to provide each municipality with a copy of any correspondence sent to an applicant and to provide the applicant with copies of correspondence to an from a municipality.

II. Requires a public hearing prior to the issuance of a decision on an application for a large groundwater withdrawal.

III. Makes the record of a public hearing on a large groundwater withdrawal subject to RSA 91-A.

2005-0659h

Amendment to HB 94-FN-A

Proposed by the Minority of the Committee on Ways and Means - R

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect July 1, 2006.

2005-0864h

Amendment to HB 114

Proposed by the Committee on Executive Departments and Administration - C

Amend the bill by replacing section 13 with the following:

13 Flunitrazepam; Controlled Drug Act; GHB and Ketamine Hydrochloride Removed. RSA 318-B:1-c is repealed and reenacted to read as follows:

318-B:1-c Flunitrazepam.

I. The legislature intends that the provisions of paragraph III of this section shall remain in effect until such time as flunitrazepam is scheduled by the commissioner of the department of human services in accordance with and pursuant to RSA 318-B.

II. The legislature finds that flunitrazepam, marketed under the trade name rohypnol, which has a sedative, hypnotic, and amnesiac effect, has no acceptable medical uses in the United States and carries a high potential for abuse. Therefore, flunitrazepam meets the criteria for placement on schedule I of controlled drugs.

III. Notwithstanding the provisions of RSA 318-B:1-a, relative to scheduling by rulemaking of the commissioner of the department of health and human services, flunitrazepam shall be scheduled as a schedule I controlled drug:

2005-0031h

Amendment to HB 125

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

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

AN ACT relative to ignition interlock devices.

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

1 New Paragraph; Alcohol Ignition Interlock Program; Driving After Revocation or Suspension. Amend RSA 265:93-a by inserting after paragraph I the following new paragraph:

I-a. Any person who is convicted of driving while under suspension or revocation resulting from a DWI offense shall be required by the court to install an ignition interlock device in any vehicle registered to that person or used by that person on a regular basis, for the remaining period of suspension or revocation plus an additional period not less than 6 months nor more than 2 years. The court may order such installation on a temporary basis prior to conviction as a condition of bail.

2 Alcohol Ignition Interlock Circumvention. Amend RSA 265:93-b, I to read as follows:

I. Any person required by the court to ~~[drive only a motor vehicle equipped with]~~ **install** an ignition interlock device shall not drive any motor vehicle not equipped with this device.

3 Effective Date. This act shall take effect January 1, 2006.

AMENDED ANALYSIS

This bill requires an ignition interlock device on any vehicle registered to or regularly used by a person who drives after a suspension or revocation resulting from a DWI offense. This bill also prohibits persons required to install an ignition interlock device from driving a motor vehicle not equipped with this device.

2005-0850h

Amendment to HB 126

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 relative to a public employee right of free speech.

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

1 New Subdivision; Public Employee Right of Free Speech. Amend RSA 275-E by inserting after section 7 the following new subdivision:

Protection of Public Employee's Right of Free Speech

275-E:8 Definitions. In this subdivision:

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

(a) Persons elected by popular vote.

(b) Persons whose duties imply a confidential relationship to the public employer.

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.

275-E:9 Right to Speak Protected.

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 or any other law, the right of protected speech under this subdivision 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.

2 Rights and Remedies; Public Employee Right of Free Speech Added. Amend RSA 275-E:4, I to read as follows:

I. Any employee who alleges a violation of rights under RSA 275-E:2 ~~[or]~~, 3, **or 9** and who has first made a reasonable effort to maintain or restore such employee's rights through any grievance procedure or similar process available at such employee's place of employment, may obtain a hearing with the commissioner of labor or a designee appointed by the commissioner. Following such hearing, the labor commissioner or the designee appointed by

such commissioner shall render a judgment on such matter, and shall order, as the commissioner or his designee considers appropriate, reinstatement of the employee, the payment of back pay, fringe benefits and seniority rights, any appropriate injunctive relief, or any combination of these remedies.

3 Effective Date. This act shall take effect January 1, 2006.

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.
2005-0242h

Amendment to HB 137-FN

Proposed by the Majority of the Committee on Labor, Industrial and Rehabilitative Services - R

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

2 New Paragraph; Unemployment Compensation Eligibility; Part-Time Work. Amend RSA 282-A:31 by inserting after paragraph I the following new paragraph:

I-a. An unemployed individual shall not be disqualified for eligibility for unemployment compensation benefits solely on the basis that he or she is only available for part-time work. If an individual restricts his or her availability to part-time work, he or she may be considered to be able to work and available for work pursuant to subparagraph I(d) if it is determined that all of the following conditions exist:

(a) The claim is based on the part-time employment.

(b) The claimant is actively seeking and is willing to accept work under essentially the same conditions as existed while the wage credits were accrued.

(c) The claimant imposes no other restrictions and is in a labor market in which a reasonable demand exists for the part-time services he or she offers.

3 Unemployment Benefit Eligibility. Amend RSA 282-A:31, I(d) to read as follows:

(d) He or she is available for and seeking permanent *full-time* work for which he or she is qualified.

4 Repeal. RSA 282-A:31, I-a, relative to unemployment compensation benefits for part-time workers, is repealed.

5 Appropriation of Federal Funds; Department of Employment Security. There is hereby appropriated out of federal funds made available to this state under section 903(d) of the Social Security Act, 42 U.S.C. section 1103(d), as amended, transferred to the state on March 13, 2002, the sum of \$10,033,920, or so much thereof as may be necessary, to be used, under the direction of the New Hampshire department of employment security for the purpose of providing unemployment compensation benefits to claimants who are seeking part-time work under RSA 282-A:31, I-a. Expenditures may include providing funds for benefit payments, additional personnel, and administrative costs and other purposes that are in accordance with any uses authorized by the United States Congress, now or in the future. Such funds shall exclusively be used for expenses authorized under section 903(d) of the Social Security Act, 42 U.S.C. section 1103(d) as amended.

6 Report. On or before August 1, 2006, the commissioner of employment security shall provide to the general court a report detailing the overall financial cost, additional state personnel utilized, and the number of claimants served as a result of RSA 282-A:31, I-a.

7 Effective Date.

I. Sections 3 and 4 of this act shall take effect July 1, 2006.

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

AMENDED ANALYSIS

This bill:

I. Deletes, for a one-year period, the requirement that an individual seek full-time employment to qualify for unemployment compensation benefits.

II. Authorizes the department of employment security to expend federal funds for part-time unemployment compensation benefits.

III. Requires the commissioner of employment security to report to the general court.
2005-0861h

Amendment to HB 158
Proposed by the Committee on Judiciary - C

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

AN ACT relative to Auburn, Exeter, and Hampton District Courts.

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

1 District Courts; Auburn-Candia-Raymond District. RSA 502-A:1, IV is repealed and reenacted to read as follows:

IV. AUBURN-CANDIA-RAYMOND DISTRICT. The Auburn-Candia-Raymond district shall consist of the towns of Auburn, Candia, Deerfield, Nottingham, Raymond, and Northwood. The court shall be located in Candia or Raymond. The court shall hold sessions regularly at the principal court location and elsewhere in the district as justice may require. The court shall bear the name of the city or town in which it is located.

2 District Courts; Hampton District; Exeter District. Amend RSA 502-A:1, II and II-a to read as follows:

II. HAMPTON DISTRICT. The Hampton district shall consist of the towns of Hampton, Hampton Falls, North Hampton, South Hampton, and Seabrook. The district court for the district shall be *temporarily* located in ~~Hampton~~ **Seabrook**, holding sessions regularly therein and elsewhere in the district as justice may require. The name of this court shall be the Hampton District Court.

II-a. EXETER DISTRICT. The Exeter district shall consist of the towns of Exeter, Newmarket, Stratham, Newfields, Fremont, East Kingston, Kensington, Epping, and Brentwood. The district court for the district shall *temporarily* be located in ~~Exeter~~ **Brentwood**, holding sessions regularly therein and elsewhere in the district as justice may require. The name of this court shall be the Exeter District Court.

3 Contingency. RSA 502-A:1, II and II-a as inserted by section 2 of this act shall remain in effect until the Hampton District Court and Exeter District Court are permanently sited in accordance with 2004, 236:8-10, or other provisions of law. In any event the court shall be permanently sited no later than January 1, 2011.

4 Effective Date.

I. Section 1 of this act shall take effect January 1, 2006.

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

AMENDED ANALYSIS

This bill changes the name of the Auburn judicial district to the Auburn-Candia-Raymond district and requires the court to be located in Candia or Raymond.

The bill also temporarily changes the locations of the Hampton District Court and the Exeter District Court.

2005-0828h

Amendment to HB 170

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

Amend RSA 282-A:45-a, I as inserted by section 3 of the bill by replacing it with the following:

I. An employing unit or employer shall file a mass layoff notice with the department if the employer lays off or expects to lay off 25 or more individuals:

- (a) In the same calendar week;
- (b) For an expected duration of 7 days or more; and
- (c) For either of the following reasons:
 - (1) Vacation or holiday shutdown; or
 - (2) Company Closure.

Amend RSA 282-A:45-a as inserted by section 3 of the bill by inserting after paragraph III the following new paragraph:

IV. An employing unit or employer may be granted a waiver from filing the mass layoff notice required in paragraph I if the commissioner determines, in accordance with such rules as the commissioner shall adopt, that it is unlikely that 25 or more of the individuals laid off will file an initial claim, as defined in RSA 282-A:42, II(a), due to the expected receipt of wages, as defined in RSA 282-A:14, III. Any such waiver shall become void if in fact 25 or more of the individuals laid off claim benefits.

Amend RSA 282-A:91-a, I(c) – I(h) as inserted by section 6 of the bill by replacing them with the following:

(c) In determining whether there is any common ownership, management, or control of 2 employers, the commissioner shall use objective factors which may include the extent of commonality or similarity of: ownership; any familial relationships; principals or corporate officers; organizational structure; day-to-day operations; assets and liabilities; and stated business purposes. Ownership of publicly traded mutual funds, publicly traded stocks, and similar publicly traded investments shall not be indicative of common ownership, management, or control.

(d) In determining whether a substantial purpose of the transfer of trade or business was to obtain a reduced liability for contributions, the commissioner shall use objective standards which may include the cost of acquiring the business to which the experience was transferred; how long such business enterprise was continued after the transfer; the extent to which such business enterprise reduced its workforce following the transfer; the size of each employer's workforce before and after the transfer; and the business activity conducted by each employer prior to, and after, the transfer.

(e) In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the commissioner shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(f)(1) If a person knowingly violates or attempts to violate subparagraph (a), (b), or (g) or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of such provision, the person shall be subject to the following penalties:

(A) If the person is an employer, such employer shall be assigned the highest rate assignable under this chapter for the rate year during which such violation or attempted violation occurred and the 3 rate years immediately following this rate year. However, if the person's business is already at such highest rate for any year, or if the amount of increase in the person's rate would be less than 2 percent for such year, then a penalty rate of contributions of 2 percent of taxable wages shall be imposed for such year.

(B) If the person is not an employer, such person shall be subject to a civil fine of not more than \$5,000. Any such fine shall be deposited in the fund established by RSA 282-A:140. Such person shall also be jointly and severally liable with any liable employer for additional contributions and all related penalties, fees, interest, and costs owed as a result of the application of this section. Such person shall be subject to civil action for such liability in any manner provided for collection of contributions in RSA 282-A:141-156.

(2) In addition to other penalties imposed in this paragraph, any violation of this section may be prosecuted under RSA 282-A:166 or any other appropriate statute.

(g) The commissioner shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

(h) For purposes of this section:

(1) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(2) "Person" means "person" as defined in section 7701(a)(1) of the Internal Revenue Code of 1986.

(3) "Trade or business" includes the employer's workforce.

(4) "Violates" or "attempts to violate" includes, but is not limited to, intent to evade, misrepresentation, and willful nondisclosure.

(i) The reporting by an employer of its payroll under the account of another employer with which there is no common ownership, management, or control, is prohibited unless the reporting employer is an employee leasing company lawfully making such report.

(j) A management company which contracts with any employer to report wages of managed employees shall be considered, in accordance with such rules as the commissioner may adopt, to have common management or control with such employer, and with any other management company with which the employer may contract for the same purpose in the future.

Amend the bill by inserting after section 9 the following and renumbering the original section 10 to read as 13:

10 Partial Unemployment. Amend RSA 282-A:14, I to read as follows:

I. **(a)** An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to him and during which he performs no services. An individual who is not entitled to vacation pay from his employer shall be deemed to be in "total unemployment" during the entire period of any general closing of his employer's place of business for vacation purposes, notwithstanding his prior assent, direct or indirect, to the establishment of such vacation period by his employer.

(b) An individual who meets the requirements of RSA 282-A:31, V and who is seeking only part-time work shall be deemed to be partially unemployed only in any week during which the individual was employed fewer than 20 hours.

11 New Paragraph; Unemployment Compensation; Benefit Eligibility Conditions. Amend RSA 282-A:31 by inserting after paragraph IV the following new paragraph:

V. Subparagraphs I(c) and I(d) of this section shall not apply to individuals who are seeking solely part-time work if the individual establishes that:

(a) The individual is the only available adult to care for the individual's natural, adopted, step, or foster child under the age of 16;

(b) The individual's last 6 months in employment as defined in RSA 282-A:9, except RSA 282-A:9, IV(f), or wages earned in a like manner in another state, usually consisted of 30 or fewer hours each week throughout such 6 month period;

(c) The individual is ready, willing, and able to accept and perform suitable work at least 20 hours per week for which there is a market for the services the individual offers, and that the individual has exposed himself or herself to employment to the extent commensurate with the economic conditions and the efforts of a reasonable prudent person seeking work; and

(d) There exists in the individual's labor market area sufficient suitable work during the hours or shifts to which the individual is restricted.

12 Unemployment Benefits; Disqualification of Benefits. Amend RSA 282-A:32, I(d)(2)(D) – (E) to read as follows:

(D) If ~~he~~ **the individual** is unable to apply for or accept work during the hours of the third shift, so-called, because he **or she** is the only adult available ~~[for the care of his children under the age of 15 during said hours or]~~ for the care of an ill or infirm elderly person who is dependent on him for support.

(E) If the individual is unable to apply for or accept work during the hours of a particular shift because he or she is the only adult available for the care of a natural, adopted, step or foster child under the age of 16; or

(F) If the individual is permanently physically and/or mentally disabled, full-time work for such individual shall be deemed to be the hours and shifts the individual is

physically able to work as certified by a licensed physician provided there is a market for the services the individual offers during such hours and shifts.

AMENDED ANALYSIS

This bill makes various changes to laws on unemployment compensation administered by the department of employment security including mass layoff, appeals of benefits determinations, and transfers of businesses by employers.

This bill also makes changes to unemployment compensation eligibility requirements for individuals seeking part-time work.

This bill is a request of the department of employment security.
2005-0691h

Amendment to HB 177

Proposed by the Committee on Commerce - R

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

1 New Chapter; Home Improvement Contracts. Amend RSA by inserting after chapter 359-F the following new chapter:

CHAPTER 359-G

HOME IMPROVEMENT CONTRACTS

359-G:1 Application of Chapter. This chapter applies only to residential property, which means real property that includes a single family dwelling or an owner-occupied dwelling of not more than 4 units, as well as all fixtures to, structures on, and improvements to the real property.

359-G:2 Definitions. In this chapter:

I. "Change order" means a written amendment to the home improvement contract which becomes part of and is in conformance with the existing contract.

II. "Consumer" means the owner of the residential property.

III. "Down payment" means all payments to a home improvement contractor prior to the initiation of the work.

IV. "Home improvement" means the construction, reconstruction, alteration, renovation, repair, modernization, conversion, improvement, removal, or demolition, of any residential property where the value of the home improvement or the liability of the consumer is equal to or in excess of \$5,000. "Home improvement" includes the repair, paving, or resurfacing of a residential driveway and pool or hot tub installation.

V. "Home improvement contract" means an agreement, in writing, for the performance of home improvement, including all labor, goods, and services set forth under such agreement, for the performance of home improvement.

VI. "Home improvement contractor" means any person who owns or operates a business who, personally or through others, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid for home improvement.

VII.(a) "Home improvement contract price" means:

(1) The total fixed price for performance of the contract;

(2) The home improvement contractor's actual costs and expenses, as defined in the specifications, plus a fixed fee; or

(3) The home improvement contractor's actual costs and expenses, as defined in the specifications, plus a fixed percentage of all costs incurred over the length of the project.

(b) The home improvement contract price may include financing costs, loan consolidation amounts, taxes, and governmental fees paid by or on behalf of the consumer, amounts returned to or on behalf of the consumer, or similar costs not related to the home improvement.

VIII. "Specifications" means the plans, detailed drawings, lists of materials, stated allowances, or other methods customarily used in the home improvement industry as a whole to describe with particularity the work, workmanship, materials, and quality of materials for each home improvement.

359-G:3 Contract Requirements. No home improvement contractor shall perform a home improvement without a home improvement contract that meets the requirements of this chapter. The home improvement contractor and the consumer shall sign the home improvement contract prior to the commencement of any work under the contract. The contract shall contain, at a minimum, the following:

I. The consumer's name, telephone number, and the address of the residential property that is the subject of the home improvement.

II. The name and street address of the home improvement contractor and the number of any license or permit issued to the home improvement contractor by the electrician's board pursuant to RSA 319-C, the plumbers' licensing and regulation board pursuant to RSA 329-A, the water well board pursuant to RSA 482-B, or the department of environmental services pursuant to RSA 485-A, and any other applicable license or permit.

III. The name and telephone number of any agent to whom consumer problems and inquiries can be directed.

IV. The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract.

V. A reasonably detailed description of the proposed home improvements.

VI. If the description required by paragraph V does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications. All specifications shall meet or exceed applicable building codes or standards.

VII. The estimated date of commencement of work and the estimated date when the work will be substantially completed. The estimated date of commencement of work and the completion date may be changed if work cannot begin or end due to circumstances beyond the control of the contractor, including, but not limited to, the lack of readiness of the job site, the unavailability of building materials, or weather conditions.

VIII. A statement of any contingencies that would materially change the approximate completion date.

IX. The home improvement contract price.

X. The amount of the initial down payment, which shall be limited to no more than 1/3 of the total contract price.

XI. The schedule of payments, which may stipulate additional deposits required to initiate the ordering of materials.

XII. A change order statement which reads: "Any alteration or deviation from the contractual specifications that results in a revision of the contract price or date of commencement or completion of the work will be executed only upon the parties entering into a written change order."

XIII. A statement describing the extent of liability insurance maintained by the home improvement contractor or disclosure that the home improvement contractor does not have liability insurance.

XIV. A warranty statement which reads: "In addition to any additional warranties agreed to by the parties, the home improvement contractor warrants that the work will be free from faulty materials, constructed according to the standards of the building code applicable for this location, constructed in a skillful manner, and fit for habitation or appropriate use."

XV. A statement specifying who shall be responsible for obtaining and paying for all applicable permits.

XVI. Signature lines for the home improvement contractor or the contractor's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or a typed version of that person's name placed directly after or below the signature.

359-G:4 Signature of Contractor. Before the consumer signs the home improvement contract and before the consumer may be required to make any down payment, the home

improvement contractor shall have agreed unequivocally by written signature to all of the terms of the home improvement contract.

359-G:5 Consumer's Copy of Dated Contract. The home improvement contractor shall give an executed copy of the home improvement contract to the consumer within 3 days of the consumer signing it. The contract shall also show the dates the contractor and each consumer executed the contract.

359-G:6 Approval by Consumer. Any approval required by this chapter shall not be unreasonably withheld by the consumer.

359-G:7 Exemption. Parties to a home improvement contract may exempt themselves from the requirements of this chapter only if:

- I. The total home improvement contract is for services totaling less than \$5,000; or
- II. The consumer asserts that exigent circumstances exist. Exigent circumstances shall include, but not be limited to, severe damage to the residence, such as by fire or water, that requires immediate repair in order to mitigate further damage or make the residence habitable.

359-G:8 Violations.

I. A violation of this chapter shall constitute prima facie evidence of a violation of the consumer protection act under RSA 358-A:2. Except as otherwise provided in this section, any right or remedy available under RSA 358-A, including the civil penalties under RSA 358-A:4 and the criminal penalties under RSA 358-A:6, shall apply to this chapter. The attorney general shall have the sole authority to bring an action under RSA 358-A for violations of this chapter. No person may bring a private action under RSA 358-A:10 for a violation of this chapter.

II. There is established a home improvement consumer protection fund within the office of the treasurer which shall be nonlapsing and continually appropriated to the department of justice for investigation and enforcement measures under the consumer protection act. Any civil penalties assessed under RSA 358-A:4 for violations of this chapter shall be deposited in the home improvement consumer protection fund.

III. If the home improvement contractor has committed more than one violation of this chapter within one year, the court shall consider the following factors in assessing a civil penalty:

- (a) The volume of business which the home improvement contractor performs on an annual basis.
- (b) The number of contracts in violation.
- (c) The actual financial loss or exposure to financial loss suffered by any consumer as a result of the violations.
- (d) Whether the home improvement contractor acted in good faith or knowingly with respect to such violations.

IV. Except as otherwise provided in paragraph I, nothing in this section shall impair, limit, or reduce the statutory, common law, or contractual duties or liability of any home improvement contractor.

359-G:9 Applicability. This chapter shall not exempt any home improvement contractor subject to its provisions from complying with any local ordinance with respect to the regulation of home improvement contractors, provided, however, that after January 1, 2006, no political subdivision may enact a local ordinance inconsistent with the provisions of this chapter.

2 New Subparagraph; Home Improvement Consumer Protection Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (234) the following new subparagraph:

(235) Moneys deposited in the home improvement consumer protection fund, established under RSA 359-G:8.

3 Effective Date. This act shall take effect January 1, 2006.

AMENDED ANALYSIS

This bill establishes certain requirements for home improvement contracts, including that they be in writing and that they address the contract price, the work to be completed, and estimated completion date. The bill provides that a violation of the chapter regulating home improvement contracts is prima facie evidence of a violation of the consumer protection act. The bill also establishes a separate fund for civil penalties collected by the department of justice, which may be used for enforcement of the consumer protection act.

2005-0369h

Amendment to HB 215-FN

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

Amend RSA 488:2, VI-VIII as inserted by section 1 of the bill by replacing them with the following:

VI. "Surface waters" means any lake, pond, river, stream, wetland, or tidal waters.

VII. "Transfer" means any conveyance of water from one real property or place of business to another or incorporation into a product for subsequent distribution.

VIII. "Withdrawal" means the removal or collection of water by pumping or gravity from surface water or groundwater.

Amend RSA 488:3, I as inserted by section 1 of the bill by replacing it with the following:

I. No person shall withdraw or discharge a cumulative amount of more than 20,000 gallons of water per day, averaged over any 7-day period, or more than 600,000 gallons of water over any 30-day period, at a single real property or place of business without registering the withdrawal or discharge with the department. Transfers of such volume of water shall also be registered. Registration shall be in addition to any required permits.

Amend RSA 488:4 as inserted by section 1 of the bill by replacing it with the following:

488:4 Measurement Required. Each withdrawal, discharge, or transfer required to be registered under this chapter shall be metered or measured by a technically appropriate and verifiable method approved by the commissioner. Withdrawals and discharges shall be measured at the point of withdrawal or discharge, respectively. Transfers shall be measured at a technically appropriate point approved by the commissioner.

Amend RSA 488:8 as inserted by section 1 of the bill by replacing it with the following:

488:8 Administrative Fines.

I. The commissioner, after notice and hearing pursuant to RSA 541-A, may impose an administrative fine not to exceed \$2,000 for each offense upon any person who knowingly:

(a) Violates any provision of this chapter or any rule or order adopted or issued under it.

(b) Makes any material false statement in any document required to be filed or maintained.

(c) Renders inaccurate, falsifies, or tampers with any monitoring device or method.

II. Rehearings and appeals from a decision of the commissioner under this section shall be in accordance with RSA 541.

III. Any administrative fine imposed under this section shall not preclude the imposition of further penalties under this chapter. The commissioner may assess additional fines upon any person who has received written notification from the department regarding violations of the provisions of this chapter or rule adopted pursuant to this chapter, if the violations have not been mitigated within 30 days of receipt of notification.

Amend RSA 488:9, I and II as inserted by section 1 of the bill by replacing them with the following:

I. The content and structure of all forms pertaining to registrations to be received or issued by the department, including information and other materials to be submitted with the registration.

II. The form, content, structure, and frequency of filing of the records required under this chapter. The commissioner shall balance resource management objectives with the

economic impact of filings when determining the substance of this rule and shall also give consideration to proprietary and confidentiality concerns.

Amend RSA 488:9 as inserted by section 1 of the bill by inserting after paragraph III the following and renumbering the existing paragraphs IV and V to read as V and VI:

IV. Criteria to identify actions that constitute withdrawals, transfers, or discharges required to be registered pursuant to this chapter.

Amend RSA 488:10 as inserted by section 1 of the bill by replacing it with the following:

488:10 Appeals. Unless otherwise specified, actions of the department may be appealed in accordance with RSA 21-O:14.

Amend the bill by replacing section 3 with the following:

3 Effective Date.

I. Section RSA 488:8 as inserted by section 1 of this act shall take effect January 1, 2007.

II. The remainder of this act shall take effect January 1, 2006.
2005-0495h

Amendment to HB 220

Proposed by the Committee on Children and Family Law - C

Amend the bill by replacing section 3 with the following:

3 Duties. The committee shall:

I. Investigate the number of homeless youth in the state and the extent of any current or prior relationship to the division of children, youth and families or the division for juvenile justice services.

II. Investigate the needs of homeless youth for employment, education, transportation, housing, nutrition, mental health services, medical and dental care, legal services, and other support services from adults, including the current availability and accessibility of such services.

III. Solicit testimony from youth and young adults who are or have been homeless, and from agencies and organizations that provide services to homeless youth and young adults, including school assistance and other educational programs, runaway and homeless youth programs, health, mental health and substance abuse prevention and treatment programs, and from other sources as deemed helpful by the committee.

IV. Seek information relative to the needs of adolescents, as they transition to adulthood, from the following organizations: the Adolescence Resource Center of the university of New Hampshire, the New Hampshire Medical Society, the New Hampshire Coalition Against Domestic and Sexual Violence, the department of education, the department of health and human services office of homeless, housing, and transportation services, New Hampshire Legal Assistance, and others as may be appropriate.

V. Study the effect that homeless teens have on society, including the social and financial costs associated with inadequate transitional services for teens who leave the foster care system and special education system without the necessary skills or supports to become self-sufficient.

Amend the bill by replacing section 6 with the following:

6 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2005. The report shall include, to the extent practicable, the estimated cost of both implementing and not implementing the committee's recommendations.

2005-0764h

Amendment to HB 255

Proposed by the Committee on Environment and Agriculture - R

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

I. The members of the committee should have knowledge of the dairy industry and shall be as follows:
2005-0797h

Amendment to HB 270

Proposed by the Committee on Election Law - C

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

1 New Section; Legislative Ethics Committee; Disqualification and Duty to Recuse.

Amend RSA 14-B by inserting after section 4 the following new section:

14-B:4-a Disqualification and Duty to Recuse.

I. No member shall participate in any matter which the committee is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of another legislator, or if that member would be disqualified for any reason stated for jury disqualification under RSA 500-A:12. Reasons for disqualification shall not include knowledge of the facts involved gained in the performance of the member's official duties on the committee.

II. A member who is recused or disqualified shall not participate in any discussions of the committee nor make any public or private statements to any member of the committee or to any other person until the final determination of the committee has been made or until any final recommendation of the committee has been issued. Such member may attend public meetings or hearings of the committee; however, if so present, such member shall not be seated at the committee table nor take any actions whereby it may be perceived by another legislator or the public that the member is acting as a member of the committee.

III. The committee may, upon the request of a member or any other person, vote on the question of whether a member should be recused or disqualified in a particular matter. Any such request and vote shall be made prior to or at the commencement of any action relative to that matter or immediately upon the discovery of a reason for recusal or disqualification at any time during the course of committee action of a matter. Such vote shall be advisory and nonbinding.

IV. A violation of this section shall be considered a violation of the guidelines established by the committee.

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

AMENDED ANALYSIS

This bill establishes requirements and procedures for disqualification of and recusal by legislative ethics committee members.

2005-0608h

Amendment to HB 272-FN-A

Proposed by the Committee on Finance - C

Amend the bill by replacing section 1 with the following:

1 Barn Preservation Fund; Appropriation. The sum of \$1 for the fiscal year ending June 30, 2006 is hereby appropriated to the barn preservation fund established in RSA 227-C:28, for the purpose of preserving historic barns and agricultural structures in New Hampshire. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

AMENDED ANALYSIS

This bill makes an appropriation of \$1 for the 2006 fiscal year to the barn preservation fund.

2005-0439h

Amendment to HB 289-FN

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

Amend the bill by replacing section 2 with the following:

2 Lobbyists; Registration Fees. Amend RSA 15:2 to read as follows:

15:2 Registration Fee.

I. The fee for registration as a lobbyist under RSA 15:1 for any one legislative session shall be \$50 for each employer. ***A lobbyist registering solely as a lobbyist for nonprofit entities shall pay a \$25 fee for each such entity.*** Each individual who acts as a lobbyist shall pay the above registration fee regardless of his affiliation with any registered lobbyist.

II. ***The fee for registration as an employer of a lobbyist shall be \$100, or if the employer has nonprofit status and represents fewer than 2 for profit entities, \$50.***
2005-0807h

Amendment to HB 293

Proposed by the Committee on Environment and Agriculture - C

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

AN ACT establishing a commission to study the feasibility of developing a materials resource and recovery facility in Sullivan county.

Amend the bill by replacing section 1 with the following:

1 Commission Established. There is established a commission to study the feasibility of developing a materials resource and recovery facility in Sullivan county.

Amend the bill by replacing section 3 with the following:

3 Duties. The commission shall:

I. Determine the feasibility of developing a materials resource and recovery facility in Sullivan county.

II. If feasible, determine a site for the facility. Candidate sites shall include but not be limited to, brownfield sites within Sullivan county as well as the current Wheelabrator site in Claremont.

III. Study and identify disposal options.

IV. Explore all funding options for the construction and operation of a county-wide facility and the feasibility of a county-wide landfill.

Amend the bill by replacing section 5 with the following:

5 Report. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, the state library, and the municipalities located in Sullivan county on or before September 1, 2006.

AMENDED ANALYSIS

This bill establishes a commission to study the feasibility of developing a materials resource and recovery facility in Sullivan county.

2005-0663h

Amendment to HB 294

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

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

AN ACT relative to annulment of arrest records.

