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HOUSE RECORD

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Calendar and Journal of the 2019 Session

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Friday, May 31, 2019

No. 27

Contains: House Deadlines, Bills Laid on Table; House Bills Amended by the Senate; 2019 Committee of Conference Procedures; Reports and Amendments; Meetings and Notices

HOUSE CALENDAR

MEMBERS OF THE HOUSE:

The next House session will be on **Wednesday, June 5th at 1:00 p.m. and Thursday, June 6th at 10:00 a.m.** We will also meet Thursday, June 13th at 10:00 a.m.

Please note the box below regarding the continuing education presentation that is scheduled for Wednesday June 5th. This is very important information on what comes next in the legislative process and will be very helpful to those new to the legislature, as well as an excellent refresher for those of us who have been through the process before.

As next week's session starts at 1:00 p.m., I'd like to once again remind everyone that Part II, Article 15 of the NH Constitution states "...each member shall receive mileage for actual daily attendance on legislative days..." Therefore, if you attend the continuing education scheduled in the morning, you must attend the afternoon House session in order to be reimbursed for mileage for that day. If you attend only the continuing education but leave before session, you will not be reimbursed for mileage.

And don't forget, the State House Bicentennial celebrations will be happening next week! The festivities will start on Sunday, June 2nd and run through Saturday, June 8th. We are especially excited for the Legislative Old Home Day on Thursday, June 6th where we will have an opportunity to welcome back to the State House our colleagues, including several former speakers, who have previously served in the legislature. We will have a picnic lunch for everyone as we celebrate all those who have and are currently serving. You can see a full schedule of events at the website, www.nhstatehouse200.com.

Stephen J. Shurtleff, Speaker of the House

NOTICE

There will be a meeting of the chairs and vice chairs on **Tuesday, June 4th at 8:30 a.m.** in Rooms 201-203 of the Legislative Office Building.

Stephen J. Shurtleff, Speaker of the House

NOTICE

There will be a Democratic caucus on **Wednesday, June 5th at 11:00 a.m.** in Representatives Hall.
There will be a Democratic caucus on **Thursday, June 6th at 9:00 a.m.** in Representatives Hall.

Rep. Doug Ley

NOTICE

There will be a Republican caucus on **Wednesday, June 5th at 11:00 a.m.** in Rooms 301-303, LOB.
There will be a Republican caucus on **Thursday, June 6th at 9:00 a.m.** in Rooms 301-303, LOB.

Rep. Richard Hinch

NOTICE

House Continuing Education

DATE: Wednesday, June 5, 2019

TOPIC: You want me to Chair *WHAT*???.
Learn everything you ever wanted to know about:
Committees of Conference, Retained Bill Subcommittees, Study Committees
and Commissions

TIME: 9:00 a.m. – 11:00 a.m.

PLACE: LOB 210-211

COORDINATOR: Representative Marjorie Porter

NOTICE

ALL reports, scheduling and notices are due in the House Clerk's Office by **3:00 p.m. on WEDNESDAYS**. Reports and scheduling shall be turned in to House Committee Services for processing ***no later than 1:00 p.m.*** on Wednesday. Please be sure to complete that work in a timely fashion to meet the Calendar deadline.

CLOSES AT 3:00 p.m. ON:

Wednesday, June 5, 2019
Wednesday, June 12, 2019
Wednesday, June 19, 2019

AVAILABLE ON:

Friday, June 7, 2019
Friday, June 14, 2019
Friday, June 21, 2019

Paul C. Smith, Clerk of the House

2019 HOUSE DEADLINES

Thursday, June 6, 2019	Last day to act on SBs
Thursday, June 13, 2019	Last day to form Committees of Conference
Thursday, June 20, 2019	Last day to sign Committee of Conference reports (4:00 p.m.)
Thursday, June 27, 2019	Last day to act on Committee of Conference reports

AMENDMENT TO HOUSE RULE 65

AS PROPOSED BY THE HOUSE RULES COMMITTEE

Wednesday, September 4, 2019	First day to file LSRs for 2020 session
Friday, September 20, 2019	Last day to file LSRs for 2020 session (4:00 p.m.)
Friday, November 1, 2019	Last day to sign off LSRs for 2020 session (4:00 p.m.)
Thursday, November 14, 2019	Last day to report retained bills
Thursday, January 9, 2020	Last day to introduce House Bills

2019 HOUSE COMMITTEE OF CONFERENCE PROCEDURES

The Chairmen of the policy committees will receive bills amended by the Senate and should check with their committees to determine whether to recommend that the House concur, non-concur, or non-concur and request a Committee of Conference.

When a committee requests that the bill be sent to a Committee of Conference, the Chairman will recommend members for appointment. If the bill has gone to more than one committee, the members may come from the different committees as determined by the Speaker. Chairmen should recommend only those members from their policy committees. The Speaker shall make the final decision of Conference committee members, and the committee choices are generally limited to those who support the House position.

The **first named House member shall serve as Chairman of the House Conferees**. For House bills in Committee of Conference, **the House Conferee Chairman shall set the time and place of the first meeting with the Clerk's Office** and shall chair each meeting of the Committee of Conference. **The first meeting shall be posted in the Clerk's Office and outside the committee room at least 24 hours in advance**. If a Committee of Conference meeting recesses, **the reconvening time shall be posted in the Clerk's office and outside the committee room with at least 12 hours' notice**. [House Rule 49 (c)].

The House and Senate Conferees on a bill shall meet jointly but vote separately while in conference.

The Committee of Conference may not change the title of the bill. The Committee also may not add amendments that are not germane to the subject matter of the bill or contain subject matter that has been indefinitely postponed. A non-germane amendment is one in which the subject matter is not contained in either the House or Senate version of the bill. [House Rule 49 (g)]

The sponsor of a bill that is in Committee of Conference shall, upon request, be provided an opportunity to be heard.

A unanimous vote of both the House and Senate Conferees, voting separately, is necessary for an agreed upon report to be sent to the House and Senate.

Reports of all Committees of Conference must be filed with the Office of Legislative Services by the June 20, 2019 deadline adopted by the House. **All Committee of Conference members must sign their reports in the Office of Legislative Services by June 20, 2019 by 4:00 p.m.**

The **first-named House member on all bills in Committee of Conference must prepare an analysis of the report.** This report should contain a complete explanation of all changes made to the bill since it was passed by the House and must be submitted to the House Clerk for printing in the calendar.

All Committee of Conference reports shall be distributed in seat pockets to be acted on some subsequent day. [House Rule 49 (f)].

