

State of New Hampshire HOUSE RECORD

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

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Friday, April 21, 2006

No. 34

Contains: Reports and Amendments for April 26, Hearings, Meetings, List of House Bills Amended by the Senate and Notices

HOUSE CALENDAR

MEMBERS OF THE HOUSE:

The House will meet on **Wednesday, April 26th** at **10:00 a.m.**

Chairmen and Vice Chairmen will meet on **Tuesday, April 25** at **9:00 a.m.** in Room 203, LOB.

W. Douglas Scamman, Speaker

NOTICE

There will be a Republican Caucus on Wednesday, **April 26** at **9:00 a.m.** in Representatives Hall.

Rep. Michael O'Neil, Majority Leader

NOTICE

There will be a Democratic Caucus on Wednesday, **April 26** at **9:00 a.m.** in Rooms 305-307 of the Legislative Office Building.

Rep. James W. Craig, Democratic Leader

NOTICE

STATEHOUSE CAFETERIA IS NOW A "WI-FI HOTSPOT!"

The Statehouse Cafeteria dining room has been set up as a "Wi-Fi HotSpot." Anyone using an 802.11 wireless compatible device (laptop or PDA) is now able to access the Internet for free during the hours that the cafeteria dining room is open. Unlike other areas of the Statehouse complex, where an Encryption Key must be used, the Cafeteria offers open access. This new HotSpot has been set up on a separate network so that the legislative network will remain secure. This was made possible through joint efforts of House and Senate leadership, under the guidance of Stan Kelly, Manager of General Court Information Systems.

W. Douglas Scamman, Speaker

LEGISLATIVE HEALTH SCREENING DAY

All Legislators and Legislative staff are invited to the Legislative Health Screening Day presented by Health Services. This event will be held on Thursday, **April 27** from 9:00 a.m. to 1:00 p.m. in Rooms 305-307 and 306-308, LOB. Have your blood pressure taken, blood sugar tested, spine screened, balance assessed, eyes and throat checked, get some stress reduction hints and even a short massage, plus much more. Got questions? Bring them to our participating professionals for quick and up to date information. Looking forward to seeing all of you.

Jeanne Berube, RN and Dianne Bergquist, RN

NOTICE

Please note that normally the Calendar closes at 3:00 p.m. on Wednesdays for scheduling and notices. It closes at 1:00 p.m. on Thursdays for Committee Reports. Members and staff who need to schedule meetings should make arrangements with the Clerk's Office for room availability/assignment and publication of meeting notices.

Karen O. Wadsworth, Clerk of the House

HOUSE DEADLINES FOR 2006 SESSION

January 4 th , Wednesday	Last day to introduce 2006 House Bills
February 9 th , Thursday	Last day to REPORT HBs going to 2 nd committee (noon)
February 15 th , Wednesday	Last day to ACT on HBs going to 2 nd committee
February 23, Thursday	Last day to REPORT all other HBs (noon)
March 16 th , Thursday	Last day to REPORT HBs from 2 nd committee (noon)
March 22 nd , Wednesday	CROSSOVER Last day to ACT on HBs
April 6 th , Thursday	Last day to REPORT SBs going to 2 nd committee (noon)
April 12 th , Wednesday	Last day to ACT on SBs going to 2 nd committee
April 20 th , Thursday	Last day to REPORT all other SBs (noon)
April 27 th , Thursday	Last day to REPORT SBs from 2 nd committee (noon)
May 3 rd , Wednesday	Last day to ACT on SBs
May 11 th , Thursday	Last day to FORM Committees of Conference
May 18 th , Thursday	Last day to SIGN Comm. of Conference Reports (3:00 pm)
May 24 th , Wednesday	Last day to ACT on Comm. of Conference Reports

WEDNESDAY, APRIL 26

CONSENT CALENDAR

CHILDREN AND FAMILY LAW

SB 253, relative to enforcement of support orders for college and postsecondary educational expenses. **REFER FOR INTERIM STUDY**

Rep. Eileen C. Flockhart for Children and Family Law: Owing to the fact that this bill attempts to deal with two disparate areas of court-ordered and voluntary private contracts regarding college education responsibilities, it was felt by the committee that Interim Study would be the most productive way to find genuinely viable solutions to this difficult problem. Our committee has referred HB 1586 for interim study and it, as well, deals with the issue of support orders for college expenses. The study committee would then be able to look at all aspects of both of these bills and be able to recommend future legislation. **Vote 14-0.**

COMMERCE

SB 334, authorizing the use of a credit freeze as a means of deterring identity theft. **OUGHT TO PASS WITH AMENDMENT**

Rep. Betsi L. DeVries for Commerce: This bill establishes a process by which an individual aggrieved by identity theft can apply to credit reporting agencies to place a "freeze" on information which would normally be released in the processing of new credit applications. This would provide protection to consumers by preventing the processing of new credit cards or loans without their permission. This bill also establishes a simple process for individuals to file police reports with local police departments regardless of where the crime of identity theft occurred. **Vote 13-0.**

SB 369, relative to portability, availability, and renewability of health coverage. **OUGHT TO PASS**

Rep. Martha S. McLeod for Commerce: This bill clarifies procedures related to SB 125, 2005 and the small group market.

Health carriers are required to use the standard reinsurance underwriting form; provide a rating disclosure form when providing a premium quote; and requests health carriers to supply information and data by April 1 of each year on the small employer health insurance market to the Commissioner of the Department of Insurance. **Vote 17-0.**

ELECTION LAW

SB 26, requiring identification to obtain a ballot. **INEXPEDIENT TO LEGISLATE**

Rep. Richard B. Drisko for Election Law: The intent of this bill was to require photo ID to obtain a ballot. These issues were covered in previous legislation, HB 345, adopted by the Senate this session. **Vote 15-0.**

SB 271, relative to the availability of voter checklist information. **INEXPEDIENT TO LEGISLATE**

Rep. Claudia A. Chase for Election Law: The language of this bill is now covered in an amendment to HB 1238, adopted by the Senate. The committee, by unanimous vote, will recommend that the House concur with the amendment which required that mailing addresses be subject to the Right to Know Law, and therefore, the language of this bill is redundant. **Vote 14-0.**

SB 345, relative to lobbyist registration requirements. **INEXPEDIENT TO LEGISLATE**

Rep. William L. O'Brien for Election Law: This bill addresses the issue of late filing of lobbyist reports by proposing, in addition to the current possibility of being charged with a misdemeanor, a daily fine until a late report is filed. While only a small minority of lobbyists file their reports late, there may be a need to impose a financial penalty to discourage such failures. The committee believes, however, that now is not the time to make this change, because the recently enacted SB 206 increases the number of lobbyists' reports that have to be filed to monthly from semi-annually, and this change may well affect the number of late filed reports. If such a change occurs, it may suggest either that no legislation is not necessary or a different approach is needed to avoid late reports than is proposed in this bill. We should wait to see the effect of SB 206 on this issue before legislating a remedy. **Vote 13-1.**

SB 398-FN, relative to political contributions and expenditures. **INEXPEDIENT TO LEGISLATE**

Rep. Claudia A. Chase for Election Law: A bill of this nature should be submitted during the first year of session, thereby providing a full year for candidates and political committees to be educated about changes to registration and reporting requirements. There are indeed important issues addressed in this bill that the committee felt should be considered in the future and divided into several more focused bills. **Vote 15-0.**

SB 403, relative to verification of identity when a person registers or attempts to vote. **OUGHT TO PASS WITH AMENDMENT**

Rep. William L. O'Brien for Election Law: Most of this bill seeks to revisit issues such as photographic IDs for voters and publicly available voter checklist information that has been addressed by other legislative efforts of the House during this biennium. As such, and with one exception, the House has addressed these issues with different and sometimes inconsistent approaches than are suggested by SB 403. The exception is that section of the bill that would require supervisors of the checklist to include election day changes in the statewide voter registration database. This requirement is not yet statutorily mandated, but would be in the bill as amended. **Vote 14-0.**

ENVIRONMENT AND AGRICULTURE

SB 250, relative to lead paint poisoning prevention. **OUGHT TO PASS**

Rep. James F. Powers for Environment and Agriculture: This bill supports the important health task of reducing sources of lead poisoning. It provides some significant improvements to the Health and Human Services Department's process of enforcing their orders to reduce lead hazards in occupied rental dwellings. It specifies that an order issued by the Commissioner to reduce lead hazard is binding upon any new owner. Under present law, sale or transfer of the property means the whole process has to be started again from the beginning. In addition, the bill provides that either the Attorney General or the Commissioner may bring a civil action in Superior Court to enforce the Commissioner's orders. At present, this can only be done by the Attorney General's Office using legal sources currently available in the Health and Human Department. This process will accelerate removal of the hazardous material. **Vote 15-0.**

SB 255, establishing a committee to study the funding necessary to operate the hazardous materials program in New Hampshire. **OUGHT TO PASS**

Rep. Jane E. Beaulieu for Environment and Agriculture: This bill will establish a committee to study ways to raise necessary funding for the hazardous waste program in New Hampshire. Testimony indicated federal funds were "drying up" and because of its critical nature, the program must find alternative methods of funding. **Vote 13-0.**

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SB 352-FN, relative to the regulation of real estate appraisers. **OUGHT TO PASS WITH AMENDMENT**

Rep. Nelson S. Allan for Executive Departments and Administration: This bill prohibits persons with certain criminal convictions from being licensed or certified real estate appraisers and makes changes to the regulation of real estate appraisers by the Real Estate Appraisers Board. Licenses are now expired on a stagger and renewed every two years. Apprentice real estate appraisers shall work under the supervision appraiser until requirements for licensure or certification have been met.

Vote 16-0.

SB 359-FN, relative to the regulation of plumbers and water treatment technicians by the plumbers' board. **OUGHT TO PASS WITH AMENDMENT**

Rep. Maurice L. Pilotte for Executive Departments and Administration: This bill makes several changes to the licensing requirements for plumbers and certification requirements for water treatment technicians. (1) It specifies that the board shall be made up of three licensed plumbers, one of whom may be a journeyman instead of 2 master plumbers and one journeyman (2) provides rule-making authority for setting fees for plumbing licensure, renewal and late renewal of license, for apprentice identification cards, inspections, copies of the state plumbing code, workshops, courses and seminars offered by the board, (3) provides rule-making authority for the nature of proctored examinations for licensure of plumbers and certification of water treatment technicians, (4) in the absence of a building inspection department of a town or municipality, it provides for inspections and enforcement of plumbers' code by the board. The amendment added work done by students in an approved postsecondary vocational plumbing program to the list of exceptions of the provisions of the program. The amendment also deletes a section of the bill that would have removed the requirement of the presence of a public member for a quorum of the board. **Vote 16-1.**

JUDICIARY

CACR 44, relating to limits on the taking of private property. Providing that a person's property shall not be taken by eminent domain if the taking is for private use. **INEXPEDIENT TO LEGISLATE**

Rep. Maureen C. Mooney for Judiciary: This CACR is an identical twin to CACR 30 which passed the House on March 22, 2006 with a vote of 277 to 61. The committee felt it unnecessary to send two identical amendments to the voters, **Vote 20-1.**

SB 24, relative to disposition upon death of patient accounts in nursing homes. **OUGHT TO PASS**

Rep. Gregory M. Sorg for Judiciary: There is presently uncertainty among nursing homes as to how small amounts of money in patient accounts and other items of personal property of small value left in the home by deceased patients, particularly Medicaid patients, are to be handled. This bill establishes a simple, inexpensive and uniform procedure for dealing with such personal property in cases where its value does not exceed \$2,500.00 and no probate proceedings on the patient's estate have been filed within 180 days of the patient's death. It requires in such cases that the nursing home administrator file with the probate court for the county in which the nursing home is located, the patient's will, if any, and an affidavit, on a standard form to be prescribed by the probate court, attesting to the patient's death. The court will then see to the proper administration of the patient's estate and disposition of this property in accordance with the probate code. **Vote 18-2.**

SB 336, relative to security deposits in landlord tenant matters. **OUGHT TO PASS WITH AMENDMENT**

Rep. Cynthia J. Dokmo for Judiciary: The bill eliminates the current requirement that a landlord provide a receipt for a tenant's security deposit, if that deposit is tendered by a personal check, a bank check, or a check issued by a government or non-profit agency on behalf of a tenant. Receipts would continue to be required for any other type of payment. **Vote 21-0.**

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SB 265, relative to workers' compensation requirements for out-of-state employers and employees. **OUGHT TO PASS**

Rep. Roland P. Hofemann for Labor, Industrial and Rehabilitative Services: This bill reverses language enacted a few years ago to help the state of Maine when they were in the middle of a workers compensation crisis. The reason for the bill no longer exists and it is time to put previous law back into place. The Department of Labor supports this legislation. **Vote 11-0.**

SB 273, relative to reasonable accommodations for employees with disabilities. **OUGHT TO PASS**

Rep. Mary J. Gorman for Labor, Industrial and Rehabilitative Services: The committee views this bill as straightforward and aligned with the federal statutes regarding employment discrimination and reasonable accommodation. **Vote 11-0.**

MUNICIPAL AND COUNTY GOVERNMENT

SB 241, allowing municipalities to exclude certain retirement assets from consideration in qualifying for the elderly property tax exemption. **INEXPEDIENT TO LEGISLATE**

Rep. Paul R. Hopfgarten for Municipal and County Government: This bill would allow municipalities to exclude certain retirement assets from consideration in qualifying for the elderly property tax exemption. However, this bill is not enabling; it requires municipalities to exclude certain retirement assets from consideration in qualifying for the elderly property tax exemption. The current definition of "net assets" is the value of all assets, tangible and intangible minus the value of any good faith encumbrances." The committee heard testimony that this bill would create an opportunity for wealthy individuals to transfer assets and qualify for an exemption, as well as put the local assessors in the role of becoming financial experts. The bill would also create an unfair situation as it would not apply to other income and asset-based property tax exemptions.

Technically, the bill would need amending as the application date for exemptions has already passed. The majority of the committee did realize that there are many different types of retirement plans and options in today's world. However, this bill creates more problems than it solves and may result in further tax shifting to benefit the wealthy at the expense of the individual property taxpayer. **Vote 13-2.**

RESOURCES, RECREATION AND DEVELOPMENT

SB 103-FN-A-LOCAL, establishing a committee to study alternatives for funding the operation and maintenance of state-owned dams and making an appropriation to the state dam maintenance fund. **OUGHT TO PASS WITH AMENDMENT**

Rep. Judith T. Spang for Resources, Recreation and Development: This bill, as amended, would address a serious problem that the legislature has been unable to solve to date. The fund that pays for maintenance of state-owned dams is inadequate, and a funding mechanism has yet to be enacted. An ongoing source must be found by this commission. In the meantime, this bill would appropriate funds for maintaining the most critical dams. The amendment also calls for a management plan of the new Berlin park, as previously endorsed by the House. **Vote 15-1.**

SB 335, relative to funds of the department of resources and economic development used for snowmobile trail grooming equipment. **OUGHT TO PASS**

Rep. David H. Russell for Resources, Recreation and Development: This bill will allow the Department of Resources and Economic Development (DRED) to provide grant-in-aid funds to snowmobile clubs for the purchase of grooming equipment during any year (such as this) when that money is not actually expended on grooming because of the lack of snow. Both the New Hampshire Snowmobile Association and the DRED Bureau of Trails support the bill, as a well-maintained network of trails is vital to the state's economy. **Vote 16-0.**

SCIENCE, TECHNOLOGY AND ENERGY

SB 244, relative to alternative regulation of small incumbent local exchange carriers and relative to unclaimed deposits for utility services. **OUGHT TO PASS WITH AMENDMENT**

Rep. James M. Garrity for Science, Technology and Energy: This bill, as amended, allows unclaimed other payments, in addition to unclaimed deposits, as held by utilities to revert to the State Treasury. This is a technical correction, requested by the State Treasurer, which will enable the Treasurer to expend the funds in the public interest payphone fund, to pay the costs of public interest payphones in the state. The public interest payphone fund was established in 2005 under RSA 374:22-q. **Vote 12-0.**

SB 314-FN-L, establishing minimum renewable standards for energy portfolios. **INEXPEDIENT TO LEGISLATE**

Rep. Roy D. Maxfield for Science, Technology and Energy: The bill establishes standards requiring the use of renewable energy resources by providers of electricity for sale to retail customers in New Hampshire. Our current energy policy supports the voluntary production and retail use of renewable energy. Several states have adopted mandatory renewable energy standards for renewable generation through energy certificates. The money to provide incentives for renewable generation was removed by the Senate. The majority of the committee was not comfortable with cost/benefit models or various classes of renewable energy as they apply to New Hampshire. The committee voted to ITL the bill and defer to HB 1146 that would study these issues before making recommendations. **Vote 13-3.**

SB 389, establishing a committee to study energy efficiency programs funded by the system benefits charge. **OUGHT TO PASS WITH AMENDMENT**

Rep. Lee G. Slocum for Science, Technology and Energy: Both the House and Senate were called into emergency session last December to pass legislation (SB 228) enabling some of the money raised by the System Benefits Charge (SBC), which appears on our electric bills, to be applied to low-income energy assistance programs. At that time numerous questions were raised about the scope, purpose and effectiveness of energy efficiency programs supported by the SBC. This bill was introduced in response to those concerns. The amendment makes minor wording changes to the bill. **Vote 17-0.**

TRANSPORTATION

SB 221, relative to obtaining a driver's license and creating a violation for failure to pay a highway toll. **OUGHT TO PASS**

Rep. Brenda L. Ferland for Transportation: Defines in statute the authorization for the Department of Safety to require identification and proof of residence from a driver's license applicant. **Vote 11-0.**

SB 282-FN-LOCAL, relative to removal of abandoned vehicles. **OUGHT TO PASS WITH AMENDMENT**

Rep. Brenda L. Ferland for Transportation: This bill deals with the removal of abandoned vehicles on private property. Current law is for a land owner to notify a peace officer and the officer shall cause the removal of such vehicle. The Senate changed "shall" to "may" and the Transportation Committee amended this part of the bill back to "shall." The cost of the removal of said vehicle will be the responsibility of the last registered owner according to the Department of Motor Vehicle records. Some members of the committee objected to this part of the bill, as the one who abandoned the vehicle may not be the last owner and would then be held responsible. The last registered owner allows for law enforcement to start the process to find the person responsible for abandoning the vehicle. Also, under the current RSA 262:35-A a person is able to contest a towing charge. Because the Department of Transportation and State Police are seeing cases of people "dumping" vehicles in state-owned park and ride lots, this bill allows for an unattended vehicle to be removed after 30 days. The Department of Environmental Services (DES) also asked for an amendment to streamline the present law in RSA 485-A:14 on removal of motor vehicles that have become partially or completely submerged in water. The amendment says the petroleum-powered vehicle or petroleum containers shall be removed by the state within 48 hours or as soon as weather conditions permit. The amendment

goes on to describe what vehicles and containers and fines are included in the law. Also, DES must be notified of any incident of anything in the water and Department of Safety if any injury or death has occurred. **Vote 8-3.**

SB 325, making technical corrections and other changes to motor vehicle laws. **OUGHT TO PASS WITH AMENDMENT**
Rep. Sherman A. Packard for Transportation: This bill changes statutes from highway building equipment to construction equipment. It also changes the current way a retail vehicle dealer provides notification to the Department of Safety (DOS) from a sale to a Massachusetts person. It allows the DOS to issue more than one walking disability plate to a person who owns more than one motorcycle, and allows private trucks to put a 9-foot plow on their vehicle. If a rental car company changes a title and registration recovery fee, such changes shall be disclosed. This bill defines a motor home in statute. It clarifies that in cases of motor homes with awnings that exceed 103 inches, the awning shall not be considered as part of the width. It prevents a person from being arrested or having their car towed by a police officer, if they present a valid registration. This has become a minor problem because new registrations or re-registrations sometimes take a few days to get entered into the DOS database. **Vote 11-0.**

SB 341, extending by one year the advisory-only period for OBD II testing. **OUGHT TO PASS WITH AMENDMENT**
Rep. Stephen H. Nedeau for Transportation: This bill was amended from a one year extension of the enforcement of repairs on OBD II to a phase in. Starting December 1, 2006 all 2002 or newer cars will be required to fix an OBD II failure. Starting July 1, 2007, all cars from 1996 up will be required to repair an OBD II failure. If by July 1, 2007 an exemption program has not been developed and approved by the OBD II Advisory Committee, section II of this bill, will not take effect. **Vote 10-0.**

WAYS AND MEANS

SB 298-FN, relative to motor vehicle fines. **INEXPEDIENT TO LEGISLATE**

Rep. Susan W. Almy for Ways and Means: This bill and HB 1243 are different attempts to do the same thing: sunset last year's increase in motor vehicle fines. The House passed HB 1243 on to the Senate, which has passed it with one change: the effective date is now the day after the next budget passes, rather than July 1, 2007. The committee agreed with this change and is therefore recommending Inexpedient to :Legislate for the second bill, but wishes to remind the House that if the repeal is not repealed again in 2007, the budget will lose \$5 million per year in revenues. **Vote 19-0.**

WEDNESDAY, APRIL 26

REGULAR CALENDAR

CHILDREN AND FAMILY LAW

SB 323, establishing a legislative youth advisory council. **OUGHT TO PASS WITH AMENDMENT**

Rep. Mary Stuart Gile for Children and Family Law: This bill establishes a legislative youth advisory counsel similar to successful programs in Michigan and Maine. Membership shall include legislators from the House and Senate as well as students, ages 15-21 years. Appointing authorities shall make appointments that foster geographic and socioeconomic diversity and shall appoint at least one member from each county. The council will involve youth with legislators in dealing with policies on issues such as education, employment, strategies to increase youth participation in local and state government, safe environments, emotional and physical health, foster care, poverty, homelessness and youth access to state and local services. The council will file an annual report of its activities, including any recommendation for proposed legislation on or before November 1st of each year. This is an opportunity for state legislators to reach out to youth to engage them in the democratic process. **Vote 13-0.**

SB 355-FN, relative to unlawful possession of alcohol by a minor. **REFER FOR INTERIM STUDY**

Rep. Mary Stuart Gile for Children and Family Law: The committee recognizes the honorable intent of the bill's sponsor to protect any person under the age of 21 from possessing or consuming alcoholic beverages. However, many questions and concerns were raised, such as the value of approaches involving prevention versus punishment, parents' role in teaching their children about responsible use of alcoholic beverages, the potential for overzealous application by authorities, particularly among the 18-21 population and lastly, if current NH law prohibits anyone 21 years and under from drinking alcohol, why do we need this bill? Interim Study seemed the most appropriate decision. **Vote 13-1.**

SB 370-FN, relative to multidisciplinary child protection teams. **OUGHT TO PASS**

Rep. Anthony P. Matarazzo for Children and Family Law: This bill allows the Department of Children, Youth and Families (DCYF) to enter into agreements and create protocols for multidisciplinary child protection teams in order to minimize the stress on a child being interviewed in an abuse case. **Vote 12-0.**

SB 382, relative to the guardian ad litem board. **OUGHT TO PASS**

Rep. Mary Stuart Gile for Children and Family Law: This bill recodifies the duties and powers of the guardian ad litem board. The board shall be responsible for overseeing the credentialing, activities, and discipline of guardians ad litem who are, or who have been, certified by the board. The bill also deals with the terms of appointment, duties of the board, rulemaking authority, certification, confidentiality and disclosure of information, immunity from civil and criminal actions, court-appointed special

advocates and severability. **Vote 13-1.**

COMMERCE

SB 230, relative to the qualifications and liability of the medical director responsible for utilization review under the managed care law. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Stella Scamman for the **Majority** for Commerce: This bill attempts to define further the term medical director as in RSA 420-J regarding the qualifications and responsibilities for utilization review under the managed care law. This bill, while well intentioned is unnecessary. For example, section 1 of this bill requires that the medical director of a managed care insurance company be a licensed physician. In RSA 420-J: 3xxv-a, the law already requires that such medical directors be licensed physicians. This amended bill creates some serious issues and concerns because it does not mesh with the very extensive requirements already contained in current law. Also SB 74, passed last year, further requires and defines internal grievance procedures. Both the committee and subcommittee support the current comprehensive statute for medical review with the standards in current law crafted to incorporate federal and state provisions. **Vote 11-6.**

Rep. Marshall E. Quandt for the **Minority** for Commerce: This bill is about parity. The legislation is a result of painstaking efforts to put HMOs on the hook for medical mistakes. This bill does one thing: it ensures that a medical director working for an insurance company must now accept the responsibility for the decisions that they make, i.e. is accountable to insurance companies, plain and simple. HMOs make decisions and determine treatment of patients on a regular basis, but what the hallmark point of this bill is that although a "treating physician" can be held responsible legally; HMOs are essentially immune from state malpractice law, because they are protected by federal statute. The legislative intent is to sanction that a "medical director" of an insurance company is subject or held to the same standard as the treating physician; they must also exercise reasonable care or be held accountable.