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

1 Annulment of Arrest Records. Amend RSA 651:5, II to read as follows:

II. *The arrest record of a person whose arrest has resulted in a verdict of not guilty by a jury or judge shall be immediately annulled by the court without requiring a petition.*

II-a. Any person whose [~~arrest has resulted in a finding of not guilty, or whose~~] case was dismissed or not prosecuted, may petition for annulment of the arrest record at any time in accordance with the provisions of this section.

2 Effective Date. This act shall take effect January 1, 2006.

AMENDED ANALYSIS

This bill requires the court to automatically annul the arrest record upon acquittal of any defendant.

2005-0843h

Amendment to HB 299

Proposed by the Committee on Commerce - C

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

AN ACT establishing a committee to study state laws governing liens for labor and materials.

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

1 Committee Established. There is established a committee to study state laws governing liens for labor and materials.

2 Membership and Compensation.

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

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

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

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

3 Duties. The committee shall study the need to revise RSA 447, relative to liens for labor and materials. The review shall include, but shall not be limited to: including equipment in addition to labor and materials in a lien filed pursuant to RSA 447:2, the treatment of leasehold interests, and the bonding of liens. The committee shall solicit information and testimony from such organizations and individuals as may assist the committee in the performance of its duties, including: the Home Builders and Remodelers' Association of New Hampshire, the Association of Builders and Contractors, the Association of General Contractors of New Hampshire, and the Bankers' Association.

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 president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2005.

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

AMENDED ANALYSIS

This bill establishes a committee to study the laws relative to liens for labor and materials.

2005-0810h

Amendment to HB 301-LOCAL

Proposed by the Committee on Education - C

Amend the bill by replacing section 1 with the following:

1 New Subdivision; Parent Advisory Councils. Amend RSA 186-C by inserting after section 28 the following new subdivision:

Parent Advisory Councils

186-C:29 Parent Advisory Councils.

I. Every school board may establish a parent advisory council to advise the school board on matters pertaining to the education and safety of educationally disabled children.

II. The membership in the council shall be open to any parent or legal guardian of an educationally disabled child, as defined in RSA 186-C:2, I, and any other interested party appointed by the school board.

III. The council shall have no fewer than 5 members, and the school board may establish a maximum number of members on the council, provided that parents or legal guardians of educationally disabled children constitute a majority of the council's membership.

IV. A parent advisory council:

(a) Shall advise the school district on matters pertaining to the education and safety of educationally disabled children.

(b) Shall meet with school district officials provide input in the planning, development, and evaluation of the school district's education programs and services and recommend improvements or adjustments to such programs and services as deemed necessary.

(c) Shall establish bylaws for the conduct of internal operation and procedure.

(d) May report, in writing, non-binding recommendations for legislation and rules, to the school board, the school administrative unit, the department of education, and the state advisory council under RSA 186-C:3-b.

V. A school district shall:

(a) Work with its schools to ensure that all school-level parental involvement policies meet the requirements of the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by the No Child Left Behind Act of 2001, and that each school includes, as a component, a school-parent compact consistent with the ESEA.

(b) Cooperate with the parent advisory council, which may conduct at least one workshop per year concerning the educational rights of educationally disabled children and their parents or legal guardians under federal and state education laws.

(c) Provide a parent with notification of the existence of the parent advisory council when the child is referred to special education.

VI. The school district shall provide meeting space and may provide administrative support to its parent advisory council.

AMENDED ANALYSIS

This bill requires a school district to establish a parent advisory council to advise the school district on matters pertaining to the education and safety of educationally disabled children.

2005-0634h

Amendment to HB 311-LOCAL

Proposed by the Committee on Municipal and County Government - C

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

1 New Section; Revolving Funds. Amend RSA 31 by inserting after section 95-g the following new section:

31:95-h Revolving Funds.

I. A town may, by vote of the legislative body, establish a revolving fund. Each revolving fund shall be limited to one of the following purposes:

(a) Facilitating or encouraging recycling as defined in RSA 149-M:4;

(b) Providing ambulance services; or

(c) Providing public safety services by municipal employees or volunteers outside of the ordinary detail of such persons, including but not limited to public safety services in connection with special events, highway construction, and other construction projects.

II. If a town establishes a revolving fund for any of the purposes listed in paragraph I, it may deposit into the fund all or any part of the revenues from fees, charges, or other income derived from the activities or services supported by the fund, and any other revenues approved by the legislative body for deposit into the fund. The money in the fund shall be allowed to accumulate from year to year, and shall not be considered part of the town's general surplus. The town treasurer shall have custody of all moneys in the fund, and shall pay out the same only upon order of the governing body, or other board or body designated by the local legislative body at the time the fund is created; provided, that no further approval of the legislative body, if different from the governing body, shall be required. Such funds may be expended only for the purposes for which the fund was created.

III. The legislative body may, at the time it establishes a revolving fund or at any time thereafter, place limitations on expenditures from the fund including, but not limited to, restrictions on the types of items or services that may be purchased from the fund,

limitations on the amount of any single expenditure, and limitations on the total amount of expenditures to be made in a year. No amount may be expended from a revolving fund established hereunder for any item or service for which an appropriation has been specifically rejected by the legislative body during the same year.

IV. The provisions of this section shall not preclude the establishment of a revolving fund for any other purpose authorized by law.

2 Effective Date. This act shall take effect 60 days after its passage.
2005-0667h

Amendment to HB 315

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

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

1 New Paragraph; Air Pollution Control; Definitions. Amend RSA 125-C:2 by inserting after paragraph VI the following new paragraph:

VI-a. "Dioxin" means a group of chemical compounds that share certain similar chemical structures and mode-of-action biological characteristics, including a total of 17 dioxin-like compounds that are members of 2 closely related families: chlorinated dibenzo-p-dioxins (CDDs) and chlorinated dibenzofurans (CDFs).

2 New Paragraph; Air Pollution Control; Definitions. Amend RSA 125-C:2 by inserting after paragraph IX-e the following new paragraph:

IX-f. "Particulate matter" means any material, including lead, but not uncombined water, which is or has been suspended in air or other gases and which exists in a finely divided form as a liquid or solid at standard conditions.

3 New Subparagraphs; Air Pollution Control Act; Rulemaking Authority. Amend RSA 125-C:4, I by inserting after subparagraph (n) the following new subparagraphs:

(o) Applicability thresholds for emissions of particulate matter, mercury, and dioxin as provided in RSA 125-C:10-a, VII(f).

(p) The duration of time during which no additional best available control technology determination is required as provided in RSA 125-C:10-a, IV and VI.

(q) Procedures for establishing standards for and certification of any material, that is not an exempt fuel, to be combusted in a device at an affected source subject to RSA 125-C:10-a.

4 New Section; Air Pollution Control Act; Best Available Control Technology. Amend 125-C by inserting the following new section:

125-C:10-a Best Available Control Technology Required.

I. For the purposes of this section:

(a) "Best available control technology" means an emission limitation based on the maximum degree of reduction for each air contaminant that would be emitted from any device that the department, on a case-by-case basis, taking into account energy, environmental, public health, and economic impacts and other costs, determines is achievable for such device through application of production processes or available equipment, methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air contaminant.

(b) "Exempt fuel" means coal, natural gas, landfill gas, digester or bio gas, untreated wood, virgin petroleum products, or any mixture thereof.

II. Except as provided in paragraph VII, the construction, installation, operation, or material modification of any device located at an affected source that will combust any material shall be prohibited without first applying for and obtaining a permit from the department that establishes emission limitations for such device based on best available control technology for controlling any particulate matter, mercury, or dioxin emissions from such device. Any material to be combusted in such device that is not an exempt fuel shall be certified as complying with standards established by the department. As part of the application for a permit, the affected source shall demonstrate that such standards and certification shall be complied with during facility operation. The permit shall contain

inspection, testing, and reporting requirements to ensure such standards are met. The permit shall establish procedures for sampling and testing appropriate to the material to be combusted using US EPA SW-846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, and applicable American Society for Testing and Materials sampling methods or alternate sampling and testing methods approved by the department.

III. If stack testing results show that emissions from a device are less than but within 10 percent of the emission limitation for a specific air contaminant established under paragraph II for the device, the affected source shall install a department approved continuous emission monitor (CEM) for that air contaminant. If a department approved CEM is not available for that air contaminant, the affected source shall submit a plan, including monitoring and stack testing requirements, for ensuring that the emissions limitation for that air contaminant is not exceeded until such time as a department approved CEM for that air contaminant becomes available. Once a department approved CEM is available, the affected source shall install that CEM within 24 months of department approval of the CEM.

IV. Once the department has established an emission limitation for one or more air contaminants under paragraph II for a device based on best available control technology, no further best available control technology determination for the emission of such air contaminant or air contaminants from such device shall be required for such period of time as specified in rules of the department, unless there is a material modification of the device.

V. Any determination by the department pursuant to paragraph II, shall be subject to the following:

(a) In no event shall application of best available control technology result in:

(1) Emission of any air contaminant that would exceed the emissions allowed by any applicable standard under RSA 125-C or RSA 125-I or rules adopted pursuant to either chapter; and

(2) Emission of any air contaminant specified in paragraph II in an amount disproportionate to the emissions of such air contaminant from other similar air pollution control devices for that air contaminant at facilities using similar combustion technology and similar fuels.

(b) If the department determines that a device emits more than one of the air contaminants specified in paragraph II, or that the affected source has more than one device that emits such air contaminants, the department shall determine best available control technology emission limitations for all such devices and all such air contaminants emitted.

VI. If, prior to the effective date of this section, the department made under other authority a best available control technology determination for any air contaminant specified in paragraph II for any existing device and established in a permit issued pursuant to this chapter an emission limitation for such air contaminant, then no determination of best available control technology pursuant to paragraph II for such air contaminant from such device shall be required for such period of time as specified in rules of the department, unless there is a material modification of the device.

VII. This section shall not apply to:

(a) A municipal waste combustor that is subject to RSA 125-M;

(b) Chemical recovery combustion sources at pulp and paper mills subject to 40 CFR 63, Subpart MM;

(c) A device at an affected source that combusts material of which at least 90 percent by weight is exempt fuel;

(d) An affected source that is within a listed source category and subject to a performance standard or emission guidelines established by the United States Environmental Protection Agency pursuant to either section 111 or section 112 or section 129 of the Clean Air Act, provided that these standards and guidelines are at least as stringent as those achieved by applying best available control technology as specified under paragraph II;

(e) A device at an affected source that, on the effective date of this section, routinely combusts any material other than a material specified in subparagraph (c) under a permit issued by the department, unless there is later a material modification of such device; or

(f) A device at an affected source with emissions of particulate matter, mercury, or dioxin below threshold levels established by rules of the department.

5 Rules Required. No permits shall be issued under RSA 125-C:10-a until final adoption of all rules required by this act.

6 Effective Date. This act shall take effect upon its passage.
2005-0823h

Amendment to HB 329

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

Amend RSA 275:61 as inserted by section 1 of the bill by replacing it with the following:

275:61 Definitions. In this subdivision:

I. "Crime" means an offense designated by law as a felony or a misdemeanor.

II. "Employee" means employee as defined in RSA 275:4.

III. "Employer" means employer as defined in RSA 275:4, provided that for the purposes of this subdivision, an employer shall have 25 or more employees for each working day in each of 20 or more calendar weeks during any calendar year.

IV. "Immediate family" means the father, mother, stepparent, child, stepchild, sibling, spouse, grandparent, or legal guardian of the victim; or any person involved in an intimate relationship and residing in the same household with the victim.

V. "Victim" means any person who suffers direct or threatened physical, emotional, psychological, or financial harm as a result of the commission or the attempted commission of a crime. "Victim" also includes the immediate family of any victim who is a minor or who is incompetent, or the immediate family of a homicide victim.

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

I. An employer shall permit an employee who is a victim of a crime to leave work so that the employee may attend court or other legal or investigative proceedings associated with the prosecution of the crime.

Amend RSA 275:65 as inserted by section 1 of the bill by replacing it with the following:

275:65 Penalty. Any employer violating any provision of this subdivision shall be subject to a civil penalty, to be imposed by the labor commissioner in accordance with the procedures established in RSA 273:11-a. An employer aggrieved by the commissioner's assessment of such penalty may appeal in accordance with RSA 273:11-b.

AMENDED ANALYSIS

This bill establishes the crime victim employment leave act which requires that employers allow employees who are victims of certain crimes to leave work to attend court or other legal or investigative proceedings associated with the prosecution of the crime, or to attend counseling sessions necessitated by the crime.

2005-0416h

Amendment to HB 342

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

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

AN ACT establishing a commission to study the barriers to the establishment of all-terrain vehicle trails on public and private lands.

Amend section 2 of the bill by inserting after subparagraph I(j) the following new subparagraph:

(k) One representative of New Hampshire landowners, appointed by mutual agreement of the New Hampshire Farm Bureau Federation and the New Hampshire Timberland Owners Association.

Amend paragraph V of section 3 of the bill by replacing it with the following:

V. Adequacy and enforcement of ATV regulations and policies, and means of addressing environmental impact and the problems of users, abutters, and municipalities.

AMENDED ANALYSIS

This bill establishes a commission to study the barriers to the establishment of all-terrain vehicle trails on public and private lands.

2005-0837h

Amendment to HB 343

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

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

2 Membership and Compensation.

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

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

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

(c) A representative from the New Hampshire Lakes Association, nominated by the association and appointed by the governor.

(d) A representative from the New Hampshire Rivers Council, nominated by the council and appointed by the governor.

(e) The director of the fish and game department, or designee.

(f) A representative from the public water access advisory board, nominated by the chairperson and appointed by the governor.

(g) A representative from a conservation organization, appointed by the governor.

(h) A representative from the Appalachian Mountain Club, nominated by the club president and appointed by the governor.

(i) The commissioner of the department of resources and economic development, or designee.

(j) The commissioner of the department of environmental services, or designee.

(k) The director of the office of energy and planning, or designee.

3 Duties. The commission shall study current access for non-motorized public use of water bodies including, but not limited to, the need for different types of non-motorized recreational opportunities, the geographical distribution of such opportunities, approaches for determining the optimal recreational use of a particular water body including environmental concerns, available funding for creation of access, and the adequacy of recreational opportunities for citizens of all income levels.

2005-0912h

Floor Amendment to HB 346-LOCAL

Proposed by Rep. Drisko

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

AN ACT relative to the procedure for withdrawal from a cooperative school district.

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

1 Cooperative School Districts; Procedure for Withdrawal. Amend RSA 195:25 to read as follows:

195:25 Procedure for Withdrawal. After the tenth anniversary of the date of operating responsibility, the school board of a cooperative school district may undertake a study of the feasibility and suitability of the withdrawal of one or more member districts from the cooperative district. A similar study shall be undertaken if, after the tenth anniversary of the date of operating responsibility, a pre-existing district shall, by a majority vote on a warrant article at a regular or special town meeting, direct the school board to conduct such a study. The study shall be conducted by a committee composed of at least one member of the school board from each of the pre-existing districts, one member of the board of selectmen from each town, and such other members as may be appointed by the committee. Within ~~[120]~~ **180** days after the date of its formation, the committee shall report its findings to the

state board of education. ~~[The report may make a recommendation as to the withdrawal of a member district or districts; and, if this is done, the report shall contain a plan for the education of the pupils in the withdrawing district as well as in the cooperative district. The report shall further include a detailed analysis of the financial and educational consequences of the proposed withdrawal.]~~ ***The committee shall submit to the state board of education either a report that withdrawal is not feasible or suitable, or a report that includes a withdrawal plan prepared in accordance with RSA 195:26. If the committee determines that withdrawal is not feasible or suitable, the town which voted to undertake the study may submit a minority report at the same time as the committee report is filed with the state board of education. If the committee report does not include a withdrawal plan, the minority report may include a withdrawal plan prepared in accordance RSA 195:26. If the state board approves a withdrawal plan, whether submitted by the committee or by minority report, the plan shall be submitted to the voters of the cooperative school district in accordance with RSA 195:29.***

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

AMENDED ANALYSIS

This bill amends the procedure for withdrawal from a cooperative school district and allows the town which voted to undertake the withdrawal study to submit a minority report to the state board of education.

2005-0660h

Amendment to HB 348 Proposed by the Committee on Commerce - C

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

AN ACT relative to real and personal property conveyances made under powers of attorney.

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

1 Powers of Attorney; Clarification of Legislative Intent.

I. The general court declares that its intent in enacting and amending RSA 506:6, VI, VII, and VIII(b), and RSA 506:7, IV(b), under 2001, 257, and 2003, 312, was not to impose the requirements of principal disclosure statement and agent acknowledgment on powers of attorney that are by their terms limited to a specified transaction or series of transactions such as representing a principal in a sale of a parcel of real estate or lots in a subdivision, but rather to impose the new requirements on durable powers of attorney that are general in nature, and thus more vulnerable to possible misuse.

II. The general court further declares that its intent in enacting and amending the statutes referred to in paragraph I was not to invalidate conveyances made to bona fide purchasers under powers of attorney that fail to comply with RSA 506:6, VI or VII, or both, where reasonable consideration is paid and the purchaser has no actual knowledge or reason to believe that the agent is misusing the power of attorney.

III. This act clarifies the original legislative intent of the above-referenced statutes, and effectuates such intent in regard to conveyances that have occurred prior to the effective date of this act.

2 Powers of Attorney; Disability or Incompetence of Principal; Disclosure Statement.

Amend RSA 506:6, VI(a) to read as follows:

VI.(a) A disclosure statement, signed by the principal, in substantially the following form, shall be affixed to a durable **general** power of attorney:

**INFORMATION CONCERNING THE DURABLE POWER OF ATTORNEY
THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS
DOCUMENT YOU SHOULD KNOW THESE IMPORTANT FACTS:**

Notice to the Principal: As the "Principal," you are using this Durable Power of Attorney to grant power to another person (called the "Agent" or "Attorney in Fact") to make decisions, including, but not limited to, decisions concerning your money, property, or both, and to use

your money, property, or both on your behalf. If this written Durable Power of Attorney does not limit the powers that you give to your Agent, your Agent will have broad and sweeping powers to sell or otherwise dispose of your property, and to spend your money without advance notice to you or approval by you. Under this document, your agent will continue to have these powers after you become incapacitated, and unless otherwise indicated your Agent will have these powers before you become incapacitated. You have the right to retain this Power and not to release this Power until you instruct your attorney or any other person who may hold this Power of Attorney to so release it to your Agent pursuant to written instructions. You have the right to revoke or take back this Durable Power of Attorney at any time, so long as you are of sound mind. If there is anything about this Durable Power of Attorney that you do not understand, you should seek professional advice.

Principal

3 Powers of Attorney; Disability or Incompetence of Principal; Acknowledgment. Amend RSA 506:6, VII(a) to read as follows:

VII.(a) An agent shall have no authority to act as agent under ~~the~~ **a durable general** power of attorney unless the agent has first executed and affixed to the power of attorney an acknowledgment in substantially the following form:

I, _____, have read the attached power of attorney and am the person identified as the Agent for the Principal. I hereby acknowledge that when I act as Agent or “attorney in fact,” I am given power under this Durable Power of Attorney to make decisions about money, property, or both belonging to the Principal, and to spend the Principal’s money, property, or both on the Principal’s behalf, in accordance with the terms of this Durable Power of Attorney. This Durable Power of Attorney is valid only if the Principal is of sound mind when the Principal signs it. When acting in the capacity of Agent, I am under a duty (called a “fiduciary duty”) to observe the standards observed by a prudent person, which means the use of those powers that is reasonable in view of the interests of the Principal and in view of the way in which a person of ordinary judgment would act in carrying out that person’s own affairs. If the exercise of my acts is called into question, the burden will be upon me to prove that I acted under the standards of a fiduciary. As the Agent, I am not entitled to use the money or property for my own benefit or to make gifts to myself or others unless the Durable Power of Attorney specifically gives me the authority to do so. As the Agent, my authority under this Durable Power of Attorney will end when the Principal dies and I will not have authority to manage or dispose of any property or administer the estate unless I am authorized to do so by a New Hampshire Probate Court. If I violate my fiduciary duty under this Durable Power of Attorney, I may be liable for damages and may be subject to criminal prosecution. If there is anything about this Durable Power of Attorney, or my duties under it, that I do not understand, I understand that I should seek professional advice.

Agent

4 Powers of Attorney; Disability or Incompetence of Principal; Validity. Amend RSA 506:6, VIII(b) to read as follows:

(b) Failure to comply with paragraph VI **or VII** shall not invalidate an otherwise valid durable **general** power of attorney, subject to the provisions of RSA 506:7, IV(b).

5 New Subparagraph; Powers of Attorney; Disability or Incompetence of Principal; Validity of Conveyances to Bona Fide Purchasers. Amend RSA 506:6, VIII by inserting after subparagraph (b) the following new subparagraph:

(c) Notwithstanding the provisions of paragraph VI or VII or RSA 506:7, IV(b), a conveyance of real or personal property to a bona fide purchaser for reasonable consideration under an otherwise valid durable general power of attorney that failed to comply with RSA 506:6, VI or VII, or both, shall not be set aside on account of such failure unless the purchaser had actual knowledge or good reason to believe that the agent was misusing the

power of attorney in making the conveyance. This subparagraph shall apply to every conveyance made on or after January 1, 2004, unless an action to set aside such conveyance has been filed prior to the effective date of this subparagraph.

6 New Paragraphs; Powers of Attorney; Disability or Incompetence of Principal; Definitions; Validity Amend RSA 506:6 by inserting after paragraph IX the following new paragraphs:

X.(a) "Durable power of attorney" as used in this chapter means a power of attorney described in paragraph I.

(b) "Durable general power of attorney" as used in this chapter means a durable power of attorney that is not limited by its terms to a specified transaction or series of transactions.

XI. Any durable power of attorney limited by its terms to a specified transaction or series of transactions and executed before the effective date of this paragraph shall not be deemed invalid or affected in any way because it does not comply with paragraph VI or VII.

7 Powers of Attorney; Limitations on the Agent; Presumption of Lawfulness. Amend RSA 506:7, IV(b) to read as follows:

(b) When a gift or transfer made by an agent ***under a durable general power of attorney*** is challenged in a petition filed under paragraph III of this section, the gift or transfer shall be presumed to be lawful if the durable power of attorney is accompanied by the disclosure statement and acknowledgement drafted in accordance with RSA 506:6, VI and VII, and explicitly authorizes such gifts or transfers as set forth in RSA 506:6, V. However, if the petitioner establishes that the agent made a transfer for less than adequate consideration, and the transfer is not explicitly authorized by a durable power of attorney drafted in accordance with RSA 506:6, VI and VII, the agent shall be required to prove by a preponderance of evidence that the transfer was authorized and was not a result of undue influence, fraud, or misrepresentation.

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

AMENDED ANALYSIS

This bill:

I. Declares the legislative intent concerning the disclosure statement required under a durable general power of attorney and the acknowledgement required under a durable general power of attorney.

II Clarifies that certain conveyances of real and personal property are not invalid because of failure to follow the technical form prescribed in statute.

2005-0836h

Amendment to HB 350

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

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

AN ACT relative to enforcement of the labor protection statutes, permitting certain wage deductions, and increasing the civil penalty in the department of labor.

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

2 Enforcement; Wage Claim; Department or Employee May File, Date Extended.

Amend RSA 275:51, V to read as follows:

V. ~~[If an employee elects to file a wage claim under this section, the wage claim must be filed with the department no later than 18]~~ ***A wage claim may be filed by an employee or by the department on its own motion no later than 36*** months from the date ~~the~~ ***employee knew the*** wages were due. The commissioner shall notify the employer by serving upon the employer a copy of such claim and an order to file with the commissioner within 10 days from the receipt of such notice any objections to such claim specifying the grounds therefor. Service may be by certified mail with return receipt. If objection is not made within 10 days, the commissioner may order that payment be made in accordance with the claim. If requested, a hearing shall be afforded at which time any party may appear, with counsel if desired, and present evidence and cross-examine opposing witnesses. Any party,

at the party's own expense, may cause a record to be made of the hearing. A written decision shall be made within 30 days after the hearing stating the decision and specifying the facts and conclusions upon which the decision is based. If wages are found to be due, an order for payment shall issue. Any party aggrieved by the decision may appeal to the superior court not later than 20 days from the date thereof by petition, setting forth that the decision is erroneous, in whole or in part, and specifying the grounds upon which the decision is claimed to be in error. Upon the filing of an appeal, the commissioner shall transfer to the court the record of the proceeding or a certified copy thereof. The scope of review by the superior court shall be limited to questions of law. ~~[After hearing and upon consideration of the record, the court may affirm, vacate or modify in whole or in part the decision of the commissioner, or may remand the matter to the commissioner for further findings.]~~ ***The superior court may confirm, reverse, or modify the commissioner's decision or conduct a trial de novo, if it finds any error of law.*** In the absence of a seasonable appeal, the decision and order shall be final, shall be entered upon the docket of the superior court at the request of the prevailing party, may be enforced as a judgment of the court, and shall be a lien upon the property of the employer situated in the state for a period of 3 years from the time of the decision. It is a requirement of this chapter for purposes of RSA 275:52 that a final order be immediately satisfied by the employer.

3 New Subparagraphs; Withholding of Wages; Deductions Allowed. Amend RSA 275:48, I by inserting after subparagraph (d)(2) the following new subparagraphs:

(3) Voluntary installment payments of legitimate loans made by the employer to the employee as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(4) Voluntary payments for the recovery of accidental overpayment of wages when the following conditions are met:

(A) The recovery is agreed to in writing.

(B) The deduction for the overpayment begins one pay period following the date the parties execute the written agreement.

(C) The written agreement specifies:

(i) The date the recovery of the overpayment will begin and end.

(ii) The amount to be deducted, which shall be agreed upon by the employer and the employee but which shall, in no event, be more than 20 percent of the employee's gross pay in any pay period.

(iii) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(5) Voluntary payments for the recovery of tuition for non-required educational costs paid by the employer for the employee to an educational institution when the specific deduction is authorized in writing prior to the deduction as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(6) Voluntary payments for vacation pay, paid time off pay, earned time pay, personal time pay, annual pay, sick pay, sick dependent pay, and bereavement pay pursuant to a written employment policy as required by RSA 275:49, III, when requested and paid to the employee in advance of eligibility and when the employee agrees in writing without coercion or pressure to allow the employer to deduct the amount owed from his or her final wages at the termination of employment.

4 Civil Penalties; Maximum Increased. Amend RSA 273:11-a, I to read as follows:

I. In addition to any criminal penalty provided under this title, the commissioner may, after hearing, impose a civil penalty not to exceed ~~[\$1,000]~~ **\$2,500**, as determined by the commissioner, for any violation of any of the provisions of this title or of any rule adopted pursuant to this title. Any person on whom a penalty is imposed under this section may appeal as provided in RSA 273:11-c and 273:11-d. All moneys collected under this section shall be deposited in the general fund.

5 Effective Date. This act shall take effect January 1, 2006.

AMENDED ANALYSIS

This bill:

I. Empowers the commissioner to hold hearings and investigate charges of violations of the labor protection statutes either on his or her own motion or on an employee complaint.

II. Adds the department of labor as a party entitled to initiate a wage claim and extends the period in which to file a wage claim from 18 months to 36 months.

III. Allows voluntary deductions from wages for loans, accidental overpayments, tuition, and certain time off.

IV. Increases the civil penalty that the commissioner may impose from \$1,000 to \$2,500.
2005-0916h

Floor Amendment to HB 350

Proposed by Rep. Holden - R

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

AN ACT relative to enforcement of the labor protection statutes, permitting certain wage deductions, and increasing the civil penalty in the department of labor.

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

2 Enforcement; Wage Claim; Department or Employee May File, Date Extended.

Amend RSA 275:51, V to read as follows:

V. ~~[If an employee elects to file a wage claim under this section, the wage claim must be filed with the department no later than 18]~~ ***A wage claim may be filed by an employee or by the department on its own motion no later than 36*** months from the date ~~the~~ ***employee knew the*** wages were due. The commissioner shall notify the employer by serving upon the employer a copy of such claim and an order to file with the commissioner within 10 days from the receipt of such notice any objections to such claim specifying the grounds therefor. Service may be by certified mail with return receipt. If objection is not made within 10 days, the commissioner may order that payment be made in accordance with the claim. If requested, a hearing shall be afforded at which time any party may appear, with counsel if desired, and present evidence and cross-examine opposing witnesses. Any party, at the party's own expense, may cause a record to be made of the hearing. A written decision shall be made within 30 days after the hearing stating the decision and specifying the facts and conclusions upon which the decision is based. If wages are found to be due, an order for payment shall issue. Any party aggrieved by the decision may appeal to the superior court not later than 20 days from the date thereof by petition, setting forth that the decision is erroneous, in whole or in part, and specifying the grounds upon which the decision is claimed to be in error. Upon the filing of an appeal, the commissioner shall transfer to the court the record of the proceeding or a certified copy thereof. ~~[The scope of review by the superior court shall be limited to questions of law. After hearing and upon consideration of the record, the court may affirm, vacate or modify in whole or in part the decision of the commissioner, or may remand the matter to the commissioner for further findings.]~~ ***The superior court may confirm, reverse, or modify the commissioner's decision or conduct a trial de novo, as justice may require.*** In the absence of a seasonable appeal, the decision and order shall be final, shall be entered upon the docket of the superior court at the request of the prevailing party, may be enforced as a judgment of the court, and shall be a lien upon the property of the employer situated in the state for a period of 3 years from the time of the decision. It is a requirement of this chapter for purposes of RSA 275:52 that a final order be immediately satisfied by the employer.

3 New Subparagraphs; Withholding of Wages; Deductions Allowed. Amend RSA 275:48, I by inserting after subparagraph (d)(2) the following new subparagraphs:

(3) Voluntary installment payments of legitimate loans made by the employer to the employee as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(4) Voluntary payments for the recovery of accidental overpayment of wages when the following conditions are met:

(A) The recovery is agreed to in writing.

(B) The deduction for the overpayment begins one pay period following the date the parties execute the written agreement.

(C) The written agreement specifies:

(i) The date the recovery of the overpayment will begin and end.

(ii) The amount to be deducted, which shall be agreed upon by the employer and the employee but which shall, in no event, be more than 20 percent of the employee's gross pay in any pay period.

(iii) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(5) Voluntary payments for the recovery of tuition for non-required educational costs paid by the employer for the employee to an educational institution when the specific deduction is authorized in writing prior to the deduction as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(6) Voluntary payments for vacation pay, paid time off pay, earned time pay, personal time pay, annual pay, sick pay, sick dependent pay, and bereavement pay pursuant to a written employment policy as required by RSA 275:49, III, when requested and paid to the employee in advance of eligibility and when the employee agrees in writing without coercion or pressure to allow the employer to deduct the amount owed from his or her final wages at the termination of employment.

