

HOUSE RECORD

Second Year of the 159th General Court
Calendar and Journal of the 2006 Session

Vol. 28 Concord N.H. Friday, January 13, 2006 No. 5
Contains: Amendments for January 18th

HOUSE CALENDAR

AMENDMENTS

ALL LEGISLATORS ARE ASKED TO BRING THIS CALENDAR FOR USE ON WEDNESDAY, JANUARY 18, 2006

WEDNESDAY, JANUARY 18 AMENDMENTS (LISTED IN NUMERICAL ORDER)

Amendment to HB 39
Proposed by the Majority of the Committee on Education - R

2006-0104h

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

AN ACT permitting a religious exemption from courses on human sexuality or family relations.

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

1. New Section: School Boards: Religious Exemption. Amend RSA 189 by inserting after section 10 the following new section:

189:10-a. Religious Exemption for Courses in Human Sexuality or Family Relations.

1.6a) Each public and nonpublic school shall permit a pupil to claim a religious exemption from any course on human sexuality or family relations upon the execution of a notarized religious exemption form. The form shall be available in the school principal's office, school nurse's office, and the guidance office, and shall be as follows:

CERTIFICATE OF RELIGIOUS EXEMPTION

PUPIL'S NAME _____

BIRTH DATE _____

ADDRESS _____

NAME OF COURSE _____

The above-named school health course or health instruction in human sexuality or family relations conflicts with the above-named pupil's and/or parent/guardian's religious beliefs. By the affixed signature below, I/we the parent(s)/guardian(s) affirm that the above-named pupil is exempt from attendance or participation in such course. (Only one parent/guardian signature is necessary to execute this exemption.)

Signature of parent/guardian _____

Date _____

Signature of parent/guardian _____

Date _____

I hereby affirm that this affidavit was signed in my presence on this ____ day of _____ by _____ known to me or demonstrated to me to be the legal parent(s)/guardian(s) of the above-named pupil.

Notary Public Seal _____

Notary Public/Justice of the Peace _____

(b) The school district shall retain a copy of the executed form and shall furnish a copy to the parent or legal guardian of an exempt pupil.

II. The form shall be posted on the website of the department of education and the website of the local school district, and shall be contained in the policy handbook, orientation materials, or other similar publications presented to parents at the beginning of the school year.

III. Nothing in this section shall be construed to prohibit instruction in personal hygiene or biology.

IV. The execution of this form shall not constitute grounds for denial of credits to a pupil.

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

This bill implements a procedure requiring public and nonpublic schools to grant a religious exemption from any course on human sexuality or family relations.

2006-0305h

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

AN ACT permitting a religious exemption from courses on human sexuality or family relations.

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

1. New Section: School Boards: Religious Exemption. Amend RSA 189 by inserting after section 10 the following new section:

189:10-a. Religious Exemption for Courses in Human Sexuality or Family Relations.

1.6a) Each public and nonpublic school shall permit a pupil to claim a religious exemption from any course on human sexuality or family relations upon the execution of a notarized religious exemption form. The form shall be available in the school principal's office, school nurse's office, and the guidance office, and shall be as follows:

CERTIFICATE OF RELIGIOUS EXEMPTION

PUPIL'S NAME _____

BIRTH DATE _____

ADDRESS _____

NAME OF COURSE _____

The above-named school health course or health instruction in human sexuality or family relations conflicts with the above-named pupil's and/or parent/guardian's religious beliefs. By the affixed signature below, I/we the parent(s)/guardian(s) affirm that the above-named pupil is exempt from attendance or participation in such course. (Only one parent/guardian signature is necessary to execute this exemption.)

Signature of parent/guardian _____

Date _____

Signature of parent/guardian _____

Date _____

(b) The school district shall retain a copy of the executed form and shall furnish a copy to the parent or legal guardian of an exempt pupil.

II. The form shall be posted on the website of the department of education and the website of the local school district, and shall be contained in the policy handbook, orientation materials, or other similar publications presented to parents at the beginning of the school year.

III. Nothing in this section shall be construed to prohibit instruction in personal hygiene or biology.

IV. The execution of this form shall not constitute grounds for denial of credits to a pupil.

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

This bill implements a procedure requiring public and nonpublic schools to grant a religious exemption from any course on human sexuality or family relations.

2006-0319h

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

1. New Section: School Boards: Religious Exemption. Amend RSA 189 by inserting after section 10 the following new section:

189:10-a. Religious Exemption for Courses in Human Sexuality or Family Relations.

1. Any parent or legal guardian may remove their child from any course or unit of instruction on human sexuality or family relations based on religious principles.

II. A school administrator may contact a parent or legal guardian to confirm such removal. Verbal confirmation by a parent or legal guardian shall be sufficient and no written record of the removal or non-participation in such course or unit of instruction shall be maintained.

III. A child removed from a course or unit of instruction under this section shall be granted an "excused" grade and shall not be denied graduation for non-participation in such course or unit of instruction.

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

This bill allows a parent or legal guardian to remove a child from a course or unit of instruction on human sexuality or family relations based on religious principles.

2006-0024h

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

AN ACT relative to distribution of state aid to charter schools.

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

1. Charter and Open Enrollment Schools: Funding. Amend RSA 194-B:11, 1 to read as follows:

1. 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, 2006 and every fiscal year thereafter]~~ and not approved by the local school district, the state shall pay education aid directly to the charter school for each pupil who is a resident of this state in

attendance at such charter school ~~[an amount per pupil determined]~~ as follows:

(a) For the fiscal year beginning July 1, 2005, \$3,500 annual tuition.

(b) For every fiscal year thereafter, the department of education shall determine the tuition rate by adjusting for the average annual percentage rate of inflation 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. The average shall be based on the 4 calendar years ending 18 months before the beginning of the fiscal year for which the tuition rate is to be determined.

(c) 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 equitable education grants under RSA 198:42 or on such other terms as are mutually acceptable.

(d) The source of funds for payments under this section shall be from moneys specifically set aside for charter schools.

- 2 Charter and Open Enrollment Schools: Definitions. Amend RSA 194-B:1, III to read as follows:
- III. "Charter school" means an open enrollment public school, operated independent of any school board and managed by a board of trustees. A charter school shall operate as a nonprofit secular organization under a charter granted by the state board and in conformance with this chapter and *shall not be affiliated with any religious institution or any nonpublic or sectarian school.*
- 3 New Paragraph: Charter and Open Enrollment Schools: Board of Trustees. Amend RSA 194-B:5 by inserting after paragraph VI the following new paragraph:
- VII. Any member of a charter school board of trustees who also serves as an employee, agent, or board member of any for-profit entity with whom the charter school contracts for goods or services shall make public disclosure of such fact and shall recuse oneself from any business the charter school may have with the for-profit entity. Any contract executed in violation of this paragraph shall be voidable at the discretion of the commissioner of the department of education. A member of a charter school board of trustees who executes a contract in violation of this paragraph may be held personally liable to the charter school for any damages caused by such contract.
- 4 Repeal. RSA 194-B:1, IX, relative to the issuance of reimbursement anticipation notes to charter schools, is repealed.
- 5 Effective Date. This act shall take effect upon its passage.

- This bill:
- I. Requires the state to pay education aid directly to a charter school approved by the state board of education.
- II. Prohibits a charter school from being affiliated with a religious institution, nonpublic, or sectarian school.
- III. Requires any member of a charter school board of trustees who also serves as an employee, agent, or board member of any for-profit entity with whom the charter school contracts for goods or services to make public disclosure of such fact and to recuse oneself from any business the charter school may have with the for-profit entity.

2006-0057h

Amendment to HB 162
Proposed by the Majority of the Committee on Resources, Recreation and Development - R

- Amend the title of the bill by replacing it with the following:
- AN ACT relative to general rules for vessels operating on water.
- Amend the bill by replacing all after the enacting clause with the following:
- 1 New Paragraph: General Rules for Vessels Operating on Water. Amend RSA 270-D:2 by inserting after paragraph IX the following new paragraphs:
- X(a). No person shall operate a vessel at a speed greater than is reasonable and prudent under the existing conditions and without regard for the actual and potential hazards then existing. In all cases, speed shall be controlled so that the operator will be able to avoid endangering or colliding with any person, vessel, object, or shore.
- (b) Where no hazard exists that requires lower speed for compliance with subparagraph (a), the speed of any vessel in excess of the limit specified in this subparagraph shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:
- (i) 25 miles per hour during the period from 1/2 hour after sunset to 1/2 hour before sunrise; and
- (ii) 45 miles per hour at any other time.
- (c) The speed limitations set forth in subparagraph (b) shall not apply to vessels when operated with due regard for safety under the direction of the peace officers in the chase or apprehension of violators of the law or of persons charged with, or suspected of, any such violation, nor to fire department or fire patrol vessels, nor to private emergency vessels when traveling to emergencies. This exemption shall not, however, protect the operator of any such vessel from the consequences of a reckless disregard of the safety of others.
- (d) The speed limitations set forth in subparagraph (b) shall not apply to boat racing permitted under RSA 270:27.
- XI. Any conviction under this section shall be reported to the commissioner of the department of safety, division of motor vehicles, and shall become a part of the motor vehicle driving record of the person convicted.
- 2 Effective Date. This act shall take effect January 1, 2007.

AMENDED ANALYSIS

This bill establishes general speed limitations for vessels. This bill also requires that violations of the general rules for vessels operating on water become a part of the motor vehicle driving record of the person convicted.

2006-0030h

Amendment to HB 162
Proposed by the Minority of the Committee on Resources, Recreation and Development - R

- Amend the title of the bill by replacing it with the following:
- AN ACT relative to safe operation of vessels on New Hampshire waters.
- Amend the bill by replacing all after the enacting clause with the following:
- 1 Careless and Negligent Operation of Boats; Driving Record. Amend RSA 270:29-a to read as follows:
- 270:29-a. Careless and Negligent Operation of Boats. Any person who shall operate a power boat upon any waters of the state in a careless and negligent manner or so that the lives and safety of the public are endangered shall be guilty of a misdemeanor. *Any conviction under this section shall be reported to the commissioner of the department of safety, division of motor vehicles, and shall become a part of the motor vehicle driving record of the person convicted.*
- 2 New Paragraph: General Rules for Vessels Operating on Water; Speed. Amend RSA 270-D:2 by inserting after paragraph IX the following new paragraph:
- X. No person shall operate a vessel at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.
- 3 Boating and Water Safety; Penalties; Driving Record. Amend RSA 270-D:9 to read as follows:
- 270-D:9. Penalties. Any person who violates any provisions of this chapter or any rule adopted under RSA 270-D:8 shall be guilty of a violation. *Any conviction under RSA 270-D:2 shall be reported to the commissioner of the department of safety, division of motor vehicles, and shall become a part of the motor vehicle driving record of the person convicted.*
- 4 Effective Date. This act shall take effect January 1, 2007.

AMENDED ANALYSIS

This bill establishes a general standard for vessel operation speed. This bill also makes certain vessel operation violations a part of the convicted person's driving record.

2006-0132h

Amendment to HB 203-FN
Proposed by the Committee on Commerce - R

- Amend the title of the bill by replacing it with the following:
- AN ACT relative to the regulation of tracking devices and establishing a commission on the use of tracking devices.
- Amend the bill by replacing all after the enacting clause with the following:
- 1 New Chapter: Regulation of Tracking Devices. Amend RSA by inserting after chapter 358-R the following new chapter:
- CHAPTER 358-S
REGULATION OF TRACKING DEVICES
- 358-S:1. Definitions.
- I. "Consumer product" means a physical object that is, or is intended to be, used or consumed by a consumer and includes food, alcoholic and nonalcoholic beverages, and prescription and nonprescription drugs; clothing; merchandise; motor vehicles and their component parts; advertising and sales documents and literature; and books, magazines, and greeting and business cards. A "consumer product" does not include an identification document.
- II. "Identification document" means any document or object containing personal information that an individual uses alone or in conjunction with any other information to establish his or her identity, to engage in government-regulated activities, or to engage in financial transactions. Identification documents shall include but shall not be limited to:
- (a) Drivers' licenses, identification cards, and license plates issued by the director of the division of motor vehicles, department of safety;
- (b) E-Z Pass transponders;
- (c) Identification cards or badges issued to employees or contractors;
- (d) Insurance benefit cards;
- (e) Identification cards issued by public and private schools and educational institutions;
- (f) Benefit cards issued in conjunction with any government-supported aid program;
- (g) Credit, debit, and financial account cards;
- (h) Licenses, certificates, registrations, or other means to engage in a business or profession regulated by the state or its political subdivisions; and
- (i) Library cards issued by any public library.
- III. "Personal information" means information that can be used to identify an individual. Such information includes an individual's name, address, telephone and cellular telephone number, social security number, credit card and financial account numbers, driver's license number, e-mail address, date of birth, race, religion, ethnicity, nationality, political affiliation, photograph and digital image, fingerprint or other biometric identification, and any other unique personal identifier or number.
- IV. "RFID" or "radio frequency identification" means technologies that use radio waves to identify individual physical objects.
- V. "Tracking device" means any item or application that is passively or actively capable of transmitting unique identification or location information. Tracking devices shall include devices that use radio frequency identification technology; tracking device shall not include bar codes or similar markings that do not transmit information.
- VI. "Universally accepted symbols" means a graphical system designed to provide a standard way to show the presence of an RFID transponder, its frequency, and data structure.

- 358-S:2. Labels Required: Consumer Products.
1. No consumer product or identification document, to which a tracking device or device have been affixed or implanted, shall be sold or offered for sale or provided to a consumer without a label containing a universally accepted symbol. This requirement shall also apply to any packaging relating to an individual consumer product or identification document that may contain a tracking device. A single such label may be used on a product or identification document that contains more than one tracking device.
- II. Identifying labels shall be affixed to the consumer product, identification document, or its packaging, by the entity that implants the tracking device in the product or by the entity that imports products that contain tracking devices.
- 358-S:3. Human Implantation Prohibited. No person shall implant or attempt to implant a tracking device into any individual without the informed, written consent of the individual, or an individual's legal guardian. No individual shall be offered an incentive, denied an opportunity, or in any way treated differently from any other individual as a consequence of providing or withholding such consent.
- 358-S:4. Restrictions on State Use of Tracking Devices.
- I. The state or a political subdivision, department, or agency shall not issue, or permit others to issue on its behalf, any identification document that contains a tracking device or uses tracking devices to locate an individual, either directly or indirectly through other persons, except in the following circumstances:
- (a) To locate a person who is incarcerated in the state prison or county jail, is housed in a mental health facility pursuant to a court order after having been charged with a crime, is subject to court-ordered electronic monitoring, or is a resident of a state or county hospital, nursing facility or assisted living facility;
- (b) When the tracking device is implanted in an identification document that is to be used on a toll road or bridge owned or operated by the state or a political subdivision, department, or agency thereof, but only for the specific purpose of collecting funds for the use of that road or bridge; or
- (c) To locate a state employee engaged in the performance of his or her official duties during normal working hours.
- II. No identification document issued pursuant to this section shall contain, transmit, or enable the remote reading of any personal information other than a unique personal identifier number issued by the state.
- 358-S:5. Penalties.
- I. Any person convicted of violating RSA 358-S:2 shall be guilty of a misdemeanor. Each such act shall constitute a separate offense.
- II. Any person convicted of violating RSA 358-S:3 shall be guilty of a felony.
- III. The state may bring suit for civil penalties for up to \$10,000, plus court costs and reasonable attorney's fees, for each violation of this chapter.
- 2 Commission on the Use of Tracking Devices.
- I. There is hereby established a commission on the use of tracking devices. The commission shall study the use of tracking devices in government and business and monitor their effect on the economy and society.
- II. The members of the commission shall be as follows:
- (a) Three members of the house of representatives, including one member from the house commerce committee and one member from the house science, technology, and energy committee, appointed by the speaker of the house of representatives.
- (b) Two members of the senate, appointed by the president of the senate.
- (c) Two members of the public, appointed by the governor.
- (d) The attorney general, or designee.
- (e) One member of the New Hampshire High Technology Council, appointed by such council.
- (f) One member representing the Retail Merchants Association of New Hampshire, appointed by such association.
- (g) One member representing the Business and Industry Association of New Hampshire, appointed by such association.
- (h) One member representing the financial services industry, appointed by the New England Financial Services Association.
- (i) One member representing consumer or privacy interests, appointed by the governor.
- III. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.
- IV. 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. Seven members of the commission shall constitute a quorum.
- V. 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 annually on or before November 1 and shall submit a final report before dissolving on or before November 1, 2009.
- 3 Effective Date. This act shall take effect January 1, 2007.

AMENDED ANALYSIS

This bill establishes labeling requirements for and prohibitions on the use of tracking devices and establishes a commission on the use of tracking devices.

2006-0217h

Amendment to HB 298
Proposed by the Committee on Transportation - R

- Amend the bill by replacing all after the enacting clause with the following:
- 1 New Chapter: Alcohol or Drug Impairment. Amend RSA by inserting after chapter 265 the following new chapter:
- CHAPTER 265-A
ALCOHOL OR DRUG IMPAIRMENT
- 265-A:1. Definitions. In this chapter:
- I. "Authorized agent" means any agent or inspector certified by the commissioner, after training, to police the public waters of the state.
- II. "Boat" means and includes every type of watercraft used or capable of being used as a means of transportation on the water.
- III. "OHRV" means an off-highway motor vehicle as defined in RSA 259:69 or a snowmobile as defined in RSA 250:102.
- IV. "Peace officer" means "peace officer" as defined in RSA 594:1 or any properly trained personnel of the United States Coast Guard.
- Driving or Operating Under the Influence of Drugs or Liquor
- 265-A:2. Driving or Operating Under Influence of Drugs or Liquor; Driving or Operating With Excess Alcohol Concentration.
- I. No person shall operate or attempt to operate an OHRV or drive or attempt to drive a vehicle upon any way:
- (a) While such person is under the influence of intoxicating liquor or any controlled drug or any combination of intoxicating liquor and controlled drugs; or
- (b) While such person has an alcohol concentration of 0.08 or more or in the case of a person under the age of 21, 0.02 or more.
- II. No person shall operate or attempt to operate a boat while under the influence of intoxicating liquor or any combination of intoxicating liquor and a controlled drug or drugs, or while such person has an alcohol concentration of 0.08 or more or in the case of persons under the age of 21, 0.02 or more.
- 265-A:3. Aggravated Driving While Intoxicated. A person shall be guilty of aggravated driving while intoxicated if the person drives, operates, or attempts to operate an OHRV, or if the person drives or attempts to drive a vehicle upon any way, or if the person operates or attempts to operate a boat:
- I. While under the influence of or intoxicating liquor or any controlled drug or any combination of intoxicating liquor and controlled drug or drugs; and, at the time alleged:
- (a) Drives or operates at a speed more than 30 miles per hour in excess of the prima facie limit;
- (b) Causes a motor vehicle, boat, or OHRV collision resulting in serious bodily injury, as defined in RSA 625:11, VI, to the person or another;
- (c) Attempts to elude pursuit by a law enforcement officer by increasing speed, extinguishing headlights or, in the case of a boat, navigational lamps while still in motion, or abandoning a vehicle, boat, or OHRV while being pursued; or
- (d) Carries as a passenger a person under the age of 16.
- II. While having an alcohol concentration of 0.16 or more.
- 265-A:4. Implied Consent of Driver or Operator to Submit to Determine Alcohol Concentration. Any person who drives, operates, or attempts to operate an OHRV, drives or attempts to drive a vehicle upon the way of this state, or operates or attempts to operate a boat upon the public waters of the state shall be deemed to have given consent to physical tests and examinations for the purpose of determining whether such person is under the influence of intoxicating liquor or controlled drugs, and to a chemical, infrared molecular absorption, or gas chromatograph test or tests of any or all of any combination of the following: blood, urine, or breath, for the purpose of determining the controlled drug content of such person's blood or alcohol concentration if arrested for any offense arising out of acts alleged to have been committed while the person was driving, operating, attempting to operate, or in actual physical control of an OHRV, driving, attempting to drive, or in

265-A.5 Administration of Alcohol Concentration Tests.

Department of Health and Human Services under the Clinical Laboratory Improvement Act of 1988, as amended.

V. The commissioner of the department of safety shall adopt rules pursuant to RSA 541-A relative to:

III. If the law enforcement officer, authorized agent, or peace officer fails to comply with the provisions of this section, the test shall be inadmissible as evidence in any proceeding before any administrative officer and court of this state.

time alleged, an alcohol concentration of 0.03 or less is prima facie evidence that the defendant was not under the influence of intoxicating liquor. Evidence that there was, at the time alleged, an alcohol concentration of more than 0.03 and less than 0.08 is relevant evidence but is not to be given prima facie effect in indicating whether or not the defendant was under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or

in the case of any other chemical test, the certifying scientist at the trial. The official report of the test issued pursuant to RSA 263-A:4 shall be deemed conclusive evidence of the conduct and result of said test.

IV. A copy of the appropriate form filled out and signed by the person who took the sample for the alcohol concentration test in question shall be admissible evidence that the sample was taken by such person at the stated time on the stated date according to the procedures prescribed in the rules adopted by the commissioner of the department of safety pursuant to RSA 265-A:5, V.

II. The 180-day or 2-year suspension period or denial of issuance period imposed pursuant to this section shall not run concurrently with any other penalty imposed under the provision of this title. Any such suspension or denial of a license or privilege to drive shall be imposed in addition to any other penalty provided by law, subject to review as provided in RSA 265-A:31.

(d) That the agent or officer informed the person arrested that his or her refusal to submit to such a test would constitute a violation; and

1. Any law enforcement officer, authorized agent, or peace officer, who has been certified by the police standards and training council according to standards for such certification contained in rules adopted by said council pursuant to RSA 541-A, having reasonable grounds to believe that a person has been driving, operating, attempting to operate, or in actual physical control of an OHRV, driving, attempting to drive, or in actual physical control of a vehicle, or operating, attempting to

officer had probable cause to arrest the person. The provisions of this section shall not limit the introduction of any other competent evidence bearing on the question of whether a person charged with violating RSA 265-A:2, I(a), RSA 265-A:2, II, or RSA 265-A:3 was under the influence of intoxicating liquor or any controlled drug. Nothing contained in this section shall be construed to prevent or require a subsequent test pursuant to RSA 265-A:4. The police officer requesting the test shall advise

III. The commissioner of the department of safety shall adopt rules, pursuant to RSA 541-A, relative to methods and procedures for evaluation and approval of preliminary breath test devices.

accident. All tests made under this section shall be conducted by the forensic science laboratory established in RSA 106-B:2-a or in any other laboratory capable of conducting such tests which is licensed under the laws of this or any other state and which has also been licensed by the U.S. Department of Health and Human Services under the Clinical Laboratory Improvement Act of 1988, as amended. A copy of the report of any such test shall be kept on file by the medical examiner. The filed

offender intervention detention center program (M.O.P.) or an equivalent 7-day residential intervention program approved by the commissioner of health and human services;

(3) Sentenced to a mandatory sentence of not less than 21 consecutive days of which 14 consecutive 24-hour periods shall be served in the county correctional facility followed by 7 consecutive 24-hour periods served at the state-operated 7-day multiple DWI offender intervention detention center established under RSA 265-A:40, which sentence shall begin no later than 21 days after conviction. In the event that the state-operated 7-day multiple DWI offender intervention detention

after conviction, except that in circumstances where the state-operated 7-day multiple DWI offender intervention detention center has no available space the person shall be assigned to an equivalent 7-day residential intervention program approved by the commissioner of health and human services. The person shall begin following any treatment recommendations arising out of the final evaluation given to the person at the multiple DWI offender intervention detention center or equivalent

successfully completed the program. The court may further order attendance at a residential treatment center, for a period not to exceed 30 days, at the person's own expense.

- VII. For the purposes of this section:
- (a) "Revocation" or "revoked" means revocation as defined in RSA 259:90 and also includes, if the person is a nonresident, the revocation of the person's privilege as an out-of-state driver to drive on any ways of this state.
 - (b) "Out-of-state jurisdiction" includes any governmental entity that issues driver's licenses that are valid for operating a motor vehicle on the ways of this state as provided in RSA 263:37, and that has laws relating to driving while intoxicated that are reasonably equivalent to the laws of this state.
 - (c) "Successful completion" means meeting further counseling requirements, if any, arising out of the final evaluation given to the offender at the I.D.L.P. or the M.O.P., or its equivalent; provided, however, that the offender shall have the right to an hearing before the commissioner or designee, who shall determine whether the further counseling requirements arising out of the final evaluation are warranted and appropriate, and whether the offender should be eligible for license restoration. The definition in this subparagraph shall also apply to RSA 265:42.
 - (d) A person shall be presumed to have furnished proof of successful completion of an impaired driver intervention program if the person furnishes a report indicating that he or she has completed attendance at the I.D.L.P., the M.O.P., or an equivalent program, and that he or she has paid all assessed program fees. The presumption may be overcome by a hearing requested by the department, or the I.D.L.P., the M.O.P., or an equivalent program, with notice to and an opportunity to be heard by the person, where the department under the I.D.L.P., the M.O.P., or an equivalent program shall have the burden of proving that the person has not successfully completed an impaired driver intervention program.
 - (e) The I.D.L.P., the M.O.P., or an equivalent program shall inform the department of its decision to suspend a license in writing of any further treatment or services necessary in order to be considered a completed program before a license suspension shall be restored. The department of safety shall notify the licensee of his or her ability to request a hearing to dispute the findings and the licensee shall inform the department of safety if the licensee requests a hearing within 20 days of receipt of such notice. At such hearing the I.D.L.P., the M.O.P., or an equivalent program shall have the burden of proving the person has not successfully completed an impaired driver intervention program. The I.D.L.P., the M.O.P., or an equivalent program shall inform the department of safety in writing within 5 days after the end of the program attended by the licensee.
- VIII. No portion of the minimum mandatory sentence of imprisonment and no portion of the mandatory sentence of the period of revocation and no portion of any fine imposed under this section shall be suspended or reduced by the court. No case brought to enforce this section shall be continued for sentencing for longer than 30 days. No person serving the minimum mandatory sentence under this section shall be discharged pursuant to authority granted under RSA 651:18, released pursuant to authority granted under RSA 652:1, or in any other manner that would result in the person's release from custody.
- IX. Upon conviction under the provisions of RSA 265:42, I or RSA 265-A:3, the prosecutor shall present to the court a certified copy of the defendant's record of convictions of motor vehicle offenses under title XXI and reasonably equivalent offenses in out-of-state jurisdictions which are on record at the New Hampshire division of motor vehicles or known to the prosecutor, or a signed statement that the defendant has no such prior convictions within the preceding 7 years. Prior to sentencing the court shall note on the complaint the number of prior convictions for drug or alcohol-related motor vehicle offenses, or the absence of any such prior convictions, as shown on such report or statement.
- X. Any conviction under RSA 265:42, I or RSA 265-A:3 shall be reported to the department of safety, and shall become a part of the motor vehicle driving record of the person convicted.
- XI. Any person convicted of a violation of RSA 265:42, RSA 265-A:3, or RSA 265-A:19, II, and who at the time of driving or attempting to drive a vehicle or off highway recreational vehicle or operating or attempting to operate a boat was transporting a person under the age of 16, shall have the driver's license or privilege to drive revoked for the maximum time period under the section violated and the person's license or privilege to drive shall not be restored until the offender has successfully completed a 7-day program at the state-operated multiple DWI offender program or an equivalent 7-day residential intervention program approved by the commissioner at the person's own expense.

265-A:19 Penalties for Boating While Intoxicated.