*See House Rule 49 for more information

BILLS LAID ON THE TABLE

CACR 5, relating to the right to vote. Providing that 17 year olds who will be eligible to vote in the general election be permitted to vote on that election's primary election. (No Pending Question)

CACR 6, relating to elections. Providing that any inhabitant who so desires may vote by absentee ballot in primary and general elections. (No Pending Question)

CACR 11, relating to taxes. Providing that a broad-based sales tax shall be prohibited. (Pending Question: Inexpedient To Legislate)

HB 101, relative to regulating possession of firearms in a school district. (Pending Question: Inexpedient To Legislate)

HB 144, relative to changes in property assessments. (Pending Question: Majority Committee Amendment)

HB 192-FN-LOCAL, abolishing fluoridation in water. (Pending Question: Ought To Pass)

HB 204, establishing a committee to review and update the penalties for contaminating drinking water and groundwater. (Pending Question: Majority Committee Amendment)

HB 230, prohibiting smoking in motor vehicles when a passenger is under 16 years of age. (Pending Question: Inexpedient To Legislate)

HB 249, permitting restaurant owners to allow dogs in restaurants. (Pending Question: Inexpedient To Legislate)

HB 275, relative to school nurse certification. (Pending Question: Ought To Pass)

HB 289, relative to the recitation of the Lord's prayer in public elementary schools. (Pending Question: Inexpedient To Legislate)

HB 314, relative to the submission of evidence prior to hearings in divorce cases. (Pending Question: Inexpedient To Legislate)

HB 378, raising the minimum age for marriage. (Pending Question: Ought To Pass with Amendment)

HB 451, relative to term and reimbursement alimony. (Pending Question: Inexpedient To Legislate)

HB 537, relative to the release of motor vehicle records. (Pending Question: Ought To Pass)

HB 632-FN, relative to the education tax credit. (Pending Question: Ought To Pass)

HB 672-FN, relative to driving to the left of an unbroken painted line. (Pending Question: Ought To Pass)

HB 688-FN, relative to transfer and inspection of animals. (No Pending Question)

HB 694-FN, establishing a take-back program for illegal controlled drugs. (Pending Question: Inexpedient To Legislate)

HB 732-FN, relative to over-sentencing and racial profiling. (No Pending Question)

HCR 1, rescinding all requests by the New Hampshire legislature for a federal constitutional convention. (Pending Question: Ought To Pass)

HJR 1, supporting efforts to develop wind power off the New Hampshire coast. (Pending Question: Ought To Pass)

HR 6, urging the United States to lead a global effort to prevent nuclear war. (Pending Question: Inexpedient To Legislate)

HR 8, affirming revenue estimates for fiscal years 2019, 2020, and 2021. (No Pending Question)

SB 36, creating a cause of action for certain constitutional deprivations of right. (Pending Question: Majority Committee Amendment)

SB 77-FN, relative to costs of care for animals seized in cruelty cases and prohibiting the future ownership of animals in certain animal cruelty cases. (Pending Question: Ought To Pass with Amendment)

SB 220, relative to department of transportation access to crash data. (Pending Question: Inexpedient To Legislate)

2019 HOUSE BILLS AMENDED BY THE SENATE

- HB 109-FN**, requiring background checks for commercial firearms sales. SJ 5/23/19
- HB 112**, relative to the mechanical licensing board. SJ 5/15/19
- HB 127**, (New Title) relative to the board of medicine and the medical review subcommittee and relative to health care workforce survey data. SJ 5/15/19
- HB 131**, (Second New Title) establishing a commission on mental health education and behavioral health and wellness programs and conferring degree granting authority to Signum university. SJ 5/23/19
- HB 137**, establishing a commission to examine the effects of wake boats in the state of New Hampshire. (House Concurs 5/23/19)
- HB 140**, establishing a commission to study the licensing of drivers from foreign countries. (House Concurs 5/2/19)
- HB 146**, relative to the counting of defective ballots. (House Concurs 5/23/19)
- HB 171**, (New Title) establishing a commission to study equal access and opportunity for students with disabilities to participate in cocurricular activities. (House Concurs 5/2/19)
- HB 175**, relative to the requirements for school building aid grants. SJ 5/23/19
- HB 183**, (Second New Title) establishing a committee to study the applications of microgrids in New Hampshire and changes in law necessary to allow for microgrids in electrical supply, and relative to baseload renewable generation credits for biomass energy facilities. SJ 5/23/19
- HB 196**, relative to proof of residency for fish and game purposes. (House Concurs 5/2/19)
- HB 224-FN**, making emergency medical technicians and rescue squad members eligible for a death benefit if killed in the line of duty. SJ 5/23/19
- HB 226**, relative to the renomination of teachers. SJ 5/23/19
- HB 228**, (New Title) extending the commission to study the current statutes related to management of non-tidal public waterways and the construction or placement of structures within them and relative to the New Hampshire rivers management and protection program. (House Concurs 5/23/19)
- HB 258**, (New Title) establishing a commission to study teacher preparation and education programs. SJ 5/15/19
- HB 261**, requiring the commissioner of the department of environmental services to revise rules relative to arsenic contamination in drinking water. SJ 5/23/19
- HB 280**, designating the red-tailed hawk as the state raptor. (House Concurs 5/23/19)
- HB 286-L**, relative to free inspection of records under the right-to-know law. (House Concurs 5/8/19)
- HB 291**, (New Title) establishing a committee to study certain findings regarding hospice and palliative care. SJ 5/23/19
- HB 320-FN**, (New Title) relative to organizations authorized to issue decals for multi-use decal number plates. (House Concurs 5/2/19)
- HB 326**, relative to the definition of prime wetland. SJ 5/15/19
- HB 338**, relative to rebates under the law governing unfair insurance practices. (House Concurs 5/2/19)
- HB 350**, (New Title) relative to licensed health care providers authorized to certify that criteria has been met for the use of therapeutic cannabis. (House Concurs 5/2/19)
- HB 353**, establishing a committee to study whether non-attorney legal professionals could be licensed to engage in the limited practice of law in the family division of the circuit court while under the supervision of a licensed attorney. (House Concurs 5/8/19)
- HB 354**, establishing a committee to investigate whether modification should be made to the time frame for determining permanency pursuant to RSA 169-C:24-b. (House Concurs 5/8/19)
- HB 356**, relative to the retention of certain reports by institutions of higher learning. (House Concurs 5/2/19)
- HB 359**, relative to warning labels on prescription drugs containing opiates. SJ 5/23/19
- HB 364**, (New Title) permitting qualifying patients and designated caregivers to cultivate cannabis for therapeutic use and permitting qualifying patients and designated caregivers to donate excess cannabis to other qualifying patients. SJ 5/2/19
- HB 365**, relative to net energy metering limits for customer generators. (House Concurs 5/2/19)
- HB 368-FN**, (New Title) relative to medically recognized disorders identified on drivers' licenses. SJ 5/23/19
- HB 396-FN-L**, relative to delay or denial of records under the right-to-know law. (House Concurs 5/2/19)
- HB 429**, establishing a committee to study ways to improve civic engagement in New Hampshire. SJ 5/15/19
- HB 435**, relative to certain terminology in the rulemaking authority of the department of education. SJ 5/15/19
- HB 443**, relative to municipal watering restrictions. SJ 5/15/19
- HB 446**, relative to initiating amendments and corrections to birth records. SJ 5/15/19
- HB 457-FN**, (New Title) establishing a committee to study the making, preservation, and Internet availability of audio and video recordings of proceedings of committees of the house of representatives. (House Concurs 5/8/19)
- HB 459-FN**, (Second New Title) defining hemp, relative to its growth and use in New Hampshire, establishing a committee to study the federal guidelines on growing hemp, and relative to costs of care for animals seized in animal cruelty cases and prohibiting the future ownership of animals in certain animal cruelty cases. SJ 5/23/19