4 Civil Penalties; Maximum Increased. Amend RSA 273:11-a, I to read as follows:

I. In addition to any criminal penalty provided under this title, the commissioner may, after hearing, impose a civil penalty not to exceed ~~[\$1,000]~~ **\$2,500**, as determined by the commissioner, for any violation of any of the provisions of this title or of any rule adopted pursuant to this title. Any person on whom a penalty is imposed under this section may appeal as provided in RSA 273:11-c and 273:11-d. All moneys collected under this section shall be deposited in the general fund.

5 Effective Date. This act shall take effect January 1, 2006.

AMENDED ANALYSIS

This bill:

I. Empowers the commissioner to hold hearings and investigate charges of violations of the labor protection statutes either on his or her own motion or on an employee complaint.

II. Adds the department of labor as a party entitled to initiate a wage claim and extends the period in which to file a wage claim from 18 months to 36 months.

III. Allows voluntary deductions from wages for loans, accidental overpayments, tuition, and certain time off.

IV. Increases the civil penalty that the commissioner may impose from \$1,000 to \$2,500.

2005-0735h

Amendment to HB 359

Proposed by the Committee on Municipal and County Government - C

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

AN ACT defining “unnecessary hardship” for purposes of zoning variances.

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

1 New Subparagraph; Powers of Zoning Board of Adjustment; Variance; Unnecessary Hardship. Amend RSA 674:33, I by inserting after subparagraph (b) the following new subparagraph:

(c)(1) For purposes of this subparagraph “unnecessary hardship” shall mean that because of the unique and particular characteristics of a property, its setting, and environment, the board finds that:

(A) The property cannot be reasonably used in strict conformance with the ordinance and a variance is necessary to enable a reasonable and economically viable use of it; or

(B) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to the property and the proposed use is a reasonable one.

(C) The variance will not injure the public or private rights of others.

(2) “Unnecessary hardship” as defined in subparagraph (c)(1) shall apply to both use variances and area variances.

2 Effective Date. This act shall take effect January 1, 2006.

AMENDED ANALYSIS

This bill defines an unnecessary hardship for a zoning variance as an application of the ordinance that denies the landowner a reasonable and economically viable use of a property or one that has no fair and substantial relationship between the public purposes of the ordinance and its application to the property. This bill also provides that a variance shall not injure the rights of others.

2005-0871h

Amendment to HB 366

Proposed by the Committee on Election Law - C

Amend the bill by replacing section 1 with the following:

1 Reports of Transfer. Amend RSA 654:36 to read as follows:

654:36 Reports of Transfer. If the supervisors of the checklist have received a notice of transfer from another board of supervisors of the checklist in the state of New Hampshire that a voter whose name is on the checklist has been added to the checklist of some other town or city, they shall strike that name from the checklist at the next session for the correction of the checklist. ~~[They shall retain the notice as proof of their reasoning in striking the name from the checklist.]~~ ***If the secretary of state receives notice from the election officials of any other state that a voter whose name is on the checklist of any town or ward in New Hampshire has been added to the checklist of any voting jurisdiction in any other state, the secretary of state shall cause that voter’s name to be removed from the checklist of the town or ward where the voter had been registered as maintained in the centralized voter registration database established pursuant to RSA 654:45.***

Amend the bill by inserting after section 3 the following and renumbering the original section 4 to read as 9:

4 Availability of Checklist. Amend RSA 654:31 to read as follows:

654:31 Availability of Checklist.

I. The checklist as corrected by the supervisors shall be open for the examination of any person at all times before the opening of a meeting or election at which the list is to be used. The ***secretary of state or the supervisors of the checklist*** shall furnish one or more copies of the most recent checklist to any person requesting such copies. ~~[If the supervisors maintain or have access to the checklist or information from which the checklist was derived in more than one form, the person requesting copies shall be furnished copies in any of those~~

~~forms according to his preference. The supervisors may charge a reasonable fee for copies that is based on the actual costs incurred when reproducing an existing checklist, except that in no event shall the fee for paper copies of any single town or ward checklist be less than \$5 nor more than \$25 per checklist. The fee charged for checklists on computer disk or tape, or in any form other than paper, shall be based solely on the additional costs incurred to provide such checklist to the individual requesting it. The fee shall be for the use of the town or city.]~~ **Only the supervisors of the checklist may provide checklists of less than the entire state. The supervisors of the checklist may charge a fee of up to \$25 for each copy of the checklist for a town or ward. For checklists containing more than 2,500 names, the secretary of state or the supervisors of the checklist may charge a fee of up to \$25, plus \$0.0005 per name for each name in excess of 2,500, plus any shipping costs.**

II. The secretary of state may provide checklist information on computer disk, computer tape, electronic transfer, or any form other than paper only to a political committee of a political party as defined in RSA 664:2, V, or a candidate who has filed for consideration for any office in any primary or general election or who has been nominated for any office in a general election. The fee charged for checklists provided by the secretary of state or supervisors of the checklist in any form other than paper shall be based solely on the additional costs incurred to provide such checklists.

III. Fees collected by the secretary of state under this section shall be deposited in the election fund established pursuant to RSA 5:6-d. Fees collected by a town or city under this section shall be for the use of the town or city.

5 Right to Know Exemption. Amend RSA 654:31-a to read as follows:

654:31-a Right to Know Exemption. The ~~[information contained on the]~~ **information** of a town or city, specifically, the name, street address, **mailing address**, town or city, **voter identification number, voter history**, and party affiliation, if any, of registered voters, except as otherwise provided by statute, is public information subject to RSA 91-A, **if such information is available in the statewide centralized voter registration database. Any person may obtain a copy of any affidavit used by an applicant for registration as a voter; provided; that the applicant's place of birth is redacted.** All other information on the voter registration form, absentee registration affidavit, and application for absentee ballot shall be treated as confidential information and the records containing this information shall be exempt from the public disclosure provisions of RSA 91-A, except as provided by statutes other than RSA 91-A. Election officials and law enforcement personnel in furtherance of their official duties may access and may disclose information from the voter registration form, absentee registration affidavits, and applications for absentee ballots, if necessary to resolve a challenge to an individual registering to vote or voting, or if necessary to investigate or prosecute election law violations or any crime. Law enforcement access and use of such records for the investigation or prosecution of crimes unrelated to election law violations shall be limited to the records of the specific individuals who are the subject of the investigation or prosecution. **In this section, "voter history" means the elections at which the voter voted.**

6 Verification Every 4 Years. Amend RSA 654:39 to read as follows:

654:39 Verification Every 10 Years.

I. In addition to any verification carried out under the provisions of RSA 654:38, the supervisors shall verify the checklist in [1981] **2007, 2009**, and once every [40] **4** years thereafter.

II. Between April 1 and August 1 of [1981] **2007 and 2009** and thereafter in each year ending [with a one] **after a presidential election**, the supervisors shall advertise and post notice of their sessions at least twice in a newspaper of general circulation and at the office of the town or city clerk or at the town hall and hold sufficient sessions for verification of the checklist as in their opinion will enable all eligible voters in said town or ward to

appear before them and register or reregister as the case may be. Whenever a person is reregistered, his **or her** party designation, if any, on the checklist undergoing revision shall not be changed except as provided in RSA 654:34.

III. Beginning June 1 of such year, the supervisors shall review the checklist and shall strike therefrom the names of all persons who have not registered or reregistered under paragraphs I and IV; provided, that there shall not be stricken from said checklist the name of any person duly qualified to vote unless such person, not less than 30 days prior to such action, shall have been sent notice by the supervisors at his **or her** last known address of his **or her** failure to reregister stating the procedure to be followed in order to reregister and have his **or her** name retained on said checklist nor unless such person shall have been given a reasonable opportunity to follow said procedure.

IV. For the purpose of this section, a person shall be deemed reregistered and need not appear before the supervisors if[:

~~(a) the person voted in [either of the 2 previous state general elections immediately preceding a 10-year verification; or~~

~~(b) The person voted in the annual town election in the year of a 10-year verification or, if in a city, the most recent regular city election held prior to the verification]~~
the town or ward where he or she is registered at any election held within the previous 4 years.

V. Upon completion of verification of the checklist, but in no event later than ~~[September]~~ **December** 1, the supervisors shall file with the secretary of state the following certificate: We, the supervisors of the checklist (or registrars of voters) of the town (or ward _____) of _____, do hereby certify that we have verified the checklist of registered voters in the town (or ward _____ of the city) of _____, pursuant to the provisions of RSA 654:39.

VI. In verifying the checklist in accordance with this section, the provisions of RSA 654:38, IV and V shall apply.

7 Centralized Voter Registration Database; Voter Identification Numbers. Amend RSA 654:45, I to read as follows:

I. The secretary of state is authorized to plan, develop, equip, establish, site, and maintain a statewide centralized voter registration database and communications system, hereinafter referred to as the voter database, connecting users throughout the state. The voter database shall include the information on the voter registration form and the voter checklists maintained by each city, ward, and town in the state. ***The secretary of state is authorized to assign unique voter identification numbers to registered voters in the voter database.***

8 Sending Absentee Ballots. Amend RSA 657:15 to read as follows:

657:15 Sending Absentee Ballots. When the verification required by RSA 657:12 or 657:13 has been made, the clerk shall retain the application and, without delay, personally deliver or mail to the applicant the appropriate ballot and materials as described in RSA 657:7 through 657:9 or designate an assistant to deliver such materials to the applicant. The clerk may not designate as an assistant any person who is a candidate for nomination or office or who is working for such a candidate. Any ballots sent pursuant to the provisions of this section shall be mailed or delivered only by officials from the city or town clerk's office and delivered only to the applicant. If the address to which the absent voter's ballot is sent is outside the United States or Canada, such papers shall be sent by air mail. Said clerks shall keep lists of the names and addresses, arranged by voting places, of all applicants to whom official absent voting ballots have been sent, and shall identify those official absent voting ballots which have been returned to the clerk. Candidates whose names appear on the ballot and persons bearing notarized requests or copies of notarized requests from candidates whose names appear on the ballot may obtain copies of such lists; the lists shall not be available for public inspection at any time without a court order. ***The clerk shall charge a***

fee for copies of such lists of \$3 plus \$1 for every 50 names or portion thereof, plus any shipping costs.

AMENDED ANALYSIS

This bill:

- I. Establishes requirements for the secretary of state to cause the removal of certain names from voter checklists.
- II. Modifies fees and procedures for obtaining copies of voter checklist information.
- III. Changes the 10-year checklist verification to a 4-year checklist verification.
- IV. Authorizes the secretary of state to assign voter identification numbers.
- V. Establishes fees for absentee voter lists.

2005-0665h

Amendment to HB 371

Proposed by the Committee on Environment and Agriculture - C

Amend the introductory paragraph of RSA 149-M:58, V as inserted by section 1 of the bill by replacing it with the following:

V. Owners and operators of solid waste transfer stations 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 any of the following mechanisms:

Amend RSA 149-M:58 as inserted by section 1 of the bill by deleting paragraph VI and renumbering the original paragraph VII to read as paragraph VI.

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect January 1, 2006.

2005-0733h

Amendment to HB 381-FN

Proposed by the Committee on Election Law - C

Amend the bill by replacing section 2 with the following:

2 Centralized Voter Registration Database; Jury Lists. Amend RSA 654:45, VI to read as follows:

VI. The voter database shall be private and confidential and shall not be subject to RSA 91-A and RSA 654:31. ***The secretary of state is authorized to provide voter database record data to the administrative office of the courts to assist in the preparation of master jury lists pursuant to RSA 500-A and to the clerk of the District Court of the United States for the District of New Hampshire to assist in the preparation of federal court jury lists.*** The voter checklist for a town or city shall be available pursuant to RSA 654:31. Any person who discloses information from the voter database in any manner not authorized by this section shall be guilty of a misdemeanor.

AMENDED ANALYSIS

This bill:

- I. Permits the secretary of state to make voter database record data available to assist in the preparation of jury lists.
- II. Permits certain special elections to coincide with regularly-scheduled elections.
- III. Modifies state electioneering prohibitions.
- IV. Makes technical changes to certain election laws.

2005-0905h

Amendment to HB 383

Proposed by the Committee on Executive Departments and Administration - C

Amend RSA 5-C:3, II as inserted by section 1 of the bill by replacing it with the following:

II. The division shall:

- (a) Provide access to vital records and vital records data while assuring the privacy of all New Hampshire citizens.
- (b) Outline the confidentiality requirements for vital records.
- (c) Set forth the procedures, conditions, and criteria for release of information regarding vital records data and statistics.

(d) Enforce the provisions of this chapter in regard to the collection, maintenance, and dissemination of vital records information.

(e) Provide guidance to data collectors pursuant to this chapter.

(f) Describe the informational requirements of the forms used by the division of vital records for the collection of vital records information.

(g) Establish, in conjunction with the department of health and human services, the procedures, conditions, and criteria for release of information regarding vital records data and statistics for health-related research pursuant to RSA 126:24-d.

Amend RSA 5-C:5 as inserted by section 1 of the bill by inserting after paragraph II the following new paragraph:

III. The secretary of state shall not remove or add any data fields used for purposes of protecting the public health or to conduct health-related research without prior notice and agreement of the department of health and human services.

Amend RSA 5-C:9, V as inserted by section 1 of the bill by replacing it with the following:

V. Disclosure of certain information and statistical data to federal, state, or local agencies and research for legitimate purposes other than requests for vital records information for the purposes of health-related research under RSA 126:24-c may be authorized by the registrar under RSA 5-C:102-111.

Amend RSA 5-C:96, II(m) as inserted by section 1 of the bill by replacing it with the following:

(m) Fetal death report: retained permanently.

Amend RSA 5-C:102, III as inserted by section 1 of the bill by replacing it with the following:

III. In this chapter, the following persons shall be deemed to have a direct and tangible interest with regard to access to a vital record: the registrant; a member of the registrant's immediate family; the registrant's legal guardian; the registrant's legal representative; persons demonstrating a need for information for the determination or protection of a personal or property right; members of the press, radio, television, and other news media when the information requested by such media sources is of a public nature; persons authorized by the immediate family to conduct genealogical research; and the spouse of a divorced or legally separated person whose former marriage has been legally dissolved who is requesting certified copies of such divorce, legal separation, or civil annulment record.

Amend RSA 5-C:108 as inserted by section 1 of the bill by replacing it with the following:

5-C:108 Procedures for Requesting Vital Records Data for Health-Related Research. Vital records data or copies of vital records that directly or indirectly identify individuals shall be made available for health-related research purposes upon receipt of a written application and approval of the state's institutional review board pursuant to RSA 126:24-d.

Amend RSA 5-C as inserted by section 1 of the bill by deleting RSA 5-C:109 and renumbering the original RSA 5-C:110-112 to read as RSA 5-C:109-111, respectively.

Amend RSA 5-C:110 as inserted by section 1 of the bill by replacing it with the following:

5-C:110 Public Use Statistical File. The department shall make available a public use statistical file containing vital record information of all New Hampshire residents. The public use statistical file shall not contain any identifying personal information or information to constructively identify an individual.

Amend the bill by inserting after section 10 the following and renumbering the original section 11 to read as 12:

11 New Section; Vital Records and Health Statistics; Memorandum of Understanding.

Amend RSA 126 by inserting after section 24-c the following new section:

126:24-cc Memorandum of Understanding. The commissioner and secretary of state shall enter into a memorandum of understanding to address the role of each agency in maintaining the state's vital record system. The memorandum shall facilitate a working relationship between the 2 agencies in meeting their respective responsibilities under this chapter and RSA 5-C. The memorandum shall be reviewed annually and may be modified at

the request of either agency or at the request of the advisory committee on quality of vital records information under RSA 126:24-h.

AMENDED ANALYSIS

This bill repeals and reenacts RSA 5-C, relative to vital records administration. The bill removes the rulemaking authority of the secretary of state, division of vital records and codifies existing rules relative to vital records administration with certain technical changes, including that fetal death reports be retained permanently and that government agencies may make special arrangements to receive copies of vital records at a reduced cost. The bill also requires the secretary of state and the commissioner of the department of health and human services to enter into a memorandum of understanding relative to the state's vital record system.

2005-0392h

Amendment to HB 393

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 methods for requiring employers to permit voluntary and paid on-call emergency first responders to respond to calls.

Amend the bill by replacing section 1 with the following:

1 Committee Established. There is established a committee to study methods for requiring employers to permit voluntary and paid on-call emergency first responders to respond to calls.

Amend the bill by replacing section 3 with the following:

3 Duties. The committee shall study methods for requiring employers to permit voluntary and paid on-call emergency first responders to respond to calls. The committee shall also examine the feasibility of protecting firefighters from employment discrimination in a manner similar to protections afforded members of the national guard under RSA 110-B:65.

AMENDED ANALYSIS

This bill establishes a committee to study methods for requiring employers to permit voluntary and paid on-call emergency first responders to respond to calls.

2005-0858h

Amendment to HB 394

Proposed by the Committee on Municipal and County Government - C

Amend the bill by deleting section 2 and renumbering the original section 3 to read as 2.

AMENDED ANALYSIS

This bill requires tax collectors to report the names of current owners of property subject to a tax lien.

2005-0681h

Amendment to HB 404

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 permitting employees to request a wage deduction for contributions to a political action committee.

Amend the bill by replacing section 1 with the following:

1 New Subparagraph; Withholding of Wages; Contributions to Political Action Committees. Amend RSA 275:48, I by inserting after subparagraph (d) the following new subparagraph:

(e) The employee requests in writing that deductions may be made for contributions to a political action committee from the employee's wages.

AMENDED ANALYSIS

This bill allows an employee to have contributions to a political action committee deducted from his or her wages.

2005-0792h

Amendment to HB 406

Proposed by the Majority of the Committee on Education - R

Amend the bill by deleting section 4 and renumbering the original sections 5-8 to read as 4-7, respectively.

2005-0431h

Amendment to HB 417

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

Amend the bill by deleting section 2 and renumbering the original section 3 to read as 2.

2005-0914h

Floor Amendment to HB 419

Proposed by Reps. Kurk, Spang, P. McMahon and S. Keans

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

AN ACT establishing a committee to study the sale or leasing of state property, including the expansion of the lease boundaries of the Mount Sunapee ski area.

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

1 Purpose.

I. The general court finds that state parks represent significant public trust resources belonging to all the people of the state. It is therefore appropriate that the legislature exercise oversight of the sale, lease, or major modifications of leases on state parks.

II. The general court hereby finds that the legislative record, statutes and 1998 lease of Mount Sunapee ski area need to be examined to determine whether they provide sufficient evidence of blanket legislative endorsement of any plan to expand the lease into park land beyond the 850 acres encompassed within the original lease boundary.

III. Further, the general court finds that it is necessary to establish a compelling benefit to the state's general population before sales, leases, or lease expansion are approved on state park lands, particularly when such contracts are primarily to benefit private real estate development.

2 Committee Established. There is established a committee to study the sale or leasing of state property, including the expansion of the lease boundaries of the Mount Sunapee ski area.

3 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, 2 of whom shall be members of the resources, recreation and development committee and one of whom shall be a member of the fish and game committee.

(b) Three members of the senate, appointed by the president of the senate, at least one of whom shall be from the environment and wildlife committee and one of whom shall be from the capital budget committee.

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

4 Duties.

I. The committee shall study, evaluate, and make recommendations regarding:

(a) The role of the legislature in the leasing and sale of significant state-owned property.

(b) The legislative history, relevant laws, and lease that enabled the current leasing of the ski area within Mount Sunapee state park, to determine whether the state is under any blanket obligation to approve future leasehold expansion amendments, and for what compelling public purpose leasehold expansion amendments are to be allowed.

(c) The process and criteria by which a sale, lease, or major modification of a lease of a state-owned public property should be evaluated to establish whether it would serve a compelling public purpose and benefit to the state's general population.

(d) What statutes need to be enacted to establish policy concerning the lease and sale of state-owned public property and what authority should be given to the pertinent agencies under RSA 541-A to develop administrative rules relative to these policies.

II. The committee may solicit the advice and expertise of any individual, organization, state agency, or state employee in fulfilling its duties.

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 issue a preliminary report on or before November 1, 2005, and a final report on or before November 30, 2006, of its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor.

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

AMENDED ANALYSIS

This bill establishes a committee to study the sale or leasing of state property, including the expansion of the lease boundaries of the Mount Sunapee ski area.

2005-0881h

Amendment to HB 420

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 receiving and addressing complaints against licensees by the board of mental health practice.

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

2 Mental Health Practice; Disciplinary Action; Agent of the Board. Amend RSA 330-A:27, IV to read as follows:

IV. No civil action shall be maintained against the board or any member of the board or its agents or employees with regard to any action or activity taken in the performance of any duty or authority established by this chapter. No civil action shall be maintained against any organization or its members or against any other person for or by reason of any good faith statement, report, communication, or testimony to the board or determination by the board in relation to proceedings under this chapter. ***Agents of the board granted immunity from civil action shall include persons assigned by the board to supervise disciplined licensees under board-imposed disciplinary requirements. Agents granted civil immunity shall not include supervisors of candidates for licensure. Any member of the board, employee, or agent shall comply with the ethical standards of his or her profession.***

3 New Paragraph; Mental Health Practice; Investigations and Complaints. Amend RSA 330-A:28 by inserting after paragraph I the following new paragraph:

I-a. Any board member who has had a personal relationship or has worked in a professional capacity with a complainant or with a licensee against whom a complaint has been filed or whose personal or professional views regarding the licensee or the complainant could prevent the board member from being impartial in considering the complaint shall recuse himself or herself from any investigation or disciplinary action against such licensee. If the chairman of the board is recused, the remaining board members shall elect an acting chairperson from among the board. The chairperson or acting chairperson shall appoint a former board member or a member from the appropriate advisory committee to replace the recused board member during the investigation and proceedings against the licensee. The replacement board member shall be from the same mental health discipline as the recused member.

4 Mental Health Practice; License Expirations. Amend RSA 330-A:31 to read as follows:

330-A:31 Expirations and Renewals. Licenses shall be valid for a period of 2 years and shall become invalid on the expiration date unless renewed. It shall be the duty of the board to notify every person licensed by the board under this chapter of the date of expiration of the license and the amount of the fee that shall be required for its renewal for 2 years. Such notice shall be mailed at least ~~[one month]~~ **2 months** in advance of the date of expiration of such license. Renewal shall be conditional upon filing a timely and complete renewal application and payment of the fee as set by the board.

5 Effective Date. This act shall take effect July 1, 2005.
2005-0852h

Amendment to HB 424-FN

Proposed by the Committee on Election Law - R

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

AN ACT prohibiting the receipt of cash gifts by elected officials.

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

1 Definitions. RSA 15-B:1 is repealed and reenacted to read as follows:

I. "Elected official" means the governor, members of the executive council, members of the general court, county commissioners, county sheriffs, county treasurers, county attorneys, registers of deeds, and registers of probate.

II. "Gift" means any money in the form of cash, check, or other negotiable instrument of any value or a thing of value received with a value in excess of \$50. "Gift" shall not include contributions as defined in RSA 664; a commercially reasonable loan made in the ordinary course of business; meals and beverages consumed in the course of official business; ceremonial gifts or awards which have insignificant monetary value; unsolicited gifts of nominal value or trivial items of informational value; reasonable expenses for food, travel and lodging for an in-state meeting at which the elected official participates in a panel or a speaking engagement; gifts of tickets or free admission extended to an elected official to attend charitable or political events, if the purpose of such gift or admission is a courtesy customarily extended to the office; gifts of money or a thing of value received by an elected official that are purely private and personal in nature and would have been received even were the individual not an elected official, including but not limited to, gifts from relatives by blood or marriage, or a member of the same household. The term "gift" does not include income received by the official in his or her regular course of employment or business or salary, mileage, or expense payments made to the official by the state or county for performance of official duties.

III. "Honorarium" means a payment in the form of cash, check or other negotiable instrument of any value to an elected official for services on which no fee is set or legally obtainable.

2 New Section; Prohibition on Gifts. Amend RSA 15-B by inserting after section 1 the following new section:

15-B:1-a Prohibitions on Gifts. No elected official shall knowingly accept any gift of money in the form of cash, check, or other negotiable instrument of any value. This section shall not be construed to prevent receptions, breakfasts, luncheons, dinners, dances, or picnics or like events from being held for the sole purpose of raising political contributions, provided such contributions comply with and are reported as required by RSA 664.

3 Disclosure Required; Information Required. Amend RSA 15-B:2 and 2-a to read as follows:

15-B:2 Disclosure Required. Every elected state and county official, including members of the general court, shall file a statement annually with the secretary of state by June 15 showing any ~~[income]~~ **gift or honorarium** received by the official during the preceding 12 months ending June 1 ~~[from testimonials, gifts, honorariums, donations, or any other source]~~, when the receipt of such ~~[income]~~ **gift or honorarium** is attributable to the office held by the official. ~~[This report shall not include campaign contributions, income received by the official in his regular course of employment or business or salary, mileage, or expense~~

~~payments made to the official by the state or county for performance of official duties for the preceding 12 months.]~~ The statement shall give in alphabetical order the full name, post office address, occupation, and principal place of business if any, of all contributors who gave an individual or an aggregate total of **gifts or honorarium having a value** of more than \$50 ~~[of such income]~~ and the date **each was** received. The statement shall be a public record under RSA 91-A. For the purpose of this section, “[~~income~~] **gift or honorarium** attributable to the office held by the official” means any gift~~[-]~~ **or** honorarium~~[-, or testimonial income]~~ which is received by an official in his **or her** official capacity, and which would not have been received by the official but for the office he holds.

15-B:2-a Information Required on Financial Disclosure Form.

~~[I.] Each elected official shall disclose any gift or honorarium the official received with a value in excess of \$50 and the nature and value of such gift. [Each elected official shall disclose income received from an individual contributor through gifts and honorariums or, through gifts or honorariums which exceeds that individual contributor's aggregate total of \$50.~~

~~II. For testimonials, each elected official shall disclose the total amount of income received, the expenses of holding the testimonial, and the testimonial net income raised after paying those expenses. Each elected official shall also disclose income received from individual contributors in excess of \$50, and shall follow the disclosure requirements of RSA 15-B:2.]~~

4 Effective Date. This act shall take effect June 2, 2005.

AMENDED ANALYSIS

This bill prohibits the receipt of cash gifts by elected state and county officials.
2005-0510h

Amendment to HB 429

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 representation by nonattorneys before the board of tax and land appeals and relative to condemnation proceedings conducted by the board of tax and land appeals.

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

2 Condemnation; Passage of Title; Declaration of Taking. Amend RSA 498-A:5, I-II to read as follows:

I. Condemnation, under the power of condemnation given by law to a condemnor, which shall not be enlarged or diminished hereby, shall be effected only by the filing in the board of a declaration of taking, with sufficient copies for giving notice as required by RSA 498-A:8~~[-, together with such]~~. ***The declaration shall be considered filed after receipt by the board and review by the board for compliance with paragraph II. If the board finds the declaration of taking is not compliant with paragraph II, the board may direct the filing of a more specific declaration of taking. After the giving of any bond and*** security as may be required under RSA 498-A:6, ~~[and thereupon]~~ the title which the condemnor seeks in the property condemned shall pass to the condemnor on the date of such filing, and the condemnor shall be entitled to possession as provided in RSA 498-A:11. A declaration may include more than one parcel and multiple condemnees so long as the identity of the property taken of each condemnee ~~[is]~~ ***and the nature of their interests are*** readily ascertainable.

II. The declaration of taking shall be in writing and executed by the condemnor, shall be captioned as a proceeding in rem and shall contain the following:

(a) The name and address of the condemnor;

(b) The name and address of each condemnee and the nature of each condemnee's interest;

~~[(b)]~~ **(c)** A specific reference to the statute, chapter and section thereof, under which the condemnation is authorized;

~~[(e)]~~ **(d)** A specific reference to the action, whether by ordinance, resolution or otherwise, by which the declaration of taking was authorized, including the date when such action was taken, and the place where the record thereof may be examined;

~~[(d)]~~ **(e)** A brief description of the purpose of the condemnation and the need therefor;

~~[(e)]~~ **(f)** A description and plan of the property taken sufficient for the identification thereof, specifying the town, city and county wherein the property taken is located; and

~~[(f)]~~ **(g)** A statement of the nature of the property being taken.

3 Board Action. Amend RSA 498-A:24 to read as follows:

498-A:24 Board Action. Upon receipt of the filing of a declaration of taking, ***and after any preliminary objections under RSA 498-A:9-a have been concluded***, the board shall forthwith fix a time for hearing the parties on the issue of just compensation, and shall give notice thereof to all persons named in the declaration of taking as condemnor and as condemnee, and otherwise as justice may require. Such service shall be made in the manner prescribed in RSA 498-A:4, and shall be given at least 30 days prior to the date set for the hearing. The board may, after notice to all parties, upon its own motion or motion of any party, make such order for consolidation of any of the cases pending before it as justice and convenience requires.

AMENDED ANALYSIS

This bill permits nonattorneys to represent taxpayers in utility property tax appeals before the board of tax and land appeals.

The bill also clarifies requirements for certain condemnation proceedings conducted by the board of tax and land appeals.

2005-0872h

Amendment to HB 432-FN

Proposed by the Committee on Environment and Agriculture - R

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

AN ACT relative to the septage handling and treatment facilities grant program and the septage and sludge land application restrictions.

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

2 Temporary Use Authorization; Time Extended. Amend 1998, 56:6 as amended by 2003, 43:14 and 2003, 302:3 to read as follows:

56:6 Temporary Use Authorization. The septage and sludge land application restrictions contained in RSA 483:9, VI(c), RSA 483:9-a, VII(b), RSA 483:9-aa, VII(b), and RSA 483:9-b, VII(b) shall not apply until July 1, ~~[2005]~~ **2007** to any land upon which septage or sludge has been spread in accordance with all applicable rules adopted by the federal Environmental Protection Agency and the New Hampshire department of environmental services, during any portion of the 3-year period prior to January 1, 1998. In addition, there shall be no termination of this restriction exemption for qualifying land that is used for scientific research on septage or sludge. Any continued application of septage and sludge pursuant to this section shall comply with all applicable federal and state laws and any best management practices published by the university of New Hampshire cooperative extension.

3 Effective Date.

I. Section 2 of this act shall take effect June 30, 2005.

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

AMENDED ANALYSIS

This bill allows the department of environmental services to use certain fees for the septage handling and treatment facilities grant program. This bill also extends the temporary use authorization for septage and sludge land application until July 1, 2007.

