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Contains: Amendments for January 6

HOUSE CALENDAR

AMENDMENTS

**ALL LEGISLATORS ARE ASKED TO
BRING THIS CALENDAR FOR USE
ON WEDNESDAY, JANUARY 6, 2010**

WEDNESDAY, JANUARY 6

AMENDMENTS

(LISTED IN NUMERICAL ORDER)

2009-2434h

Amendment to HB 50

Proposed by the Committee on Judiciary - R

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

AN ACT relative to proceedings of medical injury claims screening panels.

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

1 Screening Panel Procedures. Amend RSA 519-B:4, II to read as follows:

II. Within 20 days of the return date, the person or persons accused shall contact the claimant's counsel and by agreement shall designate a timetable for filing all the relevant medical and provider records necessary to a determination by the panel. If the parties are unable to agree on a timetable within 60 days of the return date, the claimant shall notify the chairperson of the panel. The chairperson shall then establish a timetable for the filing of all relevant records and reasonable discovery, which shall be filed at least 30 days before any hearing date. The hearing shall be ***expedited and shall be held*** no later than 6 months from the return date, except when the time period has been extended by ~~the panel chairperson in accordance with this chapter~~ ***agreement of the parties.***

2 Screening Panel Procedures. Amend RSA 519-B:4, VI to read as follows:

VI. All requests for extensions of time under this section shall be made to the panel chairperson. The chairperson may extend any time period for good cause, ~~[except that the chairperson may not extend any time period that would result in the hearing being held more than 11 months following the return date unless good cause is shown]~~ ***subject to the provisions of paragraph II.***

3 Hearings. Amend RSA 519-B:5, I(a) to read as follows:

I.(a) The claimant or a representative of the claimant shall present the case before the panel ***by an offer of proof.*** The person accused of professional negligence or that person's representative shall make a responding presentation ***by an offer of proof.*** ~~[The panel shall afford the parties wide latitude in the conduct of the hearing including, but not limited to, the right of examination and cross examination by attorneys. Depositions are admissible whether or not the person deposed is available at the hearing.]~~ The chairperson shall make all procedural rulings, which shall be final. The New Hampshire rules of evidence shall not apply. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The panel shall make findings upon such evidence as is presented at the hearing, the records, and any expert opinions provided by or sought by the panel or the parties. ***The evidence presented shall be limited to offers of proof and submission of documentary evidence, including but not limited to medical records, expert reports, and interrogatory answers. Live witness testimony shall not be presented. For purposes of this chapter, "offers of proof" shall mean frank, objective, and factual descriptions of the facts made in good faith and without exaggeration.***

4 Confidentiality and Admissibility. Amend RSA 519-B:8, I(a)(1) to read as follows:

(1) Any ~~[testimony or]~~ writings made under oath may be used in subsequent proceedings for purposes of impeachment.

5 Confidentiality and Admissibility. Amend RSA 519-B:8, III to read as follows:

III. The deliberations and discussion of the panel ~~[and the testimony of any expert, whether called by a party or the panel,]~~ shall be privileged and confidential, and no such person may be asked or compelled to testify at a later court proceeding concerning the

deliberations, discussions, or findings, ~~[or expert testimony or opinions expressed during the panel hearing, unless by the party who called and presented the nonparty expert,]~~ except such deliberation~~[-]~~ **and** discussion~~[-]~~ ~~and testimony]~~ as may be required to prove an allegation of fraud.

6 Mandatory Instructions. Amend RSA 519-B:9, I(c) and (d) to read as follows:

(c) The panel conducts a summary hearing ~~and~~, is not bound by the rules of evidence, **and does not hear live witness testimony.**

(d) The hearing is not a substitute for a full trial ~~and may or may not have included all of the evidence that is presented at the trial].~~

7 Effective Date. This act shall take effect January 1, 2011.

AMENDED ANALYSIS

This bill changes procedures for screening panels for medical injury claims.

2009-2384h

Amendment to HB 53

Proposed by the Committee on Judiciary - C

Amend the bill by replacing section 1 with the following:

1 Right-to-Know Law; Definition of "Public Body." Amend RSA 91-A:1-a, VI(d) to read as follows:

(d) Any legislative body, governing body, board, commission, committee, agency, ~~[or]~~ authority, **or similar entity, which acts by vote or agreement of its members** of any county, town, municipal corporation, **village district**, school district, school administrative unit, chartered public school, or other political subdivision, or any committee, subcommittee, or subordinate body thereof, or advisory committee thereto. **An individual executive or administrative officer of a political subdivision shall not constitute a public body, and staff members of an agency or department of a political subdivision meeting as a group shall not constitute a public body.**

2009-2509h

Amendment to HB 133

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

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

AN ACT requiring employers to report certain information regarding outsourcing to the department of employment security.

Amend the bill by replacing section 1 with the following:

1 New Section; Reporting Requirement. Amend RSA 282-A by inserting after section 117-a the following new section:

282-A:117-b Reporting Requirement. Any employer doing business in this state that had a net loss of 50 or more employees in this state during the prior calendar year shall, commencing January 31, 2011, submit the following information on a department-approved form to the commissioner of the department of employment security:

I. The name and principal place of business of the employer.

II. Identification of any procurement contracts that the employer has with the state or a local government.

III. Identification of any grants or loans that the employer has received from the state or a local government.

IV. A statement of the number of New Hampshire employees employed by the employer who lost their jobs in the preceding calendar year.

V. A statement of the number of jobs that were added in this state in the preceding calendar year.

VI. A statement of the number of jobs that New Hampshire employees lost that were lost as a result of the employer outsourcing the jobs to employees located outside of the United States.

AMENDED ANALYSIS

This bill requires employers that have reduced their employment in New Hampshire by 50 or more employees to supply certain information to the department of employment security including the number of jobs that were lost to outsourcing to foreign countries.

2009-2476h

Amendment to HB 138

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

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

1 Involuntary Commitment of Sexually Violent Predators; Intent. Amend RSA 135-E:1 to read as follows:

135-E:1 Findings and Intent. The general court finds that a small but extremely dangerous number of sexually violent predators exist who ~~[do not have a mental disease or defect that renders them appropriate for involuntary treatment under RSA 135-C, which is intended to provide short term treatment to individuals with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment, sexually violent predators generally]~~ have antisocial personality features which are unamenable to existing mental illness treatment modalities, and those features render them likely to engage in criminal, sexually violent behavior. The general court further finds that the likelihood of sexually violent predators engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment procedures for the treatment and care of mentally ill persons are inadequate to address the risk these sexually violent predators pose to society. The general court further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor, the treatment needs of this population are very long term, and the treatment modalities for this population are very different from the traditional treatment modalities for people appropriate for commitment under existing law. It is therefore the intent of the general court to create a civil commitment procedure for the long-term care and treatment of sexually violent predators. ***This procedure primarily targets individuals who are nearing completion of their maximum sentence of imprisonment, having being refused parole, who pose a high risk of repeated acts of predatory behavior if released to the community.***

2 Involuntary Commitment of Sexually Violent Predators; Definitions. Amend RSA 135-E:2, XI-XIII to read as follows:

XI. "Sexually violent offense" means:

- (a) Capital murder in violation of RSA 630:1, I(e);
- (b) First degree murder in violation of RSA 630:1-a, I(b)(1);
- (c) Aggravated felonious sexual assault in violation of RSA 632-A:2;
- (d) ***Felonious sexual assault in violation of RSA 632-A:3;***
- (e) Kidnapping in violation of RSA 633:1, I(d), where the offender confined the victim with the purpose to commit sexual assault against the victim;
- ~~[(e)]~~ (f) Burglary in violation of RSA 635:1, I, where the offender entered a building or occupied structure with the purpose to commit sexual assault;
- ~~[(f)]~~ (g) An attempt, criminal solicitation, or conspiracy, to commit any of the offenses listed above; or
- ~~[(g)]~~ (h) A violation of any other statute prohibiting the same conduct as the offenses listed above in another state, territory, or possession of the United States.

XII. "Sexually violent predator" means any person who:

- (a) Has been convicted of a sexually violent offense; ***and***
- (b) Suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment~~[-and~~
- ~~(c) Is not eligible for involuntary admission under RSA 135-C or RSA 171-B].~~

XIII. "Total confinement" means that the person is being held in any physically secure facility being operated by or contractually operated for the department of corrections ~~[or the department of health and human services]~~. A person shall also be deemed to be in total confinement for applicability of provisions under this chapter if the person is serving an incarcerative sentence under the custody of the department of corrections ~~[or is being held in any other secure facility for any reason]~~. A person is not subject to total confinement if the person is subject to an incarcerative sentence or other custody in a secure facility but has contact with the community, such as through work release, a halfway house, or other supervised or unsupervised release into the community.

3 Involuntary Commitment of Sexually Violent Predators; Request for Assessment. Amend RSA 135-E:3, III to read as follows:

III. Upon receipt of such notice, if there is an articulable basis to believe that the person is likely to engage in acts of sexual violence, either the county attorney, attorney general, or the agency with jurisdiction may request that the multidisciplinary team assess and evaluate the person to determine whether the person is a sexually violent predator. ***If the county attorney, attorney general, or the agency with jurisdiction over the person who has committed a sexually violent offense requests an assessment by the multidisciplinary team, the court shall appoint legal counsel to represent the person before any interview or personal examination of the person is conducted by the multidisciplinary team. The person to be assessed shall bear the cost of legal services associated with any proceedings under this section. If the person to be assessed is unable to pay for counsel, the court shall appoint counsel pursuant to RSA 604-A:2.***

4 Involuntary Commitment of Sexually Violent Predators; Request for Assessment; Version Effective September 1, 2010. RSA 135-E:3, III is repealed and reenacted to read as follows:

III. Within 45 days of receipt of such notice, if there is an articulable basis to believe that the person is likely to engage in acts of sexual violence, either the county attorney, attorney general, or the agency with jurisdiction may request that the multidisciplinary team assess and evaluate the person to determine whether the person is a sexually violent predator. If the county attorney, attorney general, or the agency with jurisdiction over the person to be assessed requests an assessment by the multidisciplinary team, the court shall appoint legal counsel to represent the person before any interview or personal examination of the person is conducted by the multidisciplinary team. The person to be assessed shall bear the cost of legal services associated with any proceedings under this section. If the person to be assessed is unable to pay for counsel, the court shall appoint counsel pursuant to RSA 604-A:2.

5 Involuntary Commitment of Sexually Violent Predators; Notice to County Attorney or Attorney General. Amend RSA 135-E:3, V(c) to read as follows:

(c) Within ~~[6]~~ 4 months after receiving ~~[notice of a person's anticipated release from total confinement]~~ ***the request for an assessment and evaluation***, the department of health and human services shall provide to the county attorney or attorney general, ***and to the attorney representing the person***, a written report of the multidisciplinary team's findings as to whether the person meets the definition of a sexually violent predator.

6 Involuntary Commitment of Sexually Violent Predators; Notice to County Attorney or Attorney General; Version Effective September 1, 2010. RSA 135-E:3, V(c) is repealed and reenacted to read as follows:

(c) Within 4 months after receiving the request for an assessment and evaluation, the department of health and human services shall provide to the county attorney or attorney general, and to the attorney representing the person, a written report of the multidisciplinary team's findings as to whether the person meets the definition of a sexually violent predator.

7 Involuntary Commitment of Sexually Violent Predators; Release of Records. Amend RSA 135-E:15, I to read as follows:

I. In order to protect the public, relevant information and records that are otherwise confidential or privileged shall be released to the agency with jurisdiction, to a multidisciplinary team, or to the county attorney or attorney general for the purpose of meeting the notice requirements of this chapter and determining whether a person is or continues to be a sexually violent predator. ***Restrictions on confidential or privileged communications pursuant to RSA 329:26, RSA 330-A:32, or any other statute establishing similar restrictions on confidential or privileged communications shall not apply to releases made under this chapter.*** A person, agency, or entity receiving information under this section which is confidential shall maintain the confidentiality of that information. Such information does not lose its confidential status due to its release under this section.

8 Effective Date.

I. Sections 4 and 6 of this act shall take effect September 1, 2010 at 12:01 a.m.

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

AMENDED ANALYSIS

This bill makes certain revisions to the statute governing involuntary commitment of sexually violent predators.

2009-2461h

Amendment to HB 160

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

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

AN ACT relative to criminal threatening and physical force in defense of a person.

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

1 New Paragraph; Physical Force in Defense of a Person. Amend RSA 627:4 by inserting after paragraph II the following new paragraph:

II-a. A person who responds to an attack which would be considered by a reasonable person as likely to cause serious bodily injury or death to the person or to another by displaying a firearm or other means of self-defense with the intent to warn the attacker away shall not have committed a criminal act.

2 New Paragraph; Criminal Threatening. Amend RSA 631:4 by inserting after paragraph III the following new paragraph:

IV. A person who responds to an attack which would be considered by a reasonable person as likely to cause serious bodily injury or death to the person or to another by displaying a firearm or other means of self-defense with the intent to warn the attacker away shall not have committed a criminal act under this section.

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

AMENDED ANALYSIS

This bill provides that the mere display of a firearm or other means of self-defense intended to warn off an attacker shall not constitute a criminal act.

2009-2453h

Amendment to HB 213-FN

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

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

1 New Subdivision; Emergency Notification System. Amend RSA 106-H by inserting after section 15 the following new subdivision:

Emergency Notification System

106-H:16 Emergency Notification System.

I. For the purposes of alerting members of the public about emergencies in a particular area and delivering rapid emergency notification and information, the bureau

shall develop and maintain a statewide emergency notification system (ENS) The bureau shall work with technical members from the wireline, wireless, voice over Internet Protocol, and cable industries to ensure the delivery of emergency messages in the most efficient manner and may utilize existing communications systems and networks for emergency state and local governmental purposes.

II. The ENS shall use the E911 database and a database developed for persons who request inclusion in the ENS. All telephone numbers in the E911 database shall automatically be included in the ENS. This data shall remain confidential and shall be used solely by the ENS for the purposes of emergency notification and message delivery.

III. The bureau shall, to the greatest extent possible, ensure that the ENS is fully geographic information system (GIS) capable and able to define an emergency zone by address or geographic area. Telephone numbers shall be linked to a GIS mapping database and able to perform a query based on address or a general geographic area.

IV. The ENS shall include means by which persons can opt-out of the system and also opt-in to the system for communications devices not otherwise included in the system, such as nomadic voice over Internet Protocol phones, internet protocol enabled services, and commercial mobile radio services.

V. To accommodate the use of the ENS during an emergency, the ENS shall be capable of providing a pre-recorded message and delivering that message to a large number of telephones and communications devices.

VI. The bureau shall ensure that every state, county, and local emergency response agency has access to and training in the use of the ENS.

VII. The bureau shall establish policies, standards, and procedures, with the approval of the enhanced 911 commission and the commissioner of safety, for the ENS. The bureau shall conduct regular assessments and internal tests of the ENS to ensure that it is functioning properly in compliance with the requirements of this section and that it meets all federal and state requirements for incident management.

VIII. The bureau, with the approval of the enhanced 911 commission and the commissioner of safety, is authorized to and shall develop and modify the ENS to be compatible with the Federal Communications Commission (FCC) guidelines or requirements for broadcast messaging once adopted.

2 Funding. Amend RSA 106-H:9, I and II to read as follows:

I. The enhanced 911 system ***and the statewide emergency notification system*** shall be funded through a surcharge to be levied upon each residence and business telephone exchange line, including PBX trunks and Centrex lines, each individual commercial mobile radio service number, and each semi-public and public coin and public access line. No such surcharge shall be imposed upon more than 25 business telephone exchange lines, including PBX trunks and Centrex lines, or more than 25 commercial mobile radio service exchange lines per customer billing account. In the case of local exchange telephone companies, the surcharge shall be contained within tariffs or rate schedules filed with the public utilities commission and shall be billed on a monthly basis by each local exchange telephone company. In the case of an entity which provides commercial mobile radio service the surcharge shall be billed to each customer on a monthly basis and shall not be subject to any state or local tax; the surcharge shall be collected by the commercial mobile radio service provider, and may be identified on the customer's bill. Each local exchange telephone company or entity which provides commercial mobile radio service shall remit the surcharge amounts on a monthly basis to the enhanced 911 services bureau, which shall be forwarded to the state treasurer for deposit in the enhanced 911 system fund. The state treasurer shall pay expenses incurred in the administration of the enhanced 911 system ***and the statewide emergency notification system*** from such fund. Such fund shall not lapse. If the expenditure of additional funds over budget estimates is necessary for the proper functioning of the enhanced 911 system ***or the statewide emergency notification system***, the department of safety may request, with prior approval of the fiscal committee of the general

court, the transfer of funds from the enhanced 911 system fund to the department of safety for such purposes. The moneys in the account shall not be used for any purpose other than the development and operation of enhanced 911 services **and the statewide emergency notification system**, in accordance with the terms of this chapter. Surcharge amounts shall be reviewed after the budget has been approved or modified, and if appropriate, new tariffs or rate schedules shall be filed with the public utilities commission reflecting the surcharge amount.

II. Imposition of the enhanced 911 services surcharge shall ~~[begin not later than 4 months from the approval of the budget, in order to]~~ provide adequate funding for the development of the enhanced 911 database and other operations ~~[necessary to the development]~~ of the enhanced 911 system **and emergency notification systems**.

3 Effective Date. This act shall take effect 30 days after its passage.

2009-2514h

Amendment to HB 218-FN

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

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

1 Purpose. The purpose of this act is to clarify the use of the state park fund and to provide fiscal flexibility to the commissioner of the department of resources and economic development in operating the state park system.

2 State Park Fund Established. Amend RSA 216-A:3-i to read as follows:

216-A:3-i State Park Fund Established.

~~[F.]~~ The state treasurer shall establish a separate and distinct account to be known as the state park fund. The treasurer shall establish within the state park fund separate and distinct accounts known as the park account and the ski area account. The treasurer shall deposit in said accounts ~~[actual]~~ revenue ~~[derived]~~ **received** by the commissioner of the department of resources and economic development ~~[in excess of budget expenses]~~ from fees, services, accommodations, rentals, revenue from lift and tramway operations, retail sales, and ~~[net profit from]~~ concession operations, and including any federal moneys which become available, and all donations and gifts. The accounts shall be ~~[continuing and]~~ **and continually appropriated to the commissioner for the purposes set forth in this section. The state treasurer shall invest the moneys deposited in the fund as provided by law, and any income received on such investments shall also be credited to the fund. Fund moneys shall only be used to pay for expenses related to the state park system.**

~~[H. Any funds deposited into the park account and ski account are hereby continually appropriated to and may be expended by the commissioner of the department of resources and economic development only with the prior approval of the governor and council and the fiscal committee, provided that additional funds above those authorized in the budget are necessary for the division of parks and recreation to provide an adequate level of service and maintenance in the state park system, restore park facilities and for proper operation of the state owned ski areas.]~~

3 Effective Date. This act shall take effect July 1, 2010.

2009-2490h

Amendment to HB 219

Proposed by the Majority of the Committee on Judiciary - R

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

1 Powers and Duties of Guardians of Incapacitated Persons; Admission to State Institution. RSA 464-A:25, I(a) is repealed and reenacted to read as follows:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the guardian shall

be entitled to custody of the ward and may establish the ward's place of abode within or without this state. Admission to a state institution shall be in accordance with the following:

(1) A guardian may admit a ward to a state institution with prior approval of the probate court if, following notice and hearing, the court finds beyond a reasonable doubt that the placement is in the ward's best interest and is the least restrictive placement available. Authorization for such admission shall not be time limited unless the court so orders. Authority to admit a ward to a state institution with prior approval under this subparagraph shall not be subject to the limitations contained in RSA 464-A:25, I(a)(2) through (7).

(2) A guardian may admit a ward to a state institution without prior approval of the probate court upon written certification by a physician licensed in the state of New Hampshire, or, in the case of placement in New Hampshire hospital, by a psychiatrist licensed in the state of New Hampshire, that the placement is in the ward's best interest and is the least restrictive placement available. Within 36 hours, excluding days when the court is closed, of such an admission of a ward to a state institution, the guardian shall submit to the Merrimack county probate court notice of the admission and the reasons therefor, together with a copy of the certificate by the physician or psychiatrist.

(3) The Merrimack County probate court shall review the guardian's notice within 48 hours of the filing of the notice, excluding days when the court is closed, to determine whether the notice on its face appears to establish that the placement is in the ward's best interest and is the least restrictive placement available. If the court concludes that the notice is insufficient, the court shall order the immediate release of the ward from the state institution. If the court concludes that the notice is sufficient, counsel for the ward shall be appointed no later than 48 hours following the court's review of the guardian's notice, excluding days when the court is closed. Notice of the appointment shall be transmitted to the ward, to the guardian, and to counsel. Counsel's notice shall be transmitted in writing and electronically or in another manner which is likely to give actual notice of the appointment to counsel at the earliest practicable time. For purposes of proceedings regarding admissions to state institutions without prior court approval, the ward shall have the right to legal counsel in the same manner as provided in RSA 464-A:6. The court shall also provide the ward a notice stating that the ward has the right to appointed counsel, the right to oppose the admission by the guardian, and the right to a hearing and to present evidence at that hearing.

(4) Counsel for a ward admitted to a state institution who has been appointed pursuant to subparagraph (3) shall deliver a written report to the court within 5 days of his or her appointment which shall declare whether the ward requests a hearing on the propriety of the admission. Unless the ward waives a hearing, counsel's report shall include a request for a hearing on behalf of the ward. A copy of counsel's report shall be sent to the ward and to the guardian. If the court does not receive a written report from counsel within 5 days of counsel's appointment, the court shall order an appropriate sanction, which may include substitution of counsel, an order to show cause, or scheduling of a hearing on the propriety of the admission without awaiting a report from counsel.

(5) Upon receipt of a request for a hearing, the court shall schedule a hearing on the admission to a state institution without prior approval of the probate court, at which the guardian shall have the burden of proving, beyond a reasonable doubt, that the placement is in the ward's best interest and is the least restrictive placement available. The hearing shall be held within 10 days, excluding days when the court is closed, from the date that the request is received.

(6) A guardian may not admit a ward to a state institution for more than 60 days for any single admission or more than 90 days in any 12-month period upon certification of a physician or psychiatrist without filing a petition requesting approval of the probate court.

(7) At any time, the ward or counsel for the ward may request a hearing on the admission to a state institution without prior approval of the probate court, at which the guardian shall have the burden of proving, beyond a reasonable doubt, that the placement is in the ward's best interest and is the least restrictive placement available. The hearing shall be held within 15 days, excluding days when the court is closed, from the date that the hearing is requested.

2 Jurisdiction and Venue; Guardianship Proceedings. Amend RSA 464-A:3, II(a) to read as follows:

(a) ***Except as provided in RSA 464-A:25, I(a)***, venue for guardianship proceedings for a proposed ward is in the county where the proposed ward resides, or the county in which the proposed ward is physically present when the proceedings are commenced.

3 Effective Date. This act shall take effect January 1, 2011.

AMENDED ANALYSIS

This bill establishes certain time frames and procedures for probate courts holding hearings on incapacitated persons admitted to state institutions by their guardians.

2010-0006h

Amendment to HB 222

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

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

AN ACT relative to project impacts on wetlands.

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

1 Administration Provisions. Amend RSA 482-A:11, II to read as follows:

II. Decisions of the department or council under this chapter shall be consistent with the purposes of this chapter as set forth in RSA 482-A:1. ***As part of its decision-making relative to these purposes, the department may consider the impacts from non-wetland portions of a project and the impacts from the project's post-construction use and maintenance.*** Before granting a permit under this chapter, the department may require reasonable proof of ownership by a private landowner-applicant. If a permit is granted, the decision of the department may contain reasonable conditions designed to protect the public good. No permit to dredge or fill shall be granted if it shall infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners.

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

AMENDED ANALYSIS

This bill requires the department of environmental services to consider direct and indirect impacts of non-wetland portions of a project on wetlands.

2009-2529h

Amendment to HB 268

Proposed by the Committee on Executive Departments and Administration - C

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

1 Benefits of Nonjudicial Employees. Amend RSA 490:28 to read as follows:

490:28 Benefits of Nonjudicial Employees.

I. Except as provided in a collective bargaining agreement under RSA 273-A, full-time nonjudicial employees of the judicial branch shall, effective January 1, 1984, receive all fringe benefits and salary increases as provided for classified state employees including membership in the state retirement system, health insurance, dental insurance, life insurance coverage, and annual and sick leave benefits. Annual and sick leave benefits accumulated by said employees, as a result of service prior to January 1, 1984, shall be transferable under such guidelines as may be established by the supreme court unless covered in a collective bargaining agreement under RSA 273-A.

II. Any full-time judicial branch employee who transfers from the judicial branch to state service in the executive branch or the legislative branch, without a break in service, may transfer all earned annual leave, sick leave, longevity pay, and bonus time already accumulated in the judicial branch, to the receiving branch of state government. The maximum amount of accumulated annual and sick leave that may be transferred shall be limited to the amount of annual and sick leave that employees of the receiving branch may accumulate. No leave granted at the outset of service, or without a relationship to the length of employment shall be included in earned leave.

2 New Section; Applicability. Amend RSA 490 by inserting after section 28 the following new section:

490:28-a Applicability. The provisions of RSA 490:28 shall apply to all individuals who are state employees as of the effective date of this section, who previously transferred from the judicial branch to the executive branch.

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

2009-2527h

**Amendment to HB 271
Proposed by the Majority of the Committee on Labor, Industrial and
Rehabilitative Services - R**

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

1 Workers' Compensation; Medical Information. Amend RSA 281-A:23, V(a) to read as follows:

V.(a)(1) The act of the worker in applying for workers' compensation benefits constitutes authorization to any physician, hospital, chiropractor, or other medical vendor to supply all relevant information regarding the worker's occupational injury or illness to the insurer, the insurer's representative, the worker's employer, the worker's representative, the worker's employer's representative, and the department. Medical information relevant to a claim includes a past history of complaints of, or treatment of, a condition similar to that presented in the claim. ***Any party authorized to request medical information under this subparagraph shall include the following notice in their request for medical records in bold print in a font size at least 2 points larger than that used in the request:***

"This request is strictly limited to medical information relevant to the occupational injury or illness that underlies the patient's workers' compensation claim, including any past history of complaints of, or treatment of, a condition similar to that presented in the claim."

(2) Any person who supplies information in accordance with this [subparagraph] ***paragraph*** and with rules adopted by the commissioner shall be immune from any liability, civil or criminal, that might otherwise be incurred for such action. The physician may require evidence from the workers' representative in his or her representative capacity. This authorization shall be valid for the duration of the work-related injury or illness.

(3) ***The commissioner may assess a civil penalty of up to \$2,500 on any insurance carrier, self-insurer, payor acting on behalf of such insurance carrier or self-insurer if any recipient of medical records receives a medical record which is clearly irrelevant to the workers' compensation claim and sends such record, or a copy of it, to another party not authorized to receive such record.***

2 Effective Date. This act shall take effect July 1, 2010.

AMENDED ANALYSIS

This bill establishes a notice requirement for persons requesting medical records in a workers' compensation case.

2009-2371h

Amendment to HB 286-FN

Proposed by the Committee on Commerce and Consumer Affairs - C

Amend RSA 408:16-d, I as inserted by section 1 of the bill by replacing it with the following:

I. The commissioner may, within 30 days after the filing of any such form, disapprove such form:

(a) If it contains a provision or provisions which are unjust, unfair, inequitable, misleading, deceptive, or encourage misrepresentation of such policy; or

(b) If it does not comply with the requirements of Title XXXVII.

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

2 New Section; Subsequent Disapproval; Individual Policies. Amend RSA 408 by inserting after section 2-a the following new section:

408:2-b Subsequent Disapproval; Individual Policies. The commissioner may at any time, after a hearing of which not less than 20 days' written notice shall have been given to the insurer, withdraw his or her approval of any such form on any of the grounds stated in this chapter. It shall be unlawful for the insurer to issue the form or use it in connection with any policy after the effective date of such withdrawal of approval. The notice of any hearing called under this section shall specify the matters to be considered at the hearing and any decision affirming disapproval or directing withdrawal of approval under this chapter shall be in writing and shall specify the reasons for the disapproval.

2009-2479h

Amendment to HB 299

Proposed by the Committee on Commerce and Consumer Affairs - R

Amend the bill by replacing the title with the following:

AN ACT prohibiting banks from requiring fingerprints in order to complete a banking transaction.

Amend RSA 382-A:3-501(c) as inserted by section 1 of the bill by replacing it with the following:

(c) Reasonable identification shall not include finger prints.

AMENDED ANALYSIS

This bill prohibits banks from requiring fingerprints in order to complete a banking transaction.

2009-2522h

Amendment to HB 325

Proposed by the Committee on Judiciary - C

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

AN ACT establishing standards for adequate service of process and establishing a commission to study service of process by laypersons.

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

1 New Chapter; Standards for Adequate Service of Process. Amend RSA by inserting after chapter 510 the following new chapter:

CHAPTER 510-A

STANDARDS FOR ADEQUATE SERVICE OF PROCESS

510-A:1 Standards for Adequate Service of Process. In the absence of other provisions of law or order of the court, the following standards for service of a subpoena, summons, order of notice, or petition shall apply:

I. Service of a subpoena, summons, order of notice, or petition may be made either by delivering in hand or reading to the person who is the subject of the subpoena, summons, order of notice, or petition in the presence of that person. Such service is known as "personal service." If the person is not available at the time delivery is attempted, the document or

documents may be given to a member of the person's household who is over the age of 18 and of apparent mental competency. Such service is known as "substitute service at place of abode."

II. If there is no one at the last and usual place of residence of the person who is the subject of the subpoena, summons, or petition, the document or documents may be posted in an obvious place at or near the main entry door of the last and usual place of abode and a copy of the document or documents mailed via United States Mail, registered or certified mail, return receipt request and postage prepaid, with address service requested, to the address where the document or documents were posted. It is the duty of the server to deliver any returned mail to the person requesting service. Such service is known as "posting service at place of abode."

III. If service is attempted at a place of employment, only personal service is permitted.

IV. If service is on a business entity, non-profit organization, or other association, service shall be made on the registered agent of the entity. If service is unable to be made on a registered agent or if the entity does not have a registered agent, then service on an officer, manager, employee, or 2 members of an association is permitted. The actual person or persons served shall be requested to provide his or her name or their names and the name or names shall be noted on the return of service. If the person served refuses to provide his or her name, a description of the circumstances and the person receiving the document or documents shall be noted on the return of service. Refusal to provide the name may result in a personal finding of contempt of court if the court determines that the refusal was in bad faith to frustrate service of process.