I. Any person convicted of a violation of RSA 265:42, II or RSA 630:2 or RSA 630:3, or RSA 631:1, RSA 631:2, RSA 631:3, or RSA 631:4 when the offense was committed by means of his or her operation or attempted operation of a boat shall not operate a boat on the waters of this state for a period of one year from the date of his or her conviction, whether or not such conviction is appealed. Any person operating or attempting to operate a boat during such a period is guilty of a misdemeanor.

II. Any person convicted of a violation of RSA 265-A:2, II who at the time of the violation was transporting a person under the age of 16 shall not operate a boat on the waters of this state until the offender has successfully completed a 7-day program at the state-operated multiple DWI offender program or an equivalent 7-day residential intervention program approved by the department of health and human services at the person's own expense. Any person operating a boat in violation of this paragraph is guilty of a misdemeanor.

III. Any conviction under this section shall be reported to the commissioner of the department of safety, division of motor vehicles, and shall become a part of the motor vehicle driving record of the person convicted.

IV. Any person who is convicted of a violation of RSA 265-A:2, II shall be subject to the same penalties as a person convicted of a violation of RSA 265-A:2, I as specified in RSA 265-A:18. Any person who is convicted of a violation of paragraph II of this section shall be subject to the same penalties as a person convicted of a violation of RSA 265-A:3 as specified in RSA 265-A:18.

V. Notwithstanding the provisions of title LXII and in addition to any other penalty imposed under this section, any person who operates a boat in violation of this subsection shall be fined not more than \$500.

265-A:20 Loss of Motorboat Privileges. Any person who is convicted of a violation of RSA 265-A:2, II involving a motor vehicle shall lose the privilege to operate a motorboat on the waters of this state for a period of one year from the date of conviction.

265-A:21 Amendment, Pledge Bargaining.

I. Notwithstanding the provisions of RSA 651:5, no court shall order an amendment of any record of conviction of driving or attempting to drive a vehicle upon any way or driving, operating, attempting to operate, or being in actual physical control of an OHRV or operating or attempting to operate a boat on the waters of this state while under the influence of intoxicating liquor or any controlled drug or while having an alcohol concentration of 0.08 or more or of aggravated drunken driving until 10 years after the date of conviction. Any record thus annulled shall be retained in a permanent file, to be opened only for purposes of sentencing in the case of an offense under RSA 265-A:3.

II. Notwithstanding any other provision of law to the contrary, in any case in which a person is arrested for and charged with the offense of driving or attempting to drive a vehicle on any way or driving, operating, attempting to operate, or being in actual physical control of an OHRV or operating or attempting to operate a boat while under the influence of intoxicating liquor or drugs or while having an alcohol concentration of 0.08 or more and that charge is reduced from a second or subsequent offense to a first offense or in which the original charge is reduced to either a charge of a misdemeanor or a misdemeanor in exchange for an agreement to plead guilty or nolo contendere to another charge, the prosecutor shall submit to the attorney general a written report describing such agreement. All such reports shall be submitted to the attorney general on a monthly basis. The report shall contain such information as the attorney general shall prescribe; provided, however, that the attorney general shall not be subject to the provisions of RSA 541-A in prescribing such information. The report required by this paragraph shall be a public record and shall be available for public inspection as provided in RSA 91-A:4.

III. Notwithstanding any other provision of law to the contrary, if a person is arrested for driving or attempting to drive a motor vehicle upon any way or driving, operating, attempting to operate, or being in actual physical control of an OHRV or operating or attempting to operate a boat while under the influence of intoxicating liquor or drugs or while having an alcohol concentration of 0.08 or more, no prosecutor shall enter into any agreement with such person or such person's attorney if such agreement would result in the person's conviction of a crime less than the crime charged in the complaint or in the indictment. The provisions of this paragraph, however, shall not prevent the bringing of any charge under RSA 630:2 or RSA 630:3.

265-A:22 Payment of all Obligations Prior to Restoration or Renewal. The director of motor vehicles shall not restore or renew a person's license or privilege to drive, if it was revoked pursuant to RSA 265-A:2, RSA 265-A:3, RSA 265-A:35, RSA 265-A:43, RSA 630:2, or RSA 630:3, or if the revocation was connected with an alcohol-related or drug-related offense, until all obligations of such person resulting from the arrest and conviction for the offense are met. For the purposes of this section, the word "obligations" shall mean fines and penalty assessments, court-ordered restitution or reimbursement to any person injured as a result of the offense, successful completion of all treatment and rehabilitation programs the person is required to take, full payment of all fees for such programs, and any other costs which may be ordered by the court. The word "obligations" shall not mean completion of probation or parole or completion of a condition of probation or parole. In any case where the court orders periodic payment of fines, penalty assessments, restitution or reimbursement, the suspension shall be for a period of 2 years.

265-A:23 Commercial Licensing: Penalties: Driving Under the Influence. Any person who drives a commercial motor vehicle with or without a valid commercial driver license and commits one of the following offenses shall be punished as follows:

- I. The commissioner shall suspend for at least one year, the commercial driver license of a person who is found to have committed a first violation of driving a commercial motor vehicle under the influence of alcohol or with an alcohol concentration of 0.04 or greater, or other controlled substances, notwithstanding RSA 265-A:1, I.
- II. If the driver commits a violation of paragraph I while carrying hazardous material, the suspension shall be for a period of 2 years.
- III. The commissioner shall suspend for life, or a period of not less than 10 years, according to federal Department of Transportation regulations, the commercial driver license of a person who is found to have committed a second violation of driving a commercial motor vehicle under the influence of alcohol or with an alcohol concentration of 0.04 or greater, or other controlled substances, notwithstanding RSA 265-A:1, I.

265-A:24 Commercial Drivers Prohibited From Driving with any Alcohol in Their Systems.

I. Notwithstanding any other provision of law, a commercial motor vehicle while having alcohol in his or her system.

II. A person who drives a commercial motor vehicle while having alcohol in his or her system, or who refuses to take a test to determine his alcohol concentration, shall be placed out-of-service for 24 hours.

265-A:25 Implied Consent Requirements for Commercial Motor Vehicle Drivers.

I. Any person who drives a commercial motor vehicle upon the ways of New Hampshire shall be deemed to have given consent, subject to the provisions of RSA 265-A:4, to a test or tests of any or all of any combination of the following: blood, breath, or urine, for the purpose of determining that person's alcohol concentration, or the presence of other drugs.

II. A test or tests may be administered at the direction of a law enforcement officer who, after stopping or detaining the commercial motor vehicle driver, has probable cause to believe that the driver was driving a commercial motor vehicle while having alcohol in his system.

III.(a) After the first refusal of any person to submit to a test or tests as administered by a law enforcement officer for the purposes of determining the person's alcohol concentration or the presence of other drugs, the director shall revoke his or her commercial license for a period of not less than one year.

(b) If the person has a prior refusal under subparagraph III(a) then, upon the second or subsequent refusal of such person to submit to a test or tests as administered by a law enforcement officer for the purposes of determining the person's alcohol concentration or the presence of other drugs, the director shall revoke his or her commercial license for a period of not less than 10 years.

IV. If the person refuses to submit to a test or tests which discloses an alcohol concentration of 0.04 or more, the law enforcement officer shall submit a sworn report to the department certifying that the test was requested pursuant to paragraph I and that the person refused to submit to testing, or submitted to a test which disclosed an alcohol concentration of 0.04 or more.

V. Upon receipt of the sworn report of a law enforcement officer submitted under paragraph IV, the department shall disqualify the driver from driving a commercial motor vehicle under RSA 265-A:23.

VI. The driver shall have the opportunity for a hearing and appeal as provided in RSA 265-A:31 and RSA 265-A:34.

265-A:26 Revocation of Licenses for Driving While Intoxicated and Appeal.

I. Upon a conviction of a violation of RSA 265:42 or RSA 265-A:3, the court shall report to the department and shall immediately revoke the license or driving privilege of the person so convicted, or the right of a nonresident so convicted to drive within the state of New Hampshire; and said court in the case of holders of New Hampshire licenses shall return such license with its findings marked thereon, together with the court return, to the department; and the department may revoke the license of any person who shall be convicted of a similar offense by a court of any other state in a criminal proceeding, or who shall be found to have committed a similar act by a court of any other state in a civil proceeding.

II. Whenever any person is convicted of a violation of RSA 265-A:2 or RSA 265-A:3 appeals, the district court shall forthwith revoke the license or driving privilege of the person so convicted, and in the case of a holder of a New Hampshire license, shall return such license together with the court return to the department which shall not reissue any license until the period of revocation determined by the court has elapsed.

265-A:27 Not Guilty Finding: Return of License. Any person whose license was revoked under the provisions of RSA 265-A:26 who appeals and is not found guilty shall have any previously held license restored. No additional fee requirement shall be imposed in connection with such license restoration.

265-A:28 License Restored Upon Proof of Financial Responsibility. Notwithstanding the provisions of RSA 263:71, the director shall not restore a license or driving privileges to a person whose license or driving privileges have been revoked pursuant to RSA 265-A:19 until such person has furnished proof of financial responsibility as required by other provisions of the law.

265-A:29 Revocation of Nonresident Privilege. When it has been finally determined under the procedures of this subsection that a nonresident's privilege to drive a motor vehicle in this state has been revoked, the department shall give information in writing by electronic means of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

265-A:30 Administrative License Suspension.

I. If any person refuses a test as provided in RSA 265-A:1 or submits to a test described in RSA 265-A:1 which discloses an alcohol concentration of 0.08 or more, or in the case of a person under the age of 21, 0.02 or more, the law enforcement officer shall submit a sworn report to the department. In the report the officer shall certify that the test was requested pursuant to RSA 265-A:1 and that the person refused to submit to testing or submitted to a test which disclosed an alcohol concentration of 0.08 or more, or in the case of a person under the age of 21, 0.02 or more.

II. Upon receipt of the sworn report of a law enforcement officer submitted under paragraph I, the department shall suspend the person's driver's license or privilege to drive as follows:

- (a) In the case of a refusal to take a test described in RSA 265-A:1, the suspension shall be for the period specified in RSA 265-A:14.
- (b) In the case of a person who submits to a test which discloses an alcohol concentration of 0.08 or more, or in the case of a person under the age of 21 at the time of the violation, 0.02 or more, the suspension shall be for:

- (i) Six months if there is no prior refusal under RSA 265-A:14, or a prior driving while intoxicated or aggravated driving while intoxicated conviction, and no prior administrative license suspension pursuant to RSA 265-A:30.
- (ii) Two years if there is a prior refusal under RSA 265-A:14, or a prior driving while intoxicated or aggravated driving while intoxicated conviction, or a prior administrative suspension pursuant to RSA 265-A:30.

III. On behalf of the department, the law enforcement officer submitting the sworn report under paragraph I shall serve immediate notice of suspension on the person, and the suspension shall be effective 30 days after the date of service. If the person has a valid New Hampshire driver's license, an officer shall take the driver's license of the person, and issue a temporary license valid for the notice period. The officer shall send the license to the department along with the sworn report under paragraph I.

IV. If the person submits to a test described in RSA 265-A:1 and the results of the test are not immediately available and therefore no notice has been served by the law enforcement officer, the department shall mail such notice and the suspension shall be effective 30 days after the date of service. If the address shown in the law enforcement officer's report differs from that shown on the department records, the notice shall be mailed to both addresses. The notice shall be presumed to have been served 3 days after mailing. Upon receipt of the notice of suspension and before requesting any review or hearing under RSA 265-A:31, if the person has a New Hampshire driver's license that has not been surrendered, the person shall surrender such person's license at a place designated by the department and shall be issued a temporary driving permit valid for the notice period.

V. In the case of a person who has a driver's license from another jurisdiction, all provisions of this subsection shall apply except that surrender of the out-of-state driver's license and issuance of a temporary driving permit shall not be required. The department shall transmit a copy of the suspension order to the motor vehicle authorities in the jurisdiction where the person's license was issued, and also in the jurisdiction of the person's residence if different from that where the license was issued.

265-A:31 Administrative Review and Hearings.

I.(a) Any person whose license or privilege under this subdivision may request either an administrative review or a hearing. The request shall be in writing and shall state the grounds upon which the person seeks to have the order of suspension or revocation rescinded, which grounds shall be limited to those provided in paragraph II. The filing of the request shall not stay the suspension or revocation. A request for either administrative review or hearing received by the department after 30 days from the date the notice is issued shall be denied as untimely.

(b) If the request is for an administrative review, the request may be accompanied by any statement or other evidence which the person wants the department to consider. Upon receiving the request the department shall review the order, the evidence upon which it is based, including whether the person was driving or in actual physical control of a motor vehicle, and any other information brought to the attention of the department, and shall determine whether sufficient cause exists to sustain the order.

(c) If the request is for a hearing, the request shall also indicate whether or not the person desires to have the law enforcement officer present. The hearing shall be held within 20 days after the filing of the request unless the person requests a continuance. A request for a continuance by the person shall not stay the order of suspension or revocation. The hearing shall be recorded, and be conducted by the department's designated agent. The hearing may be conducted upon a review of the law enforcement officer's report if there is no request to have the officer present. If there is a request that the law enforcement officer be present at the hearing and the officer fails to appear without good cause shown, the case shall be dismissed and the order rescinded. If the person requesting the hearing fails to appear without good cause shown, the right to a hearing shall be waived and the order sustained.

II. The scope of the hearing shall be limited to the issues of:

- (a) Whether the officer had reasonable grounds to believe the arrested person had been driving, attempting to drive, or was in actual physical control of a vehicle upon any way of this state or operating or attempting to operate a boat on the waters of this state or was driving, operating, attempting to operate, or in actual physical control of an OHRV while under the influence of intoxicating liquor, narcotics, or drugs;

- (b) The facts upon which the reasonable grounds to believe such are based;

- (c) Whether the person had been arrested;

- (d) Whether the person has refused to submit to the test upon the request of the law enforcement officer or whether a properly administered test or tests disclosed an alcohol concentration of 0.08 or more, or, in the case of a person under 21 years of age, 0.02 or more;

- (e) Whether the officer informed the arrested person of his or her right to have a similar test or tests conducted by a person of his or her own choosing;

- (f) Whether the officer informed the arrested person of the fact that refusal to permit the test would result in a suspension of his or her license or driving privilege; and that testing above the alcohol concentration level specified in RSA 265-A:2 or RSA 265-A:3 would also result in suspension.

III. In the case of either an administrative review or a hearing, the hearing examiner shall issue his or her recommendation on the order of suspension or revocation within 10 days of the request for administrative review or the hearing date. The recommendation shall be in writing and a copy shall be provided to the parties. The recommendation shall be final unless a review or appeal is filed under RSA 265-A:33 or RSA 265-A:34.

265-A:32 Period of License Suspension. Where a license or driving privilege has been suspended under RSA 265-A:30 and the person is also convicted on criminal charges arising out of the same event both the suspension and the court-ordered revocation shall be imposed but the total period of suspension and revocation shall not exceed the longer of the 2 periods; provided, however, that any suspension for refusing to submit to a test under the provisions of RSA 265-A:14 shall not run concurrently with any other penalty imposed under the provisions of this title.

265-A:33 Review. Within 10 days following the examiner's ruling, a person whose license has been suspended or revoked, or the law enforcement officer, may petition the director for a review of the ruling. The filing of the petition shall not stay a suspension or revocation of the person's driver's license or privilege to drive if imposed, or the restoration of the person's driver's license or privilege to drive. The review shall determine whether the ruling is erroneous as a matter of law or cannot be sustained by the facts as presented at the hearing. After a review of the ruling, the director shall issue within 10 days a finding either affirming the ruling or granting a new hearing. Any grant of a new hearing shall be accompanied by a written explanation setting forth the specific error of law or the reason why the ruling cannot be sustained by the facts.

265-A:34 Appeal, Administrative License Suspension.

I. Any person aggrieved by a decision of the department under this subdivision, after the administrative hearing or review, may appeal the decision as provided in this section. The court shall have the full authority to determine whether any license suspension or revocation should be stayed during the pendency of the appeal.

II. If the suspension is sustained after a hearing as provided in RSA 265-A:31, a person shall have the right to file a petition in the superior court in the county in which he or she was arrested to review the final order by the director or the director's authorized agent within 30 days of the date of the final order. Jurisdiction to hear such appeals is vested in the superior court.

III. At the earliest practical time, the court shall review the decision as developed before the director or authorized agent, together with any written legal argument presented to the court. Based on that review, the court may affirm or reverse the decision of the director or agent or order that oral argument be held. As justice may require, the court may remand the case to the director or authorized agent for further findings or rulings. In no event shall the oral argument be held less than 14 days after notice has been provided to the director. The petition for review shall not stay the suspension or revocation of the person's license or privilege to drive. The burden of proof shall be upon the appellant to show that the decision of the director or agent was clearly unreasonable or unlawful, and all findings of the director or agent upon all questions of fact properly before him or her shall be deemed to be prima facie lawful and reasonable. The order or decision appealed from shall not be set aside or vacated except for errors of law, unless the court is satisfied, by a clear preponderance of the evidence before it, that the order or decision is unjust or unreasonable.

IV. No new or additional evidence shall be introduced in the superior court, but the case shall be determined upon the record and evidence transferred, except that in any case, if it shall be necessary in order that no party shall be deprived of any constitutional right, or if the court shall be of the opinion that justice requires the reception of evidence of facts which have occurred since the hearing, or which by reason of accident, mistake, or misfortune could not have occurred before the director or authorized agent, it shall, in its discretion, permit the party to introduce such additional evidence.

265-A:35 Probationary Licenses.

I. Any person who shall apply for reinstatement of his or her driver's license following revocation or suspension for an offense under RSA 265:42, RSA 265-A:2, RSA 265-A:3, or RSA 265-A:43 for an offense involving a vehicle in a "at risk" driver and his or her driver's license shall be probationary for at least 5 years following the date of reinstatement.

II. No holder of a probationary license shall be eligible to drive any motor vehicle upon any way or driving, operating, attempting to operate, or being in actual physical control of a motor vehicle, or any controlled drug or any combination of intoxicating liquor and controlled drugs, so that the alcohol concentration is 0.01 or more. Driving with an alcohol concentration of 0.01 or more is a per se violation of a probationary license and subjects the probationary license holder to administrative suspension of his or her driver's license for not less than 90 days and not more than 180 days. Such administrative suspension shall be in addition to any court imposed suspension or revocation periods.

III. Any probationary license holder whom the police have reasonable cause to believe is driving with an alcohol concentration of 0.01 or more and who refuses to submit to a test for alcohol concentration shall have his or her driver's license administratively suspended for a period of 90 days.

Alcohol Ignition Interlock Program

265-A:36 Alcohol Ignition Interlock Program Established.

I. Any person whose license or permission to drive has been revoked or suspended for an aggravated DWI offense under RSA 265-A:18, I(b), I(c), or a subsequent DWI offense under RSA 265-A:18, IV, may be required by the court after the period of revocation or suspension to install an ignition interlock device as defined in RSA 259:43-a in any vehicle registered to that person or used by that person on a regular basis, for not less than 6 months nor more than 2 years. Installation and maintenance costs shall be the responsibility of the offender. A certificate for the installation of the device shall be provided to the driver's license or the individual's license accordingly.

1.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.

1.b. To the extent that technology does not exist to permit the installation of safe operation of any particular vehicle type when equipped with an interlock, the court may require that a restraining device which disables the vehicle be placed upon any such vehicle registered to or used on a regular basis as a person registered to install an ignition interlock device.

II. Nothing in this section shall prohibit a court of competent jurisdiction from requiring the installation of an ignition interlock device for any person convicted of a violation of RSA 265-A:18, IV, but the person is found to have had one or more such prior convictions in this state or in an out-of-state jurisdiction.

III. Any person under the age of 21 whose license or permission to drive has been revoked or suspended under RSA 265-A:18 may be required by the court after the period of revocation or suspension to install an ignition interlock device as defined in RSA 259:43-a in any vehicle registered to that person or used by that person on a regular basis, until the age of 21 or not less than 12 months, whichever is longer.

IV. An ignition interlock device may not be sold or distributed in this state without the device being approved by the commissioner or the department of safety.

V. The department of safety shall establish rules, pursuant to RSA 541-A, for the approval of ignition interlock devices and for the licensing of approved interlock service providers which require that each provider, at a minimum:

- VI. The commissioner shall adopt rules and regulations to create an ignition interlock program that will control the delivery of interlock services in this state under this subdivision.
- (a) Provide recalibration of each device within 30 days of installation and every 60 days thereafter, unless otherwise ordered by the court;

- (b) Maintain at least that number of locations across the state for the installation, service, calibration, and monitoring of an ignition interlock device as might be required from time to time by the program operating protocol developed by the commissioner;

- (c) Provide periodic reports as determined by the court, or in department rules, to the probation office and treatment provider, if applicable; if the offender is not placed on probation, to the arresting agency and the court of jurisdiction;

- (d) Retain all data-logger records for 12 months after the end of the period to which the offender is sentenced;

- (e) Provide installation and service to those offenders determined by the court to be unable to pay the full cost of an interlock program by reserving for that person a hardship credit equal to 2 percent of the service provider's gross receipts, excluding the purchase or rental cost of the interlock device, which credit and free service shall be reported annually to the department; and

- (f) Provide a certificate of installation to the vehicle's owner upon installation of the device in a form to be determined by the department's interlock rules.

265-A:37 Alcohol Ignition Interlock Program.

I. Any person required by the court to install an ignition interlock device shall not drive any motor vehicle not equipped with such device.

II. A person shall not tamper with, or in any way attempt to circumvent the operation of an ignition interlock device that has been installed in a motor vehicle.

III. A person shall not start or attempt to start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person who is restricted by law to drive only a motor vehicle so equipped. The provisions of this section do not apply if the starting of a motor vehicle, or the request to start a motor vehicle equipped with an ignition interlock device, is done for the purpose of safety or mechanical repair of the device or the vehicle, and the person subject to the court order does not drive the vehicle.

IV. A person shall not knowingly provide a motor vehicle not equipped with a functioning ignition interlock device to another person whom the provider of the vehicle knows was sentenced to drive only a motor vehicle equipped with an ignition interlock device.

V. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

265-A:38 Violating Court Order.

I. Upon written notice, by affidavit, that any person has violated an order of the court with regard to the installation of an ignition interlock device after the period of revocation or suspension imposed in RSA 265-A:18, 265:79, or 630:3, a hearing shall be scheduled within 14 business days of the notice. Pending the hearing and upon a finding of probable cause that a violation has occurred based upon the affidavit, the court shall immediately suspend the defendant's privilege to drive a motor vehicle. After the hearing and upon a finding of violation by a preponderance of the evidence, the privilege to drive shall not be restored until the court is satisfied that the person is in compliance with its order.

II. If it is found that a person required to drive a motor vehicle equipped with an ignition interlock device has failed to comply with any requirement for the maintenance or calibration of the device, or shows a consistent pattern of failures to pass the breath test provided by the device, the court may order a hearing to determine if the person should be held in contempt of court. Upon a finding of contempt, the court may sentence the defendant to up to 6 months in a county department of corrections facility, may make such other orders as necessary to bring about compliance, and may order a further license suspension or revocation for a period of not less than 12 months. The period of suspension or revocation under this section shall be added to any previously ordered suspension or revocation.

265-A:39 Impaired Driver Intervention Programs.

I. Except as provided in paragraph IV, the commissioner of the department of health and human services shall be responsible for biannually approving the impaired driver intervention programs and 7-day residential intervention programs equivalent to the multiple DWI offender intervention detention center program (M.O.P.) which persons convicted under RSA 265-A:2 or RSA 265-A:3 shall attend in order to regain their driver's licenses or driving privileges; but the commissioner of the department of health and human services shall not approve any impaired driver intervention program unless such program is conducted without cost to the state. Notwithstanding RSA 632, any fee collected under subparagraph V(a) of this section shall be placed in a nonspending revolving account and shall be used by the department for the purposes of this subdivision only.

II. Notwithstanding any other law to the contrary, the impaired driver intervention programs operated by the department of corrections shall be deemed approved programs for purposes of the attendance required at such programs for restoration of driver's licenses or driving privileges under RSA 265-A:42.

III. An impaired driver intervention program shall consist, at a minimum, of 20 hours of standardized educational curriculum and an exit interview.

IV. The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, relative to the impaired driver intervention programs and those programs equivalent to the M.O.P. as required in RSA 265-A:18 and RSA 265-A:42 with respect to:

- Procedures and forms to be followed in order for drivers who have completed such programs to regain their licenses or driving privileges.
- Times of business and areas of the state in which approved programs may operate.
- Records and reports.
- Schedule of fees and charges.

(c) Such other matters as the commissioner of the department of health and human services and the commissioner of safety may prescribe for the protection of the public.

V. The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, relative to the operation of impaired driver intervention programs with respect to:

- Course content and standards of instruction.
- Certification and recertification of instructors.
- A per client fee to be paid by program providers sufficient to cover the costs of monitoring course content, establishing and maintaining standards of instruction, data collection, and administrative support.
- A per other matter related to the proper administration of this section.

265-A:40 Multiple DWI Offender Intervention Detection Center Program

I. The commissioner of the department of health and human services shall be responsible for administration and operation of the 7-day multiple DWI offender intervention detention center program which persons convicted under RSA 265-A:2 or RSA 265-A:3 or sentenced pursuant to RSA 651:2, V(b) may be required to attend.

II. Any person who attends the 7-day multiple DWI offender intervention detention center program shall be required to pay the fees for confinement and intervention costs, except that prior payment shall not be required of any person. The fees shall be sufficient to make the program self-supporting, exclusive of start-up costs. The fees collected shall be deposited in a special account in the office of the state treasurer and utilized as provided in RSA 265-A:41.

III. The state-operated 7-day multiple DWI offender intervention detention center program shall furnish to the court a report indicating when a person has completed attendance at the program, and shall furnish to the division of motor vehicles, department of safety, a report indicating when a person who attends the program pursuant to RSA 265-A:18 has successfully completed the program and treatment or involvement in a substance abuse program when appropriate and warranted.

IV. The commissioner of the department of health and human services shall submit an annual report on the 7-day state-operated multiple DWI offender intervention detention center program, on or before January 1 of each year, to the speaker of the house of representatives and the president of the senate.

V. The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, relative to the operation of the 7-day multiple DWI offender intervention detention center program with respect to:

- Program curriculum and content.
- Bed availability schedules.

(c) Any other matter related to the proper administration of this section.

265-A:41 Utilization of fees from the fees collected by the commissioner of the department of health and human services under RSA 265-A:18 shall be paid over to the state treasurer within 10 days of the close of the accounting month, or at an earlier date, for deposit into a separate account in the treasury known as the 7-day multiple DWI offender intervention detention center program account. These funds are appropriated as indicated in the operating budget as a source of funds for the 7-day multiple DWI offender intervention detention center program. Any funds remaining in the account over the appropriation indicated shall lapse into the general fund at the end of each fiscal year.

265-A:42 Attendance at Impaired Driver Intervention Program Required.

I. The director shall not restore the license or driving privilege of any person whose license or privilege has been revoked or suspended pursuant to RSA 265-A:2, I or 265-A:3 until such person has furnished proof of successful completion of an impaired driver intervention program which is:

- Approved by the commissioner of the department of health and human services and the commissioner of safety pursuant to RSA 265-A:39 and RSA 265-A:40;
- Approved by the court or the department of safety, in the case of a person who is not a resident of this state; or
- Operated by the department of corrections and approved pursuant to RSA 265-A:39, II.

II. For the purposes of this section, "successful completion" means meeting further counseling requirements, if any, arising out of the final evaluation given to the offender at the I.D.I.P. or the M.O.P. or its equivalent; provided, however, that the offender shall have the right to a hearing before the commissioner or designee, who shall determine whether the further counseling requirements arising out of the final evaluation are warranted and appropriate, and whether the offender should be eligible for license restoration.