2005-0372h

Amendment to HB 437

Proposed by the Committee on Municipal and County Government - C

Amend the bill by replacing all after section 2 with the following:

3 New Section; Disposition and Retention Schedule. Amend RSA 33-A by inserting after section 3 the following new section:

33-A:3-a Disposition and Retention Schedule. The municipal records identified below shall be retained, at a minimum, as follows:

- I. Abatements: 5 years.
- II. Accounts receivable: until audited plus one year.
- III. Aerial photographs: permanently.
- IV. Airport inspections-annual: 3 years.
- V. Airport inspections-daily, including fuel storage and vehicles: 6 months.
- VI. Annual audit report: 10 years.
- VII. Annual reports, town warrants, meeting and deliberative session minutes in towns that have adopted official ballot voting: permanently.
- VIII. Archives: permanently.
- IX. Articles of agreement or incorporation: permanently.
- X. Bank deposit slips and statements: 6 years.
- XI. Blueprints-architectural: life of building.
- XII. Bonds and continuation certificates: expiration of bond plus 2 years.
- XIII. Budget committee-drafts: until superseded.
- XIV. Budgets: permanently.
- XV. Building permits-applications and approvals: permanently.
- XVI. Building permits-lapsed: permanently.
- XVII. Building permits-withdrawn, or denied: one year.
- XVIII. Capital projects and fixed assets that require accountability after completion: life of project or purchase.
- XIX. Cash receipt and disbursement book: 6 years after last entry, or until audited.
- XX. Checks: 6 years.
- XXI. Code enforcement specifications: permanently.
- XXII. Complaint log: expiration of appeal period.
- XXIII. Contracts-completed awards, including request for purchase, bids, and awards: life of project or purchase.
- XXIV. Contracts-unsuccessful bids: completion of project plus one year.
- XXV. Correspondence by and to municipality-administrative records: minimum of one year.
- XXVI. Correspondence by and to municipality-policy and program records: follow retention requirement for the record to which it refers.
- XXVII. Correspondence by and to municipality-transitory: retain as needed for reference.
- XXVIII. Current use applications and maps: until removed from current use plus 3 years.
- XXIX. Current use card: until removed from current use plus 3 years.
- XXX. Deed grantee/grantor listing from registry, or copies of deeds: discard after being updated and replaced with a new document.
- XXXI. Deferred compensation plans: 7 years.
- XXXII. Dig safe forms: 4 years.
- XXXIII. Dredge and fill permits: 4 years.
- XXXIV. Driveway permits and plans: permanently.
- XXXV. Easements awarded to municipality: permanently.
- XXXVI. Elections-federal elections ballots: 22 months after election.
- XXXVII. Elections-not federal, all other ballots: 60 days after election.
- XXXVIII. Elections-challenge affidavits: one year after election.

XXXIX. Elections-ward maps: until revised plus 1 year.

XL. Emergency medical services run reports: 10 years.

XLI. Equipment maintenance: life of equipment.

XLII. Excavation tax warrant and book or list: permanently.

XLIII. Federal form 1099s and W-2s: 7 years.

XLIV. Federal form 941: 7 years.

XLV. Federal form W-1: 4 years.

XLVI. Fire calls/incident reports: 10 years.

XLVII. Grants, supporting documentation: follow grantor's requirements.

XLVIII. Grievances: expiration of appeal period.

XLIX. Health-complaints: expiration of appeal period.

L. Health-inspections: 3 years.

LI. Health-service agreements with state agencies: term plus 7 years.

LII. Health and human services case records: active plus 7 years.

LIII. Inspections-bridges and dams: permanently.

LIV. Insurance policies: permanently.

LV. Intent to cut trees or bushes: 3 years.

LVI. Intergovernmental agreements: end of agreement plus 3 years.

LVII. Investigations-fire: permanently.

LVIII. Invoice, assessors: permanently.

LIX. Invoices and bills: until audited plus one year.

LX. Job applications-successful: retirement or termination plus 50 years.

LXI. Job applications-unsuccessful: current year plus 3 years.

LXII. Labor-public employees labor relations board actions and decisions: permanently.

LXIII. Labor union negotiations: permanently or until contract is replaced with a new contract.

LXIV. Ledger and journal entry records: until audited plus one year.

LXV. Legal actions against the municipality: permanently.

LXVI. Library:

(a) Registration cards: current year plus one year.

(b) User records: not retained; confidential pursuant to RSA 201-D:11.

LXVII. Licenses-all other except dog, marriage, health, and vital records: duration plus 1 year.

LXVIII. Licenses-dog: current year plus one year.

LXIX. Licenses-dog, rabies certificates: disposal once recorded.

LXX. Licenses-health: current year plus 6 years.

LXXI. Liens-federal liens upon personal property, other than IRS liens: permanently.

LXXII. Liens-hospital liens: 6 years.

LXXIII. Liens-IRS liens: one year after discharge.

LXXIV. Liens-tax liens, state liens for support of children: until court order is lifted plus one year.

LXXV. Liens-tax liens, state meals and rooms tax: until release plus one year.

LXXVI. Liens-tax sale and record of lien: permanently.

LXXVII. Liens-tax sales/liens redeemed report: permanently.

LXXVIII. Liens-Uniform Commercial Code leases: lease term plus 4 years; purge all July 1, 2007.

LXXIX. Liens-Uniform Commercial Code security agreements: 6 years; purge all July 1, 2007.

LXXX. Meeting minutes, tape recordings: keep until written record is approved at meeting. As soon as minutes are approved, either reuse the tape or dispose of the tape.

LXXXI. Minutes of boards and committees: permanently.

LXXXII. Minutes of town meeting/council: permanently.
 LXXXIII. Minutes, selectmen's: permanently.
 LXXXIV. Motor vehicle-application for title: until audited plus one year.
 LXXXV. Motor vehicle-titles and voided titles: sent to state division of motor vehicles.
 LXXXVI. Motor vehicle permits-void and unused: until audited plus one year.
 LXXXVII. Motor vehicle permits and registrations-used: current year plus 3 years.
 LXXXVIII. Municipal agent daily log: until audited plus one year.
 LXXXIX. Notes, bonds, and municipal bond coupons-cancelled: until paid and audited plus one year.
 XC. Notes, bonds and municipal bond coupon register: permanently.
 XCI. Oaths of office: term of office plus 3 years.
 XCII. Ordinances: permanently.
 XCIII. Payrolls: until audited plus one year.
 XCIV. Perambulations of town lines-copy kept by town and copy sent to secretary of state: permanently.
 XCV. Permits or licenses, pole: permanently.
 XCVI. Personnel files: retirement or termination plus 50 years.
 XCVII. Police, accident files-fatalities: 10 years.
 XCVIII. Police, accident files-hit and run: statute of limitations plus 5 years.
 XCIX. Police, accident files-injury: 6 years.
 C. Police, accident files-involving arrests: 6 years.
 CI. Police, accident files-involving municipality: 6 years.
 CII. Police, accident files-property damage: 6 years.
 CIII. Police, arrest reports: permanently.
 CIV. Police, calls for service/general service reports: 5 years.
 CV. Police, criminal-closed cases: statute of limitations plus 5 years.
 CVI. Police, criminal-open cases: statute of limitations plus 5 years.
 CVII. Police, motor vehicle violation paperwork: 3 years.
 CVIII. Police, non-criminal-internal affairs investigations: as required by attorney general and union contract and town personnel rules.
 CIX. Police, non-criminal-all other files: closure plus 3 years.
 CX. Police, pistol permit applications: expiration of permit plus one year.
 CXI. Property inventory: 5 years.
 CXII. Property record card: permanently.
 CXIII. Property record map, assessors: until superceded.
 CXIV. Property tax exemption applications: transfer of property plus one year.
 CXV. Records management forms for transfer of records to storage: permanently.
 CXVI. Road and bridge construction and reconstruction, including highway complaint slips: 6 years.
 CXVII. Road layouts and discontinuances: permanently.
 CXVIII. Scenic roads: permanently.
 CXIX. School records: retained as provided under RSA 189:29-a.
 CXX. Septic plan approvals and plans: until replaced or removed.
 CXXI. Sewer system filtration study: permanently.
 CXXII. Sign inventory: 7 years.
 CXXIII. Site plan review: life of improvement plus 3 years.
 CXXIV. Site plan review-lapsed: until notified that planning board action and appeal time has expired plus one year.
 CXXV. Site plan review-withdrawn or not approved: appeal period plus one year.
 CXXVI. Special assessment (betterment of property): 20 years.
 CXXVII. Street acceptances: permanently.
 CXXVIII. Street signs, street lights and traffic lights-maintenance records: 10 years.

CXXIX. Subdivision applications-lapsed: until notified that planning board action and appeal period has expired plus one year.

CXXX. Subdivision applications-successful and final plan: permanently.

CXXXI. Subdivision applications-withdrawn, or not approved: expiration of appeal period plus one year.

CXXXII. Subdivision applications-working drafts prior to approval: expiration of appeal period.

CXXXIII. Summary inventory of valuation of property: one year.

CXXXIV. Tax maps: permanently.

CXXXV. Tax receipts paid, including taxes on land use change, property, resident, sewer, special assessment, and yield tax on timber: 6 years.

CXXXVI. Tax-deeded property file (including registered or certified receipts for notifying owners and mortgagees of intent to deed property): permanently.

CXXXVII. Time cards: 4 years.

CXXXVIII. Trust fund minutes, quarterly reports, and bank statements: permanently.

CXXXIX. Vehicle maintenance records: life of vehicle plus 2 years.

CXL. Voter checklist-marked copy kept by town pursuant to RSA 659:102: 5 years.

CXLI. Voter registration:

(a) Purged record cards: 5 years.

(b) Same day, returned to undeclared status: 5 years.

CXLII. Vouchers and treasurers receipts: until audited plus one year.

CXLIII. Warrants-land use change, and book or list: permanently.

CXLIV. Warrants-property tax, and lists: permanently.

CXLV. Warrants-resident tax, and book or list: permanently.

CXLVI. Warrants-town meeting: permanently.

CXLVII. Warrants-treasurer: until audited plus one year.

CXLVIII. Warrants-utility and betterment tax: permanently.

CXLIX. Warrants-yield tax, and book or list: permanently.

CL. Welfare department vouchers: 4 years.

CLI. Work program files: current year plus 6 years.

CLII. Writs: expiration of appeal period plus one year.

CLIII. Zoning board of adjustment applications, decisions, and permits-unsuccessful: expiration of appeal period.

4 Powers and Duties of Municipal Records Board; Reference to Rulemaking Deleted.

Amend RSA 33-A:4-b to read as follows:

33-A:4-b Powers and Duties of Board. The board shall ~~[by rule establish]~~ **advise the secretary of state on** standards~~[,]~~ **and** procedures~~[, and regulations]~~ for the effective and efficient management of municipal records. Such standards~~[,]~~ **and** procedures~~[, and regulations]~~ shall govern the retention, preservation and disposition of municipal records. ~~[The statutory standards for retention, preservation and disposition of municipal records in effect at the time of passage of this section shall remain effective until superseded by rules promulgated by the board.]~~ The board shall oversee the local government records management improvement program as provided in RSA 5:47-5:51.

5 New Section; Disposition of Municipal Records; Electronic Records. Amend RSA 33-A by inserting after section 5 the following new section:

33-A:5-a Electronic Records. Records created in electronic format and designated on the disposition schedule under RSA 33-A:3-a to be retained for more than 10 years shall be transferred to paper, microfilm, or both. Electronically-created records designated on the disposition schedule to be retained for less than 10 years may be retained solely electronically if so approved by the record committee of the municipality responsible for the records. The municipality is responsible for assuring the accessibility of the records for the mandated period.

6 Effective Date. This act shall take effect 60 days after its passage.
2005-0645h

Amendment to HB 440

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 Paragraph; Prohibited Acts. Amend RSA 167-D:7 by inserting after paragraph II the following new paragraph:

III. It is unlawful for any person to willfully interfere or attempt to interfere with a service dog, as defined in RSA 167-D:1, IX.

2 Penalty. Amend RSA 167-D:9 to read as follows:

167-D:9 Penalty.

I. Any person violating any provision of this chapter shall be guilty of a misdemeanor.

II. Any person who willfully tortures, beats, kicks, strikes, mutilates, injures, disables, or otherwise mistreats a service dog, or who willfully causes the death of a service dog shall be guilty of a class B felony.

3 Effective Date. This act shall take effect January 1, 2006.

AMENDED ANALYSIS

This bill clarifies the penalty for interference with a service dog and for mistreating such dogs.

2005-0583h

Amendment to HB 468

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

Amend RSA 173-B:5-a as inserted by section 1 of the bill by replacing it with the following:

173-B:5-a Permissible Contact.

I. A protective order issued pursuant to RSA 173-B:4 or RSA 173-B:5 shall not be construed to prohibit an attorney, or any person acting on the attorney's behalf, who is representing the defendant in an action brought under this chapter, or in any criminal proceeding concerning the abuse alleged under this chapter, from contacting the plaintiff for a legitimate purpose within the scope of the civil or criminal proceeding; provided, that the attorney or person acting on behalf of the attorney: identifies himself or herself as a representative of the defendant; acknowledges the existence of the protective order and informs the plaintiff that he or she has no obligation to speak; terminates contact with the plaintiff if the plaintiff expresses an unwillingness to talk; ensures that any personal contact with the plaintiff occurs outside of the defendant's presence, unless the court has modified the protective order to permit such contact; and, if an attorney, acts in accordance with the Rules of Professional Conduct.

II. Any person who knowingly fails to comply with the requirements of this section when making contact with the plaintiff shall be guilty of a violation of a protective order under RSA 173-B:9.

Amend RSA 633:3-a, III-c, as inserted by section 1 of the bill by replacing it with the following:

III-c.(a) A protective order issued pursuant to this section, RSA 173-B:4, or RSA 173-B:5 shall not be construed to prohibit an attorney, or any person acting on the attorney's behalf, who is representing the defendant in an action brought under this chapter, or in any criminal proceeding concerning the abuse alleged under this chapter, from contacting the plaintiff for a legitimate purpose within the scope of the civil or criminal proceeding; provided, that the attorney or person acting on behalf of the attorney: identifies himself or herself as a representative of the defendant; acknowledges the existence of the protective order and informs the plaintiff that he or she has no obligation to speak; terminates contact with the plaintiff if the plaintiff expresses an unwillingness to talk; ensures that any personal contact with the plaintiff occurs outside of the defendant's presence, unless the

court has modified the protective order to permit such contact; and, if an attorney, acts in accordance with the Rules of Professional Conduct.

(b) Any person who knowingly fails to comply with the requirements of this paragraph when making contact with the plaintiff shall be guilty of a violation of a protective order under RSA 173-B:9.

AMENDED ANALYSIS

This bill sets forth conditions under which permissible contact may occur between the agent of a defendant subject to a protective order and the plaintiff.

2005-0670h

Amendment to HB 469

Proposed by the Committee on Commerce - C

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

1 New Chapter; Residential Construction Defects; Dispute Resolution. Amend RSA by inserting after chapter 359-F the following new chapter:

CHAPTER 359-G

RESIDENTIAL CONSTRUCTION DEFECTS; DISPUTE RESOLUTION

359-G:1 Purpose. In order to encourage the out-of-court resolution of disputes between homeowners and contractors relative to residential construction defects, this chapter provides a framework for discussion about an alleged defect. As part of this process, RSA 359-G:5, IV allows a homeowner to provide access to the residence for an inspection. Since an inspection is likely to lead to the timely resolution of the problem, homeowners are encouraged, but not required, to provide access for an inspection.

359-G:2 Definitions. In this chapter:

I. "Action" means any civil lawsuit, judicial action, or arbitration proceeding asserting a claim, in whole or in part, for damages or other relief in connection with a residence caused by an alleged construction defect.

II. "Homeowner" means any person, company, firm, partnership, corporation, or association who contracts with a contractor for the construction, sale, substantial remodel or repair, or construction and sale of a residence. Homeowner includes, but is not limited to, an authorized assignee, agent, or subsequent purchaser of a residence from any homeowner.

III. "Construction defect" has the meaning assigned by a written, express warranty either provided by the contractor or required by applicable statutory law. If no written, express warranty or applicable statutory warranty provides a definition, then "construction defect" means a matter concerning the design, construction, modification, or repair of a residence on which a person has a complaint against a contractor. The term may include any physical damage to the residence, any appurtenance, or the real property on which the residence or appurtenance are affixed, proximately caused by a construction defect.

IV. "Contractor" means any person, firm, partnership, corporation, association or other organization that is engaged in the business of designing, developing, or constructing a residence, modification, repair of a new or existing residence, or construction, alteration, addition, or repair of an appurtenance to a new or existing residence.

V. "Residence" means a single-family house, duplex, or multifamily unit designed for residential use in which title to each individual unit is transferred to the owner under a condominium or cooperative system and shall include common areas and improvements that are owned or maintained by an association or by members of an association. A residence includes the systems, other components, improvements, other structures, or recreational facilities that are appurtenant to the house, duplex, or multifamily unit at the time of its initial sale, but not necessarily a part of the house, duplex, or multifamily unit.

VI. "Serve" or "Service" means delivery by certified mail, return receipt requested, or in-hand service, to the last known address or place of business of the addressee.

359-G:3 Action; Stay Without Prejudice. If a homeowner files an action without first complying with the requirements of this chapter, on application by a party to the action, the court or arbitrator shall stay the action, without prejudice, until the homeowner has

complied with the requirements of this chapter. The stay shall not exceed the 60 day period set forth in RSA 359-G:4, I, and no attachments against the contractor shall be granted until the stay expires.

359-G:4 Notice and Opportunity to Repair.

I. In every action subject to this chapter, the homeowner shall, no later than 60 days before initiating an action against a contractor, provide service of written notice of claim on that contractor. The notice of claim shall state that the homeowner asserts a construction defect claim and is providing notice of the claim pursuant to the requirements of this chapter. The notice of claim shall describe the claim in detail sufficient to explain the nature of the alleged construction defect and the result of the defect. In addition, the homeowner shall provide to the contractor any evidence in possession of the homeowner that depicts the nature and cause of the construction defect.

II. Within 30 days after service of the notice of claim by the homeowner required in paragraph I, each contractor that has received the notice of claim shall serve on the homeowner, and on any other contractor that has received the notice of claim, a written response to the claim or claims, which discloses any evidence in the possession of the contractor that depicts the nature and cause of the construction defect, and:

(a) Offers to settle the claim by monetary payment, the making of repairs, or a combination of both, without inspection;

(b) Proposes to inspect the residence that is the subject of the claim; or

(c) Wholly rejects the claim.

III. Notwithstanding any other provision of this chapter, if the contractor fails to respond to the homeowner under paragraph II, wholly rejects the claim, or will neither remedy the alleged construction defect nor settle the claim, the homeowner may immediately bring an action against the contractor for the claims described in the notice of claim without further notice except as otherwise provided under applicable law.

IV. If a proposal for inspection is made pursuant to subparagraph II(b), the homeowner may, within 15 days of receiving contractor's proposal, provide the contractor and its subcontractors, agents, experts, and consultants prompt and complete access to the residence to inspect the residence, document any alleged construction defect, and, if authorized in writing by the homeowner, perform any destructive or non-destructive testing required to fully and completely evaluate the nature, extent, and cause of the claimed defect and the nature and extent of any repairs or replacements that may be necessary to remedy the alleged defect. If destructive testing is authorized in writing by the homeowner, the contractor shall give the homeowner advance notice of such tests and shall, after completion of the testing, return the residence to as close as reasonably practicable to its pre-testing condition. If any inspection or testing reveals a condition that requires additional testing to allow the contractor to fully and completely evaluate the nature, cause, and extent of the construction defect, the contractor shall provide notice to the homeowner of the need for such additional testing and, if the homeowner consents in writing to such additional testing, the homeowner shall provide access as provided under this section. If a claim is asserted on behalf of owners of multiple residences, or multiple owners of units within a multi-family complex, then the contractor shall be entitled to inspect each of the residences or units, with the written consent of the unit owner.

V. Within 15 days following completion of the inspection and testing under paragraph IV, the contractor shall serve on the homeowner a response disclosing any inspection or testing records in the possession of the contractor that depict the nature and cause of the construction defect, and:

(a) A written offer to fully or partially remedy the construction defect at no cost to the homeowner. Such offer shall include a description of any additional construction necessary to remedy the defect described in the claim, and an anticipated timetable for the completion of such construction;

(b) A written offer to settle the claim by monetary payment;

- (c) A written offer including a combination of repairs and monetary payment; or
- (d) A written statement that the contractor will not proceed further to remedy the defect.

VI. If a homeowner accepts a contractor's offer made pursuant to subparagraph VI(a), (b), or (c) and the contractor does not proceed to make the monetary payment or remedy the construction defect within the agreed timetable, the homeowner may bring an action against the contractor for the claim described in the notice of claim without further notice except as otherwise provided by applicable law. In such situation, the homeowner may also file the contractor's offer and homeowner's acceptance, and such offer and acceptance will create a rebuttable presumption that a binding and valid settlement agreement has been created and should be enforced by the court or arbitrator.

VII. If a homeowner receives a written statement that the contractor will not proceed further to remedy the defect, the homeowner may bring an action against the contractor for the claim described in the notice of claim without further notice except as otherwise provided by applicable law.

VIII. If the homeowner rejects the offer made by the contractor to remedy the construction defect or to settle the claim by monetary payment or a combination of each, the homeowner may serve written notice of the homeowner's rejection on the contractor.

IX. If the value of the offer that the homeowner rejects under this section is greater than any judgment awarded in an ensuing civil proceeding, then the contractor shall be deemed the prevailing party for the purpose of determining the taxation of costs in the proceeding.

X. Any homeowner accepting the offer of the contractor to remedy a construction defect shall do so by serving the contractor with a written notice of acceptance within a reasonable period of time after receipt of the contractor's settlement offer, but no later than 30 days after receipt of the offer. If no response is served upon contractor within the 30-day period, then the offer shall be deemed rejected.

XI. If a homeowner accepts a contractor's offer to repair a construction defect described in a notice of claim, the homeowner shall provide the contractor and its subcontractors, agents, experts, and consultants prompt and reasonable access to the residence to perform and complete the construction by the timetable stated in the settlement offer.

XII. Service of a written notice of claim pursuant this chapter shall automatically toll the expiration of an applicable limitations period for a period of 60 days. This paragraph shall not be construed to:

- (a) Extend any tolling of expiration beyond 60 days;
- (b) Revive any statute of limitation that expired prior to service of a notice of claim; or
- (c) Extend any applicable statute of repose.

XIII. A homeowner and a contractor may alter, by written mutual agreement, the procedure for the notice of claim process described in this section. The altered process may follow customer dispute resolution guidelines outlined by recognized third party insured warranty programs licensed or approved by the state of New Hampshire.

XIV. In an action relating to a residence involving a construction defect, a contractor shall not be liable for any portion of a homeowner's damages caused by:

- (a) Normal shrinkage due to drying or settlement of construction components within the tolerance of normally accepted building industry standards or standards agreed upon in the contract between the homeowner and the contractor.

- (b) The contractor's reasonable reliance on written information relating to the residence that was obtained from official government records or provided by a government entity.

- (c) The contractor's reasonable reliance on applicable building codes in effect at the start of the construction, except to the extent the homeowner and the contractor had

agreed in writing to exceed the construction standards set forth in the applicable building codes.

(d) Any construction defect that was known by or disclosed to a homeowner in writing prior to the homeowner's purchase of the residence, and that was not caused to worsen or otherwise exacerbated by acts or omissions of the contractor.

(e) If the homeowner is not the first owner of the residence, any construction defect known by the homeowner or that could have been discovered by the homeowner through the exercise of reasonable diligence prior the homeowner's purchase of the residence, and that was not caused to worsen or otherwise exacerbated by acts or omissions of the contractor.

(f) Refusal of the homeowner or homeowner's agent to allow the contractor or contractor's agents to perform their warranty service work.

(g) Normal wear, tear, and deterioration of building components.

(h) Comparative negligence or failure to perform normal and reasonable maintenance of the residence on the part of the homeowner.

(i) Alteration of contractor's work by homeowner without contractor's written consent.

359-G:5 Additional Construction Defects; Additional Notice and Opportunity to Repair Required. A construction defect that is discovered after a homeowner has provided a contractor with the initial claim notice and is substantially related to the factual circumstances, acts or omissions giving rise to the construction defects alleged in the initial notice may be alleged in an action involving the claims alleged in the initial notice without following the notice of claim procedure provided in RSA 359-G:4.

359-G:6 Release; Insurance. If a homeowner accepts an offer made in compliance with this act and the contractor fulfills the offer in compliance with this act, the homeowner shall thereafter be barred from bringing an action for the claim.

359-G:7 Contract of Sale.

I. Upon entering into a purchase agreement or contract for the construction or improvement of a residence in which the contract amount exceeds \$5,000, the contractor shall provide written notice to the owner of the residence of the contractor's right to resolve alleged construction defects before a homeowner may commence litigation against the contractor. Such notice shall be conspicuous and may be included as part of the contract.

II. Contracts providing third party insured warranty programs must provide homeowners with warranty documents and claim procedures at or before closing or first occupancy.

III. The notice required by paragraph I shall be in substantially the following form:
NEW HAMPSHIRE LAW, RSA 359-G, CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO CONSTRUCTED, REMODELED, OR REPAIRED YOUR HOME. SIXTY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECTS. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

359-G:8 Miscellaneous; Applicability of Chapter.

I. Nothing in this chapter shall create any cause of action on behalf of any homeowner or contractor.

II. This chapter shall not apply to a contractor's right to seek contribution, indemnity, or recovery against a subcontractor, supplier, or design professional for any claim made against a contractor by a homeowner.

III. Nothing in this chapter shall prohibit a homeowner from taking such actions as necessary to prevent unsafe conditions or further deterioration of a residence.

2 Applicability. This act shall apply to all contracts entered after the effective date.

3 Effective Date. This act shall take effect January 1, 2006.

2005-0585h

Amendment to HB 480

Proposed by the Committee on Municipal and County Government - C

Amend RSA 674:21, VI(e) as inserted by section 2 of the bill by replacing it with the following:

(e) The approving authority may increase, at existing property lines, the setback to new construction within a village plan alternative subdivision by up to 2 times the distance required by current zoning or subdivision regulations, subject to the provisions of subparagraph (c).

2005-0743h

Amendment to HB 481

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 commission to study the location of the secure psychiatric unit and places to which persons are committed under RSA 651:8-b, RSA 135-C, RSA 171-B, and RSA 623:1.

Amend the bill by replacing section 1 with the following:

1 Commission Established. There is established a commission to study the location of the secure psychiatric unit and places to which persons are committed under RSA 651:8-b, RSA 135-C, RSA 171-B, and RSA 623:1.

Amend paragraph I of section 2 of the bill by inserting the following new subparagraph after subparagraph (d):

(e) A representative of the New Hampshire Association of Counties, correctional affiliate, appointed by the association.

Amend the bill by replacing section 3 with the following:

3 Duties. The commission shall study the location of the secure psychiatric unit and places to which persons are committed under RSA 651:8-b, RSA 135-C, RSA 171-B, and RSA 623:1. The commission shall also examine the issue of federal reimbursement for the secure psychiatric unit.

AMENDED ANALYSIS

This bill establishes a commission to study the location of the secure psychiatric unit and places to which persons are committed under RSA 651:8-b, RSA 135-C, RSA 171-B, and RSA 623:1.

2005-0451h

Amendment to HB 487-FN

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

Amend RSA 487:32 as inserted by section 1 of the bill by replacing it with the following:

487:32 Volunteer Lake Assessment Program Coordinator. There is established in the office of the commissioner, department of environmental services, a state volunteer lake assessment program coordinator, who shall be a classified employee qualified by reason of education and experience, and who shall administer the New Hampshire volunteer lake assessment program.

487:33 Acceptance and Expenditure of Funds.

I. The commissioner may apply for and accept gifts, donations of money, federal, municipal, or private grants, or other funds or incentives from any source for the purposes of this subdivision. The funds accepted under this paragraph shall be paid into the lake restoration and preservation fund established under RSA 487:25. All funds received shall be continually appropriated to the department for the purposes of this subdivision.

II. The commissioner may expend any funds received under paragraph I for the purposes of this subdivision.

Amend the bill by replacing section 3 with the following:

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

2005-0820h

Amendment to HB 490

Proposed by the Committee on Commerce - C

Amend the bill by deleting sections 2 and 3 and renumbering the original section 4 to read as 2.

AMENDED ANALYSIS

This bill clarifies law enforcement access to financial records under the New Hampshire right to privacy act.

2005-0798h

Amendment to HB 513

Proposed by the Committee on Transportation - R

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

AN ACT relative to on-board diagnostic system inspections.

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

1 New Paragraph; Department of Safety; Duties of Commissioner; Complaints. Amend RSA 21-P:4 by inserting after paragraph XI the following new paragraph:

XII. Establish an easily accessible mechanism for citizens to file complaints with the department relating to on-board diagnostic system testing required by RSA 266:59-b. The complaint mechanism shall include either a telephone number reserved exclusively for such complaints or an Internet site for such complaints that may be accessed through links prominently displayed on Internet sites operated by the department or the state.

2 Equipment of Vehicles; Inspections; Fees. Amend RSA 266:1, VII to read as follows:

VII. Each inspection station shall conspicuously post on the outside of the building a sign showing the inspection fee charged. ***No inspection station may charge more than \$15 for the EPA OBD II test required by RSA 266:59-b.***

3 Emission Control Equipment; OBD II Testing Required. Amend RSA 266:59-b, III-V to read as follows:

III. ~~[For all model year 1996 and newer gasoline-powered and model year 1997 and newer diesel-powered motor vehicles equipped with on-board diagnostic systems meeting the federal EPA OBD II standards,]~~ The commissioner, after public hearing and consultation with the commissioner of the department of environmental services and the air pollution advisory committee, and notification of the house science, technology, and energy committee and the senate environment committee, and with the approval of the air pollution advisory committee, shall adopt rules under RSA 541-A, which require ~~[every motor vehicle]~~ ***all model year 1996 and newer gasoline-powered and model year 1997 and newer diesel-powered motor vehicles equipped with on-board diagnostic systems meeting the federal EPA OBD II standards*** driven on the ways of this state which ~~[is]~~ ***are*** subject to inspection under this chapter, after a date specified by the commissioner, to be tested for OBD II indications of failures as a component of the inspection. ***The test for OBD II indications of failure shall be conducted only after the inspection required by RSA 266:1 is completed.*** To the extent allowed by EPA OBD II policy, OBD II data may be substituted for visual and functional tests required by paragraph I.