V. If the address of service is at a gated community, the document or documents may be left with the person operating the security gate or entrance if entry is denied and a copy of the document or documents mailed via United States Mail, registered or certified mail, return receipt request and postage prepaid, to the address where the document or documents were posted.

VI. The return of service shall indicate the date, time, location, and method of service and shall be signed by the person or persons served, or if signature is refused, a description of the circumstances and person served. All returns shall be made under oath or under the pains of perjury.

2 Service of Process; Nonresident Defendant. Amend RSA 510:4, II to read as follows:

II. SERVICE OF PROCESS ON SECRETARY OF STATE. Service of process upon any person who is subject to the jurisdiction of this state, as provided in this section, may be made by leaving a copy thereof, with a fee of \$10, in the hands or office of the secretary of state. Such service shall be of the same legal force and effect as if served on the defendant at his abode or place of business in the state or country where he resides and according to the law of that state or country, provided that notice thereof and a copy of the process is forthwith sent by ~~[registered mail, postage prepaid]~~ **registered or certified mail, return receipt requested and postage prepaid**, by the plaintiff or his attorney to the defendant at his last known abode or place of business in the state or country in which the defendant resides. The defendant's return receipt and an affidavit of the plaintiff or his attorney of compliance with the section shall be appended to the process and entered therewith. In the event that the notice and a copy of the process are not delivered to or accepted by the defendant, the court may order such additional notice, if any, as justice may require.

3 Commission Established.

I. There is established a commission to study service of process by laypersons.

II.(a) The members of the commission shall be as follows:

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

(2) One member of the senate, appointed by the president of the senate.

(3) One member with expertise in local and county issues, appointed by the New Hampshire Municipal Association.

(4) One sheriff, appointed by the New Hampshire Sheriffs' Association.

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

III. The commission shall study service of process by laypersons.

IV. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named house member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Three members of the commission shall constitute a quorum.

V. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2010.

4 Effective Date.

I. Section 3 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect January 1, 2011.

2009-2524h

Amendment to HB 341

Proposed by the Committee on Election Law - R

Amend the bill by replacing section 1 with the following:

1 Election Dates; Presidential Primary Election. Amend RSA 653:9 to read as follows:

653:9 Presidential Primary Election. The presidential primary election shall be held on the second Tuesday in March or on a date selected by the secretary of state which is 7 days or more immediately preceding the date on which any other state shall hold a similar election, whichever is earlier, of each year when a president of the United States is to be elected or the year previous. Said primary shall be held in connection with the regular March town meeting or election or, if held on any other day, at a special election called by the secretary of state for that purpose. *The purpose of this section is to protect the tradition of the New Hampshire first-in-the-nation presidential primary.*

2009-2437h

Amendment to HB 366

Proposed by the Majority of the Committee on Commerce and Consumer Affairs - R

Amend RSA 259:29-a, III(a)-(b) as inserted by section 1 of the bill by replacing it with the following:

(a) A business location where the retail vehicle dealer conducts sales during normal business hours; and

(b) Such business location is capable of storing and displaying motor vehicles indoors, in one building, in an area of at least 1,000 contiguous square feet; and

Amend RSA 261:103-a, I(b) as inserted by section 3 of the bill by replacing it with the following:

(b) A complete description, including the city or town and the street and number of the permanent, established place of business and such other and additional place or places of business as shall be operated and maintained by the applicant in conjunction with the permanent, established place of business.

Amend the bill by replacing section 5 with the following:

5 New Paragraph; Retail Vehicle Dealer's Use of Dealer Registration. Amend RSA 261:111 by inserting after paragraph V the following new paragraph:

VI. A retail vehicle dealer may use the dealer registration to operate a vehicle on the ways of this state when transporting the vehicle from a place of purchase to the dealer's

place of business if the vehicle bears a valid inspection sticker from any state unless a clear violation of RSA 266:1 is apparent from visual observation.

Amend the bill by replacing section 7 with the following:

7 Unlicensed Sales; Applicability. The established place of business requirement in RSA 261:103-b, as inserted by section 4 of this act, shall not apply until December 31, 2015 to any retail vehicle dealer licensed under RSA 261:103-a on the effective date of this act so long as the dealer continues to be licensed as a retail vehicle dealer and does not have a general distinguishing number.

2010-0018h

Amendment to HB 368

Proposed by the Minority of the Committee on Education - R

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

AN ACT relative to the definition of and evaluation procedures used in home education.

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

1 Home Education; Definition. Amend RSA 193-A:4, I to read as follows:

I. Instruction shall be deemed home education if it consists of **systematic and thorough** instruction in science, mathematics, language, ~~[government, history,]~~ **social studies**, health, reading, writing, spelling, the history of the constitutions of New Hampshire and the United States, and an exposure to and appreciation of art and music. Home education shall be provided by a parent for his **or her** own child, unless the provider is as otherwise agreed upon by the appropriate parties named in paragraph II.

2 Home Education; Notification and Other Procedural Requirements. Amend RSA 193-A:5, I-II to read as follows:

I.(a) Any parent commencing a home education program for a child, for a child who withdraws from a public school, or for a child who moves into a school district shall ~~[notify]~~ **provide written notification to** the commissioner of the department of education, resident district superintendent, or principal of a nonpublic school of such within 5 business days of commencing the program.

(b) A parent planning to continue a home education program shall ~~[notify]~~ **provide written notification to** the commissioner of **the department of** education, resident district superintendent, or principal of a nonpublic school by the first school day according to the school calendar in the child's resident school district.

II. **Written** notification made by the parent pursuant to paragraph I shall include a list of the names, addresses, and birth dates of all children who are participating in the home education program.

3 Home Education; Records; Evaluation. Amend RSA 193-A:6 to read as follows:

I. The parent shall maintain a portfolio of records and materials relative to the home education program. The portfolio shall consist of a log which designates by title the reading materials used, and also samples of writings, worksheets, workbooks, or creative materials used or developed by the child. Such portfolio shall be preserved by the parent for 2 years from the date of the ending of the instruction.

II. The parent shall provide for an annual educational evaluation in which is documented the child's demonstration of educational progress at a level commensurate with the child's age and ability. The child shall be deemed to have successfully completed his **or her** annual evaluation upon meeting the requirements of **subparagraph (a) and** any one of ~~[the following]~~ **subparagraphs (b), (c), or (d), provided that the testing frequency need not exceed the schedule of state testing in the public schools:**

(a) A certified teacher or a teacher currently teaching in a nonpublic school who is selected by the parent, **but who is not the parent**, shall evaluate the child's educational progress upon review of the portfolio and discussion with the parent ~~[or]~~ **and** child. The teacher shall **sign and** submit a written evaluation **which complies with department of education rules for portfolio evaluations, including qualifications for evaluators,**

requirements for portfolio contents including the type of work and sources used, criteria to determine evidence of the child's growth in the subjects required under RSA 193-A:4, and any other issues related to portfolio evaluation deemed appropriate to the commissioner of **the department of** education, resident district superintendent, or nonpublic school principal[;]. **The department of education shall adopt rules, pursuant to RSA 541-A, relative to portfolio evaluations as required in this subparagraph.**

(b) The child shall take any national student achievement test, administered by a person who meets the qualifications established by the [~~provider or~~] publisher of the test. Composite results at or above the fortieth percentile on such tests shall be deemed reasonable academic proficiency. Such test results shall be reported to the commissioner of **the department of** education, resident district superintendent, or nonpublic school principal[;].

(c) The child shall take a state student assessment test **which is offered for the child's current grade level, and which is used and administered to the child** by the resident district. Composite results at or above the fortieth percentile on such state test shall be deemed reasonable academic proficiency. Such test results shall be reported to the commissioner of **the department of** education, the resident district superintendent, or nonpublic school principal[~~or~~].

(d) The child shall be evaluated using any other valid measurement tool mutually agreed upon by the parent and the commissioner of **the department of** education, resident district superintendent, or nonpublic school principal. The results shall be reported by the parent or the testing agency to such appropriate official.

III. The commissioner of **the department of** education, resident district superintendent, or nonpublic school principal shall review the results of the annual educational evaluation of the child in a home education program as provided in paragraph II. If the child does not demonstrate educational progress for age and ability at a level commensurate with his **or her** ability, the commissioner, superintendent, or principal shall notify the parent, in writing, that such progress has not been achieved. The parent shall have one year from the date of receipt of the written notification to provide remedial instruction to the child. At the end of the one-year probationary period, the child shall be reevaluated in a manner as provided in this section. Continuation in a home education program shall be contingent upon the child demonstrating at the end of the probationary period educational progress commensurate with his **or her** age and ability **based on the results of the portfolio evaluation or a test result required under subparagraphs II (b), (c), or (d)**. The parent of a child who fails to demonstrate such progress at the end of the probationary period shall be notified by the commissioner that the parent is entitled to a hearing as provided in RSA 193-A:7, I and II and that the program will be terminated absent a finding for continuation pursuant to such hearing. Upon a finding that the program should be terminated, the child shall be reported by the commissioner or nonpublic school principal to the appropriate resident district superintendent, who shall, if necessary, take appropriate action to ensure that compulsory attendance requirements are met.

IV. Beginning July 1, 2012, and annually thereafter, each school district superintendent and nonpublic school principal shall furnish to the commissioner of the department of education the results of the educational evaluations performed under subparagraphs II(a)-(d) for every child engaged in a home education program pursuant to this chapter. The results provided shall not contain any personally identifiable information about a child, including but not limited to, a child's name, address, date of birth, gender, social security number, or county of residence.

4 Effective Date. This act shall take effect July 1, 2011.

AMENDED ANALYSIS

This bill changes the definition of home education and the evaluation procedure used to determine the child's educational progress.

2009-2390h

Amendment to HB 379

Proposed by the Majority of the Committee on Judiciary - R

Amend the bill by replacing section 2 with the following:

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

2009-2521h

Amendment to HB 410

Proposed by the Committee on Executive Departments and Administration - R

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

1 Alcohol and Drug Use Counselors; Purpose. Amend RSA 330-C:1 to read as follows:

330-C:1 Purpose. In New Hampshire, alcohol and drug use counselors have been the primary providers of addiction services. The purpose of this chapter is to protect and benefit the public by setting standards of qualifications, education, training, and experience for those who seek to obtain a ~~[license]~~ **certificate as a certified recovery support worker or a license as a licensed alcohol and drug counselor or a master licensed alcohol and drug counselor** and to promote competency in alcohol and other drug use prevention, intervention, and treatment services **and in co - occurring disorder treatment services**.

2 Definition; Advertise. Amend RSA 330-C:2, I to read as follows:

I. "Advertise" means, but is not limited to, the attempt by a visual, oral, or written publication, dissemination, solicitation, or circulation to induce any person to do business with a licensed alcohol ~~or~~ **and** drug counselor **or a master licensed alcohol and drug counselor**.

3 Definition; Continuing Education. Amend RSA 330-C:2, VIII to read as follows:

VIII. "Continuing education" means research and training programs, college and university courses, in-service training programs, or seminars and conferences designed to maintain and enhance the skills of counselors licensed under this chapter and which are recognized by the ~~[licensing]~~ board.

4 Definition; Master Licensed Alcohol and Drug Counselor. Amend RSA 330-C:2, VIII to read as follows:

XV. "Master licensed alcohol and drug counselor," or MLADC, means an individual licensed by the board to practice substance use **and co-occurring disorder** counseling who meets the qualifications set forth in this chapter.

5 Definitions; Peer Collaboration; Practice of Substance Use Counseling. Amend RSA 330-C:2, XVII and XVIII to read as follows:

XVII. "Peer collaboration" means ongoing regularly occurring clinical consultation with, or small group meetings among, **MLADCs, LADCs or [mental health, nursing or other medical professionals with expertise in alcohol and drug treatment]** **licensees of the board of nursing, the board of mental health practice, or the board of medicine, with expertise in substance use and co-occurring disorder counseling**, at which clinical issues and/or cases are discussed.

XVIII. "Practice of substance use counseling" means the rendering or offering to render professional service for any documented fee or other consideration to individuals, families, or groups. Those professional services include the application of the specific knowledge, skills, counseling theory, and application of techniques to assess, diagnose, define goals, and develop a treatment plan of action aimed toward prevention, education, or treatment in the recovery process of substance use **disorders** within the continuum of care network. The practice further includes, but is not limited to, networking and making referrals to medical, social services, mental health services, psychiatric, or legal resources when so indicated.

6 Definition; Supervised Practical Training. RSA 330-C:2, XX is repealed and reenacted to read as follows:

XX. "Supervised practical training" means experiential activities monitored by one or more clinical supervisors who provide timely feedback to assist the counselor in the learning process, and which are designed to provide training of specific knowledge and skills necessary to competently perform the tasks inherent in the performance domains of substance use counseling.

7 Definition; Work Experience. Amend RSA 330-C:2, XXI to read as follows:

XXI. "Work experience" means paid or voluntary experience under **clinical** supervision with a primary focus **on** utilizing alcohol and other drug use treatment~~[; or intervention[, or prevention]~~ theories, techniques, or methodologies.

8 Powers and Duties of the Board. Amend RSA 330-C:5, I to read as follows:

I. Examine applicants for licensure, license, and renew licenses of duly qualified individuals, and issue **and renew** certifications for **individuals** duly qualified **to be** recovery support workers.

9 Fees; Late Renewal. Amend RSA 330-C:8, I to read as follows:

I. The board shall charge fees for the application, issuance, renewal, **late renewal**, and reinstatement of all licenses and certifications authorized by this chapter~~[, including fees for temporary licenses and the reinstatement of inactive licenses]~~. The fees established by the board shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses for the board for the previous fiscal year.

10 Rulemaking. Amend RSA 330-C:9 to read as follows:

330-C:9 Rulemaking Authority. The board shall adopt rules, in accordance with RSA 541-A, relative to the following:

I. Application procedures and eligibility requirements for the issuance of all initial~~[; temporary,]~~ and renewal licenses issued by the board, including **without limitation**:

(a) The issuance of ~~[such]~~ **LADC** licenses to applicants holding a currently valid license or other authorization to practice **substance use counseling** in another jurisdiction;

(b) **The issuance of MLADC licenses to applicants holding a currently valid license or other authorization to practice substance use counseling and co-occurring disorder counseling in another jurisdiction;**

(c) **The issuance of such licenses to applicants holding a current license issued by the board of nursing or the board of medicine; and**

(d) **The issuance of an MLADC license under RSA 330-C:16.**

II. Application procedures and eligibility requirements for the reinstatement of licenses after lapse and after disciplinary action.

III. Application procedures, training requirements, and other criteria for **the** issuance of certification, **renewal of certification, and reinstatement of certification** for certified recovery support workers.

IV. The establishment of fees required under this chapter.

V. The process for approval of education programs for the continuing education requirements of this chapter and providers of such programs, and the process for approval of providers engaged in clinical supervision.

V-a. The process for approval of individuals engaged in clinical supervision.

V-b. The requirements for clinical supervision and the documentation of clinical supervision hours.

VI. The administration of examinations authorized by this chapter, and, **if rules on the topic are determined by the board to be necessary**, the manner in which information regarding the contents of any licensing examinations may be disclosed, solicited, or compiled.

VII. Ethical standards for the practice of ~~[alcohol and drug]~~ **substance** use counseling **and co-occurring disorder counseling** and clinical supervision that are generally in keeping with standards established by NAADAC: The Association for Addiction Professionals, or its successor organization.

VIII. Continuing education requirements for license renewal and continuing education requirements for renewal of certification.

IX. Procedures for the conduct of hearings consistent with the requirements of due process.

X. The determination of disciplinary sanctions authorized by this chapter, including the assessment of administrative fines.

XI. The examinations approved by the board.

XII. ***If rules on the topic are determined by the board to be necessary***, testing procedures to be used by the board.

XIII. The requirements for peer collaboration and the documentation of peer collaboration hours, ***and the requirements for participation as a peer collaborator***.

XIV. ***Standards for the waiver of a felony conviction by the board under 330-C:27, III(f), and for determinations of whether an applicant has made sufficient restitution or been rehabilitated under RSA 330-C:15, I(e).***

XV. ***If rules on the topic are determined by the board to be necessary, determinations of equivalent academic fields for initial MLADC licensure or initial LADC licensure.***

11 Master Licensed Alcohol and Drug Counselors; Scope of Practice; Co-Occurring Disorders. RSA 330-C:10 is repealed and reenacted to read as follows:

330-C:10 Master Licensed Alcohol and Drug Counselor; Scope of Practice.

I. The scope of practice of the MLADC is the screening, assessment, diagnosis, treatment planning, and treatment of substance use disorders and co-occurring disorders only within the context of addressing substance use disorders. The practice of alcohol and drug counseling and co-occurring disorder counseling includes the following performance areas which encompass the 12 core functions and practice dimensions of addiction counseling:

(a) The performance of clinical evaluations including the screening, assessment, and diagnosis of substance use disorders and mental health disorders when they are co-occurring with a substance use disorder, and the performance of differential diagnoses;

(b) The performance of treatment planning, case management, consultation, education, documentation, and client advocacy;

(c) The performance of counseling including:

(1) Individual, group, family, and significant other counseling;

(2) Crisis prevention and intervention;

(3) Co-occurring disorder counseling with the use of integrated models of assessment, intervention, and counseling techniques within the context or treatment of a substance use disorder.

(d) Adherence to professional and ethical standards as determined by the board.

II. A MLADC may engage in independent practice within the scope of practice in this section only with clinical supervision or peer collaboration.

III. A MLADC shall provide services only within the boundaries of his or her competence, based upon education, training, clinically supervised work experience, consultation, study, or professional experience.

12 Title. Amend RSA 330-C:14, I to read as follows:

I. Only persons licensed under this chapter may use the title “master licensed alcohol and drug counselor” and the abbreviation “MLADC,” the title “licensed alcohol and drug counselor” and the abbreviation “LADC,” or the title “licensed clinical supervisor” and the abbreviation “LCS,” provided that the title and abbreviation correspond to the license held pursuant to this chapter.

13 Applicant Requirements. Amend RSA 330-C:15, I to read as follows:

I. All applicants for licensure and certification shall:

(a) Submit a completed application and pay fees established by the board;

(b) Have the ability to read and write in the English language;

(c) Report any pending criminal charges, criminal convictions, ~~or~~ plea agreements in lieu of convictions, **or complaints made to or dispositions made by licensing or certification boards;**

(d) Submit a complete set of fingerprints and a notarized criminal history record release form pursuant to RSA 330-C:20;

(e) ~~[Have committed no acts or omissions which are grounds for disciplinary action as set forth in this chapter, or, if such acts have been committed and would be grounds for disciplinary action, the board has found, after investigation, that sufficient restitution has been made;]~~ **Have committed none of the following, unless the board finds that the applicant has made sufficient restitution or been rehabilitated:**

(1) **Fraud or deceit in procuring or attempting to procure a license, certification, or other authorization to practice substance use counseling or treatment in this or another state or territory of the United States;**

(2) **Sexual relations with, solicitation of sexual relations with, or sexual abuse of, a client or past client;**

(3) **Failure to remain free from the use of a controlled substance or alcohol to the extent that use impairs the ability to conduct with safety to the public the practices authorized by this chapter;**

(4) **Conviction of a felony not waived by the board;**

(5) **An act or omission causing another state or territory of the United States to revoke or suspend a license, certification, or other authorization to practice substance use counseling or treatment or to discipline the person authorized to practice by placing him or her on probation;**

(6) **Failure to maintain confidentiality as described in RSA 330-C:26;**
and

(7) **False or misleading advertising;**

(f) **Have no mental disability that affects professional ability or judgment to the extent that it impairs the ability to conduct with safety to the public the practices authorized by this chapter, unless the board finds that measures have been taken to control the effects of the disability;**

~~[(g)]~~ (g) Meet education requirements for new applicants and continuing education requirements for renewals and reinstatements, as established by the board; and

~~[(g)]~~ (h) Meet other criteria as established by the board.

14 Master Licensed Alcohol and Drug Counselor. Amend RSA 330-C:16, I-III to read as follows:

I. (a) Have graduated with a minimum graduate degree of a 60-hour masters **degree** in ~~[a]~~ clinical mental health, clinical psychology, substance use treatment, social work, or human services ~~[discipline]~~ or equivalent, **with clinical course work and internship requirements**, from an accredited college or university, 270 hours of alcohol and drug use education, which may be included in the coursework of the master's program, and 300 hours of supervised practical training.

(b) **Have graduated with a masters degree of less than 60 hours in a discipline described in subparagraph (a) and has completed the necessary additional hours of masters level course work as determined by the board pursuant to RSA 330-C:9, I(d).**

II. Either hold a current LADC license or pass the testing procedures required under RSA 330-C:17, II.

II-a. Either hold a current license issued by the board of mental health practice or pass the examination approved by the board of licensing for alcohol and other drug use professionals to demonstrate competence to provide co-occurring disorder counseling within the context of substance use counseling.

III. Complete ~~[4,000]~~ **3,000** hours of clinically supervised **post-masters degree work** experience in ~~[alcohol and other drug disorders]~~ **the treatment of substance use and**

co-occurring disorders. Up to ~~[1,000]~~ **1,500** hours of clinically supervised ~~[hours of]~~ **work** experience accumulated by the applicant during ~~[graduate degree internship may be counted toward the required 4,000 hours. Up to 2,000 hours of clinically supervised experience accumulated by the applicant during]~~ his or her practice as an LADC may be counted toward the required ~~[4,000]~~ **3,000** hours. A current license issued by the board of mental health practice may be substituted for ~~[2,000]~~ **1,500 hours of the required 3,000** hours of clinically supervised **work** experience.

15 Licensed Alcohol and Drug Counselor. RSA 330-C:17, I is repealed and reenacted to read as follows:

I.(a) Have graduated with an associate's degree in substance use counseling, addiction studies, or equivalent program, obtained 270 hours of alcohol and drug use education within the degree-granting program or separately, completed 6,000 hours of supervised work experience, and completed 300 hours of supervised practical training within the degree-granting program, as part of the supervised work experience or separately; or

(b) Have graduated with a bachelor's degree in a clinical mental health, social work, psychology, substance use counseling, addiction studies, human services discipline, or equivalent program from an accredited college or university, obtained 270 hours of alcohol and drug use education within the degree-granting program or separately, completed 4,000 hours of supervised work experience, and completed 300 hours of supervised practical training within the degree-granting program, as part of the supervised work experience or separately.

16 Licensed Clinical Supervisor. Amend RSA 330-C:18, III and IV to read as follows:

III. Have 4,000 hours of experience as a clinical supervisor supervising professionals providing alcohol and drug counseling, which hours ~~[my]~~ **may** be accumulated by the applicant as part of the experience requirements in paragraph II;

IV. Have received 200 hours of face-to-face **clinical** supervision;

17 Applicants from Other States. Amend RSA 330-C:21 to read as follows:

330-C:21 Applicants From Other States. The board may license **or issue a certification to** any applicant who is licensed **or certified** in any other state, provided the other state's ~~[licensure]~~ requirements are substantially equivalent to or more stringent than those of this state.

18 Renewals. Amend RSA 330-C:22, III and IV to read as follows:

III. A suspended license or certification shall be subject to expiration and may be renewed as provided in this chapter, but such renewal shall not entitle the person, while the license or certification remains suspended and until it is reinstated, to engage in the activity, or in any other conduct or activity in violation of the order under which the license or certification was suspended. ***If a suspended license or certification is reinstated after its expiration, the person, as a condition of reinstatement, shall pay a reinstatement fee that shall equal the renewal fee in effect on the last regular renewal date immediately preceding the date of reinstatement, plus any late fee set by the board.***

IV. A license or certification revoked on disciplinary grounds ~~[shall be subject to expiration as provided in this chapter, and it]~~ may not be renewed. ~~[If such license or certification is reinstated after its expiration, the person, as a condition of reinstatement, shall pay a reinstatement fee that shall equal the renewal fee in effect on the last regular renewal date immediately preceding the date of reinstatement, plus any late fee set by the board.]~~

19 Renewals; Armed Forces Members. RSA 330-C:22, V is repealed and reenacted to read as follows:

V. Upon the request of a licensee or certificate holder who is a member of the armed forces of the United States, a member of any reserve component of the armed forces, or a member of the national guard, the board is authorized to place the person's license or certification on inactive status whenever such person is called to active military duty. The board is authorized to return to active status any license or certification placed on inactive

status at any time within the 2 years following the release from active military duty of the licensee or certificate holder, upon a written request accompanied by the payment of renewal fee if the license or certificate has expired, and accompanied by proof of completion of the current continuing education requirements.

20 Continuing Education Requirements. Amend RSA 330-C:24, II to read as follows:

II. The continuing education ~~[requirement]~~ **requirements** for renewal shall be:

(a) For master licensed alcohol and drug ~~[counselor]~~ **counselors** and licensed alcohol and drug ~~[counselor]~~ **counselors**, 48 hours of approved continuing education in the 24 months subsequent to the date of licensure or re-licensure.

(b) For licensed clinical ~~[supervisor]~~ **supervisors**, 6 hours of training in clinical supervision which may be incorporated into the hours needed for LADC re-licensure in the 24 months subsequent to the date of licensure or re-licensure.

(c) For certified recovery support workers, 12 hours of approved continuing education in the 24 months subsequent to the date of certification or re-certification.

21 Disciplinary Action; Misconduct. Amend RSA 330-C:27, III and IV to read as follows:

III. Misconduct sufficient to support disciplinary proceedings under this section includes:

(a) Violating any provision of this chapter or any substantive rule adopted under this chapter or order issued by the board.

(b) Engaging in the practice of substance use counseling, **co-occurring disorders counseling**, or supervision in a manner harmful or dangerous to the client or public.

(c) ~~[The practice of]~~ Fraud or deceit in procuring or attempting to ~~[obtain]~~ **procure** a license ~~[or]~~, certification ~~[under this chapter]~~, **or other authorization to practice substance use counseling or co-occurring disorders counseling in this or another state or territory of the United States.**

(d) ~~[Failing to obtain the continuing education credits necessary for renewal.]~~

~~(e)~~ Engaging in sexual relations, soliciting sexual relations, or committing an act of sexual abuse or sexual misconduct with a current client or with a person who was a client.

~~[(f)]~~ **(e)** Failing to remain free from the use of any controlled substance or any alcoholic beverage to the extent that the use impairs the ability of the licensee or certificate holder to conduct with safety to the public the practices authorized by this chapter.

~~[(g)]~~ **(f)** Conviction of a felony which has not been waived by the board.

~~[(h)]~~ **(g)** ~~[Having a disciplinary action pending in another state or territory of the United States or having a license in another state or territory of the United States under revocation, suspension, or probation.]~~ **An act or omission causing another state or territory of the United States to revoke or suspend a license, certification or other authorization to practice substance use counseling or co-occurring disorders counseling or to discipline the person authorized to practice by placing him or her on probation.**

~~[(i)]~~ **(h)** Failing to maintain confidentiality pursuant to RSA 330-C:26.

~~[(j)]~~ **(i)** Engaging in false or misleading advertising.

~~[(k)]~~ **(j)** Having a mental disability which significantly impairs professional ability or judgment ~~[and which is independently verified to the board]~~ **to the extent that it impairs the ability to conduct with safety to the public the practices authorized by this chapter, unless the board finds that measures have been taken to control the effects of the disability.**

~~[(l)]~~ **(k)** ~~Failing to submit or adhere to a plan for compliance with the clinical supervision requirement for LADCs within the required timeframe.]~~

IV. The board, after notice and a public hearing, or as part of a settlement ~~[hearing]~~, may take disciplinary action against a licensee or certificate holder in any one or more of the following ways:

- (a) Revocation of license or certificate.
- (b) Suspension of license or certificate for a period of time ~~as~~ determined **as** reasonable by the board.
- (c) Censure.
- (d) Issuance of a letter of reprimand.
- (e) Placement on probationary status. The board may require the person to submit to any of the following:
 - (1) Regular reporting to the board concerning the matters which are the basis of the probation.
 - (2) Continuing professional education until a satisfactory degree of skill has been achieved in those areas which are the basis of probation.
 - (3) Submitting to the care, counseling, or treatment of a physician, counseling service, health care facility, professional assistance program, or any comparable person or facility approved by the board.
 - (4) Practicing under the direct supervision of another licensee for a period of time specified by the board.
- (f) Refusal to renew a license or certification.
- (g) Revocation of probation which has been granted by the board and imposition of any other discipline provided in this section if the requirements of probation have not been fulfilled or have been violated.
- (h) Assessing administrative fines in amounts established by the board which shall not exceed \$2,000 per offense, or in the case of a continuing offense, \$250 for each day the violation continues.

22 Unlawful Acts. Amend RSA 330-C:31, I to read as follows:

I. Practice as a licensee **or certificate holder** without a license **or certification, as applicable**, or when the license **or certification** to do so has been revoked or suspended or when the license **or certification** to do so has lapsed.

23 Exemptions. Amend RSA 330-C:33 to read as follows:

330-C:33 Exemptions.

I. The provisions of this chapter shall not apply to the following individuals:

(a) Qualified members of other professions or occupations, including **without limitation** those ~~[currently] licensed [under RSA 330 A, including psychologists, clinical social workers, mental health counselors, marriage and family therapists, and pastoral counselors, and also including school guidance counselors, engaging in practices similar in nature to substance use counseling provided that they are authorized by the laws of this state to engage in such practices and]~~ **by the board of mental health practice, the board of medicine, and the board of nursing who provide treatment for substance use disorders and co-occurring disorders within the authorized scope of practice of their profession or occupation and who** do not represent themselves as “licensed alcohol and drug counselors,” “**master licensed alcohol and drug counselors**,” ~~or~~ “licensed clinical supervisors,” **or “certified recovery support workers.”**

(b) Students or counselors engaged in entry-level internships in a licensed or certified facility and counselors working toward licensure in a licensed or certified facility, provided that the student or counselor is practicing as part of supervised work or course of study and designated by such titles as “counselor intern,” “counselor,” or other title clearly indicating training status.

II. Nothing in this section shall be construed to prevent members of the clergy, or peer groups or self-help groups from performing peer counseling or self-help activities which may be, wholly or in part, included as a defined professional service. However, no members of a peer group or self-help group shall use a title stating or implying that they are a licensed alcohol and drug counselor ~~or~~, a licensed clinical supervisor, **or a certified recovery support worker**.

24 Transition Provisions; MLADC.

I. Individuals who obtained a license as a MLADC prior to the effective date of this act:

(a) Shall, in the event that his/her masters degree is less than a 60 hour degree, have 5 years from the effective date of this act to satisfactorily complete the necessary additional hours of course work in co-occurring disorders pursuant to standards established by the board pursuant to RSA 330-C: 9, XVI; and

(b) Shall, in the event that he or she does not hold a current license issued by the board of mental health practice, have 5 years from the effective date of this act to either:

(1) Obtain a license issued by the board of mental health practice; or

(2) Pass the examination approved by the board of licensing for alcohol and other drug use professionals to demonstrate competence in providing co-occurring disorder treatment within the context of substance use counseling.