HB 463-FN, (Second New Title) relative to licensure of advanced pharmacy technicians. (House Concurs 5/2/19)
HB 464, (New Title) relative to the definitions of solar energy systems and wind-powered energy systems for assessed value of real estate exemptions and enabling municipalities to adopt a property tax exemption for electric energy storage systems. SJ 5/23/19

HB 468-FN-L, (New Title) relative to the inclusion of attendance stipends and certain additional pay for instructional activities as earnable compensation in the retirement system. SJ 5/23/19

HB 476-FN, replacing the milk producers emergency relief fund with the dairy premium fund. (House Concurs 5/23/19)

HB 508, (Second New Title) relative to direct primary care. SJ 5/15/19

HB 511-FN, relative to vaping. SJ 4/25/19

HB 514-FN, imposing a waiting period between the purchase and delivery of a firearm. SJ 5/23/19

HB 518-FN, repealing certain statutes concerning reimbursement of cost of care by inmates. (House Concurs 5/23/19)

HB 534-FN, relative to certain major state projects. (House Nonconcurs; C of C 5/23/19)

HB 539-FN, (Second New Title) establishing a committee to study the implementation of Accessible Ballots. SJ 5/15/19

HB 549-FN, (New Title) establishing gold star family decals for motor vehicles. (House Concurs 5/23/19)

HB 560-FN, (New Title) relative to required reporting on waste reduction. SJ 5/15/19

HB 562, relative to the state building code. SJ 5/15/19

HB 564, (New Title) relative to possession of firearms on school property. SJ 5/23/19

HB 570, establishing a commission to study career pathways from full-time service year programs to postsecondary education and employment opportunities in support of New Hampshire's future workforce needs. (House Concurs 5/8/19)

HB 572, proclaiming the second Saturday in June as Pollyanna of Littleton New Hampshire Recognition Day. (House Concurs 5/2/19)

HB 582-FN, relative to the regional greenhouse gas initiative cap and trade program for controlling carbon dioxide emissions. SJ 5/15/19

HB 591, amending the laws governing OHRVs and snowmobiles. SJ 5/15/19

HB 592, relative to OHRV operation and license. (House Nonconcurs; C of C 5/23/19)

HB 593, (New Title) relative to updating official voter checklists and expanding the voter information exemption under the right to know law. SJ 5/23/19

HB 614-FN, (New Title) increasing penalties and fines for air pollution and water pollution. SJ 5/15/19

HB 628-FN, relative to universal changing stations in certain places of public accommodation. SJ 5/23/19

HB 631, establishing a deaf child's bill of rights and an advisory council on the education of deaf children. SJ 5/23/19

HB 645-FN, establishing a dock registration procedure. (House Concurs 5/23/19)

HB 660-FN, relative to studying the economic and other impacts of OHRV use in New Hampshire. SJ 5/15/19

HB 663, relative to the definition of agriculture and existing agricultural uses. (House Concurs 5/8/19)

HB 669-FN, relative to gender identity information included on drivers' licenses and nondrivers' identification cards. SJ 5/15/19

HB 692-FN, relative to dental care for Medicaid recipients. SJ 5/2/19

HB 696-FN, establishing a protective order for vulnerable adults. SJ 5/23/19

HB 706-FN-A, establishing an independent redistricting commission. SJ 5/23/19

HB 736, reestablishing the commission to study environmentally-triggered chronic illness. SJ 4/18/19

WEDNESDAY, JUNE 5

CONSENT CALENDAR

COMMERCE AND CONSUMER AFFAIRS

SB 17, relative to financial regulation technicals under insurance law. **OUGHT TO PASS.**

Rep. Christy Bartlett for Commerce and Consumer Affairs. This bill is a request of the Insurance Department to make a few "housekeeping" changes to the statutes on the financial regulation of insurance. These changes will provide clarity regarding what are considered allowable practices for filing annual statements, update permissible filing formats to include newer files, such as .pdfs and delete the requirement for filing "diskettes." This bill also corrects a reference in the statute governing holding companies and clarifies language in the statutes addressing risk based capital to include HMOs as regulated entities. **Vote 20-0.**

SB 64, relative to antifraud plans maintained by insurance companies. **OUGHT TO PASS.**

Rep. Richard Abel for Commerce and Consumer Affairs. This bill, filed by request of the Insurance Department, removes the mandate that insurance companies annually file written anti-fraud plans with the department. Regulated insurance companies are still required to develop and maintain such a plan, but will only need to submit the plan when requested by the department. The committee believes this bill allows for more efficient operations at the department and relieves insurers of the burden of filing a report that is only reviewed when there is an issue. **Vote 20-0.**

SB 195-FN, relative to insurance continuing education. **INEXPEDIENT TO LEGISLATE.**

Rep. Greg Indruk for Commerce and Consumer Affairs. This bill was a request of the Insurance Department to repeal an unnecessary dedicated fund established in RSA 400-A:29-a. However, HB 458-FN, repealing certain inactive dedicated funds, accomplishes the same purpose and has passed both chambers. Therefore, this bill is not needed. **Vote 20-0.**

SB 225-FN, adding physician assistants to certain New Hampshire laws. **OUGHT TO PASS.**

Rep. Joyce Weston for Commerce and Consumer Affairs. This bill adds licensed physician assistants (PAs) to RSA 135-C, allowing them to provide various mental health services, including involuntary emergency admissions to mental health facilities. These services are currently provided only by physicians or advanced-practice registered nurses. The intent of the bill is to increase the supply of providers — possibly providing some lower-cost options — and to include PAs in the insurance coverage benefits that apply. There was no opposition from the insurance providers. **Vote 20-0.**

SB 251, (New Title) relative to the life and health insurance guaranty association and relative to an unfair insurance practice regarding certain prescriptions. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Christy Bartlett for Commerce and Consumer Affairs. This bill is a request of the Insurance Department to add the changes recently adopted by the National Association of Insurance Commissioners (NAIC) to their model law on the Life and Health Guaranty Association of 1996, RSA 408-B. The changes will address issues arising out of the Long-Term Care Insurance (LTCI) company insolvencies; more equitably allocate the assessments for LTCI insolvencies; and add HMOs as members of the NH Life and Health Guaranty Association. The bill also prohibits denying life insurance to an applicant based solely on their having filled a prescription for certain medications, such as an opioid antagonist. The amendment adopted by the committee reconstitutes the proposed changes to RSA 408-B into a brand new chapter, RSA 408-F, to ensure the changes will only be implemented prospectively and to simplify the enforcement and regulation of existing insolvencies. **Vote 20-0.**