IV.(a) This section shall not apply to vehicles 20 or more model years old which shall be determined by subtracting the model year of the vehicle from the calendar year in which the inspection occurs.

(b) ***Vehicles of a model year within 4 years of the date of inspection with an odometer reading of less than 80,000 miles shall be exempt from the OBD II testing requirements under paragraph III.***

V. If a vehicle fails the EPA OBD II test and it passes all other inspection requirements under this chapter, then it shall be issued a temporary waiver that permits its operation for 60 days from the date of issuance, in order to make required repairs. A vehicle shall be eligible for only one such waiver during its inspection cycle. ***If the cost of the required repairs is more than \$250, as determined by the inspection station or by written estimate from any other inspection station, the vehicle shall be issued an inspection sticker, provided that a vehicle may not be issued more than 2 consecutive inspection stickers based on the cost of repairs and no inspection sticker shall be issued to any vehicle registering a third consecutive OBD II indication of failure.***

VI. ***If a vehicle fails the EPA OBD II test and the owner fails to make the required repairs, the owner may not sell the vehicle without informing the purchaser of the OBD II failure. If the owner fails to inform the purchaser of the OBD II failure, the purchaser shall be entitled to a refund of the purchase price and reasonable attorney's fees.***

VII.(a) ***There is established an OBD II testing advisory committee. The committee shall be composed of the following:***

- (1) Three representatives, appointed by the speaker of the house of representatives.***
- (2) Three senators, appointed by the president of the senate.***
- (3) The director of the division of motor vehicles of the department of safety.***
- (4) The attorney general, or designee.***
- (5) One member appointed by the New Hampshire Automobile Dealers Association.***
- (6) One member appointed by the New Hampshire Motor Transport Association.***

(b) Members' terms shall be coterminous with their terms in office, except that members appointed pursuant to subparagraphs (a)(5) and (a)(6) shall serve at the discretion of the appointing authority.

(c) The committee shall:

- (1) Review and approve any contracts between the state and any private entities relating to OBD II testing.***
- (2) Oversee any contracts between the state and any private entities relating to OBD II testing.***

(d) The department shall not enter into any contract for services related to OBD II testing, or extend or renew any contract for services related to OBD II testing, without the prior approval of the committee.

4 Fees for Inspection-Related Services; Exemptions. Motor vehicle inspection stations that are authorized to inspect only motorcycles or private fleet vehicles and motor vehicle inspection stations operated by municipalities shall not be required to pay any fees to a private entity for inspection-related services pursuant to any contract executed by the state or the department of safety prior to the effective date of this act.

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

AMENDED ANALYSIS

This bill:

- I. Limits the fees that motor vehicle inspection stations may charge for EPA OBD II tests.
- II. Modifies the applicability of the OBD II testing requirements.
- III. Allows an inspection sticker to be issued to a vehicle if repairing an OBD II failure will cost more than \$250.
- IV. Requires notice of an OBD II failure by a motor vehicle seller.

V. Establishes an advisory committee to approve and oversee contracts relating to OBD II testing.

VI. Exempts certain inspection stations from paying fees to a private entity for inspection-related services.

2005-0879h

Amendment to HB 517

Proposed by the Committee on Environment and Agriculture - R

Amend section 3 of the bill by inserting after paragraph IV the following new paragraph:

V. Evolving emissions control technology and its appropriate application to issuing permits for the incineration of construction and demolition waste.

Amend the bill by replacing sections 5 and 6 with the following:

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library. A preliminary report shall be submitted on or before November 1, 2005, and a final report shall be submitted on or before July 1, 2006.

6 Incineration Moratorium. Notwithstanding any provision of law to the contrary, there is hereby established a moratorium on the disposal of construction and demolition waste by incineration until July 1, 2006. This moratorium shall not apply to any municipal waste combustor subject to RSA 125-M, or to any municipal incinerator as defined in RSA 149-M, that is permitted by the department of environmental services and was in operation on January 1, 2005.

2005-0767h

Amendment to HB 532

Proposed by the Committee on Executive Departments and Administration - C

Amend the bill by replacing section 3 with the following:

3 Practice of Dentistry. Amend RSA 317-A:20, I(c)-(h) to read as follows:

(c) Directly or indirectly informs the public in any language, orally, in writing, or in printing, or by drawings, demonstrations, specimens, signs, or pictures that the person can perform or will attempt to perform dental operations of any kind; ~~or~~

(d) Undertakes, by any means or method, ***including by use of electronic media***, gratuitously or for a salary, fee, money, or other reward paid or granted directly or indirectly to that person or to any other person, to diagnose or profess to diagnose, to treat or profess to treat, or prescribe for or profess to prescribe for any of the lesions, diseases, disorders, or deficiencies of the human oral cavity, teeth, gums, maxilla, or mandible or adjacent associated structures;

(e) ~~[Extracts human teeth or corrects malpositions thereof or of the jaws]~~

Supervises a dentist within the scope of the practice of dentistry;

(f) Except on the written prescription of a duly licensed dentist and by the use of impressions or casts made by a duly licensed and practicing dentist, directly or indirectly by mail, carrier, personal agent, or by any other method, furnishes, supplies, constructs, reproduces, or repairs prosthetic dentures, bridges, appliances, or other structures to be used and worn as substitutes for natural teeth, or adjusts the same; ***or***

(g) Administers dental anesthetics, either general or local; ~~or~~

(h) ~~Engages in any of the practices included in the curricula of recognized dental colleges].~~

2005-0541h

Amendment to HB 547-FN

Proposed by the Committee on Finance -C

Amend RSA 146-E:6, II as inserted by section 1 of the bill by replacing it with the following:

II. Owners of facilities or land eligible under this chapter may apply for reimbursement of court-ordered damages to third parties for bodily injury or property damage, and for the costs of on-site and off-site cleanup of fuel oil discharges in amounts not

to exceed a total of \$500,000, incurred on or after October 1, 1992. Owners of on-premise-use facilities or land eligible under this chapter who have demonstrated financial need, may apply for reimbursement of costs to meet the requirements of RSA 146-E:4, I and II in amounts not to exceed a total of [~~\$1,000~~] ***\$1,500 and may apply for reimbursement of underground storage tank abandonment or removal costs in amounts not to exceed a total of \$2,500***, incurred on or after [~~July 1, 1999~~] ***the effective date of this paragraph.***
2005-0671h

Amendment to HB 549

Proposed by the Committee on Municipal and County Government - C

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

AN ACT modifying notice requirements for the acceptance of unanticipated funds by a school district, city, town, or public library.

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

3 Public Libraries; Trustees' Authority to Accept and Expend Gifts. Amend RSA 202-A:4-c, III to read as follows:

III. ***(a) For unanticipated moneys in the amount of \$5,000 or more***, the public library trustees shall hold a prior public hearing on the action to be taken. Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the hearing is held.

(b) For unanticipated moneys of less than \$5,000, the public library trustees shall post notice of the moneys in the public library trustees agenda, if any, and shall include notice in the minutes of the public library trustees meeting in which such moneys are discussed. The acceptance of unanticipated moneys under this subparagraph shall be made in public session of any regular public library trustees meeting.

AMENDED ANALYSIS

This bill establishes provisions for the acceptance of unanticipated funds in school districts, cities, towns, or public libraries.
2005-0584h

Amendment to HB 558

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

Amend RSA 632-A:4, II as inserted by section 1 of the bill by replacing it with the following:

II. A person found guilty under subparagraph [~~I(b)~~] ***I(c) or paragraph I-a*** of this section shall not be required to register as a sexual offender under RSA 651-B.

Amend the bill by inserting after section 1 the following and renumbering the original sections 2-3 to read as 3-4, respectively:

2 New Paragraph; Sexual Assault; Class B Misdemeanor Offense. Amend RSA 632-A:4 by inserting after paragraph I the following new paragraph:

I-a. When the actor subjects another person, other than the actor's legal spouse who is 13 years of age or older and under 16 years of age, to sexual contact and the age difference between the actor and the other person is 3 years or less, the actor shall be guilty of a class B misdemeanor.

2005-0786h

Amendment to HB 560

Proposed by the Committee on Environment and Agriculture - C

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

1 Timber Harvesting; Terrain Alteration Permits. Amend RSA 485-A:17, III to read as follows:

III. Normal agricultural operations shall be exempt from the provisions of this section. The department may exempt other state agencies from the permit and fee provisions of this section provided that each such agency has incorporated appropriate

protective practices in its projects which are substantially equivalent to the requirements established by the department under this chapter.

IV. Timber harvesting operations shall be exempt from the fee provisions of this section. ~~[Permits shall be granted for timber harvesting operations provided that the department of revenue administration's intent to cut form is completed.]~~ ***Timber harvesting operations shall be considered in compliance with this section and shall be issued a permit by rule provided such operations are in accordance with procedures prescribed in the Best Management Practices for Erosion Control on Timber Harvesting operations in New Hampshire, published by the department of resources and economic development, and provided that the department of revenue administration's intent to cut form is signed.***

2 Prosecution Authority. RSA 485-A:22-a is repealed and reenacted to read as follows:

485-A:22-a Cease and Desist Orders; Penalty. The director of the division of forests and lands, department of resources and economic development, or his ***or her*** authorized agents, may:

I. Issue a written cease and desist order against any timber operation in violation of this chapter. Any such violation may be enjoined by the superior court, upon application of the attorney general. A person failing to comply with the cease and desist order shall be guilty of a violation.

II. Prosecute any violation of this chapter as a violation. This provision shall not limit the state's enforcement authority under this chapter.

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

AMENDED ANALYSIS

This bill exempts certain timber harvesting operations from certain environmental laws.

This bill also grants the director of the division of forest and lands the ability prosecute certain violations of law.

2005-0781h

Amendment to HB 570

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 preliminary site plan review and the definition of inclusionary zoning.

Amend the bill by replacing section 3 with the following:

3 Board's Procedures on Plats.; Preliminary Review. Amend the introductory paragraph of RSA 676:4, II to read as follows:

II. A planning board may provide for ~~[preapplication]~~ ***preliminary*** review of applications and plats by specific regulations subject to the following:

Amend the bill by inserting after section 4 the following and renumbering the original section 4 to read as 5:

4 Board's Procedures on Plats; Preapplication Changed to Preliminary. Amend RSA 676:4, II(c) to read as follows:

(c) ~~[Preapplication]~~ ***Preliminary*** 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).

AMENDED ANALYSIS

This bill allows a planning board to require preliminary review of a site plan.

2005-0771h

Amendment to HB 573

Proposed by the Committee on Environment and Agriculture - C

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

AN ACT establishing a commission to study automobile recycling issues, including disposal fees.

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

1 Commission Established. There is established a commission to study automobile recycling issues, including disposal fees.

2 Membership and Compensation.

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

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

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

(c) The commissioner of the department of environmental services, or designee.

(d) The commissioner of the department of safety, or designee.

(e) The commissioner of the department of transportation, or designee.

(f) One representative from the Auto Recyclers Association of New Hampshire, appointed by said association.

(g) One representative from the scrap processors industry, appointed by the speaker of the house of representatives.

(h) One representative from the Alliance of Automobile Manufacturers, appointed by the speaker of the house of representatives.

(i) One representative from the New Hampshire Auto Dealers Association, appointed by said association.

(j) One representative from the New Hampshire Municipal Association, appointed by said association.

(k) One representative from New Hampshire the Beautiful, Inc., appointed by said corporation.

(l) One representative from the insurance industry, appointed by the speaker of the house of representatives.

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

3 Duties. The commission shall study automobile disposal or recycling fees, and whether said fees should be assessed at the time of purchase or at the time of disposal, and what department or entity should receive the fees and administer the program.

4 Chairperson; Quorum. The members of the study 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. Nine members of the commission shall constitute a quorum.

5 Report. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2005.

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

AMENDED ANALYSIS

This bill establishes a commission to study automobile recycling issues, including disposal fees.

2005-0808h

Amendment to HB 580

Proposed by the Committee on Environment and Agriculture - C

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

AN ACT establishing a commission to study the procedures for the formation and dissolution of solid waste management districts under RSA 53-B and the procedures for the dissolution of an interstate waste compact under RSA 53-D.

Amend paragraph III of section 3 of the bill by replacing it with the following:

III. The effect of withdrawal of a majority of the members from a solid waste management district on the continuing environmental liabilities of the remaining district members.

Amend the bill by replacing section 5 with the following:

5 Report. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, all member municipalities of the New Hampshire/Vermont solid waste district, and the state library on or before November 1, 2005.

Amend the bill by deleting section 6 and renumbering the original section 7 to read as 6.

AMENDED ANALYSIS

This bill establishes a commission to study the procedures for the formation and dissolution of solid waste management districts under RSA 53-B and the procedures for the dissolution of an interstate waste compact under RSA 53-D.

2005-0741h

Amendment to HB 583

Proposed by the Committee on Commerce - C

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

1 New Subdivision; Medical Malpractice Insurance Oversight Committee. Amend RSA 519-A by inserting after section 10 the following new subdivision:

Medical Malpractice Insurance Oversight Committee

519-A:11 Medical Malpractice Insurance Oversight Committee.

I. There is established a committee to study medical malpractice insurance rates in this state.

II. The committee shall consist of 4 members of the house of representatives, appointed by the speaker of the house of representatives and 3 members of the senate, appointed by the president of the senate.

III. The members of the committee shall elect a chairperson from among the members. Five members of the committee shall constitute a quorum.

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

V. The committee shall review and analyze detailed information provided by the administrative office of the courts and the insurance department related to medical injury liability claim activity, the condition of the medical malpractice insurance market and current rate levels and pricing of medical malpractice insurance products.

VI.(a) The committee shall analyze the information it receives under paragraph V and from the insurance commissioner and report it annually to the speaker of the house of representatives, the senate president, the house clerk, and the senate clerk.

(b) The committee shall make an interim report of its findings about medical insurance rates 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 December 1, 2007.

(c) The committee shall make a final report of its findings about medical insurance rates 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 December 1, 2009.

519-A:12 Reports.

I.(a) The administrative office of the courts shall collect data on medical injury claims and submit a report to the committee established in RSA 519-A:11 and to the insurance commissioner on or before September 30 of each year.

(b) The report shall include the number of medical injury cases filed, pending, and resolved during the fiscal year ending on the June 30 preceding the report date.

(c) The report shall also include, for medical injury cases resolved during the fiscal year:

(1) The mean and median lengths of time from initial filing to final resolution.

(2) The number and average settlement amount of cases that were resolved prior to trial.

(3) The number and average settlement amount of cases that were resolved by or after a jury verdict.

(d) To the extent possible, the report shall include comparative data from the previous 5 years.

II.(a) The insurance commissioner shall report to the committee, established in RSA 519-A:11, annually, on or before November 1 of each year, on the medical malpractice market and the current rate levels and pricing of medical malpractice insurance products. Such reports shall include, but not be limited to, average rate comparisons of medical liability insurance for categories of medical providers and specialties identified by the insurance commissioner, the frequency and severity of medical injury claims, the time for resolution of medical injury claims from first notice to final resolution, and other factors influencing the pricing of medical malpractice insurance products.

(b) The insurance commissioner may adopt rules to collect the data from insurers necessary to prepare the report required by this section. To the extent the commissioner collects information from insurers regarding individual claims, loss adjustment and other expenses, reserves, indemnity payments, or other financial information that is not otherwise reported to the commissioner and available to the public, such information shall be treated as examination materials, kept confidential and not be subject to RSA 91-A.

2 First Meeting of Committee. The first meeting of the committee established in section 1 of this act 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.

3 Effective Date. This act shall take effect 60 days after its passage.
2005-0833h

Amendment to HB 585

Proposed by the Committee on Children and Family Law - C

Amend the bill by replacing section 3 with the following:

3 Effective Date. This act shall take effect upon its passage.
2005-0722h

Amendment to HB 594-FN

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

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

AN ACT relative to retirement system classification for department of corrections correctional line personnel.

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

1 Repeal. RSA 100-A:1, VII(b), relative to group II classification of department of corrections correctional line personnel, is repealed.

2 Application of Repeal to Current Personnel. A person employed as department of corrections correctional line personnel and classified as a group II retirement system member as of the effective date of this act may remain a group II member and continue accruing service as group II service, notwithstanding the 5-year service requirement in RSA 100-A:3, II-c, for as long as the person holds that position or a related position reached through normal career-path promotion.

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

AMENDED ANALYSIS

This bill removes department of corrections correctional line personnel from group II classification in the state retirement system. The bill allows persons employed as group II department of corrections correctional line personnel on the effective date of the act to remain group II.

2005-0698h

Amendment to HB 595-FN

Proposed by the Committee on Executive Departments and Administration - C
Amend the bill by replacing section 1 with the following:

1 Position Established. There is established in the department of agriculture, markets, and food, the position of state meat inspector who shall be a classified state employee. The state meat inspector shall enforce the provisions of RSA 427:1 through RSA 427:37. Said position shall be funded entirely through federal, state, and private grants.

AMENDED ANALYSIS

This bill establishes the position of state meat inspector. The position is funded by government and private grants.

2005-0855h

Amendment to HB 599-FN

Proposed by the Committee on Transportation - C

Amend the bill by replacing section 1 with the following:

1 New Chapter; Event Data Recording Devices in Motor Vehicles. Amend RSA by inserting after chapter 357-F the following new chapter:

CHAPTER 357-G

EVENT DATA RECORDING DEVICES IN MOTOR VEHICLES

357-G:1 Event Data Recorders.

I. As used in this section, "recording device" means a device that is installed by the manufacturer of the vehicle and does one or more of the following, for the purpose of retrieving data after an accident:

- (a) Records how fast and in which direction the motor vehicle is traveling.
- (b) Records a history of where the motor vehicle travels.
- (c) Records steering performance.
- (d) Records brake performance, including, but not limited to, whether brakes

were applied before an accident.

- (e) Records the driver's seatbelt status.

(f) Has the ability to transmit information concerning an accident in which the motor vehicle has been involved to a central communications system or other external device when an accident occurs.

II. A motor vehicle dealer of a new motor vehicle sold in this state that is equipped with one or more recording devices, commonly referred to as "event data recorders (EDR)" or "sensing and diagnostic modules (SDM)," shall disclose that fact in writing to the consumer prior to the sale.

III. A person other than the registered vehicle owner authorized to download or otherwise retrieve data from a recording device, may not release that data, except to share the data among the motor vehicle safety and medical research communities to advance motor vehicle safety, and only if the identity of the registered owner or driver is not disclosed.

IV. Violations of this section shall constitute an unfair or deceptive act or practice under RSA 358-A:2.

V. This section applies to all motor vehicles manufactured on or after July 1, 2006.

AMENDED ANALYSIS

This bill requires disclosure to consumers of the presence of event data recording devices in new motor vehicles. This bill also limits the use of data recorded by event data recording devices.

2005-0917h

Amendment to HB 611-FN

Proposed by the Committee on Commerce - R

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

1 New Chapter; Small Group Reinsurance Mechanism. Amend RSA by inserting after chapter 404-H the following new chapter:

CHAPTER 404-I

SMALL GROUP REINSURANCE MECHANISM

404-I:1 Purpose.

I. The purpose of this chapter is to:

(a) Create a nonprofit organization to facilitate the availability of affordable small group health insurance for high risk small groups by establishing a mandatory assessment and reinsurance mechanism to distribute the risks within the small group market.

(b) Protect the citizens of this state who participate in the small group health insurance market by providing a mechanism to enable insurers to better protect against the excessive risk associated with covering high risk groups and individuals within those groups.

II. It is the intent of the general court that the small group reinsurance mechanism shall be adequately funded through an annual, and if necessary, a special assessment mechanism, and that the reinsurance mechanism shall utilize cost containment measures.

404-I:2 Definitions. In this chapter:

I. "Assessment" means the liability of the member insurer to the reinsurance association.

II. "Association" means the reinsurance association.

III. "Commissioner" means the insurance commissioner.

IV. "Covered lives" shall include all persons who are covered under a health insurance policy or certificate issued or delivered to a small employer in New Hampshire.

V. "Health insurance" means health insurance coverage issued in accordance with RSA 415, RSA 420-A, or RSA 420-B. For the purposes of this chapter, health insurance shall not include accident only, credit, dental, vision, Medicare supplement, Medicare Risk, Medicare Advantage, Managed Medicaid, long-term care, disability income, coverage issued as a supplement to a liability insurance, workers' compensation or similar insurance, automobile medical payment insurance, policies or certificates of specified disease, hospital confinement indemnity, limited benefit health insurance or short-term, nonrenewable individual health insurance, coverage provided through the New Hampshire healthy kids association, and coverage provided through the federal Employees' Program. "Health insurance" shall include group excess loss insurance.

VI. "Mechanism" means the New Hampshire small group reinsurance mechanism.

VII. "Member insurer" means a small group health insurance carrier that is licensed in New Hampshire pursuant to RSA 402, RSA 420-A, or RSA 420-B.

VIII. "Plan of operation" means the plan of operation of the small group reinsurance mechanism, including articles, bylaws and operating rules, procedures and policies adopted by the association.

IX. "Reinsurance association" means the entity created within this chapter.

X. "Small employer" means "small employer" as defined in RSA 420-G:2, XVI.

XI. "Small group health insurance carrier" means any entity licensed pursuant to RSA 402, RSA 420-A, or RSA 420-B that issues or maintains in force policies of health insurance to small employers in New Hampshire.

404-I:3 Reinsurance Association's Powers and Duties.

I. The association shall be a not-for-profit, voluntary corporation under RSA 292 and shall possess all general powers as derive from that status and such additional powers and duties as are approved by the commissioner or as specified below.

II. The board of directors of the association shall have the following powers:

(a) Enter into contracts as necessary or proper to administer the plan of operation.

(b) Sue or be sued, including taking any legal action necessary or proper for the recovery of any assessments for, on behalf of, or against members of the association or other participating person.

(c) Take legal action as necessary to avoid the payment of improper claims against the plan.

(d) Retain appropriate legal, actuarial, and other persons as necessary to provide technical assistance in the operation of the plan, and in any other function within the authority of the plan.

(e) Borrow money to carry out the plan of operation.

(f) Issue policies of reinsurance.

(g) Assess small group health insurance carriers.

(h) Apply for and accept funds from any third-party.

(i) Perform any other function within the authority of the association as may be necessary or proper to carry out the plan of operation.

III. The board of directors of the association shall have the following duties:

(a) Fulfill the plan of operation as approved by the commissioner.

(b) Develop and issue policies of reinsurance.

(c) Determine and collect assessments for the reinsurance mechanism.

(d) Administer reinsurance policies, including premium collection and claims payments.

(e) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, claim reserve formulas and any other actuarial functions appropriate to the plan of operation for the reinsurance mechanism.

(f) Provide for and employ cost-containment measures and requirements, which shall include but not be limited to, conducting medical audits on reinsurance submissions.

404-I:4 Reinsurance Association Membership and Governance.

I. The association shall be composed of all small group health insurance carriers licensed in the state of New Hampshire.

II. The initial board of directors of the association shall be appointed by the commissioner, and shall include 10 members, including the commissioner, or his or her designee, who shall serve as an ex officio member of the board. In the initial and in each successor board, 5 directors shall be representative of small group health insurance carriers, one director shall be representative of the health care provider community and shall be appointed by the commissioner, one director shall be representative of consumers covered through the reinsurance mechanism and shall be appointed by the commissioner, one director shall be a representative of insurance brokers and shall be appointed by the commissioner, and one director shall be a representative of small employers and shall be appointed by the commissioner. The commissioner shall serve in an ex officio capacity.

III. There shall be no more than one director representing any one small group health insurance carrier or its affiliate. For purposes of this section, the insurance activities of any elected director's affiliate shall be deemed to be insurance activities of the elected director.

IV. In the successor board, the 5 directors representing small group health insurance carriers shall be elected annually. Small group health insurance carriers shall be entitled to vote. A small group health insurance carrier's votes for small group market representatives shall be proportional to the small group health insurance carrier's assessment in that market, and shall be based on that member's covered lives.

V. Members of the board of directors shall be elected to terms of one year.

VI. The board of directors shall take action by affirmative vote representing a simple majority of the entire board.

VII. The board shall elect officers in accordance with the bylaws of the association. The bylaws of the association shall also govern the place and frequency of meetings of directors and their reimbursement for expenses incurred.

404-I:5 Plan of Operation for the Reinsurance Mechanism.

I. The board of directors for the reinsurance association shall adopt a plan of operation for the reinsurance mechanism. The reinsurance mechanism shall be funded in part through an assessment mechanism whereby small group health insurance carriers contribute an amount sufficient to cover the expenses and losses of the mechanism.

- II. The plan of operation for the reinsurance mechanism shall establish:
- (a) Procedures for selecting a third-party administrator and setting forth the powers and duties of the third-party administrator;
 - (b) Procedures for selecting and retaining an administrator;
 - (c) Procedures to create a fund, under management of the board, for administrative expenses;
 - (d) Procedures for small group health insurance carriers to submit their claims for reinsurance;
 - (e) Guidelines for conducting audits of carrier's administration of claims for individuals ceded to the reinsurance mechanism;
 - (f) Procedures for collecting assessments from member carriers;
 - (g) Procedures for handling, accounting and auditing of assets, moneys, and claims of the mechanism;
 - (h) Requirements for keeping financial and other records;
 - (i) Guidelines for termination of reinsurance coverage at the option of the ceding carrier;
 - (j) Regular times and places for meetings of the board;
 - (k) A methodology for applying the reinsurance provisions in the case of carriers that pay or reimburse health care providers through capitation or salary; and
 - (l) Such other administrative provisions as are necessary or proper for the execution of the powers and duties of the association.

404-I:6 Assessment.

I. The assessment for the reinsurance mechanism shall be based on the number of covered lives under health insurance policies issued to small employers times a specified assessment rate. The association shall specify the basis used to set the assessment rate.

- II. The association shall establish a regular assessment rate which shall be:
- (a) Calculated on a calendar year basis;
 - (b) Established no later than November 1 in the year preceding the calendar year for which the carrier's experience shall be used to calculate the assessment; and
 - (c) Anticipated to be sufficient to meet the reinsurance mechanism's funding needs.

III. In addition to the regular assessment rate, the association may establish a special assessment rate. Notwithstanding RSA 420-G:4, a small group health insurance carrier may increase the premiums charged by the amount of the special assessment. Any such premium increase shall be subject to the approval of the commissioner. Any assessment may appear as a separate line item on a policyholder's bill.

(a) The association shall only establish a special assessment if the association determines that its funds are or will become insufficient to pay the reinsurance mechanism's expenses in a timely manner.

(b) The association shall only assess, through the special assessment, at a rate necessary to fund the deficiency ascertained in subparagraph (a).

IV. The regular assessment rate, and any special assessment rate, shall be subject to the approval of the commissioner. The commissioner shall approve the rate if she or he finds that the amount is required to fulfill the purposes of the reinsurance mechanism. For the purpose of making this determination, the commissioner may, at the expense of the association, seek independent actuarial certification of the need for the proposed rate.

V. The association shall impose and collect assessments from its members.

VI. If the assessment exceeds the amount actually needed, the excess shall be held and invested and, with the earnings and interest thereon, be used to offset future net losses.

VII. Each covered life should be included in the assessment only once. The association shall adopt procedures by which affiliated carriers calculate their assessment on an aggregate basis and procedures to ensure that no covered life is counted more than once.

VIII. The initial assessment rate to fund the reinsurance mechanism shall be \$1 per covered life per month, and shall apply to all health insurance policies issued to small employers that are in force on or after July 1, 2005.

404-I:7 Reinsurance Mechanism.

I. There is hereby created the New Hampshire reinsurance mechanism. This reinsurance mechanism shall be operated by and subject to the control of the association and shall provide reimbursement on an as-incurred basis for risks ceded to the reinsurance mechanism on or after January 1, 2006.

II. The reinsurance mechanism shall be funded by premiums charged for reinsurance and by assessments which the association shall calculate based on the number of covered lives times a specified amount. The reinsurance mechanism shall not be funded with state general fund revenue. The reinsurance mechanism shall never cease providing reinsurance for claims incurred by ceded risks.

404-I:8 Reinsurance Mechanism Administrator.

I. The board shall select an administrator through a competitive bidding process to administer the mechanism. The board shall evaluate bids submitted based on criteria established by the board which shall include:

- (a) The efficiency and timeliness of the administrative procedures;
- (b) An estimate of total charges for administering the mechanism;
- (c) The reinsurance mechanism administrator's ability to apply effective cost containment programs and procedures and to administer the mechanism in a cost efficient manner; and

- (d) The financial condition and stability of the reinsurance mechanism administrator.

II.(a) The reinsurance mechanism administrator shall serve for a period of at least 3 years and shall be subject to removal for cause; and

(b) At least one year prior to the expiration of each period of service by a reinsurance mechanism administrator, the association shall invite entities, including the current reinsurance mechanism administrator, to submit bids to serve as the reinsurance mechanism administrator. Selection of the reinsurance mechanism administrator for the succeeding period shall be made at least 6 months prior to the end of the current period.

III. The reinsurance mechanism administrator shall perform such functions relating to the plan as may be as assigned to such administrator.

IV. The reinsurance mechanism administrator shall submit regular reports to the association and the commissioner regarding the operation of the reinsurance mechanism. The frequency, content, and form of the report shall be specified in the contract between the association and the reinsurance mechanism administrator.

V. Following the close of each calendar year, the reinsurance mechanism administrator shall determine the expense of administration and the paid and incurred losses for the year, and shall report this information to the association and the commissioner on a form prescribed by the commissioner.

VI. The reinsurance mechanism administrator shall be paid as provided in the contract between the association and the reinsurance mechanism administrator.

VII. The association shall submit the contract between itself and the reinsurance mechanism administrator to the commissioner for approval.

VIII. The association may select more than one administrator for the reinsurance mechanism.

404-I:9 Eligibility.

I. A small group health insurance carrier may reinsure with the mechanism as provided for in paragraphs II and III.

II. A small group health insurance carrier may reinsure an employee or dependent of a small employer within a period of 60 days following the small employer's health insurance policy issue or renewal date. A new employee or dependent of a small employer

may be reinsured within 60 days of the individual's effective date of coverage. After the date of issue of a small employer health insurance policy or after the effective date of coverage for a new employee or dependent of a small employer, a small group health insurance carrier may require completion of a health statement for the purpose of determining whether to reinsure an employee or dependent.

III. A small group health insurance carrier may terminate reinsurance with the mechanism for one or more of the reinsured employees or dependents of a small employer:

(a) On the anniversary date of the health insurance policy; or

(b) On the date the employee's or dependent's coverage under the health insurance policy terminates.