III. Successful completion shall also include payment of all assessed I.D.I.P., M.O.P., and equivalent program fees, except in the case of attendance at programs operated by the department of corrections. Failure of the offender to make full payment of the assessed fee may also result in petition for contempt of court charges against the offender.

IV. (a) Upon enrolling in an impaired driver intervention program, the person shall provide to the program an original certified copy of the person's driver's license record. Such record shall be secured from the division of motor vehicles, or from the state in which the person holds a driver's license, if an out-of-state resident. The person shall pay for all costs involved in securing the certified copy.

(b) In the case of enrollment in the state-operated 7-day multiple DWI offender intervention detention center, a person shall provide such certified copy at the time of enrollment or prior to the issuance of a report under RSA 265-A:40, III and RSA 265-A:18, VIII.

V. (a) A person shall be presumed to have furnished proof of successful completion of an impaired driver intervention program if the person furnishes a report indicating that he or she has completed attendance at the I.D.I.P., the M.O.P., or an equivalent program, and that he or she has paid all assessed program fees. The presumption may be overcome by a hearing requested by the department, or the I.D.I.P., the M.O.P., or an equivalent program, with notice to and an opportunity to be heard by the person, which shall have the burden of proving that the person has not successfully completed an impaired driver intervention program.

(b) The I.D.I.P., the M.O.P., or an equivalent program shall inform the department in writing of any further treatment it deems necessary in order to be considered a completed program before a license suspension should be restored. The department shall notify the licensee of his or her ability to request a hearing to dispute the findings and the licensee shall inform the department of safety if the licensee requests a hearing within 20 days of receipt of such notice. At such hearing the I.D.I.P., the M.O.P., or an equivalent program shall have the burden of proving the person has not successfully completed an impaired driver intervention program. The I.D.I.P., the M.O.P., or an equivalent program shall inform the department in writing within 5 days after the end of the program attended by the licensee.

Other Alcohol and Drug Offenses

265-A:43 Possession of Drugs. Any person who drives on any way a vehicle while knowingly having in his or her possession or in any part of the vehicle a controlled drug or controlled drug analog in violation of the provisions of RSA 318-B shall be guilty of a misdemeanor, and his or her license shall be revoked or his or her right to drive denied for a period of 60 days and at the discretion of the court for a period not to exceed 2 years.

265-A:44 Transporting Alcoholic Beverages.

I. The words "liquor" and "beverage" as used in this section shall have the same meanings as defined in RSA 176:1.

II. Except as provided in paragraph V, no driver shall transport, carry, possess, or have any liquor or beverage within the passenger area of any motor vehicle upon any way in this section entered in the original container and with the seal unbroken. Securely capped partially filled containers of liquor or beverages shall be stored and transported in the trunk of the motor vehicle. If the motor vehicle does not have a trunk, such containers shall be stored and transported in that compartment or area of the vehicle which is the least accessible to the driver.

III. Except as provided in paragraph V, no person shall transport, carry, possess, or have any liquor or beverage within any passenger area of any motor vehicle upon any way or in an area principally used for public parking in this state except in the original container and with the seal unbroken. Securely capped partially filled containers of liquor or beverages may be stored and transported in that compartment or area of the vehicle which is the least accessible to the driver.

IV. A person who violates this section shall be guilty of a violation and shall be subject to a fine of \$150. In addition, a person who violates paragraph II of this section may have his or her driver's license, if a resident, or driving privilege, if a nonresident, suspended 60 days for a first offense and up to one year for a second or subsequent offense.

V. This section shall not apply to persons transporting, carrying, possessing, or having any liquor or beverage in a chartered bus, in a taxi, or in a limousine for hire; provided, however, that the driver of any said vehicles is prohibited from having any liquor or beverage in or about the driver's area.

VI. For the purposes of this section only:

- "Passenger area of any motor vehicle" shall not include any section of a motor vehicle which has been designed or modified for the overnight accommodation of persons or as living quarters.
- "Way" shall mean the entire width between the boundary lines of any public highway, street, avenue, road, alley, park, or parkway, or any private way laid out under authority of statute, or any such way provided and maintained by a public institution to which state funds are appropriated for public use or any such way which has been used for public travel for 20 years.

265-A:45 Transportation of Alcoholic Beverages by a Minor.

I. Notwithstanding RSA 265-A:4, II, no driver under the age of 21 shall, except when accompanied by a parent, legal guardian, or legal age spouse, transport any liquor or beverage in any part of a vehicle. A driver violating this section may have his or her license or privilege to drive suspended for 60 days. The words "liquor" and "beverage" as used in this section shall have the same meanings as defined in RSA 176:1. "Legal age spouse" means a person 21 years of age or older.

II. This section shall not apply to a driver under 21 years of age employed under RSA 179:23.

2 Reference Changed. Amend RSA 6:12, 10b(147) to read as follows:

- (147) Moneys deposited in the 7-day multiple DWI offender intervention detention center program account under RSA ~~(265-A:40)~~ **265-A:41**.

3 Reference Changed. Amend RSA 6:12, 10b(170) to read as follows:

- (170) Moneys deposited in the alcoholism and alcohol abuse account under RSA ~~(265-A:40)~~ **265-A:29**.

4 Reference Changed. Amend RSA 21:P-14, 11b(6) to read as follows:

- (dd) The methods, procedures, and techniques for the testing of blood, urine, and breath to determine alcohol concentration as described under RSA ~~(265-A:2)~~ **265-A:5, V**.

5 Reference Changed. Amend RSA 21:P-14, 11v(4) to read as follows:

- (d) Suspension or revocation of a driver's license or driving privilege, as authorized by RSA ~~(265-A:2)~~ **265-A:25 through RSA 265-A:26, [amended] RSA 263:78, 265-A:26, and RSA 265-A:29**.
- (e) Appeals of driver's license denial, suspension, or revocation, as authorized by RSA 263:75, **RSA 265-A:34**, and 263:76.

6 Reference Changed. Amend RSA 21:P-14, 11v(5) to read as follows:

- (c) Administrative suspension of motor vehicle licenses pursuant to RSA ~~(265-A:2)~~ **265:9-b and RSA 265:9-1-c and RSA 265-A:30 through RSA 265-A:32**, including notices, forms, temporary driving permits, hearing procedures, and procedures for restoration after the suspension period.

7 Reference Changed. Amend RSA 179:27-a, II to read as follows:

II. Any partially consumed bottle of table wine which is to be removed from the premises under paragraph I shall be securely sealed and bagged, by the licensee, either to be in conformance with any applicable local open container law for those patrons on foot, or transported as required by RSA ~~(265-A:4)~~ **265-A:44**, in the trunk of a motor vehicle. If the vehicle is not equipped with a trunk, the securely sealed opened table wine bottles may be stored and transported in that compartment or area of the vehicle which is the least accessible to the driver.

8 Reference Changed. Amend RSA 214:20-f to read as follows:

214:20-f Administration of Blood Alcohol Concentration Tests. All and any alcohol concentration tests performed as authorized in RSA 214:20-d shall be conducted pursuant to the requirements of RSA ~~(265-A:2)~~ **265-A:5**, relative to the testing of blood, urine, and breath.

9 Reference Changed. Amend RSA 214:20-g to read as follows:

214:20-g Additional Tests. The provisions of RSA ~~(265-A:2)~~ **265-A:7**, relative to the right of an arrested person to obtain additional tests, shall apply to any person to whom RSA 214:20-d is applicable.

10 Reference Changed. Amend RSA 214:20-i to read as follows:

214:20-i Official Record of Tests. The provisions of RSA ~~(265-A:2)~~ **265-A:12**, relative to notice to the court and the admissibility of the official report of tests, shall govern admissibility of the official records related to the tests taken pursuant to this RSA 214:20-d as well as the notice required to compel the attendance of any person who conducted such tests at trial.

11 Reference Changed. Amend RSA 215-A:19, 111(b) to read as follows:

- (b) RSA ~~(265-A:2)~~ **265-A:2, I and RSA 265-A:2**, relative to operating an OHV while intoxicated or under the influence of drugs.

12 Reference Changed. Amend RSA 215-A:20, 111(b) to read as follows:

- (b) Conviction of any offense *involving a vehicle* specified in RSA ~~(265-A:2)~~ **265-A:2, I**.
- (c) Conviction of any offense *involving a vehicle* specified in RSA ~~(265-A:2)~~ **265-A:2**.

13 Reference Changed. Amend RSA 215-A:20, 111(b) to read as follows:

- (b) Any person who violates this section by operating an OHV in this state during the period of suspension or revocation of such person's license or driving privilege for a violation of ~~(RSA 215-A:19, 111(b))~~ **RSA 205:79, RSA ~~(265-A:2)~~ 265-A:2, I, RSA 265-A:2, and RSA 630:3**, II shall be guilty of a misdemeanor and shall be sentenced in accordance with RSA 263:64, IV.

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42 Reference Changed

- felony; the usual fines for violations of the provisions of title XVIII on fish and game laws, excluding any offense which is a misdemeanor or felony; and the usual fines for violations of the provisions of title XIX-A on forestry laws, excluding any offense which is a misdemeanor or felony. The defendant shall be given a notice of fine indicating the amount of the fine plus penalty assessment at the time the summons is issued; except, if, for cause, the summoning authority wishes the defendant to appear personally. Defendants summoned to appear personally must do so on the arraignment date specified in the summons, unless otherwise ordered by the court. Defendants who are issued a summons and notice of fine and who wish to plead guilty or nolo contendere shall enter their plea on the summons and return it with payment of the fine plus penalty assessment to the division of motor vehicles within 30 days of the date of summons. Defendants in violation of the provisions of title XVIII shall be subject to the provisions of RSA 207:18 and RSA 214:19.
- 31 Applicability: *Plas by Mail.* Section 30 of this act shall apply only to courts which are not computerized in coordination with the division of motor vehicles.
- 32 References Changed. Amend RSA 630:3, II-III to read as follows:
- II. A person is guilty of a class A felony when in consequence of being under the influence of intoxicating liquor or a controlled drug or any combination of intoxicating liquor and controlled drug while operating a propelled vehicle, as defined in RSA 637:9, III or a boat as defined in RSA ~~(979:44)~~ **265-A:1, II, he or she** causes the death of another.
- III. In addition to any other penalty imposed, if the death of another person resulted from the negligent driving of a motor vehicle, the court may revoke the license or driving privilege of the convicted person indefinitely and the person shall not petition for eligibility to reapply for a driver's license for at least 7 years. In a case in which alcohol was involved, the court may also require that the convicted person shall not have a license to drive reinstated until after the division of motor vehicles receives certification of installation of an ignition interlock device as described in RSA ~~(966:44a-b)~~ **265-A:36**, which shall remain in place for a period not to exceed 5 years.
- 33 Reference Changed. Amend RSA 630:2, V(b) to read as follows:
- (b) In cases of a person convicted of a felony or class A misdemeanor, a court may sentence such person to 7 consecutive 24-hour periods to be served at the state-operated 7-day multiple DWI offender intervention detention center program established under RSA ~~(149:44a-b)~~ **265-A:40**, if the evidence demonstrates that alcohol was a contributing factor in the commission of the offense and provided that space is available in the program and such person pays the fees for the program in full prior to admission.
- 34 References Changed. Amend the introductory paragraph of RSA 651:3, III to read as follows:
- III. Except as provided in RSA ~~(966:42-c)~~ **265-A:2, I** or in paragraphs V and VI, any person convicted of an offense may petition for annulment of the record of arrest, conviction, and sentence when the petitioner has completed all the terms and conditions of the sentence and has thereafter been convicted of no other crime, except a motor vehicle offense classified as a violation other than driving while intoxicated under RSA ~~(966:42)~~ **265-A:2, I**, for a period of time as follows:
- 35 References Changed. Amend RSA 651:6, II(b)-(c) to read as follows:
- (b) Has previously been convicted of a violation of RSA 630:3, II, RSA ~~(966:42-c)~~ **265-A:2, 1b)** or II(b), or any crime in any other jurisdiction involving driving or *attempting to drive* a motor vehicle under the influence of controlled drugs or intoxicating liquors, or both, and such person has committed a crime as defined under RSA 630:3, II or RSA ~~(966:42-c)~~ **265-A:2, 1b)** or II(b); or
- (c) Has twice previously been convicted in this state or any other jurisdiction, for driving or *attempting to drive* a motor vehicle under the influence of intoxicating liquors or controlled drugs, or both, and such person has committed a crime as defined under RSA 630:3, II or RSA ~~(966:42-c)~~ **265-A:2, 1b)** or II(b).

- 36 Repeal. The following are repealed:
- I. RSA 172-B:2-a through 172-B:2-c, relative to impaired driver intervention programs.
- II. RSA 215-A:11 through 215-A:11-q, relative to DWI provisions for OHRV's.
- III. RSA 263:14-a, relative to probationary licenses.
- IV. RSA 263:65-a, relative to attendance at impaired driver intervention programs.
- V. RSA 263:66, relative to revocation of license for driving while intoxicated and appeals.
- VI. RSA 263:67, relative to not guilty findings; return of license.
- VII. RSA 263:71-a, relative to license restoration upon proof of financial responsibility.
- VIII. RSA 263:66, relative to commercial drivers prohibited from driving with any alcohol in their systems.
- IX. RSA 263:96, relative to implied consent requirements for commercial motor vehicle drivers.
- X. RSA 265:80, relative to possession of drugs.
- XI. RSA 265:81, relative to transporting alcoholic beverages.
- XII. RSA 265:81-a, relative to transportation of alcoholic beverages by a minor.
- XIII. RSA 265:82, relative to driving under influence of drugs or liquor; driving with excess alcohol concentration.
- XIV. RSA 265:82-a, relative to aggravated driving while intoxicated.
- XV. RSA 265:82-b, relative to penalties for intoxication or operating under the influence of drugs or offenses.
- XVI. RSA 265:82-c, relative to annulment; plea bargaining.
- XVII. RSA 265:82-d, relative to payment of all obligations prior to restoration.
- XVIII. RSA 265:83, relative to arrests without a warrant.
- XIX. RSA 265:84, relative to implied consent of driver to submit to testing.
- XX. RSA 265:88, relative to administration of alcohol concentration tests.
- XXI. RSA 265:85-a, relative to administration of physical tests.
- XXII. RSA 265:86, relative to additional tests.
- XXIII. RSA 265:87, relative to prerequisites to tests.
- XXIV. RSA 265:88, relative to effect of evidence of alcohol concentration tests.
- XXV. RSA 265:88-a, relative to evidence of refusal to take alcohol concentration tests.
- XXVI. RSA 265:89, relative to evidence.
- XXVII. RSA 265:90, relative to official records of tests.
- XXVIII. RSA 265:91, relative to incapacity to give consent.
- XXIX. RSA 265:91-a, relative to administrative license suspensions.
- XXX. RSA 265:92, relative to refusal of consent.
- XXXI. RSA 265:92-a, relative to preliminary breath test.
- XXXII. RSA 265:93, relative to blood testing of certain motor vehicle fatalities.
- XXXIII. RSA 265:93-a through 265:93-c, relative to alcohol ignition interlock program.
- XXXIV. RSA 270:47 through 270:58-b, relative to implied consent for boaters.
- XXXV. RSA 215-C:11 through 215-C:27, relative to DWI provisions for snowmobiles.

37 Effective Date. This act shall take effect January 1, 2007.

2005-0074h

Amendment to HB 317-FN
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 mooring fees.

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

1 Mooring of Boats on Public Waters; Annual Mooring Fee. Amend RSA 270:62, V to read as follows:

- V. *A fee of \$125 shall be charged for each initial decal issued pursuant to this subdivision which shall be deposited in the navigation safety fund established under RSA 270-E:6-a.* An annual mooring fee of ~~(998)~~ **\$50** shall be charged for each decal ~~(issued)~~ **renewed** pursuant to this subdivision which shall be deposited in the navigation safety fund established under RSA 270-E:6-a.
- 2 Effective Date. This act shall take effect January 1, 2007.

This bill increases mooring fees.

2006-0235h

Amendment to HB 345
Proposed by the Majority of the Committee on Election Law - R

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

1 Obtaining a Ballot; Identification Required. Amend RSA 659:13 to read as follows:

- 659:13 Obtaining a Ballot.
- I. A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the checklist. *The ballot clerk shall then require the person desiring to vote to furnish a state or federal government-issued identification meeting the requirements of the federal Real ID Act of 2005, Public Law 109-13 to verify the person's identity or, if the person states that he or she has not been issued a valid form of such identification, a voter identification affidavit pursuant to paragraph II.* The voter, if still qualified to vote in the town or city, and is challenged as provided for in RSA 659:27-33, *or unless failing to present the required identification*, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state.
- II. *In any instance where a voter states to a ballot clerk that he or she has not been issued a valid state or federal government-issued identification meeting the requirements of the federal Real ID Act of 2005, Public Law 109-13, then as a substitute for such identification the voter shall be permitted to submit an affidavit, certified by the ballot clerk, in the following form:*

Voter Identification Affidavit

1. My name is _____, I reside at _____.
2. I have not been issued an identification card by a state or federal government that sets forth my name, birth date, sex, identification number, digital photograph, and address and is in effect as of the date of this affidavit.
3. This affidavit is dated _____.
- I acknowledge that I have read and understand the above and do hereby swear, under the penalties for voting fraud, that all of the above is complete and accurate.*

Signature

2 Effective Date. This act shall take effect November 1, 2007.

This bill requires a voter to present photographic identification or a voter identification affidavit to obtain a ballot.

2006-0236h

Amendment to HB 347
Proposed by the Majority of the Committee on Election Law - R

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

AN ACT relative to indicating citizenship on drivers' licenses and nondrivers' identification cards.

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

- 1 Identification Cards; Citizenship. Amend RSA 260:21, II-III to read as follows:
- II. The department shall, before issuing a card to an applicant, require the applicant to furnish proof of his or her name, sex, age, citizenship, and address of residence.
- III. The identification card shall bear the name, address, ~~(present address)~~ **identification number**, date of birth, blood type (optional), picture, and signature of the applicant, *an indication of whether or not the applicant is a United States citizen*, and in the case of a card issued pursuant to RSA 260:21, I(c), said card shall bear the notation "Golden Granite State Discount Card."
- 2 New Section: Issuance of Drivers' Licenses; Evidence of Citizenship. Amend RSA 265 by inserting after section 5c the following new section:
- 265:5-d Evidence of Citizenship. Before the department issues any license to any person under this chapter, the department shall have on file evidence of the person's citizenship.
- 3 Drivers' Licenses; Form of License. Amend RSA 263:40 to read as follows:
- 263:40 Form of License. The commissioner shall, upon payment of the required fee, issue to every applicant a driver's license subject to such conditions as the commissioner may deem expedient and in such form as the commissioner may prescribe. The license shall bear thereon a distinguishing number assigned to the licensee, *an indication of whether or not the licensee is a United States citizen*, and an instant full-face color photograph, image, or likeness of the licensee. There shall also be provided a space wherein the licensee may enter his or her blood type if ~~(he)~~ **the licensee so desires**.
- 4 Commercial Driver License; Information Included. Amend RSA 263:91, I(c)-(g) to read as follows:
- (c) The name of this state; ~~(and)~~
- (g) The expiration date; and
- (h) Whether or not the licensee is a United States citizen.*
- 5 Contingency. If HB 345 of the 2006 regular session becomes law, sections 1-4 of this act shall take effect 60 days after its passage. If HB 345 of the 2006 regular session does not become law, sections 1-4 of this act shall not take effect.
- 6 Effective Date.
- I. Sections 1-4 of this act shall take effect as provided in section 5 of this act.
- II. The remainder of this act shall take effect upon its passage.

This bill requires that drivers' licenses and nondrivers' identification cards indicate whether the holder is a United States citizen.

2006-0208h

Amendment to HB 391
Proposed by the Committee on Election Law - R

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

AN ACT relative to election affidavits.

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

- 1 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 checklist of a town or city, specifically, the name, street address, town or city, and party affiliation, if any, of registered voters, except as otherwise provided by statute, is public information subject to RSA 91-A. All other information on the voter registration 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. *Citizenship and domicile affidavits are public records subject to 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, *citizenship and domicile affidavits*, absentee registration affidavits, and applications for absentee ballots, if necessary to resolve a challenge to an individual registering to vote 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.
- 2 Affidavit. Amend RSA 659:30 to read as follows:
- 659:30 Affidavit. The affidavit of a challenged voter, a voter citizenship affidavit, a voter domicile affidavit, or any other affidavit required by the election statutes may be sworn before ~~(any person authorized by law to administer oaths or before)~~ any election official.
- 3 Preservation of Voting Materials. Amend RSA 659:101 to read as follows:
- 659:101 Preservation of Absentee Voting Materials, Election Day Affidavits, and Domicile Affidavits. The affidavit envelopes and application forms processed by the moderator as provided in RSA 659:50, and the citizenship affidavits and domicile affidavits as provided in RSA 654:12 and any other documentary proof of qualifications retained by the town or city clerk, the supervisors of the checklist, or other election official may be preserved in the same manner that ballots are preserved, ~~(and)~~
- Citizenship, voter registration, and domicile affidavits shall be retained for 3 years after the election in which they are used, and other materials may be destroyed one year after the first state general election at which the individual may vote.*
- 4 Effective Date. This act shall take effect 60 days after its passage.

This bill makes citizenship and domicile affidavits public records subject to RSA 91-A and modifies requirements for their execution and preservation.

2006-0121h

Amendment to HB 397
Proposed by the Committee on Children and Family Law - R

Amend the bill by inserting after section 1 the following and renumbering the original sections 2-3 to read as 3-4, respectively:

2 Emergency Interim Relief: Petition Filed by Department of Health and Human Services. Amend RSA 169-C:6-a, IV to read as follows:

IV. If the court issues ex parte orders, the department ~~(or law enforcement officer)~~ shall file a petition meeting the requirements of RSA 169-C:7 within 72 hours of the issuance of the orders, excluding Sundays and holidays.

Amend the bill by replacing section 4 with the following:

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

2005-2152h

Amendment to HB 459
Proposed by the Committee on Criminal Justice and Public Safety - R

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

AN ACT relative to access to criminal records and enhanced 911 system records.

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

1 Confidentiality of Enhanced 911 System Information and Records. Amend RSA 106-H:14 to read as follows:

106-H:14 Information not Subject to Right-to-Know Law. Any information or records compiled under this chapter shall not be considered a public record for the purposes of RSA 91-A. *Notwithstanding any provision of law to the contrary, the bureau shall only make information or records compiled under this chapter available to a law enforcement agency that requires the information or records for investigative purposes.*

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

AMENDED ANALYSIS

This bill clarifies that law enforcement personnel have access to criminal justice data for proper investigative purposes. The bill allows access to criminal justice information by persons who maintain the state criminal justice information database.

2006-0283h

Floor Amendment to HB 459

Proposed by Rep. Kirk

Amend the bill by replacing section 2 with the following:

2 Confidentiality of Enhanced 911 System Information and Records. Amend RSA 106-H:14 to read as follows:

106-H:14 Information not Subject to Right-to-Know Law. Any information or records compiled under this chapter shall not be considered a public record for the purposes of RSA 91-A. *Notwithstanding any provision of law to the contrary, the bureau shall only make information or records compiled under this chapter available on a case-by-case basis to a law enforcement agency that requires the information or records for investigative purposes.*

2006-0116h

Amendment to HB 485

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

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

AN ACT relative to parental rights and responsibilities and visitation rights of grandparents and stepparents.

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

1 Determination of Parental Rights and Responsibilities; Best Interest; Visitation Privilege Grandparents and Stepparents. Amend RSA 461-A:6, V to read as follows:

V. If the court determines that it is in the best interest of the children, it shall in its decree grant reasonable visitation privileges to a party who is a stepparent of the children or to the grandparents of the children pursuant to RSA 461-A:13. *[Nothing in this paragraph shall be construed to prohibit or require an award of parental rights and responsibility to a stepparent or grandparent if the court determines that such an award is in the best interest of the child.]*

2 Reporting by Candidates. Amend RSA 664:7 to read as follows:

664:7 Reporting by Candidates. Each candidate at the primary or general election for governor, councilor, state senator, representative to general court, or county officer, who has expenditures exceeding \$500, shall file statements before and after an election in like manner and detail as prescribed in RSA 664:6, II, II-a, III, IV, and V, excepting, however, the expenditures of political committees of the party to which the candidate belongs in elections other than primaries. *Such statements shall also include an itemized list of donations from lobbyists registered under RSA 18:1.*

3 Effective Date. This act shall take effect January 1, 2007.

AMENDED ANALYSIS

This bill removes a reference to the court's authority to award parental rights and responsibilities to a stepparent or grandparent. The court's authority to grant visitation privileges to stepparents and grandparents remains unchanged in RSA 461-A:6, V, and grandparents' visitation rights are specifically addressed in RSA 461-A:13.

2005-0505h

Amendment to HB 506

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

Amend RSA 354-A:2, VII as inserted by section 1 of the bill by replacing it with the following:

VII. "Employer" does not include a club exclusively social, or a fraternal or religious association or corporation, if such club, association, or corporation is not organized for private profit, as evidenced by declarations filed with the Internal Revenue Service, nor does it include any employer with fewer than 6 persons in its employ, but shall include the state and all political subdivisions, boards, departments, and commissions thereof.

2006-0199h

Amendment to HB 621-FN

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

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

1 Reporting by Political Committees. Amend RSA 664:6, I to read as follows:

1. Any political committee whose receipts or expenditures in support of a candidate, measure, or political party exceed \$500 except, for the purposes of this paragraph only, the political committee of a political party or the political committee of a candidate, shall file with the secretary of state an itemized statement, signed by its chairman and treasurer showing each of its receipts exceeding \$25 with the full name and home post office address of the contributor in alphabetical order and the amount of the contribution, the date it was received, and the aggregate total for each election for each contributor of over \$100. The statement shall be filed not later than the Wednesday 12 weeks immediately preceding a primary election, before 5 o'clock in the afternoon, and shall cover the period from the day of the committee registration up to and including the Monday before the statement is due. All receipts of \$25 or over shall appear on the statements as unitemized receipts. Any listing which exceeds an individual's aggregate total of \$100 for each election shall be accompanied by the contributor's occupation including official job title, the name of the contributor's employer, and the city or town of the contributor's principal place of business, if any. The statement shall also show each committee expenditure with the full name and city or town of persons, corporations, committees, or to whomsoever paid or to be paid, the date paid, and the election for which the expenditure was made, with the specific nature and amount of such expenditure since the date of the registration. *The statements shall include a separate itemized list of donations from lobbyists registered under RSA 18:1.*

2 Reporting by Candidates. Amend RSA 664:7 to read as follows:

664:7 Reporting by Candidates. Each candidate at the primary or general election for governor, councilor, state senator, representative to general court, or county officer, who has expenditures exceeding \$500, shall file statements before and after an election in like manner and detail as prescribed in RSA 664:6, II, II-a, III, IV, and V, excepting, however, the expenditures of political committees of the party to which the candidate belongs in elections other than primaries. *Such statements shall also include an itemized list of donations from lobbyists registered under RSA 18:1.*

3 Effective Date. This act shall take effect January 1, 2007.

AMENDED ANALYSIS

This bill requires candidates and political committees to itemize donations from registered lobbyists.

2006-0201h

Amendment to HB 624-FN

Proposed by the Committee on Executive Departments and Administration - R

Amend the bill by replacing sections 7-9 with the following:

7 Nursing; Practicing Without a License. Amend RSA 326-B:41, II to read as follows:

II. Practice as a licensee *without a license* or when the license to do so has been revoked or suspended or when the license to do so has lapsed.

