

State of New Hampshire

HOUSE RECORD

First Year of the 161st General Court Calendar and Journal of the 2009 Session

Vol. 31 Concord, NH Tuesday, March 24, 2009 No. 22A
Contains: Corrected Committee Reports, Corrected Amendment and Floor Amendments

ADDENDUM TO HOUSE CALENDAR NO. 22

TUESDAY, MARCH 24

CORRECTED CONSENT CALENDAR REPORTS

JUDICIARY

HB 203, eliminating the requirement that the trial judge present unanimous findings of the screening panel to the jury in medical injury actions. **INEXPEDIENT TO LEGISLATE.**
Rep. David L Nixon for Judiciary: This bill provides that a screening panel's findings can be read to a jury when they are supported by a majority of the three-member panel, rather than by all three of them unanimously. Because other legislation will better correct the problem sought to be solved by this Bill, its sponsor recommended it be reported ITL. **Vote 13-0.**

MUNICIPAL AND COUNTY GOVERNMENT

HB 156-L, authorizing planning boards to require third party review and inspection. **OUGHT TO PASS WITH AMENDMENT.**
Rep. Robert D Lewis for Municipal and County Government: This bill is an amendment to RSA 656. It strengthens and enhances existing law by providing for third party review of planning board projects. The applicant may be required to reimburse the board for expenses incurred but a detailed accounting of expenses must be provided to the applicant. In addition, a third party inspector is required to promptly report to the planning board or municipal authority, and the applicant, any perceived construction defect in order that such defect may be corrected in a timely manner. **Vote 18-0.**

CORRECTED REGULAR CALENDAR PART I REPORTS

COMMERCE AND CONSUMER AFFAIRS

HB 75, prohibiting the use of information concerning education level to underwrite insurance coverage. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS**
Rep. Tara G Reardon for the **Majority** of Commerce and Consumer Affairs: This bill would have prohibited the use of education level to underwrite insurance coverage. The committee heard extensive testimony in both the public hearing and subcommittee about the factors

and weighting used to determine a particular companies insurance rate. We also listened to a presentation regarding ratemaking, risk classification and regulation by David Withers, the Property and Casualty Actuary of the New Hampshire Insurance Department. The Department is charged with reviewing rates charged to New Hampshire consumers, and the entire rating plan and accompanying rates and factors that must be justified actuarially. Data supplied must support that there is a correlation between the classifications used by that company and the rates. Risks may not be based upon race, creed, national origin or religion of the insured. Variables that are allowed, and may be used by some or all companies, include, but are not limited to: age, sex, marital status, accident history, homeownership, occupation, good student, liability limits carried, insurance score (credit), education level, driver's training, as well as the kind of vehicle including age and cost, the use, miles driven, where it is garaged and how many vehicles are owned by the insured. Research done by the committee indicates, that although one insurer may use occupation as a factor, others do not. According to the New Hampshire Insurance Commissioner, our consumers enjoy a very competitive auto insurance market, with over 100 companies writing auto insurance at this time, with a wide range in premium cost. The committee did not see the need to make changes. **Vote 14-3.**

Rep. Donna L Schlachman for the **Minority** of Commerce and Consumer Affairs: The committee learned from the insurance department that educational level is not commonly used in our state as a rating factor, the minority was concerned that it is nonetheless a form of legalized discrimination that does not correlate with accident risk. As a matter of public policy, New Hampshire should bar its use in setting rates.

ELECTION LAW

HB 614, relative to domicile of students for voting purposes. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. David M Pierce for the **Majority** of Election Law: Federal constitutional law makes clear that college students living in New Hampshire while attending school have a fundamental right to vote in New Hampshire. This bill does nothing more than to affirm this right. The committee believed that the determination of constitutional rights should not be left solely to the courts and that the legislature should be the first line of defense of the fundamental right to vote. **Vote 9-5.**