404-I:10 Reinsurance Premiums.

I. The board, as part of the plan of operation, shall establish a methodology for determining premium rates to be charged by the mechanism for reinsuring employees or dependents of small employer groups.

(a) The methodology shall include a system for classification of small employers that reflects rating factors that are commonly used by small group health insurance carriers in the state. The methodology shall provide for the development of reinsurance premium rates that shall be multiplied by rating factors to determine the premium rates for the mechanism. The reinsurance premium rates and the method by which the rating factors are applied shall be established by the board, subject to the approval of the commissioner, and shall be set at levels that reasonably approximate gross premiums charged to small employers by small group health insurance carriers.

(b) The premium for the reinsurance mechanism shall allow a carrier to cede an employee or dependent at a rate that is 5 times the group's per member per month premium rate established pursuant to subparagraph (a).

(c) The board periodically shall review the methodology established under subparagraph (a), including the system of classification and any rating factors, to assure that it reasonably fulfills the purposes of this chapter. The board may propose changes to the methodology that shall be subject to the approval of the commissioner.

(d) The board may consider adjustments to the premium rates charged by the mechanism to reflect the use of effective cost containment and managed care arrangements.

II. Premium rates charged for reinsurance by the mechanism to a health maintenance organization that is federally qualified under 42 U.S.C. section 300c(c)(2)(A), and as such is subject to requirements that limit the amount of risk that may be ceded to the mechanism that is more restrictive than those specified in subparagraphs (c) and (d), shall be reduced to reflect that portion of the risk above the amount set forth in subparagraphs (c) and (d) that may not be ceded to the mechanism, if any.

404-I:11 Conditions of Reinsurance Coverage.

I. A small group health insurance carrier that cedes a risk shall apply all managed care and claims handling techniques, including utilization review, individual case management, preferred provider provisions, and other managed care provisions or other methods of operation consistently with respect to reinsured and nonreinsured business.

II. The mechanism shall reimburse a small group health insurance carrier with respect to the claims of a reinsured employee or dependent starting with the first dollar of the carrier's liability under its policy. The mechanism and the small group health insurance carrier shall participate in a cost-sharing arrangement whereby the carrier shall pay 20 percent of the portion of the claims of the reinsured employee that it is responsible for under its policy of insurance, up to a threshold of \$50,000, at which point the reinsurance mechanism shall pay 100 percent of the claims that the carrier is responsible for until a maximum of \$1,000,000 is reached on a calendar year basis.

III. On an annual basis, the board shall review the maximum limit to be retained by the carrier to reflect increases in costs and utilization within the small group market in New Hampshire. The adjustment shall not be less than the annual change in the medical

component of the "Consumer Price Index for All Urban Consumers" of the Department of Labor, Bureau of Labor Statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

IV. Any small group health insurance carrier that cedes a risk to the reinsurance mechanism shall make its books and records available for audit at the request of the reinsurance mechanism.

404-I:12 Commissioner's Powers and Duties. In addition to duties and powers enumerated elsewhere in this chapter:

I. The commissioner shall upon request of the board of directors, serve a demand upon the member insurer to pay an assessment within a reasonable time. The failure of the member insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this chapter.

II. The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed 5 percent of the unpaid assessment per month, but no forfeiture shall be less than \$100 per month. Any amounts so collected shall be credited to the assessment fund administered by the association.

III. Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if the appeal is taken within 30 days of the final action being appealed. If a member company is appealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company from available funds of the association. Any final action or order of the commissioner shall be subject to judicial review, pursuant to RSA 541.

IV. The commissioner may adopt rules, pursuant to RSA 541-A, as necessary to carry out the purposes of this chapter.

V. The powers of the commissioner enumerated in this chapter shall be in addition to those established under RSA 404-C.

404-I:13 Examination and Annual Report. The reinsurance mechanism shall be subject to examination by the commissioner. The board of directors shall submit to the commissioner each year, not later than 120 days after the association's fiscal year, a financial report in a form approved by the commissioner and a report of its activities during the proceeding fiscal year. The report shall summarize the activities of the reinsurance mechanism in the preceding calendar year, including the net written and earned premiums, enrollment, the expense of administration, and the paid and incurred losses. The association's fiscal year shall be the calendar year.

404-I:14 Tax Exemption. The reinsurance mechanism shall be exempt from payment of all fees and all taxes levied by this state or any of its political subdivisions.

404-I:15 Immunity for Members and Employees. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or the commissioner's representatives, for any action or omission by them in the performance of their powers and duties under this chapter, unless such act or omission constitutes willful or wanton misconduct.

404-I:16 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

2 New Paragraph; Small Group Health Insurance; Definition Added. Amend RSA 420-G:2 by inserting after paragraph I the following new paragraph:

I-a. "Case characteristics" means industry, age, gender, group size, participation, and the level of employer contribution of a small employer group that are considered by the carrier in the determination of premium rates for the small employer.

3 Small Group Health Insurance; Case Characteristics. RSA 420-G:4, I(e) is repealed and reenacted to read as follows:

(e) In establishing the premium charged, health carriers providing coverage to small employers shall calculate a rate that is derived from the health coverage plan rate through the consideration of case characteristics that the carrier chooses to utilize.

(1) The premium rates charged for a health benefit plan to small employers shall not vary from the health coverage plan rate, by more than 60 percent (4:1). An insurer may consider all case characteristics of a small group in setting the premium rate for that group.

(2) Upon the renewal of a small employer policy, a carrier is prohibited from increasing the group's per member per month premium rate by more than 15 percent of the rate that was charged in the preceding year. Such rate increase limitation shall not include any premium rate increase that is based on a carrier's annual cost and utilization.

(3) For a group of one, an insurer may increase the premium 10 percent above the premium calculated in subparagraph (1).

4 Legislative Oversight Committee. Amend RSA 420-G:14-c, I to read as follows:

I. There is hereby established a joint legislative oversight committee on small group health insurance reform. The committee shall review the reports filed by the commissioner pursuant to RSA 420-G:14-a, monitor the small group health insurance market in the state, and monitor the ~~[effect of SB 110 of the 2003 legislative session]~~ **effects of small group health insurance reform**. The committee shall make recommendations for any legislative changes the committee deems necessary. The committee shall include 3 members of the house, appointed by the speaker of the house and 2 senators, appointed by the president of the senate.

5 Effective Date.

I. Sections 2 and 3 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:

I. Establishes a mandatory assessment reinsurance mechanism for small group insurance.

II. Clarifies the use of case characteristics which may be used for calculating premium rates for small group health insurance.

2005-0877h

Amendment to HB 616-FN-LOCAL Proposed by the Committee on Education - R

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

AN ACT relative to the education property tax and the education equity index.

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

1 Persons and Property Taxable. RSA 76:3 is repealed and reenacted to read as follows:
76:3 Education Taxes.

I. Beginning July 1, 2005, and every fiscal year thereafter, the commissioner of the department of revenue administration shall determine an average tax rate that is sufficient to fund average per pupil cost of all municipalities pursuant to RSA 198:40 multiplied by the statewide average daily membership in residence. The rate calculated shall be uniform on each \$1,000 of the value of taxable property of all persons and property taxable pursuant to RSA 72 and RSA 73, and except property subject to tax under RSA 82 and RSA 83-F.

II. Municipalities may assess local property taxes necessary to fund school district appropriations not funded by the state education base grants, transition grants, and state

education assistance grants, paid from the education trust fund under RSA 198:39, or by other revenue sources.

III. The commissioner of the department of revenue administration shall use the most recent available equalized property tax assessment data in calculating the tax rate under paragraph I.

2 Persons and Property Taxable; Commissioner's Warrant. RSA 76:8 is repealed and reenacted to read as follows:

76:8 Commissioner's Warrant.

I. The commissioner of revenue administration shall annually calculate the cost of education in a municipality pursuant to RSA 198:40.

II. Municipalities are authorized to assess local property taxes necessary to fund school district appropriations in excess of base grants, education assistance grants, and transition grants.

3 School Money; Determination of Average Per Pupil Cost. Amend RSA 198:40, I(b) to read as follows:

(b) The department shall identify those school districts where ~~[40 to]~~ **60 to 80** percent of the elementary pupils enrolled in the grades tested on the day testing began, achieved a scaled score, in the statewide educational improvement and assessment program administered pursuant to RSA 193-C, in all areas tested, equivalent to performance at the basic level or above. From these school districts, the department shall then identify those school districts that have the lowest cost per pupil as calculated pursuant to subparagraph I(a) and which represent, as nearly as possible, 50 percent of the average daily membership in attendance at the elementary level of the school districts identified.

4 New Sections; Education Equity Index. Amend RSA 198 by inserting after section 40 the following new sections:

198:40-a Education Equity Index.

I. Beginning July 1, 2005, and every fiscal year thereafter, the department shall determine an education equity index (EEI) for each municipality that had any resident pupils during the applicable determination year as follows:

(a) Each municipality's education equity index shall be computed by dividing one by the sum of:

(1) 0.4 times the statewide average equalized valuation per pupil divided by the equalized valuation per pupil for the municipality;

(2) 0.2 times the statewide median income divided by the municipality's median income;

(3) 0.095 times the percentage of the municipality's pupils in grades 1-12 eligible to receive a free or reduced price meal during the determination year as reported to the department divided by the statewide percentage of pupils in grades 1-12 eligible to receive a free or reduced price meal during the determination year as reported to the department;

(4) 0.005 times the percentage of the municipality's pupils in grade one through grade 8 identified as having limited English proficiency and receiving at least 5 hours per week of special instruction in English during the determination year as reported to the department divided by the statewide percentage of pupils in grades one through 8 identified as having limited English proficiency and receiving at least 5 hours per week of special instruction in English during the determination year;

(5) 0.15 times the statewide average test score divided by the municipality's average test score;

(6) 0.075 times the statewide graduation rate for the determination year as reported by the department divided by the municipality's graduation rate for the determination year as reported to the department, where each municipality's graduation rate shall be equal to the graduation rate for the particular high school attended by the municipality's resident pupils that attend high school; and

(7) 0.075 times the statewide percentage of high school graduates that entered directly into postsecondary education in the determination year as reported by the department divided by the percentage of the municipality's high school graduates that entered directly into postsecondary education in the determination year as reported to the department, where each municipality's percentage of high school graduates that entered directly into postsecondary education in the determination year rate shall be equal to the percentage of such high school graduates for the particular high school attended by the municipality's resident pupils that attend high school.

(b) For the fiscal years beginning July 1, 2005 and July 1, 2006, the department shall determine the education equity index for each municipality within 15 days after the effective date of this section.

(c) Beginning July 1, 2007, and every fiscal year thereafter, the department shall determine the education equity index for each municipality not later than October 1 in the calendar year preceding the beginning of the fiscal year for which the education equity index is calculated.

II. In determining the education equity index for any municipality that sends pupils to more than one school or school district, the department shall consider only data from schools or school districts within this state attended by 5 percent or more of the municipality's resident pupils, and the department shall determine each value necessary to calculate the education equity index for such municipality by weighting the corresponding values for each school or school district to which the municipality sends pupils by the number of resident pupils from the municipality that attend such school or school district. If a municipality sends all of its resident pupils that are relevant to the determination of any value necessary to calculate the education equity index for such municipality to one or more schools not operated by any school district, then the municipality shall be assigned the statewide value for such value.

198:40-b State Education Assistance.

I. For the fiscal year beginning July 1, 2005, and for the first year of each biennium thereafter, the department shall determine the amount of state education assistance under this section, if any, for a municipality, except for municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, as follows:

(a) The state shall distribute state education assistance to municipalities pursuant to RSA 198:42 in an aggregate amount equal to the total amount of state education assistance grants determined for the fiscal year pursuant to subparagraph (b).

(b) The annual amount of state education assistance shall be distributed among the municipalities as state education assistance grants as follows:

(1) For each municipality with an education equity index for the applicable biennium year less than 1.2, the department shall determine a number of education equity units equal to the number of resident pupils in the municipality during the applicable determination year multiplied by the excess of 1.2 over the municipality's education equity index for such biennium. Each other municipality shall be assigned zero education equity units for such biennium.

(2) Each municipality shall receive a state education grant for such fiscal year equal to the total amount of state education grants for the fiscal year multiplied by a fraction, the numerator of which is the number of education equity units determined for such municipality for the applicable biennium, and the denominator of which is the total number of education equity units determined for all municipalities for such biennium.

II. For the fiscal year beginning July 1, 2006, and for the second year of each biennium thereafter, the department shall determine the amount of state education assistance under this section, if any, for a municipality, except for municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, as follows:

(a) The state shall distribute state education assistance to municipalities pursuant to RSA 198:42 in an aggregate amount equal to the total amount of state education assistance grants determined for the fiscal year pursuant to subparagraph (b).

(b) Each municipality shall receive a state education assistance grant for such fiscal year equal to the total amount of state education assistance grants for the fiscal year as determined pursuant to paragraph III below multiplied by a fraction, the numerator of which is the number of education equity units determined for such municipality for the applicable biennium, and the denominator of which is the total number of education equity units determined for all municipalities for such biennium.

III. For the fiscal year beginning July 1, 2005, and for each fiscal year thereafter, the department shall determine the amount of state education assistance under this section as follows:

(a) For the fiscal year beginning July 1, 2005, the amount of state education assistance shall be \$300,000,000, to be distributed as determined in this section using the education equity index in RSA 198:40-a.

(b) For the fiscal year beginning July 1, 2006, the amount of state education assistance shall be the amount of assistance under this paragraph for such fiscal year multiplied by the sum of one plus the percentage change in the state average daily membership in attendance plus the average annual percentage rate of inflation for the immediately preceding 4 calendar years based on the northeast region consumer price index for all urban consumers, as published by the Bureau of Labor Statistics, United States Department of Labor.

IV. For municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the amount of state education assistance for each such municipality shall be the lesser of the following:

(a) The amount calculated in accordance with paragraph I or paragraph II of this section, as applicable; or

(b) The total amount paid for education expense as determined by the department.

5 School Money; Calculation of Base Education Cost. RSA 198:41 is repealed and reenacted to read as follows:

198:41 Base Education Cost; Base Grant; Transition Grant.

I. A municipality's base education cost shall be determined by multiplying the municipality's average per pupil cost, pursuant to RSA 198:40, by the average daily membership in residence in the municipality.

II. A municipality which cannot raise sufficient revenue at the average rate established under RSA 76:3 to fund its base education cost shall receive a base grant from the education trust fund established in RSA 198:39, in an amount sufficient to fund its base education cost.

III. Transition grants shall be paid from the education trust fund and shall be determined as follows:

(a) For the 2006 and 2007 fiscal years, a municipality shall receive a transition grant for the amount that the state base grant and the state education assistance grant under RSA 198:40-b is less than 90 percent of the amount received in the 2005 fiscal year.

(b) For the 2008 fiscal year, and every fiscal year thereafter, a municipality shall receive a transition grant which is not less than 90 percent of the amount received in the preceding fiscal year. Provided, however, that after fiscal year 2008, if for a municipality the transition grant is equal to or less than \$100 per pupil, then the transition grant shall terminate.

6 School Money; Distribution Schedule. Amend the section heading of RSA 198:42 and RSA 198:42, I-II to read as follows:

198:42 **Funding** Distribution Schedule [~~of Adequate Education Grant~~]; Appropriation.

I. The ~~[adequate education grant]~~ **base grants** determined in RSA 198:41, **state educational assistance grants under RSA 198:40-b, and transition grants under RSA 198:41, V** shall be distributed to each municipality's school district or districts legally responsible for the education of the pupils who attend approved public schools within the district or in other districts or who attend approved programs for educationally disabled children, as the case may be, from the education trust fund in 4 payments of 20 percent on September 1, 20 percent on November 1, 30 percent on January 1, and 30 percent on April 1 of each school year; provided that for a dependent school district, the ~~[grant]~~ **base grants** determined in RSA 198:41 shall be distributed to the municipality, which shall appropriate and transfer the grant funds to its dependent school department.

II. For the fiscal year beginning July 1, 2004, and every fiscal year thereafter the amount necessary to fund the grants under RSA 198:41 is hereby appropriated from the education trust fund created under RSA 198:39 to the department. The governor is authorized to draw a warrant from the education trust fund to satisfy the state's obligation under this section. Such warrant for payment shall be issued regardless of the balance of funds available in the education trust fund. If the balance in the education trust fund, after the issuance of any such warrant, is less than zero, the commissioner of the department of administrative services shall inform the fiscal committee and the governor and council of such balance. This reporting shall not in any way prohibit or delay the distribution of ~~[adequate]~~ education grants.

7 Additional Education Expenditures. Amend RSA 198:43 to read as follows:

198:43 Additional Education Expenditures. School districts are authorized to develop **additional** educational programs ~~[beyond those required for an adequate education]~~ and to raise and appropriate amounts necessary for such programs.

8 School Money; Maintenance of Local Control. Amend RSA 198:48 to read as follows:

198:48 Maintenance of Local Control. Distributions under RSA 198:42 are based on ~~[adequate]~~ education costs determined in RSA 198:40 and are independent of how the municipalities decide to spend the distributions or other funds they may raise for education. Notwithstanding any other provision of law, nothing in this subdivision is intended in any way to limit or control how school districts operate or spend their budgets except that ~~[adequate]~~ education grants must be expended for educational purposes. ~~[Adequate]~~ **State** education grants ~~[and hardship grants]~~ shall not be considered unanticipated funds under RSA 198:20-b.

9 State Treasurer; Application of Receipts. Amend RSA 6:12, I(b)(65) to read as follows:

(65) Money received under RSA 77-A, RSA 77-E, RSA 78, RSA 78-A, RSA 78-B, RSA 83-F, ~~[RSA 198:46,]~~ and from the sweepstakes fund, which shall be credited to the education trust fund under RSA 198:39.

10 School Attendance; Duty of Parent; Compulsory Attendance. Amend RSA 193:1, I(c) to read as follows:

(c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student's educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186-C:18 and ~~[adequate education]~~ grants under RSA 198:41.

11 Subdivision Heading Amended. Amend the subdivision heading preceding RSA 198:38 to read as follows:

State Aid for ~~[Educational Adequacy]~~ **Education**; Education Trust Fund

12 School Money; Education Trust Fund. Amend the introductory paragraph of RSA 198:39, I to read as follows:

I. The state treasurer shall establish an education trust fund in the treasury. Moneys in such fund shall not be used for any purpose other than to distribute

~~[adequate]~~ **base, education assistance, and transition** education grants to municipalities' school districts pursuant to RSA 198:42, ~~[and]~~ to provide low and moderate income homeowners property tax relief under RSA 198:56-198:61, **and to fund the performance improvement fund established in RSA 193-H:4-a**. The state treasurer shall deposit into this fund immediately upon receipt:

13 Charter and Open Enrollment Schools; Funding. Amend RSA 194-B:11, I to read as follows:

I. There shall be no tuition charge for any pupil attending an open enrollment or charter conversion school located in that pupil's resident district. Funding limitations in this chapter shall not be applicable to charter conversion or open enrollment schools located in a pupil's resident district. For any other charter or open enrollment school authorized by the school district, the pupil's resident district shall pay to such school an amount equal to not less than 80 percent of that district's average cost per pupil as determined by the department of education using the most recent available data as reported by the district to the department. For any charter school authorized by the state board of education, the pupil's resident district shall pay tuition beginning July 1, 2004 and every fiscal year thereafter, in an amount per pupil equal to the amount determined in RSA 198:40, I. Tuition amounts shall be prorated on a per diem basis for pupils attending a school for less than a full school year. To the extent permitted by law, tuition payments shall coincide with the distribution of ~~[adequacy]~~ grants under RSA 198:42 or on such other terms as are mutually acceptable.

14 School Performance and Accountability; Local Education Improvement Plan. Amend RSA 193-H:4, I (b) to read as follows:

(b) If a school or school district has been designated as in need of improvement, then the school or school district may request assistance from the department ~~[of education]~~ **and may request funding from the performance improvement fund established in RSA 193-H:4-a**. The department shall provide technical assistance to those schools that request assistance under this section.

15 New Paragraph; School Performance and Accountability; Local Education Improvement Plan. Amend RSA 193-H:4 by inserting after paragraph IV the following new paragraph:

V. Three years following the designation, a school or school district which is still not making satisfactory progress in implementing the plan required under subparagraph I(a) shall receive, in the next fiscal year, 95 percent of the education grant to which it is entitled under RSA 198:41. For each year thereafter in which such designation persists, a school or school district shall receive, in the next fiscal year, 95 percent of the education grant to which it is entitled under RSA 198:41.

16 New Section; School Performance and Accountability; Performance Improvement Fund. Amend RSA 193-H by inserting after section 4 the following new section:

193-H:4-a Performance Improvement Fund.

I. There is hereby established in the department a performance improvement fund which shall be administered by the commissioner. The purpose of the fund is to provide funding for approved improvement plans required under RSA 193-H:4, I. Approved improvement plans shall be funded to the extent of available funds in a fiscal year.

II. Beginning July 1, 2005, and every fiscal year thereafter, the sum of \$1,000,000 is hereby appropriated to this fund from the education trust fund established in RSA 198:39. Any unused funds remaining at the end of the fiscal year shall lapse to the general fund.

17 Low and Moderate Income Homeowners' Relief. Amend RSA 198:57, IV to read as follows:

IV. All or a portion of an eligible tax relief claimant's ~~[state]~~ education property taxes, RSA 76:3, shall be rebated as follows:

(a) Multiply the total local assessed value of the claimant's property by the percentage of such property that qualifies as the claimant's homestead;

~~(b) [Multiply \$100,000 by the most current local equalization ratio as determined by the department of revenue administration;~~

~~(e)]~~Multiply the ~~[lesser of the]~~ amount determined in subparagraph (a) ~~[or (b)]~~ by the current state **and local** education property tax rate as shown on the tax bill under RSA 76:11-a **up to a maximum equalized rate of \$7.60 per \$1,000 of the value of taxable property;**

~~[(d)]~~**(c)** Multiply the product of the calculation in subparagraph (c)~~](b)~~ by the following percentage as applicable to determine the amount of tax relief available to the claimant:

(1) If a single person and total household income is:

- (A) less than \$12,500, 100 percent;
- (B) \$12,500 but less than \$15,000, 60 percent;
- (C) \$15,000 but less than \$17,500, 40 percent; or
- (D) \$17,500 but less than or equal to \$20,000, 20 percent.

(2) If a head of a New Hampshire household or a married person and total household income is:

- (A) less than \$25,000, 100 percent;
- (B) \$25,000 but less than \$30,000, 60 percent;
- (C) \$30,000 but less than \$35,000, 40 percent; or
- (D) \$35,000 but less than or equal to \$40,000, 20 percent.

~~[(e)]~~**(d)** The amount determined by subparagraph ~~[(d)]~~**(c)** is the allowable tax relief in any year.

18 Repeals. The following are repealed:

- I. 2004, 195:3 and 2004, 200:27, relative to the education property tax.
- II. 2004, 200:16-200:23, relative to contingent applicability.
- III. 2004, 200:25-200:28, relative to prospective versions of the education property tax and contingent applicability.
- IV. RSA 198:38, VII, relative to the definition of adequate education costs.
- V. RSA 198:44, relative to duties of the department of education and the board of education.
- VI. RSA 198:46-47, relative to excess education property tax payment and forms.
- VII. RSA 198:49, relative to the adequate education and education financing commission.
- VIII. RSA 198:39, I(g), relative to excess education property tax payments.

19 Nonseverability. If the New Hampshire supreme court declares any provision of sections 1-18 of this act to be unconstitutional under either the New Hampshire constitution or the United States Constitution, then sections 1-18 of this act are hereby repealed on the date such unconstitutionality is declared.

20 Effective Date. This act shall take effect July 1, 2005 at 12:02 a.m.

AMENDED ANALYSIS

This bill:

I. Replaces the education property tax with a provision requiring the commissioner of the department of revenue administration to establish a tax rate sufficient to fund state education assistance payments.

II. Distributes state education assistance in the form of state education grants, which are determined on a municipality-by-municipality basis under a formula that calculates a municipality's need for assistance based on a broad range of factors, including fiscal capacity, resource challenges, performance, and student population, with the state education grants being adjusted in future years by the consumer price index and changes in statewide pupil population.

III. Provides that for the 2006 and 2007 fiscal years, a municipality shall receive a total grant which is not less than 90 percent of the total grant received in the 2005 fiscal year, and for the 2008 fiscal year, and every fiscal year thereafter, a municipality shall receive a total

grant which is not less than 90 percent of the total grant received in the preceding fiscal year.

IV. Repeals the statutory provisions authorizing excess education property tax payments.

2005-0800h

Amendment to HB 617-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 future role of court reporters in New Hampshire's court system.

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

1 Findings and Purpose. The general court finds that the New Hampshire courts have used live court reporters for many years and recognize their importance in maintaining the most accurate court record available for the citizens of this state. The general court further finds that there is an important role for court reporters to accommodate deaf and hearing-impaired litigants, defendants, jurors, attorneys, and witnesses, and to comply with the Americans with Disabilities Act, as well as to avoid the costs associated with poor transcription of court recordings from the use of recording machines only.

2 Commission Established. There is established a commission to study the future role of court reporters in New Hampshire's court system.

3 Membership and Compensation.

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

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

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

(c) The chief justice of the supreme court, or designee.

(d) The attorney general, or designee.

(e) A member nominated by the New Hampshire Defense Lawyers Association and appointed by the governor.

(f) A member nominated by the New Hampshire Bar Association and appointed by the governor.

(g) A member nominated by the New Hampshire Trial Lawyers Association and appointed by the governor.

(h) A member nominated by the New Hampshire Court Reporters Association and appointed by the governor.

(i) Two public members, appointed by the governor.

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:

I. Study the current methods being used to record court proceedings and assess the impact they have on obtaining the best form of justice for the citizens of New Hampshire.

II. Assess the role of court reporters and court monitors as used in the court system.

III. Review possible procedures for reporting for injustices relating to inaccurate or incomplete transcripts.

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 30 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 30, 2005.

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

AMENDED ANALYSIS

This bill establishes a commission to study the future role of court reporters in New Hampshire's court system.

2005-0524h

Amendment to HB 618-FN-LOCAL

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

Amend RSA 281-A:2, VII(a)(6) as inserted by section 1 of the bill by replacing it with the following:

(6) In the absence of any mutual aid agreement or other similar written agreement that specifically addresses the issue of workers' compensation benefits, any person who acts as an agent to the department of health and human services or the department of safety by providing assistance in response to a specific public health or public safety incident. Such person shall be deemed an employee of the state for the purposes of this chapter. In order to be eligible for workers' compensation benefits under this chapter the person shall have been specifically designated in writing as an agent by the commissioner of the department of health and human services or the commissioner of the department of safety, or their respective designees, in accordance with the provisions of RSA 508:17-a. This subparagraph applies only to such designated agents who are not receiving compensation from either the department of health and human services or the department of safety, other than possible reimbursement for expenses actually incurred for such services, such as travel expenses, but who may be receiving compensation from his or her regular employer or from any other source.

Amend the bill by replacing section 3 with the following:

3 New Section; Agents Assisting the Departments of Health and Human Services and Safety; Liability Limited. Amend RSA 508 by inserting after section 17 the following new section:

508:17-a Agents Assisting Certain State Departments; Liability Limited.

I. Any person who acts as an agent to the department of health and human services or the department of safety by providing assistance in response to a specific public health or public safety incident shall be protected from claims and civil actions arising from acts committed within the scope of his or her official duty as an agent to such departments to the same extent as state officers, trustees, officials, employees, and members of the general court under RSA 99-D, provided that:

(a) The commissioner of the department of health and human services or the commissioner of the department of safety has declared in writing to the governor that a public health or public safety incident exists;

(b) The department of health and human services or the department of safety has designated the person to act as its agent to assist in responding to the public health or public safety incident;

(c) The agent was acting in good faith and within the scope of his or her official functions and duties as an agent to the department of health and human services or the department of safety; and

(d) The damage or injury was not caused by willful, wanton, or grossly negligent misconduct by the agent.

II. In this section:

(a) "Agent" means any person who acts as an agent to the department of health and human services or the department of safety by providing assistance in response to a specific public health or public safety incident and the person does not receive compensation from either department, other than possible reimbursement for expenses actually incurred for such services, but who may be receiving compensation from his or her employer or from any other source.

(b) "Damage or injury" includes physical, nonphysical, economic and noneconomic damage, and property damage.

(c) "Public health or public safety incident" means a specific incident that the commissioner of the department of health and human services or the commissioner of the department of safety has declared in writing poses a threat to the health and safety of the public and demands a response that will require the assistance of agents from outside the state system, but which does not rise to the level that would necessitate the declaration of a state of emergency by the governor under RSA 4:45

III. Notwithstanding any other provision of law, no person shall be considered an agent of the department of health and human services or the department of safety for the purposes of this section unless the commissioner of one of those 2 departments has declared in writing to the governor that a public health or public safety incident exists and the appropriate department acknowledges in writing the person's status as an agent. Such written acknowledgment shall identify the person, indicate the department of the state for which the person will be acting as an agent, indicate the duration for which the person will be acting as an agent, indicate the functions that the person will be performing for the appropriate department, and specifically indicate that the provisions of this section apply to the person's status as an agent to the appropriate department.

IV. Any licensed health care provider who acts as an agent to the department of health and human services by providing health care or services in response to a public health incident shall work under the oversight of a department physician.

V. No disciplinary action shall be taken by a licensing board against a licensed health care provider who acted as an agent or a volunteer to the department of health and human services or the department of safety. This paragraph shall apply only to a health care provider who was designated by either the department of health and human services or the department of safety to act as an agent in accordance with paragraph III and who acted in good faith within the scope of his or her official functions and duties as an agent, and who did not engage in willful, wanton, or grossly negligent conduct in the course of carrying out his or her official functions and duties.

AMENDED ANALYSIS

This bill provides workers' compensation coverage to persons acting as volunteers for the department of health and human services and the department of safety in the event of a public health or a public safety incident. This bill also limits liability for such volunteers.