SB 394, establishing the Trust Modernization and Competitiveness Act. **OUGHT TO PASS WITH AMENDMENT**

Rep. Tara G. Reardon for Commerce: The Trust Modernization and Competitiveness Act addresses the need for trust and trust services across the nation in a rapidly growing sector of the nation's economy. New Hampshire is uniquely positioned to provide the most attractive legal and financial environment for individuals and families seeking to establish and locate their trusts and investment assets. This act will serve to establish New Hampshire as the best and most attractive legal environment in the nation for trust and trust services, and this environment will attract to our state good-paying jobs for trust and investment management, the legal and accounting professions, and support an infrastructure required to service this growing sector of the nation's economy. The bill is a product of hours of work by New Hampshire's foremost trust attorneys, the Banking Department, the Secretary of State and its Securities Regulation Division, the Office of the Attorney General Charitable Trust Division, the New Hampshire Bankers Association, the sponsors of the legislation and the Commerce Committee members. Extreme efforts were made to ensure that the application process includes scrutiny to avoid unregulated securities transactions. The amendment adds the Secretary of State or his designee as a nonvoting member of the Board of Trust Incorporation, so that the Secretary of State will be able to review records necessary to ensure that all requirements for filings with the Corporate Division are satisfied. These efforts were balanced with the need to preserve the privacy required in family trusts and a welcoming climate to advance the economic development goals of this legislation. **Vote 20-0.**

CRIMINAL JUSTICE AND PUBLIC SAFETY

SB 318-FN, relative to the use of deadly force to protect oneself. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Stanley E. Stevens for the **Majority** of Criminal Justice and Public Safety: This bill is almost identical to HB 1354 which was defeated by the House. Current law already covers the duty to retreat. This is the section that the sponsors of HB 1354 conceded was covered by RSA 627:3. **Vote 9-5.**

Rep. Elbert I. Bicknell for the **Minority** of Criminal Justice and Public Safety: This bill, as introduced, simply gives back a right that has been eroded if not actually taken away, by a judicial system that has for many years been giving preferential treatment to criminals. This bill simply says that if you are being attacked in your home, your yard and any other place you have a right to be, you do not have to retreat and you do not have to turn your back on the attacker and run for your life, when you have the means to defend yourself, your family or others. In other words, this bill does away with our present law that states the victim must retreat if he or she can do so safely. It is the opinion of the minority of the committee as well as 20 of 24 citizens that testified on this bill, that to retreat upon being attacked instead of defending oneself and family is too unreasonable to ask of any person in that situation.

SB 348, prohibiting the taking of arms and ammunition in a declared state of emergency. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Gene P. Charron for the **Majority** of Criminal Justice and Public Safety: The committee felt that the events that predicated this bill were extreme examples that happened in New Orleans. New Hampshire gun owners are responsible people. Gun seizure of an entire town would be highly unlikely. No town or city would have the resources to enforce this law. **Vote 14-5**

Rep. Elbert I. Bicknell for the **Minority** of Criminal Justice and Public Safety: According to some on the committee, and possibly in the House itself, there are those that keep insisting what happened in New Orleans could never happen in New Hampshire. The minority simply points out that New Hampshire never before had a flood like what recently occurred in Alstead, but yet it did happen. Is it unreasonable to think that in certain situations, under certain conditions, under certain leaderships, we in New Hampshire will not ever have something as catastrophic an event as happened in New Orleans? As to the confiscation, or seizure of weapons of innocent citizens by members of the Police and Armed services be they from New Orleans or other states, does anyone really think it too, could not happen in New Hampshire under the wrong leadership and right emergency situations? It will not start with a “whole town” losing its rights, it will start as most lost liberties start, piecemeal, slowly, incrementally and one morning we awake without the right to protect ourselves and family, because a “leader” gave the order to start in a given area of town and seize all weapons from all peoples. This bill will not disallow the police to still use warrants from Courts, to still use probable cause to seize on sight of the unlawful use of weapons. By no means does this bill handcuff our police, if in fact they have the authority to seize firearms now, they will under that same authority be able to do what is needed for law and order to prevail in an emergency situation with help from lawfully armed citizens of New Hampshire. This bill is needed, to ensure that what the majority says will never happen, can never happen.

ENVIRONMENT AND AGRICULTURE

SB 351-FN, declaring drowning as cruelty to animals. **INEXPEDIENT TO LEGISLATE**

Rep. Timothy D. O'Connell for Environment and Agriculture: The majority of the committee believes that current laws covering animal cruelty (torture, mutilation and mistreatment) are adequate and feel that the bill as proposed would open possible loopholes weakening rather than strengthening existing law. This statute change would not apply to licensed trappers. **Vote 12-3.**

SB 388, relative to farm composting and pesticides. **OUGHT TO PASS WITH AMENDMENT**

Rep. Betty B. Hall for Environment and Agriculture: This bill allows for storage, use of and spreading of commercial fertilizer, lime, wood ash, sawdust, compost and animal manure. It also defines composting as an agricultural activity. **Vote 11-4.**

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SB 354-FN, requiring security officers of the New Hampshire hospital security force to be fully certified as police officers and including such security officers in group II of the New Hampshire retirement system. **OUGHT TO PASS WITH AMENDMENT**

Rep. Nelson S. Allan for Executive Departments and Administration: The New Hampshire Hospital security force is required to be fully certified as police officers by the police standards and training council. The security force will move to group II as they meet the certification requirements. The committee amended the bill to ensure no inadvertent harm would come to the security force during transition. The New Hampshire security force is currently under the Department of Safety. This went into effect in 2004 under the reorganization of various departments. **Vote 16-2.**

SB 405, relative to the acceptance of certain tax-sheltered funds by the Manchester employees' contributory retirement system. **OUGHT TO PASS**

Rep. Maurice L. Pilotte for Executive Departments and Administration: This bill allows the Manchester employees' contributory retirement system to accept certain tax-sheltered funds for service buybacks by members. These must be trustee-to-trustee transfers of funds from retirement plans qualified under 401(k), 403(b), or 457 of the United States Internal Revenue Code of 1986, as amended. The bill specifically prohibits service buyback if they would violate section 415(n) of the Internal Revenue Code of 1986, as amended. Portability of retirement contributions is essential in today's work environment. **Vote 17-0.**

JUDICIARY

SB 242, prohibiting a person charged with unlawfully killing a decedent from taking from the decedent's estate. **INEXPEDIENT TO LEGISLATE**

Rep. Gregory M. Sorg for Judiciary: Although there is presently no statute specifically prohibiting a perpetrator of the intentional or otherwise unlawful killing of another from inheriting from the estate of his victim, the courts, guided by the Supreme Court's 1963 ruling in Kelly v. State, 105 NH 240, have accomplished this result through their equity powers by charging the slayer as a constructive trustee of the property concerned, in those cases where it is found that he has been unjustly enriched by his wrongful act. The committee concluded that this method of addressing such cases has worked satisfactorily to bring about the social policy objectives of this bill. The committee also concluded that attempting to substitute a statute—no matter how carefully inclusive it may be—for the case-by-case flexibility of present practice, may cause unintended gaps or omissions in the law, and that, in the absence of any disagreement with the result the courts have reached in this area, no statutory remedy is necessary or advisable. **Vote 12-5.**

SB 287-FN, making certain changes to the eminent domain statute. **OUGHT TO PASS WITH AMENDMENT**

Rep. Maureen C. Mooney for Judiciary: When an event such as the U.S. Supreme Court's Kelo decision so threatens and

undermines our long-standing, common understanding of what the government can and can not do through the use of the eminent domain power, we must act to ensure that Kelo-like takings will not take place in New Hampshire. SB 287, as amended by the committee, will do 3 things: 1.) it will define "public use" for the first time in the statutes; 2.) it will replace the term "public purpose" with "public use" in numerous statutes; 3.) it will create a study committee to study topics relative to eminent domain. This bill alters close to 30 RSAs in order to accomplish these 3 objectives. The term "public use," as found in Part I, Art.12 of the NH Constitution, has never been defined in the NH statutes before. Furthermore, the statutes have continually used the term public "purpose" and deviated from the constitutional term "use." SB 287 makes clear to all New Hampshire citizens that their property may be taken by eminent domain only for genuine "public use" which is comprehensively defined in a way that both government and private citizens can understand. It restores the original and common understanding that private property cannot be taken by eminent domain for anything other than use for utilities, common carriers, or when the taking is necessary for the possession, occupation and enjoyment of the property by the general public or governmental entities (i.e., not for the private profit of private developers). SB 287 is also a balanced bill. It preserves the ability of public bodies to promote economic development without forcibly taking the property of private citizens for use by other private parties, and it also allows municipalities to use eminent domain to address abandoned structures beyond repair, and public nuisances if they pose a threat to the health and safety of the public at large. Lastly, SB 287 explicitly prohibits using eminent domain in the name of economic development, private commercial enterprise, increasing tax revenues and employment opportunities **Vote 16-0.**

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SB 267, relative to the definition of employee and clarifying the criteria for exempting workers from employee status. **REFER FOR INTERIM STUDY**

Rep. Mary J. Gorman for Labor, Industrial and Rehabilitative Services: The majority of the committee feels interim study would grant further examination of the state's definition of "independent contractor." Some factors to be determined include the necessity for the amendment's voluntary form, the choice of criteria from F – K, and the minimum wage law: definition of employee changed. **Vote 12-2.**

MUNICIPAL AND COUNTY GOVERNMENT

SB 190-L, establishing a committee to study including workforce housing in zoning ordinances. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Harry S. Gale for the **Majority** of Municipal and County Government: This bill, as amended by the Senate, directed a study committee to look at enabling a municipality who has adopted a master plan to adopt a mandatory inclusionary zoning provision in the housing section, that included workforce housing and set a percentage for the amount that had to be included in any given residential development. The majority of the committee feels that there may be a shortage of affordable housing in our state. Many misconceptions, misunderstandings, questions and concerns were raised, discussed and debated about the issue of affordable housing versus workforce housing. The majority agreed to amend the bill to promote a wide-ranging study designed to collect the ingredients of the affordable housing needs, including the collection of empirical data and other information, designed to support appropriate legislation, intended to result in wide-spread recognition of affordable housing problems and needs, as well as, possible solutions, including public/private partnerships. **Vote 9-6.**

Rep. David L. Buhlman for the **Minority** of Municipal and County Government: This study committee is not needed. To encourage the construction of affordable housing, municipalities now have the authority to revise their zoning to, for example, reduce required minimum lot sizes and reduce the level of impact fees. To supplement these already available tools, one of the 424 legislators could simply introduce a bill, next session, that provides municipalities development options similar to that allowed in other states, such as 40b housing in Massachusetts.

SB 319, establishing a task force to study county government. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Laurie J. Boyce for the **Majority** of Municipal and County Government: This is a county task force bill that will undertake a broad study of the current functions of county government; investigate if county functions can be more efficiently accomplished; propose law changes, if necessary; propose changes to the method of selecting county delegates, the standardization of reporting budget procedures and any other issues relating to uniformity in reporting county operations. The amendment increases the membership of the task force to include ten house members appointed by the chair of each delegation, so that there will be adequate members to tackle this monumental task. Another part of the amendment includes the departments of county government, not just current functions. And the last part of the amendment requires that the task force hold at least one public forum in each county for the purpose of gathering information. The majority of the committee feels that this broad study will enlighten all the residents of the state about the current functions of county government. **Vote 13-2.**

Rep. David L. Buhlman for the **Minority** of Municipal and County Government: County government is working fine, at least as well as state government, so this study committee is not needed. If there were glaring problems with county government, than at least one of the 424 legislators should be able to submit legislation that directly addresses the perceived problems without

spending more time on yet another study committee on this subject.

RESOURCES, RECREATION AND DEVELOPMENT

SB 386, relative to large groundwater withdrawals. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Judith T. Spang for the **Majority** of Resources, Recreation and Development: This bill provides an important building block in New Hampshire's developing groundwater policy. The bill does not change the criteria by which the Department of Environmental Services (DES) will decide on groundwater permits. Rather, it places those procedures in statute that are now just in rules. The bill also improves the process by providing a more efficient path for having concerns reviewed and adjudicated. **Vote 13-4.**

Rep. Richard T. Cooney for the **Minority** of Resources, Recreation and Development: Part of our property rights is the right to reasonable use of the groundwater under our property. Reasonable use means the use does not negatively impact any other use of the groundwater. If our use exceeds 57,600 gallons per day, we need a large groundwater permit from the Department of Environmental Services (DES). This permitting process ensures that we not negatively impact other users, or wetlands, ponds, lakes, or any other water resource. In the permitting process, provision is also made for new adjacent users to be accommodated. In addition, the withdrawal can be reduced or eliminated if DES determines that circumstances such as drought conditions require changes. The permit is only for a 10-year period. Some individuals are opposed to these withdrawals when they are made by someone who they feel should not have this right or by someone who is going to use the water for a purpose they do not like. This bill give these individuals more avenues to drag out the permitting process to an extent, which makes it so onerous, lengthy, and expensive that the right of the property owner is effectively eliminated. This is wrong! In addition, there are three study committees and commissions presently active which plan to provide a comprehensive water management plan for New Hampshire. We should wait for their report. The minority feels that this bill is bad legislation and should be inexpedient.

LAIID ON TABLE

HB 646-FN-LOCAL, relative to teachers who are not deemed highly qualified pursuant to the No Child Left Behind Act. (Pending question adoption of committee report of Ought to Pass with Amendment.)

HB 1229-FN, prohibiting the use of false documentation for employment, government services, or permits. (Pending question is Ought to Pass.)

HB 1703-FN, requiring certain employers to report on the percentage of payroll which is being spent on health insurance premiums for employees. (Pending question is Ought to Pass.)

HB 1726-FN, requiring the state to pay legal fees for certain supreme court justices. (Pending question is the adoption of the committee report of Ought to Pass With Amendment)

SB 324, requiring notification concerning certain offenders against children. (Pending question is the adoption of the committee report of Ought to Pass With Amendment)

HOUSE BILLS AMENDED BY THE SENATE

HB 37-FN, relative to health insurance coverage for full-time students on medical leaves of absence. (House Nonconcurrent; C of C 4/19/06))

HB 153-FN, relative to the collection of debts owed to the state. (SJ 2/2/06)

HB 203-FN, relative to the regulation of tracking devices and establishing a commission on the use of tracking devices. (SJ 4/13/06)

HB 221, relative to eligibility for absentee ballots. (SJ 4/13/06)

HB 334, relative to the type of notice provided in court proceedings. (House Concurred 4/5/06)

HB 349, relative to placement and removal of political advertising. (House Nonconcurrent; C of C 4/19/06)

HB 413, relative to the appointment of the chief justice of the superior court and the number of superior court associate justices. (House Concurred 4/5/06)

HB 460-FN, relative to the reimbursement to certain providers by the bureau of emergency communications. (House Concurred 4/5/06)

HB 544, relative to the land and community heritage program. (House Concurred 4/5/06)

HB 582, relative to the policy for records management. (House Nonconcurrent, C of C 4/5/06)

HB 599-FN, requiring disclosure to consumers of the presence of event data recording devices in new motor vehicles. (House Concurred 4/19/06)

HB 649-FN-A-L, establishing a commission to study the costs and funding of medicolegal investigations and autopsies. (House Concurred 4/5/06)

HB 690-FN, relative to aid to the needy blind and relative to undue hardship for public assistance. (SJ 4/13/06)

- HB 718-FN-A**, relative to a state active duty death benefit for activated members of the New Hampshire national guard and making an appropriation therefor. (SJ 4/6/06)
- HB 719-FN**, recodifying the Articles 1 and 7 of the Uniform Commercial Code. (House Concurred 4/12/06)
- HB 1108**, relative to the transfer of funds among PAUs within a department. (House Concurred 4/19/06)
- HB 1147**, relative to the conduct of recounts. (House Concurred 4/5/06)
- HB 1228-FN**, relative to the sale or lease of state-owned real estate. (House Concurred 4/19/06)
- HB 1238-FN**, relative to centralized voter registration database information. (SJ 4/13/06)
- HB 1243-FN**, reducing certain fines for motor vehicle violations. (SJ 4/13/06)
- HB 1294**, relative to antique snowmobiles. (House Concurred 4/19/06)
- HB 1349**, relative to costs of personnel and rates for equipment use in hazardous waste incidents. (House Concurred 4/19/06)
- HB 1402**, establishing the standard of care for certain individuals or nonprofit entities in constructing, maintaining, or improving trails for public recreational use, and establishing a committee to study the standard of care applicable to landowners, lessees, and occupants for the use of public recreational land. (House Concurred 2/2/06)
- HB 1420-FN**, prohibiting remote control and Internet hunting and relative to exceptions to the prohibitions on the sale of firearms to minors and the furnishing of arms to persons under 16. (House Concurred 4/19/06)
- HB 1433**, establishing a committee to study secured landfills and establishing a moratorium on the incineration of construction and demolition waste. (SJ 4/13/06)
- HB 1657**, establishing a wildlife legacy initiative for gifts and donations for fish and wildlife conservation programs. (House Concurred 4/5/06)
- HB 1660**, regulating identity theft. (SJ 4/13/06)
- HB 1662-FN**, establishing the crime of peonage. (SJ 4/13/06)
- HB 1671-FN**, relative to the regulation of dentists and dental hygienists by the board of dental examiners. (SJ 4/13/06)
- HB 1679-FN-L**, relative to the property tax exemption for university system property. (SJ 4/13/06)
- HB 1688**, prohibiting the use of gasoline-powered watercraft on Head's Pond in Hooksett. (SJ 4/13/06)
- HB 1692**, establishing the New Hampshire sexual predators act. (SJ 4/13/06)
- HB 1724-FN**, relative to compensation and benefits for reserve and national guard members who are state employees. (House Nonconcurrent; C of C 4/19/06)
- HB 1754**, relative to canteen privileges at veterans' clubs licensed by the liquor commission. (House Concurred 4/19/06)

COMMITTEE OF CONFERENCE

- HB 37-FN**, relative to health insurance coverage for full-time students on medical leaves of absence. (Reps. S. Francoeur, Infantine, Charles Clark and DeJoie)
- HB 349**, relative to placement and removal of political advertising. (Reps. O'Brien, J. Allen, Millham and Harvey)
- HB 582**, relative to the policy for records management. (Reps. Pilotte, Fitzgerald, Millham and Irwin)
- HB 1724-FN**, relative to compensation and benefits for reserve and national guard members who are state employees. (Reps. Stone, R. Wheeler, Ingram and Franklin)

COMMITTEE MEETINGS

MONDAY, APRIL 24

- LOW-INCOME ELECTRIC ASSISTANCE PROGRAM REVIEW COMMITTEE (SB 228, Chapter 298:4, laws of 2005), Room 209, LOB**
10:00 a.m. Regular meeting.
- OIL FUND DISBURSEMENT (RSA 146-D:4), Room 305, LOB**
9:00 a.m. Regular meeting.

TUESDAY, APRIL 25

- EDUCATION, Room 207, LOB**
10:30 a.m. Ad hoc committee to review the special education statutes.
- FINANCE, Rooms 210-211, LOB**
10:00 a.m. Full committee work and executive session on pending legislation.
- FINANCE – (DIVISION I), Room 212, LOB**
9:45 a.m. Work session on **SB 262**, establishing the position of an administrator of women offenders and family services

within the department of corrections, and establishing an interagency coordinating council on women offenders, and making an appropriation therefor.

FINANCE – (DIVISION III), Room 209, LOB

9:00 a.m. Work session on **SB 374-FN**, relative to the state children’s health insurance program.

PROCUREMENT METHODS FOR PUBLIC WORKS PROJECTS BY STATE AND LOCAL GOVERNMENT AGENCIES (HB 157, Chapter 132:1, Laws of 2005), Room 307, LOB

10:00 a.m. Regular meeting.

WAYS AND MEANS, Room 202, LOB

9:00 a.m. Full committee work and executive session on pending legislation and revenues.

WEDNESDAY, APRIL 26

WAYS AND MEANS, Room 202, LOB

Immediately following the House session, full committee work and executive session on pending legislation and revenues.

THURSDAY, APRIL 27

EDUCATION, Room 207, LOB

10:00 a.m. Ad hoc committee on highly qualified teachers.

HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS, Room 205, LOB

1:00 p.m. Ad hoc committee on stroke caucus.

FRIDAY, APRIL 28

ASSESSING STANDARDS BOARD (RSA 21-J:14-a), DRA, Training Room, 57 Regional Drive, Concord

9:30 a.m. Regular meeting.

FISCAL COMMITTEE (RSA 14:30-a), Rooms 210-211, LOB

9:00 a.m. Regular business.

9:30 a.m. Audits: State of New Hampshire Highway Fund financial statements for the fiscal year ended June 30, 2005.
State of New Hampshire comprehensive annual financial report for the year ended June 30, 2005.

MONDAY, MAY 1

DEVELOPMENTAL DISABILITY WAITLIST OVERSIGHT COMMITTEE (RSA 171-A:1-c), Room 205, LOB

10:00 a.m. Regular meeting.

TUESDAY, MAY 2

STATE VETERANS’ ADVISORY COMMITTEE (RSA 115-A:2), American Legion Post 79, 35 West Brook Street, Manchester

5:00 p.m. Regular meeting.

WEDNESDAY, MAY 3

EDUCATION OF CHILDREN WITH DISABILITIES ADVISORY (RSA 186-C:3-b), Department of Education, Room 15, 101, Pleasant Street, Concord

4:00 p.m. Regular meeting.

FRIDAY, MAY 5

ADMINISTRATIVE RULES (RSA 541-A:2), Rooms 306-308, LOB

9:00 a.m. Continued regular meeting.

PUBLIC HIGHER EDUCATION STUDY COMMITTEE (RSA 187-A:25-a), Mountainview Room, 3rd Floor, Young Student Center, Keene State College

9:30 a.m. Campus Tour.

MONDAY, MAY 8

BOARD OF MANUFACTURED HOUSING (RSA 205-A:25), Room 201, LOB

1:00 p.m. Regular meeting.

GUARDIANS AD LITEM BOARD (RSA 490-C:1), Room 102, LOB

1:00 p.m. Regular meeting.

ISSUES RELATIVE TO THE COMPREHENSIVE SHORELAND PROTECTION ACT (SB 83, Chapter 209:1, Laws of 2005), Room 305, LOB

10:00 a.m. Regular meetings.

NEW HAMPSHIRE LAND AND COMMUNITY HERITAGE AUTHORITY BOARD OF DIRECTORS (RSA 227-M:4), CDFA Board Room 14 Dixon Avenue, Concord

9:00 a.m. Regular meeting.

FRIDAY, MAY 12

ASSESSING STANDARDS BOARD (RSA 21-J:14-a), Department of Revenue Administration, Training Room, 57 Regional Drive, Concord

9:30 a.m. Regular meeting.

EMERGENCY MANAGEMENT SYSTEM OVERSIGHT COMMITTEE (RSA 21-P:51), Room 205, LOB

1:00 p.m. Regular meeting.

HEALTH AND HUMAN SERVICES OVERSIGHT COMMITTEE, (RSA 126-A:13), Room 205, LOB

10:00 a.m. Regular meeting.

MONDAY, MAY 15

WINNIPESAUKEE WATERSHED ADVISORY COMMITTEE, (RSA 483-D), Room 103, State House

9:00 a.m. Meeting to review current status of flooding.

FRIDAY, MAY 19

ADMINISTRATIVE RULES (RSA 541-A:2), Rooms 306-308, LOB

9:00 a.m. Regular meeting.

MONDAY, MAY 22

ETHICS COMMITTEE (RSA 14-B:2), Room 100, State House

10:30 a.m. Regular meeting.

FRIDAY, MAY 26

ASSESSING STANDARDS BOARD (RSA 21-J:14-a), Department of Revenue Administration, Training Room, 57 Regional Drive, Concord

9:30 a.m. Regular meeting.