ELECTION LAW

SB 105-FN, relative to contributions to inaugural committees. **OUGHT TO PASS.**

Rep. Edith DesMarais for Election Law. This bill amends RSA 664:13-a which addresses reporting requirements for the treasurer of a gubernatorial inauguration. This law requires contributions and receipts to be made through the inauguration treasurer. The bill prohibits any person from making a contribution in excess of \$10,000 and requires backup receipts for any expenditures totaling more than \$1,000 from the inaugural treasurer to the governor-elect or his or her immediate family. The bill provides for greater transparency and confidence in the integrity of elections and related activities. **Vote 20-0.**

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SB 80, (2nd New Title) relative to membership on the board of mental health practice, applications for licensure by mental health practitioners, and insurance credentialing of out-of-state mental health practitioners and psychologists. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Peter Schmidt for Executive Departments and Administration. This bill requires the Board of Mental Health Practice to issue an interim license to qualified applicants from other states while awaiting final approval or denial of the application. The bill also adds two members to the Board of Mental Health Practice and clarifies the procedure for insurance credentialing of out-of-state mental health practitioners and psychologists applying for state licensure. This bill is part of the ongoing legislative effort to address the mental health crisis in NH by expediting administrative procedures and removing barriers, so that out-of-state mental health practitioners may more easily and rapidly join forces with existing in-state professionals presently serving the people of New Hampshire. The amendment is purely ministerial; in line with ED&A's regular effort to improve public safety, it adds a criminal background check requirement for applicants, and places the language thereof in the more appropriate section of the statute. **Vote 18-0.**

SB 120, relative to the controlled drug prescription health and safety program. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Jaci Grote for Executive Departments and Administration. This bill transfers the responsibility of the Controlled Drug Prescription Health and Safety Program from the Board of Pharmacy to the Office of Professional Licensure and Certification (OPLC). It also authorizes the sharing of information with other state

departments through secure connections between OPLC and a prescribing or dispensing health care practitioner's electronic health care record keeping system. During our hearing testimony confirmed that the Board of Pharmacy and OPLC support this bill and that OPLC confirmed that rulemaking shall follow RSA 541-A, necessary to implement and maintain the program. The amendment adds one member to the program's advisory council and ensures a smooth transition to a 5-year term for council members. **Vote 18-0.**

SB 163, relative to permits for operation of solid waste management facilities. **OUGHT TO PASS.**

Rep. Carol McGuire for Executive Departments and Administration. This bill sets statutory time limits for the Department of Environmental Services (DES) to act on solid waste management facility permits, 180 days if a public hearing is required, 120 if it isn't. These limits supersede the general 60-day limit for permits, because solid waste management facilities are typically complex and of significant interest to the public, and 60 days is not sufficient for public notification, hearing, and analysis of the operation. There was no opposition to this bill, which was a request of the DES. **Vote 18-0.**

FINANCE

SB 292-FN, relative to implementation of the new mental health 10-year plan. **OUGHT TO PASS.**

Rep. Joelle Martin for Finance. This bill requires the commissioner of the Department of Health & Human Services to submit a report on the status of the implementation of the 10-year mental health plan, including unmet benchmarks and recommendations for any barrier resolutions and/or needed modifications. The first annual report is due on September 1, 2019, to the Governor, the Senate President, and the Speaker of the House. **Vote 22-0.**

HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

SB 85, reestablishing the commission to study environmentally-triggered chronic illness. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Mark Pearson for Health, Human Services and Elderly Affairs. In 2017, the legislature passed HB 511 which established the original commission to study environmentally-triggered illness. Legislators, representatives of various executive departments, and appointees from professional and educational organizations formed the commission, supplemented by active non-commission attendees, established a framework and a data base to enable further work. The original commission reached its sunset date, but all concerned thought that there was more work to be done, and that the format was useful. This bill, as amended, re-establishes the commission adding as members representatives of organizations whose volunteer members contributed previously. The new commission has a sunset date of 2024, allowing it to work longer without interruption. **Vote 21-0.**

SB 176, establishing a committee to study mental health and human service business process alignment and information system interoperability. **OUGHT TO PASS.**

Rep. Dennis Acton for Health, Human Services and Elderly Affairs. This bill establishes a committee to study methods to improve access to services, reduce duplicative effort, and integrate primary care with mental health and substance use treatment systems. **Vote 20-0.**

SB 180, relative to privileged communications under the law governing mental health practice. **OUGHT TO PASS.**

Rep. John Fothergill for Health, Human Services and Elderly Affairs. The goal of this bill is to improve the coordination of patient care by allowing the various health care professionals treating a patient to communicate more freely for the purpose of providing care. The current statute on patient confidentiality is based on the standards for attorney-client privilege. That standard does not lend itself to the kind of collaborative practice which is the model for today's patient care, and constitutes a barrier to the most effective care. This bill lessens that burden by adopting the confidentiality and information sharing provisions of HIPAA and the accompanying sections of the Code of Federal Regulations, which are more appropriate to the provision of health care, and which allow more collaborative practice among the various health care providers treating a single patient. **Vote 18-2.**

JUDICIARY

SB 149, relative to voluntary application of the uniform prudent management of institutional funds act to certain charitable trusts. **OUGHT TO PASS.**

Rep. Sandra Keans for Judiciary. This bill allows two entities to take advantage of the uniform prudent management of institutional funds. 1) The fund balance must be over \$1 million dollars. 2) Provides that individual trustees (as opposed to a corporation) may now apply to use. 3) Provides that towns who have substantial funds may also take advantage of investment vehicles. The purpose is that, depending on the trust document, the trustees could, for example, make choices between equity or growth depending on the needs to carry out the trust. **Vote 18-0.**

MUNICIPAL AND COUNTY GOVERNMENT

SB 103-LOCAL, authorizing municipalities to engage in multi-town bonding projects. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Clyde Carson for Municipal and County Government. This bill as amended allows two or more municipalities to jointly issue bonds for any purpose that they are permitted to do individually and lays out the rules for doing so. The committee heard testimony that multi-town projects such as purchasing shared equipment, facilities or telecommunication infrastructure would be enabled with this bill. **Vote 18-0.**

SB 286-FN-LOCAL, relative to aggregation of electric customers by municipalities and counties. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Clyde Carson for Municipal and County Government. The NH electric aggregation statute enables our communities to take control of their energy future. It allows municipalities and counties to aggregate their power requirements and utilize their buying power to achieve goals such as lower pricing, use of renewable energy, use of locally produced energy, etc. This has been successful in several other states, but not so in NH. The difference is that in states where municipal aggregation has been successful the programs are on an opt-out basis, meaning everyone in the community is part of the program unless they opt out. The current NH statute is on an opt-in basis, which has resulted in insufficient purchasing power to negotiate with power suppliers. This bill as amended changes the statute from opt-in to opt-out. The committee heard testimony from municipalities as well as the NH consumer advocate supporting this change. There was no testimony in opposition to the change. **Vote 18-0.**