This bill is a request of the department of health and human services.
2005-0887h

Amendment to HB 619-FN

Proposed by the Majority of the Committee on Judiciary - R

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

1 Declaration of Policy; Other Winter Sports Added. Amend RSA 225-A:1 to read as follows:

225-A:1 Declaration of Policy. The state of New Hampshire finds that the ~~[sport]~~ **sports** of skiing, ~~[is]~~ **snowboarding, snow tubing, and snowshoeing are** practiced by a large number of citizens of the state of New Hampshire, and also that skiing, ~~[attracts]~~ **snowboarding, snow tubing, and snowshoeing attract** to the state of New Hampshire large numbers of nonresidents significantly contributing to the economy of New Hampshire. Therefore, it shall be the policy of the state of New Hampshire to protect its citizens and visitors from unnecessary mechanical hazards in the operation of ski tows, lifts, **nordic ski** jumps and **passenger** tramways, to ensure that proper design and construction are used, that board accepted safety devices and sufficient personnel are provided for, and that periodic inspections and adjustments are made which are deemed essential to the safe operation of ski tows, ski lifts, **nordic** ski jumps and passenger tramways. The primary responsibility for operation, construction, maintenance and inspection rests with the operators of such passenger tramway devices. The state, through its passenger tramway safety board, as hereinafter provided, shall register all ski lift devices and **nordic** ski jumps, establish reasonable standards of design and operational practices, and make such

independent inspections as may be necessary in carrying out this policy. Further, it shall be the policy of the state of New Hampshire to define the primary areas of responsibility of skiers and other users of alpine (downhill) and nordic (cross country and **nordic** ski jumps) areas, recognizing that the sport of skiing and other ski area activities involve risks and hazards which must be assumed as a matter of law by those engaging in such activities, regardless of all safety measures taken by the ski area operators.

2 Definition of Terms. RSA 225-A:2 is repealed and reenacted to read as follows:

225-A:2 Definitions. In this chapter:

- I. "Board" means the passenger tramway safety board.
- II. "Department" means the department of safety, division of safety services.
- III. "Industry" means the activities of all those persons in the state who own or control the operation of ski areas.
- IV. "Nordic ski jump" means a facility constructed for the purpose of nordic ski jumping and built in accordance with appropriate standards and guidelines, and any facilities that are associated with the use or viewing of such a facility.
- V. "Passenger" means any person, including skiers, while being transported or conveyed by a passenger tramway, or while waiting in the immediate vicinity for such transportation or conveyance, or while moving away from the disembarkation or unloading point of a passenger tramway to clear the way for the following passengers, or while in the act of boarding or embarking upon or disembarking from a passenger tramway.
- VI. "Passenger tramway" means a device used to transport passengers uphill on skis or other winter sports devices, or in cars on tracks or suspended in the air, by the use of steel cables, chains or belts or by ropes, and usually supported by trestles or towers with one or more spans. The term passenger tramway shall include the following:
 - (a) Two-car aerial passenger tramway, a device used to transport passengers in 2 open or enclosed cars attached to, and suspended from, a moving wire rope, or attached to a moving wire rope and supported on a standing wire rope, or similar devices.
 - (b) Multi-car aerial passenger tramway, a device used to transport passengers in open or enclosed cars attached to, and suspended from, a moving wire rope, or attached to a moving wire rope and supported on a standing wire rope, or similar devices.
 - (c) "Conveyor" means a class of outdoor transportation wherein skiers or passengers are transported uphill on a flexible moving element such as a conveyor belt.
 - (d) Chair lift, a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain or link belt supported by trestles or towers with one or more spans, or similar devices.
 - (e) J bar, T bar or platter pull, so-called, and similar types of devices are means of transportation which pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans.
 - (f) Rope tow, a type of transportation which pulls the skier riding on skis as the skier grasps the rope manually, or similar devices.
 - (g) Wire rope tow means a type of transportation by which skiers are pulled on skis while manually gripping a handle attached to a wire hauling cable. The hauling cable is maintained at a constant height range between the loading and unloading points, and there is only one span with no intermediate towers.
- VII. "Ski area operator" means a person who owns or controls the operation of a ski area. The word "operator" shall include the state or any political subdivision. An operator of a passenger tramway shall be deemed not to be operating a common carrier. Ski area operator is included in the term "operator" as used in this chapter.
- VIII. "Ski areas" means all passenger tramways and all designated alpine and nordic trails, slopes, freestyle terrain, tubing terrain, and nordic ski jumps under the control of the alpine and nordic ski area operator and any other areas under the operator's control open to the public for winter sports recreation or competition.

IX. "Skier" means a person utilizing the ski area under the control of a ski area operator for ski, snowboard, and snow tube recreation and competition.

X. "Tubing terrain" means areas designated for sliding on inflatable tubes or other similar devices down a prepared course or lanes at a ski area.

XI. "Winter sports" means the use of skis, snowboards, snow tubes, snowshoes, and any device being utilized by a disabled or adaptive participant for winter recreation or competition.

3 Responsibilities of the Ski Area Operator. RSA 225-A:23 is repealed and reenacted to read as follows:

225-A:23 Responsibilities of the Ski Area Operator. It shall be the responsibility of the operator to maintain the following signs and designations:

I. General Designations. The following color code is hereby established:

(a) Green circle: On area's easiest trails and slopes.

(b) Black diamond: On area's most difficult trails and slopes.

(c) Blue square: On area's trails and slopes that fall between the green circle and black diamond designation.

(d) Yellow triangle with red exclamation point inside with a red band around the triangle: Extrahazardous.

(e) Border around a black figure in the shape of a skier inside with a band running diagonally across the sign with the word "closed" beneath the emblem: Trail or slope closed.

(f) Orange oval: On area's designated freestyle terrain without respect to its degree of difficulty.

II. Base Area; Information to Skiers and Passengers.

(a) A trail board shall be maintained at a prominent location listing the ski area's network of ski trails, slopes, tubing terrain, and designated freestyle terrain in accordance with the aforementioned color code and containing a key to the code in accordance with the above designations; said trail board shall further designate which trails, slopes, and snow tube terrain are open or closed.

(b) The ski area operator shall warn skiers and passengers by use of the trail board, if applicable, that snow grooming or snow making operations are routinely in progress on the slopes and trails serviced by each tramway.

(c) A map shall be available at all ski areas to all skiers and passengers indicating the system of ski trails, slopes, tubing terrain, and designated freestyle terrain in accordance with the color code in paragraph I.

III. Ski Trails and Slopes; Information and Warning to Skiers and Other Persons.

(a) The operator shall mark the beginning of each alpine and nordic ski trail or slope with the appropriate symbol for that particular trail's or slope's degree of difficulty in accordance with RSA 225-A:23, I.

(b) The beginning of each alpine ski trail or slope is defined as the highest point of the trail or slope. Lower trail junctions and intersections may be marked with a degree of difficulty symbol.

(c) The operator shall mark the beginning of, and designated access points to, each alpine trail or slope that is closed with a sign in accordance with RSA 225-A:23, I(e). For purposes of this subparagraph, "designated access points" means the beginning of a trail, slope, or any point where an open trail crosses or intersects the closed trail as shown on the ski area's trail board and trail map.

(d) The operator shall mark the beginning of and designated access points to terrain with the appropriate symbol in accordance with RSA 225-A:23, I(f), which sign shall warn the skier that the use of the terrain is at the skier's own risk. Further, a sign shall be placed at each lift depicting the symbols in RSA 225-A:23, I(a)-(f) describing the trail or slope that the skier may encounter by utilizing such lift.

IV. Nordic Ski Jumps. The operator shall provide a sign in a prominent location at or near the nordic ski jump facility, which sign shall warn the ski jumper that the use of the nordic ski jump is entirely at the ski jumper's own risk. Further, the ski area operator shall be responsible for the design, construction and structural maintenance of all nordic ski jumps.

4 Responsibilities of Skiers and Passengers. Amend the introductory paragraph of RSA 225-A:24 and RSA 225-A:24, I-III to read as follows:

225-A:24 Responsibilities of Skiers and Passengers. It is hereby recognized that, regardless of all safety measures which may be taken by the ski area operator, skiing, **snowboarding, snow tubing, and snowshoeing** as ~~a sport~~ **sports**, and the use of passenger tramways associated therewith may be hazardous to the skiers or passengers. Therefore:

I. Each person who participates in the sport of skiing, **snowboarding, snow tubing, and snowshoeing** accepts as a matter of law, the dangers inherent in the sport, and to that extent may not maintain an action against the operator for any injuries which result from such inherent risks, dangers, or hazards. The categories of such risks, hazards, or dangers which the skier or passenger assumes as a matter of law include but are not limited to the following: variations in terrain, surface or subsurface snow or ice conditions; bare spots; rocks, trees, stumps and other forms of forest growth or debris; **terrain**, lift towers, and components thereof (all of the foregoing whether above or below snow surface); pole lines and plainly marked or visible snow making equipment; collisions with other skiers or other persons or with any of the categories included in this paragraph.

II. Each skier and passenger shall have the sole responsibility for knowing the range of his **or her** own ability to negotiate any slope, trail, **terrain**, or passenger tramway. Any passenger who boards such tramway shall be presumed to have sufficient **knowledge, abilities, and physical dexterity** to negotiate the lift, and no liability shall attach to any operator or attendant for failure to instruct persons on the use thereof.

III. Each skier or passenger shall conduct himself **or herself**, within the limits of his **or her** own ability, maintain control of his **or her** speed and course at all times **both on the ground and in the air**, while skiing, **snowboarding, snow tubing, and snowshoeing** heed all posted warnings, and refrain from acting in a manner which may cause or contribute to the injury of himself, **herself**, or others.

5 New Subparagraph; Prohibitions; Access Closed Terrain. Amend RSA 225-A:24, V by inserting after subparagraph (f) the following new subparagraph:

(g) Ski or otherwise access terrain outside open and designated ski trails and slopes or beyond ski area boundaries without written permission of said operator or designee.

6 Insurance; Limitations. Amend RSA 225-A:25, I to read as follows:

I. Unless an operator of a passenger tramway is in violation of this chapter or the rules of the board, which violation is causal of the injury complained of, no action shall lie against any operator by any passenger or his **or her** representative; this prohibition shall not, however, prevent the maintenance of an action against an operator for negligent operation, construction, or maintenance of the passenger tramway itself.

7 Insurance; Limitations; Ski Area Operators Added. Amend RSA 225-A:25, IV to read as follows:

IV. No action shall be maintained against any operator for injuries to any skier or passenger unless the same is commenced within 2 years from the time of injury provided, however, that as a condition precedent thereof the operator shall be notified by certified return receipt mail within 90 days of said injury. The venue of any action against an operator shall be in the county ~~[in which the passenger tramway base station]~~ **where the ski area** is located and not otherwise.

8 New Paragraphs; Ski Areas; Limitations. Amend RSA 225-A:25 by inserting after paragraph IV the following new paragraphs:

V. No ski area operator shall be held responsible for ensuring the safety of, or for damages including injury or death, resulting to skiers or other persons who utilize the facilities of a ski area to access terrain outside open and designated ski trails. Ski areas shall not be liable for damages, including injury or death, to persons who venture beyond such open and designated ski trails.

VI. A ski area operator owes no duty to anyone who trespasses on the ski area property.

9 Ski Area Vehicles; Reference Changed. Amend RSA 259:101 to read as follows:

259:101 Ski Area Vehicles. "Ski area vehicles" shall mean motor vehicles, except private passenger vehicles, whether wheeled or tracked, on-highway or off-highway, owned or leased by a ski area as defined in RSA 225-A:2, [V] **VIII**, and used exclusively in winter or summer maintenance of ski trails, parking lots, private access roads, structures and other ski area facilities. These vehicles shall include snow cats, snow dozers, snow grooming equipment and tractors, except that it shall not include vehicles with metal tracks or cleats operated outside the bounds of any road maintained exclusively by the ski area.

10 Committee Established.

I. There is established a committee to study additional winter sports that may need to be included in the ski area exemption from liability and skier safety.

II. Membership and Compensation.

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

(1) Three members of the house of representatives, appointed by the speaker of the house of representatives. One member shall be from the resources, recreation and development committee, and one member shall be from the judiciary committee.

(2) Two members of the senate, appointed by the president of the senate.

(b) Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

III. Duties. The committee shall study:

(a) The need to include additional winter sports in the ski area liability exemption and which sports need to be included.

(b) Revising the statutes relating to skier safety and ski area responsibility to reflect changes in the sport of skiing and activities at ski areas.

IV. Chairperson. 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.

V. Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2005.

11 Effective Date.

I. Section 10 of this act shall take effect upon its passage.

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

AMENDED ANALYSIS

This bill:

I. Adds "snowboarding," "snow tubing," and "snowshoeing" to "skiing" in the declaration of policy.

II. Adds definitions to the definitions section and alphabetizes the section.

III. Makes certain changes to the color code signs for marking the ski trail level of difficulty and their placement.

IV. Adds "snowboarding," "snow tubing," and "snowshoeing" to skiing as inherently dangerous activities and changes the list of hazards for which skiers and others assume the risks.

V. Prohibits skiers from accessing certain parts of a ski area without written permission.

VI. Establishes a committee to study additional winter sports that may need to be included in the ski area exemption from liability and skier safety.
2005-0860h

Amendment to HB 619-FN

Proposed by the Minority of the Committee on Judiciary - R

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

1 Declaration of Policy; Other Winter Sports Added. Amend RSA 225-A:1 to read as follows:

225-A:1 Declaration of Policy. The state of New Hampshire finds that the ~~[sport]~~ **sports** of skiing ~~[is]~~ **and snowboarding are** practiced by a large number of citizens of the state of New Hampshire, and also that skiing ~~[attracts]~~ **and snowboarding attract** to the state of New Hampshire large numbers of nonresidents significantly contributing to the economy of New Hampshire. Therefore, it shall be the policy of the state of New Hampshire to protect its citizens and visitors from unnecessary mechanical hazards in the operation of ski tows, lifts, **nordic ski** jumps and **passenger** tramways, to ensure that proper design and construction are used, that board accepted safety devices and sufficient personnel are provided for, and that periodic inspections and adjustments are made which are deemed essential to the safe operation of ski tows, ski lifts, **nordic** ski jumps and passenger tramways. The primary responsibility for operation, construction, maintenance and inspection rests with the operators of such passenger tramway devices. The state, through its passenger tramway safety board, as hereinafter provided, shall register all ski lift devices and **nordic** ski jumps, establish reasonable standards of design and operational practices, and make such independent inspections as may be necessary in carrying out this policy. Further, it shall be the policy of the state of New Hampshire to define the primary areas of responsibility of skiers and other users of alpine (downhill) and nordic (cross country and **nordic** ski jumps) areas, recognizing that the sport of skiing and other ski area activities involve risks and hazards which must be assumed as a matter of law by those engaging in such activities, regardless of all safety measures taken by the ski area operators.

2 Definition of Terms. RSA 225-A:2 is repealed and reenacted to read as follows:

225-A:2 Definition of Terms. In this chapter:

I. "Passenger tramway" means a device used to transport passengers uphill on skis or other winter sports devices, or in cars on tracks or suspended in the air, by the use of steel cables, chains or belts or by ropes, and usually supported by trestles or towers with one or more spans. The term passenger tramway shall include the following:

(a) Two-car aerial passenger tramway, a device used to transport passengers in 2 open or enclosed cars attached to, and suspended from, a moving wire rope, or attached to a moving wire rope and supported on a standing wire rope, or similar devices.

(b) Multi-car aerial passenger tramway, a device used to transport passengers in open or enclosed cars attached to, and suspended from, a moving wire rope, or attached to a moving wire rope and supported on a standing wire rope, or similar devices.

(c) "Conveyor" means a class of outdoor transportation wherein skiers or passengers are transported uphill on a flexible moving element such as a conveyor belt.

(d) Chair lift, a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain or link belt supported by trestles or towers with one or more spans, or similar devices.

(e) J bar, T bar or platter pull, so-called, and similar types of devices are means of transportation which pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans.

(f) Rope tow, a type of transportation which pulls the skier riding on skis as the skier grasps the rope manually, or similar devices.

(g) Wire rope tow means a type of transportation by which skiers are pulled on skis while manually gripping a handle attached to a wire hauling cable. The hauling cable is

maintained at a constant height range between the loading and unloading points, and there is only one span with no intermediate towers.

II. "Board" means the passenger tramway safety board.

III. "Department" means the department of safety, division of safety services.

IV. "Freestyle terrain" means terrain slopes and natural features at the ski area.

V. "Industry" means the activities of all those persons in the state who own or control the operation of ski areas.

VI. "Nordic ski jump" means a facility constructed for the purpose of nordic ski jumping and built in accordance with appropriate standards and guidelines, and any facilities that are associated with the use or viewing of such a facility.

VII. "Passenger" means any person, including skiers, while being transported or conveyed by a passenger tramway, or while waiting in the immediate vicinity for such transportation or conveyance, or while moving away from the disembarkation or unloading point of a passenger tramway to clear the way for the following passengers, or while in the act of boarding or embarking upon or disembarking from a passenger tramway.

VIII. "Ski area operator" means a person who owns or controls the operation of a ski area. The word "operator" shall include the state or any political subdivision. An operator of a passenger tramway shall be deemed not to be operating a common carrier. Ski area operator is included in the term "operator" as used in this chapter.

IX. "Ski areas" means all passenger tramways and all designated alpine and nordic trails, slopes, freestyle terrain, tubing terrain, and nordic ski jumps under the control of the alpine and nordic ski area operator and any other areas under the operator's control open to the public for winter sports recreation or competition.

X. "Skier" means a person utilizing the ski area under the control of a ski area operator for ski and snowboard recreation and competition.

3 Responsibilities of the Ski Area Operator. RSA 225-A:23 is repealed and reenacted to read as follows:

225-A:23 Responsibilities of the Ski Area Operator. It shall be the responsibility of the operator to maintain the following signs and designations:

I. General Designations. The following color code is hereby established:

(a) Green circle: On area's easiest trails and slopes.

(b) Black diamond: On area's most difficult trails and slopes.

(c) Blue square: On area's trails and slopes that fall between the green circle and black diamond designation.

(d) Yellow triangle with red exclamation point inside with a red band around the triangle: Extrahazardous.

(e) Border around a black figure in the shape of a skier inside with a band running diagonally across the sign with the word "closed" beneath the emblem: Trail or slope closed.

(f) Orange oval: On area's designated freestyle terrain without respect to its degree of difficulty.

II. Base Area; Information to Skiers and Passengers.

(a) A trail board shall be maintained at a prominent location listing the ski area's network of ski trails, slopes, tubing terrain, and designated freestyle terrain in accordance with the aforementioned color code and containing a key to the code in accordance with the above designations; said trail board shall further designate which trails, slopes, and terrain are open or closed.

(b) The ski area operator shall warn skiers and passengers by use of the trail board, if applicable, that snow grooming or snow making operations are routinely in progress on the slopes and trails serviced by each tramway.

(c) A map shall be available at all ski areas to all skiers and passengers indicating the system of ski trails, slopes, tubing terrain, and designated freestyle terrain in accordance with the color code in paragraph I.

III. Ski Trails and Slopes; Information and Warning to Skiers and Other Persons.

(a) The operator shall mark the beginning of each alpine and nordic ski trail or slope with the appropriate symbol for that particular trail's or slope's degree of difficulty in accordance with RSA 225-A:23, I.

(b) The beginning of each alpine ski trail or slope is defined as the highest point of the trail or slope. Lower trail junctions and intersections shall be marked with a degree of difficulty symbol.

(c) The operator shall mark the beginning of, and designated access points to, each alpine trail or slope that is closed with a sign in accordance with RSA 225-A:23, I(e). For purposes of this subparagraph, "designated access points" means the beginning of a trail, slope, or any point where an open trail crosses or intersects the closed trail as shown on the ski area's trail board and trail map.

IV. Nordic Ski Jumps. The operator shall provide a sign in a prominent location at or near the nordic ski jump facility, which sign shall warn the ski jumper that the use of the nordic ski jump is entirely at the ski jumper's own risk. Further, the ski area operator shall be responsible for the design, construction and structural maintenance of all nordic ski jumps.

4 Responsibilities of Skiers and Passengers. Amend the introductory paragraph of RSA 225-A:24 and RSA 225-A:24, I-III to read as follows:

225-A:24 Responsibilities of Skiers and Passengers. It is hereby recognized that, regardless of all safety measures which may be taken by the ski area operator, skiing **and snowboarding** as ~~a sport~~ **sports**, and the use of passenger tramways associated therewith may be hazardous to the skiers or passengers. Therefore:

I. Each person who participates in the sport of skiing **and snowboarding** accepts as a matter of law, the dangers inherent in the sport, and to that extent may not maintain an action against the operator for any injuries which result from such inherent risks, dangers, or hazards. The categories of such risks, hazards, or dangers which the skier or passenger assumes as a matter of law include but are not limited to the following: variations in terrain, surface or subsurface snow or ice conditions; bare spots; rocks, trees, stumps and other forms of forest growth or debris; **freestyle terrain**; lift towers, and components thereof (all of the foregoing whether above or below snow surface); pole lines and plainly marked or visible snow making equipment; collisions with other skiers or other persons or with any of the categories included in this paragraph.

II. Each skier and passenger shall have the sole responsibility for knowing the range of his **or her** own ability to negotiate any slope, trail, **freestyle terrain**, or passenger tramway. Any passenger who boards such tramway shall be presumed to have sufficient **knowledge**, abilities, **and physical dexterity** to negotiate the lift, and no liability shall attach to any operator or attendant for failure to instruct persons on the use thereof.

III. Each skier or passenger shall conduct himself **or herself**, within the limits of his **or her** own ability, maintain control of his **or her** speed and course at all times **both on the ground and in the air**, while skiing **and snowboarding**, heed all posted warnings, and refrain from acting in a manner which may cause or contribute to the injury of himself, **herself**, or others.

5 New Subparagraph; Prohibitions; Access Closed Terrain. Amend RSA 225-A:24, V by inserting after subparagraph (f) the following new subparagraph:

(g) Ski or otherwise access terrain outside open and designated ski trails and slopes or beyond ski area boundaries without written permission of said operator or designee.

6 Insurance; Limitations; Immunity Extended to Employees and Agents. Amend RSA 225-A:25, I to read as follows:

I. Unless an operator of a passenger tramway is in violation of this chapter or the rules of the board, which violation is causal of the injury complained of, no action shall lie against any operator by any passenger or his **or her** representative; this prohibition shall

not, however, prevent the maintenance of an action against an operator for negligent operation, construction, or maintenance of the passenger tramway itself.

7 Insurance; Limitations; Ski Area Operators Added. Amend RSA 225-A:25, IV to read as follows:

IV. No action shall be maintained against any operator for injuries to any skier or passenger unless the same is commenced within 2 years from the time of injury provided, however, that as a condition precedent thereof the operator shall be notified by certified return receipt mail within 90 days of said injury. The venue of any action against an operator shall be in the county ~~[in which the passenger tramway base station]~~ **where the ski area** is located and not otherwise.

8 New Paragraphs; Ski Areas; Limitations. Amend RSA 225-A:25 by inserting after paragraph IV the following new paragraphs:

V. No ski area operator shall be held responsible for ensuring the safety of, or for damages including injury or death, resulting to skiers or other persons who utilize the facilities of a ski area to access terrain outside open and designated ski trails. Ski areas shall not be liable for damages, including injury or death, to persons who venture beyond such open and designated ski trails.

VI. A ski area operator owes no duty to anyone who trespasses on the ski area property.

9 Ski Area Vehicles; Reference Changed. Amend RSA 259:101 to read as follows:

259:101 Ski Area Vehicles. "Ski area vehicles" shall mean motor vehicles, except private passenger vehicles, whether wheeled or tracked, on-highway or off-highway, owned or leased by a ski area as defined in RSA 225-A:2, ~~[V]~~ **VIII**, and used exclusively in winter or summer maintenance of ski trails, parking lots, private access roads, structures and other ski area facilities. These vehicles shall include snow cats, snow dozers, snow grooming equipment and tractors, except that it shall not include vehicles with metal tracks or cleats operated outside the bounds of any road maintained exclusively by the ski area.

10 Committee Established.

I. There is established a committee to study additional winter sports that may need to be included in the ski area exemption from liability and skier safety.

II. Membership and Compensation.

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

(1) Three members of the house of representatives, appointed by the speaker of the house of representatives. One member shall be from the resources, recreation and development committee, and one member shall be from the judiciary committee.

(2) Two members of the senate, appointed by the president of the senate.

(b) Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

III. Duties. The committee shall study:

(a) The need to include additional winter sports in the ski area liability exemption and which sports need to be included.

(b) Revising the statutes relating to skier safety and ski area responsibility to reflect changes in the sport of skiing and activities at ski areas.

IV. Chairperson. 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.

V. Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2005.

11 Effective Date.

I. Section 10 of this act shall take effect upon its passage.

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

AMENDED ANALYSIS

This bill:

- I. Adds “snowboarding” to “skiing” in the declaration of policy.
- II. Adds definitions to the definitions section and alphabetizes the section.
- III. Makes certain changes to the color code signs for marking the ski trail level of difficulty and their placement.
- IV. Adds “snowboarding” to skiing as inherently dangerous activities and changes the list of hazards for which skiers and others assume the risks.
- V. Prohibits skiers from accessing certain parts of a ski area without written permission.
- VI. Establishes a committee to study additional winter sports that may need to be included in the ski area exemption from liability and skier safety.

2005-0736h

Amendment to HB 637-FN

Proposed by the Committee on Executive Departments and Administration - C

Amend the bill by replacing section 2 with the following:

2 Licensure as an Alcohol and Drug Counselor. RSA 330-C:9, II(a) is repealed and reenacted to read as follows:

- (a) For licensure as an alcohol and drug counselor (LADC):
 - (1) Experience and competence-based licensure:
 - (A) 6,000 hours of supervised alcohol and drug abuse work experience;
 - (B) 270 hours of alcohol and drug abuse training and education;
 - (C) 300 hours of supervised practical training, which may be included as part of the requirements under subparagraph (a)(1)(A);
 - (D) Passing of the written ICRC test for alcohol and drug counselors; and
 - (E) Passing of the oral ICRC test for alcohol and drug counselors; or
 - (2) Master’s degree licensure:
 - (A) A master’s degree in clinically-based behavioral sciences or addiction counseling or a related field from an accredited college or university;
 - (B) 2,000 hours of supervised alcohol and drug abuse work experience, 1,000 of which shall be earned post-masters and 1,000 of which may be earned concurrent with the masters course of study.
 - (C) 270 hours of alcohol and drug abuse training and education;
 - (D) 300 hours of supervised practical training, which may be included as part of the requirements under (a)(2)(B);
 - (E) Passing of the written ICRC test for alcohol and drug counselors; and
 - (F) Passing of the oral ICRC test for alcohol and drug counselors.

2005-0896h

Amendment to HB 640-FN

Proposed by the Committee on Children and Family Law - C

Amend RSA 461-A:4, II as inserted by section 1 of the bill by replacing it with the following:

- II. A parenting plan may include provisions relative to:
 - (a) Decision-making responsibility and residential responsibility.
 - (b) Information sharing and access, including telephone and electronic access.
 - (c) Legal residence of a child for school attendance.
 - (d) Parenting schedule, including:
 - (1) Holiday, birthday, and vacation planning.
 - (2) Weekends, including holidays, and school in-service days preceding or following weekends.
 - (e) Transportation and exchange of the child.
 - (f) Relocation of parents.
 - (g) Procedure for review and adjustment of the plan.
 - (h) Methods for resolving disputes.

Amend RSA 461-A:6, III as inserted by section 1 of the bill by replacing it with the following:

III. In determining parental rights and responsibilities under this section, including residential responsibility, the court shall not apply a preference for one parent over the other because of the sex of the child, the sex of a parent, or the financial resources of a parent.

Amend RSA 461-A:7, IV as inserted by section 1 of the bill by replacing it with the following:

IV. Reasons the court may choose not to order mediation include, but are not limited to, the following:

- (a) A showing of undue hardship to a party.
- (b) An agreement between the parties for alternate dispute resolution procedures.
- (c) An allegation of abuse or neglect of the minor child.
- (d) A finding of alcoholism, drug abuse, or domestic abuse as defined in RSA 173-B:1, unless all parties agree to mediation.
- (e) An allegation of serious psychological or emotional abuse.
- (f) Lack of an available, suitable mediator within a reasonable time period.

Amend the bill by inserting after section 19 the following and renumbering the original sections 20-21 to read as 21-22, respectively:

20 Legal Residence Required; Residential Responsibility. Amend RSA 193:12, II(a)(2) to read as follows:

(2) In a divorce decree where parents are awarded ***joint decision making responsibility or*** joint legal custody, the legal residence of a minor child is the residence of the parent with whom the child resides. If a parent is awarded sole or primary ***residential responsibility or*** physical custody by a court of competent jurisdiction in this or any other state, legal residence of a minor child is the residence of the parent who has sole or primary ***residential responsibility or*** physical custody. If the parent with sole or primary physical custody lives outside the state of New Hampshire, the pupil does not have residence in New Hampshire. ***If the court order is for equal or approximately equal periods of residential responsibility, the child's legal residence for school attendance purposes shall be as stated in the order.***

Amend the bill by replacing section 22 with the following:

22 Effective Date. This act shall take effect upon its passage.
2005-0520h

Amendment to HB 643-FN

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

Amend RSA 106-J:3, VI(e) as inserted by section 2 of the bill by replacing it with the following:

(e) J-One shall, on a monthly basis, expunge from the master name index any name that has had no activity for 5 years. For purposes of this subparagraph, "activity" means any submission of additional information or query on the name with a new agency case number.

2005-0853h

Amendment to HB 665-FN-LOCAL

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

Amend the introductory paragraph of RSA 279:21 as inserted by section 1 of the bill by replacing it with the following:

279:21 Minimum Hourly Rate. Unless otherwise provided by statute, no person, firm, or corporation shall employ any employee at an hourly rate lower than that set forth in the federal minimum wage law, as amended, or as follows, whichever is higher:

Date	Hourly Rate
~~[April 1, 1991 to September 30, 1996~~	~~\$4.25~~
~~October 1, 1996 to August 31, 1997~~	~~\$4.75]~~

On and after September 1, 1997	\$5.15
<i>On and after September 1, 2005</i>	<i>\$5.65</i>
<i>On and after September 1, 2006</i>	<i>\$6.15</i>

Tipped employees of a restaurant, hotel, motel, inn or cabin, who customarily and regularly receive more than \$20 a month in tips directly from the customers will receive a base rate from the employer of not less than \$2.38 per hour. With any change to the minimum wage after the effective date of this section, the employer is responsible to pay employees \$2.38 per hour or 45 percent of the applicable minimum wage whichever is higher. If an employee shows to the satisfaction of the commissioner that the actual amount of wages received at the end of each pay period did not equal the minimum wage for all hours worked, the employer shall pay the employee the difference to guarantee the applicable minimum wage. The limitations imposed hereby shall be subject to the following exceptions:

2005-0906h

Amendment to HB 672-FN
Proposed by the Committee on Judiciary - C

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

AN ACT relative to notaries public, justices of the peace, and adopting the Uniform Law on Notarial Acts.