8 New Section: Nursing Practice Act; Penalties. Amend RSA 326-B by inserting after section 41 the following new section:

326-B:41-a Penalty.

1. Any person who shall practice or attempt to practice as a registered nurse, advanced registered nurse practitioner, licensed practical nurse, or licensed nursing assistant in this state without a license shall be guilty of a class A misdemeanor if a natural person or guilty of a felony if any other person.

II. Any person who violates any of the other provisions of this chapter shall be guilty of a misdemeanor.

9 Certified Midwifery; Penalties. Amend RSA 326-D:6, III to read as follows:

III. The title "certified midwife" shall be used only by persons certified under this chapter. Any person shall continue to represent himself or herself as a certified midwife after certification has been suspended under this chapter. Any person whose certification under this chapter has been suspended or revoked by the council for disciplinary action under RSA 326-D:8, shall not engage in the practice of midwifery unless and until the suspension or revocation of certification has been lifted.

[Any person violating any provision of this chapter shall be guilty of a violation.]

IV. Any person who shall practice or attempt to practice as a certified midwife in this state without certification shall be guilty of a class A misdemeanor if a natural person or guilty of a felony if any other person. Any person violating any other provision of this chapter shall be guilty of a violation.

Amend the bill by replacing all after section 20 with the following:

21 New Subparagraph: Interpreters For The Deaf And Hard Of Hearing; Exemptions. Amend RSA 326-I:7, IV by inserting after subparagraph (c) the following new subparagraph:

(f) Court reporters certified under RSA 331-B while employed as court reporters as defined in RSA 331-B:2, III.

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

2006-0153h

Amendment to HB 626-FN-LOCAL

Proposed by the Committee on Judiciary - R

Amend RSA 91-A:1-a, V(b) as inserted by section 3 of the bill by replacing it with the following:

(b) The executive council and the governor with the executive council; including any advisory committee established by the governor by executive order or by the executive council;

Amend RSA 91-A:2 as inserted by section 4 of the bill by replacing it with the following:

91-A:2 Meetings Open to Public.

1 For the purpose of this ~~section~~ *chapter*, a "meeting" ~~[shall mean]~~ *means* the convening of a quorum of the membership of a public body, as ~~[provided]~~ *defined* in RSA 91-A:1-a, ~~[business meeting]~~ *whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, for the purpose of discussing or acting upon a matter or matters over which the public body has supervening control, jurisdiction, or advisory power. A chamber of commerce or other association or corporation, if such club, association, or corporation is not organized for private profit, as evidenced by declarations filed with the Internal Revenue Service, nor does it include any employer with fewer than 6 persons in its employ, but shall include the state and all political subdivisions, boards, departments, and commissions thereof.*

~~(a) Any chance meeting or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business and in which no decisions are made; however, no such chance or social meeting shall be used to circumvent the spirit of this chapter.~~

~~(b) Strategy or negotiations with respect to collective bargaining;~~

~~(c) Consultation with legal counsel; or~~

~~(d) A caucus consisting of elected members of a public body of the same political party who were elected on a partisan basis at a state general election or elected on a partisan basis by a town or city which has adopted a partisan ballot system pursuant to RSA 669:12 or RSA 442:6 or~~

~~(e) Circulation of draft documents which, when finalized, are intended only to formalize decisions formerly made in a meeting.~~

1 ~~(b) Public proceedings shall be open to the public and shall be permitted to attend any meeting of those bodies or agencies.~~ *Subject to the provisions of RSA 91-A:2, all meetings shall be open to the public.* Except for town meetings, school district meetings and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras and videotape equipment, at such meetings. Minutes of all such meetings, including names of members, persons appearing before the public body ~~[or agency]~~, and a brief description of the subject matter discussed and final decisions, shall be promptly recorded and open to public inspection within 144 hours of the ~~[public]~~ meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body ~~[or agency]~~, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each meeting, including a nonpublic session, shall be posted in 2 appropriate places, *one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to each meeting.* An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body ~~[or agency]~~ who shall *post a notice of the time and place of such meeting, as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held.* The minutes of the meeting shall clearly spell out the procedure for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or guidelines or rules of order of any public body ~~[or agency]~~ ~~or the rules of order of any public body~~ require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter.

Amend the bill by replacing sections 7 and 8 with the following:

7 New Section: Communications Outside Meetings. Amend RSA 91-A by inserting after section 2 the following new section:

91-A:2-a Communications Outside Meetings.

1 Any communications outside a meeting, in whatever form, among a quorum of the membership of a public body which bear upon matters over which the body has supervision, control, jurisdiction, or advisory power shall be disclosed at the next meeting of the body before any decision may be made, including a decision not to act. If such communications are in writing, copies or printouts shall be made a part of the public record. Communications among less than a quorum of members need not be disclosed. Communications described in RSA 91-A:2, (a)-(d) are not subject to the disclosure requirements of this paragraph.

II. Communications outside a meeting shall not be used to circumvent the spirit of this chapter.

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

AMENDED ANALYSIS

This bill clarifies the manner in which the right-to-know law applies to both governmental records kept in electronic form and electronic communication used to transact governmental business.

2006-0228h

Amendment to HB 634-FN-A

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 solid waste reduction, establishing a solid waste disposal fee, and renaming the recycling market development steering committee.

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

1 Findings. The general court finds and declares that the state did not attain the 40 percent solid waste diversion goal established by the state for the year 2000 under RSA 149-M:2. Additional resources are needed to assist municipalities and businesses in diverting greater amounts of the waste stream from disposal in landfills and incinerators, thereby preserving disposal capacity in New Hampshire. Programs must also be developed to appropriately dispose of household hazardous waste, including the ever-increasing quantities of electronic waste.

2 Solid Waste Management; Definition; Source Reduction. Amend RSA 149-M:4, XXIV to read as follows:

XXIV. "Source reduction" means changing industrial processes, technologies, and product components with the specific objective of reducing the amount or toxicity of waste at the source. *Source reduction shall also include any actions taken outside of the manufacturing setting that reduce the amount of waste produced.*

3 New Subdivision: Funding For Waste and Toxicity Reduction. Amend RSA 149-M by inserting after section 57 the following new subdivision:

Funding For Waste and Toxicity Reduction

149-M:58 Solid Waste Disposal Fee.

1 A solid waste disposal fee of \$1 per ton shall be assessed on any solid waste that is landfilled or incinerated at a solid waste facility. The operator of the facility shall be liable for payment of this fee according to paragraph II. If an accurate weight scale is not available at a receiving landfill or incinerator, the disposal fee shall be imposed at a rate of \$0.25 per cubic yard, as can most accurately be determined.

II. Fees shall accrue and be remitted to the department by those responsible for payment on a semiannual basis upon forms provided by the department. The respective 6-month accrual periods shall end on June 30 and December 31, with remittances due on the following July 31 and January 31, respectively.

III. If payment required by this section is not furnished, or is incorrect or insufficient, the department shall make a finding as such, and determine the amount due from information available.

IV. Accurate and complete solid waste history or volume records relating to the disposal fee imposed by this section shall be kept by those responsible for paying the fees to the department and shall be available for inspection or examination at any time by the commissioner, or the commissioner's duly authorized agents or employees, and shall be preserved for a period of 5 years.

V. The commissioner shall adopt rules, under RSA 541-A, relative to the payment of the fee under this section, including any necessary forms and records.

149-M:59 Exemptions. The following shall not be subject to the disposal fee imposed by RSA 149-M:58:

I. Any material that is delivered to a solid waste facility and is not landfilled or incinerated at that facility.

II. Brush, logs, stumps, leaves, and roots deposited into a stump dump.

III. Roadside wastes delivered to a landfill or incinerator when the facility operator certifies that he or she has accepted those wastes without any disposal charge.

IV. Cover material that is placed over solid waste at a landfill as defined by rules adopted under RSA 149-M:7.

V. Solid waste disposed of at a landfill or incinerator that is owned by a municipality, provided such facility accepts waste generated only within the municipality, with such exemption to be at the option of the qualifying municipality:

(a) For a municipality that opts to be exempt under this paragraph, funds collected under this subdivision shall not be used to provide money or services to the municipality or to residents, businesses, schools or any other entities within the municipality.

(b) This prohibition shall not apply to any entity that has not disposed of its solid waste at the municipal landfill or incinerator within the past 6 months.

(c) This prohibition shall expire if the municipality decides to no longer opt for such exemption and makes at least 2 consecutive, semi-annual payments under RSA 149-M:58, II.

VI. Incinerator ash that is landfilled, provided the ash was generated at an in-state incinerator and such incinerator is not owned by a qualifying municipality that opts to be exempt under paragraph V.

149-M:60 Use of Funds.

I. At least 50 percent of the revenues collected from the solid waste disposal fee shall be available to organizations registered with the secretary of state as nonprofit organizations provided the following conditions are met by each organization:

(a) The organization shall maintain its non-profit status;

(b) The organization's primary mission is to assist municipalities, schools, or businesses in increasing levels of source reduction, recycling, reuse or composting; and

(c) The organization shall only spend proceeds received under this subdivision to provide:

(1) Technical assistance to municipalities and businesses on source reduction, recycling, reuse, and composting issues;

(2) Recycling and composting equipment grants to municipalities;

(3) Support for school source reduction, recycling, reuse, and composting programs; or

(4) Support for educational programs on source reduction, recycling, reuse, composting, the purchase of products with recycled material content, and pay-as-you-throw programs.

(d) An emphasis shall be given to minimizing administrative costs, while effectively delivering such services or grants.

II. The department may expend up to 50 percent of the revenues collected from the solid waste disposal fee, pursuant to appropriations of said sums in the department's operating budget, for the purpose of:

- (a) Training solid waste facility operators in recycling and composting practices;
- (b) Maintaining accurate information on recycling and composting rates in the state, including the overall diversion rate;
- (c) Providing programs for the efficient receipt, transportation, and disposal of household hazardous waste and electronic waste; and
- (d) Collecting the solid waste disposal fee, administering the fund in RSA 149-M:61, and staffing the recycling steering commission established under RSA 149-O.
- 149-M:61 Fund Established, Administration and Expenditures
1. There is hereby established the solid waste reduction fund into which all moneys collected under this subdivision shall be deposited. This nonlapsing, special fund is continually appropriated to the department of environmental services to be expended only as provided by contract issued under paragraph II and as provided under RSA 149-M:60, II. The state treasurer shall invest the moneys deposited in the fund as provided by law. Any return on investments made shall also be credited to the fund.
- II. The recycling steering commission, established under RSA 149-O, shall determine the types and amounts of grants and services, as identified under RSA 149-M:60, I(c), that are best able to produce long-term, increased rates of solid waste diversion from landfills and incinerators. Based on such determination, the commission shall from time to time, as needed, issue requests for proposals from eligible nonprofit organizations and shall select the organization or organizations to whom a contract shall be awarded. The department shall contract with such organizations, on behalf of the commission, under such terms as specified by the commission and in conformance with applicable state law. Such contracts shall not exceed 3 years in duration and shall include a payment schedule and reporting requirements sufficient to assure that the contract is being fulfilled.
- 4 Recycling Steering Commission. Amend RSA 149-O to read as follows:

CHAPTER 149-O
RECYCLING [~~MARKET-DEVELOPMENT~~] STEERING
[~~COMMITTEE~~] COMMISSION

- 149-O:1 [~~Committee~~] Commission Established; Duties. There is established a recycling [~~market-development~~] steering [~~committee~~] commission to promote the establishment and expansion of recycling-related [~~industries-and-companies~~] activities in New Hampshire.
- 149-O:2 Duties. The [~~steering~~] commission shall have the following duties:
- I. Advocating and securing funding for recycling market development.
- II. Facilitating close communication and interaction among the state's recycling and economic development agencies and other involved organizations.
- III. Providing continuity to the state's recycling market development efforts by reviewing and revising market development priorities, evaluating the impact of market development initiatives, and recommending new directions for market development efforts.
- IV. Developing a strategy to increase the amount of solid waste diverted from landfills and incinerators through source reduction, recycling, composting, reuse, the purchase of products with recycled material content, and pay-as-you-throw programs, and to fund such activities in accordance with RSA 149-M:61, II.
- 149-O:3 Membership.
1. The [~~steering committee~~] commission shall consist of the following members: [~~representing the major segments of the state's recycling and economic development communities~~]:
- (a) One member of the house of representatives, appointed by the speaker;
- (b) One member of the senate, appointed by the senate president;
- (c) The director of the office of energy and planning, or designee, [~~governor's recycling program~~];
- (d) [~~The recycling coordinator~~]; The commissioner of the department of environmental services, or designee;
- (e) The commissioner of the department of resources and economic development, or designee;
- (f) [~~The executive director of the Northern New Hampshire Recovery Association~~];
- (g) [~~The director of the division of plant and property management, department of administrative services~~];
- (f) A representative of beverage, soft drink, or retail grocer interests, appointed by the governor.
- (g) A representative of school recycling interests, appointed by the governor.
- (h) A representative of the New Hampshire Business and Industry Association, appointed by the association.
- (i) A representative from the New Hampshire Business Development Corporation, business finance authority, or another state-wide economic development organization, appointed by the governor;
- (j) (i) A representative of New Hampshire's environmental community, appointed by the governor.
- (k) [~~A representative~~] (j) Two representatives from the New Hampshire Municipal Association, appointed by the association.
- (l) [~~The commissioner of the department of transportation, or designee~~].
- 149-O:4 Meetings and Staffing. The [~~committee~~] commission shall meet quarterly and at such other times as the chairperson may call. The commission shall be provided staffing services by the department of environmental services.
- 149-O:5 Report. The [~~committee~~] commission shall prepare an annual report detailing the [~~committee's~~] commission's actions and progress during the prior fiscal year and any recommendations for legislation. The [~~committee~~] commission shall submit the report by [~~February~~] October 1 each year to the [~~chairperson of the house environment and agriculture committee, the chairperson of the senate environment committee~~] respective house of representatives and senate

- standing committees having responsibility for the subject matter, the speaker of the house, the senate president, the house clerk, the senate clerk, the state library, and the governor.
- 149-O:6 Mileage. Members shall serve without compensation except that legislative members shall receive legislative mileage while conducting [~~committee~~] commission business.
- 5 New Subparagraph. Treasury. Amend RSA 612:10 by inserting after subparagraph (212) the following new subparagraph:
- (243) Moneys deposited in the solid waste reduction fund under RSA 149-M:61.
- 6 Repeal. RSA 149-M:61, XI, relative to assessing an out-of-state solid waste surcharge, is repealed.
- 7 Prospective Repeal. The following are repealed.
- I. RSA 149-M:58-61, relative to funding for waste and toxicity reduction.
- II. RSA 612:10(243), relative to the solid waste reduction fund. Any balance remaining in the solid waste reduction fund after all contractual payment obligations are fulfilled shall be deposited in the general fund.
- 8 Effective Date.
- I. Section 7 of this act shall take effect July 1, 2012.
- II. The remainder of this act shall take effect July 1, 2006.

AMENDED ANALYSIS

This bill establishes a program administered by the department of environmental services for funding for solid waste reduction, and authorizes fees to be paid to and expended by the department. The bill also renames the recycling market development steering committee as the recycling steering commission and revises the duties of the commission.

2006-0250b

Amendment to HB 638-FN
Proposed by the Committee on Finance - R

- Amend the title of the bill by replacing it with the following:
- AN ACT relative to county and state financing of nursing home services.
- Amend the bill by replacing all after the enacting clause with the following:
- 1 Certificate of Need. Nursing Home Beds. Moratorium Repeal. Amend RSA 151-C:4, III(a) to read as follows:
- III.(a) No certificate of need shall be granted by the board for any nursing home, skilled nursing facility, intermediate care facility or rehabilitation facility from the effective date of chapter 310, laws of 1995, department of health and human services reorganization act, through the period ending [~~December 31, 2006~~] June 30, 2009, except that a certificate of need shall be issued for replacement or renovation of existing beds as necessary to meet life safety code requirements or to remedy deficiencies noted in a licensing inspection pursuant to RSA 151 or state survey and certification process pursuant to titles XVIII and XIX of the Social Security Act.
- 2 Rehabilitation Beds. Amend 2094, 209-27 to read as follows:
- 209:27 Health Services Planning and Review Board; Rehabilitation Beds and Services. Through the period ending [~~December 31, 2006~~] June 30, 2009 unless sooner authorized by the general court, the health services planning and review board shall not authorize changes regarding the licensure or certification of any rehabilitation beds in any type of facility, shall not authorize the addition of any rehabilitation beds in any type of facility, and shall not grant any certificate of need related to the board's administrative standards for comprehensive physical rehabilitation services. This section shall not prohibit the voluntary transfer of rehabilitation beds between 2 licensed health care facilities; provided, that any such transaction does not result in an increase in the number of any type of rehabilitation beds in the state.
- 3 New Paragraph. County Reimbursement of Funds; Limitations on Payments. Amend RSA 167:18-b by inserting after paragraph VI the following new paragraph:
- VII.(a) Any shortfall between the state audited Medicaid allowances incurred by the state's county operated ICF nursing homes and amounts otherwise reimbursed by federal 50 percent Medicaid matching funds or other income, shall be certified as a public expenditure and be eligible for additional federal funding match.
- (b) The department of health and human services shall seek federal Medicaid assistance match for any state audited county nursing home Medicaid expense which is not fully reimbursed through rates. Any revenue realized through such a match shall be paid to the nursing homes which incurred the unreimbursed expense, provided, however, that no state general funds are expended directly or indirectly for this purpose.
- 4 County Nursing Homes; Local Medical Assistance Contribution. Amend RSA 167:18-b by inserting after paragraph VI the following new paragraph:
- 167:18-f Local Medical Assistance Contribution. In addition to any other reimbursement required by law, each county shall, within 60 days from notice thereof, reimburse the public assistance fund at the rate of [~~\$60~~] \$6 per month for each recipient of old age assistance and [~~\$40~~] \$22 per month for each recipient of aid to the permanently and totally disabled for whom the county would be liable under the provisions of RSA 166, except that no reimbursement shall be required for any recipient for whom the county has an obligation under RSA 167:18-b.
- 5 Appropriation: Health and Human Services. The sum of \$5,400,000 for the biennium ending June 30, 2007 is hereby appropriated to the department of health and human services, for the purpose of funding the change to the local medical assistance contribution made in section 4 of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.
- 6 County Credit for Contributions. Any county reimbursement under RSA 167:18-f made from July 1, 2005 until June 30, 2006 which exceeds the rate for reimbursement provided in section 4 of this act shall be credited to the counties for the year ending June 30, 2006 for fulfilling the local medical assistance contribution.
- 7 Effective Date.
- I. Section 4 of this act shall take effect July 1, 2005, at 12:01 a.m.
- II. Sections 5 and 6 of this act shall take effect June 30, 2006.
- III. The remainder of this act shall take effect July 1, 2006.

AMENDED ANALYSIS

The bill removes the increase in county payments for old age assistance and aid to the permanently and totally disabled. This bill also extends the moratoriums on nursing home and rehabilitation beds.

2006-0209b

Amendment to HB 639-FN
Proposed by the Majority of the Committee on Election Law - R

- Amend the title of the bill by replacing it with the following:
- AN ACT relative to voters presenting citizenship or domicile affidavits to register on election day.
- Amend the bill by replacing all after the enacting clause with the following:
- 1 General Voter Registration; Determining Qualifications of Applicant. Amend RSA 654:12 to read as follows:
- 654:12 Determining Qualifications of Applicant.
1. When determining the qualifications of an applicant, the supervisors of the checklist, or the town or city clerk, shall require the applicant to present proof of citizenship, age, and domicile, as provided in the following categories:
- (a) CITIZENSHIP. The supervisors of the checklist, or the town or city clerk, shall accept from the applicant any one of the following as proof of citizenship: the applicant's birth certificate, passport, naturalization papers if the applicant is a naturalized citizen, a citizenship affidavit, or any other reasonable documentation which indicates the applicant is a United States citizen. The citizenship affidavit shall be in the following form:
- Date: _____
- CITIZENSHIP AFFIDAVIT
- Name: _____
- Name at birth if different: _____
- Place of birth: _____
- Date of birth: _____
- Date and Place of Naturalization: _____
- I hereby swear and affirm, under the penalties for voting fraud set forth below, that I am a United States citizen and that to the best of my knowledge and belief the information above is true and correct. I hereby acknowledge that, if I present this affidavit on election day, my ballot will be marked and subject to challenge during a recount, which may occur several weeks after election day. I also am aware that my ballot will not be associated with my affidavit unless the affidavit is determined to be invalid.
- (Signature of applicant)
- In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.
- On the date shown above, before me, _____ (print name of notary public, justice of the peace, election officer), appeared _____ (print name of person whose signature is being notarized), (known to me or satisfactorily proven (circle one)) to be the person whose name appears above, and he or she subscribed his or her name to the foregoing affidavit and swore that the facts contained in this affidavit are true to the best of his or her knowledge and belief.
- Notary Public/Justice of the Peace/Official Authorized by RSA 659:30
- (b) AGE. Any reasonable documentation indicating the applicant is 18 years of age or older.
- (c) DOMICILE. Any reasonable documentation which indicates that the applicant has a domicile and intends to maintain a domicile, as defined in this chapter, in the town, city, or ward in which he or she desires to vote, or, if the applicant does not have reasonable documentation in his or her possession at the place and time of voter registration, an affidavit in the following form:
- DOMICILE AFFIDAVIT
- Date: _____
- Name: _____
- Current Domicile Address: _____
- Street Ward Number _____
- Town or City Zip Code _____
- Date when current domicile was established: Month: _____ Year: _____
- Place and date of birth: _____
- Address of last previous domicile: _____
- Street Ward Number _____
- Town or City Zip Code _____
- I hereby swear and affirm, under the penalties for voting fraud set forth below, that my established domicile is at the current domicile address I have entered above and that to the best of my knowledge and belief the information above is true and correct. I hereby acknowledge that, if I present this affidavit on election day, my ballot will be marked and subject to challenge during a recount, which may occur several weeks after election day. I am also aware that my ballot will not be associated with my affidavit unless the affidavit is determined to be invalid.
- (Signature of applicant)
- In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.
- On the date shown above, before me, _____ (print name of notary public, justice of the peace, election officer), appeared _____ (print name of person whose signature is being notarized), (known to me or satisfactorily proven (circle one)) to be the person whose name appears above, and he or she subscribed his or her name to the foregoing affidavit and swore that the facts contained in this affidavit are true to the best of his or her knowledge and belief.
- Notary Public/Justice of the Peace/Official Authorized by RSA 659:30
- II. The supervisors may refuse to add the name of an applicant to the checklist if he or she fails to present the evidence or an affidavit as required by this section. Without limiting the acceptance of other forms of proof of domicile or identity deemed reasonable by the supervisors:
- (a) Any one of the following documents is presumptive evidence that the individual seeking to vote meets the domicile requirement, provided the document is currently valid, was issued to or in the name of the applicant, and shows the address the applicant claims as a domicile:
- (1) New Hampshire driver's license.
- (2) New Hampshire vehicle registration.
- (3) Armed services identification, or other photo identification issued by the United States government.
- (b) Any one of the following is presumptive evidence of the identity of an applicant sufficient to satisfy the identity requirement for an official authorized by RSA 659:30 to take the oath of an applicant swearing to a citizenship, domicile, or election day affidavit:
- (1) Photo driver's license issued by any state or the federal government.
- (2) United States passport, armed services identification, or other photo identification issued by the United States government.
- (3) Photo identification issued by local or state government.
- (c) The presumptions established in this paragraph may be defeated by evidence establishing that it is more likely than not that the applicant is not qualified as a voter.
- III. All information provided in a citizenship affidavit or a domicile affidavit presented under this section which establishes the affidavit's qualifications as a voter must be accurate for the resulting vote to be valid.

IV. Any person presenting a citizenship or domicile affidavit in order to register on election day shall be provided with an affidavit form marked in a manner established by the secretary of state so as to promote voter privacy but allow a ballot to be matched to an invalid affidavit. The secretary of state shall further establish the procedure for the submission of the affidavits and tracking of ballots supported by affidavits.

- 2 New Section; General Provisions for Recount; Affidavit Challenges. Amend RSA 609 by inserting after section 10 the following new section:
- 609:16-A. Affidavit Challenges. Any person may challenge a ballot being recounted by stating reasons satisfactory to the secretary of state why the voter's citizenship or domicile affidavit is inaccurate. The secretary of state shall notify the voter whose ballot is challenged, and the voter or any candidate on the ballot shall be permitted to present evidence to refute the challenge. The process to be followed for this procedure shall be as established by the secretary of state and set forth in the manual on the New Hampshire election laws and procedures for conducting elections.
- 3 Board of Recount; Affidavit Challenges. Amend RSA 609:3-2 to read as follows:
- 609:3-2. Board of Recount.
- I. At the time and place so appointed and notified, the clerk shall publicly break the seal of and open the package in which the ballots of said election are kept; and, thereupon, said ballots shall be recounted by the clerk, the moderator, and the selectmen of said town who shall constitute the board of recount. Any member of the board of recount who is one of the candidates for the office being recounted shall disqualify himself or herself from the board of recount for all official duties of said board. The moderator shall appoint an assistant who shall take the same oath as, and have all the powers of the recount official whom he or she has replaced.
- II. Any person challenging a ballot being recounted by stating reasons satisfactory to the board of recount why the voter's citizenship or domicile affidavit is inaccurate. The board of recount shall notify the voter whose ballot is challenged, and the voter or any candidate on the ballot shall be permitted to present evidence to refute the challenge. The process to be followed for this procedure shall be as established by the secretary of state and set forth in the manual on the New Hampshire election laws and procedures for conducting elections.**
- 4 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill establishes a procedure for marking the ballots of voters who register on election day using citizenship or domicile affidavits. This bill also establishes a procedure for challenging the ballot of a person who presented an inaccurate citizenship or domicile affidavit.