PUBLIC WORKS AND HIGHWAYS

SB 285-FN, establishing a coastal resilience and economic development program. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Michael Edgar for Public Works and Highways. This bill establishes a coastal resilience and economic development program. It is the policy of the state of New Hampshire to support municipalities in the coastal and Great Bay Estuary region to prepare for sea-level rise, storm surge, and flooding from extreme precipitation. This bill does the following: allows municipalities to create municipal development and revitalization districts as a result of a climate change emergency; creates coastal resilience and cultural and historic reserve districts; creates a coastal resilience and cultural and historic reserve district fund; and creates a coastal resilience and cultural and historic reserve commission. An amendment to the bill clarifies its language to state that if abandonment of any state highway is considered because of sea-level rise, storm surge, and/or extreme precipitation events, or anticipation of such events projected by the Coastal Risk and Hazards Commission Final Report and subsequent reports under RSA 483-B:22, then the Department of Transportation shall coordinate procedures with affected municipalities, the Rockingham County and Strafford County Planning Commissions, Department of Business and Economic Affairs, as well as with affected economic interests. The coordination process shall also consider mitigation policies and potential funding for owners of affected roads and projected impacts to the natural environment and culture. The final approval for such projects and related funding shall be included as part of the 10-year Transportation Plan. **Vote 19-1.**

TRANSPORTATION

SB 37, relative to the registration of motor vehicles. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Steven Smith for Transportation. This bill solves a technical problem for non-residents who own New Hampshire property and register vehicles here. Under current law, the vehicle must be "exclusively garaged" here. This means that someone living in Claremont cannot travel on I-91, which is in Vermont. The committee amendment simplifies the language by conforming to car insurance language and was developed by the Division of Motor Vehicles with input from the NH Town Clerks' Association. **Vote 15-1.**

SB 56, (New Title) establishing a committee to study motor vehicle registrations and drivers' licenses of active duty military personnel. **OUGHT TO PASS.**

Rep. Peter Torosian for Transportation. The committee believes it prudent to establish a committee to study and make recommendations for future legislation, if necessary, to allow active members of the United States Armed Forces to be exempt from the requirement to pay a registration fee for principal motor vehicles and to maintain active, unexpired drivers' licenses while on active military duty. **Vote 13-1.**

SB 238-FN, relative to the registration of motor vehicles owned by veterans. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Charlie St. Clair for Transportation. This bill, as amended, allows municipalities to waive fees for certain veterans (prisoners of war, Purple Heart recipients, and Pearl Harbor survivors) if desired. The Transportation Committee supports this veteran benefit unanimously. **Vote 13-0.**

WAYS AND MEANS

SB 96, establishing a film production incentive fund in the state film office. **INEXPEDIENT TO LEGISLATE.** Rep. Edith Tucker for Ways and Means. This bill seeks to establish a film incentive fund in the state film office. No one testified before Ways and Means, however, that any efforts had been made or were planned that would attract grants or donations to support commercial film-making in New Hampshire. Nonetheless, rulemaking and tracking another dedicated fund would be required. **Vote 19-0.**

SB 134-FN, relative to the administration of the meals and rooms tax. **OUGHT TO PASS.** Rep. David Karrick for Ways and Means. This bill simplifies and modernizes meals and rooms tax law. It clarifies the tax status of meals provided by for-profit or by nonprofit entities as well as the tax status of different kinds of lodging. It updates RSA 78-A to include situations previously only covered in rules. There should be no discernable impact on general fund revenues. **Vote 19-0.**

WEDNESDAY, JUNE 5 REGULAR CALENDAR

COMMERCE AND CONSUMER AFFAIRS

SB 58-FN, relative to reimbursement rates for low-dose mammography coverage. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Joyce Weston for Commerce and Consumer Affairs. This bill clarifies the reimbursement rates for low-dose mammography and would require health insurers to reimburse providers at rates that reflect the increased cost of breast tomosynthesis (3D mammography) — the new industry standard for mammography. 3D mammography has proven to have a positive impact on patient care through fewer false-positive test results and faster detection of breast cancer. It is slightly more expensive than 2D mammography, but the cost differential is small and using the more advanced technology should save money in the long run. The amendment, which passed in committee on a vote of 12–8, amends the title of the bill and clarifies the original language. **Vote 14-6.**

SB 98, clarifying the New Hampshire trust code. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: OUGHT TO PASS WITH AMENDMENT.**

Rep. Kristina Fargo for the **Majority** of Commerce and Consumer Affairs. This bill allows a court to consider “precatory language” (non-binding expression by the settlor regarding their “wishes”) when determining if a trustee, trust advisor or trust protector has acted accordingly. In addition, it clarifies the trustee’s powers to guarantee a loan or other obligation. It also protects a settlor from liability if a trustee, trust advisor or trust protector has engaged in or committed torts. Additionally, this bill has been amended to add a study committee to examine whether the past New Hampshire trust code statutes (16th law in 16 years) have been beneficial to the state. There are many concerns that the majority has: how many jobs are being created; is the fact that the largest percentage of trust assets are managed outside the state problematic; what revenues does the State receive from this industry; also what costs could be incurred by our legal system for trusts registered here but domiciled elsewhere; and does the NH Banking Department have the appropriate degree of oversight and the resources to carry out that oversight. **Vote 12-8.**

Rep. Michael Costable for the **Minority** of Commerce and Consumer Affairs. The minority on the committee believes that this bill ought to pass with amendment #1538. This amendment was worked on, and agreed to, by a 10-1 margin during the first subcommittee work session. The amendment supported by the majority of the committee was developed after a subsequent work session. It includes the underlying language of the bill, but adds a study committee to look at the trust code laws in general. The minority does not believe that adequate reasoning was given to kill the earlier amendment.

SB 110, relative to the investigations by the state fire marshal. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Kermit Williams for Commerce and Consumer Affairs. This bill allows the State Fire Marshal to obtain information from an insurance company when investigating a building collapse or carbon monoxide incident under the same rules that currently apply to fire losses under the State Board of Fire Control. The bill also modifies the disclosure rules for such investigations, giving much more secrecy to the insurance company and making it difficult to obtain information for a potential legal claim. The committee thought that the new language was unbalanced in favor of insurers, and amended the bill to return to the original disclosure language from RSA 153:13-a, which has worked well since 1979. **Vote 18-2.**

SB 192, relative to self-service storage facility liens. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Constance Van Houten for Commerce and Consumer Affairs. This bill repeals and reenacts RSA 451-C, relative to self-service storage facility liens. As amended, the bill adds and strengthens certain definitions in this chapter such as “renter” and “emergency;” clarifies and specifies required elements of a self-service storage rental agreement; and delineates timelines and procedure for the enforcement of a facility owner’s lien following default on the part of the renter. It increases the time required prior to assessment of a late fee from three days to five days and specifies when a facility owner is permitted to enter a rented space without notice. **Vote 16-4.**