OFFICIAL NOTICES

COUNTY DELEGATION NOTICE

Belknap County Delegation will meet on May 8 at 7:00 p.m. at the County Complex relative to the Gunstock budget.
Rep. John H. Thomas, Chairman
Belknap County Delegation

COUNTY DELEGATION NOTICE

Grafton County Delegation will meet immediately after session on April 26 in Room 203, LOB, to elect a replacement to the Executive Committee and to vote on salaries for elected county officials for the 2007-2008 term.

Rep. Susan W. Almy, Chairman
Grafton County Delegation

COUNTY DELEGATION NOTICE

Hillsborough County Executive Committee will meet on Friday, **April 28th** at 9:00 a.m. at the County Complex, Bouchard Building, Goffstown. Please call Marcia at 627-5631 if you cannot attend.

Rep. Nelson S. Allan, Chairman
Hillsborough County Executive Committee

NOTICE

Reservations for the use of the Upham Walker House are now being made with Doug Dolcino, Director of Operations for the General Court, at 271-3324.

W. Douglas Scamman, Speaker

NOTICE

Recently ordered legislative license plates are available from Dick Amidon, in the Speaker's Office. The following members may pick up their plates, and are requested to bring their current registrations with them, in order to complete the paperwork: Reps. Mary Ellen Martin, Rosen and Stepanek.

Dick Amidon, Chief of Staff

REVISED FISCAL NOTES

The following HBs have revised fiscal notes: HBs 76, 100, 203, 234, 317, 325, 345, 347, 349, 380, 489, 515, 634, 638, 642, 645, 646, 649, 653, 657, 669,678, 688, 690, 716, 718, 1108, 1128, 1167, 1182, 1215, 1221, 1222, 1223, 1227, 1228, 1231, 1241, 1274, 1331, 1337, 1407, 1419, 1426, 1427, 1436, 1455, 1459, 1463, 1464, 1465, 1468, 1470, 1474, 1489, 1595, 1514, 1515, 1578, 1593,1597, 1601,1609, 1611, 1612, 1624, 1626, 1631, 1645,1648, 1652, 1656, 1657, 1661, 1670, 1671, 1676, 1677, 1679, 1681, 1683, 1691, 1692, 1693, 1694, 1695, 1697, 1698, 1699, 1701, 1702, 1704, 1707, 1708, 1709, 1710, 1711, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1722, 1723, 1724, 1726, 1725, 1727, 1728,1730, 1731, 1732, 1734, 1735, 1741, 1742, 1745, 1744, 1747, 1765, 1766, 1767, 1768. SBs 22, 103, 107, 110, 131, 175, 232, 249, 262, 268, 281, 282, 288, 300, 306, 310, 314, 325, 342, 358, 363, 367, 371, 374, 379, 380, 384, 386, 403.

Karen O. Wadsworth, Clerk of the House

When the House Clerk's Office is aware of House Members who are hospitalized or homebound by serious illness, we will publish a list of names and addresses as requested.
Robert F. Chabot, 73 Joseph Street, Manchester, NH 03102-2312
Bruce F. Hunter, 23 Channel Lane, Goffstown, NH 03045-5265
Rudolph J. Kobel, 73 Old Candia Road, Candia, NH 03034-2414
Ed M. Putnam, II, 12 Wakefield Drive. Hampstead, NH 03841-2611
Clair A. Snyder, 46 Colonial Village, Somersworth, NH 03878-1558
Colleagues who so desire may send cards and greetings to the address listed above.

Karen O. Wadsworth, Clerk of the House

MEMBERS' NOTICES

The following notices are published in the House record as a courtesy to the member(s) requesting publication. These are not official public notices and will be limited to legislative policy or legislative social activities and political meetings or events. Publication should not be construed as support for either the events listed or the views espoused by the individual or organization sponsoring the event.

The House Republican Alliance will meet every Tuesday at 8:30 a.m. at the Upham Walker House, Park Street, Concord.

Rep. Michael A. Balboni

The Main Street Republican Caucus will meet every Wednesday at 8:00 a.m. at the Upham Walker House. All Republicans are welcome.

Rep. Kenneth H. Gould

We will be collecting used cell phones for soldiers in the anteroom at the back of Representatives Hall on session days in April. If you have a cell phone that you no longer use please bring it with you and donate it.

Rep. Ken Hawkins

NH GENERAL COURT MAIL RECEIPT POLICY

No legislative employee shall accept hand delivered mail that does not include a complete return address clearly displayed on the envelope. Any legislative employee responsible for opening hand delivered mail shall secure the envelope to the contents. Legislative employees that accept and distribute mail for their department, shall not accept mail hand delivered from any person not employed by the General Court to be distributed to numerous members or staff, unless authorized by the Chief of Staff(s).

W. Douglas Scamman, Speaker

All General Court members are cordially invited to attend a presentation on **April 25th** from noon to 1:00 p.m. in Conference Rooms 1 and 2, H. Taylor Caswell, Jr. Physicians Office Building, Littleton Hospital, Littleton. The presenter is Jason Stull, DVM, State Public Health Veterinarian, NH Department of Health and Human Services and Assistant Clinical Professor, University of New Hampshire. This lecture will: 1) Provide a background on Eastern Equine Encephalitis (EEE), West Nile Virus (WNV), and Lyme disease., 2) discuss the historic human and animal impacts of these diseases in New Hampshire, 3) identify key measures for control and prevention, and 4) discuss effective ways to best communicate risk and prevention methods to the public. This presentation is part of the 2005-2006 Public Health Grand Round series and is cosponsored by the University of New Hampshire's Masters in Public Health Program, the NH Public Health Association and Littleton Hospital. To register for this event, please call or e-mail Chris Hamann by April 18th at 862-2733 or chris.hamann@unh.edu. Lunch vouchers will be provide to the first 40 registrants.

Rep. James P. Pilliod

The Osteoporosis Education and Prevention Council is hosting a legislative event on **April 26** at the Upham Walker House. There will be lunch snacks of yogurt, milk, hummus, crackers and cheese, fruit and veggies. Exhibits and educational material will be available. The event takes place from 11:00 a.m. to 1:30 p.m. All staff and legislators are welcome.

Rep. Barbara French

The Nashua Republican City Committee is having a reception with Governor George Pataki on Friday, **April 28** at 7:00 p.m. at the home of Rep. Bea Francoeur. Tickets are \$25 each and can be purchased from Reps. Crane or Price.

Rep. Pamela G. Price

The NH Federation of Republican Women's Annual Lilac Luncheon will be held on Monday, **May 1** at CR Sparks in Bedford, beginning at 11:00 a.m. Lunch will be served at noon. Special guest speaker will be Chef Roland Mesnier, White House Pastry Chef for 25 years and for 5 presidents, and author of "Dessert University". The books will be available to purchase and the book signing by Chef Mesnier will follow the luncheon. For tickets, contact Rep. Stella Scamman. Tickets are \$50 and must be purchased by April 24. Hope you can join us.

Rep. Stella Scamman

The Executive Departments and Administration Committee will host its eighth reunion luncheon at noon on Thursday, **May 11** (please note date change) at the Red Blazer Restaurant. Invitations have been sent out and should have been received by all past members of the committee. We want to make sure that we do not forget anyone. If you have not received an invitation, or are aware of any alumni who wish to attend and have not been contacted, please call Rep. Francis B. Sullivan at 622-1933, or e-mail frankatpausul@comcast.net or contact the Executive Departments and Administration Committee office at 271-3065.

Rep. Francis B. Sullivan

The Belknap County Republican Committee will host a Lincoln Day Dinner Cruise on M/S Mount Washington on Friday, **May 5** from 5:30 to 9:00 p.m. All members and guests are invited to join us in kicking off summer and the 2006 election season with an evening on Lake Winnepesaukee. Tickets are \$35 per person and can be obtained from Reps. Mike Whalley, Ralph Rosen or Frank Tilton. Carroll County or Grafton County individuals can obtain tickets from Rep. Betsey Patten or Bill Gabler respectively.

Rep. Franklin T. Tilton

The Legislative Caucus for Young Children (LCYC) invites all members of the House and Senate to an information session on Temporary Assistance to Needy Families (TANF) on Tuesday, **May 9** at 10:00 a.m. in Room 206, LOB. Recent changes in federal laws regarding TANF will have serious effects on NH policies affecting families and children. This presentation by Terry Smith, Director of Family Assistance and staff from DHHS, will give legislators the opportunity to learn about NH's response to the new federal statutes and to discuss their implications for all NH residents.

Rep. Mary Jane Wallner

The New Hampshire National Guard Legislative Open House will be held on Tuesday, **May 9**, from 3:30-5:00 p.m. at the Concord Armory, Pembroke Rd, Concord.

W. Douglas Scamman, Speaker

The Seacoast Republican Women invite you and your friends to a Spring Fashion Show and Luncheon (of men, women, and children's fashions) on Tuesday, **May 16th** starting at 11:00 a.m. at the Granite Rose, 22 Garland Drive, Hampstead. Some of our esteemed legislators will serve as models. Tickets are \$45.00. Reservations can be made PRIOR to May 5th by making checks payable to SRW and mailed to Jeannie Sangenario, 39 Hampton Meadows, Hampton, NH 03842

Rep. Nancy F. Stiles

Save the date! On Wednesday, **May 17th** the New Hampshire Women's Lobby will hold its annual Spring Celebs 2006 Awards Celebration at the Concord City Auditorium (Green and Prince Streets) from 4:30 to 6:30 p.m. We hope you'll plan to join us as we honor legislators and citizens making a difference for women and families in the Granite State.

Rep. Deanna P. Rush

In recognition of your support, the New Hampshire Law Enforcement Officers Memorial Committee cordially invites you to the annual New Hampshire Law Enforcement Officers Memorial Ceremony. The ceremony will be held on Friday, **May 19**, beginning promptly at 10:00 a.m. on the memorial site in front of the Legislative Office Building. The ceremony will proceed rain or shine. Refreshments will be served immediately following the event. Please contact either Major Timothy J. Acerno of Fish and Game at 271-3129 or Chief Timothy Russell of the Henniker Police Department at 428-3213, if you have any questions.

W. Douglas Scamman, Speaker

The bi-partisan Methamphetamine Caucus will meet on Friday, **May 19th** at 1:00 p.m. in Room 205, LOB. Anyone interested is welcome to attend.

Reps. Joy K. Tilton and Deborah J.
Hogancamp

**STATE HOUSE VISITATION SCHEDULE
2005 & 2006 SCHOOL YEAR**

Virginia Drew, Public Information Administrator		Kenneth Leidner, Director	
<u>DATE</u>	<u>TIME</u>	<u>GROUP</u>	<u>Grade/Size</u>
April 24	10:30	Ray School – Hanover	4/45
April 25	9:30	John Fuller School – North Conway	4/40
April 25	11:00	Canaan Elementary School	4/40
April 26	9:30/11:00 SH/HM	Towle Elementary School- Newport	4/80
April 27	10:30	Ray School – Hanover	4/45
April 28	10:00/11:30 SH/HM	Seminary Hill School – West Lebanon	4/75

NOTICE

The 33rd Annual Bill White Memorial Legislative Golf Tournament is scheduled for Friday, **June 2, 2006** at the Waukewan Golf Course, Meredith, NH. The entry fee for this annual tournament is \$85.00 per person which includes greens fee, cart, barbecue dinner and prizes.

Registration is at 7:30 a.m. and the shotgun start is scheduled for 9:00 a.m. The format is “Captain and Crew.”

Sign-up as a foursome or sign-up by yourself in order to be placed in a foursome.

A maximum of 100 players will be allowed. Please note that payment must be made upon registration. There will be no exceptions to this rule! Cancellation must occur two weeks prior to the tournament date to receive a full fee refund.

Return your entry and payment no later than **May 15th** to Sandra Anderson at the LOB Lobby Desk. Checks should be made payable to Sandra Anderson.

W. Douglas Scamman, Speaker of the House

!

33rd Annual Bill White Memorial Golf Tournament
Waukewan Golf Course
Meredith, NH

Name: 1. _____
2. _____
3. _____
4. _____

Telephone: _____ Amount Enclosed: _____

**WEDNESDAY, APRIL 26
AMENDMENTS**

(LISTED IN NUMERICAL ORDER)

2006-1882h

Amendment to SB 103-FN-A-LOCAL

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

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

AN ACT establishing a committee to study alternatives for funding the operation and maintenance of state-owned dams and making an appropriation to the state dam maintenance fund and requiring the department of resources and economic development to submit a management and financial plan to the general court and the public prior to the opening of the Berlin regional ATV park.

Amend the bill by replacing all after section 5 with the following:

6 Appropriation. The sum of \$1,000,000 is hereby appropriated to the department of environmental services dam maintenance fund, established under RSA 482:55, for the fiscal year ending June 30, 2007. This sum is in addition to any other funds appropriated to the department of environmental services. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

7 New Subdivision; Off Highway Recreational Vehicles; State Park in Berlin. Amend RSA 215-A by inserting after section 44 the following new subdivision:

Park Management Plan

215-A:45 State Park in Berlin; Park Management and Financial Plan.

I. Prior to the formal opening of the park in the city of Berlin to ATV use, the commissioner of the department of resources and economic development shall develop a management and financial plan and shall present the plan to the public and the general court. The plan shall include, but not be limited to:

- (a) Existing land uses, including acreage, park boundaries, trails, facilities, recreational areas, and natural areas.
- (b) Proposed park land uses, including extent and location of trails by user type, facilities for visitors and park management, non-trail recreational resources, natural areas and their management, and buffer areas.
- (c) Proposed improvements and estimated phasing schedule, including improvements to be made prior to opening of the park.

(d) Provisions for enforcement of OHRV regulations and for emergency response, including memoranda of understanding with state agencies, municipalities, and other groups.

(e) A financial plan, including proposed expenditures and sources of revenues.

II. In accordance with RSA 215-A:41, II(f), the plan shall be presented at a public hearing advertised in a newspaper of statewide circulation. Prior to this hearing, the plan shall be presented to appropriate legislative committees and to the governor.

III. An annual report shall be presented to the speaker of the house of representatives, the senate president, the house resources, recreation and development committee, the senate environment and wildlife committee, and the governor by January 15 of each year. The report shall include:

- (a) Development completed within the park.
- (b) Projected development for the coming year.
- (c) A financial report on revenues and expenditures for the past year and projections for the next 5 years.
- (d) The number of visitors and report of enforcement and emergency activity in the park.
- (e) Marketing of the park.

8 Effective Date.

I. Section 6 of this act shall take effect July 1, 2006.

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

AMENDED ANALYSIS

This bill establishes a committee to study alternatives for funding the operation and maintenance of state owned dams. This bill also makes an appropriation to the department of environmental services dam maintenance fund.

This bill requires the department of resources and economic development to submit a plan to the general court and the public prior to the opening of the Berlin regional ATV park.

2006-1710h

Amendment to SB 190-LOCAL

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

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

AN ACT establishing a committee to study affordable housing in New Hampshire.

Amend paragraphs I-III of section 1 of the bill by replacing them with the following:

- I. There is established a committee to study affordable housing in New Hampshire.
- II. Membership and Compensation.

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

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

(2) Three members of the house of representatives, including one member of the municipal and county government committee, appointed by the speaker of the house of representatives.

(b) Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

III. Duties. The committee shall study adequate affordable housing in New Hampshire and other states, including the use of public and private partnerships. The committee's objectives shall include, but not be limited to, recommending options to municipalities and the state for increasing the supply of affordable housing. These options may include recommendations that are in a community's master plan and are related to zoning and planning ordinances and state incentives, such as tax credits to businesses and developers.

AMENDED ANALYSIS

This bill establishes a committee to study affordable housing in New Hampshire.

2006-1849h

Amendment to SB 244

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

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

AN ACT relative to unclaimed deposits for utility services.

Amend the bill by deleting sections 1-2 and renumbering the original sections 3-4 to read as 1-2, respectively.

AMENDED ANALYSIS

This bill clarifies the presumptions of abandoned deposits.

2006-1727h

Amendment to SB 282-FN-LOCAL

Proposed by the Committee on Transportation - C

Amend the bill by replacing section 1 with the following:

❑ Abandoned Vehicles; Vehicles Removed From Private Property. Amend RSA 262:40-a, I to read as follows:

I. The owner or person in lawful possession of any private property on which a vehicle is parked without his **or her** permission or is apparently abandoned may:

(a) Cause the removal of the vehicle in a reasonable manner provided he **or she** gives notice of such removal to a peace officer as soon as reasonably possible; or

(b) Notify a peace officer that he **or she** wishes to have such a vehicle removed from ~~his~~ **the** property, whereupon the peace officer or another authorized official shall cause the removal of such vehicle pursuant to the removal, impoundment, and notice procedures required by this subdivision.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 5:

❑ Abandoned Vehicles; Reasons for Removal and Impoundment; Park and Ride. Amend RSA 262:32, VI to read as follows:

VI. The owner or custodian of the vehicle is under arrest or otherwise incapacitated, and the vehicle will be a menace to traffic if permitted to remain; **or**

VII. A vehicle has been left unattended within a state-owned park and ride lot for a period of greater than 30 days.

❑ Water Pollution and Waste Disposal; Prohibited Acts; Vehicles and Containers. RSA 485-A:14 is repealed and reenacted to read as follows:

485-A:14 Prohibited Acts.

I. The lawful owner of any petroleum-powered vehicle or petroleum container that becomes partially or completely submerged in the surface waters of the state shall remove the vehicle or container from the water within 48 hours or as soon thereafter as safety and weather conditions permit. Petroleum-powered vehicles include, but are not limited to, cars, trucks, motorcycles, snowmobiles, motorized boats, off highway recreational vehicles, all terrain vehicles, construction equipment, trains, and airplanes. Petroleum containers include, but are not limited to, drums, barrels, tanks, pails, cans, jugs, or equipment which contains oil.

II. The lawful owner of the submerged vehicle or container shall notify the department of environmental services in accordance with RSA 146-A, and the department shall investigate any possible contamination and ensure the safe removal of the vehicle or container from the body of water involved. Any partially or completely submerged vehicle or petroleum container shall be presumed to be discharging oil into the surface waters of the state and shall be subject to the reporting, removal, and strict liability requirements of RSA 146-A.

III. The lawful owner of a vehicle shall notify the department of safety, division of safety services, if any person is injured or killed in an incident involving a submerged vehicle.

IV. If the owner refuses or fail to remove a submerged vehicle or container as required by paragraph I, the department of environmental services may contract for the removal of the vehicle or container in question. The owner of the submerged vehicle or container shall be strictly liable for the costs of removing the vehicle or container and the costs of the investigation, containment, cleanup, removal, and corrective measures associated with the discharge. The cost shall be recoverable by the state in an action of debt brought by the attorney general in the name of the state. The state shall impound any submerged vehicle or container recovered, at the expense of the owner, until all costs incurred by the state have been paid by the owner of the vehicle or container.

V. Any person who fails to remove a submerged or partially submerged vehicle or container, as required by paragraph I, shall be guilty of a violation. Agents of the department of safety, division of safety services, or any police officer having jurisdiction over the water body, may issue citations for a violation of this section and issue fines of \$500 for each day the vehicle remains in the water.

AMENDED ANALYSIS

This bill:

- I. Clarifies liability for costs of removing abandoned vehicles from private property.
- II. Authorizes removal of abandoned vehicles from state-owned park and rides.
- III. Modifies procedures and requirements relating to vehicles submerged in surface waters of the state and adds petroleum containers to the submerged vehicle statute.

2006-1928h

Amendment to SB 287-FN
Proposed by the Committee on Judiciary - R

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

AN ACT making certain changes to the eminent domain statute and establishing a committee to study eminent domain issues.

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

1 New Paragraph; Definition Added; "Public Use." Amend RSA 162-K:2 by inserting after paragraph IX the following new paragraph:

IX-a. "Public use" means:

- (a)(1) The possession, occupation, and enjoyment of real property by the general public or governmental entities;
- (2) The acquisition of any interest in real property necessary to the function of a public or private utility or common carrier either through deed of sale or lease;
- (3) The acquisition of real property to remove structures beyond repair, public nuisances, structures unfit for human habitation or use, and abandoned property when such structures or property constitute a menace to the health and safety of the public at large; and
- (4) Private use that occupies an incidental area within a public use; provided, that no real property shall be condemned solely for the purpose of facilitating such incidental private use.
- (b) Except as provided in subparagraphs (a)(2) and (4) of this paragraph, public use shall not include the public benefits resulting from private economic development and private commercial enterprise, including increased tax revenues and increased employment opportunities.

2 Municipal Economic Development; Eminent Domain. Amend RSA 162-K:6, III(b) to read as follows:

(b) Acquire ~~land~~ **real property** or easements through negotiation or through powers of eminent domain, **except that property acquired through powers of eminent domain shall be put to public use, as defined in RSA 162-K:2, IX-a;**

3 New Paragraph; Housing Authorities Law; Definition Added. Amend RSA 203:3 by inserting after paragraph XIII the following new paragraph:

XIV. "Public use" means:

- (a)(1) The possession, occupation, and enjoyment of real property by the general public or governmental entities;
- (2) The acquisition of any interest in real property necessary to the function of a public or private utility or common carrier either through deed of sale or lease;
- (3) The acquisition of real property to remove slums, as defined in RSA 203:3, VIII, structures beyond repair, public nuisances, structures unfit for human habitation or use, and abandoned property when such structures or property constitute a menace to the health and safety of the public at large; and
- (4) Private use that occupies an incidental area within a public use; provided, that no real property may be condemned solely for the purpose of facilitating such incidental private use.
- (b) Except as provided in subparagraphs (a)(2) and (4) of this paragraph, public use shall not include the public benefits resulting from private economic development and private commercial enterprise, including increased tax revenues and increased employment opportunities.

4 New Paragraph; Housing Authorities Law; Eminent Domain. Amend RSA 203:12 by inserting after paragraph I the following new paragraph:

I-a. Property acquired through powers of eminent domain shall be put to public use, as defined in RSA 203:3, XIV.

5 Redevelopment Projects. Amend RSA 205:1 to read as follows:

205:1 Finding and Declaration of Necessity. It is hereby found and declared (a) that there exist in many communities within this state blighted areas ~~(as defined herein) or areas in the process of becoming blighted~~ **for the reasons set forth in RSA 205:2-b**; (b) that such areas impair economic values and tax revenues; that such areas cause an increase in and spread of disease and crime and constitute a menace to the health~~[-]~~ **and** safety~~[-]~~ ~~morals and welfare~~ of the residents of the state, that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities; (c) that the clearance, replanning and preparation for rebuilding of these areas, and the prevention or the reduction of blight and its causes, are public ~~uses and~~ purposes for which public money may be spent and private property acquired, **consistent with this chapter**, and are governmental functions of state concern; (d) that there are also certain areas where the condition of the title, the diverse ownership of the ~~land~~ **real property** to be assembled, the street or lot layouts, or other conditions prevent a proper development of the ~~land~~ **real property**, and that it is in the public interest that such areas, as well as blighted areas, be acquired by eminent domain, **consistent with this chapter**, and made available for sound and wholesome development in accordance with a redevelopment plan, and that the exercise of the power of eminent domain and the financing of the acquisition and preparation of ~~land~~ **real property** by a public agency for such redevelopment is likewise a public use **justifying the use of the powers of eminent domain when exercised consistent with RSA 205:3-b** and **a public purpose for which public money may be expended and such other powers authorized**; (e) that redevelopment activities will stimulate residential construction which is closely correlated with general economic activity; and that such undertakings authorized by this chapter will aid the production of better housing and more desirable neighborhoods and community development at lower costs and will make possible a more stable and larger volume of residential construction, which will assist materially in achieving and maintaining full employment; and (f) that it is in the public interest that advance preparation for such projects and activities be made now, and that the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

6 Redevelopment Projects; Findings and Declaration of Necessity. Amend RSA 205:1-a to read as follows:

205:1-a Findings and Declaration of Necessity. It is hereby found and declared that (a) certain of the blighted areas ~~and the areas in the process of becoming blighted, or portions thereof~~ may, through the means provided herein, be susceptible of conservation or rehabilitation in such manner that the conditions ~~and evils~~ of blight may be eliminated, remedied or prevented and, to the extent feasible, the salvable blighted areas should be conserved and rehabilitated through voluntary action and the regulatory process, and (b) all powers conferred in this chapter are for public uses **justifying the use of the powers of eminent domain when exercised consistent with RSA 205:3-b** and **public** purposes for which public money may be expended and such other powers exercised, and the necessity in the public interest for these provisions is hereby declared as a matter of legislative determination.