2006-0141b

Amendment to HB 642-FN-LOCAL
Proposed by the Committee on Municipal and County Government - R

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

1 New Chapter; Home Inspectors. Amend RSA by inserting after chapter 329-A the following new chapter:

- CHAPTER 329-B
HOME INSPECTORS
- 329-B:1 Purpose. The purpose of this chapter is to protect the people of the state of New Hampshire by requiring the licensing of home inspectors to assure that consumers of home inspection services can rely on the competence of a home inspector.
- 329-B:2 Definitions. In this chapter:
- I. "Apprentice" means any person who is engaged in learning and assisting in home inspection under an apprenticeship program acceptable to the board.
- II. "Board" means the board of home inspectors, established by RSA 329-B:3.
- III. "Home inspection" means a visual analysis for the purposes of providing a professional opinion of the condition of a residential building and its related structures, any reasonably accessible installed components and the operation of the building systems, including the controls normally operated by the owner, for the following components of a residential building of 4 units or less: heating system, electrical system, cooling system, plumbing system, structural components, foundation, roof covering, exterior and interior components and site aspects as they affect the building. Home inspection shall not require identifying concealed conditions or latent defects.
- IV. "Home inspector" means any person who is licensed by the board as a home inspector and who engages in the business of performing home inspections and writing home inspection reports.
- V. "Home inspector" report means a written report prepared by a home inspector for compensation and issued after a home inspection. The inspector shall report:
- (a) On those systems and components inspected which, in the professional opinion of the inspector, are significantly deficient or are near the end of their service lives.
- (b) A reason why, if not self-evident, the system or component is significantly deficient or near the end of its service life.
- (c) The inspector's recommendations to correct or monitor the reported deficiency.
- (d) Any systems and components designated for inspection which were present at the time of the inspection but were not inspected, and a reason they were not inspected.
- VI. "Residential building" means a structure consisting of one to 4 family dwelling units, including a single-family home, a multifamily dwelling, manufactured housing as defined in RSA 384:1-d, II, and any single family condominium unit, wholly or partly used or occupied, or intended to be used or occupied, as the home or residence of one or more persons.
- 329-B:3 Board.
- I. There shall be a board of home inspectors, consisting of 5 members, including 2 home inspectors, one real estate broker licensed under RSA 331-A, one attorney licensed to practice in this state, and one public member, each to be appointed by the governor, with the approval of the council, to a term of 4 years. No member of the board shall be appointed to more than 2 terms.
- II. The public member of the board of home inspectors shall be a person who is not, and never has been, a home inspector or the spouse of a home inspector, and who does not have, and never has had, a material financial interest in either the provision of home inspection services or an activity directly related to the home inspection profession at any time during the 5 years preceding appointment.
- III. The board shall be an administratively attached agency, under RSA 21:4-G-10, to the department of state.
- 329-B:4 Compensation and Expenses. Members of the board shall each be allowed the sum of \$30 per day and their necessary traveling expenses incurred in carrying out their official duties.
- 329-B:5 Organization and Meetings. The regular meetings each year, and special meetings may be held at such times as the business of the board may require. Notice of all meetings shall be given in such manner as the rules of the board may provide. The board shall annually elect a chairperson and a vice chairperson from among its members. A quorum of the board shall consist of not less than 3 members, at least one of whom shall be a public member.
- 329-B:6 Fees. The board shall establish fees for examination of applicants, for licensure and for renewal of licensure to practice under this chapter, and for transcribing and transferring records and other services. The fees established by the board shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the board for the previous fiscal year.
- 329-B:7 Receipts and Disbursements. The board shall receive and account at least monthly for all moneys derived under the provisions of this chapter, and shall pay the same to the state treasurer. The board may employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures from this fund for any purpose which, in the opinion of the board, is reasonably necessary for the proper performance of its duties under this chapter. Under no circumstances shall the total amount of payments made hereunder exceed the amount of the fees collected hereunder. Any balance in the account shall lapse at the end of each fiscal year.
- 329-B:8 Examinations. The board shall have authority to examine and license home inspectors. When issued, such license shall be valid throughout the state, and the licensee shall be entitled to perform the work of a home inspector anywhere within the state without any payment or additional fee. Each applicant for a license shall present to the board on a blank furnished by the board a written application for license, containing such information as the board may require, accompanied by the required fee. Such examinations shall be held at such times and places as the board shall determine. The scope of such examinations and the methods of procedure shall be prescribed by the board.
- 329-B:9 Rulemaking. The board shall adopt rules, pursuant to RSA 541-A, relative to:
- I. The design and content of all forms and applications required under this chapter.
- II. The application procedure for a license to practice under this chapter.
- III. The qualifications of applicants in addition to those requirements set under this chapter.
- IV. How an applicant shall be examined, including the time, place, type and form of the examination.
- V. The disposition of examinations, including provision of test results to examinees.
- VI. How a license to practice under this chapter shall be renewed, including the requirements for continuing education.
- VII. The establishment of all fees required under this chapter.
- VIII. Ethical and professional standards required to be met by each holder of a license to practice under this chapter and how disciplinary actions by the board shall be implemented for violations of these standards.
- IX. The training and experience requirements of home inspectors, and of apprentices.
- X. Procedures for the conduct of hearings consistent with the requirements of due process.
- 329-B:10 License Criteria.
- I. No person shall provide, nor present, call or represent himself or herself as able to provide a home inspection for compensation unless licensed in accordance with the provisions of this chapter. No business entity may provide home inspection services unless each of the home inspectors employed by the business entity is licensed in accordance with the provisions of this chapter. No business entity may use, in connection with the name or signature of the business entity, the title "home inspectors" to describe the business entity, unless each of the home inspectors employed by the business entity is licensed in accordance with the provisions of this chapter.
- II. To be eligible for a license as a home inspector, an applicant shall fulfill the following requirements:
- (a) Be of good moral character.
- (b) Have successfully completed high school or its equivalent.
- (c) Have completed a course of study of no less than 80 hours that covers all of the following components of a residential building of 4 units or less: heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof covering, exterior and interior components and site aspects as they affect the building.
- (d) Have acquired the required training and experience requirements as established by the board.
- 329-B:11 Expiration and Renewal of License. Any license issued by the board shall expire on the last day of the month of the licensee's birth, but may be renewed during the following month, retroactive to the first day of the month. The fee for renewal of all licenses issued under this chapter shall be established by the board. Upon failure to pay the renewal fee within the required period, a licensee may renew his or her license by submitting the required fee plus \$10 before the last day of the second month following the month of his or her birth. Any application received thereafter shall be rejected, unless accompanied by proof of successful completion of the examination required under RSA 329-B:8. A licensed home inspector shall complete at least 20 hours of board approved continuing education during each calendar year in order to maintain his or her license.
- 329-B:12 Exclusions. A licensed home inspector shall not be required to perform any action or make any determination unless specifically required by lawful authority. Inspectors are not required to determine:
- I. The condition of systems or components which are not readily accessible.
- II. The remaining life of any system or component.
- III. The strength, adequacy, effectiveness or efficiency of any system or component.
- IV. The causes of any condition or deficiency.
- V. The methods, materials, or costs of corrections.
- VI. Future conditions including, but not limited to, failure of systems and components.
- VII. The suitability of the property for any specialized use.
- VIII. Compliance with regulatory requirements (codes, regulations, laws, ordinances, etc.).
- IX. The market value of the property or its marketability.
- X. The advisability of the purchase of the property.
- XI. The presence of potentially hazardous plants or animals including, but not limited to, wood destroying organisms or diseases harmful to humans.
- XII. The presence of any environmental hazards including, but not limited to, toxins, carcinogens, noise, and contaminants in soil, water and air.
- XIII. The effectiveness of any system installed or methods utilized to control or remove suspected hazardous substances.
- XIV. The operating costs of systems or components.
- XV. The acoustical properties of any system or component.
- 329-B:13 Reciprocity. Upon payment to the board of a fee and the submission of a written application form provided by the board, the board shall issue a home inspector license to any person who holds a valid license, certificate, or registration issued by another state or possession of the United States or the District of Columbia that has standards substantially equivalent to, or exceeding, those of this state, as determined by the board.
- 329-B:14 Persons Not Eligible to be Licensed. Nothing in this chapter prevents:
- I. A person who is employed by a governmental entity from inspecting residential buildings if the inspection is within official duties and responsibilities.
- II. A person from performing a home inspection if the inspection will be used solely by a bank, savings and loan association or credit union to monitor progress on the construction of a residential structure.
- III. A person who is employed as a property manager for a residential structure and whose official duties and responsibilities include inspecting the residential structure from performing an inspection on the structure if the person does not receive separate compensation for the inspection work.
- IV. A person who is regulated in another profession from acting within the scope of that person's license, registration or certification.
- 329-B:15 Disciplinary Action.
- I. The board may undertake disciplinary proceedings:
- (a) Upon its own initiative; or
- (b) Upon written complaint of any person which charges that a person licensed by the board has committed misconduct under paragraph II and which specifies the grounds thereof.
- II. Misconduct sufficient to support disciplinary proceedings under this section shall include:
- (a) The practice of fraud or deceit in procuring or attempting to procure a license to practice under this chapter;
- (b) Conviction of a felony or any offense involving moral turpitude;
- (c) Any unprofessional conduct, or dishonorable conduct unworthy of, and affecting the practice of, the profession;
- (d) Unfitness or incompetency by reason of negligent habits or other causes; or negligent or willful acts performed in a manner inconsistent with the health or safety of persons under the care of the licensee;
- (e) Addition to the use of alcohol or other habit-forming drugs to a degree which renders him or her unfit to practice under this chapter;
- (f) Mental or physical incompetency to practice under this chapter;
- (g) Willful or repeated violation of the provisions of this chapter; or
- (h) Suspension or revocation of a license, similar to one issued under this chapter, in another jurisdiction and not reinstated.
- III. The board may take disciplinary action in any one or more of the following ways:
- (a) By reprimand;
- (b) By suspension, limitation or restriction of license or certification for a period of up to 5 years;
- (c) By revocation of license or certification;
- (d) By requiring the person to participate in a program of continuing education in the area or areas in which he or she has been found deficient;
- (e) By requiring the home inspector to obtain insurance against loss, expense and liability resulting from errors and omissions or neglect in the performance of services as a home inspector; or
- (f) By requiring the home inspector to file with the board a bond that is furnished by a company authorized to do business in this state and is in the amount approved by the board.
- 329-B:16 Prohibited Acts. A licensed home inspector shall be prohibited from the following:
- I. Performing or offering to perform, for an additional fee, any repairs to a structure on which the inspector, or the inspector's company, has prepared a home inspection report in the past 12 months, except that a home protection company that is affiliated with or that retains a home inspector does not violate this section if it performs repairs pursuant to a claim made under a home protection contract.
- II. Inspecting for a fee any property in which the inspector, or the inspector's company, has any financial interest or any interest in the transfer of the property.
- III. Offering or delivering any compensation, inducement or reward to the owner of the inspected property, broker or agent, for the referral of any business to the inspector or the inspection company.
- IV. Accepting an engagement to make an inspection or to prepare a report in which the inspection itself, or the fee payable for the inspection, is contingent upon either the conclusions in the report, preestablished findings, or the close of escrow.
- 329-B:17 Liability of Home Inspectors.
- I. An action to recover damages for any act or omission of a home inspector relating to a home inspection that he or she conducts may only be commenced within 1 year after the date that a home inspection is completed.
- II. Only a client and no other party shall have an action to recover damages arising from a home inspection or a home inspection report.
- 329-B:18 Appeals. Any person affected by a final decision of the board may appeal such final decision pursuant to RSA 541.
- 2 Effective Date. This act shall take effect January 1, 2007.

AMENDED ANALYSIS

This bill establishes the licensure of persons providing home inspection services and the regulation of such persons by a board of home inspectors.

2006-0064b

Amendment to HB 645-FN

Proposed by the Committee on Ways and Means - R

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

AN ACT relative to fire-safer cigarettes.

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

2 New Chapter; Trade and Commerce; Sale of Fire-Safer Cigarettes. Amend RSA by inserting after chapter 339-E the following new chapter:

- CHAPTER 339-F
SALE OF FIRE-SAFER CIGARETTES
- 339-F:1 Definitions. In this chapter:
- I. "Cigarette" means any roll for smoking made wholly or in part of tobacco, and wrapped in any material except tobacco.
- II. "Commissioner" means the commissioner of safety.
- III. "Manufacturer" means any person engaged in the business of importing, exporting, producing, or manufacturing tobacco products who sells his or her product only to licensed wholesalers.
- IV. "Retailer" means any person who sells tobacco products to consumers, and any vending machine in which tobacco products are sold.
- V. "Sale" or "sell," means any transfer, whether by bargain, gift, exchange, barter, or otherwise.
- VI. "Vending machine operator" means any person operating one or more tobacco product vending machines on property or premises other than his or her own.
- VII. "Wholesaler" means any person doing business in this state who shall purchase all of his or her unstamped tobacco products directly from a licensed manufacturer, and who shall sell all of his or her products to licensed wholesalers, sub-jobbers, vending machine operators, retailers, and those persons exempt from the tobacco tax under RSA 78:7-b.
- 339-F:2 Rulemaking; Cigarette Fire-Safety Standards. Pursuant to RSA 541-A:3-a, the commissioner, in consultation with the state fire marshal, shall incorporate by reference the New York fire safety standards for cigarettes effective June 28, 2004 as amended, as the fire safety standards for cigarettes sold or offered for sale in this state.
- 339-F:3 Prohibited Sales.

- II. On and after July 1, 2007, no cigarettes shall be sold or offered for sale in this state unless the manufacturer has certified in writing to the department of safety and the department of justice that such cigarettes meet the performance standards established under RSA 339-F:2. Copies of such written certifications shall be provided by the certifying manufacturer to all wholesale dealers and all agents.
- III. The commissioner also shall adopt, by rule, procedures by which retail dealers are notified of which cigarettes have been certified by manufacturers as meeting the performance standards prescribed by the department of safety.
- IV. Nothing in this section shall be construed to prohibit any person or entity from selling cigarettes that have not been certified by the manufacturer in accordance with RSA 339-F:2 if such cigarettes are or shall be stamped for sale in another state or are packaged for sale outside the United States.
- IV. No person shall sell tobacco products through a vending machine unless access to the machine is readily available or it is constructed so as to permit the commissioner, or his or her agent, to readily determine whether the packages of tobacco products being sold comply with the requirements of this chapter.
- 339-F:4 Penalties; Enforcement.
- I. A person who violates this section shall be guilty of a violation for a first offense and a misdemeanor for each subsequent offense.
- II. Any cigarettes sold, offered for sale, or possessed for sale in this state, in violation of RSA 339-F:3 shall be deemed contraband under RSA 78:16 and such cigarettes shall be subject to seizure and forfeiture, and all such cigarettes so seized and forfeited shall be destroyed and not resold.
- 339-F:5 Enforcement by Department of Justice. The department of justice may bring an action to enforce the criminal penalties in RSA 339-F:4 and to enjoin further acts in violation of this chapter. In any action brought pursuant to this section, the department shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees.
- 3 Date for Adoption of Fire-Safety Standards. The commissioner of safety shall adopt the rules required under this chapter by January 1, 2007.
- 4 Access to Vending Machines. Amend RSA 78:2, III to read as follows:
- III. No person shall sell tobacco products through a vending machine unless access to said machine is readily available or it is constructed so as to permit the commissioner, or his or her agent, to readily determine whether the packages of tobacco products being sold have proper stamps affixed to them which show payment of the tobacco tax imposed under RSA 78:7 and whether they comply with RSA 339-F.
- 5 Effective Date. This act shall take effect 60 days after its passage.

2006-0347a

Floor Amendment to HB 650-FN-LOCAL
Proposed by Reps. Carter, W.P. Campbell, Dunn, Ward and Ingbrethson

Amend the title of the bill by replacing it with the following:
AN ACT distributing aid based on median household income.
Amend the bill by replacing all after the enacting clause with the following:

- I. New Section; School Money; Aid Based on Median Household Income. Amend RSA 188 by inserting after section 40-e the following new section:
- 198-40-d. Aid Based on Median Household Income.
- I. A municipality shall comply with the requirements of RSA 198-40-b to be eligible for aid under this section.
- II. The commissioner of the department of education shall determine the amount of aid based on median household income as follows:
- (a) 1 minus $\frac{\text{municipality's median household income}}{\text{state average median household income}}$
- (b) Multiply the result in subparagraph (a) by the municipality's average daily membership in residence. This shall equal the municipality's number of units.
- (c) Divide the municipality's number of units by the total number of units for all eligible municipalities for such fiscal year.
- (d) Multiply the result by:
- (i) The difference between \$16,684,000 and the amount of transition aid available to all municipalities under RSA 198-41, 1(e) for the 2008 and 2009 fiscal years.
- (ii) \$16,684,000 for fiscal year 2010.
- (iii) \$16,684,000 plus the average annual rate of inflation for fiscal year 2011 and every fiscal year thereafter.

This amount shall be the aid based on median household income available to a municipality. Such aid shall be distributed in accordance with RSA 198-42.

- (e) No aid shall be granted if the result of the calculation under subparagraph (a) is zero or less.
- III. In this section, "median household income" shall be the most recent data available from the Census Bureau, United States Department of Commerce.

2 School Money; Education Trust Fund. Amend the introductory paragraph in RSA 198:39, I to read as follows:

1. 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 equitable education grants to municipalities' school districts pursuant to RSA 198:42, [am] to provide low and moderate income homeowners property tax relief under RSA 198:36-198:61, and to distribute aid based on median household income pursuant to RSA 198-40-d. The state treasurer shall deposit into this fund immediately upon receipt:
- 3 Effective Date. This act shall take effect July 1, 2007.

AMENDED ANALYSIS

This bill provides eligible municipalities with aid based on median household income.

2006-0181a

Amendment to HB 653-FN-LOCAL
Proposed by the Majority of the Committee on Municipalities and County Government - R

- I. Bonds for Broadband Infrastructure Added to Permissible Bonds for Counties and Municipalities. Amend RSA 33:3 to read as follows:
- 33:3 Purposes of Issue of Bonds or Notes. A municipality or county may issue its bonds or notes for the acquisition of land, for planning relative to public facilities, for the construction, reconstruction, alteration, and enlargement or purchase of public buildings, for other public works or improvements of a permanent nature including broadband infrastructure as defined in RSA 38:38, 1(e), to be purchased or constructed in areas not served by an existing broadband carrier or provider, for the purchase of departmental equipment of a lasting character, for the payment of judgments, and for purposes of economic development which shall include public-private partnerships involving capital improvements, loans, and guarantees. The public benefit in any public-private partnership must outweigh any benefit accruing to a private party. Bonds or notes for the purposes of economic development may be issued only after the governing body of the municipality or county has held hearings and presented the public benefit findings to the public and after such issuance has been approved by the legislative body. A municipality or county shall not issue bonds or notes to provide for the payment of expenses for current maintenance and operation except as otherwise specifically provided by law.
- II. Issue of Bonds for Certain Preliminary Expenses. RSA 33:3-c is repealed and reenacted to read as follows:
- 33:3-c Issue of Bonds for Preliminary Expenses.
- I. A municipality or county may issue its bonds or notes for the purpose of defraying the cost of preliminary or final plans and specifications or other preliminary expenses incidental to, or connected with, any proposed public work or improvement of a permanent nature consisting of the construction, reconstruction, alteration, enlargement, or improvement of the following:
- (a) A public building.
- (b) A water works.
- (c) A sewerage system or sewage or waste treatment facility.
- (d) A solid waste disposal or resource recovery facility.
- II. Broadband infrastructure as defined in RSA 38:38 to be purchased or constructed in areas not served by an existing broadband carrier or provider.
- III. Bonds or notes shall mature over a period of not more than 30 years from the date of issue unless they are issued at the same time as bonds or notes for the public work or improvement for which such expenses were incurred, in which case said bonds or notes shall mature over a period not exceeding the expected useful life of such public work or improvement. A municipality or county may issue its bonds or notes in accordance with this section for planning and other preliminary expenses relating to solid waste disposal or resource recovery facilities to serve the municipality or county, notwithstanding that the facilities may later be owned by a private entity, but only for such expenses incurred prior to any binding contractual commitment to a proposed private owner, and only if such bonds or notes do not constitute "private activity bonds" as defined in section 1303(n)(7) of the United States Internal Revenue Code in 2005, as amended.
- 3 New Section; Broadband Infrastructure Bonds Authorized. Amend RSA 33 by inserting after section 3-f the following new section:
- 33:3-g Broadband Infrastructure Bonds.
- I. A municipality may issue bonds for the purpose of financing the development, construction, reconstruction, renovation, improvement, and acquisition of broadband infrastructure in areas not served by an existing broadband carrier or provider that would be provided at a fee to broadband carriers that provide broadband services. Without limiting the foregoing, broadband infrastructure may be the subject of public-private partnerships established in accordance with the provisions of RSA 38:38.

II. Bonds issued under this section shall be payable in annual payments to that the amount of annual payment of principal and interest in any year on account of any bond shall be not less than the amount of principal and interest payable in any subsequent year by more than 5 percent of the principal of the entire bond. The total amount of payments shall be sufficient to extinguish the entire bond at such bond's maturity. The first payment of principal on any bond shall be made no later than 5 years and the last payment not later than 30 years after the date issued. Each authorized issue of bonds shall be a separate and distinct loan.

III. A municipality shall not take bonds for the purpose of financing the development, construction, reconstruction, renovation, improvement, and acquisition of broadband infrastructure in areas not served by an existing broadband carrier or provider unless the request for proposals has been issued and no broadband carrier or provider has responded positively within 2 months or deployed broadband service within 14 months of the issuance of the request for proposals.

4 New Section; Extension From Debt Limit; Broadband Infrastructure. Amend RSA 33:3 by inserting after section 3-f the following new section:

- 33:3-f Exclusion From Debt Limit; Broadband Infrastructure. Municipalities may incur debt for broadband infrastructure as defined in RSA 38:38, 1(e) by the issue of bonds or notes authorized under this chapter. Any debt incurred for this purpose shall be outside the debt limit prescribed in this chapter. Such debt shall at no time be included in the net indebtedness of any municipality for the purposes of determining its borrowing capacity.
- 5 Definitions; "Broadband Infrastructure" Added to Definition of "Revenue-Producing Facilities." Amend RSA 33:8-1, VI to read as follows:
- VI. "Revenue-producing facilities" means water works, broadband infrastructure as defined in RSA 38:38, 1(e), purchased or constructed in areas not served by an existing broadband carrier or provider, sewerage systems, sewage treatment or disposal facilities, solid waste disposal or resource recovery facilities, parking facilities, facilities for the production, generation, transmission, or distribution of electricity or gas and any other real or personal property or interests in a municipality or regional water district owned or controlled by the municipality or regional water district. From the operation of which revenues are or are expected to be derived by the municipality, or regional water district.

6 New Subdivision; Broadband Access. Amend RSA 38 by inserting after section 37 the following new subdivision:

- Broadband Access
- 38:38 Broadband Access.
- I. In this section:
- (a) "Access tariff" means the fee charged on a monthly or annual basis to broadband carriers for access to the broadband infrastructure.
- (b) "Areas not served" means any part of a municipality without a wireless or facilities based broadband service provider. Wireless shall not include subscription satellite service.
- (c) "Broadband" means the transmission of information, between or among points specified by the user, with or without change in the form or content of the information as sent and received, at rates of transmission defined by the Federal Communications Commission as "broadband."
- (d) "Broadband carrier" means any provider of broadband services, except aggregators of broadband services, as defined in section 220 of the 1996 Telecommunications Act.
- (e) "Broadband infrastructure" means the construction, installation, and expansion of the facilities and equipment used to provide broadband, and any software integral to or related to the operations, support, facilitation, or interconnection of such equipment, including upgrades, and any installation, operations and support, maintenance, and other functions required to support the delivery of broadband.
- (f) "Broadband service" means the offering of broadband for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
- (g) "Open network" means any broadband infrastructure which is open to any third party users in a nondiscriminatory manner on a fair and equitable basis using publicly available access tariffs for services.
- (h) "Open network interfaces" means the technical and operational means, manners, and methods for any third party access to the broadband infrastructure, which shall be provided on the basis of generally acceptable industry standards available at the time of access.
- I. A municipality may use its broadband infrastructure for the purpose of providing an open network and assuring that third party access is available in accordance with current state and federal regulations.
- 38:39 Broadband Access Tariffs. For defraying the cost of acquisition, construction, payment of the interest on any debt incurred, management, maintenance, operation, and repair of broadband infrastructure, or the construction, enlargement, or improvement of such systems, the governing body may establish a scale of rates called access tariffs, may prescribe the manner and the time for the payment of such tariffs, and may change such tariffs when it deems advisable.
- 38:40 Broadband Fund.
- I. The funds received from the collection of access tariffs shall be kept as a separate fund to be known as the broadband fund. Such fund shall be allowed to accumulate from year to year, shall not be commingled with town or city tax revenues, and shall not be deemed part of the municipality's general fund accumulated surplus. Such fund may be expended only for the purposes specified in RSA 38:38, or for the previous expansion or replacement of broadband infrastructure.
- II. Except when a capital reserve fund is established pursuant to paragraph III, all broadband funds shall be held in the custody of the municipal treasurer. Estimates of anticipated revenues and anticipated expenditures from the broadband fund shall be prepared and submitted to the governing body as a special warrant article as set forth in RSA 32, if applicable, and shall be included as a part of the municipal budget submitted to the local legislative body for approval. Expenditures shall be within amounts appropriated by the local legislative body.
- III. At the option of the local governing body, all or part of any surplus in the broadband fund may be placed in one or more capital reserve funds held in the custody of the trustees of trust funds pursuant to RSA 35:10. If such a reserve fund is created, then the governing body, may expend such funds pursuant to RSA 35:15 without prior approval or appropriation by the local legislative body, but all such expenditures shall be reported to the municipality pursuant to RSA 38:41. This paragraph shall not be construed to prohibit the establishment of other capital reserve funds for any lawful purpose relating to broadband access.
- 38:41 Broadband Fund Report. The governing body shall annually make a report of the broadband fund to the municipality showing the expenses and income of the fund, and all other material facts. This report shall be published in the annual report of the municipality.
- 7 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

- This bill, in areas not served by an existing broadband carrier or provider:
- I. Authorizes a county or municipality to issue bonds for broadband infrastructure.
- II. Exempts broadband infrastructure bonds from municipal debt limits.
- III. Authorizes municipalities to charge broadband access tariffs, to be kept in a separate fund and expended only for broadband infrastructure.