Rep. Shawn N Jasper for the **Minority** of Election Law: While the minority concedes that the amendment improves the bill, we believe that the bill is unnecessary, as the secretary of state's representative testified that the perceived problems which the bill attempts to address have been dealt with through training sessions, held for local election officials. The minority is concerned that we are heading down a path, with our registration process that will lead to disaster for certain communities and possibly entire counties. While everyone domiciled in New Hampshire has a right to vote, the legislature has the duty to set the qualifications to meet the domicile test, within certain parameters. It is not an unreasonable restriction to require that students who have a driver's license or a car and claim domicile here, obtain a New Hampshire drivers license and car registration, rather than allowing them to continue to maintain out of state licenses and registrations, but the requirement was recently eliminated. It is not a stretch of one's imagination to envision that in a college town students could take over the governments and budgets of those towns, if they were so motivated. In fact we have seen it happen on a limited basis in one county. Students in dorms have none of the rights afforded tenants under our laws, yet we consider them domiciled here for voting purposes. If they are domiciled here shouldn't they be protected equally under the laws of our state? In the end, all this bill does is make students a special class of voters for the purpose of registering.

SCIENCE, TECHNOLOGY AND ENERGY

HB 496, establishing a limit on the amount of cost recovery for the emissions reduction equipment installed at the Merrimack Station. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Nickolas J Levasseur for the **Majority** of Science, Technology and Energy: While this bill is well intentioned, the committee received many hours of testimony outlining the negative and unintended consequences associated with passing the bill. The committee heard lengthy testimony from both sides. In 2006, the legislature had required the plant owner to proceed with the installation without placing a specific limit on the cost. The majority believes that to choose now to place an absolute cap on the cost at this time, would pose significant problems. While the committee recognizes that the increase in projected cost for the scrubber is significant, it is the role of the PUC (Public Utilities Commission) to decide the amount of funds to be recovered after the completion of the project in a legal process known as a prudency review. This means that before the company can be granted cost recovery it must provide justification for each expense before the PUC. The majority believes that establishing a legislatively imposed cap on spending before the project is even complete not only breaks with precedent but undermines the authority of the PUC and the prudency review process. Additionally, the majority believes that placing a cap on cost recovery at this time would be arbitrary and unconstitutional as it could amount to a taking. The majority was also concerned that the passage of this bill would lead to a pause in or cancellation of the project. This would not only have significant environmental ramifications, but also would lead to the loss of several hundred short term and long term jobs related to the construction and operation of the scrubber. The committee also decided that an unofficial late amendment was too far reaching, requiring more time to debate and receive public input. As a result, the potential amendment was not considered by the committee and discussion was focused on the bill as introduced. Vote 15-4

Rep. Robin P Read for the **Minority** of Science, Technology and Energy: Public Service of New Hampshire's (PSNH) estimated cost of installing a mercury scrubber at its coal-fired power plant in Bow has gone from \$250 million in 2006 to \$457 million today, an increase of 83% in less than three years. There has been no review of the increase in costs by the PUC. The total cost of operating the plant could increase even more in the coming years when new expected federal environmental regulations and laws, including laws regarding carbon emissions, are implemented. Under current law, New Hampshire commercial and residential ratepayers will have to pay for the project through higher electric bills no matter what the costs, while the project will result in significantly increased profit for PSNH shareholders. The minority of the committee believes that it is in the best interest of New Hampshire ratepayers for the cost of the project to be paid for by ratepayers to be capped at PSNH's original estimate of \$250 million and that PSNH shareholders should finance any costs over \$250 million.

ADDITIONAL REGULAR CALENDAR PART II REPORTS

JUDICIARY

HB 73, relative to the solemnization of marriage. **OUGHT TO PASS.**

Rep. Janet G Wall for Judiciary: RSA 457:31 currently lists the categories of people who may solemnize marriage. Among these currently listed are a justice of the peace, an ordained minister of the gospel, and any clergy not ordained but engaged in the service of the religious body to which he or she belongs. A subsequent section, entitled "Exceptions" currently allows Jewish Rabbis and "the people called Friends or Quakers" to solemnize marriage according to their traditions. The purpose of this bill is to remove the reference singling out these two religious groups as exceptions, and to include the many other faith traditions which have for so long been omitted. The bill also changes the words "minister of the gospel" to the more inclusive "member of the clergy". The wording changes do not remove any authority from any

person already authorized to perform marriages. They simply serve to include all religious traditions. **Vote 12-8.**