7 Redevelopment Projects; Finding and Declaration of Necessity. Amend RSA 205:1-b to read as follows:

205:1-b Findings and Declaration of Necessity. It is hereby found and declared that there exist in many communities within this state areas of vacant or predominantly vacant ~~land~~ **real property** which are substandard or blighted ~~or in the process of becoming blighted~~ for the reasons set forth in RSA 205:2-b; that such areas constitute a serious and growing menace to the safety~~[-]~~ **and** health~~[-]~~ ~~morals, and welfare~~ of the communities of this state; that such areas are not being used at all or are being used in an unplanned, haphazard and piecemeal manner; that such areas impair economic values, retard the provision of residential, commercial, industrial, institutional and recreational buildings and other improvements, impair the tax revenues in these communities and threaten the sources of public revenue and the financial stability of these communities, thus preventing the sound growth of these communities and the provision of new places of residence or employment for their citizens; that the development or redevelopment of such areas in these communities in accordance with a comprehensive redevelopment plan is necessary to improve economic values, return important tax revenues, and provide additional places of residence or employment; that the development or redevelopment of such areas cannot be achieved by the ordinary operations of private enterprise without the aids herein provided; that the development or redevelopment of such areas are public ~~uses and~~ purposes for which public monies may be expended and **public uses** for which the power of eminent domain and other governmental powers may be exercised, **consistent with RSA 205:3-b**; that the development or redevelopment of such areas in accordance with an approved redevelopment plan will stimulate the investment of private capital, the construction of residential, commercial, industrial, institutional and recreational buildings and the provision of new sources of employment and will eliminate and prevent the recurrence of the existing substandard and blighted and blighting conditions now existing in such areas; and the necessity in the public interest for these provisions is hereby declared as a matter of legislative determination.

8 Redevelopment Projects; Authority. Amend RSA 205:3 to read as follows:

205:3 Authority. In undertaking such redevelopment projects a housing authority shall have all the rights, powers, privileges and immunities that such authority has under the housing authorities law, RSA 203, and any other provision of law

relating to slum clearance and housing projects for persons of low income (including, without limiting the generality of the foregoing, the power to make and execute contracts, to issue bonds and other obligations and give security therefor, to acquire real property by eminent domain or purchase, and to do any and all things necessary to carry out projects, ***except that the power to acquire real property by eminent domain shall be limited as set forth in RSA 205:3-a***) in the same manner as though all the provisions of law applicable to slum clearance and housing projects were applicable to redevelopment projects undertaken under this chapter; provided that nothing contained in RSA 203:9 and 10 shall be construed as limiting the power of an authority, in the event of a default by a purchaser or lessee of land in a redevelopment plan, to acquire ***real*** property and operate it free from the restrictions contained in said sections.

9 New Sections; Redevelopment Projects; Authority to Take Real Property by Eminent Domain Limited. Amend RSA 205 by inserting after section 3 the following new sections:

205:3-a Authority to Take Real Property by Eminent Domain Limited. In undertaking redevelopment projects pursuant to this chapter, a housing authority shall have the power to take real property by eminent domain. The power of eminent domain shall be used only for the purpose of acquiring real property that will be put to public use, as defined in RSA 205:3-b.

205:3-b “Public Use” Defined. Notwithstanding any other provision of law to the contrary, in this chapter, “public use” means:

- I.(a) The possession, occupation, and enjoyment of real property by the general public or governmental entities;
- (b) The acquisition of any interest in real property necessary to the function of a public or private utility or common carrier either through deed of sale or lease;
- (c) The acquisition of real property to remove structures beyond repair, public nuisances, structures unfit for human habitation or use, and abandoned property when such structures or property constitute a menace to the health and safety of the public at large; and
- (d) Private use that occupies an incidental area within a public use; provided, that no real property may be condemned solely for the purpose of facilitating such incidental private use.

II. Except as provided in subparagraphs I(b) and (d) of this paragraph, public use shall not include the public benefits resulting from private economic development and private commercial enterprise, including increased tax revenues and increased employment opportunities.

10 Eminent Domain Procedure Act; Intent of Chapter. Amend RSA 498-A:1 to read as follows:

498-A:1 Intent of Chapter.

I. It is the intent by the enactment of this chapter to provide a complete and exclusive procedure to govern all condemnations of property for public purposes including the review of necessity, public ~~[purposes]~~ ***uses***, and net-public benefit, and the assessment of damages therefor. It is not intended to enlarge or diminish the power of condemnation given by law to any condemnor and it is not intended to enlarge or diminish the rights given by law to any condemnee to challenge the necessity, public ~~[purposes]~~ ***uses***, and net-public benefit for any condemnation.

II. Notwithstanding any other provision of law to the contrary, no person’s private real property shall be taken pursuant to this chapter unless that real property is to be put to public use, as defined in RSA 498-A:2, VII.

11 New Paragraph; Definition Added; Public Use. Amend RSA 498-A:2 by inserting after paragraph VI the following new paragraph:

VII. “Public use” means:

- (a)(1) The possession, occupation, and enjoyment of real property by the general public or governmental entities;
 - (2) The acquisition of any interest in real property necessary to the function of a public or private utility or common carrier either through deed of sale or lease;
 - (3) The acquisition of real property to remove structures beyond repair, public nuisances, structures unfit for human habitation or use, and abandoned property when such structures or property constitute a menace to the health and safety of the public at large; and
 - (4) Private use that occupies an incidental area within a public use; provided, that no real property may be condemned solely for the purpose of facilitating such incidental private use.
- (b) Except as provided in subparagraphs (a)(2) and (4) of this paragraph, public use shall not include the public benefits resulting from private economic development and private commercial enterprise, including increased tax revenues and increased employment opportunities.

12 Condemnation; Passage of Title; Declaration of Taking. Amend RSA 498-A:5, II(e) to read as follows:

(e) A brief description of the purpose of the condemnation ~~[and]~~, the need ~~[therefore]~~ ***therefor, and the public use to which the real property will be put;***

13 Eminent Procedure Act; Preliminary Objections. Amend RSA 498-A:9-a, I(c) to read as follows:

(c) The necessity, public ~~[purposes]~~ ***use***, and net-public benefit of the taking.

14 Eminent Procedure Act; Determination of Preliminary Objections Based on Necessity. Amend the section heading and paragraph I of RSA 498-A:9-b to read as follows:

498-A:9-b Determination of Preliminary Objections Based on Necessity, Public ~~[Purpose]~~ ***Use***, and Net-Public Benefit.

I. If a condemnee files a preliminary objection under RSA 498-A:9-a, I(c) concerning necessity, public ~~[purpose]~~ **use**, or net-public benefit, the board shall transfer that preliminary objection to the superior court of the county in which the property is located. There shall be no filing fee for such transfer.

15 New Section; Eminent Domain Procedure Act; Attorneys Fees. Amend RSA 498-A by inserting after section 26-a the following new section:

498-A:26-b Attorney's Fees. If the condemnee is the prevailing party solely on the issue of public use, he or she shall be entitled to reasonable attorney's fees.

16 Change of Term; "Public Purpose" to "Public Use." Amend RSA 21-L:15, I to read as follows:

I. The board shall hear and decide appeals from decisions of the commissioner relative to contract interpretation or other decisions affecting persons not employed by the department, municipalities, or private property, except condemnations of property for public ~~[purposes]~~ **uses**, and the assessment of damages therefor. Decisions of division directors shall be appealed to the commissioner. Decisions of the commissioner may be appealed to the appeals board, except decisions relative to aeronautical matters, which may be appealed to the aviation users advisory board established under RSA 21-L:8, and decisions relative to common carriers by rail, which may be appealed to the railroad appeals board established under RSA 21-L:16. The board shall also hear appeals from the department of administrative services relating to such matters involving public works design and construction as have been delegated to the department of administrative services or as were administered prior to July 1, 2005 by the division of public works, department of transportation.

17 Change of Term; "Public Purpose" to "Public Use." Amend RSA 71-B:5, III to read as follows:

III. To hear and determine all matters relating to the condemnation of property for public ~~[purposes]~~ **uses** and the assessment of damages therefor as provided in RSA 498-A.

18 Change of Term; "Public Purpose" to "Public Use." Amend RSA 228:56 to read as follows:

228:56 Acquisition and Necessity. Notwithstanding any provisions of the law to the contrary, the commissioner, as sole agent for the state, and with the approval of the governor and council, is authorized to acquire, by purchase or condemnation, or otherwise, such portion or portions of the rail property of any railroad corporation, including such tracks and ties, rights-of-way, land, buildings, appurtenances and other facilities necessary and required for the operation of railroads, as well as any other property found by the commissioner to be necessary for the operation of a railroad or other transportation purposes, including recreational trails. The authority to acquire such rail properties shall extend to rail properties within, as well as those not within, the jurisdiction of the Interstate Commerce Commission, and includes rail properties within the purview of the Regional Rail Reorganization Act of 1973, and any amendments thereto or other pertinent federal legislation. The acquisition of such rail properties and other property by the commissioner shall be for the purpose of the continued and future operation of a railroad or transportation corridor, including recreational trails, which is deemed to be in the public interest and which shall include the authority to sell or lease said properties. The acquisition of such rail properties and other property is declared to be a public ~~[purpose]~~ **use** and to be reasonably necessary. This action may be taken in concert with another state or states as necessary to insure continued rail service and to insure continuous corridors, including recreational trails.

19 Change of Term; "Public Purpose" to "Public Use." Amend RSA 228:57 to read as follows:

228:57 Sale or Lease; Purpose. The commissioner as sole agent for the state, with the approval of the governor and council, is authorized to sell, transfer or lease all or any part of the rail properties, and other property acquired under the provisions of this subdivision, to any responsible person, firm or corporation, for continued operation of a railroad, or other public ~~[purpose]~~ **use**, provided, if necessary, approval for such continued operation, or other public ~~[purpose]~~ **use**, is granted by the interstate commerce commission of the United States whenever such approval is required. Such sale, transfer or lease shall be for such price, and subject to said further terms and conditions, as in the opinion of the commissioner are necessary and appropriate to effectuate the purposes of this subdivision.

20 Change of Term; "Public Purpose" to "Public Use." Amend RSA 228:59 to read as follows:

228:59 Condemnation. If the commissioner is unable to acquire the rail properties of any railroad, or any part thereof, by purchase or otherwise, he **or she** may proceed to condemn all or any such portion of such property. In all such condemnation proceedings, the legislative determination herein made that the acquisition is for a public ~~[purpose]~~ **use** and is reasonably necessary shall be prima facie evidence thereof. The procedure for any necessary condemnation proceedings shall be as set forth in RSA 498-A.

21 Change of Term; "Public Purpose" to "Public Use." Amend RSA 228:67 to read as follows:

228:67 Disposition of Acquired or Abandoned Rail Properties. Whenever the commissioner determines that certain acquired or abandoned rail properties owned by the state pursuant to RSA 228:60-a, II; 228:60-a, VI; 228:60-b; or any other means are no longer needed, the commissioner may transfer or sell such rail properties to any other state department or agency, or political subdivision of the state, which will utilize such properties for public ~~[purposes]~~ **uses** and, if no state department or agency, or political subdivision, wants such properties, the commissioner may sell them, in accordance with RSA 4:40 with the proceeds from the sale deposited into the special fund established in RSA 228:68. Such transfer or sale shall require approval of the long range capital planning and utilization committee and the governor and council.

22 Change of Term; "Public Purpose" to "Public Use." Amend RSA 230:13, I to read as follows:

I. The governor, with advice of the council, may determine upon hearing whether there is occasion for the laying out or alteration of a class I or class II highway or a highway within the state included in the national system of interstate highways as proposed by the commissioner of transportation, and, if so, shall appoint a commission of 3 persons who may purchase land or other property that is reasonably necessary for the construction, reconstruction, or alteration and who shall lay out the remainder of such highway or alteration. Any such land or property which cannot be acquired by agreement with the owner or owners thereof may be acquired in accordance with RSA 498-A and all issues that are appealed relating to necessity, public ~~[purpose]~~ **use**, and net public benefit shall be determined in accordance with RSA 230:19. Property rights acquired under the provisions of this section shall be in fee simple or in the form of easements, including property acquired by condemnation proceedings.

23 Change of Term; "Public Purpose" to "Public Use." Amend RSA 230:14, I to read as follows:

I. The governor, with advice of the council, may appoint a commission of 3 persons who, upon hearing, shall determine whether there is occasion for the laying out or alteration of a class I or class II highway or a highway within the state included in the national system of interstate highways as proposed by the commissioner of transportation and if so, the commission may purchase land or other property that is reasonably necessary for the construction, reconstruction, or alteration and shall lay out the remainder of such highway or alteration. Any such land or property which cannot be acquired by agreement with the owner or owners thereof may be acquired in accordance with RSA 498-A and all issues that are appealed relating to necessity, public ~~[purpose]~~ **use**, and net public benefit shall be determined in accordance with RSA 230:19. Property rights acquired under the provisions of this section shall be in fee simple or in the form of easements, including property acquired by condemnation proceedings.

24 Change of Term; "Public Purpose" to "Public Use." Amend RSA 498-A:1 to read as follows:

498-A:1 Intent of Chapter. It is the intent by the enactment of this chapter to provide a complete and exclusive procedure to govern all condemnations of property for public ~~[purposes]~~ **uses** including the review of necessity, public ~~[purposes]~~ **uses**, and net-public benefit, and the assessment of damages therefor. It is not intended to enlarge or diminish the power of condemnation given by law to any condemnor and it is not intended to enlarge or diminish the rights given by law to any condemnee to challenge the necessity, public ~~[purposes]~~ **uses**, and net-public benefit for any condemnation.

25 Change of Term; "Public Purpose" to "Public Use." Amend RSA 498-A:2, I-III to read as follows:

I. "Condemn" means to take public and private property by authority of law for a public ~~[purpose]~~ **use**;

II. "Condemnee" means the owner of record of property taken or to be taken, including tenants for life or years, remaindermen, reversioners, and holders of undischarged mortgages of record whose mortgages are dated not earlier than 20 years prior to the date of the filing of declaration of taking, municipalities with respect to unpaid taxes, fees and interest for which the municipality has been granted a lien or other interest in the property under the provisions of RSA 80, and guardians ad litem appointed pursuant to the provisions of this chapter. This definition does not include judgment creditors or other lien holders;

III. "Condemnor" means the entity, including the state of New Hampshire, taking property of another under authority of law for a public ~~[purpose]~~ **use**;

26 Change of Term; "Public Purpose" to "Public Use." Amend RSA 498-A:9-a, I(c) to read as follows:

(c) The necessity, public ~~[purposes]~~ **uses**, and net-public benefit of the taking.

27 Change of Term; "Public Purpose" to "Public Use." Amend RSA 498-A:9-b, I to read as follows:

I. If a condemnee files a preliminary objection under RSA 498-A:9-a, I(c) concerning necessity, public ~~[purpose]~~ **use**, or net-public benefit, the board shall transfer that preliminary objection to the superior court of the county in which the property is located. There shall be no filing fee for such transfer.

28 Committee Established. There is established a committee to study eminent domain in New Hampshire and issues related to eminent domain.

29 Membership and Compensation.

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

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

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

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

30 Duties. The committee shall specifically study:

I. What the criteria should be to establish the proper balance between the probable benefit of an economic development project to a community through the eminent domain process, and the probable harm to the concept of the sanctity of private property?

II. Do state statutes relating to eminent domain need to be consolidated, specifically those contained in RSA 203 and RSA 205?

III. Should we consider the award of enhanced compensation; that is, payment in excess of fair market value, for property taken by eminent domain?

IV. Should the terms "public good" and "incidental area within a public use," which have increasingly appeared in

feasibility studies and court decisions in which the exercise of the power of eminent domain has been considered, be precisely defined by statute?

V. Should the term “blighted,” and derivative and related terms, be explicitly defined by statute in the context of eminent domain when dealing with so-called “urban renewal” and “redevelopment” projects? Should the proposed RSA 498-A:2 language “the acquisition of land to cure a concrete harmful effect of its present use, including the removal of public nuisances or structures that are beyond repair or that are unfit for human habitation or use; or the acquisition of abandoned property” be included when defining “blight?” Should, and if so, how should appraisals and other similar measures be used to determine “blight?”

VI. Does the limited scope of our proposed definition of public use in any way unduly burden communities in greatest need of economic development?

VII. Should a displacing agency pay “replacement costs” to businesses displaced by eminent domain? If so, should the payment consist of an amount equal to the replacement cost of the business?

VIII. Whether natural gas pipelines fall within the category of a public or private utility or common carrier for the purposes of defining public use.

IX. Other issues pertinent to eminent domain in New Hampshire.

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

32 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 30, 2007.

33 Effective Date.

I. Sections 28-33 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect January 1, 2007.

AMENDED ANALYSIS

This bill defines the term “public use” for purposes of taking by eminent domain.

This bill also establishes a committee to study issues relative to eminent domain in New Hampshire.

2006-1782h

Amendment to SB 319

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

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

I. The members of the task force shall be as follows:

- (a) Two members of the senate, appointed by the president of the senate.
- (b) Four members of the house of representatives, appointed by the speaker of the house of representatives.
- (c) Ten members of the house of representatives, each representing a different county, appointed by the chairpersons of the respective county delegations.
- (d) Two county commissioners, appointed by the New Hampshire Association of Counties.
- (e) One mayor of a city and one selectmen of a town, appointed by the New Hampshire Municipal Association.
- (f) One sheriff, appointed by the New Hampshire Sheriff's Association.
- (g) The commissioner of the department of revenue administration, or designee.
- (h) The commissioner of the department of health and human services, or designee.
- (i) The commissioner of the department of corrections, or designee.
- (j) Two public members, appointed by the governor.

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

I. Undertake a broad study of the current functions and departments of county government in New Hampshire, including but not limited to a determination of the total cost of operating county government functions, and shall also examine possible new functions of county government.

Amend the bill by replacing section 5 with the following:

5 Chairperson; Meetings; Public Forums. The members of the task force shall elect a chairperson from among the members. The first meeting of the task force shall be called by the first-named senate member. The first meeting of the task force shall be held within 45 days of the effective date of this section. The task force shall hold at least one public forum in each county for the purpose of gathering information relevant to the study.

2006-1859h

Amendment to SB 323

Proposed by the Committee on Children and Family Law - R

Amend RSA 19-J as inserted by section 1 of the bill by replacing it with the following:

CHAPTER 19-J

LEGISLATIVE YOUTH ADVISORY COUNCIL

19-J:1 Legislative Youth Advisory Council Established. A legislative youth advisory council is established to examine issues of importance to youth, such as education, employment, strategies to increase youth participation in local and state government, safe environments for youth, substance abuse, emotional and physical health, foster care, poverty, homelessness, and youth access to state and local services. The council shall advise the legislature on these issues and shall submit an annual report with any recommendations for future legislation.

19-J:2 Membership. The council shall consist of 21 members, one of whom shall be a member of the house of representatives and one of whom shall be a member of the senate. The remaining nineteen members shall be youths between the ages of 15 and 22.

I. The president of the senate shall appoint the following 7 members:

(a) Three youths who are students in secondary schools, who are home school students, or who are enrolled in programs that lead to a secondary school diploma, certificate of attendance, or general equivalency diploma.

(b) Three youths who are residents of this state and who are students at postsecondary education institutions located in the state.

(c) One member of the senate.

II. The speaker of the house of representatives shall appoint the following 8 members:

(a) Four youths who are students in secondary schools, who are home school students, or who are enrolled in programs that lead to a secondary school diploma, certificate of attendance, or general equivalency diploma.

(b) Three youths who are residents of this state and who are students at postsecondary education institutions located in the state.

(c) One member of the house of representatives.

III. The governor shall appoint the following 3 members:

(a) Two youths who are students in secondary schools, who are home school students, or who are enrolled in programs that lead to a secondary school diploma, certificate of attendance, or general equivalency diploma.

(b) One youth who is a resident of this state and who is a student at a postsecondary education institution located in the state.

IV. The secretary of state shall appoint the following 3 members:

(a) Two youths who are students in secondary schools, who are home school students, or who are enrolled in programs that lead to a secondary school diploma, certificate of attendance, or general equivalency diploma.

(b) One youth who is a resident of this state and who is a student at a postsecondary education institution located in the state.

V. The appointing authorities shall make appointments that foster geographic and socio-economic diversity among council members and shall appoint at least one member from each of the 10 counties. The legislative members of the council shall serve a term coterminous with their term in office. Nonlegislative members shall serve 2-year terms, except that the initial appointment of 9 of the members shall be for a term of one year. Except for legislative members, no member shall serve on the council for more than 4 years.

19-J:3 Duties. The council shall perform the following duties:

I. Advise the legislature, the president of the senate, and the speaker of the house of representatives on proposed or pending legislation, state budget expenditures, and policy matters related to youth.

II. Advise the joint standing committees of the legislature and legislative study committees, commissions, and task forces on issues related to youth.

III. Conduct an annual seminar each August for council members regarding leadership, government, and the legislature.

IV. Meet no fewer than 4 times per year and conduct 2 public hearings per year on issues of importance to youth.

V. File an annual report of its activities, including any recommendations for proposed legislation, on or before November 1 of each year with the speaker of the house, the senate president, and the state library.

19-J:4 Council Administration.

I. The council member from the house of representatives shall serve as the co-chair of the council and shall call the first meeting of the council. At the first meeting of each calendar year, the members shall elect one of the youth members to serve as co-chair for a term of one year.

II. The council shall set priorities, determine the function of any subcommittees, and adopt procedures and rules governing the council's meetings and activities.

III. The council may provide testimony on legislation pending before the legislature.

IV. Members of the council shall not be compensated, except that legislative members of the council shall receive mileage at the legislative rate when attending to the duties of the council.

V. Meetings of the council shall be open to the public, and all records of the council shall be public records.

VI. The New Hampshire Alliance for Civic Engagement, in coordination with the office of the speaker of the house of representatives and the office of the senate president, shall provide staff assistance to the council.

19-J:5 Funding; Legislative Youth Advisory Council Fund Established.

I. The council may accept and expend funds, with the approval of the joint committee on legislative facilities, from public and private sources to support its activities. Funds shall not be accepted from any party with a pecuniary or other vested interest in the outcome of the matters being studied or who would in any way compromise the work of the council. Any person, other than a state agency, who desires to make a financial or in-kind contribution shall certify to the council or its designee in the manner prescribed by the council that the person has no pecuniary or other vested interest in the outcome of the work of the council. All contributions shall be subject to approval by the council and the joint committee on legislative facilities.

II. Any funds received by the council shall be deposited by the state treasurer in a separate, non-lapsing account which shall be known as the legislative youth advisory council fund. The fund shall be continually appropriated to the legislative youth advisory council for the purposes of this chapter and shall be within the oversight of the joint committee on legislative facilities.

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

2 New Subparagraph; Dedicated Funds; Legislative Youth Advisory Council Fund Added. Amend RSA 6:12, I(b) by inserting after subparagraph (247) the following new subparagraph:

(248) Moneys deposited in the legislative youth advisory council fund established in RSA 19-J:5.

2006-1600h

Amendment to SB 325

Proposed by the Committee on Transportation - C

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

10 New Sections; Equipment of Vehicles; Width; Snowplows and Motor Homes. Amend RSA 266 by inserting after section 13 the following new sections:

266:13-a Snowplows; Exception. A truck used for snow plowing may be driven on the ways of this state with a plow not exceeding 108 inches in width.

266:13-b Appurtenances on Motor Homes, Trailer Coaches, and Recreation Vehicles. A motor home, trailer coach, or recreation vehicle may be driven on the ways of this state when the overall width is greater than 102 inches, provided the excess over 102 inches is solely due to a non-load-carrying appurtenance that extends no more than 6 inches beyond the body of the vehicle. The term "appurtenance" does not include any item that is temporarily affixed to the exterior of the vehicle by the vehicle's owner for the purpose of transporting the item from one location to another, but does include an awning and its support hardware and other items that are intended to be an integral part of the vehicle and were installed by the motor vehicle manufacturer or dealer.

11 New Section; Motor Vehicles; Words and Phrases Defined; Motor Home. Amend RSA 259 by inserting after section 58 the following new section:

259:58-a Motor Home. "Motor home" shall mean a self-propelled, completely self-contained vehicle that includes the conveniences of a home, including cooking, sleeping, and permanent sanitary facilities, and a driver's seat that is accessible in a walking position from the living quarters.