2006-0124a

Amendment to HB 656-FN
Proposed by the Majority of the Committee on Judiciary - R

CHAPTER 137-F
MEDICAL DECISION MAKING FOR ADULTS
WITHOUT CAPACITY TO MAKE HEALTH CARE DECISIONS

- 137-1:1 Purpose and Policy.
- I. The state of New Hampshire recognizes that a person has a right, founded in the autonomy and sanctity of the person, to control the decisions relating to the rendering of his or her own medical care. In order that the rights of persons may be respected even after such persons lack the capacity to make health care decisions for themselves, and to encourage communication between patients and their attending physicians or ARNPs, the general court declares that the laws of this state shall recognize the right of a competent person to make a written declaration:
- (a) Delegating to an agent the authority to make health care decisions on the person's behalf, in the event such decisions for himself or herself, either due to permanent or temporary lack of capacity to make health care decisions;
- (b) Instructing his or her attending physician or ARNP to provide, withhold, or withdraw life-sustaining treatment, in the event such person is near death or is permanently unconscious.
- II. All persons have a right to make health care decisions, including the right to refuse cardiopulmonary resuscitation. It is the purpose of the "Do Not Resuscitate" provisions of this chapter to ensure that the right of a person to self-determination relating to cardiopulmonary resuscitation is protected, and to give direction to emergency services personnel and other health care providers in regard to the performance of cardiopulmonary resuscitation.
- 137-2:1 Definitions. In this chapter:
- I. "Advance directive" means a document allowing a person to give directions about future medical care or to designate another person to make medical decisions if he or she should lose the capacity to make health care decisions. The term "advance directives" shall include living wills and durable powers of attorney for health care.
- II. "Advanced registered nurse practitioner" or "ARNP" means a registered nurse who is licensed in good standing in the state of New Hampshire as having specialized clinical qualifications as provided in RSA 326-B:10.
- III. "Agent" means an adult to whom authority to make health care decisions is delegated under an advance directive.
- IV. "Attending physician" means the physician or advanced registered nurse practitioner, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient. If more than one physician or advanced registered nurse practitioner shares that responsibility, any one of those physicians or advanced registered nurse practitioners may act as the attending physician or ARNP under the provisions of this chapter.
- V. "Capacity to make health care decisions" means the ability to understand and appreciate generally the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care.
- VI. "Cardiopulmonary resuscitation" means those measures used to restore or support cardiac or respiratory function in the event of a cardiac or respiratory arrest.
- VII. "Commissioner" means the commissioner of the department of health and human services.
- VIII. "Do not resuscitate identification" means a standardized identification necklace, bracelet, card, or written medical order that signifies that a "Do Not Resuscitate Order" has been issued for the principal.
- IX. "Do not resuscitate order" or "DNR order" (also known as "Do not attempt resuscitation order" or "DNAR order") means an order that, in the event of an actual or imminent cardiac or respiratory arrest, chest compression and ventricular defibrillation will not be performed, the patient will not be intubated or manually ventilated, and there will be no administration of resuscitation drugs.
- X. "Durable power of attorney for health care" means a document by which a person delegates to an agent the authority to make health care decisions on the person's behalf, in the event such decisions for himself or herself, either due to permanent or temporary lack of capacity to make health care decisions.
- XI. "Emergency services personnel" means paid or volunteer firefighters, law-enforcement officers, emergency medical technicians, paramedics or other emergency services personnel, providers, or entities acting within the usual course of their professions.
- XII. "Health care decision" means informed consent, refusal to give informed consent, or withdrawal of informed consent to any type of health care, treatment, admission to a health care facility, any service or procedure to maintain, diagnose, or treat an individual's physical or mental condition except as prohibited in this chapter or otherwise by law.
- XIII. "Health care provider" means an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care, for profit or otherwise, in the ordinary course of business or professional practice.
- XIV. "Life-sustaining treatment" means any medical procedure or interventions which utilize mechanical or other medically administered means to sustain, restore, or supplant a vital function which, in the written judgment of the attending physician or ARNP, would serve only to artificially postpone the moment of death, and where the person is near death or is permanently unconscious. "Life-sustaining treatment" includes, but is not limited to, the following: mechanical respiration, kidney dialysis or the use of other external mechanical or technological devices. Life-sustaining treatment may include drugs to maintain blood pressure, blood transfusions, and antibiotics. "Life-sustaining treatment" shall not include the administration of medication, natural ingestion of food or fluids by eating and drinking, or the performance of any medical procedure deemed necessary to provide comfort or to alleviate pain.
- XV. "Living will" means a document which, when duly executed, contains the express direction that no life-sustaining treatment be given when the person executing said document has been diagnosed and certified in writing by the attending physician or ARNP to be near death or permanently unconscious, without hope of recovery from such condition and is unable to actively participate in the decision-making process.
- XVI. "Medically administered nutrition and hydration" means invasive procedures such as, but not limited to the following: Nasogastric tubes; gastrostomy tubes; intravenous feeding or hydration; and hyperalimentation. It shall not include the natural ingestion of food or fluids by eating and drinking.
- XVII. "Near death" means an incurable condition caused by injury, disease, or illness which is such that death is imminent and the application of life-sustaining treatment would, to a reasonable degree of medical certainty, as determined by 2 physicians or a physician and an ARNP, only postpone the moment of death.
- XVIII. "Permanently unconscious" means a lasting condition, indefinitely without improvement, in which thought, awareness of self and environment, and other indicators of consciousness are absent as determined by an appropriate neurological assessment by a physician in consultation with the attending physician or an appropriate neurological assessment by a physician in consultation with an ARNP.
- XIX. "Physician" means a medical doctor licensed in good standing to practice in the state of New Hampshire pursuant to RSA 329.
- XX. "Principal" means a person 18 years of age or older who has executed an advance directive pursuant to this chapter.
- XXI. "Reasonable degree of medical certainty" means a medical judgment that is made by a physician or ARNP who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
- XXII. "Residential care provider" means a "facility" as defined in RSA 161-F:1, IV, a "nursing home" as defined in RSA 151-A:1, IV, or any individual or facility licensed, certified, or otherwise authorized or permitted by law to operate, for profit or otherwise, a residential care facility for adults, including but not limited to those operating pursuant to RSA 420-D.
- XXIII. "Witness" means a person 18 years or older who is present when the principal signs an advance directive.
- 137-3:1 Freedom From Interference.

- I. No health care provider or residential care provider, and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan shall charge a person a different rate because of the existence or non-existence of an advance directive or do not resuscitate order, or require any person to execute an advance directive or require the issuance of a do not resuscitate order as a condition of admission to a hospital, nursing home, or residential care home, or as a condition of being insured for, or receiving, health or residential care services. Health or residential care services shall not be refused because a person is known to have executed an advance directive or have a do not resuscitate order.
- II. The execution of an advance directive or issuance of a do not resuscitate order pursuant to this chapter shall not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired, modified or invalidated in any manner by the withholding or withdrawal of life-sustaining treatment from an insured person notwithstanding any term of the policy or the contract.
- 137-3.1 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not affect any other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

- Advance Directive**
- 137-3.5 Scope and Duration of Agent's Authority.
- I. Subject to the provisions of this chapter and any express limitations set forth by the principal in an advance directive, the agent shall have the authority to make any and all health care decisions on the principal's behalf that the principal could make.
- II. An agent's authority under an advance directive shall be in effect only when the principal lacks capacity to make health care decisions, as certified in writing by the principal's attending physician or ARNP, and filed with the name of the agent in the principal's medical record. When and if the principal regains capacity to make health care decisions, such event shall be certified in writing by the principal's attending physician or ARNP, noted in the principal's medical record, the agent's authority shall terminate, and the authority to make health care decisions shall revert to the principal.
- III. If the principal has no attending physician or ARNP for reasons based on the principal's religious or moral beliefs as specified in his or her advance directive, the advance directive may include a provision that a person designated by the principal in the advance directive may certify in writing, acknowledged before a notary or justice of the peace, as to the lack of decisional capacity of the principal. The person so designated by the principal shall not be the agent, or a person ineligible to be the agent.
- IV. The principal's attending physician or ARNP shall make reasonable efforts to inform the principal of any proposed treatment, or of any proposal to withdraw or withhold treatment. Notwithstanding that an advance directive is in effect and irrespective of the principal's lack of capacity to make health care decisions at the time, treatment may not be given to or withheld from the principal over the principal's objection.
- V. Nothing in this chapter shall be construed to give an agent authority to:
- (a) Consent to voluntary admission to any state institution;
- (b) Consent to a voluntary sterilization; or
- (c) Consent to withholding life-sustaining treatment from a pregnant principal, unless, to a reasonable degree of medical certainty, as certified on the principal's medical record by the attending physician or ARNP and an obstetrician who has examined the principal, such treatment and procedures will not maintain the principal in such a way as to permit the continuing development and live birth of the fetus or will be physically harmful to the principal or prolong severe pain which cannot be alleviated by medication.
- 137-3.6 Requirement to Act in Accordance with Principal's Wishes and Best Interests. After consultation with the attending physician or ARNP and other health care providers, the agent shall make health care decisions in accordance with the agent's knowledge of the principal's wishes and religious or moral beliefs, as stated orally or otherwise communicated by the principal, or, if the principal's wishes are unknown, in accordance with the agent's assessment of the principal's best interests and in accordance with accepted medical practice.
- 137-3.7 Provider's Responsibilities.
- I. A principal's health care provider or residential care provider, and employees thereof, having knowledge of the principal's advance directive shall be bound to follow the directives of the principal's designated agent to the extent they are consistent with this chapter and the advance directive, and to the extent they are within the bounds of responsible medical practice.
- (a) An attending physician or ARNP, or other health care provider or residential care provider, who is requested to do so by the principal shall make the principal's advance directive or a copy of such document a part of the principal's medical record.
- (b) Any person having in his or her possession a duly executed advance directive or a revocation thereof, if it becomes known to that person that the principal executing the same is in such circumstances that the terms of the advance directive might become applicable, shall forthwith deliver the same to the health care provider or residential care provider with which the principal is a patient.
- II. A principal's health care provider or residential care provider who is aware of the principal's execution of an advance directive shall, as appropriate to the principal's medical condition and without delay, take the necessary steps to provide for written verification of the principal's lack of capacity to make health care decisions, as applicable, so that the principal's agent may be authorized to act pursuant to this chapter.
- III. Prior to the agent making a health care decision for the principal, the principal's health care provider or residential care provider shall provide the agent with the following information regarding the agent's responsibilities:
- (a) The agent shall, at all times, make health care decisions that are consistent with what the principal would have wanted, if reasonably known, had the principal had the capacity to make health care decisions.
- (b) If the principal's wishes cannot reasonably be ascertained, the agent shall, in consultation with the attending physician or ARNP, make health care decisions that are in the best interest of the principal, which may include withholding or withdrawing treatment.
- (c) The agent shall be informed by the principal's attending physician or ARNP regarding any health care decision the agent makes for the principal, and the agent shall consider the nature and consequences, including the risks, benefits and reasonable alternatives of that health care decision.
- IV. When the direction of an agent requires an act or omission contrary to the moral or ethical principles or other standards of a health care provider or residential care provider of which the principal is a patient or resident, the health care provider shall allow for the transfer of the principal and the appropriate medical records to another health care provider chosen by the principal or by the agent and shall incur no liability for its refusal to carry out the terms of the direction by the agent; provided that, the health care provider or residential care provider shall inform the agent of its decision not to participate in such an act or omission.
- 137-3.8 Restrictions on Who May Act as Agent. A person may not exercise the authority of agent while serving in one of the following capacities:
- I. The principal's health care provider or residential care provider.
- II. A representative of the principal who is an employee of the principal's health care provider or residential care provider.
- 137-3.9 Confidentiality and Access to Protected Health Information.
- I. Health care providers, residential care providers, and persons acting for such providers or under their control, shall be authorized to:
- (a) Communicate to an agent any medical information about the principal, if the principal lacks the capacity to make health care decisions, necessary for the purpose of assisting the agent in making health care decisions on the principal's behalf;
- (b) Provide copies of the principal's advance directives as necessary to facilitate treatment of the principal.
- II. Subject to any limitations set forth in the advance directive by the principal, an agent whose authority is in effect shall be authorized, for the purpose of making health care decisions, to:
- (a) Request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including, but not limited to, medical and hospital records.
- (b) Execute any releases or other documents which may be required in order to obtain such medical information.
- (c) Consent to the disclosure of such medical information.
- 137-3.10 Withholding or Withdrawal of Life-Sustaining Treatment.
- I. In the event a health care decision to withhold or withdraw life-sustaining treatment, including medically administered nutrition and hydration, is to be made by an agent, and the principal has not executed the "Living Will" component of the advance directive document, the following additional conditions shall apply:
- (a) The principal's attending physician or ARNP shall certify in writing that the principal lacks the capacity to make health care decisions.
- (b) Two physicians or a physician and an ARNP shall certify in writing that the principal is near death or is permanently unconscious.
- (c) Notwithstanding the capacity of an agent to act, the agent shall make a good faith effort to explore all avenues reasonably available to discharge the desires of the principal including, but not limited to, the principal's advance directive, the principal's written or spoken expressions of wishes, and the principal's known religious or moral beliefs.
- II. The withholding or withdrawal of life-sustaining treatment pursuant to the provisions of this chapter shall at no time be construed as a suicide or murder for any legal purpose. Nothing in this chapter shall be construed to constitute, condone, authorize, or approve suicide, assisted suicide, mercy killing, or euthanasia, or permit any affirmative or deliberate act or omission to end one's own life or to end the life of another other than to permit the natural process of dying of those near death or in a permanently unconscious condition as provided in this chapter. The withholding or withdrawal of life-sustaining treatment in accordance with the provisions of this chapter, however, shall not relieve any individual of responsibility for any criminal acts that may have caused the principal's condition.
- III. Nothing in this chapter shall be construed to condone, authorize, or approve:
- (a) The withholding of life-sustaining treatment from or to permit any affirmative or deliberate act or omission to end the life of a pregnant woman by an attending physician or ARNP when such attending physician or ARNP has knowledge of the woman's pregnant condition, unless, to a reasonable degree of medical certainty, as certified on the principal's medical record by the attending physician or ARNP and an obstetrician who has examined the principal, such treatment or procedures will not maintain the principal in such a way as to permit the continuing development and live birth of the fetus or will be physically harmful to the principal or prolong severe pain which cannot be alleviated by medication.
- (b) The arbitrary withholding or withdrawing of life-sustaining treatment from mentally incompetent or developmentally disabled persons.
- IV. Nothing in this chapter shall impair or supersede any other legal right or responsibility which any person may have to effect life-sustaining treatment in any lawful manner.
- V. Nothing in this chapter shall be construed to revoke or adversely affect the privileges or immunities of health care providers or residential care providers and others to provide treatment to persons in need thereof in an emergency, as provided for under New Hampshire law.
- VI. Nothing in this chapter shall be construed to create a presumption that in the absence of an advance directive, a person wants life-sustaining treatment to be either taken or withdrawn. This chapter shall also not be construed to supplant any existing rights and responsibilities under the law of this state governing the conduct of physicians or ARNPs in consultation with patients or their families or legal guardians in the absence of an advance directive.

- 137-3.11 Liability for Health Care Costs. Liability for the cost of health care provided pursuant to the agent's decision shall be the same as if the health care were provided pursuant to the principal's decision.
- 137-3.12 Immunity.
- I. No person acting as agent pursuant to an advance directive shall be subjected to criminal or civil liability for making a health care decision on behalf of the principal in good faith pursuant to the provisions of this chapter and the terms of the advance directive if such person exercised such power in a manner consistent with the requirements of this chapter and New Hampshire law.
- II. No health care provider or residential care provider, or any other person acting for the provider or under the provider's control, shall be subjected to civil or criminal liability or be deemed to have engaged in unprofessional conduct for:
- (a) Any act or intentional failure to act, if the act or intentional failure to act is done pursuant to the dictates of an advance directive, the directives of the principal's agent, and the provisions of this chapter, and said act or intentional failure to act is done in good faith and in keeping with reasonable medical standards pursuant to the advance directive and in accordance with this chapter; or
- (b) Failure to follow the direction of an agent of the health care provider or other such person believed to be acting in good faith and in keeping with the authority of the agent under this chapter or the contents of the principal's advance directive.
- III. Nothing in this section shall be construed to establish immunity for the failure to exercise due care in the provision of services or for actions contrary to the requirements of this chapter or other laws of the state of New Hampshire.
- IV. For purposes of this section, "good faith" means honesty in fact in the conduct of the transaction concerned.
- 137-3.13 Use of Statutory Forms.
- I. Every person wishing to execute an advance statement shall be provided with a disclosure statement substantially in the form set forth in RSA 137-3.18 prior to execution. The principal shall be required to sign a statement acknowledging that he or she has received the disclosure statement and has read and understands its contents.
- II. An advance directive executed on or after the effective date of this chapter shall be substantially in the form set forth in RSA 137-3.10.
- III. Medically administered nutrition and hydration shall not be withdrawn or withheld under an advance directive unless there is a clear expression of such power in the document.
- 137-3.14 Execution and Witnesses.
- I. The advance directive shall be signed by the principal in the presence of either of the following:
- (a) Two or more subscribing witnesses, neither of whom shall, at the time of execution, be the agent, the principal's spouse or heir at law, or a person entitled to any part of the estate of the principal upon death of the principal under a will, trust, or other testamentary instrument or deed in existence or by operation of law, or attending physician or ARNP, or person acting under the direction or control of the attending physician or ARNP. No more than one such witness may be the principal's health or residential care provider or such provider's employee. The witnesses shall affirm that the principal appeared to be of sound mind and free from duress and at the time the advance directive was signed and that the principal affirmed that he or she was aware of the nature of the document and signed it freely and voluntarily; or
- (b) A notary public or justice of the peace, who shall acknowledge the principal's signature pursuant to the provisions of RSA 456 or RSA 456-A.
- II. If the principal is physically unable to sign, the advance directive may be signed by the principal's name written by some other person in the principal's presence and at the principal's express direction.
- 137-3.15 Revocation.
- I. An advance directive consistent with the provisions of this chapter shall be revoked:
- (a) By written revocation delivered to the agent or to a health care provider or residential care provider expressing the principal's intent to revoke, signed, and dated by the principal; by oral revocation in the presence of 2 or more witnesses, none of whom shall be the principal's spouse or heir at law; or by any other act evidencing a specific intent to revoke the power, such as by burning, tearing, or obliterating the same or causing the same to be done by some other person at the principal's direction and in the principal's presence;
- (b) By execution by the principal of a subsequent advance directive;
- (c) By the filing of an action for divorce, legal separation, annulment or protective order, where both the agent and the principal are parties to such action, except when there is an alternate agent designated, in which case the designation of the primary agent shall be revoked and the alternate designation shall become effective. Re-execution or written re-affirmation of the advance directive following a filing of an action for divorce, legal separation, annulment or protective order shall make effective the original designation of the primary agent under the advance directive.
- II. A determination by a court under RSA 506:7 that the agent's authority has been revoked.
- III. A principal's health or residential care provider who is informed of or provided with a revocation of an advance directive shall immediately record the revocation, and the time and date when he or she received the revocation, in the principal's medical record and notify the agent, the attending physician or ARNP, and staff responsible for the principal's care of the revocation. An agent who becomes aware of such revocation shall inform the principal's health or residential care provider of such revocation. Revocation shall be communicated to the attending physician or ARNP.
- 137-3.16 Documents from Other States; Documents Executed Prior to Enactment. Nothing in this chapter limits the enforceability of a durable power of attorney for health care or living will or similar instrument validly executed under prior New Hampshire law or in another state or jurisdiction in compliance with the law of that state or jurisdiction. However, any exercise of power under such a previously valid or foreign advance directive or similar instrument shall be restricted by and in compliance with the requirements of this chapter and the laws of the state of New Hampshire.
- 137-3.17 Naming of Multiple Agents. If the principal lists more than one person as the agent in a durable power of attorney for health care document, the agents shall have authority in priority of the order in which their names are listed on the document, unless the method of joint agency is expressly included.
- 137-3.18 Durable Power of Attorney; Disclosure Statement. The disclosure statement which must accompany a durable power of attorney for health care shall be in substantially the following form:

INFORMATION CONCERNING THE DURABLE POWER OF
ATTORNEY FOR HEALTH CARE THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING IT, YOU SHOULD
KNOW THESE IMPORTANT FACTS:

- Except if you say otherwise in the document, this document gives the person you name as your health care agent the power to make any and all health care decisions for you when you lack the capacity to make health care decisions for yourself (in other words, you no longer have the ability to understand and appreciate generally the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care). "Health care" means any treatment, service or procedure to maintain, diagnose or treat your physical or mental condition. Your health care agent, therefore, will have the power to make a wide range of health care decisions for you. Your health care agent may consent (in other words, give permission), refuse to consent, or withdraw consent to medical treatment, and may make decisions about withholding or withdrawing life-sustaining treatment. Your health care agent cannot consent to or direct any of the following: commitment to a state institution, sterilization, or termination of treatment if you are pregnant and if the withdrawal of that treatment is deemed likely to terminate the pregnancy, unless the treatment will be physically harmful to you or prolong severe pain which cannot be alleviated by medication.
- You may explain in this document any treatment you do not want, or any treatment you want to be sure you receive. Your health care agent's power will begin when your doctor certifies that you lack the capacity to make health care decisions (in other words, that you are not able to make health care decisions). If for moral or religious reasons you do not want to be treated by a doctor or to be examined by a doctor to certify that you lack capacity, you must say so in the document and you must name someone who can certify your lack of capacity. That person cannot be your health care agent or alternate health care agent or any person who is not eligible to be your health care agent. You may attach additional pages to the document if you need more space to state your wishes.
- If you want to give your health care agent power to withhold or withdraw medically administered nutrition and hydration, you must state, "Under no conditions will your health care agent be able to direct the withholding of food and drink that you are able to eat and drink normally."
- Your health care agent shall be guided by your written instructions in this document when making decisions for you. Unless you state otherwise in the document, your agent will have the same power to make decisions about your health care as you would have had, if those decisions by your health care agent are made consistent with state law.
- It is important that you discuss this document with your doctor or other health care providers before you sign it, to make sure that you understand the nature and range of decisions which could be made for you by your health care agent. If you do not have a health care provider, you should talk with someone else who is knowledgeable about these issues and can answer your questions. Check with your community hospital or hospice for trained staff. You do not need a lawyer's assistance to complete this document, but this document is not valid unless you do not understand it, you should ask a lawyer to explain it to you.
- The person you choose as your health care agent should be someone you know and trust, and he or she must be at least 18 years old. If you choose your health or residential care provider (such as your doctor, advanced registered nurse practitioner, or an employee of a hospital, nursing home, home health agency, or residential care home, other than a relative), that person will have to choose between acting as your health care agent or as your health or residential care provider, because the law does not allow a person to do both at the same time.
- You should consider choosing an alternate health care agent, in case your health care agent is unwilling, unable, unavailable or not eligible to act as your health care agent. Any alternate health care agent you choose will then have the same authority to make health care decisions for you.
- You should tell the person you choose that you want him or her to be your health care agent. You should talk about this document with your health care agent and your doctor and advanced registered nurse practitioner and give each one a signed copy. You should write on the document itself the people and institutions who will have signed copies. Your health care agent will not be liable for health care decisions made in good faith on your behalf.
- EVEN AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS FOR YOURSELF AS LONG AS YOU ARE ABLE TO DO SO, AND TREATMENT CANNOT BE GIVEN TO YOU OR STOPPED OVER YOUR CLEAR OBJECTION. You have the right to revoke the power given to your health care agent by telling him or her, or by telling your health care provider, orally or in writing, that you no longer want that person to be your health care agent.
- This document cannot be changed or modified. If you want to make changes, you must make an entirely new document.
- THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR TWO (2) OR MORE QUALIFIED WITNESSES, WHO MUST BOTH BE PRESENT WHEN YOU SIGN AND WHO WILL ACKNOWLEDGE YOUR SIGNATURE ON THE DOCUMENT. THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:
- The person you have designated as your health care agent;
- Your spouse or heir at law;
- Your attending physician or ARNP, or person acting under the direction or control of the attending physician or ARNP;
- ONLY ONE OF THE TWO WITNESSES MAY BE YOUR HEALTH OR RESIDENTIAL CARE PROVIDER OR ONE OF YOUR PROVIDER'S EMPLOYEES.
- 137-3.19 Advance Directive; Durable Power of Attorney and Living Will. Form. An advance directive in its individual "Durable Power of Attorney for Healthcare" and "Living Will" components shall be in substantially the following form:

- NEW HAMPSHIRE ADVANCE DIRECTIVE
- NOTE: This form has two sections.
- You may complete both sections, or only one section.
- I. DURABLE POWER OF ATTORNEY FOR HEALTH CARE
- I, _____, hereby appoint _____ of _____ (Please choose only one person. If you choose more than one agent, they will have authority in priority of the order their names are listed), as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document or as prohibited by law. This durable power of attorney for health care shall take effect in the event I lack the capacity to make my own health care decisions.
- In the event the person I appoint above is unable, unwilling or unavailable, or ineligible to act as my health care agent, I hereby appoint _____ of _____ as alternate agent. (Please choose only one person. If you choose more than one alternate agent, they will have authority in priority of the order their names are listed.)
- STATEMENT OF DESIRES, SPECIAL PROVISIONS,
AND LIMITATIONS REGARDING HEALTH CARE DECISIONS.
- For your convenience in expressing your wishes, some general statements concerning the withholding or removal of life-sustaining treatment are set forth below. (Life-sustaining treatment is defined as procedures without which a person would die, such as but not limited to the following: mechanical respiration, kidney dialysis or the use of other external mechanical and technological devices, drugs to maintain blood pressure, blood transfusions, and antibiotics.) There is also a section which allows you to set forth specific directions for those or other matters. If you wish, you may indicate your agreement or disagreement with any of the following statements and give your agent power to act in those specific circumstances.
- A. LIFE-SUSTAINING TREATMENT.
1. If I am near death and permanently lack the capacity to make health care decisions, I authorize my agent to direct that:
- (Initial beside your choice of (a) or (b).)
- (a) life-sustaining treatment not be started, or if started, be discontinued.
- or
- (b) life-sustaining treatment continue to be given to me.
2. Whether near death or not, if I become permanently unconscious I authorize my agent to direct that:
- (Initial beside your choice of (a) or (b).)
- (a) life-sustaining treatment not be started, or if started, be discontinued.
- or
- (b) life-sustaining treatment continue to be given to me.
- B. MEDICALLY ADMINISTERED NUTRITION AND HYDRATION.
1. I realize that situations could arise in which the only way to allow me to die would be to not start or to discontinue medically administered nutrition and hydration. In carrying out any instructions I have given in this document, I authorize my agent to direct that:
- (Initial beside your choice of (a) or (b).)
- (a) medically administered nutrition and hydration not be started or, if started, be discontinued.
- or

Amend RSA 137-J:10, IV as inserted by section 1 of the bill by replacing it with the following:

IV. Nothing in this chapter shall impair or supersede any other legal right or responsibility which any person may have to effect life-sustaining treatment in any lawful manner; provided, that this paragraph shall not be construed to authorize any violation of RSA 137-J:7, IV.

Amend RSA 137-J:10, VI as inserted by section 1 of the bill by replacing it with the following:

VI. In the absence of an advance directive, life-sustaining treatment shall be undertaken.

Amend RSA 137-J:12, II(b) as inserted by section 1 of the bill by replacing it with the following:

(b) Failure to follow the directive of an agent if the health care provider or residential care provider or other such person believes in good faith and in keeping with reasonable medical standards that such directive exceeds the scope of or conflicts with the authority of the agent under this chapter or the contents of the principal's advance directive; provided, that this paragraph shall not be construed to authorize any violation of RSA 137-J:7, IV or RSA 137-J:10, VI.

Amend RSA 137-J:21, II as inserted by section 1 of the bill by replacing it with the following:

H. A copy of any such action shall be given in hand to the principal's attending physician or ARNP and, as applicable, to the principal's health care provider or residential care provider. To the extent they are not irreversibly implemented, health care decisions made by a challenged agent shall not thereafter be implemented without an order of the probate court or a withdrawal or dismissal of the court action; provided, that this paragraph shall not be construed to authorize any violation of RSA 137-J:7, IV.

Amend RSA 137-J:31, I as inserted by section 1 of the bill by replacing it with the following:

I. Nothing in this chapter shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding of cardiopulmonary resuscitation in any lawful manner. In such respect, the provisions of this chapter are cumulative; provided, that this paragraph shall not be construed to authorize any violation of RSA 137-J:7, IV.

2006-0355a

Amend RSA 137-J:10, VI as inserted by section 1 of the bill by replacing it with the following:

VI. In the absence of an advance directive, life-sustaining treatment shall be undertaken.

2006-0039a

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

I. New Chapter: Community Revitalization Tax Relief Incentive. Amend RSA by inserting after chapter 79-D the following new chapter:

79-E:1 Declaration of Public Benefit.

I. It is declared to be a public benefit to enhance downtown and town centers with respect to economic activity, cultural and historic character, sense of community, and in-town residential uses that contribute to economic and social vitality.

II. It is further declared to be a public benefit to encourage the rehabilitation of the many underutilized structures in urban and town centers as a means of encouraging growth of economic, residential and municipal uses in a more compact pattern, in accordance with RSA 9-B.

III. Short-term property assessment tax relief and a related covenant to protect public benefit as provided under this chapter are considered to provide a demonstrated public benefit if they encourage substantial rehabilitation and use of qualifying structures as defined in this chapter.

79-E:2 Definitions. In this chapter:

I. "Qualifying structure" means a building located in a district officially designated in a municipality's master plan, or by zoning ordinance, as a downtown, town center, central business district, or village center, or where no such designation has been made, in a geographic area which, as a result of its compact development patterns and uses, is identified by the governing body as the downtown, town center, or village center for purposes of this chapter.

II. "Substantial rehabilitation" means rehabilitation of a qualifying structure which costs at least 15 percent of the pre-rehabilitation assessed valuation or at least \$75,000, whichever is less.

III. "Tax relief" means that for a period of time determined by a local governing body in accordance with this chapter, the property tax on a qualifying structure shall not increase as a result of the substantial rehabilitation thereof.

IV. "Tax relief period" means the finite period of time during which the tax relief will be effective, as determined by a local governing body pursuant to RSA 79-E:5.