HB 396, relative to the solemnization of marriage. **INEXPEDIENT TO LEGISLATE.**

Rep. Lucy M Weber for Judiciary: This bill is exactly the same as HB 73 except for two changes. The bill would retain the term “ministers of the gospel”. It would also replace the words “marriage license” with the words “notice of intent to marry” throughout the marriage statute. Opponents of this bill either believed that HB 73 was a better bill, or that the current statute should remain unchanged. **Vote 16-4.**

HB 453, establishing that marriage between one man and one woman shall be the only legal domestic union that shall be valid or recognized in this state. **INEXPEDIENT TO LEGISLATE.**

Rep. Lucy M Weber for Judiciary: This bill, in its original form, would have repealed civil unions and provided that marriage between one and one woman shall be the only legal marriage valid in this state. The prime sponsor presented the committee with an amendment omitting the repeal of civil unions. What remained was a provision stating that the only legal marriage is between one man and one woman. The majority of the committee believed that this bill was unnecessary, as marriage is already defined in our statutes as being between one man and one woman. **Vote 11-9.**

CORRECTED “WITHOUT RECOMMENDATION” STATEMENT

JUDICIARY

HB 415, adding certain terms regarding non-discrimination to the laws. **WITHOUT RECOMMENDATION.**

Statement in support of Ought to Pass:

This is a bill which simply adds the words “gender identity or expression” to the antidiscrimination and hate crimes statutes. This change is needed to protect transgendered persons or others with gender identity issues from job loss, housing discrimination and other discriminatory practices. Gender identity issues are not a matter of personal choice. They are often the result of chromosomal abnormalities and accompanying physical ambiguity. Existing language in the antidiscrimination statute, in the opinion of the Human Rights Commission, does not provide adequate protection for this population. Nothing in this bill will provide protection for sexual predators in public restrooms. Similar protections are already in place in 13 states and numerous political subdivisions. The level of fear and misunderstanding generated by this bill convinces the proponents of the urgent need for protection for this vulnerable population.

Rep. Lucy Weber

Statement in support of Inexpedient to Legislate:

HB 415 is a complete violation of our citizens’ rights. To make the entire 1.3 million residents of our state uncomfortable and afraid in the restroom is unconscionable and an example of the tyrannical minority pushing around the majority. This would also allow a man to enter the ladies locker room at the gym and the sauna. People are in various states of undress and are very often the only ones there. Men are at risk of women entering their private spaces and accusing them of sexual advances. Our children are at particular risk. When a child enters the restroom a predator of any sex could be there waiting and no one can say a word to them. All a man in a girls room would need to say if someone questioned him why he was there, is that he thought he was a woman and was just using the restroom. We need to protect the children of NH from sexual predators. Our neighbor to the south, MA, has experimented with this line of thinking and has all kinds of problems. Constituents reported that the unisex bathrooms in Europe are a haven for rapists.

A law very similar to HB 415 passed in Colorado, has since become known as the “bathroom bill” because it has opened up public restrooms, once reserved to either men or women, to all genders depending upon their “gender expression” at that time. As you can imagine, this

new law has also opened up an opportunity for sexual predators to use it as a “cover” to enter intimate areas in search of a victim. Gender confusion is NOT a biological disorder, but rather a psychological one and has been classified as such by the American Psychiatric Association. People with Gender Identity Disorder (GID) need compassion and treatment, not confirmation of their disorder through special rights.

In addition, the NH bill also serves as a threat to the religious liberties of business owners in NH. A refusal to do business with someone based on a sincerely held religious belief would now violate the law. That threatens the religious liberties of every Christian, Jewish or Muslim business owner who operates a business on faith-based principles.

New Hampshire already has the term “sexual orientation” in its anti-discrimination laws, it does not need to add “gender identity and expression” to it as well, as it will only cause confusion and open itself up for countless lawsuits. If someone were to challenge or not allow a professing trans-gender to use the restroom of their choice they could be charged with a hate crime. That case would go through the Commission on Human Rights. Another bill that has been recommended OTP by Judiciary Committee (HB 686) says that. If you are in question of a Human Rights violation the Plaintiff has the choice of court or the Commission. The Defendant does not. The Plaintiff can remove to the Court, after the commission’s finding, but the Defendant cannot. The penalties can be as high as \$50,000. So if you question why a man is in the ladies room, he can bring you before the Commission, they can fine you \$50,000 and there is nothing you can do about it.