II. An individual subject to paragraph I shall, prior to his or her completion of the requirements set forth in paragraph I, conduct his or her practice as an MLADC in full compliance with RSA 330-C: 10.

III. An individual subject to the requirements of this section shall notify the board in writing that he or she has completed the requirements in paragraph I.

IV. In the event that an individual subject to the requirements of this section does not satisfy the requirements of this section within 5 years after the effective date of this act, the board shall not renew the individual's MLADC license but shall, if the individual meets all the requirements for licensure as a LADC, issue a LADC license to the individual.

V. An individual who received his or her MLADC license pursuant to the independent practice provisions of 2008, 189:2, and to whom the board issues a LADC license pursuant to paragraph IV of this section shall be permitted to continue to engage in independent practice upon participating in peer collaboration requirements as required by the board and all continuing education requirements for licensure as a licensed alcohol and drug counselor.

VI. The board of licensing for alcohol and other drug use professionals may adopt rules pursuant to RSA 541-A as necessary to implement this section.

25 Repeal. RSA 330-C:2, VII, relative to the definition of clinically supervised, is repealed.

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

2009-2383h

**Amendment to HB 425-FN-A-LOCAL
Proposed by the Committee on Judiciary - C**

Amend RSA 91-A:8, I-IV as inserted by section 1 of the bill by replacing it with the following:

I. If any public body or public agency or officer, employee, or other official thereof, violates any provisions of this chapter, such public body or public agency shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under this chapter, provided that the court finds that such lawsuit was necessary in order to enforce compliance with the provisions of this chapter. Fees shall not be awarded unless the court finds that the public body, public agency, or person knew or should have known that the conduct engaged in was in violation of this chapter. Fees also shall not be awarded if the parties, by agreement, provide that no such fees shall be paid.

II. The court may award attorney's fees to a public body or public agency or employee or member thereof, for having to defend against a person's lawsuit under the provisions of this chapter, when the court finds that the lawsuit is frivolous or in bad faith.

III. The court shall invalidate an action of a public body taken at a meeting held in violation of the provisions of this chapter, unless the court makes a specific finding that the circumstances do not justify such invalidation.

IV. If the court finds that an officer, employee, or other official of a public body or public agency has violated this chapter in bad faith, the court may impose against such

person a civil penalty of not more than \$1,000. Upon such finding, such person or persons may also be required to reimburse the public body or public agency for any attorney's fees or costs it paid pursuant to paragraph I unless the person or persons involved resign their office. For the purposes of this paragraph, a finding of bad faith shall mean that the officer, employee, or other official violated this chapter knowingly and without adequate justification.

Amend the bill by replacing section 3 with the following:

3 Effective Date. This act shall take effect January 1, 2011.

2009-2448h

Amendment to HB 431-FN

Proposed by the Committee on Commerce and Consumer Affairs - R

Amend RSA 644:8-g as inserted by section 1 of the bill by replacing it with the following:

644:8-g Sale of Engine Coolants and Antifreeze.

I. After October 1, 2011, no person may sell or offer to sell in this state any engine coolant or antifreeze that contains more than 10 percent ethylene glycol unless it includes denatonium benzoate or other aversive agents in sufficient strength at a minimum of 30 parts per million as a bittering agent within the product so as to render it unpalatable.

II. Notwithstanding paragraph I, an aversive agent other than denatonium benzoate may be used in engine coolant or antifreeze if it meets or exceeds the degree of aversion in test subjects obtained by using the formulation of 30 parts per million of denatonium benzoate in antifreeze.

III. This section shall not apply to the sale of a motor vehicle that contains engine coolant or antifreeze.

IV. Any person who knowingly violates this section shall be guilty of a class B misdemeanor.

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

2 Effective Date. This act shall take effect January 1, 2011.

2009-2471h

Amendment to HB 478-FN

Proposed by the Majority of the Committee on Commerce and Consumer Affairs - R

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

AN ACT relative to the regulation of radio frequency identification devices and the illegal use of payment card scanning devices or reencoders.

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

1 New Chapter; Regulation of Radio Frequency Identification Devices. Amend RSA by inserting after chapter 358-S the following new chapter:

CHAPTER 358-T

REGULATION OF THE USE OF RADIO FREQUENCY IDENTIFICATION DEVICES FOR THE PURPOSE OF TRACKING

358-T:1 Definitions. In this chapter:

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

II. "Radio frequency identification device" means any item or application that is capable of transmitting unique identification or location information through the use of radio waves. Such devices shall not include bar codes, magnetic stripes, or similar markings that do not transmit information using radio waves or commercial mobile radio service as described in 47 U.S.C. section 332.

358-T:2 Human Implantation of Radio Frequency Identification Device Prohibited.

I. No person shall implant or attempt to implant or physically incorporate a radio frequency identification device into or on the body, skin, teeth, hair, or nails of another individual without the prior, informed, written consent of the individual. No person shall implant or attempt to implant or physically incorporate a radio frequency identification device into or on the body, skin, teeth, hair, or nails of a minor child. Use of a bracelet or other readily removable device is not considered implantation or physical incorporation under this section.

II. No individual shall be offered an incentive, denied an opportunity, or in any way treated by a person differently from any other individual as a consequence of providing or withholding such consent.

III. No person shall use the presence or absence of an implanted radio frequency identification device as a basis for discriminating against an individual for any purpose whatsoever, including, but not limited to, employment, housing, insurance, medical care, voting, education, travel, and commerce.

358-T:3 Penalties.

I. Any person convicted of violating this chapter shall be guilty of a class B felony.

II. An aggrieved individual or the state may bring suit for civil penalties for up to \$10,000, plus court costs and reasonable attorney's fees, for each violation of this chapter.

2 Illegal Use of Payment Card Scanning Device or Reencoder. Amend RSA 638:28, I-III to read as follows:

I. "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on ~~[the magnetic strip or stripe of]~~ **or in** a payment card.

II. "Reencoder" means an electronic device that places encoded information from ~~[the magnetic strip or stripe of]~~ a payment card onto ~~[the magnetic strip or stripe of]~~ **or into** a different payment card.

III. "Payment card" means a credit card, charge card, debit card, or any other card **or device** that is issued to an authorized ~~[card]~~ user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.

3 Illegal Use of Payment Card Scanning Device or Reencoder. Amend RSA 638:29, I to read as follows:

I. A person is guilty of the crime of using a scanning device or reencoder to defraud when the person knowingly:

(a) Uses a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on ~~[the magnetic strip or stripe of a]~~ **or in** a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant; or

(b) Uses a reencoder to place information encoded on ~~[the magnetic strip or stripe of a]~~ **or into a different** payment card onto ~~[the magnetic strip or stripe of]~~ **or into** a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

4 Effective Date. This act shall take effect January 1, 2011.

AMENDED ANALYSIS

This bill prohibits the human implantation of a radio frequency identification device without the individual's informed, written consent. The bill prohibits the human implantation of such a device onto or into a minor child. The bill also amends the definition of payment card and reencoding for purposes of the crime of using a scanning device or reencoder for fraudulent purposes.

2009-2511h

Amendment to HB 478-FN

**Proposed by the Minority of the Committee on Commerce and Consumer Affairs: -
R**

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

AN ACT relative to the regulation of radio frequency.

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

1 New Chapter; Regulation of Radio Frequency Devices. Amend RSA by inserting after chapter 358-S the following new chapter:

**CHAPTER 358-T
REGULATION OF RADIO FREQUENCY DEVICES**

358-T:1 Definitions. In this chapter:

I. "Consumer notice" means either:

(a) A commonly recognized symbol designed to provide a standard way to show the presence of a remotely readable device; or

(b) Notice given with the following text: "This item contains a radio frequency device that can be read without your knowledge if it is brought within range of a reader device."

II. "Identification document" means any document or object, and any packaging intended to be removed by a consumer, containing personal information that an individual uses alone or in conjunction with any other information to establish his or her identity, to obtain health or medical care, to engage in government-regulated activities, or to engage in financial transactions. Identification documents shall include but shall not be limited to:

(a) Drivers' licenses, identification cards, and license plates issued by the director of the division of motor vehicles, department of safety.

(b) Electronic toll collection systems as defined in RSA 236:31, I(c).

(c) Identification cards or badges issued to employees or contractors.

(d) Insurance benefit cards.

(e) Identification cards issued by schools and educational institutions.

(f) Benefit cards issued in conjunction with any government-supported aid program.

(g) Credit, debit, and financial account cards.

(h) Licenses, certificates, registrations, or other means to engage in a business or profession regulated by the state or its political subdivisions.

(i) Library cards issued by any public library.

III. "Personal information" means information that can be used to identify an individual. Such information includes an individual's name, address, telephone and cellular telephone number, social security number, credit card and financial account numbers, driver's license number, e-mail address, date of birth, race, religion, ethnicity, nationality, political affiliation, photograph and digital image, fingerprint or other biometric identification, and any other unique personal identifier or number.

IV. "Remotely readable device" means any item, application, or mark that is passively or actively capable of transmitting an individual's identity, characteristics, status, group membership, travel history, or location, or capable of storing or transmitting a number, symbol, signal, pattern, or other identifier that could be linked with any such identification or location information. A remotely readable device includes, but is not limited to, technologies that use radio waves to identify individual objects, such as radio frequency identification.

V. "RFID" means any technology that uses radio waves to identify individual physical objects.

VI. "Radio frequency device" means any item or application that is passively or actively capable of transmitting unique identification or location information. Radio frequency devices shall include devices that use RFID. "Radio frequency device" shall not include bar codes or similar markings that do not transmit information.

358-T:2 Human Implantation of Remotely Readable Device Prohibited.

I. No person shall implant or attempt to implant or physically incorporate a remotely readable device into or on the body, skin, teeth, hair, or nails of another individual without the prior, informed written consent of the adult individual. Consent of a guardian, guardian ad litem, attorney-in-fact shall be considered adequate consent, unless a written instrument executed by the individual precludes implantation or physical incorporation. Use of a bracelet or other readily removable device is not considered implantation or physical incorporation under this section.

II. No individual shall be offered an incentive, denied an opportunity, or in any way treated by a person differently from any other individual as a consequence of providing or withholding consent under paragraph I.

III. No person shall use the presence or absence of an implanted remotely readable device as a basis for discriminating against an individual for any purpose including, but not limited to, employment, housing, insurance, medical care, voting, education, travel, and commerce.

358-T:3 Restrictions on State Use of Radio Frequency Devices.

I. The state or a political subdivision, department, or agency shall not issue, or permit others to issue on its behalf, any identification document that contains a radio frequency device or uses radio frequency devices to locate an individual, either directly or indirectly through other persons, except in the following circumstances:

(a) To locate a person who is incarcerated in the state prison or county jail, is housed in a mental health facility pursuant to a court order after having been charged with a crime, is subject to court-ordered electronic monitoring, or is a resident of a state or county hospital, nursing facility, or assisted living facility.

(b) When the radio frequency device is implanted in an identification document that is to be used on a toll road or bridge owned or operated by the state or a political subdivision, department, or agency thereof, but only for the specific purpose of collecting funds for the use of that road or bridge.

(c) An identification document that is issued to a person for the limited purpose of facilitating secure access by the identification document holder to a secured public building or parking area. Any such identification document issued after January 1, 2011 shall include a consumer notice to the recipient.

(d) The identification document is part of a contactless identification document system used by the state or a political subdivision, department, or agency of the state that is operational and in use prior to January 1, 2009. Any such identification document issued after January 1, 2011 shall include a consumer notice to the recipient.

(e) Credit, debit, or financial account cards or other payment devices issued to a person for use on behalf of the state or a political subdivision, department, or agency of the state. Any such card or payment device issued after January 1, 2011 shall include a consumer notice to the recipient.

II. No identification document permitted under this section shall contain, transmit, or enable the remote reading of any personal information other than a unique personal identifier number which is not a social security number, except for identification documents provided under subparagraph I(e), which may include additional personal information required or allowed under standards published by the International Organization of Standards (ISO).

III. This section shall not apply to the court-authorized use of radio frequency devices by law enforcement officials.

358-T:4 Penalties.

I. Any person convicted of violating RSA 358-T:3 shall be guilty of a class B felony.

II. An aggrieved individual or the state may bring suit for damages for up to \$1,000 or actual damages, whichever is greater, plus court costs and reasonable attorney's fees, for each violation of this chapter.

2 Illegal Use of Payment Card Scanning Device or Reencoder. Amend RSA 638:28, I-III to read as follows:

I. "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on ~~[the magnetic strip or stripe of]~~ **or in** a payment card.

II. "Reencoder" means an electronic device that places encoded information from ~~[the magnetic strip or stripe of]~~ a payment card onto ~~[the magnetic strip or stripe of]~~ **or into** a different payment card.

III. "Payment card" means a credit card, charge card, debit card, or any other card **or device** that is issued to an authorized ~~[card]~~ user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.

3 Use of Payment Card Scanning Device or Reencoder to Defraud. Amend RSA 638:29, I to read as follows:

I. A person is guilty of the crime of using a scanning device or reencoder to defraud when the person knowingly:

(a) Uses a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded ~~[on the magnetic strip or stripe of]~~ **or in** a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant; or

(b) Uses a reencoder to place information encoded on ~~[the magnetic strip or stripe of]~~ **or into** a **different** payment card onto ~~[the magnetic strip or stripe of]~~ **or into** a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

4 Effective Date. This act shall take effect January 1, 2011.

AMENDED ANALYSIS

This bill:

I. Requires consumer products or identification documents with radio frequency devices to include a consumer notice to that effect.

II. Prohibits the implantation of a remotely readable device in a human without the individual's informed, written consent.

III. Amends the statutes governing the use of a payment card scanning device or reencoder.

2009-2410h

Amendment to HB 507-FN

Proposed by the Committee on Commerce and Consumer Affairs - R

Amend RSA 400-A:29, I(a) and (b) as inserted by section 1 of the bill by replacing them with the following:

(a) Application ~~[\$300]~~ **\$500**

(b) Initial certificate \$100

Amend RSA 400-A:29-a, III as inserted by section 2 of the bill by replacing it with the following:

III. Members of the respective continuing education advisory councils shall be reimbursed for all actual travel.

Amend RSA 405:29, I as inserted by section 4 of the bill by replacing it with the following:

I. Each licensed producer shall file with the commissioner, not later than January 31st of each year, a sworn statement of the gross premiums charged for insurance procured or placed and the gross return premiums on such insurance cancelled under such license during the year ending on December 31 next preceding, and at the time of filing such statement shall pay to the state treasurer a sum equal to ~~[2]~~ **3** percent of such gross premiums less such return premiums reported.

Amend the bill by deleting section 5 and renumbering the original sections 6-9 to read as 5-8, respectively.

Amend the bill by replacing section 8 with the following:

8 Effective Date. This act shall take effect July 1, 2010.

2009-2518h

Amendment to HB 510

Proposed by the Committee on Executive Departments and Administration - C

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

1 Division of Vital Records Administration. Amend RSA 5-C:2 to read as follows:

5-C:2 Division of Vital Records Administration Established.

I. There is established within the department of state a division of vital records administration under the supervision of a director of vital records administration. The secretary of state, with the approval of the governor and council, shall appoint the director of vital records administration, ***who shall be known as the state registrar and who shall be an unclassified employee.*** ~~[In addition to the title of director, the director shall also be known as the state registrar.]~~ The director of vital records administration shall be academically and technically qualified to hold the position. The director shall be a citizen of this state ~~[or become a citizen of this state within one year of the director's appointment].~~

The term of office for the state registrar shall be 4 years. Any vacancy shall be filled for the remainder of the unexpired term.

II. ~~[The director shall:~~

~~(a) Be responsible for the day-to-day operations of the division.~~

~~(b) Plan and provide operational resources as available, for the establishment and support of a statewide vital records registration, issuance, and dissemination program.]~~

The salary of the state registrar shall be as specified in RSA 94:1-a and shall be determined in accordance with the procedure in RSA 94:1-d and RSA 14:14-c.

2 Registrar of Vital Records; Privacy; Duties. Amend RSA 5-C:4, I to read as follows:

I. The ~~[secretary of state shall appoint the]~~ ***state*** registrar ~~[of vital records for the state who]~~, under the supervision of the secretary ***of state***, shall have charge of the vital records of the state and shall enforce the provisions of law in relation to them. ***The state registrar shall be responsible for the day-to-day operations of the division and shall plan and provide operational resources, as available, to establish and support a statewide vital records registration, issuance, and dissemination program.***

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

AMENDED ANALYSIS

This bill clarifies the duties and responsibilities of the state registrar.

2009-2444h

Amendment to HB 523-FN

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

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

1 DNA Testing of Criminal Offenders; DNA Analysis Required. Amend RSA 651-C:2, I to read as follows:

I. Upon intake or prior to the release of any offender after conviction for the commission of any ~~[offense defined in RSA 651-C:1, VIII or IX, or commission of a similar offense]~~ ***sexual offense, as defined in RSA 651-B:1, V, or any offense against a child as defined in RSA 651-B:1, VII, or any other felony offense*** prohibited by ***the laws of this or another state or*** federal law ~~[or the laws of another state]~~, whether on probation, conditional or unconditional release, completion of sentence, or release for any other reason, ~~[or prior to the release of any juvenile offender after a finding of delinquency,]~~ such person shall have a DNA sample taken for DNA analysis to determine identification characteristics specific to the person.

2 Repeal. The following are repealed:

I. RSA 651-C:1, VIII and IX, relative to the definitions of "sexual offender" and "violent crime."

II. RSA 651-C:7, relative to the applicability of RSA 651-C for DNA testing of criminal offenders.

3 Applicability.

I. Section 1 of this act shall apply to those persons who are incarcerated in a state or county correctional facility, or on probation or parole, for a felony offense, or who are required to register under RSA 651-B, on or after the effective date of this act.

II. The provisions of RSA 651-C in effect prior to the effective date of this act shall apply to those persons convicted of a violent crime as defined in that chapter, on or after July 1, 2003, and to persons incarcerated in a state or county correctional facility, or on probation or parole, for a violent crime as defined in RSA 651-C:1, IX, on or after July 1, 2003.

III. The provisions of RSA 651-C in effect prior to the effective date of this act shall apply to those persons convicted of a sexual offense listed under RSA 651-C:1, VIII, on or after August 2, 1996, and to persons incarcerated in a state or county correctional facility for a sexual offense listed under RSA 651-C:1, VIII, on or after August 2, 1996.

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

AMENDED ANALYSIS

This bill:

I. Amends certain provisions of RSA 651-C requiring DNA analysis of criminal offenders.

II. Repeals the definitions of "sexual offender" and "violent crime" in RSA 651-C.

III. Inserts a provision governing the applicability of RSA 651-C.

2009-2391h

Amendment to HB 546-FN

Proposed by the Committee on Ways and Means - C

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

AN ACT relative to authorizing temporary registrations of off-highway recreational vehicles for nonresidents.

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

1 OHRV Registrations. Amend RSA 215-A:21, II to read as follows:

II. Except as otherwise provided, no OHRV shall be operated in this state unless registered as provided in this chapter. No registration shall be required for an OHRV operated solely on land owned or leased by the owner of the OHRV. ***Except for temporary registrations under paragraph V***, all OHRV registrations shall expire on July 1 in each year. The executive director shall collect a fee for each registration as provided in RSA 215-A:23.

2 Temporary Registrations; Nonresident Registration. Amend RSA 215-A:21, V to read as follows:

V. All OHRVs except conventional motor vehicles registered for highway use ~~and those registered pursuant to paragraph IV~~ shall be registered at the fee provided in RSA 215-A:23, and shall be furnished a registration plate or decals of a design and color as chosen by the executive director. Said registration plate or decals shall be attached securely on the front and rear of the vehicle, in an unobstructed manner, as high as possible or at a location designed by the manufacturer. ***A nonresident registering an OHRV for a calendar month from May to October shall be issued a temporary registration by the executive director. Such registration shall be valid only for the calendar month for which it is issued. The executive director shall determine the design, color, and placement of temporary registration decals. Temporary registrations may not be transferred.***

3 New Paragraph; Fees; Temporary Registration. Amend RSA 215-A:23 by inserting after paragraph V the following new paragraph:

V-a. Temporary Registration for Nonresidents. \$34 for each non-transferable, calendar month registration upon presentation of a valid out-of-state driver's license issued to a person 18 years of age or older. From each fee collected pursuant to this paragraph:

(a) The first \$14 shall be appropriated to the department of resources and economic development for administration of the bureau's grant-in-aid program pursuant to paragraph VI.

(b) From the balance, \$10 shall be appropriated to the department of resources and economic development for administration of the bureau for the purposes listed in paragraph VII, and \$10 shall be appropriated to the department of fish and game for the purposes listed in paragraph VIII.

4 2013 Version; OHRV Registrations. Amend RSA 215-A:21, II to read as follows:

II. Except as otherwise provided, no OHRV shall be operated in this state unless registered as provided in this chapter. No registration shall be required for an OHRV operated solely on land owned or leased by the owner of the OHRV. ~~[Except for temporary registrations under paragraph V,]~~ All OHRV registrations shall expire on July 1 in each year. The executive director shall collect a fee for each registration as provided in RSA 215-A:23.

5 2013 Version; Temporary Registrations Removed. Amend RSA 215-A:21, V to read as follows:

V. All OHRVs except conventional motor vehicles registered for highway use shall be registered at the fee provided in RSA 215-A:23, and shall be furnished a registration plate or decals of a design and color as chosen by the executive director. Said registration plate or decals shall be attached securely on the front and rear of the vehicle, in an unobstructed manner, as high as possible or at a location designed by the manufacturer. ~~[A nonresident registering an OHRV for a calendar month from May to October shall be issued a temporary registration by the executive director. Such registration shall be valid only for the calendar month for which it is issued. The executive director shall determine the design, color, and placement of temporary registration decals. Temporary registrations may not be transferred.]~~

6 Repeal. RSA 215-A:23, V-a, relative to temporary OHRV registrations for nonresidents, is repealed.

7 Effective Date.

I. Sections 4-6 of this act shall take effect January 1, 2013.

II. The remainder of this act shall take effect 120 days after its passage.

AMENDED ANALYSIS

This bill allows nonresidents to be issued temporary registrations for OHRVs for each calendar month during the period of May through October. The temporary OHRV registration authority is repealed January 1, 2013.

2010-0011h

Amendment to HB 558-FN

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

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

AN ACT establishing a procedure for leasing state parks.

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

1 New Subdivision; Lease of State Parks. Amend RSA 216-A by inserting after section 6-a the following new subdivision:

Lease of State Parks

216-A:6-b Definitions. In this subdivision:

I. "Commissioner" means the commissioner of the department of resources and economic development.

II. "Director" means the director of the division of parks and recreation, department of resources and economic development.

III. "Division" means the division of parks and recreation, department of resources and economic development.

IV. "Lease" means a written instrument to which the state and a lessee are parties which provides for the development, management, or operation of a state park and the payment of rent to the state.

V. "Lease evaluation committee" or "committee" means a body consisting of the commissioner or designee, the director or designee, the executive director of the department of fish and game or designee, the director of the appropriate regional planning commission, a representative of each local community appointed by the governing body of the local community, and 3 members of the state park system advisory council, established in RSA 216-A:3-k, appointed by the chairman of the council. If state historical sites or facilities are involved, the committee shall include either the commissioner of the department of cultural resources or the director of the division of historical resources in the department of cultural resources. The commissioner shall oversee the formation of the committee.

VI. "Local community" means:

(a) Any municipality or unincorporated place in which a state park is located, whether in whole or in part; or

(b) Any municipality or unincorporated place abutting a state park; or

(c) Any municipality or unincorporated place that provides services to, or is affected by, the operation of a state park, as determined by the director in consultation with the appropriate regional planning commission.

VII. "State park" means any property or facility owned by the state and managed by the division for recreational, cultural, historical, or educational purposes.

216-A:6-c Lease of State Parks.

I. Except as provided in this section, no state park shall be leased to any entity without legislative approval of a proposed lease recommended by the commissioner, and subsequent approval of such lease by the governor and council.

II. This section shall not apply to operations related to souvenir and food service concessions, ski instruction, rental, or repair, or to any other similar type of auxiliary activity where the management and overall operations of the state park remains with the state.

III. This section shall not apply to any leases validly executed before the effective date of this section or to the renewal of such leases.

216-A:6-d Evaluation of Proposed Lease.

I. The commissioner shall review all lease proposals and determine which proposals shall be submitted to the committee.

II. If the commissioner submits a lease proposal to the committee, the committee shall first determine if the lease proposal contains sufficient information to be evaluated under paragraph III. If the committee determines additional information is needed, it may request the lease applicant to provide such additional information as the committee determines is reasonably necessary to properly evaluate the proposal. The additional cost of providing such information to the committee shall be borne by the lease applicant.

III. The committee shall evaluate the proposed lease of a state park using the following criteria:

(a) The effect on the current 10-year strategic plan for the specific state park and the role of the state park in the state park system.

(b) The proposed lessee possesses the financial, technical, and managerial capabilities to ensure that the state park shall be managed and operated in accordance with any conditions the committee may deem necessary.

(c) The financial benefit of the proposed lease to the state park system.

(d) The proposed lease will not interfere with the development of local communities, or with the responsibilities of local governing bodies, or municipal or regional planning commissions.

(e) The benefits of the proposed lease to the public using the state park, to the public using the state park system, and to local communities and businesses in the area of the state park, and in the state as a whole.

(f) The environmental effects of the proposed lease.

(g) Any relevant issues in local communities which may be caused by the proposed lease, including land use, development and growth, infrastructure issues, emergency and other community services, master plans and other community plans, zoning, and property valuation.

(h) Whether the activities in the proposed lease would be permitted under state or federal law.

(i) The proposed lessee agrees to the retention of as many state employees as is practicable under the proposed lease.

(j) The proposed lease will not adversely affect the economy, aesthetics, historical sites, environmental quality, public health or safety, infrastructure, or quality of life in a local community or in the state as a whole.

(k) The proposed lease contains provisions requiring the lessee to make payments to the department of resources and economic development to be deposited in the state park local community assistance fund established in RSA 216-A:6-e.

IV. The committee shall hold at least one public hearing on the proposed lease prior to the preparation of its written report. The commissioner shall post notice of the date, time, and place of the hearing at least 10 days in advance on the Internet site of the division of parks and recreation, in the town hall of each local community, and in at least one publication of general circulation in each local community.

V. Upon completion of the evaluation, the committee shall prepare a written report of its findings and recommendations on the proposed lease. Copies of the report shall be submitted to the commissioner, the speaker of the house of representatives, the president of the senate, the chairperson of the house resources, recreation and development committee, and the chairperson of the senate energy, environment and economic development committee.

VI. The committee shall hold an informational meeting, to occur not more than 30 days after completion of the written report. The commissioner shall post notice of the date, time, and place of the hearing at least 10 days in advance on the Internet site of the department of resources and economic development, in the town hall of each local community, and in at least one publication of general circulation in each local community.

VII. The commissioner shall not recommend a proposed lease to the legislature unless it meets the criteria set forth in paragraph III.

VIII. The committee shall monitor approved leases for the duration of the lease period to ensure compliance with lease terms.

216-A:6-e Local Community Assistance Fund Established.

I. The state treasurer shall establish a separate and distinct account known as the local community assistance fund and shall deposit into said account a portion of the revenue determined in accordance with the lease agreement. Any remainder derived by the commissioner of the department of resources and economic development resulting from the lease of a state park shall be deposited into the state park fund established in RSA 216-A:3-i. The fund shall be nonlapsing and continually appropriated to the department of resources and economic development for the purposes set forth in this section. Moneys in the fund shall be available to local communities and may be used by such communities to pay for fire, school, ambulance, or other capital items, or to meet the costs of increased growth and development in local communities as a result of the lease. Local communities may receive moneys under this section only to the extent of available funds. A local community may

apply for funds under this section once per fiscal year on a form to be provided by the commissioner. The commissioner may require the local community to provide such information as the commissioner determines is reasonable and necessary.

II. The attorney general may retain counsel for local communities to assist in determining the appropriate proportion of total lease revenue to be deposited in the local community assistance fund to compensate local communities affected by the lease of a state park. This paragraph shall not prohibit any person or local community from being represented by counsel.

III. The commissioner may adopt rules, pursuant to RSA 541-A, relative to application procedures, deadlines, criteria, and limits on disbursements.

2 New Subparagraph; Application of Receipts; Local Community Assistance Fund.
Amend RSA 6:12, I(b) by inserting after subparagraph (299) the following new subparagraph:

(300) Moneys deposited in the local community assistance fund established in RSA 216-A:6-e.

3 Repeal. RSA 12-A:29-a, relative to terms of lease agreements for Cannon Mountain and Mount Sunapee, is repealed.

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

AMENDED ANALYSIS

This bill establishes a procedure for the leasing of state parks, creates a local community assistance fund, and repeals the lease provisions for the leasing of Cannon Mountain and Mount Sunapee.

2009-2457h

Amendment to HB 564-FN

Proposed by the Committee on Public Works and Highways - C

Amend the bill by replacing the title with the following:

AN ACT relative to ramp/lift equipped van parking spaces.

Amend the bill by replacing section 1 with the following:

1 New Section; Accessible Parking. Amend RSA 155-A by inserting after section 5-b the following new section:

155-A:5-c Handicap Accessible, Van Accessible, and Ramp/Lift Equipped Van Only Parking Spaces.

I. Any new construction containing a parking area or parking areas commenced after January 1, 2011 shall have the following number of handicap accessible, van accessible, and ramp/lift equipped van only parking spaces reserved for individuals with walking disabilities:

(a) If there are between 76 and 200 parking spaces there shall be one ramp/lift equipped van only parking space in addition to those required by the International Building Code as referenced in the New Hampshire State building code.

(b) If there are more than 201 parking spaces there shall be 2 ramp/lift equipped van only parking spaces in addition to those required by the International Building Code as referenced in the New Hampshire State building code.

II. Property owners with an existing parking area or parking areas shall conform to the standards in paragraph I when the existing parking area or parking areas are repaved, resurfaced, repainted, or otherwise reconstructed. Property owners shall not be obligated to conform to the standards in paragraph I when parking lot cracks are sealed, pot holes are filled, or other general maintenance is performed.

III. Paragraph I shall not apply to a property owner if it conflicts with local zoning regulations regarding either the total number of parking spaces required or the total number of handicapped spaces required.