SB 194-FN, relative to the insurance data security law. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Edward Butler for the **Majority** of Commerce and Consumer Affairs. This bill is a request of the Insurance Department. This legislation will adopt the National Association of Insurance Commissioners (NAIC) model law to establish standards for the protection of consumers’ information and requirements for the investigation of a breach and notification to the Insurance Commissioner in the event of such a breach. The Insurance Department has worked closely with industry and stakeholders to make modifications to the NAIC model that will better fit New Hampshire businesses while still ensuring full protection for our consumers. The amendment makes needed changes to the senate-passed version, including: correcting a reference, allowing an exception for portable electronics vendors, and adding breach investigation requirements for entities that comply with the New York cybersecurity program requirements. The amendment also adds two provisions to the exceptions section that were inadvertently omitted in the senate version. **Vote 11-9.**

Rep. John Hunt for the **Minority** of Commerce and Consumer Affairs. Generally the House Commerce Committee is very willing to support suggested legislation from the National Association of Insurance Commissioners (NAIC), but not always. We have already had one bill this year that had 4 different “model laws” and ironically it addressed a problem beyond their defined responsibility for insurance regulation. Frankly, they need to stick to insurance and not attempt to regulate banks, which the NAIC has no business trying to regulate, since banks already have their own federal and state regulators and regulations. NH already has laws for retailers who experience data breaches that are enforced by the Attorney General’s office. This model legislation regulates extended warranties issued by cell phone companies and car dealerships as insurance and, therefore, everyone now has a whole new set of requirements and responsibilities to the Insurance Commissioner. The Insurance Department claims that all other federal and state laws regulating banks, car dealers, retailers and cell phone companies are so inadequate that only the Insurance Department can stop these relentless data breaches. While the minority agrees with the Insurance Department’s regulations that address insurance companies, this over reach that includes anyone with a limited and obscure insurance connection, is totally inappropriate.

SB 226-FN, relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Garrett Muscatel for the **Majority** of Commerce and Consumer Affairs. This bill creates a registration requirement for Pharmacy Benefit Managers (PBMs) operating in the State of New Hampshire and reestablishes the prescription drug transparency commission from last year. The committee heard that there is a stunning lack of transparency in how insured individuals get their prescription drugs, and with prescription drug costs rising every day, removing the veil from this complicated system will allow us to understand it better and guide further regulation to help Granite Staters access the medication they need. Last year’s commission recommended registration as a way to gather more data about prescription drug spending in New Hampshire as much of the information we currently collect from insurers is withheld by PBMs on account of “trade secrets” protection. Registration will allow us to get the data from PBMs directly, and with it, we will better understand where the money goes in this convoluted process. The commission reestablished in the bill will also continue to study this issue and make valuable further recommendations on how to proceed. **Vote 12-8.**

Rep. John Hunt for the **Minority** of Commerce and Consumer Affairs. Pharmacy Benefit Managers (PBMs) are subcontractors of health insurance companies. They are intended to help an insurance company control costs and ultimately hold down health insurance premiums. Currently the NH Insurance Department licenses and regulates insurance companies and must have access to information about all paid health benefits so that it can ensure that the insurance companies’ premiums are correct based on all their actual claims paid, including any rebates or “kickbacks.” Unfortunately the department is not confident that it is getting all of this information, and instead of holding the health insurance companies accountable, the department wants to register, not even license, these PBMs, in hopes that the department can fill the holes in to fully calculate the insurance companies’ paid benefits. Clearly this problem can be best solved by requiring the insurance companies to rewrite their contracts with the PBMs. The adoption of this bill will just continue the finger pointing that will not resolve anything and will leave everyone wanting for real accountability.

SB 228-FN, relative to multiple-employer welfare arrangements. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Edward Butler for the **Majority** of Commerce and Consumer Affairs. There are three pieces to this bill. The first piece amends RSA 415-E, RSA 420-G, and RSA 420-K, and encompasses the work done over the summer and fall by the Insurance Department along with a workgroup of stakeholders – businesses, chambers of commerce, healthcare providers, insurance carriers and health system advocates. That work grew out of an Association Health Plan regulation finalized last June by the U.S. Department of Labor, which allowed aggregation of employer groups in a way not possible under prior federal guidance, and created an additional policy option for the small group market. This part of the bill defines these new policies and also creates balancing mechanisms to prevent significant negative impacts on existing insurance markets. But there’s a stumbling block: in March a federal District Court ruled that the USDOL regulation is unlawful because it conflicts with ACA guidelines. So this part of the bill becomes a contingency plan, to be implemented when, and if, the current & active court challenge allows these policies. The majority believes that the work reflected in this part of the bill deserves support. The second piece of the bill creates a new chapter 404-J, which establishes a commission on the status of health coverage markets for individuals and small employers. This commission will work to identify challenges to the individual and small group markets and will consider whether other changes might benefit our constituents. The third piece of the bill amends RSA 404-G and RSA 420-N to support the state’s ability to apply for a federal 1332 waiver to help stabilize the individual market, which is floundering. The bill language will make the process of applying for the waiver more streamlined and efficient. The amendment replaces the original bill. **Vote 12-8.**

Rep. John Hunt for the **Minority** of Commerce and Consumer Affairs. When the NH Insurance Department began working on this bill last summer it was after the US Department of Labor had issued a bulletin to allow these multiemployer health insurance arrangements to go forward. Even though New Hampshire already has a law on the books, the Insurance Department felt a need to ensure that New Hampshire's law reflected the requirements of the bulletin. However, several months ago the Federal courts ruled that it violated the Affordable Care Act; therefore these types of health plans are dead in the water. Appeals will take years and even if anything is approved, it will require new legislation to make it available here in New Hampshire, therefore the minority of the committee strongly believes this legislation should not be passed at this time. This bill also has a waiver request which can be addressed, like all other waiver requests have been addressed using a process in current law, with the Health Care Reform Oversight Committee.

SB 272-FN, relative to mental health parity under the insurance laws. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: OUGHT TO PASS.**

Rep. Kermit Williams for the **Majority** of Commerce and Consumer Affairs. This bill authorizes the Insurance Commissioner to enforce the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 and requires the commissioner to examine and evaluate health insurers, health service corporations, and health maintenance organizations for compliance. The act requires that health insurers to provide the same benefits for mental health services that they provide for physical health services, without additional limits to copays or number of visits. The committee supports the bill as an important issue. The amendment deals with another important issue, fair reimbursement for auto body shops from insurance companies. The text of this amendment comes from HB 664, which passed the House by a wide margin earlier this year. Since the fate of HB 664 in the other body is unclear, the committee decided to combine these two issues to emphasize their importance and try to move them both forward. **Vote 14-5.**

Rep. Michael Costable for the **Minority** of Commerce and Consumer Affairs. The minority on the committee believes that this bill should be adopted without the amendment that adds the language of HB 664. HB 664 is still in the Senate but changes are being proposed that will significantly change the bill as passed by the House. The minority believes that HB 664 will harm small businesses by forcing them to use dealers and harm consumers by driving up rates due to a lack of understanding of what OEM recommendations are and what required procedures are. As such, the majority amendment should not be adopted.