12 Administration of Motor Vehicle Laws; Records and Certification. Amend RSA 260:14, III-IV to read as follows:

III. Motor vehicle records may be made available **pursuant to a court order or** in response to a request from a state, a political subdivision of a state, ~~[pursuant to a court order,]~~ the federal government, or a law enforcement agency for use in official business. The request shall be on a case-by-case basis. Any records received pursuant to this ~~[section]~~ **paragraph** shall not be further transferred or otherwise made available to any other person or listed entity not authorized under this paragraph.

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

IV.(a) Except for a person's photograph, computerized image, and social security number, motor vehicle records shall be made available, upon proof of the identity of the person requesting the records and representation by such person on a form satisfactory to the department that the records will be strictly limited to one of the following described uses:

(1) Motor vehicle manufacturers, or their authorized agents, for use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of the Automobile Information Disclosure Act, the Motor

Vehicle Information and Cost Saving Act, the National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft Act of 1992, and the Clean Air Act.

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

(b) No motor vehicle records made available under this ~~[section]~~ **paragraph** shall be sold, rented, transferred, or otherwise made available in whole or in part, in any form or format, directly or indirectly, to another person, except that an authorized agent may make such records available to any principal on whose behalf the records were sought if the name of that principal was provided to the department at the time the records were sought.

13 New Section; Rental Vehicle Title and Registration Recovery Fee. Amend RSA 261 by inserting after section 31 the following new section:

261:31-a Rental Vehicle Title and Registration Recovery Fee. A vehicle title and registration recovery fee charged to customers by a company engaged in the rental of motor vehicles shall be fully disclosed to the customer by being separately stated and identified on the rental agreement.

14 Registration Required. Amend RSA 261:40 to read as follows:

261:40 Registration Required. Except as otherwise provided, it is a violation for any person to drive or any owner or custodian to knowingly permit or cause to be driven on the ways of this state any vehicle ~~[of a type required to be registered hereunder]~~ **which is not specifically exempt by statute or rule from the requirement of registration**, unless the same has been registered and the appropriate fee paid in accordance with the provisions of this chapter. The fine for a violation of this section shall be \$100.

15 New Section; Proof of Valid Registration. Amend RSA 261 by inserting after section 59 the following new section:

261:59-a Proof of Valid Registration. No person shall be arrested for a violation of RSA 261:40, nor shall any person's vehicle be towed on account of being unregistered, solely because a computer check indicates that the registration has expired, if the driver presents to the officer a facially legitimate, current registration certificate and the number plates have current, serially numbered decals attached, the serial numbers of which match the numbers on the registration certificate. This section shall not apply in any case where the certificate or decals appear to be counterfeit or altered or the computer check indicates that the plates have been suspended or revoked.

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

AMENDED ANALYSIS

This bill:

- I. Corrects various obsolete or incorrect references in the motor vehicle laws.
- II. Requires retail vehicle dealers to notify the department of safety of vehicle sales to Massachusetts residents.
- III. Permits a person to receive multiple walking disability motorcycle plates.
- IV. Establishes exceptions to vehicle width limitations for snowplows, motor homes, trailer coaches, and recreation vehicles.
- V. Establishes disclosure requirements for title and registration recovery fees charged by rental companies.
- VI. Clarifies certain vehicle registration requirements.

2006-1590h

Amendment to SB 334

Proposed by the Committee on Commerce - C

Amend RSA 359-B:22, I and II as inserted by section 1 of the bill by replacing it with the following:

I. "Identity theft" means the unauthorized taking or use of an individual's personal information to obtain credit, goods, services, money, or property, with the intent to commit fraud. In this paragraph, personal information includes, but is not limited to, an individual's first name or initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

- (a) Social security number.
- (b) Driver's license number.
- (c) Account number, credit card number, or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

II. "Proper identification" has the same meaning as in 15 U.S.C. section 1681h(a)(1), and includes:

- (a) The consumer's full name, including first, last, and middle names and any suffix.
- (b) Any name the consumer previously used.
- (c) The consumer's current and recent full addresses, including street address, any apartment number, city, state, and zip code.
- (d) The consumer's social security number.
- (e) The consumer's date of birth.

Amend RSA 359-B as inserted by section 1 of the bill by inserting after section 28 the following new section:

359-B:29 Police Report Regarding Identity Theft.

I. A person who has learned or reasonably suspects that he or she has been the victim of identify theft may contact the local law enforcement agency that has jurisdiction over his or her place of residence, which shall take a police report of the matter, and provide the complainant with a copy of that report. Notwithstanding the fact that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity fraud, the local law enforcement agency shall take the complaint and provide the complainant with a copy of the complaint and may refer the complaint to a law enforcement agency in a different jurisdiction.

II. Nothing in this section shall interfere with the discretion of a local law enforcement agency to allocate resources for investigations of crimes. A complaint filed under this section is not required to be counted as an open case for purposes such as compiling open case statistics.

2006-1649h

Amendment to SB 336
Proposed by the Committee on Judiciary - C

Amend the bill by replacing section 1 with the following:

1 Receipt for Security Deposit; When Required. Amend RSA 540-A:6, I to read as follows:

I.(a) A landlord shall not demand or receive any security deposit in an amount or value in excess of one month’s rent or \$100, whichever is greater.

(b) *Except as provided in subparagraph (c)*, upon receiving a deposit from a tenant, a landlord shall forthwith deliver to the tenant a signed receipt stating the amount of the deposit and specifying the place where the deposit or bond for the deposit pursuant to RSA 540-A:6, II(c) will be held, and shall notify the tenant that any conditions in the rental unit in need of repair or correction should be noted on the receipt or given to the landlord in writing within 5 days of occupancy.

(c) *No receipt shall be required when the tenant furnishes a security deposit in the form of a personal check, a bank check, or a check issued by a government or non-profit agency on behalf of the tenant. Regardless of whether or not a receipt is required, the landlord shall provide written notice to the tenant that a written list of conditions in the rental unit in need of repair or correction, if any, should be given to the landlord within 5 days of occupancy.*

2006-1872h

Amendment to SB 341
Proposed by the Committee on Transportation - C

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

AN ACT relative to the applicability of OBD II testing requirements.

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

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

XIII. Establish a program to waive the repair requirements of the OBD II testing program. Waivers shall be granted based on indigency or other urgent financial need. The waiver program required by this paragraph shall be consistent with the recommendations of the OBD II testing advisory committee established in RSA 266:59-b, VII and shall be implemented no later than February 1, 2007.

2 OBD II Testing; Applicability. Amend 2005, 296:4 to read as follows:

296:4 OBD II Testing; Applicability. Notwithstanding RSA 266:59-b, any EPA OBD II testing required by department of safety rules prior to [May] **December** 1, 2006 shall be advisory only. No inspection station shall deny an inspection sticker to any **model year 2002 or newer** vehicle because of OBD II failure prior to [May] **December** 1, 2006. **No inspection station shall deny an inspection sticker to any model year 1996 through 2001 vehicle because of OBD II failure, except that a sticker may be denied to such vehicle after July 1, 2007 if the department has implemented a repair waiver program.**

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

AMENDED ANALYSIS

This bill requires the commissioner of safety to implement an OBD II repair waiver program by February 1, 2007. This bill also modifies the applicability of the OBD II inspection failure requirement.

2006-1879h

Amendment to SB 352-FN
Proposed by the Committee on Executive Departments and Administration - C

Amend RSA 310-B:2, II as inserted by section 2 of the bill by replacing it with the following:

II. “Appraisal **report**” or “real estate appraisal **report**” means a written statement [~~independently and impartially~~]

prepared by a licensed or certified appraiser, ~~and~~ ***whether or not*** used in connection with a federally-related transaction under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information. ***Nothing in this paragraph shall be interpreted to effect the right of any person to provide services under RSA 310-B:3, II, III, or IV.***

Amend RSA 310-B:7 as inserted by section 5 of the bill by replacing it with the following:

310-B:7 Examination Requirements. An original license or certification as a licensed or certified real estate appraiser may be issued to any person who has demonstrated through a proctored written examination process that he or she meets the minimum requirements of the Appraisal Foundation.

2006-1895h

Amendment to SB 354-FN

Proposed by the Committee on Executive Departments and Administration - R

Amend the bill by replacing section 5 with the following:

5 Transitional Provisions. Any persons employed as security officers of the New Hampshire hospital security force on the date this act takes effect and who have not completed the training required by the police standards and training council for certification as full-time police officers shall be scheduled for training at the police academy at the earliest practical time without undue interruption to the security operations at the hospital. No person shall be entitled to join group II of the retirement system without successfully completing all the training and other requirements to be fully certified. Any person employed as a security officer of the security force on the date this act takes effect and who has not successfully completed all the training and requirements for full-time police certification shall be entitled to continue said employment or be transferred to a civilian position at a comparable labor grade at the hospital or the department of safety. All officers hired on or after July 1, 2006, if not already full-time certified, shall successfully complete the police academy within the time specified in RSA 188-F and the rules of the police standards and training council.

2006-1930h

Floor Amendment to SB 355-FN

Proposed by Rep. Tholl

Amend the bill by replacing section 1 with the following:

1 Unlawful Possession of Alcohol by a Minor. Amend RSA 179:10 to read as follows:

179:10 Unlawful Possession ~~[and Intoxication]~~ ***of Alcohol by a Minor.***

I. Except as provided in RSA 179:23, any person under the age of 21 years who has in his or her possession any liquor or alcoholic beverage, or who ~~[is intoxicated by consumption of an]~~ ***has consumed any*** alcoholic beverage, shall be guilty of a violation and shall be fined a minimum of \$300. Any second and subsequent offense shall be fined at least \$600. For purposes of this section, alcohol concentration as defined in RSA 259:3-b of .02 or more shall be prima facie evidence of ~~[intoxication]~~ ***consumption.*** ~~[No portion of this mandatory minimum fine shall be waived, continued for sentencing, or suspended by the court.]~~ ***In lieu of any or all portions of such fines, the court may impose community service for such period as the court deems appropriate under the circumstances.*** In addition to the penalties provided in this section, the court may, in its discretion, impose further penalties authorized by RSA 263:56-b. ***The department of safety shall not automatically suspend the driver's license or privilege to drive or deny an application for a license based on a conviction under this section unless the conviction is motor vehicle related.***

II. Except for persons convicted on the basis of ~~[intoxication]~~ ***having consumed an alcoholic beverage***, any person under the age of 21 years convicted of unlawful possession of liquor or beverage shall forfeit the same, and it shall be disposed of as the court directs. The proceeds, if any, shall be paid into the treasury of the county in which the proceedings were determined.

2006-1829h

Amendment to SB 359-FN

Proposed by the Committee on Executive Departments and Administration - C

Amend the bill by deleting section 5 and renumbering the original sections 6-22 to read as 5-21, respectively.

Amend RSA 329-A:7 as inserted by section 6 of the bill by replacing it with the following:

329-A:7 Examinations; Licenses and Certificates. ~~[The board shall have authority to examine and license master plumbers and journeyman plumbers, and to certify water treatment technicians. When issued, such license shall be valid throughout the state, and the licensee shall be entitled to perform the work of a master or journeyman plumber, as the case may be, anywhere within the state without any payment or additional fee. Each applicant for a license shall present to the secretary of 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***

board shall establish through rulemaking, pursuant to RSA 541-A, the nature of proctored examinations required for issuance of master plumber licenses, journeyman plumber licenses, and certifications as a water treatment technician, respectively. The scope of such examinations and the methods of procedure shall be prescribed by the board, provided that the scope of examination of water treatment technicians shall be limited to the configuration and installation of water treatment systems and the provisions of this chapter and the rules adopted by the board that relate to water treatment systems.

Amend the bill by deleting section 13 and renumbering the original sections 14-21 to read as 13-20, respectively.

Amend RSA 329-A:13, V as inserted by section 14 of the bill by replacing it with the following:

~~[VI.]~~ **V.** To any plumbing installations in residential buildings performed by students enrolled in a high school vocational plumbing program approved by the department of education **or an approved postsecondary vocational plumbing program**, provided such work is performed under the supervision of either a teacher holding a plumber's license or by a licensed plumber who is a supervisor of students in cooperative education placements from such programs; and in those cases where the installation is in a new building being constructed as a part of the vocational program, that the installation will be inspected and approved by an individual or group of individuals chosen by the local school districts from persons nominated by the state board for the licensing and regulation of plumbers. Any person nominated by the state board shall hold a master's license issued by the board.

Amend RSA 329-A:16, II as inserted by section 17 of the bill by replacing it with the following:

II. The board shall refer all allegations of violations specified in RSA 329-A:18 to the New Hampshire attorney general and to the county attorney in the appropriate county.

2006-1919h

Amendment to SB 386

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

Amend the introductory paragraph of RSA 485-C:21,V-c and RSA 485-C:21, V-c, (a)-(d) as inserted by section 5 by replacing them with the following:

V-c. In order to preserve the public trust, no large groundwater withdrawal shall cause an unmitigated impact as determined by the following:

(a) Reducing the withdrawal capacity of a private water supply well of a single residence as a result of the reduction of available water that is directly associated with the withdrawal as determined by the following:

(1) Any reduction in capacity for wells with a capacity less than water well board recommended optimum minimum flow capacity of 4 gallons per minute for 4 hours before the withdrawal;

(2) Any reduction in capacity below 4 gallons per minute for 4 hours, for wells that had a capacity greater than 4 gallons per minute for 4 hours, before the withdrawal; or

(3) A reduction in capacity where the well still has a capacity between 4 gallons and 10 gallons per minute for 4 hours and the user provides information indicating that the reduction in flow has resulted in the inability to meet their water needs;

(b) Reducing the capacity of a public, drinking water supply below the minimum withdrawal rates required per consumer determined by the following:

(1) Minimum daily amounts of drinking water shall be determined per use based on the design flow criteria established for public water supply systems established in rules adopted by the department; or

(2) Where it is verified that such wells were unable to produce the design flow before the withdrawal began, the adverse impact shall be any reduction in the ability to produce water;

(c) Reducing the capacity of a water supply that is used for a multiple unit dwelling residence, but that is not a public water supply, that results in the inability to continue established activities or maintain existing water capacity requirements;

(d) Reducing the capacity of a private, non-residential, non-drinking water supply that results in the inability of a commercial, industrial, agricultural, or retail facility to continue established services or production volumes;

Amend RSA 485-C:21,VI(b) as inserted by section 5 of the bill by replacing it with the following:

(b) Any party shall have the right to appeal from the decision of the water council to the superior court of the county in which the large groundwater withdrawal is to be made to determine the validity and the reasonableness of the department's action on the permit. The appeal shall be filed within 60 days after the decision of the water council. The appeal shall suspend the decision of the department pending the outcome of a preliminary hearing. The appeal, so far as practicable, shall have precedence over other actions in the same court.

2006-1876h

Amendment to SB 388

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 farm composting, pesticides, and wild animals.

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

2 Definitions; Wild Animals. Amend RSA 207:1, XXXIII to read as follows:

XXXIII. Wild Animals: All animals other than domestic animals *as defined in RSA 21:34-a, II(4)*.

3 Definitions; Wildlife. Amend RSA 207:1, XXXV to read as follows:

XXXV. Wildlife: Refers to all species of mammals, birds, fish, mollusks, crustaceans, amphibians, invertebrates, reptiles or their progeny or eggs which, whether raised in captivity or not, *except for domestic animals as defined in RSA 21:34-a, II(4)*, are normally found in a wild state.

AMENDED ANALYSIS

This bill adds composting to the list of defined farm activities and designates compost as a farm product.

This bill also specifies pesticides for inclusion in state management plans to protect groundwater from pesticide contamination.

This bill clarifies the definitions of “wild animals” and “wildlife” for purposes of fish and game laws.

2006-1696h

Amendment to SB 389

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

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

AN ACT establishing a committee to study programs funded by the system benefits charge.

Amend the bill by replacing section 1 with the following:

1 Committee Established. There is established a committee to study programs funded by the system benefits charge.

Amend the bill by replacing section 3 with the following:

3 Duties. The committee shall undertake a complete analysis of each of the different types of programs that are funded by the system benefits charge. The analysis shall include a critical evaluation of each type of program in order to determine which programs make the best use of system benefits charge funds and which programs should serve as models for future programs. The committee shall also recommend persons or entities that the committee determines are best suited to administer system benefits charge funds.

AMENDED ANALYSIS

This bill establishes a committee to study programs funded by the system benefits charge.

2006-1927h

Amendment to SB 394

Proposed by the Committee on Commerce - R

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

1 Purpose. The legislature finds that:

I. The market for trust and trust services across the nation is a rapidly growing sector of the nation’s economy.

II. New Hampshire is uniquely positioned to provide the most attractive legal and financial environment for individuals and families seeking to establish and locate their trusts and investment assets.

III. This act will serve to establish New Hampshire as the best and most attractive legal environment in the nation for trusts and trust services, and this environment will attract to our state good-paying jobs for trust and investment management, the legal and accounting professions, and support an infrastructure required to service this growing sector of the nation’s economy.

IV. This act shall be known as the Trust Modernization and Competitiveness Act.

2 Nondepository Trust Companies; Examination. Amend RSA 383:9-d to read as follows:

383:9-d Examination of Highly Rated Institutions; *Nondepository Trust Companies*.

I. The bank commissioner may, at his or her discretion, waive one 18-month examination requirement under RSA 383:9 every 6 years for institutions which have consistently been given high ratings in past examinations. The commissioner may also substitute for an 18-month examination once every 6 years a report of a federal institution examining agency whose reports regularly include a report on New Hampshire institutions. Within any 6-year period in which 4 18-month examinations are required under RSA 383:9, the commissioner may for highly rated institutions:

[F.] (a) Waive one examination; [and]

[H.] (b) Substitute for one examination a report of a federal bank examining agency whose reports regularly include a report on New Hampshire banks; and

[HH.] (c) Perform 2 examinations as required by 383:9.

II. *The commissioner may, at his or her sole discretion, upon the written request of a highly-rated*

nondepository trust company, satisfy the examination requirement of RSA 383:9, including modifications under paragraph I, for such trust company through an off-premises examination of:

(a) An audit report satisfying the requirements of RSA 384:43, I and II if it is prepared in accordance with RSA 384:43, III(a) and (b), a fiduciary audit conforming to applicable generally accepted auditing standards; and

(b) Such other records and information of the institution as may be required by the commissioner.

3 Powers and Inconsistent Charter Provisions. Amend RSA 384 by inserting after section 1-a the following new section:

384:1-b Powers and Inconsistent Charter Provisions. Unless otherwise determined by the bank commissioner, each savings bank, trust company, cooperative bank and other banking company chartered by the state of New Hampshire shall have all the powers, rights, benefits, privileges and procedures conferred upon each of such types of banks by the general statutes and rules adopted thereunder, subject to all the duties and restrictions contained in such general statutes and rules. The provisions of such general statutes and rules shall prevail over any inconsistent charter provisions of such banks.

4 Trust Companies; Banks Authorized to Invest Trust Funds in Affiliated Investments. Amend RSA 384:65 to read as follows:

384:65 Banks Authorized to Invest Trust Funds in Affiliated Investments.

I. Notwithstanding the provisions of any other law to the contrary, **and in addition to any authority granted by RSA 564-B**, any bank, as defined in RSA 384:57, II, authorized to exercise trust powers in this state, is authorized while acting as a fiduciary to purchase for the fiduciary estate, directly from underwriters or distributors or in the secondary market:

(a) Bonds or other securities underwritten or distributed by such bank or an affiliate thereof or by a syndicate which includes such bank or affiliate, provided that such bank discloses in any written communication or account statement reflecting the purchase of such bonds or securities the nature of the interest of such bank or affiliate in the underwriting or distribution of such bonds and securities and whether such bank or affiliate received any fee in connection with such purchase; and

(b) Securities of any investment company ~~[registered]~~ **as defined** under the federal Investment Company Act of 1940 for which such bank or affiliate acts as advisor, distributor, transfer agent, registrar, sponsor, manager, shareholder servicing agent, or custodian, provided that such bank discloses in any written communication or account statement reflecting the purchase of such securities the nature of the relationship and whether such bank or affiliate received any fee for providing such services.

II. The authority granted in paragraph I of this section may be exercised only if:

(a) The investment is not expressly prohibited by the instrument, judgment, decree, or order establishing the fiduciary relationship;

(b) The bank discloses in writing to the person or persons to whom it sends account statements its intent to exercise the authority granted in paragraph I prior to the first exercise of such authority; and

(c) The bank procures in writing the consent of its cofiduciaries **with discretionary investment powers**, if any, to the investment.

III. A bank, acting as a fiduciary pursuant to RSA 384:65, I, may:

(a) Invest in the securities of an investment company or investment trust, to which such fiduciary or its affiliate provides services in a capacity other than as trustee, such as advisor, distributor, transfer agent, registrar, sponsor, manager, shareholder servicing agent, administrator, or custodian, and such investment is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor standard pursuant to article 9 of RSA 564-B.

(b) Be compensated by the investment company or investment trust for providing services in a capacity other than as trustee, such as advisor, distributor, transfer agent, registrar, sponsor, manager, shareholder servicing agent, administrator, or custodian, if the fiduciary at least annually notifies ~~[the]~~ **each** person ~~[or persons]~~ to whom it ~~[sends]~~ **is required to send** account statements **under RSA 564-B:8-813** of the rate and method by which the compensation was determined.

IV. Nothing in this section shall affect the degree of prudence which is required of fiduciaries under the laws of this state. Any bonds or securities purchased under authority of this section shall have sufficient liquidity and investment quality to satisfy the principles of fiduciary investment and the terms of the instrument, judgment, decree, or order establishing the fiduciary relationship.

V. Notwithstanding paragraphs I-IV, no bank authorized to exercise trust powers in this state which is acting as a fiduciary shall purchase for the fiduciary estate any fixed income or equity security issued by such bank or an affiliate thereof, unless the bank is expressly authorized to do so by the terms of the instrument creating the trust, a court order, the written consent of the grantor of the trust, or the written consent of the **qualified** beneficiaries of the trust, **as defined in RSA 564-B:1-103**.

5 Trust Companies; Bond Requirement. RSA 390:14 is repealed and reenacted to read as follows:

390:14 Bonds. Unless required by the order of a court with proper jurisdiction, no corporation or limited liability company authorized to act as trustee or executor in this state shall be required to give bond of an indemnity company licensed to do business in this state.

6 Repeal. RSA 390:16, relative to making loans from funds held in trust, is repealed.

7 New Section; Trust Companies; Definitions. Amend RSA 392 by inserting after section 1 the following new section:

392:1-a Definitions. For the purposes of title XXXV and RSA 359-C, as applicable:

I. "Confidential information," with respect to a trust company, includes the names of stockholders, members, or other owners; ownership information; capital contributions; addresses; business affiliations; findings of the commissioner or the board of trust company incorporation through any examination or investigation of the commissioner or the board of trust company incorporation; any information required to be reported or filed with the commissioner or the board, any information that qualifies as any person's "nonpublic personal financial information" under Chapter V of the Gramm-Leach-Bliley Act of 1999 and the regulations implementing it; any information or agreement relating to any merger, consolidation, or transfer; any agreements or information relating to any relationship with a contracting trustee; and any other nonpublic information that, in the judgment of the commissioner, could be useful in connection with an act of bribery, extortion, identity theft, or terrorism.

II. "Depository trust company" means a trust company that is organized under this chapter and is not prohibited by its charter from accepting deposits.

III. "Family fiduciary services company" means a nondepository trust company that is organized under this chapter to engage in business with one or more family members and does not transact business with the general public, as defined in RSA 392:39-a, I(c) and is prohibited by its charter from making loans.

IV. "Nondepository trust company" means a trust company organized under this chapter but is prohibited by its charter from accepting deposits.

V. "Organizational instrument" means, with respect to a trust company, the articles of agreement for a corporation or the certificate of formation for a limited liability company.

VI. "Trust company" means a depository trust company or a nondepository trust company.

8 Trust Companies; Number of Organizers. Amend RSA 392:2 to read as follows:

392:2 ~~[Incorporators]~~ **Organizers.** Except as provided in this paragraph, ~~[10] 3~~ persons may subscribe to ~~[articles of agreement]~~ **an organizational instrument** in writing for the purpose of forming a trust company and may, upon compliance with the provisions of this chapter, become a ~~[corporation]~~ **trust company** with all the powers and privileges and subject to all the duties, restrictions, and liabilities of a trust company, as set forth in the general laws now or hereafter in force relating to such ~~[corporations]~~ **trust companies**. If a trust company is being organized by a bank holding company or a financial holding company as defined by the federal Bank Holding Company Act of 1956, as amended, or by a savings and loan holding company as defined by the federal Savings and Loan Holding Company Act, as amended, or by any other type of company that will directly or indirectly hold all of the shares **or interests** of the trust company~~['s capital stock]~~, or in connection with a reorganization of a trust company into a holding company structure, then only the holding company or, if applicable, the subsidiary of the holding company that will hold all of the shares **or interests** of the trust company~~['s capital stock]~~, is required to subscribe to the ~~[articles of agreement]~~ **organizational instrument**.