IV. In this section, "ramp/lift equipped van" shall be as defined in RSA 259:83-a.
Amend RSA 265:73-a as inserted by section 3 of the bill by replacing it with the following:

265:73-a Parking Signs; Disabled. A parking space on private or public property that is reserved for persons who are disabled shall be marked by a sign affixed to a post or a building. Said sign shall be clearly visible to anyone directly approaching that particular space. ***Spaces designated for ramp/lift equipped vans only and for van accessible parking shall be marked by a sign in compliance with the American National Standards Institute (ANSI) A117.1 as referenced in the New Hampshire State building code for accessible and usable buildings and facilities standards affixed to a post or building with the words "RAMP/LIFT VANS ONLY".***

Amend the bill by replacing section 4 with the following:

4 Effective Date. This act shall take effect 90 days after its passage.

AMENDED ANALYSIS

This bill requires new construction to designate certain areas as ramp/lift equipped van only parking.

2009-2462h

Amendment to HB 569-FN

Proposed by the Majority of the Committee on Commerce and Consumer Affairs - R

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

AN ACT clarifying insurance coverage for diagnosis and treatment of pervasive developmental disorder or autism.

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

1 New Paragraph; Coverage for Certain Biologically-Based Mental Illnesses. Amend RSA 417-E:1 by inserting after paragraph V the following new paragraph:

VI. Nothing in this section shall be construed to affect any obligation to provide services to an individual under an individualized family service plan or an individualized education program, as required under the federal Individuals With Disabilities Education Act, or the provision of services to an individual under any other federal or state law.

2 New Section; Coverage for Treatment of Pervasive Developmental Disorder or Autism. Amend RSA 417-E by inserting after section 1 the following new section:

417-E:2 Coverage for Treatment of Pervasive Developmental Disorder or Autism

I. For the purposes of this chapter, treatment of pervasive developmental disorder or autism as required under RSA 417-E:1, III(h) shall include the following medically necessary care prescribed by a licensed physician, advanced practice registered nurse, psychologist, or clinical social worker:

(a) Professional services and treatment programs, including applied behavioral analysis, provided by a pervasive developmental disorder or autism service provider to produce socially significant improvements in human behavior or to prevent loss of attained skill or function;

(b) Medications and any health-related service necessary to determine the need or effectiveness of the medications;

(c) Direct or consultative services provided by a licensed psychiatrist, advanced practice registered nurse, psychologist, or clinical social worker; and

(d) Services provided by a licensed speech therapist, occupational therapist, or physical therapist.

II. Treatment, including frequency and duration of treatment, shall be covered in accordance with a written plan signed by a licensed physician, advanced practice registered nurse, or psychologist stating that the treatment is medically necessary for the patient and is consistent with nationally recognized treatment standards for the condition such as those set forth by the American Academy of Pediatrics. Coverage shall not be denied on the basis that services are habilitative in nature. The benefits included in this section shall be subject to the terms and conditions of the policy and shall be no less extensive than coverage provided for similar conditions or illnesses.

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

AMENDED ANALYSIS

This bill clarifies the insurance coverage required for diagnosis and treatment of pervasive developmental disorder or autism.

2009-2376h

Amendment to HB 577-FN

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

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

1 Recovery of Assistance. Amend RSA 167:14-a, III-a and IV to read as follows:

III-a. The commissioner of health and human services may recover the full amount of medical assistance furnished by the state ~~[if there are proceeds available for such recovery after the deduction of reasonable attorneys' fees, litigation costs, claims by other creditors, and 10 percent of the remaining net settlement amount for the recipient of medical assistance. Any balance remaining after the state has recovered the full amount due shall be available to the recipient of medical assistance. No attorneys' fees shall be deducted from the amount due the state from such award or settlement]~~ **from the portion of any settlement or judgment reasonably attributable to medical expenses.** The commissioner may waive or reduce the amount due the state for good cause upon written request from a recipient or recipient's attorney. The acceptance of any waiver or the payment of any reduced amount due shall create a rebuttable presumption that the apportionment was equitable in any action brought pursuant to paragraph IV.

IV. A disbursement of any award, judgment, or settlement shall not be made to a recipient without the recipient or the recipient's attorney first providing at least 30-days written notice of any scheduled trial, alternative dispute resolution hearing, or settlement to the commissioner of health and human services that the recipient has a claim which could result in a recovery from a third party or obtaining from the commissioner a written release of any obligation owed to the state for medical assistance provided to the recipient. The commissioner shall notify the recipient or the recipient's attorney of the amount of the commissioner's claim within 21 days of the notice. If a dispute arises between the recipient and the commissioner of health and human services as to the settlement of any claim that arises under this section, the third party or the recipient's attorney shall withhold from disbursement to the recipient or to any legal instrument created for the benefit of the recipient, an amount equal to the commissioner's claim. Either party may apply to the superior court or the district court in which an action based upon the recipient's claim could have been commenced for an order to determine an equitable apportionment between the commissioner and the recipient of the amount withheld. **The court shall have broad discretion to apportion the amount withheld as justice may require.** An order of apportionment has the effect of a judgment. The obligation of a third party under this paragraph to withhold all or part of a disbursement is conditional upon the receipt by the third party of written notice from the commissioner, the recipient, or the recipient's attorney that the commissioner is asserting a claim.

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

AMENDED ANALYSIS

This bill permits the department of health and human services to recover medical assistance costs from the portion of settlements or judgments reasonably attributed to medical expenses. The bill also clarifies the court's discretion to apportion the amount withheld from such awards.

2009-2510h

Amendment to HB 579-FN

Proposed by the Majority of the Committee on Transportation - R

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

1 Drivers' Licenses; Examinations; Road Test. Amend RSA 263:6 to read as follows:

263:6 Examination. Before a license is granted to any person, the applicant, if not previously licensed to drive a motor vehicle in this state, shall pass such examination as to the person's qualifications as the director may prescribe. ***Such examination shall include a road test of the applicant's driving skills.*** Such examination may ***also*** include an examination for visual acuity as prescribed by the director. All license examinations shall be conducted by department of safety personnel. No license shall be issued until the director is satisfied that the applicant is a proper person to receive it. No physical defect of an applicant shall prohibit the applicant from receiving a license unless it can be shown by common experience that such defect results in an incapacity to safely drive a motor vehicle, except as provided in RSA 263:13. ***Previously licensed, out-of-state drivers who have relocated, or are in the process of relocating their permanent residence to New Hampshire are exempt from taking the examination unless their out-of-state drivers' license has expired, or they cannot demonstrate proof that they possess a license which is current, valid, and the appropriate class and type.***

2 New Section; Learner's Permit. Amend RSA 263 by inserting after section 25 the following new section:

263:25-a Learner's Permit. Upon application and payment of the fee provided in RSA 263:42 and attaining a passing score on a written examination administered by the department, the department shall issue a learner's permit to a person who is 15-1/2 years of age or older. The commissioner shall develop the written examination and determine a passing score based on the minimum necessary knowledge of the rules of the road required for safe operation of a motor vehicle. The permit shall be valid for one year from the date of issuance or until the holder of the permit obtains a youth or adult license, whichever is sooner.

3 New Paragraph; Driver's License Fees; Learner's Permit. Amend RSA 263:42 by inserting after paragraph I-a the following new paragraph:

I-b. For each learner's permit issued under RSA 263:25-a, \$20.

4 Exception for Persons Learning to Drive. Amend RSA 263:25, I to read as follows:

I. Except as provided in paragraph II, a person who does not possess a driver's license ***but possesses a learner's permit issued under RSA 263:25-a*** may drive a motor vehicle while being taught to drive, when accompanied by a person holding a driver's license of the appropriate class and type for the vehicle being driven, who is occupying the seat beside ~~[or, in the case of a bus, immediately adjacent to,]~~ the person who is being taught to drive. This exception shall not apply to persons whose driving privileges or driver's licenses have been suspended or revoked for cause, persons less than 15-1/2 years of age, and persons learning to drive commercial motor vehicles unless they meet the requirements of paragraph II. For all unlicensed drivers the person accompanying them shall be a certified driving instructor, parent, legal guardian, or responsible adult who is 25 years of age or older and who is a licensed driver. The person accompanying the unlicensed driver shall be liable for the violation of any provision of this title or rules adopted hereunder committed by such unlicensed driver. A person who is learning to drive pursuant to the provisions of this section shall have in his ***or her*** possession proof of the fact he ***or she*** meets the age requirement ***and a learner's permit issued under RSA 263:25-a.***

5 New Paragraph; Learner's Permit Waiver. Amend RSA 263:25 by inserting after paragraph II the following new paragraph:

III. In-state providers of education for persons with disabilities may apply to the director for a waiver of the learner's permit requirement for the purpose of providing driver education to resident and nonresident students, provided that all of the other requirements of paragraph I are met. The waiver may be reviewed, suspended, or revoked at the discretion of the director or the director's designee.

6 Youth Operators' Licenses; Eligibility. Amend RSA 263:14, II(a) to read as follows:

II.(a) The director shall issue a youth operator's license to applicants who are 16 years of age or older and under 21 years of age. The youth operator license shall expire on the 21st anniversary of the applicant's date of birth. In addition to any other requirements established by law, no such license shall be issued to applicants under 18 years of age unless the applicant ***possesses a learner's permit issued under RSA 263:25-a***, meets the requirements of RSA 263:17, [~~or furnishes written consent from the applicant's parent or legal guardian~~] and ***furnishes*** a certificate of successful completion of a driver education course as provided in RSA 263:19.

7 Youth Operators' Licenses; Restrictions. Amend RSA 263:14, II(c) to read as follows:

(c) During the first [~~6 months~~] ***year*** after issuance of the license, the holder of a youth operator's license shall not operate a motor vehicle with more than one passenger [~~less than 25 years of age~~] who is not a member of the holder's family [~~unless accompanied by a~~] ***or the holder's legal guardian. If there is more than one passenger, such additional passengers shall at all times include one licensed responsible adult who is a member of the holder's family or the holder's legal guardian and*** who is at least 25 years of age ***and there shall be a passenger restraint worn by every person in the vehicle who is required to wear a passenger restraint under RSA 265:107-a.***

8 Effective Date. This act shall take effect July 1, 2010.

AMENDED ANALYSIS

This bill:

I. Requires learners' permits for persons learning to drive and modifies certain restrictions on youth operators.

II. Requires that the examination given to first-time driver's license applicants include a road test.

2009-2523h

Amendment to HB 615 Proposed by the Committee on Education - C

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

AN ACT relative to organization, reorganization, or withdrawal from a school administrative unit.

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

1 School Administrative Unit; Organization, Reorganization, or Withdrawal. RSA 194-C:2 is repealed and reenacted to read as follows:

194-C:2 Organization, Reorganization, or Withdrawal.

I. GENERAL PROVISIONS.

(a) Any school district pursuant to an article in the warrant for any annual or special meeting may vote to create a planning committee in the following manner:

(1) The question shall be placed on the warrant of a special or annual school district meeting, which body shall have final authority to adopt the provision to create a planning committee.

(2)(A) In districts without annual meetings, the legislative body of the school district shall consider and act upon the question in accordance with their current procedures. To the extent and if permitted by local ordinance, upon submission to the legislative body within 60 days of the legislative body's vote of a petition signed by 100 or by 2 percent, whichever is less, of the registered voters, the legislative body shall place the question on the official ballot for any regular election otherwise in accordance with their current procedures for passage of referenda.

(B) The school district legislative body shall hold a public hearing on the question at least 15 days but not more than 30 days before the question is to be voted on. Notice of the hearing shall be posted in at least 2 public places in the municipality and published in media of general availability and usage at least 7 days before the hearing.

(C) In the event that the referendum is nonbinding, the question shall be returned for reconsideration to the legislative body which shall have final authority to adopt the provision to create a planning committee.

(D) In the event that the referendum is binding, the public vote shall be the final and binding authority to adopt the provision to create a planning committee.

(3) The planning committee shall consist of the following members:

(A) Two local school board members, appointed by the local school board.

(B) One member of the financial committee having the statutory authority to make recommendations concerning school budgets, appointed by the financial committee. In communities with no such financial committee, the number of public members under subparagraph (a)(3)(C) shall be increased to 5.

(C) Four public members representing the community at large, appointed by the school district moderator or, for districts without an annual meeting, the legislative body of the school district.

(D) The superintendent, who shall be a nonvoting member of the committee.

(4)(A) The first-named school board member shall call the first meeting which shall be no later than 30 days from the date of his or her appointment. All planning committee meetings shall comply with RSA 91-A.

(B) At the first meeting, a chairperson shall be elected by the members.

(C) A notice of all meetings of the planning committee shall be posted in all school districts in the existing school administrative unit and in any new school administrative unit which may be created as a result of organization, reorganization, or withdrawal.

(D) All meetings shall allow time for public comment.

(5) The members of the committee shall serve without pay for a term ending:

(A) At the annual meeting of the district next following the creation of the committee, if the committee is created at an annual meeting; or

(B) One year from the date of appointment, if the committee is created at a special meeting.

(C) One year from the date of appointment, if appointed in districts without annual meetings.

(6) Vacancies on the committee shall be filled by the appropriate appointing authority for the balance of the unexpired term.

(7) The district may appropriate money to meet the expenses of the committee at the meeting at which it is created or at any subsequent district meeting notwithstanding the provisions of RSA 32 or RSA 197:3, and such expenses may include the cost of publication and distribution of reports.

(8) A planning committee shall act by a majority vote of its total membership.

(b) If the planning committee chooses to recommend organization, reorganization, or withdrawal from a school administrative unit, it shall prepare a plan which complies with the requirements of this section.

(1) Before final approval of a plan by the planning committee, it shall hold at least one public hearing on the plan within the proposed school administrative unit and shall give such public notice of the hearing at least 2 weeks before the hearing and in all affected school districts.

(2) The plan for organization, reorganization, or withdrawal from a school administrative unit shall be submitted to the state board of education.

(3) The plan shall be submitted to the voters in accordance with the procedures outlined in this section.

(4) If the voters fail to vote in the affirmative by the 3/5 vote required, the school district may submit the plan to the voters at the next annual school district meeting.

If the plan fails to receive the necessary 3/5 vote a second time, the school district shall not offer another warrant article seeking to create a planning committee for a period of 2 years after the date of the second vote by the district.

(c) If the planning committee chooses not to recommend organization, reorganization, or withdrawal from a school administrative unit, that recommendation shall be submitted to the voters of the school district at the next annual school district meeting.

(1) If a majority of voters present and voting vote in the affirmative, the recommendation shall be accepted.

(2) If a majority of voters present and voting reject the recommendation, the vote shall represent a vote to create a new planning committee in accordance with RSA 194-C:2, II and that planning committee shall prepare a plan for organization, reorganization, or withdrawal from a school administrative unit which meets the requirements of this section.

II. ORGANIZATION.

(a) The planning committee shall:

(1) Study the advisability of establishing a school administrative unit in accordance with this chapter, its organization, operation, and control, and the advisability of constructing, maintaining, and operating a school or schools to serve the needs of such school administrative unit.

(2) Estimate the construction and operating costs of operating such school or schools.

(3) Investigate the methods of financing such school or schools, and any other matters pertaining to the organization and operation of a school administrative unit.

(4) Prepare an educational and fiscal analysis of the impact on the school districts within the existing school administrative unit and on any new school administrative unit which may be created, and prepare a proposed plan for the disposition of any school administrative unit assets and liabilities.

(5) Consult with the department of education regarding any unique issues and resolve such issues in a timely manner and submit a report or reports of its findings and recommendations to the several school districts within the existing school administrative unit.

(b) If the planning committee recommends the organization of a school administrative unit, it shall prepare a plan to provide superintendent services which meet the requirements set forth in RSA 194-C:4 for the proposed school administrative unit, and a transition plan and timeline which includes consideration of transition budgets and staffing and is signed by at least a majority of the membership of the planning committee.

(c) The planning committee shall submit a copy of the proposed plan to the several school districts within the existing school administrative unit and the school districts in any new school administrative unit which may be created as a result of organization, and shall hold at least one public hearing no less than 14 days prior to submission to the state board.

(d) The state board of education shall review the proposed plan within 60 days of receipt to determine whether the plan complies with the requirements of this section and RSA 194-C:4. If, in the opinion of the state board, all requirements have been met, it shall forward the plan to the school district clerk for a vote at a regular or special school district meeting.

(e) If the state board of education determines that all requirements of this section and RSA 194-C:4 have not been properly addressed, the deficiencies shall be noted and the plan shall be promptly returned for revision. When the plan is resubmitted, the state board of education shall promptly return the plan and make a recommendation for or against its adoption based on whether or not the plan complies with the requirements of this section and RSA 194-C:4. This recommendation shall be reported to the legislative body of the district. The state board shall not have veto power over any plan once it is resubmitted to the state board by the planning committee.

(f) The state board shall submit the organization plan to the school boards of the districts for acceptance by the districts as provided in subparagraph (c). Upon such submission, the state board shall cause the approved plan to be published once at the expense of the state in media of general availability and usage within the proposed school administrative unit.

(g) Upon the receipt of written notice of the state board's recommendation of the plan, the plan shall be submitted for approval by the school districts under the procedures outlined in paragraph I of this section. The question shall be in substantially the following form:

"Shall the school district accept the provisions of RSA 194-C providing for the organization of a school administrative unit involving school districts of _____ and _____ etc., in accordance with the provisions of the proposed plan?"

Yes _____ No _____

(h) If 3/5 of the votes cast on the question in each district shall vote in the affirmative, the clerk of each district shall forthwith send to the state board a certified copy of the warrant, certificate of posting, evidence of publication, if required, and minutes of the meeting in the district. If the state board finds that 3/5 majority of the votes cast in each district meeting have voted in favor of the establishment of the school administrative unit, it shall issue its certificate to that effect; and such certificate shall be conclusive evidence of the lawful organization and formation of the school administrative unit as of the date of its issuance.

III. REORGANIZATION.

(a) The planning committee shall:

(1) Study the advisability of reorganizing school administrative units in accordance with this chapter, its organization, operation and control, and the advisability of constructing, maintaining and operating a school or schools to serve the needs of reorganized school administrative units.

(2) Estimate the construction and operating costs of operating such school or schools.

(3) Investigate the methods of financing such school or schools, and any other matters pertaining to the reorganization and operation of a school administrative unit.

(4) Prepare an educational and fiscal analysis of the impact of the reorganized school administrative unit on any remaining districts in the school administrative unit and on the school districts in any new school administrative unit which may be created as a result of reorganization, and a proposed plan for the disposition of any school administrative unit assets and liabilities.

(5) Consult with the department of education regarding any unique issues and resolve such issues in a timely manner and submit a report or reports of its findings and recommendations to the several school districts within the existing school administrative unit.

(b) If the planning committee recommends the reorganization of a school administrative unit, it shall prepare a plan to provide superintendent services which meet the requirements set forth in RSA 194-C:4 for the proposed reorganized school administrative unit, and a transition plan and timeline which includes consideration of transition budgets and staffing and is signed by at least a majority of the membership of the planning committee.

(c) The planning committee may submit to the board of an existing school administrative unit, a plan for joining the existing school administrative unit. If approved, the plan shall be submitted to the state board of education and the school district voters in accordance with this section.

(d) The planning committee shall submit a copy of the proposed plan to the several school districts and shall hold at least one public hearing no less than 14 days prior

to submission to the state board. Within 60 days, the state board of education shall review the proposed plan for administrative structure and to determine whether or not the proposed plan complies with the requirements of this section and RSA 194-C:4

(e) If in the opinion of the state board, all requirements of this section and RSA 194-C:4 have been met, it shall forward the plan to the school district clerk for a vote at a regular or special school district meeting.

(f) If the state board of education determines that all requirements have not been properly addressed, the deficiencies shall be noted and the plan shall be promptly returned for revision. When the plan is resubmitted, the state board of education shall promptly return the plan and make a recommendation for or against its adoption based on whether or not the plan complies with the requirements of this section and RSA 194-C:4. This recommendation shall be reported to the legislative body of the district. The state board shall not have veto power over any plan once it is resubmitted by the planning committee.

(g) The state board shall submit the reorganization plan to the school boards of the districts for acceptance by the districts as provided in subparagraph (d). Upon such submission, the state board shall cause the approved plan to be published once at the expense of the state in media of general availability and usage within the proposed school administrative unit.

(h) Upon the receipt of written notice of the state board's recommendation of the plan, the plan shall be submitted for approval by the school districts under the procedures outlined in paragraph I of this section. The question shall be in substantially the following form:

"Shall the school district accept the provisions of RSA 194-C providing for the reorganization of a school administrative unit involving school districts of _____ and _____ etc., in accordance with the provisions of the proposed plan?"

Yes _____ No _____

(i) If 3/5 of the votes cast on the question in each district shall vote in the affirmative, the clerk of each district shall forthwith send to the state board a certified copy of the warrant, certificate of posting, evidence of publication, if required, and minutes of the meeting in the district. If the state board finds that 3/5 majority of the votes cast in each district meeting have voted in favor of the establishment of the school administrative unit, it shall issue its certificate to that effect; and such certificate shall be conclusive evidence of the lawful organization and formation of the school administrative unit as of the date of its issuance.

IV. WITHDRAWAL.

(a) The planning committee shall:

(1) Study the advisability of the withdrawal of a specific school district from a school administrative unit in accordance with this chapter, its organization, operation and control, and the advisability of constructing, maintaining and operating a school or schools to serve the needs of such school district.

(2) Estimate the construction and operating costs of operating such school or schools.

(3) Investigate the methods of financing such school or schools, and any other matters pertaining to the organization and operation of a school administrative unit.

(4) Prepare an educational and fiscal analysis of the impact of the withdrawing district on any school districts remaining in the school administrative unit and a proposed plan for the disposition of any school administrative unit assets and liabilities.

(5) Consult with the department of education regarding any unique issues and resolve such issues in a timely manner and submit a report or reports of its findings and recommendations to the several school districts within the existing school administrative unit.

(b) If the planning committee recommends the withdrawal of a school administrative unit, it shall prepare a plan for organization or reorganization. The plan shall include providing superintendent services, which meet the requirements set forth in RSA 194-C:4, and a transition plan and timeline, which includes consideration of transition budgets and staffing for the withdrawing district, and is signed by at least a majority of the membership of the planning committee.

(c) The planning committee may submit to the board of an existing school administrative unit, a plan for joining the existing school administrative unit. If approved, the plan shall be submitted to the state board of education and the school district voters in accordance with this section.

(d) The planning committee shall submit a copy of the proposed plan to the several school districts and shall hold at least one public hearing no less than 14 days prior to submission to the state board. Within 60 days, the state board of education shall review the proposed plan for administrative structure and to determine whether or not the proposed plan complies with the requirements of this section and RSA 194-C:4.

(e) If in the opinion of the state board, all requirements have been met, it shall forward the plan to the school district clerk for a vote at a regular or special school district meeting.

(f) If the state board of education determines that all requirements have not been properly addressed, the deficiencies shall be noted and the plan shall be promptly returned for revision. When the plan is resubmitted, the state board of education shall promptly return the plan and make a recommendation for or against its adoption based on whether or not the plan complies with the requirements of this section and RSA 194-C:4. This recommendation shall be reported to the legislative body of the school district. The state board shall not have veto power over any plan once it is resubmitted by the planning committee.

(g) The state board shall submit the plan for district withdrawal from a school administrative unit to the school board of the withdrawing district for acceptance by the district as provided in subparagraph (d). Upon such submission, the state board shall cause the approved plan to be published once at the expense of the state in media of general availability and usage within the district which proposes to withdraw from a school administrative unit.

(h) Upon the receipt of written notice of the state board's recommendation of the plan, the plan shall be submitted for approval by the school district under the procedures outlined in paragraph I of this section. The question shall be in substantially the following form:

"Shall the school district accept the provisions of RSA 194-C providing for the withdrawal from a school administrative unit involving school districts of _____ and _____ etc., in accordance with the provisions of the proposed plan?"

Yes _____ No _____

(i) If 3/5 of the votes cast on the question in the withdrawing district shall vote in the affirmative, the clerk of that district shall forthwith send to the state board a certified copy of the warrant, certificate of posting, evidence of publication, if required, and minutes of the meeting in the district. If the state board finds that 3/5 of the votes cast in that district meeting have voted in favor of withdrawing from the school administrative unit, it shall issue its certificate to that effect; and such certificate shall be conclusive evidence of the lawful organization and formation of the new, single district school administrative unit as of the date of its issuance.

2 School Administrative Units; Superintendent Services. Amend RSA 194-C:4 to read as follows:

194-C:4 Superintendent Services. Each school administrative unit or single school district shall **successfully** provide the following superintendent services:

I. An educational mission which indicates how the interests of pupils will be served under the administrative structure.

II. Governance ~~[and]~~, organizational structure, and ~~[delivery]~~ **implementation** of administrative services including, but not limited to:

(a) Payroll, cash flow, bills, records and files, accounts, reporting requirements, funds management, audits, and coordination with the treasurer, and advisory boards on policies necessary for compliance with all state and federal laws regarding purchasing.

(b) Recruitment, supervision, and evaluation of staff; labor contract negotiation support and the processing of grievances; arrangement for mediation, fact finding, or arbitration; and management of all employee benefits and procedural requirements.

(c) Development, review, and evaluation of curriculum, coordination of the implementation of various curricula, provisions of staff training and ~~[staff]~~ **professional** development, and development and recommendation of policies **and practices** necessary for compliance relating to curriculum and instruction.

(d) Compliance with laws, regulations, and rules regarding special education, Title IX, the Americans with Disabilities Act, home education, minimum standards, student records, sexual harassment, and other matters as may from time to time occur.

(e) Pupil achievement assessment through grading and state and national assessment procedures and the methods of assessment to be used.

(f) The on-going assessment of district needs relating to student population, program facilities and regulations.

(g) Writing, receiving, disbursement, and the meeting of **all federal, state, and local** compliance requirements.

(h) **Oversight of the provision of** insurance, **appropriate** hearings, litigation, and court issues.

(i) School board operations and the relationship between the board and the district administration.

(j) The daily administration and provision of educational services to students at the school facility including, but not limited to, fiscal affairs; staff, student, **and** parent[?] safety and building issues; and ~~[for]~~ dealing with citizens at large.

(k) Assignment, usage, and maintenance of administrative and school facilities.

(l) Designation of number, grade or age levels and, as applicable, other information about students to be served.

(m) Pupil governance and discipline, including age-appropriate due process procedures.

(n) Administrative staffing.

(o) Pupil transportation.

(p) Annual budget, inclusive of all sources of funding.

(q) School calendar arrangements and the number and duration of days pupils are to be served pursuant to RSA 189:1.

(r) Identification of consultants to be used for various services.

3 Withdrawal from a Cooperative School District; Time of Withdrawal. Amend RSA 195:30 to read as follows:

195:30 Time of Withdrawal. The vote to withdraw from a cooperative school district shall take effect on July 1 of the calendar year one year subsequent to the date on which the withdrawal vote is passed. ***A pre-existing school district which withdraws from a cooperative school district shall remain a part of the school administrative unit of which it was a member prior to withdrawal unless the withdrawing district complies with the school administrative unit withdrawal process set forth in RSA 194-C:2.*** After passage of the withdrawal vote and the issuance by the state board of education of its certificate of withdrawal, a special meeting of the voters in the withdrawing district shall be held at a time set by the state board of education. The warrant for this special meeting, approved by the state board of education and signed by the commissioner,

shall provide for the election of officers in the withdrawing school district. The commissioner of education shall have authority to appoint officers pro tem as may be necessary and prepare the warrant for the special meeting held to elect officers. This meeting shall have the same power and authority as an annual meeting with reference to the raising or appropriating of money. The district officers elected at said meeting shall take office immediately and shall carry out the duties of their office and may take any action otherwise permitted by law which is necessary in order to carry out the provisions of the withdrawal.

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

AMENDED ANALYSIS

This bill makes various changes to the section on organization, reorganization, and withdrawal from a school administrative unit.

2009-2516h

Amendment to HB 626-FN

Proposed by the Committee on Election Law - R

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

AN ACT relative to voter identification.

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

1 Election Fund. Amend RSA 5:6-d, III to read as follows:

III. The secretary of state is authorized to accept, budget, and, subject to the limitations of this paragraph, expend monies in the election fund received from any party for the purposes of conducting elections, voter and election official education, the purchase or lease of voting equipment which complies with Help America Vote Act of 2002, Public Law 107-252, election law enforcement, ~~and~~ improvements to related information technology, **and reimbursing municipalities for the costs of issuing voter identification cards.**

2 Election Fund. Amend RSA 5:6-d, V to read as follows:

V. The treasurer, upon approval of the secretary of state shall pay the expenses of planning, equipping, administering, staffing, maintaining, and improving the election services provided by the secretary of state and related services provided by the department of safety, the department of health and human services, ~~and~~ the department of justice, **and municipalities** out of any monies in the election fund, subject to the limitations established in paragraph III, notwithstanding any other provision of law.

3 New Section; Voter Identification Card. Amend RSA 654 by inserting after section 13 the following new section:

654:13-a Voter Identification Card.

I. The town or city clerk shall issue a voter identification card, upon request, to any person who is registered to vote in the town or city. The town or city clerk shall issue a voter identification card to every person whose name is added to the checklist after June 30, 2010.

II. Each voter identification card shall bear a unique identification number assigned by the town or city clerk. The clerk shall notify the supervisors of the checklist of the identification number assigned to the voter.

III. Cards shall be issued on paper of a uniform weight, size, and color specified by the secretary of state. Voter identification cards shall be in substantially the following form:

VOTER IDENTIFICATION CARD

Identification No. _____

_____, NH

(city/town)

Date _____

I hereby verify that _____

(name of registered voter)

(street address of registered voter)

is a registered voter in the city/town of _____, county of _____, state of New Hampshire, United States of America, since _____.

(state seal)

(election officer signature)

(voter's signature)

IV. A town or city may seek reimbursement from the secretary of state for the costs of issuing voter identification cards.

4 Preparing Checklist. Amend RSA 654:25 to read as follows:

654:25 Preparing Checklist. The secretary of state shall issue and distribute guidelines for the composition and style of checklists and for the maintenance of data related to checklists by which the supervisors of the checklist shall compile and correct the checklist. Such guidelines shall specify the information which will be maintained and updated by the supervisors. The secretary shall establish standard forms and procedures for the use of the supervisors for the maintenance of such information. The information to be maintained and updated shall include the full name, address, **voter identification number**, and party affiliation, if any, of each voter on the checklist and such other information as the secretary requires. Every checklist used at any election shall contain the full name, address, **voter identification number**, and party affiliation, if any, of each voter on the checklist. The name and address of a voter shall not appear on the checklist at the request of the voter if the voter presents to the supervisors of the checklist a valid protective order pursuant to RSA 173-B. The name, address, and mailing address, if different, of such a voter shall be maintained on a separate list of voters, which shall be nonpublic and not subject to RSA 91-A. If it is necessary to establish such a nonpublic list, the public checklist shall be marked at the end with a notation of the number of voters whose names are maintained on the nonpublic list.