Rep. Nancy Elliott

ADDITIONAL AMENDMENTS

(LISTED IN NUMERICAL ORDER)

2009-0323h

Floor Amendment to HB 62

Proposed by Rep. DiFruscia

Amend RSA 132:10-e as inserted by section 1 of the bill by replacing it with the following:

132:10-e Proof of Counseling Prior to Abortion for Young Women Under 15 Years of Age Required. A pregnant female under 15 years of age shall provide written proof of counseling to the person performing an abortion. The pregnant female and the person providing counseling shall sign, date, and seal or notarize the document certifying the proof of counseling. The counseling shall be provided at least 48 hours prior to the submission of the certifying document. The counseling may be provided by one parent of the pregnant female, a licensed mental health provider, a pediatrician, or a certified counselor. The certification shall be on a form approved by the department of health and human services.

Notwithstanding this section, a licensed physician may perform an abortion without the form required by this section when the physician’s good faith medical judgment dictates or a medical emergency exists for the preservation of the life or health of the mother. The medical or hospital record shall specify the reasons for the waiver. Counseling provided by a person associated with a licensed provider who performs abortions does not constitute the receipt of counseling.

AMENDED ANALYSIS

This bill requires young women under 15 years of age to provide proof of counseling prior to obtaining an abortion. This bill allows a physician to waive the requirement of counseling when the physician’s good faith judgment dictates or when a medical emergency exists.

2009-0950h

Floor Amendment to HB 197

Proposed by Reps. G. Richardson, Nixon and W. O’Brien

Amend RSA 507:7-e,V as inserted by section 1 of the bill by replacing it with the following:

V. For purposes of this section, fault and damages shall not be apportioned with regard to a party that is immune from liability pursuant to RSA 281-A.

AMENDED ANALYSIS

This bill prohibits the apportionment of damages with regard to a party that is immune from liability pursuant to RSA 281-A.

2009-0944h

Floor Amendment to HB 381

Proposed by Rep. Hopper

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

AN ACT establishing a committee to study the prohibition of certain preferences in recruiting, hiring, promotion, or admission in state employment.

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

1 Committee Established. There is established a committee to study prohibiting preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the community college system, and the postsecondary education commission, the feasibility of such a prohibition, and the implementation of such a prohibition.

2 Membership and Compensation.

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

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

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

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

3 Duties. The committee shall study prohibiting preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the community college system, and the postsecondary education commission, the feasibility of such a prohibition, and the implementation of such a prohibition.

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

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2009.

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

AMENDED ANALYSIS

This bill establishes a committee to study prohibiting preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the community college system, and the postsecondary education commission, the feasibility of such a prohibition, and the implementation of such a prohibition.

2009-0782h

Corrected Amendment to HB 443

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

Amend RSA 146-C:19, II(b) as inserted by section 2 of the bill by replacing it with the following:

(b) The results of each inspection shall be recorded in a monthly inspection report. The records shall be maintained and made available for department inspection and copying for a period of not less than 3 years.

Amend RSA 146-C:19, II(c)(9) as inserted by section 2 of the bill by replacing it with the following:

(9) Inspect each motor fuel dispenser cabinet interior for leaking components and the presence of oil, water, or debris; remove and dispose of any oil, water, or debris in accordance with all applicable federal, state, and local requirements; and repair each component as necessary. If a motor fuel dispenser cabinet interior has a liquid-tight containment sump with continuous leak detection monitoring provided by either a dispenser sump sensor or the attached piping sump sensor, the motor fuel dispenser cabinet interior inspection may be conducted annually and the results reported in the associated monthly inspection report.

Amend RSA 146-C:19, II(d) as inserted by section 2 of the bill by replacing it with the following:

(d) Deficiencies discovered during the visual inspection shall be repaired or otherwise resolved within 30 days.