9 Trust Companies; Limited Liability Company Powers. Amend RSA 392:2-a to read as follows:

392:2-a Limited Liability Company. Notwithstanding RSA 304-C:7, I or any other provision of law to the contrary, a trust company subject to the regulation of the bank commissioner may be organized as a limited liability company **with all the powers and privileges and subject to all the duties, restrictions, and liabilities of a corporate trust company**. A trust company organized as a limited liability company shall ~~[be subject to the provisions of]~~ **have all the powers and privileges and, except as otherwise provided in this section, be subject to all the duties, restrictions, and liabilities of** state ~~[law]~~ **laws** applicable to ~~[such type of entity]~~ **a limited liability company**~~[- provided, however, any filing required to be made with the secretary of state shall be made instead with the bank commissioner]~~. Any reference to a corporation in the statutes governing trust companies shall also include a limited liability company. A trust company organized as a limited liability company shall be subject to all of the same laws and regulations that relate to a trust company organized as a corporation. All managers and employees of a trust company organized as a limited liability company shall be subject to the same duties and liabilities as pertain to directors, trustees, and employees of a trust company organized as a corporation. Any reference to corporations, directors, officers, stockholders or other like terms used to describe corporations in the statutes governing trust companies shall be construed to apply in the same manner to limited liability companies, managers, employees, members or other like terms used to describe limited liability companies unless the context otherwise requires. The organizational ~~[instruments]~~ **instrument** of a trust company chartered as a limited liability company ~~[shall satisfy the requirements of the Federal Deposit Insurance Corporation in order to be deemed "incorporated" for purposes of federal deposit insurance]~~ **shall provide that its existence shall be perpetual, that the company shall be managed by managers, that no member of the company shall be individually liable for the debts of the company, other than to the extent of the member's investment therein and that any limitation on transferability of ownership interests shall exclude any transfer required by lawful order of the bank commissioner**.

10 Nondepository Trust Companies. RSA 392:3 is repealed and reenacted to read as follows:

392:3 Organizational Instrument. Said organizational instrument shall set forth that the organizers thereto associate themselves with the intention of forming a trust company, and shall specifically state:

I. The name by which the trust company shall be known.

II. The purpose for which it is formed, including, for a nondepository trust company, an exclusion from taking deposits.

III. The name of the registered agent and the address of the registered office.

IV. The amount of its capital and the number of shares or interests into which the same is to be divided.

V. Any other provisions consistent with the requirements of RSA 293-A if the trust company is in corporate form or RSA 304-C if the trust company is in limited liability form.

11 Trust Companies; Organizer's Business Address. RSA 392:4 is repealed and reenacted to read as follows:

392:4 Signing Organizational Instrument. Each organizer shall subscribe to the organizational instrument the organizer's name, business post office address, and the number of shares of stock or interests which the organizer agrees to take.

12 Trust Companies; Application for Charter. RSA 392:5 is repealed and reenacted to read as follows:

392:5 Petition.

I. A petition setting forth said organizational instrument or its terms, signed by the organizers and requesting that the board of trust company incorporation grant a charter shall be filed with the bank commissioner in the form prescribed by the commissioner. The commissioner shall designate in such form the questions, requests for information and certifications applicable only to deposit taking or lending institutions that need not be responded to by organizers of a nondepository trust company. An examination fee of \$ 5,000 shall be paid when the petition is filed. Sums collected under this section shall be payable to the state treasurer as restricted revenue and credited to the appropriation for the bank commissioner.

II. Upon receipt of a petition deemed to be complete by the commissioner, the commissioner shall promptly conduct an examination of all relevant facts connected with the formation of the proposed trust company. The commissioner may examine the following factors:

(a) The proposed market or markets to be served.

(b) Whether the proposed organizational and capital structure and the amount of initial capital appear adequate in relation to the proposed business and market or markets.

(c) Whether the anticipated volume and nature of business indicate a reasonable probability of success and profitability based on the market or markets proposed to be served.

(d) Whether the proposed officers and directors or managers, as a group, have sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed trust company will be free from improper or unlawful influence and otherwise will operate in compliance with law, and that success of the proposed trust company is reasonably probable.

(e) Whether the proposed name of the proposed trust company is likely to mislead the public as to its character or purpose or is the same as a name already adopted by an existing bank, savings association, or trust institution in this state, or so similar thereto as to be likely to mislead the public.

(f) Any other factor, as the commissioner may determine.

III. The failure of a petitioner to furnish required information, data, other material, or the required fee within 30 days after a request may be considered an abandonment of the petition.

13 Trust Companies; Investigation by Bank Commissioner. Amend RSA 392:5-a to read as follows:

392:5-a Investigations. For the purpose of any investigation under this chapter, the board **or the commissioner** shall have the power to subpoena witnesses and administer oaths in any adjudicative proceedings, and to compel, by subpoena duces tecum, the production of all books, records, files, and other documents and materials relevant to its investigation.

14 Trust Companies; Notice. RSA 392:6 is repealed and reenacted to read as follows:

392:6 Notice. Upon a determination by the commissioner that the petition is complete, he or she shall approve the form of a notice to be published in a newspaper of general circulation acceptable to the commissioner. The notice shall be published not later than 30 days after the date of approval. The notice shall state a date before which objections may be filed, which date shall not be later than 30 days after the publication of said notice. Any interested person may, within the time specified, file with the commissioner a statement of objection to the granting of such petition.

15 Trust Companies; Hearings. RSA 392:6-a is repealed and reenacted to read as follows:

392:6-a Hearing. The board may order within its discretion a public hearing on the petition. The board may approve or deny the petition with or without a public hearing. Any required public hearing shall be held at the time and place fixed by the board and a notice shall be published in accordance with the provisions of RSA 392:6. The board may prescribe reasonable procedural rules to govern the proceedings, including rules for maintaining the confidentiality of the portions of the petition, the commissioner's investigation, and the proceedings of the board that include confidential information or are determined by the board or the commissioner or otherwise determined by law to be confidential or to exempt a certain class of petitions from any public hearing requirement. The board shall keep a permanent verbatim record of all such evidence.

16 Repeal. RSA 392:7, relative to form of notice, is repealed.

17 Trust Companies; Decisions. RSA 392:8 is repealed and reenacted to read as follows:

392:8 Decision.

I. In deciding whether or not to grant the petition, the board shall consider the factors set forth in RSA 392:5, II. Upon

reaching its decision, the board shall make a record thereof. If the petition is denied, it shall be dismissed and no new petition concerning the same company may be filed within one year thereafter.

II. If in any case the board shall be of the opinion that the petition does not satisfy the factors in RSA 392:5, II by the exercise proposed by the trust company of all the powers and privileges which are included in the petition, but that the same would be satisfied by the exercise of a part thereof, it shall so notify the petitioners; and in such case the petitioners may have leave to withdraw, and may at once file another petition setting forth new organizational documents, upon which the same procedure shall be had as upon the original petition.

18 Repeal. RSA 392:9, relative to new agreement, is repealed.

19 Trust Companies; Decisions. Amend RSA 392 by inserting after section 9 the following new section:

392:9-a Confidentiality.

I. All confidential information received in connection with any petition or application of or concerning a family fiduciary services company shall be confidential communications, shall not be subject to subpoena and shall not be made public unless, in the judgment of the commissioner, the ends of justice and the public advantage will be served by the publication of the information. The commissioner may, at his or her discretion on request or otherwise, determine that confidential information received in connection with any petition or application of or concerning a public trust company other than a family fiduciary services company should not be publicly available, in which case such information shall be confidential communications, shall not be subject to subpoena, and shall not be disclosed unless, in the judgment of the commissioner, the ends of justice and the public advantage will be served by the disclosure of the information.

II. The commissioner shall give to the affected trust company 10-days prior written notice of intent to disclose confidential information directly or indirectly to the public. Any trust company which receives a notice may object to the disclosure of the confidential information and shall be afforded the right to a hearing in accordance with the provisions of RSA 383. If a trust company requests a hearing, the commissioner may not reveal confidential information prior to the conclusion of the hearing and a ruling. Prior to dissemination of any confidential information, the commissioner shall require a written agreement not to reveal the confidential information by the party receiving the confidential information. In no event shall the commissioner disclose confidential information to the general public, any competitor, or any potential competitor of a trust company.

III. Nothing in this chapter is intended to preclude a law enforcement officer from gaining access to otherwise confidential records by subpoena, court order, search warrant, or other lawful means. Notwithstanding any other provision of this chapter, the commissioner shall have the ability to share information with other out of state or federal regulators with whom the department has an information sharing agreement. Nothing in this chapter is intended to preclude any agency of the state of New Hampshire from gaining access to otherwise confidential records in accordance with any applicable law, including in connection with an investigation or review of the secretary of state conducted in accordance with RSA 421-B.

20 Trust Companies; First Meeting. RSA 392:10 is repealed and reenacted to read as follows:

392:10 First Meeting. The first meeting of the organizers shall be called by a notice signed either by that organizer who is designated in the organizational instrument for the purpose, or by a majority of organizers, and such notice shall state the time, place and purpose of the meeting.

21 Repeal. The following are repealed:

I. RSA 392:11, relative to notice of meeting of trust company.

II. RSA 392:12, relative to waiver of notice.

22 Trust Companies; Subscribers Powers. Amend RSA 392:13 to read as follows:

392:13 ~~[Subscribers]~~ **Organizers'** Powers. The ~~[subscribers to the agreement of association]~~ **organizers of a trust company in organization** shall hold the franchise until the organization has been completed.

23 Trust Companies; Organization. RSA 392:14 is repealed and reenacted to read as follows:

392:14 Organization. The organizers shall adopt bylaws which may be incorporated in an operating agreement if the company is a limited liability company, and shall also elect, or cause to be elected, such directors or managers and officers as may be required by the organizational instrument or bylaws. All directors, managers, and officers so elected shall be sworn to the faithful performance of their duties. A temporary clerk or secretary shall make and attest a record of the proceedings until the clerk or secretary has been chosen and sworn, including a record of such choice and qualification.

24 Trust Companies; Certificate. Amend RSA 392:15 to read as follows:

392:15 Certificate. A majority of the directors **or managers** who are elected at such first meeting shall sign and make oath to a certificate setting forth:

I. A true copy of the ~~[agreement of association]~~ **organizational instrument**, the names **and business post office address** of the ~~[subscribers]~~ **organizers** thereto, and the name~~[-residence]~~ and **business** post office address of the **directors, managers, and** officers of the ~~[corporation]~~ **trust company**.

II. The date of the first meeting and the successive adjournments thereof, if any.

III. A copy of the records.

25 Trust Companies; Approval of. Amend RSA 392:16 to read as follows:

392:16 Approval of. Such certificate shall be submitted to ~~[said board of incorporation]~~ **the commissioner**, who shall examine the same, and who may require such amendment thereof or such additional information as ~~[they]~~ **he or she** may consider necessary. If ~~[they]~~ **he or she** ~~[find]~~ **finds** that the ~~[public convenience and advantage will be promoted by the establishment of such corporation]~~ **certificate is consistent with the decision of the board pursuant to RSA 392:8** and that the proceedings in other respects conform to the provisions of this chapter, ~~[they]~~ **he or she** shall so certify and indorse ~~[their]~~ **his or her** approval upon said certificate **and the organizational instrument**.

26 Trust Companies; Record of. RSA 392:17 is repealed and reenacted to read as follows:

392:17 Record of Organizational Instrument. Within 90 days after a favorable decision pursuant to RSA 392:8, petitioners shall file with the secretary of state the organizational instrument. The secretary of state, upon payment of a fee equal to the fee charged by the secretary of state to business corporations under RSA 293:A if the trust company is a corporation or the fee charged to limited liability companies under RSA 304-C if the trust company is a limited liability company, shall cause the same, with the indorsement thereon, to be recorded.

27 RSA 392:18 is repealed and reenacted to read as follows:

392:18 Certificate of Organization. The secretary shall thereupon issue a certificate of organization in the following form:

STATE OF NEW HAMPSHIRE

Be it known, that whereas (the names of the organizers of the trust company) have associated themselves with the intention of forming a trust company under the name of (the name of the trust company), for the purpose (the purpose declared in the organizational instrument,), with capital of (the amount fixed in the organizational instrument), and have complied with the provisions of the statutes of this state as duly approved by the board of trust company incorporation and recorded in this office: Now, therefore, I (the name of the secretary), secretary of state, do hereby certify that said (the names of the organizers of the trust company), and their successors, are legally organized and established as, and are hereby made, an existing trust company under the name of (name of trust company), with the powers, rights and privileges, and subject to the limitations, duties, and restrictions, which by law appertain thereto.

Witness my official signature hereunto subscribed, and the seal of the state hereunto affixed, this _____ day of _____ in the year _____ (the date of the filing of the organizational instrument).

The secretary of state shall sign the certificate of organization and cause the seal of the state to be thereto affixed, and such certificate shall have the force and effect of a special charter.

28 Trust Companies; Certificate or Record as Evidence. Amend RSA 392:19 to read as follows:

392:19 Certificate or Record as Evidence. The secretary of state shall also cause a record of the certificate of ~~[incorporation]~~ **organization** to be made, and such certificate, or such record or a certified copy thereof, shall be conclusive evidence of the existence of such ~~[corporation]~~ **trust company**.

29 Trust Companies; When Organized; Beginning Business. RSA 392:20 is repealed and reenacted to read as follows:

392:20 When Organized; Beginning Business. The existence of such trust company shall begin upon the filing of the organizational instrument with the secretary of state. Any trust company organized under this chapter shall begin business within 2 years from the date of its organization; otherwise its charter shall be void, unless the board of trust company incorporation, for good cause shown, shall grant one extension for not more than one year.

30 Trust Companies; List of Owners. Amend RSA 392:22 to read as follows:

392:22 List of ~~[Stockholders]~~ **Owners**. When ~~[the whole capital stock has been issued]~~ **all of the initial investment in the capital of the trust company has been paid**, a complete list of the ~~[stockholders]~~ **investors**, with the name~~[-residence]~~ and post office address of each, and the number of shares **or interests** held by each, shall be filed with the bank commissioner, which list shall be verified by the president and clerk **or secretary** of the ~~[corporation]~~ **trust company**.

31 Trust Companies; Authorizing Business. Amend RSA 392:23 to read as follows:

392:23 Authorizing Business. Upon receipt of such list, the commissioner shall cause an examination to be made; and if, upon such examination, it appears that ~~[the whole capital stock and surplus fund have]~~ **the required capital has** been paid ~~[in]~~ **to the trust company** in cash, and that all requirements of law have been complied with, the commissioner shall issue a certificate authorizing such ~~[corporation]~~ **trust company** to begin the transaction of business. The cost of such examination shall be paid by the ~~[corporation]~~ **trust company** and shall be limited to a per diem charge for overall compensation costs, including the benefits portion thereof, and expenses as determined by the commissioner, provided, however, that no such ~~[institution]~~ **trust company** shall be charged or pay for less than one full day. Sums collected under this section shall be payable and credited in accordance with the procedure established under RSA 383:11, I.

32 Trust Companies; Unauthorized Acts. RSA 392:24 is repealed and reenacted to read as follows:

392:24 Unauthorized Acts. The transaction of a banking or trust business by such trust company prior to the issuance of a certificate of authority to engage in business issued by the commissioner as required by RSA 392:23 shall make the organization void; and in such case the organizers shall be liable as partners for the contracts, debts, and engagements of the

company.

33 Trust Companies; Minimum Capital Requirement. RSA 392:25 is repealed and reenacted to read as follows:

392:25 Minimum Capital Requirements; Investment of Capital.

I. The initial capital required to organize a trust company shall be not less than \$500,000. The board of trust company incorporation may require, in the exercise of its discretion based on safety and soundness factors, as set forth in paragraph IV, additional capital at such levels as it determines is necessary to protect against the risks inherent in the business of the trust company. Once organized, a nondepository trust company shall maintain a minimum level of capital required by the commissioner to operate in a safe and sound manner based upon his or her examination of the company, provided that the level of capital shall not be less than \$500,000.

II. In addition to the minimum capital requirements, a trust company being organized as a nondepository trust company shall pledge to the commissioner securities or a surety bond for the benefit of the commissioner to defray the costs of a liquidation of the trust company by the commissioner in the event it should fail. The amount of the securities or the surety bond shall be determined by the commissioner in an amount that the he or she deems appropriate to defray such costs, but in no event shall exceed \$1,000,000. In the event of a receivership of a nondepository trust company, the commissioner may, without regard to any priorities, preferences, or adverse claims, reduce the pledged securities or the surety bond to cash and, as soon as practicable, utilize the cash to defray the costs associated with the receivership. If the nondepository trust company chooses to pledge securities to satisfy this provision, the securities shall be held at a depository institution or a Federal Reserve Bank approved by the commissioner. The commissioner may specify the types of securities that may be pledged. Any fees associated with holding such securities shall be the responsibility of the nondepository trust company. If the nondepository trust company chooses to purchase a surety bond to satisfy this provision, the surety bond shall be issued by a bonding company, approved by the commissioner, that is authorized to do business in this state and that has a rating in one of the 3 highest grades as determined by a national rating service. The surety bond shall be in a form approved by the commissioner. The nondepository trust company may not obtain a surety bond from any entity in which the trust company has a financial interest. The commissioner may require any trust company to increase its capital funds from time to time as may be necessary to comply with reasonable banking and trust standards, as applicable, not inconsistent with law.

III. Nondepository trust companies organized prior to January 1, 2007, shall be required to increase and maintain their level of capital to \$500,000. Any nondepository trust company that has less than \$500,000 in capital on January 1, 2007, shall comply with the minimum capital requirement by January 1, 2010. At a minimum, such nondepository trust company shall increase and maintain its existing capital level by at least \$50,000 per year until January 1, 2010. In addition, a nondepository trust company shall pledge to the commissioner securities or a surety bond for the benefit of the commissioner in the same manner as specified in paragraph II to defray the costs associated with a receivership.

IV. The safety and soundness factors to be considered by the board or the commissioner in the exercise of their discretion include:

(1) The nature and type of business proposed to be conducted including, without limitation, whether the company will accept deposits or make loans.

(2) The nature and liquidity of assets proposed to be held in its own account.

(3) The amount of fiduciary assets projected to be under management.

(4) The type of fiduciary assets proposed to be held and the proposed depository of the assets.

(5) The complexity of fiduciary duties and degree of discretion proposed to be undertaken.

(6) The competence and experience of proposed management.

(7) The extent and adequacy of proposed internal controls.

(8) The proposed presence or absence of annual unqualified audits by an independent certified public accountant.

(9) The reasonableness of business plans for retaining or acquiring additional equity capital.

(10) The existence and adequacy of insurance proposed to be obtained by the trust company for the purpose of protecting its clients, beneficiaries, and grantors.

V. Based on the factors in paragraph IV, the commissioner may require any trust company to increase its capital funds from time to time as may be necessary for its safe and sound operation.

VI. Notwithstanding any other provisions of law to the contrary, a nondepository trust company may invest its funds for its own account in any type or character of equity securities or debt securities subject to the limitations provided by this section, which investments shall otherwise comply with the prudent investor standard described in RSA 564-B:9-902.

VII. Subject to paragraphs VIII and IX, the total investment in equity and investment securities of any one issuer, obligor, or maker held by a nondepository trust company for its own account shall not exceed an amount equal to 15 percent of the nondepository trust company's equity capital. The commissioner may authorize investments in excess of this limitation if the commissioner concludes that the safe and sound operation of a nondepository trust company would not be adversely affected by a proposed investment exceeding this limitation.

VIII. In calculating compliance with the investment limits set forth in paragraph II, a nondepository trust company shall not be required to combine:

(a) The nondepository trust company's pro rata share of the securities of an issuer in the portfolio of a collective investment vehicle with the nondepository trust company's pro rata share of the securities of that issuer held by another collective investment vehicle in which the nondepository trust company has invested; or

(b) The nondepository trust company's own direct investment in the securities of an issuer with the nondepository trust company's pro rata share of the securities of that issuer held by collective investment vehicles in which the nondepository trust company has invested under the provisions of this section.

IX. Notwithstanding paragraph VII, a nondepository trust company may purchase for its own account, without limitation and subject only to the exercise of prudent judgment:

(a) Bonds and other general obligations of a state, an agency, or political subdivision of a state, the United States, or an agency or instrumentality of the United States.

(b) A debt security that this state, an agency or political subdivision of this state, the United States, or an agency or instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee.

(c) Securities that are offered and sold under 15 U.S.C. section 77d(5).

(d) Mortgage-related securities as defined in 15 U.S.C. section 78c(a).

(e) Investment securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, Fannie Mae, the Government National Mortgage Association, the Federal Agricultural Mortgage Association, or the Federal Farm Credit Banks Funding Corporation; and

(f) Investment securities issued or guaranteed by the North American Development Bank.

X. The commissioner may allow a nondepository trust company to make other investments of its corporate funds not specified in this chapter by rules, orders, or declaratory rulings.

34 Trust Companies; Par Value. RSA 392:26, relative to change in par value, is repealed.

35 Trust Companies; Petition. RSA 392:27 is repealed and reenacted to read as follows:

392:27 Petition. Any trust company organized under this chapter or chartered prior to the passage thereof may file with said board of incorporation a petition setting forth an amendment to its organizational instrument, within the provisions of this chapter, and praying for approval of the amended organizational instrument based on the considerations set forth in RSA 392:5, II.

36 Trust Companies; Procedure; Effect. Amend RSA 392:28 to read as follows:

392:28 Procedure; Effect. If the decision is favorable to the petition a copy of the said amended ~~[certificate or charter]~~ **organizational instrument**, certified by the clerk **or secretary** of the ~~[corporation]~~ **trust company**, with the approval of said board indorsed thereon, shall be filed in the office of the secretary of state, accompanied by a fee equal to the fee charged by the secretary of state to business corporations under RSA 293-A **if the trust company is a corporation or the fee charged to limited liability companies under RSA 304-C if the trust company is a limited liability company**, and thereupon the secretary of state shall cause the same, with the endorsement thereon, to be recorded as provided in RSA 392:17, and shall issue a certificate of such amended ~~[incorporation]~~ **organizational instrument**, which shall conform as nearly as may be to the form prescribed in RSA 392:18 and shall have the same force and effect, and thereafter such ~~[corporation]~~ **trust company** shall have all the powers and privileges provided for by such amended certificate or charter and shall be subject to all the provisions of this chapter.

37 Trust Companies; Election. Amend RSA 392:30 to read as follows:

392:30 Election. The ~~[officers]~~ **management** of ~~[such corporation]~~ **a trust company** shall ~~[be]~~ **include** a president, a clerk **or secretary**, a board of not less than 5 directors **or managers**, a treasurer, and such other officers as may be prescribed in its ~~[bylaws]~~ **organizational instrument or other organizational documents** and the laws of the state. Such officers, except the treasurer, shall be chosen annually.

38 Trust Companies; Treasurer. Amend RSA 392:31 is repealed and reenacted to read as follows:

392:31 Treasurer. The treasurer shall be elected by the board of directors or managers and shall hold office during their pleasure.

39 Trust Companies; In General. RSA 392:33 is repealed and reenacted to read as follows:

392:33 In General.

I. A trust company may be authorized and empowered to receive on deposit, storage or otherwise, money, securities, jewelry, documents, evidences of debt, and other personal property of a similar character, for safekeeping, upon such terms or conditions as may be agreed upon, which said deposits may be made by corporations and persons acting individually or in any fiduciary capacity; to collect and disburse the income and principal of said property when due; to negotiate, purchase, and sell stocks, bonds, and other evidences of debt; to do a general banking business; and to conduct a savings bank business, provided a non-depository trust company may not accept deposits.

II. In addition to the foregoing, and not limited to, a trust company may act as a fiduciary within or outside this state or in similar capacities generally performed by corporate trustees, and in so acting to possess, purchase, sell, invest, reinvest, safekeep, or otherwise manage or administer real or personal property of other persons, and exercise the powers of a business corporation or limited liability company organized under New Hampshire law and any incidental powers that are reasonably

necessary to enable it to fully exercise, in accordance with commonly accepted banking and fiduciary customs and usages, a power conferred in this chapter or RSA 390.