79-E:3 Adoption of Community Revitalization Tax Relief Incentive Program

I. Any city or town may adopt the provisions of this chapter by voting whether to accept for consideration requests for community revitalization tax relief incentives. Any city or town may do so by following the procedures in this section.

II. In a town, other than a town that has adopted a charter pursuant to RSA 49-D, the question shall be placed on the warrant of a special or annual town meeting by the governing body or by petition under RSA 39:2.

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

IV. If a majority of those voting on the question vote "yes," applications for community revitalization tax relief incentives may be accepted and considered by the local governing body at any time thereafter, subject to the provisions of paragraph VI of this section.

V. If the question is not approved, the question may later be voted on according to the provisions of paragraph II or III of this section, whichever applies.

VI. The local governing body of any town or city that has adopted this program may consider rescinding its action in the manner described in paragraph II or III of this section, whichever applies. A vote terminating the acceptance and consideration of such applications shall have no effect on incentives previously granted by the city or town, nor shall it terminate consideration of applications submitted prior to the date of such vote.

79-E:4 Community Revitalization Tax Relief Incentive.

I. An owner of a qualifying structure who intends to substantially rehabilitate such structure may apply to the governing body of the municipality in which the property is located for tax relief. The applicant shall include the address of the property, a description of the intended rehabilitation, any changes in use of the property resulting from the rehabilitation, and an application fee.

II. Upon receipt of an application, the governing body shall hold a duly noticed public hearing to take place no later than 60 days from receipt of the application, to determine whether the structure at issue is a qualifying structure; whether the proposed rehabilitation qualifies as substantial rehabilitation; and whether there is a public benefit to granting the requested tax relief and, if so, for what duration.

III. No later than 45 days after the public hearing, the governing body shall render a decision granting or denying the requested tax relief, or, if so granting, establishing the tax relief period.

IV. (a) The governing body may grant the tax relief, provided:

(1) The governing body finds a public benefit under RSA 79-E:7; and

(2) The specific public benefit is preserved through a covenant under RSA 79-E:8; and

(3) The governing body finds that the proposed use is consistent with the municipality's master plan or development regulations.

(b) If the governing body grants the tax relief, the governing body shall identify the specific public benefit achieved under RSA 79-E:7, and shall determine the precise terms and duration of the covenant to preserve the public benefit under RSA 79-E:8.

V. If the governing body, in its discretion, denies the application for tax relief, such denial shall be accompanied by a written explanation. The governing body's decision may be appealed either to the board of tax and land appeals or the superior court in the same manner as provided for appeals of current use classification pursuant to RSA 79-A:9 or 79-A:11 provided, however, that such denial shall be deemed discretionary and shall not be set aside by the board of tax and land appeals or the superior court except for bad faith or discrimination.

79-E:5 Duration of Tax Relief Period.

I. The governing body may grant such tax assessment relief for a period of up to 5 years, beginning with the completion of the substantial rehabilitation.

II. The governing body may in its discretion add up to an additional 2 years of tax relief for a project that results in new residential units and up to 4 years for a project that includes affordable housing.

III. The governing body shall have discretion add up to an additional 1 year of tax relief for the substantial rehabilitation of a qualifying structure located in a district designated as a historic district, or is located on or determined eligible for listing on the National Register of Historic Places, state register of historic places, or is located within and important to locally designated historic district, provided that the substantial rehabilitation is conducted in accordance with the U.S. Secretary of Interior's Standards for Rehabilitation.

79-E:6 Resumption of Full Tax Liability. Upon expiration of the tax relief period, the property shall be taxed at its market value in accordance with RSA 75:1.

79-E:7 Public Benefit. The proposed substantial rehabilitation must provide at least one of the following public benefits in order to qualify for tax relief under this chapter:

I. It enhances the economic vitality of the downtown.

II. It enhances and improves a structure that is culturally or historically important on a local, regional, state, or national level, either independently or within the context an historic district, town center, or village center in which the building is located;

III. It promotes development of municipal centers, providing for efficiency, safety, and a greater sense of community, consistent with RSA 9-B; or

IV. It increases residential housing in urban or town centers.

79-E:8 Covenant to Protect Public Benefit.

I. Tax relief for the substantial rehabilitation of a qualifying structure shall be effective only after a property owner grants to the municipality a covenant ensuring that the structure shall be maintained and used in a manner that further the public benefits for which the tax relief was granted.

II. The covenant shall be enforceable upon the tax relief period, may, if required by the governing body, be effective for a period of time up to twice the duration of the tax relief period.

III. The covenant shall include provisions requiring the property owner to obtain casualty insurance, and flood insurance if appropriate. The covenant may include, at the governing body's sole discretion, a lien against proceeds from casualty and flood insurance claims for the purpose of ensuring proper restoration or demolition or damaged structures and property. If the property owner has not begun the process of restoration, rebuilding, or demolition of such structure within one year following damage or destruction the property owner shall be subject to the termination of provisions set forth in RSA 79-E:9, I.

IV. The local governing body shall provide for the recording of the covenant to protect public benefit with the registry of deeds. It shall be a burden upon the property and shall bind all transferees and assignees of such property.

V. The applicant shall pay any reasonable expenses incurred by the municipality in the drafting, review and/or execution of the covenant. The applicant also shall be responsible for the cost of recording the covenant.

79-E:9 Termination of Covenant; Reduction of Tax Relief. Penalty.

I. If the owner fails to maintain or utilize the building according to the terms of the covenant, or fails to restore, rebuild, or demolish the structure following damage or destruction as provided in RSA 79-E:8, III, the governing body shall, after a duly noticed public hearing, determine whether and to what extent the public benefit of the rehabilitation has been diminished and shall determine whether to terminate or reduce the tax relief period in accordance with such determination. If the covenant is terminated, the governing body shall assess all taxes to the owner as though no tax relief was granted, with interest in accordance with paragraph II.

II. Any tax payment required under paragraph I shall be payable according to the following procedure:

(a) The commissioner of the department of revenue administration shall prescribe and issue forms to the local assessing officials for the payment due, which shall provide a description of the property, the market value assessment according to RSA 75:1, and the amount payable.

(b) The prescribed form shall be prepared in quadruplicate. The original, duplicate, and triplicate copy of the form shall be given to the collector of taxes for collection of the payment along with a special tax warrant authorizing the collector to collect the payment under the warrant. The quadruplicate copy of the form shall be retained by the local assessing officials for their records.

(c) Upon receipt of the special tax warrant and prescribed forms, the tax collector shall mail the duplicate copy of the tax bill to the owner responsible for the tax as the notice of payment.

(d) Payment shall be due not later than 30 days after the mailing of the bill. Interest at the rate of 18 percent per annum shall be due thereafter on any amount not paid within the 30-day period. Interest at 12 percent per annum shall be charged upon all taxes that would have been due and payable on or before December 1 of each tax year as if no tax relief had been granted.

79-E:10 Lien for Unpaid Taxes. The real estate of every person shall be held for the taxes levied pursuant to RSA 79-E:9.

79-E:11 Enforcement. All taxes levied pursuant to RSA 79-E:9 which are not paid when due shall be collected in the same manner as provided in RSA 80:1 - 80:42-a.

79-E:12 Rulemaking. The commissioner of the department of revenue administration shall adopt rules, pursuant to RSA 541-A, relative to the payment and collection procedures under RSA 79-E:9.

79-E:13 Extent of Tax Relief.

I. Tax relief granted under this chapter shall pertain only to assessment increases attributable to the substantial rehabilitation performed under the conditions approved by the governing body and not to those increases attributable to other factors including but not limited to market forces; or

II. Tax relief granted under this chapter shall be calculated on the value in excess of the original assessed value. Original assessed value shall mean the value of the qualifying structure assessed at the time the governing body approves the application for tax relief and the owner grants to the municipality the covenant to protect public benefit as required in this chapter.

79-E:14 Other Programs. The provisions of this chapter shall not apply to properties whose rehabilitation or construction is subsidized by state or federal grants or funds that do not need to be repaid totaling more than 50 percent of construction costs from state or federal programs.

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

2006-0286a

Amend RSA 79-E:2, I as inserted by section 1 of the bill by replacing it with the following:

I. "Qualifying structure" means a building located in a district officially designated in a municipality's master plan, or by zoning ordinance, as a downtown, town center, central business district, or village center, or where no such designation has been made, in a geographic area which, as a result of its compact development patterns and uses, is identified by the governing body as the downtown, town center, or village center for purposes of this chapter. If so adopted by a city or town pursuant to RSA 79-E:3, residential uses may be excluded from this definition.

Amend RSA 79-E:3, VI as inserted by section 1 of the bill by replacing it with the following:

VI. The local governing body of any town or city that has adopted this program may

Amend RSA 79-E:4, V as inserted by section 1 of the bill by replacing it with the following:

V. If the governing body, in its discretion, denies the application for tax relief, such denial shall be accompanied by a written explanation. The governing body's decision may be appealed either to the board of tax and land appeals or the superior court in the same manner as provided for appeals of current use classification pursuant to RSA 79-A:9 or 79-A:11 provided, however, that such denial shall be deemed discretionary and shall not be set aside by the board of tax and land appeals or the superior court except for bad faith or discrimination based on age, race, ethnicity, national origin, sex, or sexual orientation.

Amend RSA 79-E:5 as inserted by section 1 of the bill by replacing it with the following:

79-E:7 Public Benefit. To qualify for tax relief under this chapter, the proposed substantial rehabilitation, over its expected useful life, shall provide:

I. Future tax revenue, including tax revenue associated with the substantial rehabilitation, at least equal to the sum of the tax relief provided under this chapter and any municipal costs associated with the substantial rehabilitation, including the costs of education; and

II. At least one of the following public benefits:

(a) Enhancement of the economic vitality of the downtown;

(b) Enhancement and improvement of a structure that is culturally or historically important on a local, regional, state, or national level, either independently or within the context of an historic district, town center, or village center in which the building is located;

(c) Promoting the development of municipal centers, providing for efficiency, safety, and a greater sense of community, consistent with RSA 9-B; or

(d) Increases residential housing in urban or town centers.

2006-0197a

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

AN ACT relative to open enrollment in all school districts.

Amend the bill by inserting after section 2 the following and renumbering the original sections 3-9 to read as 4-10, respectively:

3 New Paragraph: Charter and Open Enrollment Schools; Establishment and Admission. Amend RSA 194-B:2 by inserting after paragraph VIII the following new paragraph:

VIII-a. No teacher, school administrator, or other school district official shall engage in any action for the purpose of recruiting or otherwise attempting to persuade an individual pupil to attend a specific school. No school district which causes a specific pupil to attend a specific school by engaging in recruitment or persuasion shall receive any per pupil funds for such pupil under RSA 194-B:1, and all funds for any such pupil shall remain with the pupil's resident school district.

4 Amend RSA 194-B:1, I as inserted by section 1 of the bill by replacing it with the following:

I. This law removes the residency requirements for school attendance and requires that all elementary and secondary schools adopt procedures to become open enrollment schools. The bill also prohibits teachers or other school officials from recruiting or attempting to persuade an individual pupil to attend a specific school.

2006-0301a

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

AN ACT relative to open enrollment in all school districts.

Amend the bill by inserting after section 2 the following and renumbering the original sections 3-9 to read as 4-10, respectively:

3 New Paragraph: Charter and Open Enrollment Schools; Establishment and Admission. Amend RSA 194-B:2 by inserting after paragraph VIII the following new paragraph:

VIII-a. No teacher, school administrator, or other school district official shall engage in any action for the purpose of recruiting or otherwise attempting to persuade an individual pupil to attend a specific school. No school district which causes a specific pupil to attend a specific school by engaging in recruitment or persuasion shall receive any per pupil funds for such pupil under RSA 194-B:1, and all funds for any such pupil shall remain with the pupil's resident school district.

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Amend the bill by inserting after section 2 the following and renumbering the original sections 3-9 to read as 4-10, respectively:

3 New Paragraph: Charter and Open Enrollment Schools; Establishment and Admission. Amend RSA 194-B:2 by inserting after paragraph VIII the following new paragraph:

VIII-a. No teacher, school administrator, or other school district official shall engage in any action for the purpose of recruiting or otherwise attempting to persuade an individual pupil to attend a specific school. No school district which causes a specific pupil to attend a specific school by engaging in recruitment or persuasion shall receive any per pupil funds for such pupil under RSA 194-B:1, and all funds for any such pupil shall remain with the pupil's resident school district.

4 Amend RSA 194-B:1, I as inserted by section 1 of the bill by replacing it with the following:

I. This law removes the residency requirements for school attendance and requires that all elementary and secondary schools adopt procedures to become open enrollment schools. The bill also prohibits teachers or other school officials from recruiting or attempting to persuade an individual pupil to attend a specific school.

2006-0301a

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

AN ACT relative to open enrollment in all school districts.

Amend the bill by inserting after section 2 the following and renumbering the original sections 3-9 to read as 4-10, respectively:

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2006-0301a

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

- (b) If a majority of those voting vote to rescind the provisions of RSA 194-B or to reduce the percentages of pupils eligible to attend ~~[open-enrollment or]~~ a charter ~~[schools]~~ school, then as of July 1 next following the action taken:
- 8 Charter and Open Enrollment Schools: Procedures for Adoption and Rescission. Amend RSA 194-B:4, IV to read as follows:
- IV. Upon approval by each of the district's legislative bodies and after a public hearing, 2 or more school districts may consolidate otherwise eligible resident pupils into one applicant pool for the purposes of an admissions lottery for designated charter ~~[or open-enrollment]~~ schools.
- 9 New Section: Open Enrollment Schools: Procedures for Limitation. Amend RSA 194-B by inserting after section 4 the following new section:
- 194-B:4-a Open Enrollment Schools: Limitation Provisions.
- 1(a) A school district may impose limitations on the number of its resident pupils who may attend an open enrollment school located inside or outside the school district. These limitations shall be represented as any percentage between zero and 100 percent of the school district's current pupil enrollment. The question shall be presented in accordance with the procedures set forth in RSA 194-B:4, I(a)-(d).
- (b) A school district with annual meetings, where no limitation question receives a majority vote, there shall be no limitation on the number of pupils who may attend an open enrollment school located inside or outside the school district. Where 2 or more conflicting limitation questions receive a majority vote, that combination of limitation provisions receiving a majority vote granting greatest latitude of parental choice shall apply.
- II. The wording of the limitation question shall be either or both:
- (a) "Shall no more than (any whole number from 0 to 100) percent of the district's current pupil enrollment be eligible for tuition to attend an open enrollment school located outside the school district?"; and/or
- (b) "Shall no more than (any whole number from 0 to 100) percent of the district's current pupil enrollment be eligible for tuition to attend an open enrollment school located inside the school district?"
- 10 Charter and Open Enrollment Schools: Pupil Selection. Amend RSA 194-B:9, V to read as follows:
- V (a) ~~[The district shall have the sole right to select only the open enrollment provisions of this chapter.]~~ The local school board shall have the authority to establish ~~[rules to implement]~~ procedures for the acceptance or denial of open enrollment pupils. Such procedures shall specify, in part, that no school district shall be required to accept a pupil from another school district if doing so would result in an unreasonable increase in the pupil/teacher ratio as determined by the local school board.
- (b) Open enrollment pupils shall be required to reapply for admission each school year.
- (c) A local school board shall not deny the payment of money as set forth in RSA 194-B:11 to another school district which has accepted an open enrollment pupil.
- (d) Open enrollment pupils shall continue to be counted in the average daily membership in attendance of their resident district.
- (e) A parent or legal guardian aggrieved by the decision of a local school board under this section may appeal such decision to the state board of education.
- 11 Charter and Open Enrollment Schools. Amend the introductory paragraph to RSA 194-B:1, I to read as follows:
1. There shall be no tuition charge for any pupil attending ~~[or open-enrollment]~~ a public elementary or secondary school 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]~~ public elementary or secondary schools located in a pupil's resident district. For any other charter ~~[or open-enrollment]~~ school authorized by the school district or the state board of education, or for a school district which has accepted an open enrollment pupil, 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]~~ education's cost per pupil by district report 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 no more than the average cost per pupil equal to the amount determined in RSA 194-B:4-c. If this amount exceeds the average costs per pupil in the receiving district, then such excess shall be returned to the pupil's resident district. If this amount is less than the average cost per pupil in the receiving district, the school board of the receiving district may opt to accept such amount as full payment of tuition for the school year or may require the parent or legal guardian to pay the difference, or a portion thereof. Tuition amounts shall be presented 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.]~~
- 12 District Liability for Elementary or Junior High School Tuition. Amend RSA 193:4 to read as follows:
- 193:4 District Liability for Elementary or Junior High School Tuition. Any district shall pay for the tuition of any pupil who, as a resident of the district, has been assigned to attend a public elementary or junior high school or school of corresponding grade in another district and any district not maintaining an elementary or junior high school or school of corresponding grade shall pay for the tuition of any pupil as provided in RSA 194-B:11, I, who, as a resident of the district, after fall investigation by the state board of education is determined to be entitled to have such tuition paid by the pupil's resident district, and who attends an approved public elementary or junior high school or public school of corresponding grade in another district. Except under contract the liability of any school district under this section for the tuition of any pupil shall be the current expenses of operation of the receiving district for its elementary or junior high school or public school of corresponding grade, as estimated by the state board of education for the preceding school year. This current expense of operation shall include all costs except costs of transportation of pupils.
- 13 Public Legal Residence Required. RSA 193:12 is repealed and reenacted to read as follows:
- 193:12 Legal Residence Required.
- I. For purposes of this section, the legal residence of a pupil shall be as follows:
- (a) In the case of a minor, legal residence is where his or her parents reside, except that:
- (1) If the parents live apart and are not divorced, legal residence is the residence of the parent with whom the child resides.
- (2) In a divorce decree where parents are awarded 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 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 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.
- (b) If the minor guardian appointed by a New Hampshire court of competent jurisdiction or a court of competent jurisdiction in another state, territory, or country, legal residence is where the guardian resides. If the department of health and human services has been appointed legal guardian, the residence of the minor is where the child is placed by the department or the court. Legal guardianship shall not be appointed solely for the purpose of allowing a pupil to attend school in a district other than the district of residence of the minor's parent or parents. Whenever a petition for guardianship or legal custody is filed in a court of competent jurisdiction on behalf of a relative of a child, other than a parent, the child shall be permitted to attend school in the district in which the relative of the child resides pending a court determination relative to custody or guardianship.
- (c) No minor placed in a home for children or health care facility, as defined in RSA 193:27, by another state which charges the state of New Hampshire, a political subdivision of the state of New Hampshire, or a New Hampshire school district, for the regular or special education costs for New Hampshire children placed in that state, shall be deemed a legal resident for purposes of school assignment, unless the sending state agrees to reimburse the receiving district, as defined in RSA 193:27, for regular education costs.
- II. For the purposes of this title, "legal residence" of a school district means a natural person who is domiciled in the school district and who, if temporarily absent, demonstrates an intent to maintain a principal dwelling place in the school district indefinitely and to return there, coupled with an act or acts consistent with that intent. A married person may have a domicile independent of the domicile of his or her spouse. If a person removes to another town with the intention of remaining there indefinitely, that person shall be considered to have lost residence in the town in which the person originally resided even though the person intends to return at some future time. A person may have only one legal residence at a given time.
- III. For the purposes of this section, the legal residence of a child of homeless parents is where the child temporarily resides unless the parents and another school district agree that the child's attendance in school in that school district will be in the best interests of the child in that continuity of education will be provided and transportation will not be unduly burdensome to the school district. "A child of homeless parents" means a child whose parents:
- (a) Lack a fixed, regular and adequate residence; or
- (b) Have a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations such as public assistance hotels, emergency shelters, battered women's shelters, and transitional housing facilities, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings.
- IV. Except as provided in subparagraph (b)(3), nothing in this section shall limit the right of any child to attend in any home for children, as defined in RSA 193:27, or of any child placed in the home of a relative of that child by the department of health and human services, or placed in the home of a relative or friend by a court pursuant to RSA 169-B, RSA 169-C, RSA 169-D, or RSA 463, to attend the public schools of the school district in which the home for children or home of the relative or friend in which a child is placed by the department of health and human services or by a court of competent jurisdiction is located, as provided in RSA 193:28.
- V. Whenever a parent or guardian voluntarily places a child with a relative at the recommendation or request of the department of health and human services, that child shall be permitted to attend the public schools of the school district in which that relative resides provided that:
- (a) Upon request of the school district, the department of health and human services shall confirm that the department recommended or requested that the child be placed with the relative to promote the child's well being, and not for the purpose of allowing the child to attend school in the district where the relative resides; and
- (b) Upon request of the school district, the relative shall take reasonable steps to secure a court award of guardianship over the child, the child being allowed to attend school in that district while the relative seeks guardianship.
- VI. Whenever a dispute arises between 2 or more school districts as to the residency of a child who is in the legal custody or guardianship of the department of health and human services, or who has been placed pursuant to a court order in a proceeding under RSA 169-B, RSA 169-C, RSA 169-D, or RSA 463, the department of health and human services may request in writing that the respective superintendents resolve the dispute. If the residency dispute remains unresolved 10 days after such request, the department of health and human services may request that the commissioner of the department of education determine the residence of the child. The child may attend school in the district in which the child has been placed by the court or the department of health and human services pending the resolution of the residency dispute. Liability as to the cost of school attendance provided under this paragraph shall be determined by the commissioner of education.
- VII. If more than one school district is in a residency dispute or the parents who live apart cannot agree on the residence of a minor child, the respective superintendents shall jointly make such decision. In those instances when an agreement cannot be reached in a timely manner, the commissioner of education shall make a determination and such determination shall be final. No school district shall deny a pupil implementation of an existing individual education plan. A pupil shall remain in attendance in the pupil's school of origin during the pendency of a determination of residency and shall be counted in the average daily membership in residence in the district of residence. In this paragraph, "school of origin" means the school the child attended when permanently housed or the school in which the child was last enrolled. Notwithstanding the provisions of RSA 21-N:11, if any person aggrieved by a determination of the commissioner may appeal such determination to a court of competent jurisdiction.
- VIII. Nothing in this section shall require a district to provide transportation for a student beyond the geographical limits of that district.
- IX. Each school district shall adopt an admission and attendance of students policy.
- X. The commissioner of education may enter into agreements with other states relative to liability for educational costs, including special education costs, of students placed in New Hampshire by those states, or of students placed outside the state of New Hampshire.
- XI. For the purpose of determining liability for a child placed and cared for in any home for children or health care facility, the provisions of RSA 193:29 shall apply.
- 14 Cooperative School Districts: Modification. Amend RSA 195:31 to read as follows:
- 195:31 Modification. In the event that the cooperative district adopts the provisions of RSA 194-B, ~~[and the cooperative district also adopts open enrollment percentage amounts pursuant to RSA 194-B:4-c]~~ the percentage of pupils authorized by a vote of the cooperative district shall be permitted to attend a charter school which may be established in the district and approved by the voters in accordance with RSA 194-B:3.
- 15 Authorized Regional Schools: Provision. Amend RSA 195:42, V(p) to read as follows:
- (p) Whether the districts within the area plan shall adopt the provisions of RSA 194-B, and how the adoption of such provisions ~~[and the adoption of the open enrollment percentage limitations]~~ will affect the districts within the area plan;
- 16 Repeal. The following are repealed:
1. RSA 194-B:2, I, providing that a school district legislative body may vote to designate a school as an open enrollment school.
- II. RSA 194-B:2, III, relative to requiring that no public school shall be required to be an open enrollment school.
- III. RSA 194-B:4, I(a)(2), relative to the adoption by a city or town of open enrollment provisions.
- 17 Effective Date. This act shall take effect 60 days after its passage.

This bill:

- I. Amends the requirements for school attendance.
- II. Provides that all school districts shall be deemed open enrollment districts, but allows a school district to control open enrollment by authorizing the local school board to adopt procedures governing the acceptance and denial of open enrollment pupils.
- III. Provides that no local school board shall deny the payment of money as set forth in RSA 194-B:11 to another school district which has accepted an open enrollment pupil.
- IV. Allows municipalities to limit the percentage of the pupil population eligible to attend a school located inside or outside of the resident district.

2006-0316b

Floor Amendment to HB 686-FN
Proposed by Reps. Major, Camm and Almy

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

AN ACT establishing a committee to study state laboratory water tests and fees for such tests collected by the department of environmental services.

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

- 1 Committee Established. There is established a committee to study water tests conducted by the state laboratory of hygiene and water test fees collected by the department of environmental services.
- 2 Membership and Compensation.
1. The members of the committee shall be as follows:
- (a) Five members of the house of representatives, 2 from the resources, recreation and development committee, 2 from the ways and means committee, and one from the finance committee, appointed by the speaker of the house of representatives.
- (b) Five members of the senate, appointed by the president of the senate.
2. 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 water tests conducted by the state laboratory of hygiene and water test fees collected by the department of environmental services. The committee shall evaluate the need for future additions to existing laboratory tests and equipment and make recommendations for laboratory test fees and distributions to the laboratory equipment and replacement fund.
- 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.
- 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, 2006.
- 6 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill establishes a committee to study water tests conducted by the state laboratory of hygiene and water test fees collected by the department of environmental services.

2006-0170b

Amendment to HB 686-FN
Proposed by the Minority of the Committee on Municipal and County Government - R

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

- 1 University System Property: Payment in Lieu of Taxes. Amend RSA 187-A:25 to read as follows:
- 187-A:25 Tax Exemption. The property of the university system of New Hampshire and each of its constituent institutions and divisions is exempt from taxation. *However, the university system of New Hampshire shall for a 5-year period pay, in lieu of real estate taxes, to the municipality in which any property acquired after April 1, 2006 is located, an amount in the first year equal to the amount that would have been paid as ad valorem taxes in respect to such property, had it been used by a nongovernmental person, and an amount in subsequent years reduced from the first year by 20 percent each year except that the value of the property acquired shall be determined at the time of acquisition and subsequent payments in lieu of taxes shall utilize that valuation.*
- 2 Effective Date. This act shall take effect April 1, 2006.

This bill requires for a 5-year period a payment in lieu of taxes to be made by the university system of New Hampshire for property purchased after April 1, 2006.

2006-0273b

Floor Amendment to HB 695-FN
Proposed by Rep. M. Cooney

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

- 1 University System Property: Payment in Lieu of Taxes. Amend RSA 187-A:25 to read as follows:
- 187-A:25 Tax Exemption. The property of the university system of New Hampshire and each of its constituent institutions and divisions is exempt from taxation. *However, the university system of New Hampshire shall for a 5-year period pay, in lieu of real estate taxes, to the municipality in which any property acquired after April 1, 2006 is located, an amount in the first year equal to the amount that would have been paid as ad valorem taxes in respect to such property, had it been used by a nongovernmental person, and an amount in subsequent years reduced from the first year by 20 percent each year except that the value of the property acquired shall be determined at the time of acquisition and subsequent payments in lieu of taxes shall utilize that valuation.*
- 2 Effective Date. This act shall take effect April 1, 2006.

This bill requires for a 5-year period a payment in lieu of taxes to be made by the university system of New Hampshire for property purchased after April 1, 2006.

2006-0270b

Floor Amendment to HB 722
Proposed by Reps. Eaves and Merriek

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

5 New Subdivision: Biosolids, Septage, Short Paper Fiber, Sludge, and Solid Waste. Amend RSA 483 by inserting after section 15 the following new subdivision:

Biosolids, Septage, Short Paper Fiber, Sludge, and Solid Waste

483.16 Definitions. In this chapter:

1. "Biosolids" mean biosolids as defined in RSA 485-A:2, XXII.
- II. "Septage" means septage as defined in RSA 485-A:2, IX-a.
- III. "Short paper fiber" means short paper fiber as defined in RSA 485-A:2, XXIII.
- IV. "Sludge" means sludge as defined in RSA 485-A:2, XI-a.
- V. "Solid waste" means solid waste as defined in RSA 149-M:4, XXII.