SB 279-FN, relative to access to fertility care. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: OUGHT TO PASS WITH AMENDMENT.**

Rep. Christy Bartlett for the **Majority** of Commerce and Consumer Affairs. This bill came to the committee with strong support. We heard hours of testimony from NH citizens. One in six couples struggle with infertility. There are also other medical reasons, such as, cancer, that may cause infertility. Currently, NH does not require insurance coverage for treatment of infertility in group health insurance policies, though, it is covered for state employees in their negotiated self-insured plan provided. MA has had such a requirement since 1987 and CT and RI have recently enacted laws with this requirement. Currently, seventeen states require this coverage and several others have bills pending. As a state with an aging population that wants to attract young families to live and raise families in NH, the committee heard from many affected couples that they had to work in MA in order to obtain this insurance coverage for infertility in order to have a family. One problem is that when a couple uses their savings or mortgages their home to pay the costs for invitro fertilization (IVF), which can cost up to \$14,000 per try, they may have more than one embryo implanted, hoping for a better chance at success. This increases the risk of a multiple birth which can lead to complications. Current insurance policies will pay for multiple babies born with potentially expensive medical conditions. But if IVF was covered, then a "singleton" would be implanted increasing the chance of a full-term, healthy baby. The amendment to this bill decreased the storage provision to the policy term and clarified there is no coverage for surrogacy. This bill is the result of bipartisan work, even though not a bipartisan vote, and will have a significant and positive impact on the younger generation and their ability to build families in New Hampshire. **Vote 12-8.**

Rep. John Hunt for the **Minority** of Commerce and Consumer Affairs. The minority is very concerned about the impact of this mandate on health insurance premiums for small businesses. Businesses with fewer than 50 employees represent only 20% of the insurance market, but these small employers pay some of the highest premiums because of mandates and they do not receive any subsidies similar to the individual/non group market. Ironically, the senate removed the non-group market from the bill because, under the Affordable Care Act, the state would have had to fund this mandate. Instead only small businesses must foot this mandate. It is little wonder why New Hampshire has never passed this legislation since first being studied 28 years ago and introduced as proposed legislation 19 years ago. For years Massachusetts was the only state with this mandate, and only very recently 2 other New England states have enacted this legislation. The proposed minority amendment would take advantage of a 20-year-old law that was enacted for exactly this purpose - to evaluate the impact a new mandate would have on health insurance premiums prior to enactment.

CRIMINAL JUSTICE AND PUBLIC SAFETY

SB 250-FN, relative to forgery of a certificate of insurance. **OUGHT TO PASS WITH AMENDMENT.**

Rep. David Welch for Criminal Justice and Public Safety. This bill changes the penalty for forgery of a certificate of insurance from a misdemeanor to a class B felony. The committee felt that this was an exceptional increase and amended the bill to read a class A misdemeanor. The Insurance Department had complained that the current statute of limitations of one year did not allow sufficient time to investigate so the amendment also extends the statute of limitations from one year to read two years. **Vote 19-0.**

ELECTION LAW

SB 66, relative to political contributions by candidates for certain offices. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Richard Komi for the **Majority** of Election Law. This bill bars candidates for the offices of Secretary of State, State Treasurer and any office voted upon by the New Hampshire General Court from making a political contribution to anybody running for public office. While the intent of the bill is laudable, the majority of the committee is of the opinion that this bill will infringe directly on the free speech rights of a specific small group of citizens, which are protected by the First Amendment to our Constitution. The majority therefore believes that the bill should be found Inexpedient to Legislate. **Vote 12-8.**

Rep. Katherine Prudhomme-O'Brien for the **Minority** of Election Law. This bill prohibits candidates for Secretary of State and State Treasurer from contributing to political committees, parties, advocacy organizations, candidates for State Representative, Speaker of the House or State Senate. Only two other states elect their Secretary of State and Treasurer in the same way we do, by joint session of the House and Senate. They are Maine and Tennessee. Maine adopted this law in the 1990's after abuses of the public trust. The current Tennessee Secretary of State reports that contributing in the above mentioned manner would cause immediate loss of support of the legislature and is an unthinkable move there. Imagine a situation where the highest election official in our state oversees the recount of a candidate for office who they also contributed to? How could other candidates (and their supporters) in that situation be certain they were treated with total impartiality? Public trust is a most sacred ideal we must always strive for. Passing this bill will help us to maintain that ideal and affirm our deepest affection for it for current and future generations of Granite Staters.

SB 156, relative to political contributions made by limited liability companies. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Wayne Moynihan for the **Majority** of Election Law. This bill modifies the law in regard to businesses which get organized in NH as limited liability companies (LLCs). The bill clarifies that individual partners or "members" of a LLC are subject to the same political campaign contribution limits as are other individuals and corporations under our state law. A problem with our current law has been exposed over the last several NH election cycles. Presently each LLC is treated as its own individual donor for the purpose of direct campaign contributions, regardless of who controls it. Single candidates have been receiving multiple contributions from separately organized LLCs, often created at the same address, that are controlled by the same person, corporation, or group of people. In these cases, contributions from the multiple LLCs, have enabled individual LLC members to direct the many LLC contributions to single candidates in total amounts that exceeded the contribution limits allowed to the owners individually. Currently, no state campaign finance statutes discuss, define, or even mention LLC's. These circumstances have become known as the "LLC Loophole." The effect of this bill will be to close that hole, and to increase the transparency and accountability of our law election law. **Vote 12-8.**

Rep. Kathleen Hoelzel for the **Minority** of Election Law. The minority believes that this bill is potentially harmful. It eliminates the privacy of members of limited liability companies (LLCs) and would give the state an anti-business reputation for the formation of new businesses, a practice which currently generates revenues for our state. Additionally, member information for LLCs is not currently collected. There are numerous LLCs in the state with the same address on file with the Secretary of State. Many unrelated business entities use the same address for their registered agents and registered offices which are required to be public by law. If this became law, the minority further believes that other statutes and in-house software and processes would be necessary at a cost unknown.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SB 232-FN, adopting the model psychology interjurisdictional compact. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Jaci Grote for the **Majority** of Executive Departments and Administration. States across the country are in the process of joining an interstate compact that will allow licensed psychologists to practice for 30 days

in other compact states. This agreement also permits interstate telemedicine among compact states. NH is in the running to be one of the first states to join the compact which would allow NH officials to participate in the bylaw development process. Once the compact goes live, it will have the authority to enforce rules and regulations, therefore it is beneficial for NH to be part of bylaw development. Members of compact states will apply for an E-passport allowing them to engage in telemedicine in another compact state even if they are not licensed in that state. Compact state telemedicine allows for continuity of care for NH residents who are, for example, traveling, relocating for work or education purposes, or are veterans or members of our armed forces. NH is among the states that need additional psychologists. This program is supported by a national organization and will not create an expense for the state as the Office of Professional Licensure and Certification will not need to hire additional staff. **Vote 12-6.**

Rep. Carol McGuire for the **Minority** of Executive Departments and Administration. The minority is concerned that this bill binds future legislatures to the rules adopted by the compact commission. This commission, which has not yet been formed, (and New Hampshire is not guaranteed a membership) will develop and adopt rules for reciprocity, codes of ethics, and discipline of psychologists. This bill requires New Hampshire to recognize these rules and enforce them as laws, whatever they say and whenever they are issued. If a some of these rules were objectionable to officials in any participating state, the only recourse would be legislative action withdrawing the state from the compact. Withdrawal could not be effective for a minimum of six months after passing! The minority is convinced that this procedure cedes too much authority to an unelected authority and commits us too thoroughly to an as yet unformed commission.