III. Notwithstanding any other provision of law to the contrary, a trust company shall be authorized to make any type of secured or unsecured loan to any person, including without limitation any business or governmental entity except to the extent limited by its organizational instrument. With respect to secured loans, a trust company shall adopt prudent policies establishing loan-to-value ratios suitable for the type of property securing the loans. With respect to all loans, a trust company shall adopt prudent policies establishing the creditworthiness of borrowers.

40 Trust Companies; Pledge of Assets. Amend RSA 392:34 to read as follows:

392:34 Pledge of Assets. Such ~~[corporation]~~ **trust company** may be authorized, by vote of its board of directors **or managers**, to pledge the assets of its commercial department to the United States when such action is necessary or desirable to secure deposits in said department by the United States government in connection with war loan deposit accounts or other similar accounts.

41 Trust Companies; Transfer Agent. Amend RSA 392:35 to read as follows:

392:35 Transfer Agent, Acting As. Such ~~[corporation]~~ **trust company** may be authorized and empowered to act as agent for the purpose of issuing, registering, or countersigning certificates of stock, bonds, or other evidence of indebtedness of any corporation, association, municipal corporation, county or state government, on such terms as may be agreed upon.

42 Trust Companies; Real Estate. Amend RSA 392:37 to read as follows:

392:37 Real Estate. Every such ~~[corporation]~~ **trust company** may acquire and hold real estate for its own use, in whole or in part, but its investment in such real estate, exclusive of any real estate which may be taken in good faith for debt or held as collateral security, shall not exceed an amount equal to 50 percent of the sum of its capital and surplus, except with the approval of the commissioner.

43 Trust Companies; Prohibited Loans and Purchases. Amend RSA 392:38 to read as follows:

392:38 Prohibited Loans and Purchases. No such ~~[corporation]~~ **trust company** shall make a loan or discount on the security of the shares ~~[of its own capital stock]~~ **or interests**, nor be the purchaser or holder of such shares **or interests** unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock **or interests** so purchased or acquired shall within 6 months after its purchase be sold or disposed of at public or private sale, unless such time is extended by the commissioner.

44 Trust Companies; Redemptions. Amend RSA 392:38-a to read as follows:

392:38-a Redemption of Shares **or Interests**. Notwithstanding the provisions of RSA 392:38, any such ~~[corporation]~~ **trust company** which then has more than 500 holders of the shares **or interests** of its own capital stock shall be entitled, with the express written approval of the bank commissioner, to redeem any and all of such shares **or interests** from holders thereof who own in the aggregate 10 shares or less of such stock. Such redemption shall be pursuant to a tender offer, the form of which shall have been approved by the bank commissioner, and all shares **or interests** so redeemed shall be retired within 60 days of the expiration of the tender offer, thereby reducing the authorized capital stock of the ~~[corporation]~~ **trust company**. Within said 60 day period the ~~[corporation]~~ **trust company** shall file with the board of trust company incorporation, as required under RSA 392:27, an appropriate amendment reciting the change in outstanding shares **or interests**.

45 New Subdivision; Family Fiduciary Services Companies. Amend RSA 392:39 by inserting after section 392:39 the following new subdivision:

Family Fiduciary Services Companies

392:39-a Definitions; Exemption From Certain Laws.

I. For purposes of this subdivision:

(a) "Designated relative" means the individual required to be named in the application under RSA 392:39-b, I(e) requesting an exemption from certain provisions of this chapter pursuant to RSA 392:39-a, III.

(b)(1) "Family member" means the designated relative and:

(A) Any individual within the fifth degree of lineal kinship to the designated relative;

(B) Any individual within the ninth degree of collateral kinship to the designated relative;

(C) The spouse of the designated relative and of any individual qualifying as a family member under subparagraphs (a) and (b);

(D) A company controlled by one or more family members, who shall possess, directly or indirectly, the power to direct or cause the direction of the management and policies of such company, whether through the ownership of voting securities, by contract, or otherwise;

(E) A trust established by a family member or by an individual who is not a family member if non-charitable beneficiaries who are family members represent a majority of interest in the trust;

(F) The estate of a family member; or

(G) A charitable foundation or other charitable entity created by a family member.

(2) For purposes of this subparagraph, a legally adopted individual shall be treated as a natural child of the adoptive parents.

(3) For purposes of this subparagraph, lineal kinship shall mean a family member who is in the direct line of ascent or descent from the designated relative. Collateral kinship shall mean a relationship that is not lineal, but stems from a common ancestor. Degrees are calculated by adding the number of steps from the designated relative through each person to the family member either directly in the case of lineal kinship or through the common ancestor in the case of collateral kinship.

(4) For purposes of this subparagraph, no company, trust, charitable foundation, or other charitable entity shall qualify as a family member if the commissioner determines such entity was organized or operated for the purpose of evading the limitations of RSA 392:39-a, I.

(c) "Transact business with the general public" means engaging in any sales, solicitations, arrangements, agreements, or transactions to provide trust business services, whether or not for a fee, to more than 15 natural persons that are not family members. In order for a person to be eligible to receive such trust business services, the person shall be:

(1) An employee of the family fiduciary services company or of a trust or company that is a family member; and

(2) Engaged principally in providing services to the family fiduciary services company or its fiduciary accounts.

II. A family fiduciary services company engaging in trust business in this state shall comply with all provisions of this chapter applicable to a nondepository trust company, unless expressly exempted from this chapter by the commissioner pursuant to this section.

III. A family fiduciary services company or proposed family fiduciary services company may request in writing that it be exempted from specified provisions of title 35, including without limitation RSA 383:9, RSA 383:13-a, RSA 384:3, RSA 384:4, RSA 384:7, RSA 384:7-b, RSA 384:43, RSA 390:8, RSA 390:14, RSA 392:6-a, and RSA 392:30. The commissioner may grant or deny the exemption request in whole or in part. The commissioner also may issue rules, orders, or declaratory rulings granting exemptions to all family fiduciary services companies, or to family fiduciary services companies that meet specified conditions.

IV. The commissioner may examine or investigate the family fiduciary services company or proposed family fiduciary services company in connection with the application for exemption. Unless the application presents novel or unusual questions, the commissioner shall approve or deny the application for exemption no later than the 61st day after the date the commissioner considers the application complete and accepted for filing. The commissioner may require the submission of additional information in order to make an informed decision to approve or reject the proposed exemption.

V. Any exemption granted under the provisions of this section may be made subject to conditions or limitations imposed by the commissioner consistent with this subdivision, and those conditions or limitations shall be included in an order.

VI. If an application under this section is approved by the commissioner, the petition of the organizers for a charter for the proposed trust company shall be exempt from the notice, objection, and hearing provisions of RSA 392:6 and RSA 392:6-a, and any petition by a family fiduciary services company under RSA 392:27 shall be decided by the commissioner and exempt from any notice or hearing requirement, except as otherwise ordered in the particular case by the board.

VII. Rules, orders, or declaratory rulings of the commissioner may provide for other circumstances that justify exemption from specific provisions of this chapter or RSA 383, RSA 384, RSA 390 or RSA 392-A, specifying the provisions that are subject to the exemption request, and establishing procedures and requirements for obtaining, maintaining, or revoking exemptions.

392:39-b Requirements to Apply for and Maintain Status as a Family Fiduciary Services Company.

I. A family fiduciary services company or a proposed family fiduciary services company requesting an exemption from the provisions of this chapter pursuant to RSA 392:39-a shall file an application with the commissioner, in the form required by the commissioner, containing, preceded, or accompanied by:

(a) An application fee of \$1,500;

(b) A statement under oath of the reasons for requesting the exemption;

(c) A statement under oath showing that the family fiduciary services company is not currently transacting business with the general public and that the company will not transact business with the general public without the approval of the commissioner;

(d) A listing of the specific provisions of this chapter or RSA 383, RSA 384, RSA 390 or RSA 392-A from which exemption is requested; and

(e) The name of the designated relative whose relationship to other individuals determines whether the individuals are family members under RSA 392:39-a, I(b). The designated relative must be living and 18 years of age or older at the time the application is made.

II. The commissioner may make further inquiry and investigation as the commissioner deems appropriate. Notwithstanding any other law to the contrary, information bearing on actual or proposed accounts of the family fiduciary services company or proposed family fiduciary services company applying for the exemption or the identity or residence address of the designated relative or any other family member is confidential and not subject to public disclosure.

III. To maintain its status as a family fiduciary services company and to maintain any exemptions from the provisions of this title granted by the commissioner, a family fiduciary services company shall file with the commissioner an annual certification that it is in compliance with the provisions of this subdivision and the conditions and limitations of all exemptions granted. This annual certification shall be filed in the form required by the commissioner and accompanied by a fee of \$100.

The annual certification shall be filed on or before December 31 of each year. The commissioner may examine or investigate the family fiduciary services company periodically as necessary to verify the certification.

IV. In any transaction involving a family fiduciary services company for which an application is required under RSA 383, RSA 388, RSA 389 or RSA 389-A, any exemption from the provisions of this chapter granted to the family fiduciary services company shall automatically terminate upon the consummation of the transaction unless the commissioner approves the continuation of the exemption.

V. The commissioner may revoke any exemption from the provisions of this chapter granted to a family fiduciary services company in the following circumstances:

- (a) An officer or director of the family fiduciary services company makes a false statement under oath on any document required to be filed by this chapter or by any rules or orders of the commissioner;
- (b) The family fiduciary services company fails to submit to an examination by the commissioner as required by law;
- (c) An officer or director of the family fiduciary services company withholds requested information from the commissioner;
- (d) The family fiduciary services company violates any provision of this subdivision or fails to meet any condition on which the exemption is based; or
- (e) The family fiduciary services company refuses to comply with any rule or order of the commissioner.

VI. If the commissioner determines from examination or other credible evidence that a family fiduciary services company has violated any of the requirements of RSA 392:39-a through RSA 392:39-c or fails to meet any condition or limitation on which an exemption from the provisions of this chapter is based, the commissioner may by personal delivery or registered or certified mail, return receipt requested, notify the family fiduciary services company that the family fiduciary services company's exemptions from the provisions of this chapter will be revoked unless the family fiduciary services company corrects the violation or failure or shows cause why any exemptions should not be revoked. The notification shall state grounds for the revocation with reasonable certainty and shall advise of an opportunity for a hearing. The notice shall state the date upon which the revocation shall become effective absent a correction or showing of cause why the exemption should not be revoked, which shall not be before the 30th day after the date the notification is mailed or delivered, except as provided in paragraph VII. The revocation shall take effect for the family fiduciary services company on the date stated in the notice if the family fiduciary services company does not request a hearing in writing before the effective date. After the revocation takes effect, the family fiduciary services company shall be subject to all of the requirements and provisions of this chapter applicable to a nondepository trust company.

VII. If the commissioner determines from examination or other credible evidence that a family fiduciary services company appears to be engaging or attempting to engage in acts intended, designed, or likely to deceive or defraud the public, the commissioner may shorten or eliminate the 30-day notice period specified in paragraph VI, but shall promptly afford a subsequent hearing upon request to rescind the action taken.

VIII. If the family fiduciary services company does not comply with all of the provisions of this chapter or correct any failure to meet any condition or limitation on which an exemption is based within the notice period specified in paragraph VI, the commissioner may institute any action or remedy prescribed by this chapter or any applicable rule.

392:39-c Conversion to Nondepository Public Trust Company Transacting Business With the General Public.

I. Before transacting business with the general public, a family fiduciary services company shall file a notice on a form prescribed by the commissioner, which shall set forth the name of the family fiduciary services company and an acknowledgment that any exemption granted or otherwise applicable to the family fiduciary services company pursuant to RSA 392:39-a shall cease to apply once the commissioner terminates family fiduciary services company status. The family fiduciary services company shall furnish a copy of the resolution adopted by its board of directors authorizing the family fiduciary services company to commence transacting business with the general public, and shall pay the filing fee, if any, prescribed by rule of the commissioner.

II. The family fiduciary services company may commence transacting business with the general public on the 31st day after the date the commissioner receives the notice, unless the commissioner:

- (a) Establishes an earlier or later date;
- (b) Notifies the family fiduciary services company that the notice raises issues that require additional information or additional time for analysis; or
- (c) Disapproves the termination of family fiduciary services company status.

III. If the commissioner gives a notification described in subparagraph II(b), the family fiduciary services company status may be terminated only on approval by the commissioner.

IV. The commissioner may deny approval of the proposed termination of family fiduciary services company status if the commissioner finds that the family fiduciary services company lacks sufficient resources to undertake the proposed conversion without adversely affecting its safety or soundness or if the commissioner determines that the family fiduciary services company could not within a reasonable period be in compliance with any provision of this chapter from which it previously had been exempted pursuant to RSA 392:39-a. Such determination shall be based on the factors set forth in RSA 392:5, II to the extent

applicable.

46 Uniform Transfer on Death; Definitions. Amend RSA 563-C:2, V to read as follows:

V. "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker, ***a bank defined in RSA 384-B:1, I, or a national bank or federal savings bank authorized to conduct business in this state*** maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

47 Uniform Trust Code; Definitions. Amend RSA 564-B:1-103(10) to read as follows:

(10) "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable by a trustee which is limited by an ascertainable standard [~~related to a beneficiary-trustee's health, education, maintenance, or support,~~] or which is exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

48 New Paragraphs; Uniform Trust Code; Definitions. Amend RSA 564-B:1-103 by inserting after paragraph (21) the following new paragraphs:

(22) "Ascertainable standard" means a standard related to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter, or as later amended.

(23) "Directed trust" means a trust where either through the terms of the trust, an agreement of the beneficiaries, or a court order, one or more persons is given the authority to direct or consent to a fiduciary's actual or proposed investment decision, distribution decision, or any other noninvestment decision of the fiduciary.

(24) "Excluded fiduciary" means any fiduciary excluded by the terms of the trust or by court order from exercising a power, or relieved by the terms of the trust of by court order of a duty, because, by the terms of the trust or by court order, such power or duty is vested in another person.

(25) "Include" and "including" means the same as "include, without limitation" and "including, without limitation" regardless of whether expressly specified.

(26) "Investment company" means an investment company as defined under the federal Investment Company Act of 1940.

(27) "Trust advisor" means any party whose appointment is provided for by the terms of the trust and whose powers are defined in RSA 564-B:12-1203 but excludes any person who does not have the authority to direct or consent to a fiduciary's actual or proposed investment decision, distribution decision, or any other noninvestment decision or who does not have any of the powers identified in RSA 564-B:7-711(c).

(28) "Trust protector" means any disinterested party whose appointment is provided for by the terms of the trust and whose powers are defined in RSA 564-B:12-1203 but excludes any person who does not have the authority to direct or consent to a fiduciary's actual or proposed investment decision, distribution decision, or any other noninvestment decision or who does not have any of the powers identified in RSA 564-B:7-711(b).

49 Uniform Trust Code; Default and Mandatory Rules. Amend RSA 564-B:1-105(b)(8)-(13) to read as follows:

(8) [~~the duty under RSA 564-B:8-813 (c) and (d) to provide specified information to certain qualified beneficiaries and others who are treated as qualified beneficiaries of certain irrevocable trusts;~~]

[~~(9)~~] the effect of an exculpatory term under RSA 564-B:10-1008;

[~~(10)~~] **(9)** the rights under RSA 564-B:10-1010 through RSA 564-B:10-1013 of a person other than a trustee or beneficiary;

[~~(11)~~] **(10)** statutory periods of limitation for commencing a judicial proceeding;

[~~(12)~~] **(11)** the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

[~~(13)~~] **(12)** the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in RSA 564-B:2-203 and RSA 564-B:2-204.

50 New Paragraph; Uniform Trust Code; Authority of Director of Charitable Trusts. Amend RSA 564-B:1-110 by inserting after paragraph (c) the following new paragraph:

(d) No provision of this chapter shall limit the authority of the director of charitable trusts to supervise and control charitable organizations.

51 Uniform Trust Code; Nonjudicial Settlement Agreements. Amend RSA 564-B:1-111(d) to read as follows:

(d) Matters that may be resolved by a nonjudicial settlement agreement include ***without limitation***:

(1) the interpretation or construction of the terms of the trust;

(2) the approval of a trustee's report or accounting;

(3) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

(4) the resignation or appointment of a trustee and the determination of a trustee's compensation;

(5) transfer of a trust's principal place of administration; [~~and~~]

(6) liability of a trustee for an action relating to the trust[~~;~~]; ***and***

(7) the termination or modification of a trust.

52 Uniform Trust Code; Enforcement by Director of Charitable Trusts. Amend RSA 564-B:4-405(c) to read as follows:

(c) The settlor of a charitable trust **or the director of charitable trusts**, among others, may maintain a proceeding to enforce the trust. In any such proceeding **where the director of charitable trusts is not a party**, the director of charitable trusts shall be joined as a necessary party.

53 Uniform Trust Code; Noncharitable Trust Without Ascertainable Beneficiary. Amend RSA 564-B:4-409(1) and (2) to read as follows:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. ~~[The trust may not be enforced for more than 21 years.]~~

(2) A trust authorized by this section may be enforced by a **trust advisor, a trust protector, a** person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

54 Uniform Trust Code; Modification or Termination Because of Unanticipated Circumstances or Inability to Administer Trust Effectively. Amend RSA 564-B:4-412(a) to read as follows:

(a) Upon petition by the trustee or trustees, the director of charitable trusts **(in the case of a charitable trust)** or an interested party other than the settlor, the court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

55 Uniform Trust Code; Discretionary Trusts. Amend RSA 564-B:5-504(b) to read as follows:

(b) Except as otherwise provided in subsection (c) ~~[and (d)]~~, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

- (1) the discretion is expressed in the form of a standard of distribution; or
- (2) the trustee has abused the discretion.

56 Uniform Trust Code; Cotrustees. RSA 564-B:5-504(e) is repealed and reenacted to read as follows:

(e) A creditor or assignee of a beneficiary may not compel a distribution to the beneficiary solely because the beneficiary is a trustee if the beneficiary-trustee does not have the discretion to make or participate in making distributions to himself or herself, if the beneficiary-trustee's discretion to make or participate in making distributions to himself or herself is limited by an ascertainable standard, or if the beneficiary-trustee's discretion to make or participate in making distributions to himself or herself is exercisable only with the consent of a cotrustee or another person holding an adverse interest. Under such circumstances, the creditor or assignee may compel a distribution only to the extent the creditor or assignee otherwise may compel a distribution were the beneficiary not acting as trustee or cotrustee.

57 New Paragraph; Uniform Trust Code; Cotrustees. Amend RSA 564-B:7-703 by inserting after paragraph (h) the following new paragraph:

(i) A trustee shall keep each cotrustee and any other fiduciary designated by the terms of the trust reasonably informed about the administration of the trust to the extent the trustee has knowledge that the other cotrustee or other fiduciary designated by the terms of the trust does not have of the trustee's actions or regarding other material information (or the availability of such information) related to the administration of the trust that would be reasonably necessary for the cotrustee or other fiduciary designated by the terms of the trust to perform its duties as a trustee or other fiduciary of the trust.

58 Uniform Trust Code; Compensation of Trustee. Amend RSA 564-B:7-708 to read as follows:

564-B:7-708 Compensation of Trustee.

(a) If the terms of a trust do not specify the trustee's, **trust advisor's, or trust protector's** compensation, ~~[a trustee]~~ **each such fiduciary** is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of a trust specify the trustee's, **trust advisor's, or trust protector's** compensation, ~~[the trustee]~~ **each such fiduciary** is entitled to be compensated as specified, but the court may allow more or less compensation if:

- (1) the duties of the trustee, **trust advisor, or trust protector** are substantially different from those contemplated when the trust was created; or
- (2) the compensation specified by the terms of the trust would be unreasonably low or high.

59 Uniform Trust Code; Reimbursement of Expenses. Amend RSA 564-B:7-709 to read as follows:

564-B:7-709 Reimbursement of Expenses.

(a) A trustee, **trust advisor, or trust protector** is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

- (1) expenses that were properly incurred in the administration of the trust; and
- (2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance by the trustee, **trust advisor, or trust protector** of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

60 New Sections; Uniform Trust Code; Directed Trusts. Amend RSA 564-B by inserting after section 7-710 the following

new sections:

564-B:7-711 Directed Trusts.

(a) If the terms of the trust requires a fiduciary to follow the direction of a trust protector or trust advisor and the fiduciary acts in accordance with such direction, the fiduciary shall be treated as an excluded fiduciary under the provisions of RSA 564-B:12-1206 and RSA 564-B:12-1207.

(b) Any person authorized by the terms of the trust instrument or by court order either to appoint a trust protector or to direct or consent to a fiduciary's actual or proposed decisions other than an investment decision shall be considered to be a trust protector under RSA 564-B:1-103(27).

(c) Any person authorized by the terms of the trust or by court order either to appoint a trust advisor or to direct or consent to a fiduciary's actual or proposed investment decisions shall be considered to be a trust advisor under RSA 564-B:1-103(26).

(d) If a court order requires a fiduciary to follow the direction of a trust protector or trust advisor and the fiduciary acts in accordance with the direction, the fiduciary shall be treated as an excluded fiduciary under the provisions of RSA 564-B:12-1206 and RSA 564-B:12-1207.

564-B:7-712 Vacancy; Directed Trusts.

(a) Except as otherwise provided by the terms of the trust upon obtaining knowledge of a vacancy in the office of trust advisor, the trustee shall be vested with any fiduciary power or duty that otherwise would be vested in the trustee but that by the terms of the trust was vested in the trust advisor, until such time that a trust advisor is appointed pursuant to the terms of the trust or by a court upon the petition of any interested person.

(b) Except as otherwise provided by the terms of the trust, upon obtaining knowledge of a vacancy in the office of trust protector, the trustee shall petition the court to fill the vacancy if the trustee determines that the terms of the trust require the vacancy to be filled.

(c) Notwithstanding the provisions of subsection (a), a trustee shall not be liable for failing to exercise or assume any power or duty held by a trust advisor and conferred upon the trustee by subsection (a) for the 60 day period immediately following the date the trustee obtains knowledge of such vacancy.

61 Uniform Trust Code; Duty of Loyalty. RSA 564-B:8-802(f)-(h) are repealed and reenacted to read as follows:

(f) The following transactions, if fairly priced and in accordance with the interest of the beneficiaries and the purposes of the trusts are not presumed to be affected by a conflict between the trustee's personal and fiduciary interest provided that any investment made pursuant to the transaction otherwise complies with the prudent investor rule of article 9:

(1) an investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee provided that any investment made pursuant to the transaction otherwise complies with the prudent investor rule of Article 9 of RSA 564-B.

(2) the placing of securities transactions by a trustee through a securities broker that is a part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee;

(3) any loan from the trustee or its affiliate;

(4) an investment in an insurance contract purchased from an insurance agency owned by, or affiliated with, the trustee, or any of its affiliates;

(5) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee, or any of its affiliates;

(6) payment of reasonable compensation to the trustee, or any of its affiliates;

(7) a transaction between a trust and another trust, decedent's estate, guardianship or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(8) a deposit of trust money in a financial institution operated by the trustee or an affiliate;

(9) a delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee; or

(10) an advance by the trustee of money for the protection of the trust.

(g) If compensation, in addition to the trustee's fees charged to the trust is paid, to the trustee, its affiliate, or associated entity for any transaction or for the provision of services described in subsection (f) the trustee shall at least annually notify the persons that would be entitled under RSA 564-B:8-813 to receive a copy of the trustee's annual report of the rate or method by which the compensation was determined.

(h) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(i) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

62 Uniform Trust Code; Delegation by Trustee. Amend the introductory paragraph of RSA 564-B:8-807(a) to read as

follows:

(a) A trustee may delegate duties, powers and investment and management functions ***to any person, even if such person is associated or affiliated with the trustee***, that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

63 Uniform Trust Code; Powers to Direct. Amend RSA 564-B:8-808(c) to read as follows:

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

64 New Paragraphs; Uniform Trust Code; Duty to Inform and Report. Amend RSA 564-B:8-813 by inserting after paragraph (i) the following new paragraphs:

(j) If the trustee is bound by any written confidentiality restrictions with respect to an asset of a trust, a trustee may require that any beneficiary who is eligible to receive information pursuant to this section about such asset shall agree in writing to be bound by the confidentiality restrictions that bind the trustee before receiving such information from the trustee.