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

654:31-a Right to Know Exemption. The information contained on the checklist of a town or city, specifically, the name, street address, mailing address, town or city, **voter identification number**, and party affiliation, if any, of registered voters, except as otherwise provided by statute, is public information subject to RSA 91-A. All other information on the voter registration form, absentee registration affidavit, qualified voter and domicile affidavits, and application for absentee ballot shall be treated as confidential information and the records containing this information shall be exempt from the public disclosure provisions of RSA 91-A, except as provided by statutes other than RSA 91-A. Notwithstanding the foregoing, qualified voter and domicile affidavits are public records subject to RSA 91-A for the sole purpose of challenging an individual registering to vote or voting, challenging ballots to be recounted, to the extent that such ballot challenges are specifically authorized by law, or determining the accuracy of any qualified voter or domicile affidavit. Election officials and law enforcement personnel in furtherance of their official duties may access and may disclose information from the voter registration form, qualified voter and domicile affidavits, absentee registration affidavits, and applications for absentee ballots, if necessary to resolve a challenge to an individual registering to vote or voting, or if necessary to investigate or prosecute election law violations or any crime. Law enforcement access and use of such records for the investigation or prosecution of crimes unrelated to election law violations shall be limited to the records of the specific individuals who are the subject of the investigation or prosecution.

6 Obtaining a Ballot. Amend RSA 659:13 to read as follows:

659:13 Obtaining a Ballot. A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. **A ballot**

clerk may request that the person spell his or her name or write his or her name on a piece of paper for the purpose of assisting the ballot clerk in identifying the person's name on the checklist. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the paper checklist and the supervisors of the checklist shall cause the centralized voter registration database to reflect the correction. The voter, if still qualified to vote in the town or ward and unless challenged as provided for in RSA 659:27-33, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state.

7 Challenge of Voter; Proof of Identity. Amend RSA 659:27 to read as follows:

659:27 Challenge of Voter; ~~[Affidavit]~~ **Proof of Identity.**

I. Any voter at any state election may challenge any other voter offering to vote at such election, and the moderator shall not receive the vote of the person so challenged until he or she shall **sign and give to the moderator an affidavit in the following form: "I, _____, do solemnly swear (or affirm) that I am a duly qualified voter of this town (or ward) and have a legal domicile therein."** The clerk shall record the name and address of each person completing such affidavit and shall preserve the affidavit as provided in RSA 659:103.

II. A person against whom a challenge pursuant to paragraph I has been asserted shall, in addition to completing the affidavit required by paragraph I, present to the ballot clerk one of the following forms of identification, provided that no election official shall ask or require any person desiring to vote to leave the polling place to retrieve proof of identity:

(a) A photo identification issued by any local, state, or federal government or agency.

(b) A photo or non-photo identification issued by an accredited college or university.

(c) A photo identification not authorized by subparagraph (a) or (b) but determined to be legitimate by the supervisors of the checklist or the clerk.

(d) A voter registration card issued pursuant to RSA 654:13-a by the clerk of the town or city in which the election is held.

(e) A non-photo identification determined to be legitimate by the supervisors of the checklist or the clerk, such as commercial correspondence, a personal check, or a motor vehicle registration with the person's name and address printed on it.

(f) Verification of the person's identity by a supervisor of the checklist or the clerk or by another person registered as a voter and personally known to a supervisor or the clerk.

(g) Completion of ~~[sign and give to the moderator]~~ an affidavit in the following form: "I, _____, do solemnly swear (or affirm) that I am the identical person whom I represent myself to be~~[that I am a duly qualified voter of this town (or ward) and have a legal domicile therein].~~" ~~[In the alternative, a challenged voter may fill out and sign a qualified voter affidavit.]~~ **The clerk shall record the name and address of each person completing such affidavit and shall preserve the affidavit as provided in RSA 659:103.**

(h) **If the person is a resident of a nursing home or similar facility, verification of identity by the administrator of the facility or by his or her designee.**

8 Effective Date. This act shall take effect January 1, 2011.

AMENDED ANALYSIS

This bill authorizes voter identification cards and modifies procedures for obtaining a ballot and verifying voter challenges.

Amendment to HB 629-FN-A

Proposed by the Committee on Ways and Means - C

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

AN ACT relative to habitual offenders, relative to implements of husbandry, and relative to registration of vehicles under the Unified Carrier Registration Act of 2005.

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

1 Habitual Offender; Offenses Added. Amend RSA 259:39, I(r)-(s) to read as follows:

(r) Conviction of any offense specified in RSA 265:82; ~~[or]~~

(s) Conviction of any offense specified in RSA 265:82-a;

(t) Conviction of any offense specified in RSA 262:23;

(u) Conviction of any offense specified in RSA 265-A:43; or

(v) Conviction of any offense specified in RSA 265:79-b.

2 Words and Phrases Defined; Implement of Husbandry. Amend RSA 259:44 to read as follows:

259:44 Implement of Husbandry. "Implement of husbandry" shall mean equipment designed~~[;]~~ **or** adapted~~[;]~~ and used exclusively for agricultural, horticultural, forestry, or livestock operations, for which use on a public way is incidental to its intended function. "Implement of husbandry" shall include a self-propelled custom harvester, **sprayer, soil amendment spreader, or forage mower.**

3 New Section; Unified Carrier Registration Required. Amend RSA 261 by inserting after section 40 the following new section:

261:40-a Unified Carrier Registration Required. It is a violation for any person to drive or for the owner or lessee to cause to be driven on the ways of this state a motor vehicle subject to registration under the provisions of the Unified Carrier Registration Act of 2005, 49 U.S.C. section 14504a, as amended, unless the motor vehicle has been registered and the appropriate fee paid. The fine for a violation of this section shall not exceed \$500 plus penalty assessment for a first offense and \$1,000 plus penalty assessment for a subsequent offense in a 12-month period.

4 New Paragraph; Implements of Husbandry; Identification. Amend RSA 261:64 by inserting after paragraph II the following new paragraph:

III. Implements of husbandry shall not be operated on toll roads or on the interstate and defense highway system. When implements of husbandry not meeting the definition of a tractor in RSA 259:108 are moved over any other way, the power unit shall display in a conspicuous location an identifying decal or plate issued by the division. The identifying decal or plate issued by the division is not a registration and shall not require the municipal permit for registration described in RSA 261:148. The fee for each identifying decal or plate shall be \$15 for an implement weighing no more than 15,000 pounds and \$25 for an implement weighing 15,001 pounds or more. The identifying decal or plate shall not require annual renewal but shall expire upon a change of ownership of the implement. The director may adopt rules pursuant to RSA 541-A specifying the location for display of the identifying decal or plate, specifying such limitations as the director deems necessary for the safety of other highway users by restricting speeds of operation and operation after daylight hours, and specifying safety, conspicuity, and lighting equipment requirements.

5 Spillage of Material; Farming Operations. Amend RSA 266:72, IV to read as follows:

IV. The provisions of paragraphs I, II, II-a, and III of this section shall not apply to a local farmer transporting his **or her** own farm products or materials incidental to ~~his~~ **a local** farming ~~[operations]~~ **operation** where such transporting requires incidental use of a way, provided that such farmer shall not thereby be relieved of his **or her** duty to exercise reasonable care ~~[in carrying on such operations]~~ **to prevent hazardous spillage.**

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

AMENDED ANALYSIS

This bill:

I. Adds offenses to the definition of “habitual offender.”

II. Establishes penalties for failing to comply with unified carrier registration requirements.

III. Requires an identifying plate or decal for certain implements of husbandry.

This bill was requested by the department of safety.

2009-2531h

Amendment to HB 630-FN-A

Proposed by the Committee on Local and Regulated Revenues - R

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

1 Limitation; Live Racing and Simulcast. RSA 284:1 is repealed and reenacted to read as follows:

284:1 Limitation. This chapter shall be construed to apply only to running or harness horse racing, whether live or simulcast, or simulcast dog racing.

2 Racing and Charitable Gaming Commission. RSA 284:6-a, I-II are repealed and reenacted to read as follows:

I. There shall be a state racing and charitable gaming commission consisting of 6 members appointed by the governor with the advice and consent of the council. Each member shall hold office for a term of 3 years. Any vacancy shall be filled for the unexpired term. Annually, one member shall be chosen chairperson by the commission, and one shall be chosen as secretary.

II. The racing and charitable gaming commission shall assume the powers, rights, duties, and responsibilities granted to the state racing commission and the state greyhound racing commission under RSA 284, and any reference to the state racing commission or the state greyhound racing commission in RSA 284 or any other statutory cites shall be deemed to refer to the New Hampshire racing and charitable gaming commission. The New Hampshire racing and charitable gaming commission shall, in carrying out the purpose of this chapter, use the applicable provisions for horse racing independent of the applicable provisions for simulcast dog racing.

3 Rulemaking. RSA 284:12, III is repealed and reenacted as follows:

III. The operation of racetracks on which running or harness horse race meets are held and the facilities where simulcast of running or harness horse racing or dog racing are presented.

4 License Required; Investigation Fees. RSA 284:12-a, I is repealed and reenacted to read as follows:

I. No person, association, corporation, or any other type of entity shall hold any live running or harness race or meet, or shall conduct any simulcast running or harness horse or dog race or meet, at which pari-mutuel pools are sold without a license from the commission.

5 Requirements for License to Simulcast Dog Racing. RSA 284:15-a is repealed and reenacted to read as follows:

284:15-a Requirements for License to Simulcast Dog Racing.

I. Subject to the provisions of RSA 284:15-a, V, any person, association, or corporation desiring to simulcast a dog race at or for which pari-mutuel pools are sold, shall apply to the commission for a license to do so. The application shall be signed and sworn to by the person or executive officer of the association or corporation and shall contain the following information:

(a) The full name and address of the person, association, or corporation.

(b) If an association, the names and residences of the members of the association.

(c) If a corporation, the name of the state under which it is incorporated with its principal place of business and the names and addresses of its directors and stockholders.

(d) The location of the facility where it desires to conduct simulcast dog racing, provided, however, the location of such facility must be a place at which live dog racing was

conducted in 2008 and the operator of such facility was licensed by the commission in 2010 to accept pari-mutuel wagers on simulcast races pursuant to RSA 284:22-a.

(e) Whether or not the facility is owned or leased, and if leased, the name and residence of the fee owner, or if a corporation, of the directors and stockholders thereof.

(f) A statement of the assets and liabilities of the person, association, or corporation making such application.

(g) Such other information as the commission may require.

II. It shall be the responsibility of any license applicant or holder to inform the commission immediately of any material change or anticipated material change in the information required in this section.

III. The commission shall have the power to require, at the applicant's or holder's expense, that any financial information provided under paragraphs I and II be verified by an audit performed by a certified public accountant. The commission shall have the further power to require that as a condition of securing a license or of continuing to hold a license the license applicant or holder make available its books and records to permit the commission to perform such independent auditing or financial analysis as the commission may deem necessary. In so doing, the commission may employ certified public accountants and any other financial analysts or investigators necessary to perform auditing and may bill the license applicant or holder for all costs associated with the auditing.

IV. A person, association, or corporation which is issued a license pursuant to RSA 284:16-a may, with the approval of the commission, accept wagers on simulcast running or harness horse racing.

V. A person, association, or corporation which is issued a license pursuant to RSA 284:16 may, with the approval of the commission, accept wagers on simulcast dog racing.

6 Issuance of Licenses. RSA 284:16-a is repealed and reenacted to read as follows:

284:16-a Issuance of Licenses. If the commission is satisfied that all the provisions hereof and the rules and regulations prescribed have been and will be complied with by the applicant and that the financial backing upon which said application is predicated is sound and is committed in support of said application, it may issue a license which shall expire on the thirty-first day of December. The license shall set forth the name of the licensee, the place where the simulcast races or race meets are to be held, and the time and number of days during which simulcast racing may be conducted by said licensee. Any license issued shall not be transferable nor assignable. Said commission shall have power to revoke any license for good cause upon reasonable notice and hearing. The commission may at any time for cause require the removal of any employee or official employed by any licensee hereunder. The license of any corporation shall automatically cease upon the change in ownership, legal or equitable, of 50 percent or more of the voting stock of the corporation and the corporation shall not simulcast any racing without a new license.

7 License Restricted. RSA 284:16-c is repealed and reenacted to read as follows:

284:16-c License Restricted. Notwithstanding any other provision of law, the commission shall not issue a license pursuant to RSA 284:16-a to any applicant if the place where the simulcast dog races are to be presented is within a radius of 40 miles of Belmont, Salem, or Seabrook, New Hampshire, provided that the facilities at which simulcast dog racing was licensed by the commission are exempt from this restriction.

8 Laboratory Testing. RSA 284:20-g is repealed and reenacted to read as follows:

284:20-g Contracting and Payment for Laboratory Testing.

I. Beginning April 1, 2008, the commission shall contract with a qualified laboratory to provide laboratory testing services for the commission on horses that perform live at racetracks authorized to conduct live racing in the state. The commission shall issue a request for proposals for such services that sets forth the terms and conditions of the proposed service contract, including the requirements of this section, laboratory qualifications, cost per test, and such other information determined to be relevant by the commission. The commission shall present the contract to the attorney general for review

and, upon approval by the attorney general, the proposal shall be submitted to the governor and council for approval. The contract shall expire no later than June 30 of the second year of a biennium. Such laboratory test service agreement shall provide that the laboratory shall send each licensee an invoice for such testing in accordance with paragraph III.

II. The total cost of any contract under this section shall not exceed \$300,000 annually. In the event that the aggregate cost of testing exceeds \$300,000 based solely upon an increase in live racing within the state, the commission may request an increase in the maximum contract amount from the governor and council.

III. Each licensee shall pay the laboratory for the cost of each laboratory test conducted pursuant to the laboratory test service contract on the horse that performed live at the licensee's track. The laboratory shall provide the licensee with an invoice for such costs within 10 days after the end of each month in which the licensee conducts live racing and the licensee shall pay the invoice within 30 days after receipt of that invoice. Each invoice shall specify the number of tests conducted during the prior month, the identity of the animal tested, the results of each test, and the cost of each test.

9 Penalty. RSA 284:21 is repealed and reenacted to read as follows:

284:21 Penalty. Except in cases when another penalty is provided in this chapter, any person, association, or corporation holding or conducting, or any person or persons aiding or abetting in the holding or conducting, of any running or harness horse race, whether live or simulcast, or simulcast dog race or meet for public exhibition, at which pari-mutuel pools are sold, without a license duly issued by the commission, or any person, association, or corporation who violates any of the provisions of this chapter, or who violates any of the rules and regulations prescribed by the commission, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

10 Payment. RSA 284:22, IV is repealed and reenacted to read as follows:

IV. Subject to the provisions of RSA 284:22-a, V, the commission on all win, place, and show pari-mutuel pools at tracks or race meets at which simulcast dog races are conducted for public exhibition shall be uniform throughout the state at the rate of 19 percent of each dollar wagered in such pools; and the commission on all other pari-mutuel pools at such tracks or race meets shall be at the rate of 27 percent of each dollar wagered in such pools. In addition to the above commission, 1/2 of the odd cents of all redistribution based on each dollar wagered exceeding a sum equal to the next lowest multiple of 10, known as "breakage", shall be retained by the licensee, 1/4 paid to the state treasury for the use of the state and 1/4 shall be paid to the racing and charitable gaming commission. Each licensee shall pay the tax provided for in RSA 284:23.

11 Payment. RSA 284:22-a, I(c) is repealed and reenacted to read as follows:

(c) "Licensee" means

(1) Any individual, association, partnership, joint venture, corporation, or other organization or other entity which holds a license under RSA 284 to conduct a live running or harness horse race meet, or if the election is made pursuant to RSA 284:22-a, II(c), licensee means the individual, association, partnership, joint venture, corporation, or other organization or entity which applies for a license under RSA 284 to conduct simulcasting at a facility at which live running or harness horse racing was conducted in 2008, or

(2) The individual, association, partnership, joint venture, corporation, or other organization or other entity which applies for a license pursuant to RSA 284:15-a to conduct simulcasting at a facility at which live dog racing was conducted in 2008 and at which facility a license was issued to an applicant for 2010 to simulcast running and harness horse racing and dog racing.

12 Payment. RSA 284:22-a, II is repealed and reenacted to read as follows:

II.(a) During the calendar years 1941-2029, a licensee may sell pari-mutuel pools on races held at racetracks other than at the facility of the licensee, if any, provided:

(1) Such sales are within the enclosure of the facility at which the licensee holds a license;

(2) Wagers are made on races which are exhibited by television or other electronic reproduction at licensee's facility simultaneously with the conduct of each such race at its point of origin with the agreement or approval of the racetrack which provides the transmission of the races to be simulcast and the racetrack which conducts the races to be simulcast;

(3) Unless the licensee makes the election pursuant to RSA 284:22-a, II(c), the licensee which holds a license to conduct live harness or running horse racing has scheduled at least 50 calendar days of live harness and/or running horse racing in the calendar year such licensee simulcasts; and

(4) The licensee obtains the consents and approvals set forth in RSA 284:22-a, III.

13 Payment. Amend RSA 284:22-a, III to read as follows:

III. A licensee may sell pari-mutuel pools on races held at other appropriately licensed racetracks, whether such racetracks are in the state of New Hampshire or outside the state of New Hampshire with the agreement or approval of the racetrack which provides the transmission of the races to be simulcast and the racetrack which conducts the races to be simulcast. A licensee may sell pari-mutuel pools under RSA 284:22-a on the same types of races that it conducts live at its racetrack with the approval of the commission. ~~A licensee may sell pari-mutuel pools under RSA 284:22-a on types of races different from the type of races conducted live at the licensee's racetrack provided:~~

~~(a) The licensee obtains the approval of the commission; and~~

~~(b) The licensee shall have received city or town approval under RSA 284:17 to conduct the type of racing which is to be simulcast prior to or subsequent to the effective date of RSA 284:22-a; the type of racing which is to be simulcast shall have been approved by the city or town in which the licensee's racetrack is located in accordance with RSA 284:17 prior to or subsequent to the effective date of RSA 284:22-a; or the acceptance of wagers or simulcast races of a type other than the type of racing which the licensee conducts live at its racetrack shall have been approved by a majority vote at an annual town meeting or special town meeting called for such purpose in the town in which the licensee's racetrack is located.]~~

A licensee may sell pari-mutuel pools under RSA 284:22-a on types of races different from the types of races conducted live at the licensee's racetrack, or if such licensee holds a license pursuant to RSA 284:15-a and RSA 284:16-a, or the licensee makes the election pursuant to RSA 284:22-a, II(c) with respect to live running or harness horse racing, provided such licensee obtains the approval from the commission and the municipality in which the licensee operates its facility had approved the issuance of a license to conduct harness or running horse racing and/or dog racing, whether live or simulcast, in such municipality either prior to enactment of RSA 284:22-a or subsequent to enactment of RSA 284:22-a.

14 Payment. RSA 284:22-a, VIII is repealed and reenacted to read as follows:

VIII. RSA 284:22, I, II, III, and IV shall apply according to the type of race on which the simulcast wagers are made, excepting, however, interstate common pools as provided in RSA 284:22-a, V(b) and that the provisions made for purses made in RSA 284:22, I shall not apply to simulcast races. The commission on simulcast race pools shall be available to the simulcasting licensee to satisfy obligations to the racing association originating or transmitting such simulcast races or to the horsemen's group of such association.

15 False Entry. RSA 284:35 is repealed and reenacted to read as follows:

284:35 False Entry. No person shall knowingly enter or cause to be entered for competition, or knowingly compete with, any horse under any other than its true name, or out of its proper class, for any purse, prize, premium, stake or sweepstakes offered to the winner of a contest of speed.

16 Name. RSA 284:36 is repealed and reenacted to read as follows:

284:36 Name. The name of any horse for the purpose of entry for competition or performance in any contest of speed, shall be the name under which said horse has been registered and has publicly performed, and shall not be changed, except as provided by the code of printed rules of the society or association under which the contest is advertised to be conducted.

17 Malicious Interference with Horses. RSA 284:38 is repealed and reenacted to read as follows:

284:38 Malicious Interference with Horses. Any person who willfully or maliciously attempts to or does interfere with, tamper with, injure, or destroy by the use of narcotics, drugs, stimulants, or appliances of any kind used by any horse for the purpose of racing, whether such horse is the property of such person or another, or who willfully or maliciously causes, instigates, counsels, or in any way aids or abets any such interference, tampering, injury, or destruction shall be guilty of a class B felony if a natural person, or guilty of a felony if any other person. The owner of any race horse engaged in racing within this state that is found to have been stimulated or doped, or any entry of which such horse is a part, shall be denied any part of the purse offered for such race, and the purse shall be distributed as in the case of a disqualification.

18 Trainer as Insurer. RSA 284:38-a is repealed and reenacted to read as follows:

284:38-a Trainer as Insurer.

I. The trainer of record shall be responsible for and shall be the insurer of the condition of any horses used for the purposes of racing, which such trainer of record enters to race. In this section, "trainer of record" means the person registered and identified as trainer of such horse used for the purpose of racing in the records of the racing and charitable gaming commission.

II. The racing and charitable gaming commission may impose sanctions or penalties upon the trainer of record resulting from the condition of the horse entered in a race failing to comply with the rules of the commission. Any person aggrieved by a decision by the commission, shall have the right to appeal the decision to the full commission. Any appeal to the commission shall be in accordance with RSA 284:13.

19 Rights of Licensee. RSA 284:39 is repealed and reenacted to read as follows:

284:39 Rights of Licensee.

I. Any licensee under this chapter may refuse admission to, or eject from, the grounds or the enclosure of the racetrack or facility where a licensed live race or race meet or is being held or where licensed simulcasting is held, any person or persons whose presence or conduct, in the sole judgment of the licensee, is inconsistent with the orderly and proper conduct of the live or simulcast race meet, or is detrimental to the sport of racing, whether or not such presence or offensive conduct is associated with gambling.

II. The phrase "grounds or the enclosure of the racetrack or facility" means all real or personal property used by the licensee in the operation of the racetrack and the facilities for simulcasting, including without limitation, the parking lots, grandstands, stables, barn areas, and buildings at the racetrack or facility.

20 Repeal. The following are repealed:

I. RSA 284:14-d, relative to records of greyhound injuries.

II. RSA 284:14-c, relative to records of greyhound disposition.

21 Repeal. The following are repealed:

I. RSA 284:12, II, relative to holding dog races for public exhibition.

II. RSA 284:12, V, relative to rules regarding greyhound racing.

III. RSA 284:12, VIII, relative to rules regarding racing greyhound injury records.

IV. RSA 284:14-a, relative to breeding of greyhounds.

V. RSA 284:15-c, relative to local option relative to dog racing licenses.

VI. RSA 284:17-a, relative to the restriction on Sunday racing.

VII. RSA 284:18-a, relative to rules of racing.

VIII. RSA 284:20-b, relative to judges supervising dog races.

IX. RSA 284:23, III(a), relative to payments made to the state treasurer.
X. RSA 284:23, VI, relative to licensee reports to the racing and charitable gaming commission.

22 Effective Date.

I. Section 20 of this act shall take effect January 1, 2015.

II. The remainder of this act shall take effect January 1, 2011.

AMENDED ANALYSIS

This bill prohibits dog racing in New Hampshire.

This bill also allows existing racing licensees to broadcast simulcast running and harness horse and dog races.

2009-2409h

Amendment to HB 652-FN

Proposed by the Minority of the Committee on Environment and Agriculture - R

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

AN ACT relative to the protection of ground water.

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

1 Terrain Alteration. Amend RSA 485-A:17, I to read as follows:

I. Any person proposing to dredge, excavate, place fill, mine, transport forest products or undertake construction in or on the border of the surface waters of the state, and any person proposing to significantly alter the characteristics of the terrain, in such a manner as to impede the natural runoff or create an unnatural runoff, ***or alter natural recharge, or deplete groundwater resources*** shall be directly responsible to submit to the department detailed plans concerning such proposal and any additional relevant information requested by the department, at least 30 days prior to undertaking any such activity. The operations shall not be undertaken unless and until the applicant receives a permit from the department. The department shall have full authority to establish the terms and conditions under which any permit issued may be exercised, giving due consideration to the circumstances involved and the purposes of this chapter, and to adopt such rules as are reasonably related to the efficient administration of this section, ~~and~~ the purposes of this chapter, ***and the protection of groundwater quality and quantity in accordance with RSA 485-C***. Nothing contained in this paragraph shall be construed to modify or limit the duties and authority conferred upon the department under RSA 482 and RSA 482-A.

2 Effective Date. This act shall take effect 30 days after its passage.

AMENDED ANALYSIS

This bill requires any person who plans to alter or deplete groundwater resources to submit plans to the department of environmental services and permits the department to adopt rules related to groundwater quality and quantity.

2009-2532h

Amendment to HB 656-FN

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

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

1 Education Property Tax to be Collected by Department of Revenue Administration.
RSA 76:3, is repealed and reenacted to read as follows:

76:3 Education Property Tax.

I. Beginning July 1, 2010, and every fiscal year thereafter, the commissioner of the department of revenue administration shall set the education tax rate at a level sufficient to generate revenue of \$363,000,000 when imposed on all persons and property taxable pursuant to RSA 76:8, except property subject to tax under RSA 82 and RSA 83-F. The education property tax rate shall be effective for the following fiscal year. The rate shall be set to the nearest 1/2 cent necessary to generate the revenue required in this section.

II. The commissioner of the department of revenue administration shall determine the state portion of the education tax owed by each taxpayer under this section and bill each taxpayer for ½ the amount payable by July 1 and ½ the amount payable by December 1 of each year.

III.(a) The selectmen or municipal tax collectors shall send a bill to the taxpayer for all taxes, interest, additions to tax, and penalties imposed under this chapter. The taxpayer shall remit the amount due the state to the department of revenue administration. The state treasurer shall deposit all taxes collected in the education trust fund established under RSA 198:39 and all interest, additions to tax, and penalties in the education property tax hardship relief fund established under RSA 198:65.

(b) The commissioner shall reimburse a city or town 50 cents for each tax bill sent by the city or town to a taxpayer for the local portion of the education property tax.

IV. The selectmen or municipal tax collectors or the commissioner may institute actions in the name of the state to recover any tax, interest on tax, additions to tax, or the penalties imposed by this section.

V. In the collection of the tax imposed by this section, the selectmen or municipal tax collectors or the commissioner may use all of the powers granted to tax collectors under RSA 80 for the collection of taxes. The commissioner shall also have all of the duties imposed upon the tax collectors by RSA 80 that are applicable to the commissioner. The provisions of RSA 80:26 shall apply to the sale of land for the payment of taxes due under this chapter, and the state treasurer is authorized to purchase the land for the state. If the state purchases the land, the state treasurer shall certify the purchase to the governor, and the governor shall draw a warrant for the purchase price out of any money in the treasury not otherwise appropriated.

VI. Appeals regarding valuation of property shall be made to the board of tax and land appeals or the superior court of the county in which the taxpayer resides in the manner prescribed in RSA 76:16-a and RSA 76:17. Appeals other than appeals of valuation shall be made according to the procedure and subject to the time limits provided for other taxes administered by the department under RSA 21-J.

VII. Taxes not paid when due shall be subject to appropriate penalties and interest under RSA 21-J.

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

I. The state treasurer shall establish an education trust fund in the treasury. Moneys in such fund shall not be used for any purpose other than to distribute adequate education grants to municipalities' school districts and to approved charter schools pursuant to RSA 198:42, to ~~provide flow and moderate income homeowners property tax relief under RSA 198:56-198:61~~ **reimburse municipalities for the local portion of education property tax relief claims made pursuant to RSA 198:63 and individual taxpayers for the state portion of education property tax relief claims made pursuant to RSA 198:63**, and to fund kindergarten programs as may be determined by the general court. The state treasurer shall deposit into this fund immediately upon receipt:

3 Reference Change; Source of Funds; Education Trust Fund. RSA 198:39, I(g) is repealed and reenacted to read as follows:

(g) Education property taxes paid over to the state treasurer by the department of revenue administration pursuant to RSA 76:3.

4 Determination of Adequate Education Grants. Amend RSA 198:41, I to read as follows:

I. Except for municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of education shall determine the amount of the education grant for the municipality as follows:

(a) Add the per pupil cost of providing the opportunity for an adequate education for which each pupil is eligible pursuant to RSA 198:40-a, I-III, and from such amount;

(b) ~~[Subtract the amount of the education property tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:9 for the next tax year, and from such amount; and~~

~~(e)]~~ Add the fiscal capacity disparity aid pursuant to RSA 198:40-c.

5 Reference Change. Amend RSA 198:41, II(b) to read as follows:

(b) The total amount paid for items of current education expense as determined by the department of education ~~[minus the amount of the education property tax warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:9 for the next tax year].~~

6 New Subdivision; Education Property Tax Relief. Amend RSA 198 by inserting after section 61 the following new subdivision:

Education Property Tax Relief

198:62 Definitions. In this subdivision:

I.(a) "Claimant" means a person who:

(1) Has filed a claim with the department for reduction in such claimant's property taxes under this subdivision; and

(2) During the 3 fiscal years preceding the year in which the person files a claim for relief under this chapter:

(A) Has had an ownership interest in a homestead and was domiciled in the homestead upon which education property taxes have accrued and for which the person is making a claim for tax relief from education property taxes in this state; and

(B) Was not a full-time student claimed as a dependent by any taxpayer under the United States Internal Revenue Code; and

(3) Did not during the prior federal income tax year, pay the alternative minimum tax.

(b) In this paragraph, the term "ownership interest" includes:

(1) A vendee in possession under a land contract;

(2) One or more joint tenants or tenants in common; or

(3) A person who has equitable title, or the beneficial interest for life in the homestead.

II. "Commissioner" means the commissioner of the department of revenue administration.

III. "Department" means the department of revenue administration.

IV. "Education property taxes" means the sum of the statewide education property tax under RSA 76:3 and the education portion of property taxes assessed by a municipality.

V. "Equalized assessed value" or "equalized assessed valuation" means the modified assessed valuation of property equalized by the commissioner pursuant to RSA 21-J:3, XIII. In this paragraph, "modified assessed valuation" means the sum of the assessments of taxable property in a municipality less the statutory exemptions provided in RSA 72:12-a, 72:12-b, 72:37, 72:39-a, and 72:39-b. "Modified assessed valuation" shall not include optional exemptions provided in RSA 72:37-b, 72:62, 72:66, and 72:70.