483.17 Land Application of Biosolids, Septage, Short Paper Fiber, Sludge, and Solid Waste.

1. Within a protected river corridor, any land application or stockpiling of biosolids, septage, short paper fiber, sludge, and solid waste shall be set back a minimum of 250 feet from the normal high water mark of the protected river.
- II. Along tributaries within a protected river corridor and outside the 250-foot setback required under paragraph I:
- (a)(i) If immediately incorporated into the soil, any land application of biosolids, septage, short paper fiber, sludge, and solid waste shall be set back a minimum of 75 feet from the normal high water mark of the tributary on land which has a slope less than 15 percent; or
- (ii) If not immediately incorporated into the soil, the application shall be set back 125 feet from the normal high water mark of the tributary on land which has a slope less than 15 percent, and shall only be applied to established forage crops.
- (b) Any stockpiling of biosolids, septage, short paper fiber, sludge, and solid waste shall be set back a minimum of 250 feet from the normal high water mark of the tributary.
- III. The provisions of this section shall not apply to biosolids that are sold for home gardening use in consumer packages registered as fertilizers under RSA 431:4 and that weigh 100 pounds or less.
- 483.18 Excepting; Manure, Lime, and Wood Ash. The provisions of RSA 483:17 shall not apply to manure, lime, or wood ash, when used for agricultural purposes.
- 483.19 Excepting; Temporary Use Authorization. The provisions of RSA 483:17 shall not apply to biosolids, septage, short paper fiber, sludge, and solid waste when applied to existing land uses except under 1908, 56:6, as amended by 2003, 43:14, unless the required departmental permit issued under applicable rules is not removed, is revoked, or is allowed to lapse.
- 483.20 Excepting; Scientific Research. The restrictions on the land application of biosolids, septage, short paper fiber, sludge, and solid waste contained in this subdivision shall not apply to qualifying land that is used for scientific research on biosolids, septage, short paper fiber, sludge, and solid waste conducted by the university of New Hampshire and the New Hampshire department of environmental services. Any continued application of biosolids, septage, short paper fiber, sludge, and solid waste 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.
- 6 Effective Date. This act shall take effect 60 days after its passage.

2006-0272b

Floor Amendment to HB 722

Proposed by Rep. Hall

Amend the bill by replacing all after the section 4 with the following:
§ New Subdivision; Biosolids, Septage, Short Paper Fiber, Sludge, and Solid Waste. Amend RSA 483 by inserting after section 15 the following new subdivision:
Biosolids, Septage, Short Paper Fiber, Sludge, and Solid Waste

- 483:16 Definitions. In this chapter:
- "Biosolids" means biosolids as defined in RSA 485-A:2, XXII.
 - "Septage" means septage as defined in RSA 485-A:2, IX-a.
 - "Short paper fiber" means short paper fiber as defined in RSA 485-A:2, XXIII.
 - "Sludge" means sludge as defined in RSA 485-A:2, XI-a.
 - "Solid waste" means solid waste as defined in RSA 149-M:4, XXII.
- 483:17 Land Application of Biosolids, Septage, Short Paper Fiber, Sludge, and Solid Waste.
- Within a protected river corridor, any land application or stockpiling of biosolids, septage, short paper fiber, sludge, and solid waste shall be set back a minimum of 250 feet from the normal high water mark of the protected river and the land application of such materials shall be immediately incorporated into the soil.
 - Along tributaries within a protected river corridor and outside the 250-foot setback required under paragraph I:
 - Any land application of biosolids, septage, short paper fiber, sludge, and solid waste shall be set back a minimum of 75 feet from the normal high water mark of the tributary on land which has a slope less than 15 percent.
 - Any stockpiling of biosolids, septage, short paper fiber, sludge, and solid waste shall be set back a minimum of 200 feet from the normal high water mark of the tributary.
 - The provisions of this section shall not apply to biosolids that are sold for home gardening use in consumer packages registered as fertilizers under RSA 431:4 and that weigh 100 pounds or less.
- 483:18 Exception; Manure, Lime, and Wood Ash. The provisions of RSA 483:17 shall not apply to manure, lime, or wood ash, when used for agricultural purposes.
- 483:19 Exception; Temporary Land Application. The provisions of RSA 483:17 shall not apply to biosolids, septage, short paper fiber, sludge, and solid waste when applied to existing land application sites exempt under 1998, 56:6, as amended by 2003, 43:14, unless the required departmental permit issued under applicable rules is not renewed, is revoked, or is allowed to lapse.
- 483:20 Exception; Scientific Research. The restrictions on the land application of biosolids, septage, short paper fiber, sludge, and solid waste contained in this subdivision shall not apply to qualifying land that is used for scientific research on biosolids, septage, short paper fiber, sludge, and solid waste conducted by the university of New Hampshire and the New Hampshire department of environmental services. Any continued application of biosolids, septage, short paper fiber, sludge, and solid waste 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.
- 6 Effective Date. This act shall take effect 60 days after its passage.

2006-0311h

Amendment to HB 1184
Proposed by the Committee on Municipal and County Government - C

Amend the bill by replacing section 2 with the following:
2 Effective Date. This act shall take effect upon its passage.

2006-0175h

Amendment to SB 104-FN
Proposed by the Majority of the Committee on Municipal and County Government - R

- Amend the bill by replacing all after the enacting clause with the following:
- 1 Exemption: Water and Air Pollution Control Facilities. Amend RSA 72:12-a to read as follows:
- 72:12-a Water and Air Pollution Control Facilities
- Any person, firm, or corporation which builds, constructs, installs, or places in use in this state any treatment facility, device, appliance, or installation wholly or partly for the purpose of reducing, controlling, or eliminating any source of air or water pollution shall be entitled to have the value of said facility and any real estate necessary therefor, or a percentage thereof determined in accordance with this section, exempted from the taxes levied under this chapter for the period of years in which the facility, device, appliance, or installation is used in accordance with the provisions of this section *until reimbursement for the investment costs are recovered by accumulation of value through this property tax exemption.*
 - The party owning biosolids, septage, short paper fiber, sludge, and solid waste shall be set back a minimum of 200 feet from the normal high water mark of the tributary, with a copy to the taxing authorities in the municipality where the facility is situated. Said application shall describe the facilities and their function or functions and shall state the applicant's total investment therein and the portion allocable to each function, *to be verified by the department of revenue administration. Any such exemption requested shall not exceed 25 percent of the applicant's total assessed value of the facility at the time of the exemption.*
 - The *department of environmental services* shall investigate and determine whether the purpose of the facility is solely or only partially pollution control. If the department finds that the purpose of the facility is only partially pollution control it shall determine by an allocation of the applicant's investment in the facility what percentage of the facility is used to control pollution. In making its investigation, the department may inspect the facility and request such other information from the applicant as it may require in making its determination.
 - Upon making its determination, the department of *environmental services* shall notify the applicant, the *department of revenue administration*, and the taxing authorities of the municipality where the facility is situated whether the purpose of the facility is solely pollution control, or, if not, what percentage of the applicant's investment in the facility should be allocated to pollution control.
 - V. The ~~department of environmental services~~ *department of revenue administration* shall each year separately appraise and describe the facility and related real estate ~~and estimate such appraised and description~~ *using the determination approved by the department of environmental services. Such appraisal shall be reported to the local taxing authorities* to appear in their inventory. In accordance with the provisions of this section, the taxing authority shall exempt from the taxes levied under this chapter the appraised value of the facility and any real estate necessary therefor, or the exempt percentage thereof, determined by the department of *environmental services*. The exemption period shall begin as of the April 1 next following the receipt of the ~~department of environmental services'~~ *department of revenue administration's* determination. *The department of revenue administration shall keep a record of the total of exemptions granted and shall provide the information to the owner of the facility, the municipality, and the general court annually.*
 - VI. Either the municipality ~~may~~ *the owner of the facility, or the department of revenue administration* may request a rehearing or appeal from such determination in accordance with the provisions of RSA 541.
- 2 Effective Date. This act shall take effect April 1, 2006.

AMENDED ANALYSIS

This bill limits the property tax exemption for water and pollution control facilities to the reimbursement of the amount of investment costs.

2006-0011h

Amendment to SB 110-FN-A
Proposed by the Majority of the Committee on Health, Human Services and Elderly Affairs - R

- Amend the title of the bill by replacing it with the following:
AN ACT establishing the New Hampshire Rx plus program for prescription drugs and continually appropriating a special fund.
- Amend the bill by replacing all after the enacting clause with the following:
- Statement of Purpose. The general court finds that affordability is critical in providing access to prescription drugs for New Hampshire residents. The general court hereby creates the New Hampshire Rx Plus Program to enable the state to make prescription drugs more affordable for qualified New Hampshire residents, thereby increasing the overall health of New Hampshire residents, promoting healthy communities, and protecting the public health and welfare. It is not the intent of this act to discourage employers from offering to pay or paying for prescription drug benefits for their employees or to supplant employer-sponsored prescription drug benefit plans.
 - New Chapter: New Hampshire Rx Plus Program for Prescription Drugs. Amend RSA by inserting after chapter 161-K the following new chapter:

CHAPTER 161-L
NEW HAMPSHIRE RX PLUS PROGRAM

- 161-L:1 Definitions. In this chapter:
- "Commissioner" means the commissioner of the department of health and human services.
 - "Committee" means the pharmacy and therapeutics advisory committee established in 2003, 319:176 that advises the department on the Medicaid preferred drug list.
 - "Department" means the department of health and human services.
 - "Initial discounted price" as it pertains to a drug means the average wholesale price less 10 percent.
 - "Participating pharmacy" or "retail pharmacy" means a retail pharmacy located in this state that elects to participate in the program.
 - "Preferred drug" includes but is not limited to:
 - A drug listed on the state's Medicaid preferred drug list;
 - An antipsychotic drug;
 - An antidepressant drug;
 - A chemotherapy drug;
 - An antiretroviral drug;
 - An immunosuppressive drug; and
 - Any other drug approved pursuant to this chapter.
 - "Program" means the New Hampshire Rx plus program.
 - "Qualified resident" means a resident of the state who has a family income equal to or less than 300 percent of the federal poverty level, who does not have prescription drug coverage or has exceeded the extent of their benefits, and who is enrolled in the program.
 - "Secondary discounted price" as it pertains to a drug means the initial discounted price less any further discounts paid out of the Rx plus fund.
- 161-L:2 Rx Plus Preferred Drug List; Duties of Committee.
- The department shall establish a Rx plus preferred drug list that includes but is not limited to:
 - Drugs listed on the state's Medicaid preferred drug list;
 - Antipsychotic drugs;
 - Antidepressant drugs;
 - Chemotherapy drugs;
 - Antiretroviral drugs;
 - Immunosuppressive drugs; and
 - Any other drugs approved pursuant to this chapter.
 - The committee shall review and recommend drugs for placement on the Rx plus preferred drug list, striving to identify the safest and most efficacious drugs that are available at the lowest cost. The committee's recommendations may take into consideration any of the following factors:
 - Therapeutic value for the disease or condition under treatment;
 - Clinical efficacy;
 - Safety;
 - Cost; and
 - Other relevant factors as determined by the committee.
 - When considering categories of drugs designed to treat specialized chronic medical conditions and diseases, the committee shall consult with physicians and other health care professionals with specialized clinical knowledge and expertise in this area, either in their capacity as consultants serving on the committee, or as physicians or pharmacists with a practice or specialty in chronic diseases.
 - The determination of a drug's safety and efficacy shall be consistent with the standards set forth in the peer-reviewed literature and the available sources including, but not limited to the American Hospital Formulary Service Drug Information, the United States Pharmacopoeia Drug Information, the DRUGDEX Information System, and the America Medical Association Drug Evaluations.
 - The determination of a drug's net cost shall consider the pharmacy reimbursement amount, authorized under RSA 161-L:8, as adjusted by manufacturer's rebates to be paid to the department. The committee shall not consider a drug's net cost unless it determines that the drug has no significant clinical or safety advantages over one or more alternative drugs, when used for a given purpose.
- 161-L:3 New Hampshire Rx Plus Program.
- There is established within the department, the New Hampshire Rx plus program. The program shall combine the purchasing power of all qualified residents to enable the state to reduce prescription drug costs and to improve the quality of health care for qualified New Hampshire residents in the program, thereby increasing the overall health of New Hampshire residents, promoting healthy communities, and protecting the public health and welfare, and to integrate the program as part of any statewide program for the uninsured.
 - The program shall utilize manufacturer rebates and pharmacy discounts to reduce prescription drug prices.
 - The department may administer the program or contract with a third party or third parties to administer any single component, or combination of components of the program including outreach, eligibility, claims, administration, rebate negotiations and recovery and redistribution in order to achieve the maximum possible discount for New Hampshire residents. Any contract to administer any program component shall prohibit the contractor from receiving any compensation or other benefits from any manufacturer participating in the program.
 - The department shall conduct ongoing quality assurance activities similar to those used in the Medicaid program.
- 161-L:4 Program Eligibility
- All qualified residents of the state shall be eligible to participate in the Rx plus program.
 - The department:
 - Shall establish procedures to determine eligibility and shall issue program enrollment cards to eligible qualified residents;
 - Shall undertake outreach efforts to build public awareness of the program and maximize the enrollment of eligible qualified residents; and
 - May adjust the requirements and terms of the program by rule, pursuant to RSA 541-A, to accommodate any federally-fund or authorized prescription drug program.
- 161-L:5 Rebate Agreement.
- A drug manufacturer or labeler that sells prescription drugs in the state may enter into a rebate agreement with the department for this purpose. The rebate agreement shall require the manufacturer to make rebate payments to the state each calendar quarter or according to a schedule established by the department.
 - The commissioner shall negotiate the amount of the rebate required from a manufacturer in accordance with this section.
 - The commissioner shall take into consideration the rebate calculated under the Medicaid rebate program pursuant to title 42 U.S.C. section 1395c-8, the average wholesale price of prescription drugs, and any other information on prescription drug prices and price discounts.
 - The commissioner shall use his or her best efforts to obtain an initial rebate amount equal to or greater than the rebate calculated under the Medicaid program pursuant to 42 U.S.C. section 1395c-8.
 - With respect to rebates effective July 1, 2008, the commissioner shall use his or her best efforts to obtain a rebate amount equal to or greater than the amount of any discount, rebate, or price reduction for prescription drugs provided to the federal government.
- 161-L:6 Participating and Nonparticipating Manufacturers.
- The names of manufacturers that enter and do not enter into rebate agreements pursuant to this chapter shall be deemed public information. The department shall release this information to health care providers and the public annually.
 - The department may also provide to health care providers information about the relative cost of drugs produced by manufacturers that enter into rebate agreements compared to the cost of drugs produced by those that do not enter into rebate agreements. The department shall adopt rules, under RSA 541-A, establishing procedures for the implementation of this section.
- 161-L:7 Discounted Retail Prices for Program Participants.
- Each retail pharmacy participating in the program shall sell drugs to qualified residents at the lowered initial discounted price, in addition to the secondary discounted price as such discounted prices are determined by the department pursuant to this chapter.
 - The department shall establish discounts for drugs covered by a rebate agreement and shall promote the use of safe, efficacious, and cost-effective drugs, taking into consideration:
 - Reduced prices for state and federally-capped drug programs;
 - Differential dispensing fees;
 - Administrative costs of the department; and
 - The recommendation of the committee.
 - Beginning July 1, 2007, a participating pharmacy shall offer the initial discounted price.
 - No later than July 1, 2008, a participating pharmacy shall offer the secondary discounted price, if available.
- 161-L:8 Pharmacy Reimbursement.
- A pharmacy shall submit claims to the department to verify the amount charged to program participants. On a schedule to be determined by the department, the department shall reimburse each pharmacy for the discounts of prescription drugs provided to program participants less any administrative costs incurred by the department.
 - The department shall collect pharmacy use data necessary to calculate the amount of the manufacturer rebate under RSA 161-L:5. The department shall protect the confidentiality of information received as required under state or federal law, rule, or regulation.
 - The department shall not impose transaction charges on participating pharmacies that submit claims or receive payments under the program.
- 161-L:9 Rx Plus Fund Established.
- There is hereby established in the office of the state treasurer a fund to be known as the Rx plus fund into which shall be deposited:
 - All moneys received from manufacturers who pay rebates as provided in RSA 161-L:5.
 - Appropriations made by the general court to the fund; and
 - Any other revenue designated for the fund.
 - Moneys in the fund shall be used for the following purposes:
 - Reimbursement payments to participating pharmacies for discounts provided to program participants;
 - The cost of administering the Rx plus program, including salary and benefits of employees, computer costs, and contracted services as provided in RSA 161-L:5; and
 - Any other purpose deemed necessary by the department for the purpose of operating and administering the Rx plus program.
 - All interest on Rx plus fund balances shall accrue to the Rx plus fund. Moneys in this fund shall be nonlapsing and continually appropriated to the department.

- 161-L-10 Annual Report. The department shall make a report relative to the enrollment and financial status of the Rx plus program to the speaker of the house of representatives, the president of the senate, and the governor no later than 20 days prior to the convening of each regular legislative session, beginning with the 2007 regular legislative session.
- 161-L-11 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:
- I. The application process.
 - II. Rebate agreements under RSA 161-L:5.
 - III. The administration of the Rx plus fund established in RSA 161-L:9.
 - IV. The contracting process, including confidentiality procedures, under RSA 161-L:3.
 - V. Any adjustments to accommodate any federally-funded or authorized prescription drug program pursuant to RSA 161-L:4, II(c).
 - VI. The content and form of information to be provided under RSA 161-L:6.
 - VII. The schedule for reimbursement to pharmacies under RSA 161-L:8.
- 3 New Subparagraph; Rx Plus Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (242) the following new subparagraph:
- (243) Moneys deposited in the Rx plus fund pursuant to RSA 161-L.
- 4 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill establishes the New Hampshire Rx plus program for prescription drugs. Under this bill, participating pharmacies shall sell prescription drugs to qualified residents at a discounted price. The bill grants rulemaking authority to the commissioner of the department of health and human services for the purposes of the bill.

2006-0274b

Floor Amendment to SB 128-FN

Proposed by Rep. Phinney

Amend the bill by replacing section 2 with the following:

2 Mercury Emissions Reduction. RSA 125-O:3, II(c) is repealed and reenacted to read as follows:

(c) Total mercury emissions from all affected sources burning coal as a fuel, of 50 pounds per year beginning July 1, 2009.

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

4 New Paragraphs; Emissions Reduction; Compliance. Amend RSA 125-O:4 by inserting after paragraph V the following new paragraphs:

VI. The owner of the affected source of Merrimack Units 1 and 2 shall install and have operational technology to control mercury emissions at Merrimack Units 1 and 2 no later than July 1, 2013. The achievement of this requirement is contingent upon obtaining all necessary permits and approvals from federal, state, and local regulatory agencies and bodies. The owner shall make appropriate initial filings with the department and the public utilities commission, if applicable, within one year of the effective date of this section, and with any other applicable regulatory agency or body in a timely manner.

VII.(a) If affected sources are unable to comply with the emission cap for mercury established under RSA 125-O:3, III(c), the owner may request a variance from the mercury emissions reduction requirements of this chapter by submitting a written request to the department. The request shall provide sufficient information concerning the conditions or special circumstances on which the variance request is based to demonstrate to the satisfaction of the department that variance from the applicable requirements is necessary.

(b) Where an alternative schedule is sought, the owner shall submit a proposed schedule which demonstrates reasonable further progress and contains a date for final compliance as soon as practicable. If the department deems such a delay is reasonable under the cited circumstances, it shall grant the requested variance.

(c) Where an alternative reduction requirement is sought, the owner shall submit information to substantiate an energy supply crisis, a major fuel disruption, an unanticipated or unavoidable disruption in the operations of the affected sources, or technological or economic infeasibility. The department, after consultation with the public utilities commission, shall grant or deny the requested variance. If requested by the owner, the department shall provide the owner with an opportunity for a hearing on the request.

5 Emissions Reduction; Powers and Duties of the Commissioner. Amend RSA 125-O:4, I to read as follows:

1. Develop a trading and banking program to provide appropriate compliance flexibility in meeting the emission caps established under RSA 125-O:3, III(a), (b), and (d), and to encourage earlier and greater emissions reductions and the development of new emission control technologies in order to maximize the cost-effectiveness with which the environmental benefits of this chapter are achieved. ***This paragraph shall not apply to mercury emissions under RSA 125-O:3, III(c).***

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

AMENDED ANALYSIS

This bill changes certain mercury emissions reduction standards as required by the Clean Power Act.

2006-0075b

Amendment to SB 140

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

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

1 New Subdivision; Aquatic Resource Compensatory Mitigation. Amend RSA 482-A by inserting after section 27 the following new subdivision:

Aquatic Resource Compensatory Mitigation

482-A:28 Aquatic Resource Compensatory Mitigation. In lieu of requiring other forms of compensatory mitigation, the department may accept payment for an unavoidable loss of aquatic resource functions and values from a proposed activity which at a minimum:

- I. Impacts less than one acre of wetlands and meets the criteria for a United States Army Corps of Engineers state programmatic general permit.
- II. Involves more than 200 linear feet, measured along the shoreline, of a lake or pond or its bank.
- III. Alters the course of or disturbs 200 or more linear feet of an intermittent or perennial stream or river channel or its banks. For intermittent streams, this distance shall be measured along the thread of the channel. For perennial streams or rivers, the total disturbance shall be calculated by summing the lengths of disturbances to the channel and the banks.
- IV. Exceeds one acre of impact for a public roadway or a public utility project and meets the criteria for a United States Army Corps of Engineers state programmatic general permit

482-A:29 Fund Established.

- I. There is hereby established the aquatic resource compensatory mitigation fund into which payments made under this subdivision shall be deposited. The fund shall be a separate, non-lapsing fund continually appropriated to the department to be used only as specified in this subdivision for costs related to wetlands creation or restoration, stream restoration, preservation of upland areas adjacent to wetlands, and the subsequent monitoring and maintenance of such areas.
- II. The fund may not be used to pay state personnel costs except, upon approval of the fiscal committee, to support up to one full-time position for administration of the fund and related projects. Only money from the 5 percent administrative assessment collected under RSA 482-A:30, II, and RSA 482-A:31, II, and RSA 482-A:32, II shall be used for this purpose.
- III. The state treasurer shall invest the fund as provided by law. Interest received on such investment shall be credited to the fund.
- IV. The wetlands council, established by RSA 21-O:5-a, shall approve disbursements of the aquatic resource compensatory mitigation fund based on recommendations provided by the site selection committee established under RSA 482-A:33, and in accordance with rules adopted by the commissioner.

482-A:30 Payment for Freshwater and Tidal Wetlands Losses. For freshwater and tidal wetlands losses, the in-lieu payment shall be the sum of:

- I. The cost that would have been incurred if a wetland of the same type was constructed at the ratios adopted by the department based on a price of \$65,000 per acre of wetland created, to be adjusted at the beginning of the calendar year according to the annual simple rate of interest on judgments established by RSA 336:1;
- II. The area of wetlands, as used in the calculation performed under paragraph I, times the cost of land in the municipality where the impact is occurring as calculated by the total assessed land values in the municipality, as determined by the department of revenue administration which are equalized, divided by the number of acres in the municipality to yield a per acre equalized land value; and
- III. An administrative assessment which equals 5 percent of the sum of paragraphs I and II.

482-A:31 Payment for Stream or Shoreline Losses. For stream or shoreline resource losses, the in-lieu payment shall be the sum of:

- I. The linear feet of shoreline or stream impacted times \$200, to be adjusted at the beginning of the calendar year according to the annual simple rate of interest on judgments established by RSA 336:1; and
- II. An administrative assessment which equals 5 percent of the amount in paragraph I.

482-A:32 Rulemaking. The commissioner shall adopt rules under RSA 541-A relative to:

- I. Identification of appropriate situations under which in-lieu payments may be made. The criteria in RSA 482-A:28 shall be the minimum requirements for projects eligible for in-lieu payments.
- II. The method of calculating the amount of in-lieu payments under RSA 482-A:30 and RSA 482-A:31 which shall approximate the total cost of wetlands construction or such other mitigation actions as would have been required by the department and incurred by the applicant in the absence of making such payments. An administrative assessment of 5 percent of the total cost shall be added as part of the calculation method.
- III. Criteria to use in selecting projects that would compensate for the lost aquatic resource functions or values.
 - (a) Tidal aquatic resources shall be compensated by the selection of qualifying tidal projects.
 - (b) An emphasis shall be given to selecting from among the qualifying projects those that are nearest to the site of the lost aquatic resource.
 - (c) No project shall be funded with in-lieu payments from losses that occurred outside the hydrologic unit code 8 watershed, as developed by the United States Geological Survey, in which the project is located.
 - (d) Such criteria shall be adopted in consultation with the site selection committee established under RSA 482-A:33.

482-A:33 Site Selection Committee Established.

I. There is established a site selection committee for the purpose of identifying projects to be funded from the aquatic resource compensatory mitigation fund.

II. The committee shall consist of the following members:

- (a) The commissioner of the department of environmental services, or designee.
- (b) The director of fish and game, or designee.
- (c) The director of the office of energy and planning, or designee.
- (d) The commissioner of the department of resources and economic development, or designee.
- (e) Four members of the public, appointed by the governor and council for a term of 3 years or until a successor is chosen. The members of the public shall be as follows:
 - (1) A member of a municipal conservation commission at the time of appointment, who shall be one of 3 nominees submitted by the New Hampshire Association of Conservation Commissions.
 - (2) A natural resource scientist, who shall be one of 3 nominees submitted by the New Hampshire Association of Natural Resource Scientists.
 - (3) A person with experience in environmental protection and resource management at the time of appointment, who shall be one of 3 nominees submitted by the Nature Conservancy.
 - (4) A person with experience in environmental protection and resource management at the time of appointment, who shall be one of 3 nominees submitted by the Society for the Protection of New Hampshire Forests.

III. The members of the committee shall elect a chairperson annually.

IV. Each public member of the committee shall receive \$50 per meeting. The other members of the site selection committee shall receive no compensation other than their regular state salaries but shall receive mileage paid at the rate set for state employees.

482-A:34 Report. The department shall submit an annual report by October 1 beginning with fiscal year 2006, to the fiscal committee, the chairperson of the house resources, recreation and development committee, and the chairperson of the senate environment and wildlife committee summarizing all receipts and disbursements of the aquatic resource compensatory mitigation fund, including a description of all projects undertaken. Each report shall be in such detail with sufficient information to be fully understood by the general court and the public. After submission to the general court, the report shall be available to the public.

2 Application of Receipts; Aquatic Resource Compensatory Mitigation Fund. Amend RSA 6:12, I(b) by inserting after subparagraph 242 the following new subparagraph:

(243) Moneys deposited in the aquatic resource compensatory mitigation fund established by RSA 482-A:29.

3 Wetlands Council; Aquatic Resource Compensatory Mitigation Fund. Amend RSA 21-O:5-a by inserting after paragraph VII the following new paragraph:

VIII. The council shall approve disbursements of the aquatic resource compensatory mitigation fund established under RSA 482-A:29.

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

AMENDED ANALYSIS

This bill allows the department of environmental services to accept monetary payments in lieu of other forms of compensatory mitigation for wetlands and shorelines for certain small projects. It establishes a mitigation fund for the payments and establishes a committee to select projects that will compensate for the loss of wetlands and which may be funded from the mitigation fund.