(k) A trust advisor, trust protector, or other fiduciary designated by the terms of the trust shall keep each excluded fiduciary designated by the terms of the trust reasonably informed about (1) the administration of the trust with respect to any specific duty or function being performed by the trust advisor, trust protector, or other fiduciary to the extent that the duty or function would normally be performed by the excluded fiduciary or to the extent that providing such information to the excluded fiduciary is reasonably necessary for the excluded fiduciary to perform its duties and (2) any other material information that the excluded fiduciary would be required to disclose to the qualified beneficiaries under subsection (b) regardless of whether the terms of the trust relieve the excluded fiduciary from providing such information to qualified beneficiaries. Neither the performance nor the failure to perform of a trust advisor, trust protector, or other fiduciary designated by the terms of the trust as provided in this subsection shall affect the limitation on the liability of the excluded fiduciary provided by RSA 564-B:7-716 and RSA 564-B:7-718.

65 Uniform Trust Code; Discretionary Powers; Tax Savings. Amend RSA 564-B:8-814(b)(1) to read as follows:

(1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard ~~[relating to the trustee's individual health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter, or as later amended];~~ and

66 Uniform Trust Code; Diversification. Amend RSA 564-B:9-901(b) to read as follows:

(b) The prudent investor rule may be expanded, restricted, eliminated, or otherwise altered by the terms of the trust except as provided in RSA 564-B:1-105(b)(2) and (3). A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust ***or court order or determined not to diversify the investments of a trust in good faith in reliance on the express terms of the trust or a court order or pursuant to RSA 564-B:9-903.***

67 New Article; Uniform Trust Code. Amend RSA by inserting after article 11 of RSA 564-B the following new article:

ARTICLE 12

TRUST PROTECTORS AND TRUST ADVISORS

564-B:12-1201 Trust Protector. The powers, duties and discretions of a trust protector shall be expressly set forth in the trust instrument and may, in the best interests of the beneficiaries, be exercised or not exercised in the sole and absolute discretion of the trust protector and shall be binding on all other persons. The powers, duties and discretions may include, without limitation, the following:

(a) To modify or amend the trust instrument to achieve favorable tax status or because of changes in the Internal Revenue Code, state law, or the rulings and regulations implementing such changes.

(b) To amend or modify the trust instrument to take advantage of changes in the rule against perpetuities, laws governing restraints on alienation, or other state laws restricting the terms of the trust, the distribution of trust property, or the administration of the trust.

(c) To appoint a successor trust protector.

(d) To review and approve the accountings of a trustee.

(e) To change the governing law or principal place of administration of the trust.

(f) To remove and replace any trust advisor for the reasons stated in the trust instrument.

(g) To remove a trustee, cotrustee, or successor trustee, for the reasons stated in the trust instrument, and appoint a successor.

(h) To consent to a trustee's or cotrustee's action or inaction in making distributions to beneficiaries if this power is not given exclusively to a trust advisor.

(i) To increase or decrease any interest of the beneficiaries in the trust, to grant a power of appointment to one or more trust beneficiaries, or to terminate or amend any power of appointment granted in the trust; however, a modification, amendment or grant of a power of appointment may not grant a beneficial interest in a charitable trust with only charitable beneficiaries to any non-charitable interest or purpose and may not grant a beneficial interest in any trust to the trust protector,

the trust protector's estate, or for the benefit of the creditors of the trust protector.

564-B:12-1202 Trust Protector as a Fiduciary. Trust protectors are fiduciaries and the provisions of this chapter applicable to trustees shall be applicable to trust protectors, but only to the extent of the powers, duties and discretions granted to them under the terms of the trust instrument.

564-B:12-1203 Trust Advisor. The powers, duties and discretions of a trust advisor shall be expressly set forth in the trust instrument and may, in the best interests of the beneficiaries, be exercised or not exercised in the sole and absolute discretion of the trust advisor and shall be binding on all other persons. Such powers, duties and discretions may include, without limitation the following:

- (a) To perform a specific duty or function that would normally be required of a trustee or cotrustee.
- (b) To advise the trustee or cotrustee concerning any beneficiary.
- (c) To consent to a trustee's or cotrustee's action or inaction relating to investments of trust assets.
- (d) To direct the acquisition, disposition, or retention of any trust investment.
- (e) To consent to a trustee's or cotrustee's action or inaction in making distributions to beneficiaries if this power is

not given to a trust protector.

564-B:12-1204 Trust Advisor as a Fiduciary. Trust advisors are fiduciaries and the provisions of this chapter applicable to trustees shall be applicable to the trust advisors but only to the extent of the powers, duties, and discretions granted to them under the terms of the trust instrument.

564-B:12-1205 Trust Advisor and Trust Protector Subject to Court Jurisdiction. By accepting appointment to serve as a trust advisor or trust protector, the trust advisor or the trust protector submits to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust advisor or trust protector.

564-B:12-1206 Duty to Review Actions of Trust Advisor or Trust Protector. An excluded fiduciary has no duty to review the actions of a trust protector or trust advisor including, without limitation, any duty or responsibility to perform investment reviews and make recommendations with respect to any investments to the extent the trust advisor or trust protector has the duty to direct the acquisition, disposition, or retention of any such investment.

564-B:12-1207 Fiduciary's Liability for Action or Inaction of Trust Advisor and Trust Protector. An excluded fiduciary is not liable for any loss resulting from any action or inaction of a trust advisor or trust protector or for any loss that results from the failure of a trust advisor or trust protector to take any action proposed by the excluded fiduciary that requires authorization of a trust advisor or trust protector if the excluded fiduciary timely sought but failed to obtain that authorization.

68 New Chapter; Uniform Principal and Income Act. Amend RSA by inserting after chapter 564-B the following new chapter:

CHAPTER 564-C UNIFORM PRINCIPAL AND INCOME ACT

Article 1

Definitions and Fiduciary Duties

564-C:1-101 Short Title. This chapter may be cited as the Uniform Principal and Income Act.

564-C:1-102 Definitions. In this chapter:

(1) "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

(2) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(3) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator and a person performing substantially the same function.

(4) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in article 4.

(5) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(6) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

(7) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(8) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period. During any period in which the trust is being administered as a unitrust, either pursuant to the powers conferred by RSA 564-A:3-c or pursuant to the terms of the will or the trust, "net income" means the unitrust amount, if the unitrust amount is no less than 2 percent and no more than 8 percent of the fair market value of the trust assets whether determined annually or averaged on a multiple year basis.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(10) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(11) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

(12) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(13) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as then amended and in effect.

564-C:1-103 Fiduciary Duties; General Principles.

(a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of articles 2 and 3, a fiduciary:

(1) shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter;

(2) may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter and no inference that the fiduciary has improperly exercised the discretion arises from the fact that the fiduciary has made an allocation contrary to the provisions of this chapter;

(3) shall administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under RSA 564-C:1-104(a), the power to convert into a unitrust or reconvert or change the unitrust payout percentage pursuant to RSA 564-A:3-c or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, this chapter or other applicable law, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will express an intention that the fiduciary shall or may favor one or more of the beneficiaries. The exercise of discretion by a fiduciary in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

564-C:1-104 Trustee's Power to Adjust.

(a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in RSA 564-C:1-103(a), that the trustee is unable to comply with RSA 564-C:1-103(b).

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a), a trustee may consider factors to the extent they are relevant to the trust and its beneficiaries, including, but not limited to, the following factors:

(1) the nature, purpose, and expected duration of the trust;

(2) the intent of the settlor;

(3) the identity and circumstances of the beneficiaries;

(4) the needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) the net amount allocated to income under the other sections of this chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;

(9) the anticipated tax consequences of an adjustment; and

(10) the investment return under current economic conditions from other portfolios meeting similar fiduciary requirements.

(c) A trustee may not make an adjustment between principal and income:

(1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a

spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(7) if the trustee is a beneficiary of the trust; or

(8) if the trust is being administered as a unitrust pursuant to the trustee's exercise of the power to convert to a unitrust provided in RSA 564-A:3-c or pursuant to the terms of the will or the terms of the trust.

(d) If subsection (c)(5), (6), or (7) applies to a trustee and there is more than one trustee, the other cotrustee (if there is only one) or a majority of the other cotrustees (if there is more than one) to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by subsection (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (c)(1) through (6) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c). The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a).

(g) Nothing in this section or chapter is intended to create or imply a duty to make an adjustment, and a fiduciary is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment.

(h) A trustee may give notice of a proposed action regarding a matter governed by this section as provided in this subsection. For purposes of this subsection, a proposed action includes a course of action and a determination not to take action. For purposes of this subsection, the representation rules of Article III of RSA 564-B shall apply.

(1) The trustee shall mail notice of the proposed action to all qualified beneficiaries (as defined in RSA 564-B:1-103(12)) who are adults and to those persons who have the rights of a qualified beneficiary with respect to the trust under RSA 564-B:1-110. Notice may be given to any other beneficiary. Notice of the proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(2) The notice of proposed action must state that it is given pursuant to this paragraph and must contain the following:

(A) the name and mailing address of the trustee;

(B) the name and telephone number of a person who may be contacted for additional information;

(C) a description of the action proposed to be taken and an explanation of the reasons for the action;

(D) the time within which objections to the proposed action can be made, which must be at least 30 days from the mailing of the notice of proposed action;

(E) the date on or after which the proposed action may be taken or is effective;

(F) a statement that the beneficiary or person who has the rights of the beneficiary may petition for a judicial determination of the proposed action; and

(G) a form on which consent or objection to the proposed action may be indicated.

(3) A beneficiary or a person who has the rights of a qualified beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(4) If a trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period, the trustee is not liable for the action to a beneficiary if:

(A) notice is mailed to the beneficiary, or a person who may represent and bind the beneficiary under the provisions of Article 3 of RSA 564-B or the person who has the rights of a qualified beneficiary at the address determined by the

trustee after reasonable diligence;

(B) the beneficiary receives actual notice; or a person who may represent and bind the beneficiary under the provisions of Article 3 of RSA 564-B or the person who has the rights of a qualified beneficiary

(C) the beneficiary or a person who may represent and bind the beneficiary under the provisions of Article 3 of RSA 564-B or the person who has the rights of a qualified beneficiary to the proposed action either before or after the action is taken; or

(5) If the trustee receives a written objection within the applicable time period, either the trustee, a beneficiary or a person who has the rights of a qualified beneficiary may petition the court to have the proposed action performed as proposed, performed with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action or a person who has the rights of a qualified beneficiary objecting to the proposed action has the burden of proof as to whether the trustee's proposed action should not be performed. A beneficiary who has not objected or a person who has the rights of a qualified beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the qualified beneficiaries of the trust who are adults and those persons who have the rights of a qualified beneficiary of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary or a person who has the rights of a qualified beneficiary may petition the court to have the action performed and has the burden of proof as to whether it should be performed.

(6) Nothing in this subsection limits the right of a trustee or beneficiary to petition the court pursuant to RSA 564-C:1-105 for instructions as to any action, failure to act, or determination not to act regarding a matter governed by this section in the absence of notice as provided in this subsection. In any such proceeding, any beneficiary filing such a petition or objecting to a petition of the trustee has the burden of proof as to any action taken, any failure to act, or determination not to act, by the trustee.

(i) Following the exercise of the power conferred by subsection (a) to adjust from principal to income, the trustee shall consider in the following order:

(1) the amount so adjusted as paid from ordinary income for federal income tax purposes to the extent not allocable to net accounting income;

(2) the amount so adjusted, after calculating the trust's capital gain net income described in section 1222(9) of the Internal Revenue Code, as paid from net short-term capital gain described in section 1222(5) of the Internal Revenue Code, and then from net long-term capital gain described in section 1222(7) of the Internal Revenue Code; and

(3) any remaining amount so adjusted as coming from the principal of the trust.

564-C:1-105 Judicial Control of Discretionary Power.

(a) The court may not order a fiduciary to change a decision to exercise or not to exercise a discretionary power conferred by this chapter unless it determines that the decision was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(b) The decisions to which subsection (a) applies include:

(1) a decision under RSA 564-C:1-104(a) as to whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) A decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors, in deciding whether and to what extent to exercise the discretionary power conferred by RSA 564-C:1-104(a).

(c) If the court determines that a fiduciary has abused the fiduciary's discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the discretion had not been abused as equity requires, according to the following guidelines:

(1) to the extent that the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court may order the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position.

(2) to the extent that the abuse of discretion has resulted in a distribution to a beneficiary which is too large, the court may place the beneficiaries, the trust, or both, in whole or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust.

(3) to the extent that the court is unable, after applying subsection (c)(1) and (2), to place the beneficiaries, the trust, or both, in the positions they would have occupied if the discretion had not been abused, the court may order the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.

(d) A fiduciary may petition the court having jurisdiction over a trust or estate for a determination by the court whether a proposed exercise or nonexercise of a discretionary power conferred by this chapter will result in an abuse of discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to

inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

(e) A fiduciary shall be reimbursed for any and all costs, including without limitation all attorneys' fees and costs of defense, and all liabilities that the fiduciary may incur in connection with any claim or action relating in any way to the fiduciary's exercise of its discretion under this chapter, except to the extent that the beneficiary establishes that the fiduciary did not exercise its discretion in good faith and with honest judgment. All attorneys' fees and costs shall be advanced to the fiduciary as incurred and shall only be collected from the fiduciary after it has been determined that the fiduciary did not exercise its discretion in good faith and with honest judgment.

Article 2

Decedent's Estate or Terminating Income Interest

564-C:2-201 Determination and Distribution of Net Income. After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in articles 3 through 5 which apply to trustees and the rules in subsection (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in articles 3 through 5 which apply to trustees and by:

(A) including in net income all income from property used to discharge liabilities;

(B) paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(C) paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will or the terms of the trust from net income determined under subsection (2) or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright and no interest or other amount is provided for by the will or by the terms of the trust then, if the pecuniary amount is not distributed to the beneficiary within one year of the date of death of the testator or the date the income interest ends, the fiduciary shall distribute to the beneficiary interest at the rate prescribed in RSA 336:1, II.

(4) A fiduciary shall distribute the net income remaining after distributions required by subsection (3) in the manner described in RSA 564-C:2-202 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subsection (1) because of a payment described in RSA 564-C:5-501 or RSA 564-C:5-502 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

564-C:2-202 Distribution to Residuary and Remainder Beneficiaries.

(a) Each beneficiary described in RSA 564-C:2-201(4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to

property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each beneficiary as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

Article 3

Apportionment at Beginning and End Of Income Interest

564-C:3-301 When Right to Income Begins and Ends.

(a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:

(1) on the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) on the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) on the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d), even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

564-C:3-302 Apportionment of Receipts and Disbursements when Decedent Dies or Income Interest Begins.

(a) A trustee shall allocate an income receipt or disbursement other than one to which RSA 564-C:2-201(1) applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which RSA 564-C:4-401 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

564-C:3-303 Apportionment when Income Interest Ends.

(a) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) Except as provided in subsection (c), when a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust.

(c) If immediately before the income interest ends the beneficiary described in subsection (b) has an unqualified power to revoke more than 5 percent of the trust, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(d) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

Article 4
Allocation of Receipts During Administration of Trust
Part 1
Receipts from Entities

564-C:4-401 Character of Receipts.

(a) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which RSA 564-C:4-402 applies, a business or activity to which RSA 564-C:4-403 applies, or an asset-backed security to which RSA 564-C:4-415 applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate the following receipts from an entity to principal:

(1) property other than money;

(2) money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) money received in total or partial liquidation of the entity; and

(4) money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) For purposes of subsection (c)(3):

(1) money is received in partial liquidation:

(A) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(B) if the total amount of money and property received in a distribution or series of related distributions is greater than 20 percent of the entity's gross assets, as shown by the entity's year end financial statements immediately preceding the initial receipt.

(2) money is not received in partial liquidation, nor may it be taken into account under subsection (d)(1)(B), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(e) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

564-C:4-402 Distribution from Trust or Estate. A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, RSA 564 C:4 401 or RSA 564-C:4-415 applies to a receipt from the trust.

564-C:4-403 Business and Other Activities Conducted by Trustee.

(a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

(1) retail, manufacturing, service, and other traditional business activities;

(2) farming;

(3) raising and selling livestock and other animals;

(4) management of rental properties;

(5) extraction of minerals and other natural resources;

(6) timber operations; and

(7) activities to which RSA 564-C:4-414 applies.

Part 2
Receipts not Normally Apportioned

564-C:4-404 Principal Receipts. A trustee shall allocate to principal:

- (1) To the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;
- (2) Subject to any contrary rules set forth in articles 4 or 5 of this chapter, money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this article;
- (3) Amounts recovered from third parties to reimburse the trust because of disbursements described in RSA 564-C:5-502(a)(7) or for other reasons to the extent not based on the loss of income;
- (4) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;
- (5) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and
- (6) Other receipts as provided in part 3.

564-C:4-405 Rental Property. To the extent that a trustee accounts for receipts from rental property pursuant to this section and not as provided in RSA 564 C:4 403, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

564-C:4-406 Obligation to Pay Money.

(a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(b) An amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity, must be allocated to principal. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) This section does not apply to an obligation to which RSA 564-C:4-409, 410, 411, 412, 414, or 415 applies.

564-C:4-407 Insurance Policies and Similar Contracts.

(a) Except as otherwise provided in subsection (b), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to RSA 564-C:4-403, loss of profits from a business.

(c) This section does not apply to a contract to which RSA 564-C:4-409 applies.

Part 3

Receipts Normally Apportioned

564-C:4-408 Insubstantial Allocations Not Required.

(a) If a trustee determines that an allocation between principal and income required by RSA 564-C:4-409, 410, 411, 412, or 415 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in RSA 564-C:1-104(c) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in RSA 564-C:1-104(d) and may be released for the reasons and in the manner described in RSA 564-C:1-104(e).

(b) An allocation is presumed to be insubstantial if:

- (1) the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; or
- (2) the value of the asset producing the receipt for which the allocation would be made is less than 10 percent of the total value of the trust's assets at the beginning of the accounting period.

(c) Nothing in this section imposes a duty on the trustee to make an allocation under this section, and the trustee is not liable for failing to make an allocation under this section regardless of whether or not the trustee has made allocations under this section in the past.

564-C:4-409 Deferred Compensation, Annuities, and Similar Payments.

(a) In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund

created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(e) This section does not apply to payments to which RSA 564-C:4-410 applies.

564-C:4-410 Liquidating Asset.

(a) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to RSA 564-C:4-409, resources subject to RSA 564-C:4-411, timber subject to RSA 564-C:4-412, an activity subject to RSA 564-C:4-414, an asset subject to RSA 564-C:4-415, or any asset for which the trustee establishes a reserve for depreciation under RSA 564-C:5-503.

(b) A trustee shall allocate to income 10 percent of the receipts from a liquidating asset and the balance to principal.

564-C:4-411 Minerals, Water, and Other Natural Resources.

(a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(1) if received as a nominal bonus, nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

(2) if received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(3) if an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90 percent must be allocated to principal and the balance to income.

(4) if an amount is received from a working interest or any other interest not provided for in subsection (1), (2), or (3), 90 percent of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90 percent of the amount must be allocated to principal and the balance to income.

(c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on the effective date of this chapter, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before the effective date of this chapter. If the trust acquires an interest in minerals, water, or other natural resources after the effective date of this chapter, the trustee shall allocate receipts from the interest as provided in this chapter.

564-C:4-412 Timber.

(a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(1) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in subsections (a)(1) and (2); or

(4) to principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to subsections (a)(1), (2), or (3).

(b) In determining net receipts to be allocated pursuant to subsection (a), a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timber land on the effective date of this chapter, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before the effective date of this chapter. If the trust acquires an interest in timber land after the effective date of this chapter, the trustee shall allocate net receipts from the sale of timber and related products as provided in this chapter.

564-C:4-413 Property Not Productive of Income.

(a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under RSA 564-C:1-104 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee within a reasonable time from being notified by the spouse to make property productive of income, convert property within a reasonable time or exercise the power conferred by RSA 564-C:1-104(a). The trustee may decide which action or combination of actions set forth above to take without regard to the specific action or actions requested by the spouse, if any.

(b) In cases not governed by subsection (a), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

564-C:4-414 Derivatives and Options.

(a) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under RSA 564-C:4-403 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

564-C:4-415 Asset-Backed Securities.

(a) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which RSA 564-C:4-401 or RSA 564 C:4-409 applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 10 percent of the payment to income and the balance to principal.

Article 5

Allocation of Disbursements During Administration of Trust

564-C:5-501 Disbursements from Income. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which RSA 564-C:2-201(2)(B) or (C) applies:

(a) So much of the compensation of the trustee and of any person providing investment advisory or custodial services to the trustee, and expenses for accounting, judicial proceedings, or other matters that involve the income and remainder interests as shall be determined by the trustee."

(b) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(c) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

564-C:5-502 Disbursements from Principal.

(a) A trustee shall make the following disbursements from principal:

(1) the remaining 1/2 of the disbursements described in RSA 564-C:5-501(1) and (2) except as otherwise ordered

by court;

- (2) all of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;
- (3) payments on the principal of a trust debt;
- (4) expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;
- (5) premiums paid on a policy of insurance not described in RSA 564-C:5-501(4) of which the trust is the owner and beneficiary;
- (6) estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and
- (7) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

564-C:5-503 Transfers from Income to Principal for Depreciation.

(a) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

- (1) of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;
- (2) during the administration of a decedent's estate; or
- (3) under this section if the trustee is accounting under RSA 564-C:4-403 for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund.

564-C:5-504 Transfers from Income to Reimburse Principal.

(a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

- (1) an amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;
- (2) a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;
- (3) disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;
- (4) periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and
- (5) disbursements described in RSA 564-C:5-502(a)(7).

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a).

564-C:5-505 Income Taxes.

(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately:

- (1) from income to the extent that receipts from the entity are allocated to income; and
- (2) from principal to the extent that:
 - (A) receipts from the entity are allocated to principal; and
 - (B) the trust's share of the entity's taxable income exceeds the total receipts described in subsections (c)(1)

and (2)(A).

(d) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed

to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

564-C:5-506 Adjustments between Principal and Income Because of Taxes.

(a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

- (1) elections and decisions, other than those described in subsection (b), that the fiduciary makes from time to time regarding tax matters;
- (2) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or
- (3) the ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

Article 6

Miscellaneous Provisions

564-C:6-601 Severability Clause. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect 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.

564-C:6-602 Application of Chapter to Trusts and Estates.

- (a) The effective date of this chapter shall be January 1, 2007.
- (b) Except as otherwise provided in this chapter, on the effective date of this chapter, the chapter shall apply:
 - (1) to every inter vivos trust created on or after the effective date of this chapter except as otherwise expressly provided in the terms of the trust or in this chapter;
 - (2) to any inter vivos trust created before the effective date of this chapter upon the election of the trustee to apply this chapter made in writing and delivered to the beneficiaries then entitled to receive income and principal from the trust;
 - (3) to any estate existing or testamentary trust of a decedent who dies on or after the effective date of this chapter;
 - (4) to any estate or testamentary trust upon the approval by a court of competent jurisdiction, upon either (A) a petition filed by an interested person or (B) the court on its own motion.
- (c) Nothing in this section imposes a duty on the trustee or any other fiduciary to make an election under this section, and the trustee or any other fiduciary is not liable for failing to make an election under this section.
- (d) Nothing in this chapter shall be construed to affect or change the form of accounting required under the rules of the probate court.

71 Board of Trust Company Incorporation; Membership. Amend RSA 392:1 to read as follows:

392:1 Incorporation Board. The bank commissioner, the state treasurer, or a deputy treasurer, and the attorney general, or a designee from the office of the attorney general, shall constitute a board for the incorporation of trust companies and other corporations of a similar character, shall be known as the board of trust company incorporation, and shall receive no compensation for services on this board. ***The secretary of state, or designee shall be a nonvoting member of the board for the sole purpose of monitoring filings required to be made with the secretary of state.*** The deputy bank commissioner shall serve as clerk of the board. Provided, that if on May 31, 1985 there shall be pending any matter before the board as constituted prior to May 31, 1985, the board as so constituted shall remain in existence with respect to such matter and shall retain jurisdiction thereof until final decision shall have been rendered thereon.

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

2006-1840h

Amendment to SB 403

Proposed by the Committee on Election Law - C

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

AN ACT relative to election day changes of address.

Amend the bill by deleting sections 1-2 and renumbering the original section 3-4 to read as 1-2.

Amend the bill by replacing section 2 with the following:

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

AMENDED ANALYSIS

This bill requires supervisors of the checklist to include election day changes of address in the centralized voter registration database.