VI.(a) "Excessive education property taxes" means the sum of the state education rate determined under RSA 76:3 multiplied by the equalized value of the claimant's qualifying homestead and the amount of the local education portion of property taxes assessed on a claimant's homestead; which is in excess of 10 percent of a claimant's household income for the calendar year preceding the tax year of the excessive education property tax claim.

(b) In this paragraph, "equalized assessed value of the qualifying homestead" means the local assessed value of the homestead equalized by applying the equalization ratio for the municipality, as determined by the commissioner pursuant to RSA 21-J:3, XIII, for the year of the claim.

(c) A qualifying homestead is the first \$100,000 of equalized value of a homestead. If a homestead is owned by 2 or more persons or entities as joint tenants or

tenants in common, and one or more persons or entities are not members of the claimant's household, "excessive education property taxes" applies to that part of statewide education property taxes levied on the homestead which reflects the ownership percentage of the claimant and the claimant's household. If a homestead is an integral part of a larger unit such as a multi-dwelling building, the statewide education property taxes shall be that percentage of the total education property taxes accrued as the total inhabitable area of the claimant's dwelling is of the total inhabitable area of the building. For purposes of this paragraph "unit" refers to the parcel of property covered by a single tax statement of which the homestead is a part.

VII.(a) "Homestead" means the dwelling owned by a claimant which is used as the claimant's principal place of residence for not less than 240 days in a calendar year and includes the following:

- (1) The land upon which the dwelling stands;
- (2) Visual and ordinary appurtenant structures such as but not limited to garages, wood sheds, barns, and other outbuildings;
- (3) The land upon which such appurtenant structures stand;
- (4) Land contiguous to such dwelling and appurtenant structures that is groomed and maintained around them; and
- (5) Land necessary to the support and service of the dwelling such as but not limited to driveways and maintained rights-of-way for purposes of ingress and egress to the dwelling.

(b) A homestead may consist of a part of a multi-unit dwelling and its proportionate share of the land upon which it stands and other ordinary appurtenant common facilities.

(c) In this paragraph, the term "owned" includes a vendee in possession under a land contract and one or more joint tenants or tenants in common.

(d) "Homestead" shall not include personal property such as furniture, furnishings or appliances, or structures.

(e) Manufactured housing shall be considered a dwelling.

VIII. "Household income" means any and all income received by a household, including disability income, social security income, and other sources of income which are nontaxable under the United States Internal Revenue Code. "Household income" shall also include all income of any trust through which the claimant holds equitable title, or the beneficial interest for life, in the homestead.

IX. "Education property tax" means the tax levied under RSA 76:3.

X. "United States Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended.

198:63 Claims for Education Property Tax Relief.

I.(a) A claimant shall be entitled to make claim to the department for education property tax relief equal to the excessive education property taxes levied under RSA 76:3 on the first \$100,000 of equalized valuation of the claimant's homestead.

(b) No claim with respect to relief by a claimant under this subdivision shall be allowed unless the claim is filed with the department by March 1 following the date of notice of tax as defined in RSA 72:1-d.

II. No interest shall be allowed on any relief to which a claimant may be entitled under this subdivision.

III. Annually, the commissioner shall reimburse each city or town for the amount of relief granted against the local tax portion of the education property tax. Such reimbursement shall be paid from the education trust fund established in RSA 198:39.

IV. No person who qualifies for the alternative minimum tax under federal tax law shall be eligible to file a claim under this section.

V. No person who has claimed a homestead exemption in another state shall be eligible to claim the homestead exemption under this subdivision in the same tax year.

198:64 Reports of Claims. By May 15 of each year, the department shall report to the state treasurer the qualifying claimants under RSA 198:63.

198:65 Education Property Tax Hardship Relief Fund; Reimbursement to Qualifying Claimants; Appropriation. An education property tax hardship relief fund is established within the office of the state treasurer to pay qualified claims made under RSA 198:63. Interest, additions to tax, and penalties received by the state treasurer under RSA 76:3, IV shall be deposited in this fund. Within 30 days of receipt of the report by the department required under RSA 198:65, the state treasurer shall, to the extent of available funds, reimburse a qualifying claimant by June 15 of each year for qualified claims received under RSA 198:63. Such payments shall be charged against the education property tax hardship relief fund. Payments shall be made to the extent of annual appropriations to the fund and shall not exceed such annual appropriations to the fund.

198:66 One Claimant Per Household. Only one claimant per household per year shall be entitled to relief under this subdivision.

198:67 Claim is Personal. The right to file a claim under this subdivision shall be personal to the claimant. The right to file a claim under this subdivision shall survive the claimant's death to the extent that this right may be exercised on behalf of a claimant by a legal guardian, attorney, spouse, or another person who could have qualified as the claimant had the decedent not filed.

198:68 Administration; Rulemaking.

I. This subdivision shall be administered and enforced by the department.

II. The department shall adopt rules, pursuant to RSA 541-A, necessary to administer and enforce this subdivision.

198:69 Forms for Claim. The commissioner of revenue administration shall make available suitable forms with instructions for claimants. Such forms may require claimants to provide all information reasonably necessary to determining the accuracy of claims, including, but not limited to, property taxes accrued, changes of homestead, household membership, household income, size and nature of property claimed as the homestead, and a statement that the property taxes have been or will be paid by the claimant.

198:70 Fraudulent Claims; Penalty. A person shall be guilty of a class B felony who:

I. Files a fraudulent claim.

II. With fraudulent intent, assisted in the preparation or filing of the fraudulent claim or supplied information upon which the fraudulent claim was prepared.

198:71 Appeals. Any person aggrieved by the denial in whole or in part of a claim under this subdivision, except when the denial is based upon late filing of claim, may appeal the denial to the board of tax and land appeals or to the superior court in the county in which the person resides by filing a petition within 30 days after such denial. Procedures for an appeal of a denial of a claim shall be the same as the procedures for an appeal of a denial of an abatement of property tax under RSA 76:16-a–RSA 76:17.

198:72 Claim Applied Against Outstanding Liabilities. The amount of any claim otherwise payable under this subdivision may be applied by the department against any liability outstanding against the claimant or against anyone who was a member of the household in the taxable year to which the claim relates.

7 New Subparagraph; Special Fund. Amend RSA 6:12, I by inserting after subparagraph (299) the following new subparagraph:

(300) Interest, additions to tax, and penalties received from the commissioner of revenue administration under RSA 76:3, IV.

8 Application of Receipts; Reference Deleted. Amend RSA 6:12, I(b)(65) to read as follows:

(65) Money received under RSA 77-A, RSA 77-E, RSA 78, RSA 78-A, RSA 78-B, RSA 83-F, ~~[RSA 198:46,~~ and from the sweepstakes fund, which shall be credited to the education trust fund under RSA 198:39.

9 Repeal. The following are repealed:

- I. RSA 76:8, I and II, relative to the commissioner's warrant.
 - II. RSA 76:9, relative to the commissioner's report.
 - III. RSA 198:46, relative to excess education property tax payment.
 - IV. RSA 198:47, relative to forms for reporting and remitting of excess education property tax.
 - V. RSA 198:56-61, relative to the low and moderate income homeowners property tax relief program.
- 10 Effective Date. This act shall take effect July 1, 2010.

2009-2482h

Amendment to HB 660-FN

Proposed by the Committee on Commerce and Consumer Affairs - R

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

1 New Chapter; Life Settlements Act. Amend RSA by inserting after chapter 408-C the following new chapter:

CHAPTER 408-D

LIFE SETTLEMENTS ACT

408-D:1 Short Title. This chapter may be cited as the life settlements act.

408-D:2 Definitions. In this chapter:

I. "Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, in this state, for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest or transfer the death benefit or ownership of a life insurance policy to a life settlement contact.

II. "Business of life settlements" means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other manner, acquiring an interest in a life insurance policy by means of a life settlement contract.

III. "Chronically ill" means:

(a) Being unable to perform at least 2 activities of daily living, including eating, toileting, transferring, bathing, dressing or continence;

(b) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

(c) Having a level of disability similar to that described in subparagraph (a) as determined by the department of health and human services.

IV. "Commissioner" means the insurance commissioner.

V.(a) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a life settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a life settlement contract, but:

(1) Whose principal activity related to the transaction is providing funds to effect the life settlement contract or purchase of one or more viaticated policies; and

(2) Who has an agreement in writing with one or more licensed life settlement providers to finance the acquisition of life settlement contracts.

(b) "Financing entity" does not include a non-accredited investor or a life settlement purchaser.

VI. "Fraudulent life settlement act" includes:

(a) Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in acts including, but not limited to:

(1) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a life settlement provider, life settlement premium finance lender, life settlement producer, life settlement purchaser, financing entity insurer, insurance producer or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

- (A) An application for the issuance of a life settlement contract or insurance policy;
- (B) The underwriting of a life settlement contract or insurance policy;
- (C) A claim for payment or benefit pursuant to a life settlement contract or insurance policy;
- (D) Premiums paid on an insurance policy;
- (E) Payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract, or insurance policy;
- (F) The reinstatement or conversion of an insurance policy;
- (G) The solicitation, offer, effectuation, or sale of a life settlement contract, or insurance policy;
- (H) The issuance of written evidence of life settlement contracts or insurance;
- (I) A financing transaction; or
- (J) Plan which involves “stranger-originated life insurance” (STOLI) as defined in paragraph XVI.

(2) Employing any plan, financial structure, device, scheme, or artifice to defraud related to viaticated policies.

(b) In the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its employees or its agents to:

- (1) Remove, conceal, alter, destroy or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of life settlements;
- (2) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer or other person;
- (3) Transact the business of life settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of life settlements; or
- (4) File with the commissioner or the equivalent chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the commissioner.

(c) Embezzlement, theft, misappropriation or conversion of moneys, funds, premiums, credits or other property of a life settlement provider, insurer, insured, viator, insurance policy owner or any other person engaged in the business of life settlements or insurance.

(d) Recklessly entering into, negotiating, brokering, otherwise dealing in a life settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the person or the persons intended to defraud the policy’s issuer, the life settlement provider or the viator. “Recklessly” means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.

(e) Facilitating the change of state of ownership of a policy or certificate or the state of residency of a viator to a state or jurisdiction that does not have a law similar to this chapter for the express purposes of evading or avoiding the provisions of this chapter.

(f) Attempting to commit, assisting, aiding or abetting the commission of, or conspiracy to commit the acts or omissions specified in this paragraph.

VII. "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to RSA 402-J:7, I(a).

VIII. "Life settlement producer" means a person as provided for in RSA 408-D:3, who working for a fee, commission, or other valuable consideration, offers or attempts to solicit or negotiate life settlement contracts between a viator and one or more life settlement providers or one or more life settlement producers. The term does not include an attorney, certified public accountant or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the life settlement provider or life settlement purchaser.

IX. "Life settlement contract" means the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this state.

(a) "Life settlement contract" includes a written agreement between a viator and a life settlement provider or any affiliate of the life settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the viator's present or future assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.

(b) "Life settlement contract" includes a premium finance loan made for a life insurance policy by a lender to viator on, before or after the date of issuance of the policy where:

(1) The viator or the insured receives on the date of the premium finance loan a guarantee of a future life settlement value of the policy; or

(2) The viator or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

(c) "Life settlement contract" does not include:

(1) A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms;

(2) Loan proceeds that are used solely to pay:

(A) Premiums for the policy;

(B) The costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third party collateral provider fees and expenses, including fees payable to letter of credit issuers;

(3) A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, provided that the default itself is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter;

(4) A loan made by a lender that does not violate RSA 415-B, provided that the premium finance loan is not described in subparagraph (b);

(5) An agreement where all the parties are closely related to the insured by blood or law, or have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties;

(6) Any designation, consent or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;

(7) A bona fide business succession planning arrangement;

(A) Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trust established by its shareholders;

(B) Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or

(C) Between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trust established by its members;

(8) An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or

(9) Any other contract, transaction or arrangement exempted from the definition of life settlement contract by the commissioner based on a determination that the contract, transaction or arrangement is not of the type to be regulated by this chapter.

X.(a) "Life settlement provider" means a person, other than a viator, that enters into or effectuates a life settlement contract with a viator resident in this state.

(b) "Life settlement provider" does not include:

(1) A bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan;

(2) A premium finance company making premium finance loans and exempted by the commissioner from the licensing requirement under the premium finance laws that takes an assignment of a life insurance policy solely as collateral for a loan;

(3) The issuer of the life insurance policy;

(4) An authorized or eligible insurer that provides stop loss coverage or financial guaranty insurance to a life settlement provider, life settlement purchaser, financing entity, special purpose entity or related provider trust;

(5) A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;

(6) A financing entity;

(7) A special purpose entity;

(8) A related provider trust;

(9) A life settlement purchaser; or

(10) Any other person that the commissioner determines is not the type of person intended to be covered by the definition of life settlement provider.

XI.(a) "Life settlement purchaser" means a person who provides a sum of money as consideration for the life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a life settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a life settlement contract, for the purpose of deriving an economic benefit.

(b) "Life settlement purchaser" does not include:

(1) A licensee under this chapter;

(2) An accredited investor or qualified institutional buyer as defined, respectively, in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended;

(3) A financing entity;

(4) A special purpose entity; or

(5) A related provider trust.

XII. "Person" means a natural person or a legal entity, including, but not limited to, an individual, a partnership, limited liability company, association, trust, or corporation.

XIII. "Policy" means an individual or group policy, group certificate, contract or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

XIV. "Related provider trust" means a titling trust or other trust established by a licensed life settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. In order to qualify as a related provider trust, the trust must have a written agreement with the licensed life settlement provider under which the licensed life settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to life settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed life settlement provider.

XV. "Special purpose entity" means a corporation, partnership, trust, limited liability company or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets:

- (a) For a financing entity or licensed life settlement provider;
- (b) In connection with a transaction in which the securities in the special purposes entity are acquired by the viator or by "qualified institutional buyers" as defined in Rule 144 promulgated under the Securities Act of 1933, as amended; or
- (c) The securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

XVI. "Stranger-originated life insurance" or "STOLI" means a practice or plan to initiate a life insurance policy for the benefit of a third party investor who, at the time of policy origination, has no insurable interest in the insured. STOLI practices include but are not limited to cases in which life insurance is purchased with resources or guarantees from or through a person, or entity, who, at the time of policy inception, could not lawfully initiate the policy himself or itself, and where, at the time of inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy and/or the policy benefits to a third party. Trusts, that are created to give the appearance of insurable interest, and are used to initiate policies for investors, violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not include those practices set forth in RSA 408-D:2, XI(b)(2).

XVII. "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in 24 months or less.

XVIII. "Viaticated policy" means a life insurance policy or certificate that has been acquired by a life settlement provider pursuant to a life settlement contract.

XIX.(a) "Viator" means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a life settlement contract. For the purposes of this chapter, a viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one viator on a single policy and the viators are residents of different states, the transaction shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all the viators.

(b) "Viator" does not include:

- (1) A licensee under this chapter, including a life insurance producer acting as a life settlement producer pursuant to this chapter;
- (2) Qualified institutional buyer as defined, respectively, in Rule 144A promulgated under the Federal Securities Act of 1933, as amended;
- (3) A financing entity;
- (4) A special purpose entity; or
- (5) A related provider trust.

408-D:3 License and Appointment Requirements.

I.(a) A person shall not operate as a life settlement provider or life settlement producer without first obtaining a license from the commissioner of the state of residence of the viator. If there is no license requirement in the state of residence of the viator, then a license must be obtained in New Hampshire.

(b)(1) A resident or nonresident life insurance producer who has been duly licensed with a life line of authority in this state or his or her home state for at least one year shall be deemed to meet the licensing requirements of subparagraph VI(b)(1) and (2) of this section and shall be permitted to operate as a life settlement producer upon demonstration of evidence of financial responsibility as required in subparagraph VI(b)(3).

(2) Not later than 30 days from the first day of operating as a life settlement producer, the life insurance producer shall notify the commissioner that he or she is acting as a life settlement producer on a form prescribed by the commissioner, and shall pay any applicable fee to be determined by the commissioner. Notification shall include an acknowledgement by the life insurance producer that he or she will operate as a life settlement producer in accordance with this chapter.

(3) The insurer that issued the policy being viaticated shall not be responsible for any act or omission of a life settlement producer or life settlement provider arising out of or in connection with the life settlement transaction, unless the insurer receives compensation for the placement of a life settlement contract from the life settlement provider or life settlement producer in connection with the life settlement contract.

(4) The life settlement provider shall be responsible for any act or omission of an appointed life settlement producer as set forth in RSA 408-D:15, VI.

(c) A person licensed as an attorney, certified public accountant or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator, whose compensation is not paid directly or indirectly by the life settlement provider, may negotiate life settlement contracts on behalf of the viator without having to obtain a license as a life settlement producer.

II. Application for a life settlement provider or a life settlement producer license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and these applications shall be accompanied by the fees specified in RSA 400-A:29.

III. Licenses may be renewed from year to year on the anniversary date upon payment of the annual renewal fees specified in RSA 400-A:29. Failure to pay the fees by the renewal date results in expiration of the license.

IV. The applicant shall provide information on forms required by the commissioner. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees, and the commissioner may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of any person if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards of this chapter.

V.(a) A life settlement producer that negotiates a life settlement contract between a viator and a life settlement provider shall be appointed by the life settlement provider.

(b) To appoint a life settlement producer, the life settlement provider shall file a notice of appointment in a format approved by the commissioner within 15 days from the date the contract between the life settlement provider and the life settlement producer is executed or the life settlement contract is signed and executed.

(c) The life settlement provider shall pay an appointment fee as set forth in RSA 400-A:29 for each life settlement producer appointed by the life settlement provider.

(d) The life settlement provider shall notify the commissioner within 15 days of any termination of an appointment of a life settlement producer using a format approved by the commissioner.

VI. Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

(a) If the life settlement provider:

- (1) Has provided a detailed plan of operation;
- (2) Is competent and trustworthy and intends to act in good faith;
- (3) Has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied; and
- (4) Has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through either a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or a deposit of cash, certificates of deposit or securities or any combination thereof in the amount of \$250,000.

(b) If a life settlement producer:

- (1) Is competent and trustworthy and intends to act in good faith;
- (2) Has a good business reputation and has had 15 hours of training or education related to life settlements and life settlement transactions so as to be qualified in the business for which the license is applied;
- (3) Has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through either a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or a deposit of cash, certificates of deposit or securities or any combination thereof in the amount of \$250,000;
- (4) The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary;
- (5) Any surety bond issued pursuant to subparagraphs (a)(4) and (b)(3) shall be in the favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud or conviction of unfair practices by the life settlement provider or life settlement producer; and
- (6) Notwithstanding any provision of this paragraph to the contrary, the commissioner shall accept, as evidence of financial responsibility, proof that financial instruments in accordance with the requirements in this paragraph have been filed with one state where the applicant is licensed as a life settlement provider or life settlement producer.

(c) If a legal entity, provides a certificate of good standing from the state of domicile; and

(d) If a life settlement provider or life settlement producer, has provided an anti-fraud plan that meets the requirements of RSA 408-D:15, VII.

VII. The commissioner shall not issue a license to a nonresident applicant, unless a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner, the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

VIII. A life settlement provider or life settlement producer shall provide to the commissioner new or revised information about officers, 10 percent or more stockholders, partners, directors, members of designated employees within 30 days of the change.

IX. An individual licensed as a life settlement producer shall complete on an annual basis 15 hours of training related to life settlements and life settlement transactions, as required by the commissioner. Any person failing to meet the requirements of this paragraph shall be subject to the penalties imposed by the commissioner.

408-D:4 License Revocation and Denial.

I. The commissioner may refuse to issue, suspend, revoke or refuse to renew the license of a life settlement provider, or a life settlement producer, or a life insurance producer operating as a life settlement producer if the commissioner finds that:

(a) There was any material misrepresentation in the application for the license;

(b) The licensee or any officer, partner, member or key management personnel has been convicted of fraudulent or dishonest practices, is subject to final administrative action or is otherwise shown to be untrustworthy or incompetent;

(c) The life settlement provider demonstrates a pattern of unreasonable payments to viators;

(d) The licensee or any officer, partner, member or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to any felony, or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

(e) The life settlement provider has entered into any life settlement contract that has not been approved pursuant to this chapter;

(f) The life settlement provider has failed to honor contractual obligations set out in a life settlement contract;

(g) The licensee no longer meets the requirements for initial licensure;

(h) The life settlement provider has assigned, transferred or pledged a settled policy to a person other than a life settlement provider licensed in this state, life settlement purchaser, an accredited investor or qualified institutional buyer as defined respectively in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended, financing entity, special purpose entity, or related provider trust; or

(i) The licensee or any officer, partner, member or key management personnel has violated any provision of this chapter.

II. If the commissioner denies a license application or suspends, revokes or refuses to renew the license of a life settlement provider, life settlement producer, or suspends, revokes, or refuses to renew a license of a life insurance producer operating as a life settlement producer pursuant to this chapter the commissioner shall conduct a hearing in accordance with RSA 541-A.

408-D:5 Approval of Life Settlement Contracts and Life Settlement Provider Disclosure Statements.

I. A person shall not use a life settlement contract form or provide to a viator a disclosure statement form in this state unless first filed with and approved by the commissioner.

II. The commissioner shall disapprove a life settlement contract form or disclosure statement form if, in the commissioner's opinion, the life settlement contract or provisions contained therein fail to meet the requirements of RSA 408-D:9, RSA 408-D:11, RSA 408-D:14 and RSA 408-D:15, II, or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. At the commissioner's discretion, the commissioner may require the submission of advertising material.

408-D:6 Reporting Requirements and Privacy.

I. Each life settlement provider shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner may prescribe by rule. Individual transaction data regarding the business of life settlements or data that could compromise the privacy of personal, financial and health information of the viator or insured shall be filed with the commissioner on a confidential basis.

II. Except as otherwise allowed or required by law, a life settlement provider, life settlement producer, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose that identity as an insured, or the insured's financial or medical information to any other person unless the disclosure:

(a) Is necessary to effect a life settlement between the viator and a life settlement provider and the viator and insured have provided prior written consent to the disclosure;

(b) Is necessary to effect a life settlement purchase agreement between the life settlement purchaser and a life settlement provider and the viator and insured have provided prior written consent to the disclosure;

(c) Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of RSA 408-D:15, III;

(d) Is a term of or condition to the transfer of a policy by one life settlement provider to another life settlement provider;

(e) Is necessary to permit a financing entity, related provider trust or special purpose entity to finance the purchase of policies by a life settlement provider and the viator and insured have provided prior written consent to the disclosure;

(f) Is necessary to allow the life settlement provider or life settlement producer or their authorized representatives to make contacts for the purpose of determining health status; or

(g) Is required to purchase stop loss coverage or financial guaranty insurance.
408-D:7 Examination or Investigations.

I. Authority, scope, and scheduling of examinations

(a)(1) The commissioner may conduct an examination under this chapter of a licensee as often as the commissioner in his or her discretion deems appropriate.

(2) In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner may consider such matters as consumer complaints, results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, report of independent certified public accountants, and other relevant criteria as determined by the commissioner.

(b) For purposes of completing an examination of a licensee under this chapter, the commissioner may examine or investigate any person, or the business of any person, in so far as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the licensee.

(c) In lieu of an examination under this chapter of any foreign or alien licensee licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state.

(d) As far as practical, the examination of a foreign or alien licensee shall be made in cooperation with the insurance supervisory officials of other states in which the licensee transacts business.

II. Record retention requirements.

(a) A person required to be licensed by this chapter shall for 5 years retain copies of all:

(1) Proposed, offered or executed contracts, purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer or execution of the contract or purchase agreement, whichever is later;

(2) All checks, drafts, or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date of the transaction; and

(3) All other records and documents related to the requirements of this chapter.

(b) This paragraph shall not relieve a person of the obligation to produce these documents to the commissioner after the retention period has expired if the person has retained the documents.

(c) Records required to be retained by this section shall be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

III. Conduct of examinations.

(a) Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners Handbook adopted by the National Association of Insurance Commissioners (NAIC). The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

(b) Every licensee or person from whom information is sought, its officers, directors and agents shall provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets and computer or other recordings relating to the property, assets, business and affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the licensee to engage in the life settlement business or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation or refusal of any license or authority shall be conducted pursuant to Title XXXVII.

(c) The commissioner may issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence.

(d) When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the subject of the examination.

(e) Nothing contained in this chapter shall be construed to limit the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(f) Nothing contained in this chapter shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner may, in his or her sole discretion, deem appropriate.

IV. Examination reports.

(a) Examination reports shall be comprised of only facts appearing upon the books, records or other documents of the licensee, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(b) No later than 60 days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(c) In the event the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law.

V. Confidentiality of examination information.

(a) Names and individual identification data for all viators, owners, purchasers, and insureds shall be considered private and confidential information and shall not be disclosed by the commissioner, unless the disclosure is to another regulator or is required by law.

(b) Except as otherwise provided in this chapter, all examination reports, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this chapter, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee shall be confidential by law and privileged, shall not be subject to RSA 91-A, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(c) Documents, materials or other information, including, but not limited to, all working papers, and copies thereof, in the possession or control of the NAIC and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are:

(1) Created, produced or obtained by or disclosed to the NAIC and its affiliates and subsidiaries in the course of assisting an examination made under this chapter, or assisting a commissioner in the analysis or investigation of the financial condition or market conduct of a licensee; or

(2) Disclosed to the NAIC and its affiliates and subsidiaries under subparagraph V(e) by a commissioner.

(d) Neither the commissioner nor any person that received the documents, material or other information while acting under the authority of the commissioner, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to subparagraph V.

(e) In order to assist in the performance of the commissioner's duties, the commissioner:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subparagraph V, with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication or other information;

(2) May receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the jurisdiction that is the source of the document, material or information; and

(3) May enter into agreements governing sharing and use of information consistent with this paragraph.

(f) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subparagraph V(e).

(g) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.

(h) Nothing contained in this chapter shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the commissioner of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time or to the NAIC, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.

VI. Conflict of interest.

(a) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this chapter. This section shall not be construed to automatically preclude an examiner from being:

- (1) A viator;
- (2) An insured in a viaticated insurance policy; or
- (3) A beneficiary in an insurance policy that is proposed to be viaticated.

(b) Notwithstanding the requirements of this paragraph, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.

VII. Cost of examinations. The cost of examinations shall be borne by the licensee examined, and shall be pursuant to RSA 400-A:37, III(d), VII, and VIII.

VIII. Immunity from liability.

(a) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.

(b) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This paragraph does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subparagraph (a).

(c) A person identified in subparagraphs (a) or (b) shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this paragraph, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

IX. Investigative authority of the commissioner. The commissioner may investigate suspected fraudulent life settlement acts and persons engaged in the business of life settlements. The confidentiality protections set forth in paragraph V shall apply to any investigation conducted by the commissioner.

408-D:8 Life Insurer Disclosure to Viator.

I. Life insurers shall provide individual life insurance policyholders with a written notice, upon issuance of a policy and annually thereafter, that shall clearly state in substance

the following: “Any of the following actions related to your life insurance policy may have significant future financial, tax or other implications: surrender or lapse of your policy, failure to make premium payments, assignment or sale of the policy, financing your premium payments, application of the equity or accumulated dividends to premium payments, or borrowing against the equity of your policy. Before you act, you should consider all options carefully and seek advice from a licensed financial advisor, attorney or other professional who can explain all available options and consequences.”

II. The written notice shall also provide a current cash value for the policy.

408-D:9 Life Settlement Provider Disclosure to Viator and Insured; Life Settlement Producer Disclosure to Viator.

I. With each application for a life settlement, a life settlement provider or a life settlement producer on behalf of the life settlement provider shall provide the viator with at least the following disclosures no later than the time the application for the life settlement contract is signed by all parties. The disclosure shall be provided in a separate document that is signed by the viator and the life settlement provider or life settlement producer, and shall provide the following information:

(a) There are possible alternatives to life settlement contracts including, but not limited to, any accelerated death benefits or policy loans offered under the viator’s life insurance policy, and the viator should consider all options carefully and seek advice from a licensed financial advisor, attorney, or other professional who can explain all available options and consequences.

(b) Some or all of the proceeds of the life settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.

(c) Proceeds of the life settlement could be subject to the claims of creditors.

(d) Receipt of the proceeds of a life settlement may adversely affect the viator’s eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

(e) The viator has the right to rescind a life settlement contract before the earlier of 60 calendar days after the date upon which the life settlement contract is executed by all parties or 30 calendar days after the life settlement proceeds have been paid to the viators, as provided in RSA 408-D:11, VI. Rescission, if exercised by the viator, is effective only if both notice of the rescission is given, and the viator repays all proceeds and any premiums, loans and loan interest paid on account of the life settlement provider within the rescission period. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded, subject to repayment by the viator or the viator’s estate of all life settlement proceeds and any premiums, loans and loan interest the life settlement within 60 days of the insured’s death.

(f) Funds will be sent to the viator within 3 business days after the life settlement provider has received the insurer or group administrator’s written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.

(g) Entering into a life settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator. Assistance should be sought from a financial adviser.

(h) Disclosure to a viator shall include distribution of a brochure describing the process of life settlements. The NAIC’s form for the brochure shall be used unless another form is developed or approved by the commissioner.

(i) The amount and method of calculating the compensation paid or to be paid to the life settlement producer, or any other person acting for the owner in connection with the transaction, wherein the term compensation includes anything of value paid or given.

(j) The disclosure document shall contain the following language: “All medical, financial or personal information solicited or obtained by a life settlement provider or life settlement producer about an insured, including the insured’s identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the life settlement contract between the viator and the life settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every 2 years.”

(k) Following execution of a life settlement contract, the insured may be contacted for the purpose of determining the insured’s health status and to confirm the insured’s residential or business street address and telephone number, or as otherwise provided in this chapter. This contact shall be limited to once every 3 months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less. All such contacts shall be made only by a life settlement provider licensed in this state in which the viator resided at the time of the life settlement, or by the authorized representative of a duly licensed life settlement provider.