Amend RSA 455:16 as inserted by section 6 of the bill by replacing it with the following:

455:16 Misconduct, Penalties.

- I. A person shall be subject to a civil penalty not to exceed \$1,000 if such person:
 - (a) When applying for a commission as a notary public, negligently or recklessly makes a material false representation on the application form;
 - (b) Holding a commission as a notary public or justice of the peace, negligently or recklessly makes a notarial act that is false;
 - (c) Holding a commission as a notary public or justice of the peace, negligently or recklessly makes a notarial act for a person not personally known by the notary without first requiring the person to establish his or her identity; or
 - (d) Holding a commission as a notary public or justice of the peace, negligently or recklessly makes a notarial act purporting to have witnessed the maker's signing of the document or purporting to have received the oath or affirmation of the person, when the notary did not actually witness the maker's signing of the document or did not actually receive the oath or affirmation of the person.
- II. A person shall be guilty of a class A misdemeanor if such person purposefully or knowingly commits any of the acts listed in paragraph I.
- III.(a) The court, upon petition of the attorney general, may levy upon any person who violates the provisions of paragraph I a civil penalty in an amount not to exceed \$1,000 per violation. All penalties assessed under this paragraph shall be paid to the secretary of state for deposit into the general fund.
- (b) The attorney general shall have authority to notify suspected violators of this section of the state's intention to seek a civil penalty, to negotiate, and to settle with such suspected violators without court action, provided any civil penalty paid as settlement shall be paid to the secretary of state for deposit into the general fund.

Amend RSA 5:10 as inserted by section 7 of the bill by replacing it with the following:

5:10 Office Fees. Except as otherwise provided, the following fees shall be paid to the secretary of state for the use of the state: For every commission issued to a justice of the peace or to a notary public, ~~[\$50]~~ ***\$75, \$25 of which shall be deposited into the fund established by RSA 660:31 for the use of the secretary of state and the attorney general as provided by RSA 455:17***; for every certificate pertaining to the existence of a corporation, trade name, or other business entity, or writ served on the same, \$5; for every such certificate in long form, \$10; for every apostille provided under the Hague Convention of

1961 and for every certificate for a notary public or justice of the peace, \$10; for every other certificate under seal of the state, \$5; for engrossing private acts, \$1 for each page of 240 words; for expedited service of every 10 documents or any part thereof, \$25.

Amend the bill by inserting after section 11 the following and renumbering the original sections 12 and 13 to read as 13 and 14, respectively:

12 Application; Penalty for False Representation Added. Amend RSA 455-A:2 to read as follows:

455-A:2 Application.

I. Any person applying to be a justice of the peace shall indicate on the application whether he or she has been a registered voter in this state for at least 3 years immediately preceding the date of application. The applicant must sign a written statement under oath stating ~~as to~~ whether the applicant has ever been convicted of a crime that has not been annulled by a court, other than minor traffic violations. The applicant shall be endorsed for appointment by 2 justices of the peace and a registered voter of this state.

II. *A person shall be subject to a civil penalty not to exceed \$1,000 if he or she negligently or recklessly makes a material false representation on the application form when applying for a commission as a justice of the peace. A person is guilty of a class A misdemeanor if he or she purposefully or knowingly makes a material false representation on the application form when applying for a commission as a justice of the peace. The civil penalty shall be imposed in the same manner as set forth in RSA 455:16.*

AMENDED ANALYSIS

This bill:

I. Adds commissioners of deeds to the law on notaries public and commissioners.

II. Adds penalties for misconduct by notaries and justices of the peace.

III. Adopts the Uniform Law on Notarial Acts.

IV. Repeals the Uniform Acknowledgment Act and the Uniform Recognition of Acknowledgments Acts.

2005-0702h

Amendment to HB 687-FN

Proposed by the Committee on Education - R

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

AN ACT relative to free tuition at New Hampshire public institutions of higher education for children of veterans who die while on active duty or from a service-connected disability.

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

1 Scholarships for Orphans of Veterans; Purpose of Appropriations. RSA 193:19 is repealed and reenacted to read as follows:

193:19 Purpose of Appropriations. The sums appropriated under the provisions of this section shall be used for the sole purpose of contributing to the payment of board, room rent, books and supplies, at a New Hampshire public institution of higher education, for veteran's natural or adopted children between the ages of 16 and 25 years, who are legal residents of the state at the time of application, whose parent served on active duty in the armed services of the United States from December 7, 1941 to December 31, 1946; or from June 27, 1950 to January 31, 1955; or from February 28, 1961 to May 7, 1975; or from August 2, 1990 through a final date of the Gulf War conflict to be prescribed by Presidential proclamation or law; or in any operation not otherwise covered by this section for which the armed forces expeditionary medal or a theater of operations service medal, as defined in RSA 72:29, has been awarded to the veteran, and the veteran, who was a New Hampshire resident at the time of his or her death, either died while on active duty during the service described above, or has since died from a service-connected disability so rated by the federal government. Not more than \$2,500 shall be paid under this section to any one student in any one year,

provided that no individual shall be eligible to receive such benefits for a period of more than 4 years.

2 Scholarships for Orphans of Veterans; Tuition. RSA 193:20 is repealed and reenacted to read as follows:

193:20 Tuition. Children, as described in RSA 193:19, enrolled at a New Hampshire public institution of higher education shall receive free tuition.

3 Scholarships for Orphans of Veterans; Payment. Amend RSA 193:21 to read as follows:

193:21 Payment. The amounts payable to recipients shall be determined by the postsecondary education commission ~~[and shall not be in excess of the amount specified in RSA 193:22]~~. The commission shall determine the eligibility in accordance with rules adopted under RSA 541-A of the children who make application for the benefits provided for in this subdivision, provided that no member of the commission shall receive any compensation for such service.

4 Repeal. RSA 193:22, relative to fund, is repealed.

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

AMENDED ANALYSIS

This bill provides that children of veterans who die while on active duty or later die from a service-connected disability are entitled to free tuition when enrolled at a New Hampshire public institution of higher education.

The bill also increases the maximum scholarship amount a student may receive for board, books and supplies from \$1,000 to \$2,500.

2005-0742h

Amendment to HB 691-FN-LOCAL

Proposed by the Majority of the Committee on Health, Human Services and Elderly Affairs - R

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

1 Purpose and Intent.

I. The general court recognizes that the demand upon the medicaid system will increase sharply in the near future due to the rapid aging of the population and the increasing numbers of citizens 85 years of age and older. These facts coupled with an anticipated federal reduction in medicaid funding requires a more cost-effective system to ensure that the state has the ability to meet the needs of its citizens while providing quality care to medicaid recipients.

II. The purpose of this act is to carry out the proposals contained in the plan for the modernization of the medicaid program, called Granite Care, administered by the department of health and human services as it relates to the provision of long-term care. This act is written to strengthen the commitment of the state to its people, for the provision of long-term care within an established continuum of care of home and community-based care, intermediate or mid-level care, and nursing facility care. The plan provides for a basic health care system for elderly or disabled persons who are poor, are without the means for obtaining long-term care services, and who are in need of transitional or long-term support in order to achieve or maintain an identified degree of independence, self-sufficiency, health, or quality of life. The plan also provides a new emphasis on maintaining our elderly in home and community-based care through the empowerment of consumer choice. A basic intent underlying this proposal is that medicaid funding is reserved for those qualified individuals who need it and those who are not eligible are excluded.

2 Long-Term Care; Eligibility for Nursing Facility Services. Amend RSA 151-E:3, I(a) to read as follows:

(a) Clinically eligible for nursing facility care because the person requires 24-hour care for one or more of the following purposes, as determined by ~~[the department]~~ **registered nurses employed by the department using an assessment tool:**

(1) Medical monitoring and nursing care **when the skills of a licensed medical professional are needed to provide safe and effective services;**

(2) Restorative nursing or rehabilitative care **with patient-specific goals;**

(3) Medication administration ~~[or instruction and supervision of self-medication for discharge purposes only]~~ **by oral, topical, intravenous, intramuscular, or subcutaneous injection, or intravenous feeding for treatment of recent or unstable conditions requiring medical or nursing intervention;** or

(4) Assistance with 2 or more activities of daily living **involving eating, toileting, transferring, bathing, dressing, and continence;** and

3 Long-Term Care; Nursing Facility Services. Amend RSA 151-E:4 to read as follows:

151-E:4 Consumer Choice. A person who has been determined to be medicaid eligible for nursing facility services in accordance with RSA 151-E:3 shall have the right to receive nursing facility services; however, the person **shall be offered and** may choose to receive services in a less restrictive setting if such services are available and do not result in costs to the state and counties in excess of the limitations set forth in RSA 151-E:11, II. Such choice shall be ~~[subject to limitations imposed by federal and state laws and regulations]~~ **offered in accordance with state laws and federal regulations. The department shall take into consideration the family and community supports available to the person, the family's desire and ability to care for the person, and shall ensure that all consideration and support is offered to the family to maintain the person in home and community-based care. Nothing in this section is intended to require the provision of financial assistance or supports by a family member.**

4 Eligibility for Assistance; Asset Transfers. Amend RSA 167:4, I(b) to read as follows:

(b) In the case of an applicant for public assistance or medical assistance who has made an assignment or transfer of ~~[property]~~ **assets to an individual** for less than fair market value within ~~[36]~~ **60** months or in the case of ~~[payments from]~~ **transfers of real estate, or transfers of assets to** a trust or portions of a trust that are treated as assets disposed of by the individual within ~~[60]~~ **120** months immediately preceding the date of application or while the application is pending, or in the case of a recipient of public assistance or medical assistance who makes such an assignment or transfer while in receipt of the assistance, the assistance sought shall only be granted or continue to be granted in accordance with rules establishing restrictions and eligibility criteria for such cases as adopted by the commissioner of the department of health and human services under RSA 541-A, subject to applicable federal regulations **and waiver approval, if any, and review by the oversight committee on health and human services, established in RSA 126-A:13. The oversight committee on health and human services shall make a report to the legislative fiscal committee which shall have final approval authority.**

5 Eligibility for Assistance; Medicaid. Amend RSA 167:4, IV(c) to read as follows:

(c) **Notwithstanding any provision of law to the contrary, for purposes of medicaid eligibility, investment in life insurance policies with cash surrender value in excess of \$1,500 shall be limited to policies that ensure payment to the state of New Hampshire of all the proceeds of the policy in excess of amounts spent on burial up to the total of medicaid expenditures made on behalf of the individual.**

(d) **Contingent upon federal approval, the commissioner shall establish a program to eliminate the resource ceiling for applicants and recipients of medical assistance at the institutional level of care if the applicant or recipient benefits from or will benefit from a conforming long-term care insurance policy. The commissioner shall establish criteria for conforming long-term care insurance**

policies which, at a minimum, shall provide benefits for at least 36 months of nursing home payments at the average private pay rate for county nursing home facilities, an annual benefit inflation factor of at least 5 percent compounded annually, and coverage for home and community-based care equivalent to the benefit provided in a nursing facility. The estates of recipients of medical assistance for institutional level of care for whom the resource ceiling has been eliminated, shall be exempt from recoveries pursuant to RSA 167:13 and RSA 167:14.

(e) The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, relative to the proper administration of this paragraph.

6 Recovery for Assistance Furnished. Amend RSA 167:13, I to read as follows:

I. Except as provided in paragraph II, if at any time during the continuance of assistance, the recipient or the husband or wife of the recipient becomes possessed of any property or income in excess of the amount stated in the application, it shall be the duty of the recipient within 10 calendar days to notify the commissioner of the department of health and human services of the receipt or possession of such property or income. On the death of a recipient of old age assistance, ***aid to the needy blind, medicaid for employed adults with disabilities***, or aid to the permanently and totally disabled, the total amount of assistance paid under this chapter or RSA 161 shall be allowed as a claim against the estate of such person after payment of the charges in the priority set forth in RSA 554:19. No lien filed in accordance with RSA 167:14 shall be extended to enforce recovery nor shall any sale be forced against the real estate of a recipient of old age assistance, ***aid to the needy blind, medicaid for employed adults with disabilities***, or aid to the permanently and totally disabled while it is occupied as a home by a surviving spouse. The federal government shall be entitled, as long as required as a condition to federal financial participation, to such proportion of the net amount collected from the estate of a recipient of old age assistance, ***aid to the needy blind, medicaid for employed adults with disabilities***, or aid to the permanently and totally disabled as the federal participation bears to the total amount of assistance granted said recipient.

7 Assistance; Claims and Liens. Amend RSA 167:14, I to read as follows:

I. The estate of every recipient and the estate of a recipient's spouse, if any, owned severally or as joint tenants, shall be liable for all financial old age assistance, ***aid to the needy blind***, or aid to the permanently and totally disabled granted to the recipient; provided, however, that the estate of a recipient's spouse shall be liable only for such financial assistance as was granted to the recipient during the time that the recipient and the recipient's spouse were neither legally separated nor divorced. After providing all owners of the real property known to the department with prior notice and an opportunity for a hearing, the commissioner of the department of health and human services shall file with the register of deeds of the county in which the recipient, or the spouse of the recipient, if any, owns real property, notice of the lien. Such notice of lien shall contain the names of the recipient and the recipient's spouse, if any. All such liens shall continue during the lifetime of the recipient and of the spouse of the recipient, if any, and until enforced as provided in this section, unless sooner released by the commissioner of the department of health and human services.

8 Recovery of Assistance. Amend RSA 167:14-a, I and II to read as follows:

I. Any person who is a recipient of financial assistance, medical assistance, old age assistance, ***aid to the needy blind, medicaid for employed adults with disabilities***, or aid to the permanently and totally disabled shall, by his acceptance of such assistance, be deemed to have assigned any claim or right of action against any person or party to the commissioner of health and human services, to the extent that such assistance is furnished.

II. Whenever a recipient of financial assistance, medical assistance, old age assistance, ***aid to the needy blind, medicaid for employed adults with disabilities***, or aid to the permanently and totally disabled shall have a legally cognizable claim against any person or party for expenses or support and the department of health and human services

has already furnished assistance to such recipient, the amount of assistance furnished may be recovered in an action brought in the name of the state from such person or party against whom the recipient has a legally cognizable claim for expenses or support.

9 New Paragraph; Recovery of Assistance; Estates of Recipients. Amend RSA 167:14-a by inserting after paragraph V the following new paragraph:

VI. Notwithstanding any provision of law to the contrary, for purposes of recovering the costs of medical assistance, the estate of a recipient shall include all property, real or personal, which at the time of a recipient's death was held by the recipient in joint tenancy with rights of survivorship, tenancy in common, life estate, living trust or other arrangement, without regard to the date that such title or interest was established. No sooner than 45 days from the death of the recipient, the department shall provide the other joint owner or owners notice of the department's claim. Within 30 days of the receipt of notification of the department's claim, the joint owner or owners shall acknowledge receipt of the department's claim and either tender an amount equal to the deceased recipient's interest in the identified property and/or financial instrument to the state of New Hampshire toward the deceased's medical assistance bill, but such amount shall not exceed the total amount of medical assistance provided to the deceased recipient, or enter into a binding agreement to make such payment as soon as is practicable. If the joint owner or owners refuse to acknowledge receipt of the department's claim or to tender payment or fail to fulfill the agreement to pay without good cause, as required by this paragraph, the commissioner may bring an action in superior court to compel such payment. Nothing in this paragraph shall be interpreted or applied so as to violate RSA 167:16-a, IV or 42 U.S.C. section 1396p(b)(2)(A) prohibiting recovery when the recipient is survived by a spouse, minor children, or disabled children.

10 Prescription Drugs; Organization of Drugs. Amend RSA 318:42, XIII to read as follows:

XIII. A nurse licensed under RSA 326-B, who is an employee of a ~~[home health care or hospice agency]~~ **health facility** licensed pursuant to RSA 151:2 and is acting in the course of employment, from organizing the prescription and nonprescription drugs of clients into containers designed to aid clients in carrying out a prescriber's directions, provided that the organizing of drugs is documented in the client's nursing record and that the original prescription containers remain in the client's possession.

11 New Subparagraph; Confidentiality of Records; Disclosure to Department of Health and Human Services. Amend RSA 21-J:14, V(d) by inserting after subparagraph (7) the following new subparagraph:

(8) An officer or employee of the department of health and human services in the performance of duties under RSA 167:14-a, V, which disclosure shall be limited to the report of the trust and a copy of the trust document, including any list of beneficiaries, filed in accordance with RSA 87:20.

12 New Paragraph; Duties of the Department of Health and Human Services; Medicaid Waivers. Amend RSA 126-A:4 by inserting after paragraph V the following new paragraph:

VI. The department of health and human services shall enter into medicaid waivers from the federal Centers for Medicare and Medicaid Services, subject in each case to a review by the oversight committee on health and human services, established in RSA 126-A:13, which shall make a report to the legislative fiscal committee which shall have final approval authority.

(a) Allow the department to begin the penalty period of ineligibility for medicaid services due to transfers of assets for less than fair market value as of the date of application for medical assistance or as of the date that the applicant, but for the transfer of assets for less than fair market value, meets all of the criteria for eligibility for medical assistance, whichever is later.

(b) Allow the department to eliminate the resource ceiling for applicants for medical assistance and to exempt them from actions for recovery against their estates for the

cost of medical assistance they receive when they have a long-term care insurance policy that meets the standards established by the legislature and the department.

13 Long-Term Care; Cost Controls; Limitation on Waiver Slots. Amend RSA 151-E:11 to read as follows:

151-E:11 Program Management and Cost Controls.

I. The department shall designate in its operating budget requests specific class lines for nursing facility, mid-level, and home-based care provided for in this chapter. These class lines shall reflect, and the requesting documentation shall include, the anticipated number of persons to receive services. The department ***with prior review of the county-state finance commission and with the approval of the legislative fiscal committee, may make transfers between these class lines, but*** shall not increase expenditures in ***the total*** approved budgets for ~~[care] these class lines [or the number of persons to receive mid-level or home care services without the approval of the legislative fiscal committee, and the prior review of the county-state finance commission]~~.

II. For the fiscal year beginning July 1, 2003, and each fiscal year thereafter the average annual cost for the provision of services to persons in the mid-level of care shall not exceed 60 percent of the average annual cost for the provision of services in a nursing facility. The average annual cost for the provision of services in home-based care shall not exceed 50 percent of the average annual cost for the provision of services to persons in a nursing facility. Average annual costs shall be the net medicaid costs exclusive of provider payments. ***No person whose costs would be in excess of 80 percent of the average annual cost for the provision of services to a person in a nursing facility shall be approved for home-based or mid-level services without the prior approval of the commissioner of health and human services.*** The department shall provide a report semi-annually on the utilization of non-nursing home services to the county-state finance commission and the legislative fiscal committee.

14 Applicability. Pending federal Centers for Medicare and Medicaid Services approval required under section 4 of this act and notwithstanding RSA 167:4, I(b) or any other provision of law to the contrary, any applicant for public assistance or medical assistance who has made an assignment or transfer of assets to an individual for less than fair market value or who has transferred real estate or transferred assets to a trust relying on the 3-year or 5-year look back provision under RSA 167:4 and which is in existence on March 14, 2005 shall be grandfathered.

15 Commission Established. Pursuant to the goals of the Granite Care plan, there is established a commission to develop a comprehensive state mental health plan as recommended by the President's New Freedom Commission on Mental Health. The purpose of the commission is to create a 5-year strategy to deliver mental health services that are founded on the principles of resiliency and recovery, evidence - based practice, effectiveness and efficiency. The plan shall also focus on the integration of the mental health system with other systems of care, including the developmental services system and the elder care system.

16 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 house committee on health, human services and elderly affairs, appointed by the speaker of the house of representatives.

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

(c) Two members representing community mental health centers, one of whom shall be a board member, appointed by the Community Behavioral Health Association.

(d) The commissioner of the department of health and human services, or designee.

(e) The director of the division of community-based care services of the department of health and human services, or designee.

- (f) The superintendent of New Hampshire hospital.
- (g) The superintendent of the Glencliff home for the elderly.
- (h) The chief of the bureau of behavioral health, department of health and human services.
- (i) The director of the office of consumer affairs, department of health and human services.
- (j) The executive director of the National Alliance for the Mentally Ill (NAMI).
- (k) The executive director of the governor's commission on disability, or designee.
- (l) Two members representing consumers utilizing mental health services, appointed by the governor.
- (m) Two members representing families utilizing mental health services, appointed by the governor.
- (n) The director, office of alcohol and drug policy, department of health and human services.
- (o) A psychiatrist, appointed by the New Hampshire Psychiatric Society.
- (p) The medical director, bureau of behavioral health, department of health and human services.
- (q) Two members representing peer support agencies, one of whom shall be a board member, appointed by the Consumer Council.
- (r) The commissioner of the department of corrections, or designee.
- (s) The superintendent of a county house of corrections, appointed by the governor.
- (t) A member of the West Institute, appointed by the Dartmouth Psychiatric Research Center.
- (u) The dean of the university of New Hampshire, school of health sciences.

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

III. The commission may seek grant funding support to carry out its duties.

17 Duties. The commission shall review and study the mental health service delivery system and make recommendations regarding:

- I. The role and mission of New Hampshire hospital and Glencliff home for the elderly.
- II. The role and mission of community mental health centers as providers of comprehensive behavioral health services and supports, including a range of residential services.
- III. The role and mission of peer support programs.
- IV. The role and mission of family mutual support organizations.
- V. The integration of services for persons who have both mental illness and problems with substance abuse.
- VI. The implementation of evidence based standards of care and treatment.
- VII. The promotion of research to improve the treatment of mental illness.
- VIII. The utilization of local community hospitals to provide short-term stabilization of mental health crises.
- IX. The development of regional transitional housing.
- X. The availability of mental health treatment in prisons and jails.
- XI. The integration of mental and physical health care.
- XII. Other matters related to the delivery of mental health services.

18 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. Twelve members of the commission shall constitute a quorum. The bureau of behavioral health shall provide administrative support to the commission.

19 Report. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, senate president, the house clerk, the senate clerk, the governor, and the state library in an interim report on or before December 1, 2005 and in a final report on or before December 1, 2006.

20 Oversight Committee on Health and Human Services; Duty Added. Amend RSA 126-A:15, I to read as follows:

I. The committee shall provide legislative oversight of and informational meetings on the programs, policies, and rules of the department of health and human services as brought to its attention by committee members, legislators, department personnel, or others. The committee's work may include, but is not limited to, analyzing the efficacy of selected programs, studying the characteristics of target populations, researching trends affecting program costs and participation, and reviewing alternate approaches to programmatic and administrative concerns. ***The committee shall monitor the on-going medicaid modernization plan.*** The committee shall provide informational meetings on such topics to the general court. The committee shall maintain communications with the department of health and human services, and any other departments, as necessary to accomplish its work.

21 Effective Date.

I. Section 2 of this act shall take effect January 1, 2006.

II. Sections 15-19 of this act shall take effect upon its passage.

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

AMENDED ANALYSIS

This bill revises the medicaid program. Specifically some of the changes include:

I. Clarifying the law regarding eligibility for nursing facility services.

II. Clarifying entitlement to nursing facility care.

III. Revising the law regarding asset transfers preceding application for public assistance.

IV. Adding the category of aid to the needy blind for purposes of recovery of assistance.

V. Requiring the department of health and human services to seek certain medicaid waivers.

VI. Establishing a commission to develop a comprehensive state mental health plan.
2005-0909h

Amendment to HB 702-FN

Proposed by the Committee on Judiciary - R

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

AN ACT relative to the screening and mediation of medical malpractice claims.

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

1 New Chapter; Screening and Mediation for Medical Injury Claims. Amend RSA by inserting after chapter 519-A the following new chapter:

CHAPTER 519-B

SCREENING AND MEDIATION FOR MEDICAL INJURY CLAIMS

519-B:1 Definitions. In this chapter a "provider of health care" shall mean a person, corporation, facility, or institution licensed by the state to provide health care or professional services as a physician, hospital, clinic or nursing home, dentist, registered or licensed nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, acupuncturist, or an officer, employee, or agent thereof acting in the course and scope of his or her employment.

519-B:2 Screening Hearing and Mediation.

I. Every action at law for medical injury against a provider of health care shall be screened by a single justice of the superior court. The plaintiff shall present an offer of proof and the screening judge shall determine if the evidence presented, if properly substantiated, is sufficient to raise a legitimate question of liability appropriate for judicial inquiry or whether the plaintiff's case is merely an unfortunate medical result.

II. All actions which continue after the decision of the screening judge under paragraph I shall be mediated within 45 days in a manner established by court rules to promote and encourage an expeditious settlement.

519-B:3 Procedure.

I. Each such action for medical injury shall be heard by the screening judge within 45 days after the defendant's answer has been filed. Substantial evidence shall mean such evidence as a reasonable person might accept as adequate to support a conclusion. Admissible evidence shall include, but not be limited to, hospital and medical records, nurses' notes, x-rays, and other records kept in the usual course of the practice of the health care provider without the necessity for other identification or authentication, statements of fact or opinion on a subject contained in a published treatise, periodical, book, or pamphlet or statements by experts without the necessity of such experts appearing at the hearing. The screening judge may, upon the application of either party or upon his or her own decision, summon or subpoena any such records or individuals to substantiate or clarify any evidence which has been presented and may appoint an impartial and qualified physician or surgeon or other related professional person or expert to conduct any necessary professional or expert examination of the claimant or relevant evidentiary matter and to report to the screening judge or to testify as a witness thereto. Such a witness shall be allowed traveling expenses and a reasonable fee to be fixed by the screening judge which shall be assessed as costs. The testimony of the witness and the decision of the screening judge shall be admissible as evidence at a trial.

II. If a finding is made for the defendant or defendants in the case the plaintiff may pursue the claim through the usual judicial process only upon filing bond in the amount of \$6,000 in the aggregate secured by cash or its equivalent with the clerk of the court in which the case is pending, payable to the defendant or defendants in the case for costs assessed, including witness and experts fees and attorneys fees if the plaintiff does not prevail in the final judgment. The screening judge may, within his or her discretion, increase the amount of the bond required to be filed. If the bond is not posted within 30 days of the screening judge's finding, the action shall be dismissed. Upon motion filed by the plaintiff and a determination by the court that the plaintiff is indigent, the screening judge may reduce the amount of the bond but may not eliminate the requirement.

III. The expenses of the screening hearing and mediation shall be equitably assessed to the parties by the court.

519-B:4 Final Disposition. Upon entry of judgment, settlement, or other final disposition at trial court level, the clerk shall, no later than 15 days after such entry, send a copy of the judgment, settlement or other final disposition, to the board of medicine. The terms of judgment, settlement, or other final disposition shall not be sealed by agreement of the parties or by any other means and shall be available for public inspection, except, however, the identity of the plaintiff may be kept confidential.

519-B:5 Notification to the Board of Medicine. Whenever the tribunal makes a finding, the clerk of the court shall, no later than 15 days after such finding, send a copy of the complaint and finding to the board of medicine.

2 Effective Date. This act shall take effect January 1, 2006.

AMENDED ANALYSIS

This bill establishes a screening hearing before a superior court judge to review medical malpractice claims and mediation for claims that continue.

2005-0885h

Amendment to HB 710-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 5-year valuation of municipal assessments, and relative to the total property valuation for the town of Roxbury.

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

1 Five-Year Valuation. RSA 75:8-a is repealed and reenacted to read as follows:

75:8-a Five-Year Valuation. The assessors and selectmen shall reappraise all real estate within the municipality so that the assessments are at full and true value at least as often as every fifth year, beginning with the later of either of the following:

I. The first year a municipality's assessments were reviewed by the commissioner of the department of revenue administration pursuant to RSA 21-J:3, XXVI and the municipality's assessments were determined to be in accordance with RSA 75:1; or

II. The municipality conducted a full revaluation monitored by the department of revenue administration pursuant to RSA 21-J:11, II, provided that the full revaluation was effective on or after April 1, 1999.

2 Town of Roxbury; Total Valuation Adjusted By the Department of Revenue Administration. The commissioner of revenue administration shall adjust the 2003 total town valuation for the town of Roxbury to exclude the \$2,143,500 of exempt property previously included as taxable property. Notwithstanding RSA 21-J:35, the department shall forthwith utilize such adjusted total valuation in all calculations of town, county, state education, and local education tax rates, and in the determination of equalized assessed valuation.

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

AMENDED ANALYSIS

This bill clarifies the 5-year period in which municipalities reappraise real property to full and true value. The bill also directs the department of revenue administration to adjust the 2003 total valuation for the town of Roxbury.

2005-0922h

Floor Amendment to HB 710-FN Proposed by Reps. Patten and Stohl

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

AN ACT relative to the 5-year valuation of municipal assessments, and relative to the total property valuation for the town of Roxbury.

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

1 Five-Year Valuation. RSA 75:8-a is repealed and reenacted to read as follows:

75:8-a Five-Year Valuation. The assessors and/or selectmen shall reappraise all real estate within the municipality so that the assessments are at full and true value at least as often as every fifth year, beginning with the later of either of the following:

I. The first year a municipality's assessments were reviewed by the commissioner of the department of revenue administration pursuant to RSA 21-J:3, XXVI and the municipality's assessments were determined to be in accordance with RSA 75:1; or

II. The municipality conducted a full revaluation monitored by the department of revenue administration pursuant to RSA 21-J:11, II, provided that the full revaluation was effective on or after April 1, 1999.

2 Town of Roxbury; Total Valuation Adjusted By the Department of Revenue Administration. The commissioner of revenue administration shall adjust the 2003 total town valuation for the town of Roxbury to exclude the \$2,143,500 of exempt property previously included as taxable property. Notwithstanding RSA 21-J:35, the department shall forthwith utilize such adjusted total valuation in all calculations of town, county, state education, and local education tax rates, and in the determination of equalized assessed valuation.

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

AMENDED ANALYSIS

This bill clarifies the 5-year period in which municipalities reappraise real property to full and true value. The bill also directs the department of revenue administration to adjust the 2003 total valuation for the town of Roxbury.

2005-0799h

Amendment to HB 721

Proposed by the Majority of the Committee on Education - R

Amend paragraph IV of section 1 of the bill by replacing it with the following:

IV. The general court and governor have the power to define a constitutionally adequate education, and therefore any rules proposed or adopted by the department of education or the state board of education which purport to define an adequate education would be unconstitutional and null and void ab initio.

2005-0255h

Amendment to HCR 7

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

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

A RESOLUTION urging the United States Congress to establish a task force to review and revise the current drug policy.

AMENDED ANALYSIS

This house concurrent resolution urges the United States Congress to establish a task force to review and revise the current drug policy.

2005-0635h

Amendment to SB 76

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

Amend the bill by replacing section 3 with the following:

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