(l) The affiliation, if any, between the life settlement provider and the issuer of the insurance policy to be viaticated;

(m) The disclosure document shall include the name, address, and telephone number of the life settlement provider;

(n) Any affiliations or contractual arrangements between the life settlement provider and the life settlement purchaser;

(o) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed life settlement;

(p) State the dollar amount of the current death benefit payable to the life settlement provider under the policy or certificate. If known, the life settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the extent to which the viator’s interest in those benefits will be transferred as a result of the life settlement contract;

(q) State whether the funds will be escrowed with an independent third party during the transfer process, and if so, provide the name, business address, and telephone number of the independent third party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

II. A life settlement producer shall provide the viator with at least the following written disclosures no later than the date the life settlement contract is signed by all parties. The written disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the viator and provide the following information:

(a) The name, business address, and telephone number of the life settlement producer;

(b) A full, complete, and accurate description of all offers, counter-offers, acceptances, and rejections relating to the proposed life settlement contract;

(c) A written disclosure of any affiliations or contractual arrangements between the life settlement producer and any person making an offer in connection with the proposed life settlement contracts.

(d) The amount and method of calculating the life settlement producer’s compensation, which term “compensation” includes anything of value paid or given to a life settlement producer for the placement of a policy.

(e) Where any portion of the life settlement producer’s compensation, as defined in subparagraph (d), is taken from a proposed life settlement offer, the life settlement

producer shall disclose the total amount of the life settlement offer and the percentage of the life settlement offer comprised by the life settlement producer's compensation.

III. If the life settlement provider transfers ownership or changes the beneficiary of the insurance policy, the life settlement provider shall communicate in writing the change in ownership or beneficiary to the insured within 20 days after the change.

408-D:10 Life Settlement Provider and Life Settlement Producer Disclosure to Insurer. Prior to the initiation of a plan, transaction or series of transactions, a life settlement producer or life settlement provider shall fully disclose to an insurer a plan, transaction or series of transactions, to which the life settlement producer or life settlement provider is a party, to originate, renew, continue or finance a life insurance policy with the insurer for the purpose of engaging in the business of life settlements at anytime prior to, or during the first 5 years after, issuance of the policy.

408-D:11 General Rules.

I.(a) A life settlement provider entering into a life settlement contract, shall first obtain:

(1) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a life settlement contract; and

(2) A document in which the insured consents to the release of his or her medical records to a licensed life settlement provider, life settlement producer and the insurance company that issued the life insurance policy covering the life of the insured.

(b) Within 20 days after a viator executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise or any other form of understanding, expressed or implied, to viaticate the policy, the life settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by subparagraph (c).

(c) The life settlement provider shall deliver a copy of the medical release required under subparagraph (a)(2), a copy of the viator's application for the life settlement contract, the notice required under subparagraph (b) and a request for verification of coverage to the insurer that issued the life policy that is the subject of the life transaction. The NAIC's form for verification of coverage shall be used unless another form is developed and approved by the commissioner.

II. The insurer shall respond to a request for verification of coverage submitted on an approved form by a life settlement provider or life settlement producer or life insurance producer within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible fraud. The insurer shall accept a request for verification of coverage made on an NAIC form or any other form approved by the commissioner. The insurer shall accept an original or facsimile or electronic copy of such request and any accompanying authorization signed by the viator. Failure by the insurer to meet its obligations under this paragraph shall be a violation of RSA 408-D:12 and RSA 408-D:16.

III. Prior to or at the time of execution of the life settlement contract, the life settlement provider shall obtain a witnessed document in which the viator consents to the life settlement contract, represents that the viator has a full and complete understanding of the life settlement contract, that he or she has a full and complete understanding of the benefits of the life insurance policy, acknowledges that he or she is entering into the life settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

IV. A life settlement producer may perform any of the requirements of this section on behalf of the life settlement provider.

V. All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information.

VI. All life settlement contracts entered into in this state shall provide the viator with an absolute right to rescind the life settlement contract before the earlier of 60 calendar days after the date upon which the life settlement contract is executed by all parties or 30 calendar days after the life settlement proceeds have been sent to the viator as provided in RSA 408-D:9, I(f). Rescission by the viator may be conditioned upon the viator both giving notice and repaying to the life settlement provider within the rescission period all proceeds of the settlement and any premiums, loans and loan interest paid by or on behalf of the life settlement provider in connection with or as a consequence of the life settlement contract. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded, subject to repayment to the life settlement provider or life settlement purchaser of all life settlement proceeds, and any premiums, loans, and loan interest that have been paid by the life settlement provider or life settlement purchaser, which shall be paid within 60 calendar days of the death of the insured. In the event of any rescission, if the life settlement provider has paid commissions or other compensation to a life settlement producer in connection with the rescinded transaction, the life settlement producer shall refund all such commissions and compensation to the life settlement provider within 5 business days following receipt of written demand from the life settlement provider, which demand shall be accompanied by either the viator's notice of rescission if rescinded at the election of the viator, or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.

VII. The life settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to the independent escrow agent.

VIII. Within 3 business days after the date the escrow agent receives the document (or from the date the life settlement provider receives the documents), if the viator erroneously provides the documents directly to the life settlement provider, the life settlement provider shall pay or transfer the proceeds of the life settlement into an escrow or trust account maintained in a state or federally-chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the life settlement provider or related provider trust or other designated representative of the life settlement provider. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.

IX. Failure to tender consideration to the viator for the life settlement contract within the time set forth in the disclosure pursuant to RSA 408-D:9, I(f) renders the life settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator. Funds shall be deemed sent by a life settlement provider to a viator as of the date that the escrow agent either releases funds for wire transfer to the viator or places a check for delivery to the viator via United States Postal Service or other nationally recognized delivery service.

X. Contacts with the insured for the purpose of determining the health status of the insured by the life settlement provider or life settlement producer after the life settlement has occurred shall only be made by the life settlement provider or life settlement producer licensed in this state or its authorized representatives and shall be limited to once every 3 months for insureds with a life expectancy of more than one year, and to no more than once a month for insureds with a life expectancy of one year or less. The life settlement provider or life settlement producer shall explain the procedure for these contacts at the time the life

settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Life settlement providers and life settlement producers shall be responsible for the actions of their authorized representatives.

408-D:12 Prohibited Practices.

I. It is a violation of this chapter for any person to solicit or promote STOLI or to knowingly participate in any transaction, practice, or course of business involving the sale or settlement of STOLI.

II. It is a violation of this chapter for any person to enter into a life settlement contract at any time prior to the application or issuance of a policy which is the subject of a life settlement contract or within a 5 year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the life settlement provider that one or more of the following conditions have been met within the 5 year period:

(a) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 60 months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

(b) The viator submits independent evidence to the life settlement provider that one or more of the following conditions have been met within the 5 year period:

(1) The viator or insured is terminally or chronically ill;

(2) The viator's spouse dies;

(3) The viator divorces his or her spouse;

(4) The viator retires from full-time employment;

(5) The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment; or

(6) A final order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee or liquidator to all or a substantial part of the viator assets; or

(c) The viator enters into a life settlement contract more than 2 years after the date of issuance of a policy and, with respect to the policy, at all times prior to the date that is 2 years after policy issuance, the following conditions are met:

(1) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by, or fully recourse liability incurred by, the insured or a person described in RSA 408-D:2, IX(c)(5); and

(2) There is no agreement or understanding with any other person to guarantee any such liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of the loan.

III. Copies of the independent evidence described in subparagraph I(b) and document required by RSA 408-D:11, I shall be submitted to the insurer when the life settlement provider or other party entering into a life settlement contact with a viator submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the life settlement provider that the copies are true and correct copies of the documents received by the life settlement provider.

IV. If the life settlement provider submits to the insurer a copy of the owner or insured's certification described in and the independent evidence required by subparagraph I(c) when the life settlement provider submits a requests to the insurer to effect the transfer of the policy or certificate to the life settlement provider, the copy shall be deemed to conclusively establish that the life settlement contract satisfies the requirements of this section and the insurer shall timely respond to the request.

V. No insurer may, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a life settlement contract, require that the viator, insured, life settlement provider or life settlement producer sign any forms, disclosures, consent or waiver form that has not been expressly approved by the commissioner for use in connection with life settlement contracts in this state.

VI. Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within 30 calendar days with written acknowledgement confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer shall not unreasonably delay effecting change of ownership or beneficiary and shall not otherwise seek to interfere with any life settlement contract lawfully entered into in this state.

VII. With respect to any life settlement contract or insurance policy, no life settlement producer knowingly shall solicit an offer from, effectuate a life settlement with or make a sale to any life settlement provider, life settlement purchaser, financing entity or related provider trust that is controlling, controlled by, or under common control with such life settlement producer.

VIII. With respect to any life settlement contract or insurance policy, no life settlement producer knowingly may enter into a life settlement contract with a viator, if, in connection with such life settlement contract, anything of value will be paid to a life settlement producer that is controlling, controlled by, or under common control with such life settlement provider or the life settlement purchaser, financing entity or related provider trust that is involved in such life settlement contract.

IX. A violation of paragraphs I or II shall be deemed a fraudulent life settlement act.

X. No life settlement provider shall enter into a life settlement contract unless the life settlement promotional, advertising and marketing materials, as may be prescribed by rule, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is “free” for any period of time. The inclusion of any reference in the marketing materials that would cause a viator to reasonably believe that the insurance is free for any period of time shall be considered a violation of this chapter.

XI. No life insurance producer, insurance company, life settlement producer or life settlement provider shall make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

408-D:13 Advertising for Life Settlements. The purpose of this section is to provide prospective viators with clear and unambiguous statements in the advertisement of life settlements and to assure the clear, truthful and adequate disclosure of the benefits, risks, limitations and exclusions of any life settlement contract. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of life settlements to assure that product descriptions are presented in a manner that prevents unfair, deceptive or misleading advertising and is conducive to accurate presentation and description of life settlements through the advertising media and material used by life settlement licensees.

I. This section shall apply to any advertising of life settlement contracts, or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

II. Every life settlement licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products and services. All advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the life settlement licensees, as well as the individual who created or presented the advertisement. A system of control shall include

regular routine notification, at least once a year, to agents and others authorized by the life settlement licensee who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the life settlement licensee.

III. Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a life settlement contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

IV. The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(a) An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving viators as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the life settlement contract offered is made available for inspection prior to consummation of the sale, or an offer is made to refund the payment if the viator is not satisfied or that the life settlement contract includes a "free look" period that satisfies or exceeds legal requirements, does not remedy misleading statements.

(b) An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.

(c) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

(d) The words "free," "no cost," "without cost," "no additional cost," "at no cost," or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or service or may state that a charge is included in the payment or use other appropriate language.

(e) Testimonials, appraisals, or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the life settlement contract, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisal, analysis, or endorsement. In using testimonials, appraisals, or analysis, a licensee under this chapter makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

(1) If the individual making a testimonial, appraisal, analysis, or an endorsement has a financial interest in the party making use of the testimonial, appraisal, analysis or endorsement, either directly or through a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(2) An advertisement shall not state or imply that a life settlement contract benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the life settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the life settlement licensee, or receives any payment or other consideration from the life settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(3) When an endorsement refers to benefits received under a life settlement contract all pertinent information shall be retained for a period of 5 years after its use.

V. An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

VI. An advertisement shall not disparage insurers, life settlement providers, life settlement producers, life settlement investment agents, insurance producers, policies, services or methods of marketing.

VII. The name of the life settlement licensee shall be clearly identified in all advertisements about the licensee or its life settlement contract, products or services, and if any specific life settlement contract is advertised, the life settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the life settlement provider shall be shown on the application.

VIII. An advertisement shall not use a trade name, group designation, name of the parent company of a life settlement licensee, name of a particular division of the life settlement licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the life settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the life settlement licensee, or to create the impression that a company other than the life settlement licensee would have any responsibility for the financial obligation under a life settlement contract.

IX. An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

X. An advertisement may state that a life settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competing life settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the insurance department to find out if the state requires licensing and, if so, whether the life settlement provider or life settlement producer is licensed.

XI. An advertisement shall not create the impression that the life settlement provider, its financial condition or status, the payment of its claims or the merits, desirability, or advisability of its life settlement contracts are recommended or endorsed by any government entity.

XII. The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

XIII. An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the U.S. government endorses, approves, or favors:

- (a) Any life settlement licensee or its business practices or methods of operation;
- (b) The merits, desirability or advisability of any life settlement contract;
- (c) Any life settlement contract; or
- (d) Any life insurance policy or life insurance company.

XIV. If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

XV. If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past 6 months.

408-D:14 Fraud Prevention and Control.

I. Fraudulent life settlement acts, interference and participation of convicted felons prohibited.

(a) A person shall not commit a fraudulent life settlement act.

(b) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter.

(c) A person in the business of life settlements shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements.

II. Fraud warning required.

(a) Life settlement contracts and applications for life settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement: "Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison."

(b) The lack of a statement as required in subparagraph (a) does not constitute a defense in any prosecution for a fraudulent life settlement act.

III. Mandatory reporting of fraudulent life settlement acts.

(a) Any person engaged in the business of life settlements having knowledge or a reasonable suspicion that a fraudulent life settlement act is being, will be or has been committed shall provide to the commissioner the information as required by, and in a manner prescribed by, the commissioner.

(b) Any other person having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

IV. Immunity from Liability.

(a) No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

(1) The commissioner or the commissioner's employees, agents, or representatives;

(2) Federal, state or local law enforcement or regulatory officials or their employees, agents or representatives;

(3) A person involved in the prevention and detection of fraudulent life settlement acts or that person's agents, employees, or representatives;

(4) The National Association of Insurance Commissioners (NAIC), National Association of Securities Dealers (NASD), the North American Securities Administration Association (NASAA), or their employees, agents, or representatives, or other regulatory body overseeing life insurance, life settlements, securities, or investment fraud; or

(5) The life insurer that issued the life insurance policy covering the life of the insured; or

(b) Subparagraph (a) shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent life settlement act, the party bringing the action shall plead specifically any allegation that subparagraph (a) does not apply because the person filing the report or furnishing the information did so with actual malice.

(c) A person furnishing information as identified in subparagraph (a) shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it

had a reasonable basis in law or fact at the time that it was initiated. However, such an award does not apply to any person furnishing information concerning his or her own fraudulent life settlement acts.

(d) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in subparagraph (a).

V. Confidentiality.

(a) The documents and evidence provided pursuant to paragraph IV or obtained by the commissioner in an investigation of suspected or actual fraudulent life settlement acts shall be privileged and confidential and shall not be a public record under RSA 91-A and shall not be subject to discovery or subpoena in a civil or criminal action.

(b) Subparagraph (a) shall not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent life settlement acts:

(1) In administrative or judicial proceedings to enforce laws administered by the commissioner; or

(2) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent life settlement acts or to the NAIC.

(c) Release of documents and evidence under subparagraph (b) shall not abrogate or modify the privilege granted in subparagraph (a).

VI. Other law enforcement or regulatory authority. This act shall not:

(a) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;

(b) Prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud to a law enforcement or regulatory agency other than the insurance department; or

(c) Limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

VII. Life settlement antifraud initiatives.

(a) Life settlement providers and life settlement producers shall have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent life settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section. Antifraud initiatives shall include:

(1) Fraud investigators, who may be life settlement provider or life settlement producer employees or independent contractors; and

(2) An antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall include, but not be limited to:

(A) A description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(B) A description of the procedures for reporting possible fraudulent life settlement acts to the commissioner;

(C) A description of the plan for antifraud education and training of underwriters and other personnel; and

(D) A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(b) Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record under RSA 91-A and shall not be subject to discovery or subpoena in a civil or criminal action.

408-D:15 Injunctions; Civil Remedies; Cease and Desist.

I. In addition to the penalties and other enforcement provisions of this chapter, if any person violates this chapter or any rule implementing this chapter, the commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the commissioner determines are necessary to restrain the person from committing the violation.

II. Any person damaged by the acts of a person found in violation of this chapter by the commissioner may bring a civil action against the person committing the violation in a court of competent jurisdiction.

III. The commissioner may issue, in accordance with RSA 541-A, a cease and desist order upon a person that violates any provision of this chapter, any rule or order adopted by the commissioner, or any written agreement entered into with the commissioner.

IV. When the commissioner finds that an activity in violation of this chapter presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for 90 days. If the commissioner begins non-emergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction pursuant to RSA 541:18.

V. In addition the penalties and other enforcement provisions of this chapter, any person who violates this chapter is subject to civil penalties of up to \$2,500 per violation. Imposition of civil penalties shall be pursuant to an order of the commissioner issued under RSA 400-A:23. The commissioner's order may require a person found to be in violation of this chapter to make restitution to persons aggrieved by violations of this chapter.

VI. A person convicted of a violation of this chapter shall be ordered to pay restitution to persons aggrieved by the violation of this chapter. Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment. The commissioner may order a life settlement provider to pay restitution to persons aggrieved by the violations of this chapter committed by its appointed life settlement producers.

VII. Except for a fraudulent life settlement act committed by a viator, the enforcement provisions and penalties of this section shall not apply to a viator.

408-D:16 Unfair Trade Practices. A violation of this chapter, including the commission of a fraudulent life settlement act, shall be considered an unfair trade practice under RSA 417.

408-D:17 Rulemaking. The commissioner shall have the authority to:

I. Adopt rules pursuant to RSA 541-A, implementing this chapter;

II. Establish standards for evaluating reasonableness of payments under life settlement contracts for persons who are terminally or chronically ill. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy insuring the life of a person that is chronically or terminally ill;

III. Establish appropriate licensing requirements, fees, and standards for continued licensure for life settlement providers and life settlement producers;

IV. Require a bond or other mechanism for financial accountability for life settlement providers and life settlement producers; and

V. Adopt rules governing the relationship and responsibilities of both insurers and life settlement providers and life settlement producers during the viatication of a life insurance policy or certificate.

408-D:18 Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

408-D:19 Applicability. A life settlement provider or life settlement producer transacting business in this state may continue to do so pending approval or disapproval of the life settlement provider, or life settlement producer application for licensure if the application is filed with the commissioner within one month of the effective date of this chapter.

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

2010-0005h

Amendment to HB 681-FN

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

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

AN ACT relative to assessments for aquatic resource compensatory mitigation.

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

1 Aquatic Resource Compensatory Mitigation; Fund Established. RSA 482-A:29, II is repealed and reenacted to read as follows:

II. A separate, non-lapsing account shall be established within the fund into which all administrative assessments collected under RSA 482-A:30, III and RSA 482-A:30-a, II shall be placed. Such account moneys shall only be used to support up to 2 full-time positions for administration of the fund and related projects. No other fund moneys shall be used for state personnel costs.

2 Payment for Freshwater and Tidal Wetlands Losses. Amend RSA 482-A:30, III to read as follows:

III. An administrative assessment which equals ~~[5]~~ **20** percent of the sum of paragraphs I and II.

3 Payment for Freshwater and Tidal Wetlands Losses. Amend RSA 482-A:30, III to read as follows:

III. An administrative assessment which equals ~~[20]~~ **5** percent of the sum of paragraphs I and II.

4 Payment for Stream or Shoreline Losses. Amend RSA 482-A:30-a, II to read as follows:

II. An administrative assessment equal to ~~[5]~~ **20** percent of the amount in paragraph I.

5 Payment for Stream or Shoreline Losses. Amend RSA 482-A:30-a, II to read as follows:

II. An administrative assessment equal to ~~[20]~~ **5** percent of the amount in paragraph I.

6 Rulemaking. Amend RSA 482-A:31, II to read as follows:

II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river construction, or such other mitigation actions as would have been required by the department and incurred by the applicant in the absence of making such payments. An administrative assessment of ~~[5]~~ **20** percent of the total cost shall be added as part of the calculation method.

7 Rulemaking. Amend RSA 482-A:31, II to read as follows:

II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river construction, or such other mitigation actions as would have been required by the department and incurred by the applicant in the absence of making such payments. An

administrative assessment of [20] 5 percent of the total cost shall be added as part of the calculation method.

8 Report. Amend RSA 482-A:33 to read as follows:

482-A:33 Report. The department shall submit an annual report by October 1 beginning with fiscal year 2006, to the fiscal committee, the chairperson of the house resources, recreation and development committee, and the chairperson of the senate environment and wildlife committee summarizing all receipts and disbursements of the aquatic resource compensatory mitigation fund, including a description of all projects undertaken **and the status of the administrative assessment account**. Each report shall be in such detail with sufficient information to be fully understood by the general court and the public. After submission to the general court, the report shall be available to the public.

9 Department Investigation. The department of environmental services shall investigate ways of compiling and providing information on known compensatory mitigation opportunities to applicants who need to compensate for unavoidable impacts by their proposed projects, as part of the wetlands permitting process. The department shall report on the results of this investigation on October 1, 2011 as part of its annual report under RSA 482-A:33.

10 Effective Date.

I. Sections 3, 5, and 7 of this act shall take effect July 1, 2012.

II. Section 1 shall take effect July 1, 2010 at 12:01 a.m.

III. The remainder of this act shall take effect July 1, 2010.

AMENDED ANALYSIS

This bill temporarily increases the percentage of certain administrative assessments related to aquatic resource compensatory mitigation.

2009-1669h

Amendment to SB 44

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

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

AN ACT establishing a commission to review all fees charged by the department of environmental services and to study the complexity of the current permitting processes of the department of environmental services.

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

1 Commission Established. There is established a commission to review all fees charged by the department of environmental services and to study the complexity of the current permitting processes of the department of environmental services.

2 Membership and Compensation.

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

(a) One member of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, two of whom shall be members of the ways and means committee and one of whom shall be a member of the resources, recreation and development committee, appointed by the speaker of the house of representatives.

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

(d) One representative of the Home Builders and Remodelers Association of New Hampshire, appointed by that organization.

(e) One representative of the Business and Industry Association of New Hampshire, appointed by that organization.

(f) One representative of the Associated General Contractors of New Hampshire, appointed by that organization.

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

3 Duties. The commission shall:

- I. Review all fees charged by the department of environmental services.
 - II. Study the complexity of the current department of environmental services permitting processes due to the number of environmental permits that are required for a single project and recommend in its report ways to streamline and better coordinate the environmental permitting process with the local, state, and federal agencies that are involved in the environmental permitting process.
 - III. Review the department's innovative permitting and technical assistance initiative and the impact of more efficient or integrated permitting procedures on fees and recommend legislation as necessary.
- 4 Chairperson; Quorum. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Five members of the commission shall constitute a quorum.
- 5 Report. The commission shall make an interim report with its findings and any recommendations for legislation for the 2010 legislative session on or before November 1, 2009 and a final report with its findings and any recommendations for legislation on or before November 1, 2010 to the president of the senate, the speaker of the house of representatives, the chair of the senate energy, environment and economic development committee, the chair of the senate ways and means committee, the chair of the house ways and means committee, the chair of the house resources, recreation and development committee, the senate clerk, the house clerk, the governor, and the state library.
- 6 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill establishes a commission to review all fees charged by the department of environmental services and to study the complexity of the current permitting processes of the department of environmental services.

2009-2418h

Amendment to SB 59

Proposed by the Committee on Education - R

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

1 Schoolhouses; Location and Construction by District. Amend RSA 199:1 to read as follows:

199:1 Location and Construction by District. The district may decide upon the location of its schoolhouses by vote or by a committee appointed for the purpose, provided, however, that all plans, specifications, and the selection of site for any new school buildings for any school district within the state shall be approved by the school board of the district in which it is proposed to construct such a building. The provisions of this section shall apply to all new construction ***and substantial renovation*** of public school buildings, including those constructed by grant or loans of funds from state, the federal government, or other sources. ***The district shall investigate feasible options in the course of deciding to renovate or replace an existing school building. In considering such options, the district shall hold at least one public hearing and shall seek input from municipal boards and departments. The district shall also review the municipality's zoning regulations and master plan in order to maximize best planning practices.*** For the purposes of this chapter, in addition to their usual meanings, the words "schoolhouse" and "school building" also mean educational administration building, including school administrative unit facilities.

2 New Paragraph; School Building Aid; Amount of Annual Grant. Amend RSA 198:15-b by inserting after paragraph VII the following new paragraph:

VIII. For the purpose of receiving grants under this section, acquisition of additional land as part of any school renovation project shall not be required unless such additional land is necessary to ensure the safe flow of traffic for school buses or other vehicles entering

or exiting school grounds, or the safe boarding or discharge of children using school buses or other vehicles.

3 School Building Aid; Approval of Plans. Amend RSA 198:15-c to read as follows:

198:15-c Approval of Plans, Specifications, and Costs of Construction or Purchase. A school district maintaining approved schools, desiring to avail itself of the grants herein provided shall have the plans, specifications, and cost estimates for school plant construction or proposals for the purchase of school buildings, or both, and the costs for them approved by the state board prior to the start of construction. For this purpose the district shall submit its plans, specifications, cost, and purchase estimates in writing to the department of education on such forms as the department prescribes. A school district shall also submit a copy of any application for energy efficiency reimbursement under RSA 374-F. The department of education shall coordinate with the public utilities commission to ensure that eligible school districts have submitted applications for funding reimbursement and technical assistance as available from energy utility companies to promote indoor air quality and energy efficiency in public schools. Application for school building aid shall be submitted before January 1 of each year in order to be eligible for school building aid in the fiscal year following the year of submittal. The department of education shall not approve the plans, specifications, cost, or purchase estimates, if in the department's judgment the facilities planned will not adequately meet the educational requirements, or if its cost estimates are excessive or unreasonable. The department of education shall not approve the plans, specifications, cost, or purchase estimates if in the department's judgment the proposed construction or purchase is in conflict with effective statewide planning *pursuant to RSA 9-A and RSA 9-B*. Necessary costs of the purchase of school buildings may be determined by any recognized method of real estate appraisal with appropriate adjustments for remodeling or other expenditures. Upon approval of the construction or purchase, or both, by the department of education, the school district shall be entitled to receive an annual grant as provided herein.

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

AMENDED ANALYSIS

This bill:

I. Requires school districts to investigate feasible options in the course of deciding to renovate or replace an existing school building.

II. Provides that acquisition of additional land as part of any school renovation project shall not be required unless such additional land is necessary to ensure the safe flow of traffic for school buses or other vehicles entering or exiting school grounds, or the safe boarding or discharge of children using school buses or other vehicles.

III. Requires plans for construction or renovation of school buildings to comply with effective statewide planning and the principles of smart growth.

2009-2392h

Amendment to SB 123

Proposed by the Committee on Environment and Agriculture - C

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

1 Agricultural Preservation Restrictions. Amend RSA 432:18, I-II to read as follows:

I. "Agricultural land development rights" means the rights of the fee simple owner of agricultural land to construct on, sell, lease or otherwise improve the agricultural land for uses that result in rendering such land no longer suitable for agricultural use. Such development rights may be severed from the fee simple right to constitute a restriction for the preservation of the agricultural land *as defined in paragraphs II and II-a*.

II. "Agricultural preservation restriction" means the restraint placed on the development rights of agricultural land, whether stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of the owner of the land which is appropriate to retaining land or water areas

predominantly in their agricultural use, to prohibit or limit (1) construction or placement of buildings except those used for agricultural purposes or for [dwellings] **a dwelling** used for family living by the landowner, his **or her** immediate family or employees; (2) excavation, dredging, or removal of loam, sod, peat, gravel, soil, rock, or other mineral substance in such a manner as to adversely affect the land's future agricultural potential; or (3) other acts or uses detrimental to such retention of the land for agricultural use. **Agricultural preservation restriction does not include agricultural restricted grants as defined in paragraph II-a.**

2 New Paragraph; Agricultural Restricted Grants; Definition. Amend RSA 432:18 by inserting after paragraph II the following new paragraph:

II-a. "Agricultural restricted grant" means a grant given to a landowner by the department of agriculture, markets, and food for a limited time set by the parties with financial or technical assistance provided by the department in return for guarantees of continued farm use of the property for a minimum specified time period.

3 Site; Agricultural Restricted Grants Added. Amend RSA 432:18, IX to read as follows:

IX. "Site" means a specific land area for agricultural purposes in which agricultural land development rights **including agricultural restricted grants** are acquired in order to preserve land suitable for agricultural production.

4 New Paragraph; Duties of the Commissioner. Amend RSA 432:21 by inserting after paragraph V the following new paragraph:

VI. Adopt rules relative to procedures for granting financial or technical assistance for aid for the creation of agricultural restricted grants.

5 Administration; Agricultural Restricted Grants. Amend RSA 432:22, I to read as follows:

I. Acquisition of agricultural land development rights shall be conducted in cooperation with a landowner upon review pursuant to this section. Any proposal for designating a site as an agricultural preservation restriction area **or a site for an agricultural restricted grant** shall be submitted by the landowner to the committee for approval. **Notwithstanding RSA 432:23, approval of a site for an agricultural restricted grant shall not be the only cause for a current use valuation as described in RSA 79-A.**

6 Administration; Agricultural Restricted Grant. Amend RSA 432:22, V to read as follows:

V. The committee shall view each parcel subject to agricultural preservation restriction **or an agricultural restricted grant** not less than once every 2 years to assure that its use complies with law and the rules of the committee. The committee may delegate responsibility for monitoring of the agricultural preservation restriction to the conservation commission in the municipality, or to the conservation district, in which the parcel is situated. Such commission or district shall submit a report of its inspection to the committee in a timely manner.

7 Release; Agricultural Restricted Grants. Amend RSA 432:24, I-II to read as follows:

I. Agricultural preservation restrictions shall be in perpetuity except as released pursuant to this section and RSA 432:25. **Agricultural restricted grants shall run in accordance with the agreement between a landowner and the department of agriculture, markets, and food except as terminated pursuant to this section and RSA 432:25.** All customary rights and privileges of ownership shall be retained by the owner including the right to privacy and the right to carry out all regular agricultural practices which are not prohibited by RSA 432:18, II.

II. Agricultural preservation restrictions **and agricultural restricted grants** may be released **or terminated** by the committee if the site is no longer suitable for agricultural purposes. An owner of an agricultural preservation site may request the committee's approval to release the restriction for the public good. Prior to the release of the agricultural land development rights by the committee, a public hearing shall be conducted in the

municipality in which the site is located. A notice of said hearing shall specify the grounds for the hearing as well as the date, time, and place, and at least 14 days' notice of the time and place of such hearing shall be published in a paper of general circulation in the municipality. A legal notice of the hearing shall also be posted in at least 3 public places in such city or town. The 14 days shall not include the day of publication nor the day of the meeting, but shall include any Saturdays, Sundays, and legal holidays within said period. At least 2 committee members shall sit on the hearing panel.

8 Agricultural Land Development; Special Account; Bonding Removed. Amend RSA 432:30 to read as follows:

432:30 Special Account~~[- Bonds Authorized]~~.

~~[I.]~~ The state treasurer shall establish a separate account to which shall be credited all funds appropriated or acquired **to provide financial and technical assistance associated with agricultural restricted covenants or** to fund the acquisition of development rights in accordance with RSA 432:17-31-a. This shall be a non-lapsing account, and funds in said account are hereby appropriated for the purposes of this subdivision.

~~[II. To provide funds for any appropriation made for the account established in RSA 432:30, I, the state treasurer may borrow upon the credit of the state a sum as approved by the general court and issue bonds and notes in the name of and on behalf of the state in accordance with RSA 6-A. Any bonds issued under this section shall be payable not later than 10 years from their date or dates of issue.~~

~~III. The payment of principal and interest on the bonds and notes issued for the purposes of this subdivision shall be made when due from the general fund.]~~

9 Contributions. Amend RSA 432:31 to read as follows:

432:31 Contributions. The committee is authorized to apply for and accept ~~[federal funds]~~ **public or private grants, gifts, or donations of any kind** and to use and dispose of money, services and property received from **such** contributions ~~[and gifts]~~ for the purposes of this subdivision.

10 Easement Restriction. For all agricultural easements acquired under RSA 432 after July 1, 2010, the construction or placement of any building is prohibited except those used solely for agricultural purposes.

11 Effective Date. This act shall take effect July 1, 2010.

2009-2539h

Amendment to SB 157

Proposed by the Committee on Election Law - R

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

AN ACT relative to the procedure for listing candidates on election ballots.

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

1 Municipal Elections; City Charters; Preparation of Ballots. Amend RSA 49-C:6 to read as follows:

49-C:6 Preparation of Ballots. The city clerk shall prepare the ballots to be used at the municipal elections. Under charters providing for election by the Australian ballot system, the ballots shall be prepared in accordance with the procedure provided for in general election laws governing such system. Under charters providing for non-partisan elections, the ballot shall contain the names in alphabetical order by surname **according to the alphabetization procedure established in RSA 656:5-a**, without party designation, of all who file with the city clerk as candidates for elective office. ~~[In the alternative, the charter may provide for a random selection of the order of names on the ballot.]~~ The charter shall specify a filing period, the filing fee to be paid for each office, and, as an alternative method of becoming a candidate on the ballot, the number of qualified voters which may be subscribed to a nominating petition in such form as the charter may set out.

2 Nominations for Special State Elections; Order of Names on Ballot. Amend RSA 655:81, IX to read as follows:

IX. The names of all candidates for a party nomination at a special election primary shall be printed in alphabetical order on the ballot [~~and the same ballot listing shall be used at all polling places where the special primary election is held~~] **according to the alphabetization procedure established in RSA 656:5-a**; and

3 New Section; Preparation of State General Election Voting Materials; Order of Candidate Names on Ballots. Amend RSA 656 by inserting after section 5 the following new section:

656:5-a Order of Candidate Names on Ballots.

I. Whenever there are 2 or more candidates for the same office whose names will appear together within the same column or list on a ballot, the position of such names shall be determined according to this section.

II. Immediately following the close of the period during which a person may accept the nomination of a party committee pursuant to RSA 655:32, the secretary of state or designee shall conduct a public random selection of a whole number from one to the total number of candidates for each possible list length where a group of candidates for the same office may appear in the same list in state or local elections during the next 2 years. For example, for a possible list of 3 candidates, the number one, 2, or 3 shall be randomly selected. The seed number for each possible list length shall remain in effect for the 2 years until the next random selection of seed numbers.

III. To determine the order of names on each ballot, the candidates for each office in the same list shall be temporarily listed alphabetically by surnames and the positions in such list shall be temporarily numbered in ascending order. The candidate whose position in the initial temporary list equals the seed number selected under paragraph II for the appropriate list length shall appear first on the ballot. The order of candidates after the candidate in the first position shall follow alphabetically by surname with "a" following "z."

4 Primary Election Voting Materials; Order of Names. Amend RSA 656:24 to read as follows:

656:24 Order of Names. With the exception of the office of state representative, whenever there are 2 or more candidates for nomination to the same office, the names of such candidates shall be alternated on the state primary election ballots used so that each name shall appear thereon as nearly as may be an equal number of times at the top, at the bottom, and in each intermediate place, if any, of the list in which it belongs. Names of candidates for nomination to the office of state representative shall be arranged in the alphabetical order of their surnames **according to the alphabetization procedure established in RSA 656:5-a**.

5 Constitutional Convention Ballots; Form. Amend RSA 667:12 to read as follows:

667:12 Form. Every ballot for the election shall contain the name and domicile of each candidate who has filed a declaration of candidacy for delegate. The names of candidates upon the ballot shall be arranged in perpendicular columns under the title "For Delegate to the Constitutional Convention." Below the title shall be printed in easily legible type the words "Vote for" followed by a spelled number designating the number of persons to be elected to such office. At the right of the name of each candidate and on the same line, there shall be a square. Following the names there shall be as many blank lines as there are persons to be elected. Whenever there are 2 or more candidates, the names shall be printed upon the ballot in alphabetical order of their surnames **according to the alphabetization procedure established in RSA 656:5-a**.

6 Town Elections; Official Ballot; Voting Materials. Amend RSA 669:23 to read as follows:

669:23 Preparation of Voting Materials. The town clerk shall prepare the official ballots for the town and shall arrange the names of candidates upon said ballots in parallel columns. Immediately above the names of each block of candidates shall be printed the title of the

office for which they are candidates, such as “For Selectman.” Below the title of each office shall be printed in small but easily legible type the words “Vote for not more than (here insert a number designating how many persons are to be voted for).” Directly to the right of the name of each candidate there shall be a square. Whenever there are 2 or more candidates for the same office the names shall be printed upon the ballot in the alphabetical order of their surnames **according to the alphabetization procedure established in RSA 656:5-a**. Following the names printed on the ballot under the title of each office, there shall be as many blank lines as there are persons to be elected to that office.

7 Form of Candidate’s Name on Ballot; Nicknames. Amend RSA 655:14-b, I-II to read as follows:

I. Every candidate for state or federal office who intends to have his or her name printed upon the ballot of any party for a primary shall designate in the declaration of candidacy, or on the primary petitions and assents to candidacy, the form in which the candidate’s name shall be printed on the ballot. ~~[The candidate may designate his or her given, first, and middle name, the initials of his or her given, first, and middle name, a nickname, or any combination thereof as the form in which the candidate’s name shall be printed on the ballot, but the candidate shall not designate a deceptive name. If the candidate designates a nickname in place of or in combination with the candidate’s given name or the initials thereof, the nickname shall be set off with quotation marks and shall be placed immediately before his or her surname. If the candidate designates a nickname, the nickname shall be customarily related to the candidate’s given name, or, if the nickname is not customarily related to the candidate’s given name, the candidate shall submit clear and convincing evidence that the candidate has been known by the nickname for at least the 5 years immediately preceding the time of filing. If deemed sufficient by the appropriate official, 3 affidavits from voters in the district who are not related to the candidate stating that the candidate has been known by the nickname for at least 5 years may constitute clear and convincing evidence. Nicknames shall be limited to one word, except for 2 word nicknames customarily related to the candidate’s given name.]~~ ***The designated name may include the candidate’s given name or a shortened form of the candidate’s given name or a one-word nickname customarily related to the candidate, and by which the candidate is commonly recognized. The designated name may also include an initial for the first or middle name, or both.*** No candidate may designate a nickname that implies that the candidate is some other person, that constitutes a slogan or otherwise associates the candidate with a cause or issue, ~~[or]~~ that has an offensive or profane meaning~~[-]~~, ***or that creates a perception of a professional or vocational affiliation, such as “Doc” or “Coach.”*** A candidate shall include his or her surname in the designation of the form in which the candidate’s name shall be printed on the ballot.

II. Every candidate for state or federal office who intends to have his or her name placed on the ballot for the state general election by means other than nomination by party primary shall designate in the declaration of intent the form in which the candidate’s name shall be printed on the ballot. ~~[The candidate may designate his or her given, first, and middle name, the initials of his or her given, first, and middle name, a nickname, or any combination thereof as the form in which the candidate’s name shall be printed on the ballot, but the candidate shall not designate a deceptive name. If the candidate designates a nickname in place of or in combination with the candidate’s given name or the initials thereof, the nickname shall be set off with quotation marks and shall be placed immediately before his or her surname. If the candidate designates a nickname, the nickname shall be customarily related to the candidate’s given name, or, if the nickname is not customarily related to the candidate’s given name, the candidate shall submit clear and convincing evidence that the candidate has been known by the nickname for at least the 5 years immediately preceding the time of filing. If deemed sufficient by the appropriate official, 3 affidavits from voters in the district who are not related to the candidate stating that the candidate has been known by the nickname for at least 5 years may constitute clear and~~

~~convincing evidence. Nicknames shall be limited to one word, except for 2 word nicknames customarily related to the candidate's given name.]~~ ***The designated name may include the candidate's given name or a shortened form of the candidate's given name or a one-word nickname customarily related to the candidate, and by which the candidate is commonly recognized. The designated name may also include an initial for the first or middle name, or both.*** No candidate may designate a nickname that implies that the candidate is some other person, that constitutes a slogan or otherwise associates the candidate with a cause or issue, ~~[or]~~ that has an offensive or profane meaning~~[-]~~, ***or that creates a perception of a professional or vocational affiliation, such as "Doc" or "Coach."*** A candidate shall include his or her surname in the designation of the form in which the candidate's name shall be printed on the ballot.

8 Election Fund. Amend RSA 5:6-d, III to read as follows:

III. The secretary of state is authorized to accept, budget, and, subject to the limitations of this paragraph, expend monies in the election fund received from any party for the purposes of conducting elections, voter and election official education, the purchase or lease of voting equipment which complies with Help America Vote Act of 2002, Public Law 107-252, election law enforcement, and improvements to related information technology, ***including acquisition and operation of an automated election management system.***

9 Rotation of Party Columns; 2010 General Election. Immediately following the filing deadline for nomination papers for the 2010 general election pursuant to RSA 655:43, the secretary of state or designee shall publicly select by lot the actual party columns to be positioned on the 2010 general election ballot according to the generic column rotation plan established in this section. The first actual party column drawn by lot shall occupy all positions corresponding to the generic party column "1" designation; the second actual party column drawn by lot shall occupy all positions corresponding to the generic party column "2" designation and so forth until all actual party columns are assigned positions on all ballots. If more party columns are required, the secretary of state shall establish such generic party column.

Generic party column rotation plan for 3 party columns			
<u>VOTING PLACE</u>	1st column position	2nd column position	3rd column position
Acworth	1	3	2
Albany	2	1	3
Alexandria	3	2	1
Allenstown	3	2	1
Alstead	3	1	2
Alton	2	1	3
Amherst	2	3	1
Andover	1	2	3
Antrim	2	1	3
Ashland	3	1	2
At. & Gil. Ac. Gt.	3	2	1
Atkinson	2	3	1
Auburn	3	1	2
Barnstead	2	3	1
Barrington	3	2	1
Bartlett	2	1	3
Bath	3	1	2
Bean's Grant	1	3	2
Bean's Purchase	1	2	3

Bedford	3	2	1
Belmont	1	3	2
Bennington	2	3	1
Benton	3	1	2
Berlin Ward 1	1	2	3
Berlin Ward 2	3	1	2
Berlin Ward 3	2	3	1
Berlin Ward 4	1	3	2
Bethlehem	1	3	2
Boscawen	2	1	3
Bow	1	3	2
Bradford	3	1	2
Brentwood	1	3	2
Bridgewater	2	1	3
Bristol	1	2	3
Brookfield	1	2	3
Brookline	3	2	1
Cambridge	3	1	2
Campton	2	3	1
Canaan	1	3	2
Candia	3	2	1
Canterbury	2	3	1
Carroll	2	3	1
Center Harbor	1	2	3
Chandler's Purchase	1	3	2
Charlestown	3	1	2
Chatham	3	2	1
Chester	1	3	2
Chesterfield	1	2	3
Chichester	1	2	3
Claremont Ward 1	1	3	2
Claremont Ward 2	2	3	1
Claremont Ward 3	3	2	1
Clarksville	3	1	2
Colebrook	1	2	3
Columbia	3	2	1
Concord Ward 01	3	1	2
Concord Ward 02	1	3	2
Concord Ward 03	2	3	1
Concord Ward 04	3	2	1
Concord Ward 05	2	3	1
Concord Ward 06	1	3	2
Concord Ward 07	3	1	2
Concord Ward 08	1	3	2
Concord Ward 09	1	2	3
Concord Ward 10	2	3	1
Conway	1	3	2
Cornish	2	1	3
Crawford's Purchase	1	2	3
Croydon	2	1	3

Cutt's Grant	1	3	2
Dalton	2	1	3
Danbury	3	1	2
Danville	2	3	1
Deerfield	2	1	3
Deering	1	3	2
Derry	3	2	1
Dix's Grant	3	1	2
Dixville	2	1	3
Dorchester	2	3	1
Dover Ward 1	1	3	2
Dover Ward 2	2	3	1
Dover Ward 3	2	1	3
Dover Ward 4	3	1	2
Dover Ward 5	3	1	2
Dover Ward 6	2	1	3
Dublin	3	2	1
Dummer	2	3	1
Dunbarton	2	3	1
Durham	3	2	1
East Kingston	2	3	1
Easton	1	2	3
Eaton	3	2	1
Effingham	3	2	1
Ellsworth	3	2	1
Enfield	3	2	1
Epping	1	3	2
Epsom	2	1	3
Errol	2	1	3
Erving's Location	3	2	1
Exeter	2	1	3
Farmington	2	3	1
Fitzwilliam	2	1	3
Francestown	3	1	2
Franconia	2	3	1
Franklin Ward 1	3	2	1
Franklin Ward 2	1	3	2
Franklin Ward 3	2	3	1
Freedom	2	3	1
Fremont	2	3	1
Gilford	3	1	2
Gilmanton	1	3	2
Gilsum	1	3	2
Goffstown	3	2	1
Gorham	2	1	3
Goshen	3	2	1
Grafton	2	1	3
Grantham	3	2	1
Greenfield	2	1	3
Greenland	2	1	3

Green's Grant	1	2	3
Greenville	2	1	3
Groton	1	3	2
Hadley's Purchase	1	2	3
Hale's Location	3	1	2
Hampstead	1	3	2
Hampton	1	2	3
Hampton Falls	2	1	3
Hancock	3	2	1
Hanover	2	1	3
Harrisville	1	2	3
Hart's Location	3	2	1
Haverhill	1	2	3
Hebron	3	1	2
Henniker	2	1	3
Hill	1	2	3
Hillsborough	1	2	3
Hinsdale	3	2	1
Holderness	2	3	1
Hollis	2	1	3
Hooksett	3	1	2
Hopkinton	1	3	2
Hudson	2	3	1
Jackson	3	1	2
Jaffrey	2	1	3
Jefferson	1	2	3
Keene Ward 1	3	1	2
Keene Ward 2	2	3	1
Keene Ward 3	1	3	2
Keene Ward 4	2	1	3
Keene Ward 5	1	2	3
Kensington	3	2	1
Kilkenny	1	3	2
Kingston	3	1	2
Laconia Ward 1	3	1	2
Laconia Ward 2	1	2	3
Laconia Ward 3	3	2	1
Laconia Ward 4	1	3	2
Laconia Ward 5	2	1	3
Laconia Ward 6	2	3	1
Lancaster	3	2	1
Landaff	1	3	2
Langdon	2	3	1
Lebanon Ward 1	1	2	3
Lebanon Ward 2	2	1	3
Lebanon Ward 3	3	2	1
Lee	1	2	3
Lempster	3	1	2
Lincoln	1	2	3
Lisbon	2	1	3

Litchfield	3	1	2
Littleton	1	3	2
Livermore	1	3	2
Londonderry	1	3	2
Loudon	3	1	2
Low & Burbank's Grant	1	3	2
Lyman	2	3	1
Lyme	3	1	2
Lyndeborough	3	1	2
Madbury	2	1	3
Madison	1	2	3
Manchester Ward 01	1	3	2
Manchester Ward 02	2	1	3
Manchester Ward 03	1	2	3
Manchester Ward 04	2	3	1
Manchester Ward 05	2	1	3
Manchester Ward 06	2	1	3
Manchester Ward 07	1	3	2
Manchester Ward 08	3	2	1
Manchester Ward 09	1	2	3
Manchester Ward 10	3	1	2
Manchester Ward 11	1	3	2
Manchester Ward 12	2	3	1
Marlborough	3	2	1
Marlow	3	2	1
Martin's Location	1	2	3
Mason	1	2	3
Meredith	3	1	2
Merrimack	2	1	3
Middleton	2	3	1
Milan	3	2	1
Milford	1	3	2
Millsfield	2	3	1
Milton	1	2	3
Monroe	3	2	1
Mont Vernon	3	2	1
Moultonborough	2	3	1
Nashua Ward 1	3	1	2
Nashua Ward 2	2	1	3
Nashua Ward 3	1	3	2
Nashua Ward 4	1	3	2
Nashua Ward 5	1	3	2
Nashua Ward 6	3	2	1
Nashua Ward 7	2	1	3
Nashua Ward 8	3	2	1
Nashua Ward 9	1	2	3
Nelson	1	3	2
New Boston	1	2	3
New Castle	1	2	3
New Durham	2	1	3

New Hampton	3	2	1
New Ipswich	1	3	2
New London	1	3	2
Newbury	3	2	1
Newfields	1	2	3
Newington	2	3	1
Newmarket	3	2	1
Newport	1	2	3
Newton	1	3	2
North Hampton	3	1	2
Northfield	1	3	2
Northumberland	1	3	2
Northwood	3	1	2
Nottingham	1	2	3
Odell	3	1	2
Orange	2	1	3
Orford	1	2	3
Ossipee	3	1	2
Pelham	1	3	2
Pembroke	3	2	1
Peterborough	3	1	2
Piermont	3	2	1
Pinkham's Grant	1	3	2
Pittsburg	2	3	1
Pittsfield	1	2	3
Plainfield	1	2	3
Plaistow	2	3	1
Plymouth	2	1	3
Portsmouth Ward 1	1	2	3
Portsmouth Ward 2	3	1	2
Portsmouth Ward 3	3	2	1
Portsmouth Ward 4	2	1	3
Portsmouth Ward 5	1	3	2
Randolph	1	2	3
Raymond	2	1	3
Richmond	3	2	1
Rindge	1	2	3
Rochester Ward 1	1	3	2
Rochester Ward 2	3	2	1
Rochester Ward 3	2	1	3
Rochester Ward 4	2	3	1
Rochester Ward 5	3	1	2
Rochester Ward 6	1	2	3
Rollinsford	3	1	2
Roxbury	3	1	2
Rumney	3	1	2
Rye	3	2	1
Salem	3	2	1
Salisbury	3	2	1
Sanbornton	1	2	3

Sandown	3	1	2
Sandwich	2	1	3
Sargent's Purchase	1	3	2
Seabrook	1	2	3
Second College Grant	3	2	1
Sharon	2	3	1
Shelburne	3	1	2
Somersworth Ward 1	1	2	3
Somersworth Ward 2	1	3	2
Somersworth Ward 3	2	1	3
Somersworth Ward 4	2	3	1
Somersworth Ward 5	3	2	1
South Hampton	3	1	2
Springfield	2	3	1
Stark	1	3	2
Stewartstown	3	1	2
Stoddard	1	2	3
Strafford	1	3	2
Stratford	3	1	2
Stratham	1	2	3
Success	2	1	3
Sugar Hill	2	3	1
Sullivan	1	2	3
Sunapee	3	1	2
Surry	3	1	2
Sutton	1	2	3
Swanzy	2	3	1
Tamworth	1	3	2
Temple	2	1	3
Thompson & Merserve's Purch.	1	2	3
Thornton	2	1	3
Tilton	3	2	1
Troy	1	3	2
Tuftonboro	3	1	2
Unity	1	2	3
Wakefield	2	1	3
Walpole	2	1	3
Warner	2	3	1
Warren	2	1	3
Washington	3	1	2
Waterville Valley	3	2	1
Weare	1	2	3
Webster	3	1	2
Wentworth	1	2	3
Wentworth's Location	3	2	1
Westmoreland	2	3	1
Whitefield	2	3	1
Wilmot	2	3	1
Wilton	2	3	1
Winchester	2	1	3

Windham	2	1	3
Windsor	3	1	2
Wolfeboro	1	3	2
Woodstock	3	1	2

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

AMENDED ANALYSIS

This bill:

- I. Establishes a procedure for the ordering of names on the ballots.
- II. Changes the limitations on a candidate designating a name to be placed on the ballot.
- III. Establishes a party column ordering procedure for the 2010 general election.

2009-1908h

Amendment to SB 205-FN

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

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

1 Criminal Mischief. Amend RSA 634:2, II and II-a to read as follows:

II. Criminal mischief is a class B felony if the actor purposely causes or attempts to cause:

- (a) Pecuniary loss in excess of [~~\$1,000~~] **\$1,500**; or
 - (b) A substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public service; or
 - (c) Discharge of a firearm at an occupied structure, as defined in RSA 635:1, III;
- or

(d) Damage to private or public property, real or personal, when the actor knows that the property has historical, cultural, or sentimental value that cannot be restored by repair or replacement.

II-a. Criminal mischief is a class A misdemeanor if the actor purposely causes or attempts to cause pecuniary loss in excess of \$100 and not more than [~~\$1,000~~] **\$1,500**.

2 Unauthorized Entries; Criminal Trespass. Amend RSA 635:2, II to read as follows:

II. Criminal trespass is a misdemeanor for the first offense and a class B felony for any subsequent offense if the person knowingly or recklessly causes damage in excess of [~~\$1,000~~] **\$1,500** to the value of the property of another.

3 Theft; Penalties. Amend RSA 637:11 to read as follows:

637:11 Penalties.

I. Theft constitutes a class A felony if:

- (a) The value of the property or services exceeds [~~\$1,000~~] **\$1,500**, or
- (b) The property stolen is a firearm, or
- (c) The actor is armed with a deadly weapon at the time of the theft, except that if the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II-g.

II. Theft constitutes a class B felony if:

- (a) The value of the property or services is more than [~~\$500~~] **\$1,000** but not more than [~~\$1,000~~] **\$1,500**, or
- (b) The actor has been twice before convicted of theft of property or services, as a felony or class A misdemeanor, or
- (c) The theft constitutes a violation of RSA 637:5, II(a) or (b), or
- (d) The property or services stolen are from 3 separate business establishments within a 72-hour period.

(e) The property is stolen with intent to resell or distribute. It would be prima facie evidence that that the offense constitutes theft with intent to resell or distribute when the theft consists of goods or merchandise in quantities that would not normally be purchased for personal use or consumption.

(f) The property received in violation of RSA 637:7 consists of goods or merchandise in quantities that would not normally be purchased for personal use or consumption.

(g) The actor has twice before been convicted of offenses under RSA 637:3-a, II and the present and prior convictions were based on offenses committed within a 36-month period.

(h) The actor is convicted a third time of theft under RSA 637:3-a.

III. Theft constitutes a misdemeanor if the value of the property or services does not exceed ~~[\$500]~~ **\$1,000**.

4 Fraud; Issuing Bad Checks. Amend RSA 638:4, IV(a) to read as follows:

IV.(a) Issuing a bad check is:

(1) A class A felony if:

(A) The face amount of the check exceeds ~~[\$1,000]~~ \$1,500; or

(B) The defendant has 2 or more prior convictions under this section, the present and prior convictions were based on offenses committed within a 12-month period, and the aggregate face amount of the checks underlying the present and prior convictions exceeds \$1,500;

(2) A class B felony if:

(A) The face amount of the check exceeds ~~[\$500]~~ \$1,000 but is not more than ~~[\$1,000]~~ \$1,500; or

(B) The defendant has 2 or more prior convictions under this section, the present and prior convictions were based on offenses committed within a 12-month period, and the aggregate face amount of the checks underlying the present and prior convictions exceeds \$1,000 but does not exceed \$1,500;

(3) A class A misdemeanor if the face amount of the check does not exceed ~~[\$500]~~ \$1,000 and the actor has been convicted of an offense under this section within the previous 12 months; and

(4) A class B misdemeanor in all other cases.

5 Fraud; Fraudulent Use of Credit Card. Amend RSA 638:5, III to read as follows:

III.(a) Fraudulent use of a credit card is:

(1) A class A felony if:

(A) Property or services are obtained which exceed the value of ~~[\$1,000]~~ \$1,500; or

(B) The defendant has 2 or more prior convictions under this section, the present and prior convictions were based on offenses committed within a 12-month period, and the aggregate amount of the property or services obtained by the defendant as part of those offenses exceeds \$1,500;

(2) A class B felony if:

(A) Property or services are obtained which exceed the value of ~~[\$500]~~ \$1,000 but are not more than the value of ~~[\$1,000]~~ \$1,500; or

(B) The defendant has 2 or more prior convictions under this section, the present and prior convictions were based on offenses committed within a 12-month period, and the aggregate amount of the property or services obtained by the defendant as part of those offenses exceeds \$1,000 but does not exceed \$1,500; and

(3) A misdemeanor in all other cases.

(b) The value ~~[may]~~ **shall** be determined according to the provisions of RSA 637:2, V.

6 Fraud; Commercial Bribery. Amend RSA 638:7, III to read as follows:

III.(a) Commercial bribery is:

(1) A class A felony if the value of the benefit referred to in paragraphs I and II is more than ~~[\$1,000]~~ \$1,500;

(2) A class B felony if the value of the benefit referred to in paragraphs I and II is more than ~~[\$500]~~ **\$1,000**, but is not more than ~~[\$1,000]~~ **\$1,500; and**

(3) A misdemeanor in all other cases.

(b) The value shall be determined according to the provisions of RSA 637:2, V.

7 Fraud; Sports Bribery. Amend RSA 638:8, II to read as follows:

II.(a) Sports bribery is:

(1) A class A felony if the benefit referred to in subparagraphs I(a), (b) or (d), or the value of the benefit gained or to be gained from influencing the outcome of a contest as referred to in subparagraph I(c), exceeds ~~[\$1,000]~~ **\$1,500** or if the injury threatened in subparagraphs I(a) or (b) is a serious bodily injury;

(2) A class B felony in all other cases.

(b) The value shall be determined according to the provisions of RSA 637:2, V.

8 Fraud; Fraud on the Women, Infants, and Children (WIC) Program. Amend RSA 638:15, II to read as follows:

II. Fraud on the women, infants, and children program is:

(a) A class A felony where the value of the funds, assets, or property exceeds ~~[\$1,000]~~ **\$1,500**;

(b) A class B felony where the value of the funds, assets, or property exceeds ~~[\$100]~~ **\$500**, but is not more than ~~[\$1,000]~~ **\$1,500**;

(c) A misdemeanor in all other cases.

9 Fraud; Computer Crime Penalties. Amend RSA 638:18, I-III to read as follows:

I. Computer crime constitutes a class A felony if the damage to or the value of the property or computer services exceeds ~~[\$1,000]~~ **\$1,500**, or if the person has previously been convicted of violating RSA 638:17, II, IV, or VI, or any other statute prohibiting the same conduct in another state, territory, or possession of the United States.

II. Computer crime constitutes a class B felony if:

(a) The damage to or the value of the property or computer services exceeds ~~[\$500]~~ **\$1,000 but is not more than \$1,500**;

(b) The person recklessly engages in conduct which creates a risk of serious physical injury to another person; or

(c) The person is guilty of violating RSA 638:17, II, IV, or VI.

III. Computer crime is a misdemeanor if the damage to or the value of the property or computer services, if any, is ~~[\$500]~~ **\$1,000** or less.

10 Fraud; Computer Crime Penalties. Amend RSA 638:18, V(c) to read as follows:

(c) When the value of the property or computer services or damage thereto cannot be satisfactorily ascertained, the value shall be deemed to be ~~[\$250]~~ **\$500**.

11 Fraud; Insurance Fraud. Amend RSA 638:20, IV(a) to read as follows:

IV.(a) Insurance fraud is:

(1) A class A felony if the value of the fraudulent portion of the claim for payment or other benefit pursuant to an insurance policy is more than ~~[\$1,000]~~ **\$1,500**.

(2) A class B felony if the value of the fraudulent portion of the claim for payment or other benefit pursuant to an insurance policy is more than ~~[\$500]~~ **\$1,000**, but not more than ~~[\$1,000]~~ **\$1,500**.

(3) A misdemeanor in all other cases.

12 Presentence Investigation. Amend RSA 651:4 to read as follows:

651:4 Presentence Investigation.

I. ~~[No person convicted of a felony shall be sentenced before a written report of a presentence investigation has been presented to and considered by the court, unless waived by defendant and the state, or by the court.]~~ The court may, in its discretion, order a presentence investigation for a defendant convicted of a **felony or a** misdemeanor; provided that, upon the recommendation of the prosecution, the court shall order a presentence investigation report where the **felony or** misdemeanor was violent and the court has reason to believe that the defendant committed a similar act within the past year. The report shall

include a recommendation as to disposition, together with reference to such material disclosed by the investigation as supports such recommendation.

II. Before imposing sentence, the court shall take such steps as may be necessary so that the defendant is advised, by ~~his~~ counsel or otherwise, as the situation warrants, of the factual contents of any presentence investigation, and afforded a fair opportunity to ~~[controversy]~~ **contest** them. The sources of confidential information need not, however, be disclosed.

13 New Section; Theft; Organized Retail Crime Enterprise. Amend RSA 637 by inserting after section 10-b the following new section:

637:10-c Organized Retail Crime Enterprise. A person is guilty of a class B felony, and a class A felony for a second or subsequent offense, if he or she conspires with one or more persons to engage for profit in a scheme or course of conduct of theft as defined in RSA 637:3-a, II or RSA 637:10-b. A conviction under this section shall not merge with the conviction for any offense that is the object of the conspiracy.

14 Contingency. If HB 471-FN of the 2009 legislative session becomes law, then RSA 637:11, II(g)-(h) as inserted by section 3 of this act and section 13 of this act shall take effect on January 1, 2010 at 12:01 a.m. If HB 471-FN of the 2009 legislative session does not become law, then RSA 637:11, II(g)-(h) as inserted by section 3 of this act and section 13 of this act shall not take effect.

15 Effective Date.

I. RSA 637:11, II(g)-(h) as inserted by section 3 of this act shall take effect as provided in section 14 of this act.

II. Section 13 of this act shall take effect as provided in section 14 of this act.

III. The remainder of this act shall take effect January 1, 2010.

AMENDED ANALYSIS

This bill:

I. Increases the statutory damage amounts for theft, criminal trespass, criminal mischief, willful concealment, and shoplifting, and for certain crimes involving fraud.

II. Allows the court the discretion to order a presentence investigations in felony cases.

III. Makes certain changes to the theft statute and the insertion of a new section on organized retail crime enterprise contingent on the enactment of HB 471-FN of the 2009 legislative session.