FINANCE

SB 2-FN, relative to funding for job training programs in the department of business and economic affairs. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Patricia Lovejoy for the **Majority** of Finance. This legislation increases the contribution to the Job Training Fund administered by the Department of Business and Economic Affairs from \$2 million to \$6 million and revises the program. Funding is from the Unemployment Compensation Fund. Unemployment security rates are based on an employer's experience rating. When the Unemployment Compensation Fund has balances exceeding \$250 million employers receive discounted rates ranging from 0.5% to 1.5% depending on the balance of the fund. Employment Security anticipates the fund balance without this change would be slightly more than \$275 million in 2021 which would entitle employers to a 1% discount. With this increased funding of the Job Training Fund, Employment Security anticipates that the fund will fall just below the \$275 million-dollar threshold for the 2nd and 3rd quarters of 2021, thereby resulting in a reduction in discount to 0.5% for those two quarters with the discount rising again to 1% in the 4th quarter of 2021. The impact of this reduced rate for the two quarters of 2021 would be \$9.8 million spread among all employers in the state. The majority of the committee believes it is in the public interest to enhance public-private partnerships to recruit, train, and re-employ workers in order to meet New Hampshire's skill gap and worker shortage. **Vote 11-9.**

Rep. Werner Horn for the **Minority** of Finance. The minority believes that in times of moderate to high unemployment there is significant value in workforce job training programs. To divert an additional \$4 million at this point in time will have the economic impact of levying an additional \$13.3 million from New Hampshire employers according to the fiscal note prepared by the LBA. New Hampshire is at a point of low unemployment, indicating lack of workers to justify the 200% increases to these programs. Diverting \$4 million at this point will reduce the fund balance in the Unemployment Compensation Fund below the \$275 million threshold triggering the higher tax rate for businesses. Sustaining funding for this program over multiple years will unnecessarily prevent the fund rising above the \$300 million balance which would keep the unemployment tax rate at the higher rate. It is important to justify government expenditures against the benefit to New Hampshire and increasing funding for these programs 200% fails to meet that standard.

SB 82-FN, relative to school food and nutrition programs. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Kenneth Weyler for Finance. This bill is important to school districts which provide breakfast for their students. Students who qualify for reduced price meals, due to family incomes between 130% and 185% of federal poverty level, are required to pay 30 cents for breakfast. Too often this stipend is not paid. Never the less, the school provides the meal for the student, understanding the importance of not starting school while hungry. The committee agrees, and feels it is important enough to support the school districts by relieving them of this cost. The federal government pays 3 cents of the 30, and this bill pays the other 27 cents. The cost to the state is estimated to be \$370,234 for 2020 and increasing slightly each year. The amendment is to ensure that the funds are in the Department of Education budget and dedicated for this purpose. **Vote 22-0.**

SB 125-FN, relative to parental reimbursement for voluntary services provided under the child in need of services (CHINS) program. **OUGHT TO PASS.**

Rep. Katherine Rogers for Finance. This bill would remove responsibility for parents to reimburse the state for any voluntary services provided under the Child in Need of Services program (CHINS) and would have a

negligible financial impact on the Department of Health and Human Services budget. The concept of offering voluntary services, prior to a CHINS petition being brought into the court system, was to prevent court involvement in a child's life. The prohibitive cost of these services has prevented many families from availing themselves of these services and getting help for a child until court involvement is necessary, therefore costing the state much more over the course of time, than if they were offered at no cost to the families at the first signs of problems. **Vote 21-0.**

SB 185-FN-A, (New Title) relative to development of the New Hampshire state rail trails plan by the department of transportation and making an appropriation therefor. **OUGHT TO PASS.**

Rep. Susan Ford for Finance. This bill establishes a rail trail corridors advisory committee to assist the Department of Transportation to update the state trails plan and makes an appropriation of \$200,000. The state of New Hampshire owns 500 miles of rail corridors and use of these trails for biking and non-motorized recreation provides valuable New Hampshire assets for residents and tourists. This bill requires the development of a plan for the state rail-trail system to ensure preservation and provide direction for future development. **Vote 22-0.**

SB 289-FN, relative to health and human services. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. David Huot for the **Majority** of Finance. This bill came to the committee at the request of the Department of Health and Human Services to make a technical correction to the definition of "Area Agency" in Section 4 of the bill and clarify the source of its authority in federal regulations. The bill brings New Hampshire into compliance with federal regulations. New Hampshire needs to be in compliance by FY 2022 or risk jeopardizing federal funding for the programs totaling approximately \$175 million per year. **Vote 12-9.**

Rep. Erin Hennessey for the **Minority** of Finance. This bill is a Department of Health and Human Services omnibus bill with seven separate sections. The minority, although not opposed to the policies in this bill, could not support the bill because there was no financial analysis done by the committee. At the work session, there were no bill sponsors or department finance employees present to answer any questions posed by the minority. As it is the committee's charge to examine all measures carrying appropriations of state money, the minority hoped to retain the bill and complete our responsibilities.

SB 290-FN, relative to the New Hampshire granite advantage health care program. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Joelle Martin for the **Majority** of Finance. This bill makes several updates to the Granite Advantage Health Care Program. The majority of the committee is concerned with the possibility of a significant loss of coverage for our Medicaid Expansion enrollees, as happened in Arkansas where the imposition of a work requirement lead to 18,000 recipients losing coverage. This bill does not eliminate the community engagement requirement but establishes a trigger for its elimination if: 1) there are negative economic consequences due to increased un-compensated care as a result of beneficiaries being suspended from the program; or 2) if 500 or more enrollees lose coverage. The bill also adjusts the minimum required balance for the TANF reserve fund due to the increased demand for TANF funds for the Granite Workforce program, and allows general funds to be used as a source of last resort if the federal match of 90% is sustained. The majority respects the spirit and goals of the community engagement provision while providing a safeguard for NH Medicaid Expansion patients and the economy. **Vote 13-9.**

Rep. Erin Hennessey for the **Minority** of Finance. Currently, New Hampshire's Granite Advantage Health Care Program (expanded Medicaid program) provides health coverage to approximately 50,000 residents. The work requirements and other details in the bi-partisan SB 313 from 2018, not only provided access to health care for these 50,000 individuals, but created a job training program with childcare and transportation. The minority believes all of the details from SB 313 are helping to move Granite Staters into higher income levels and self-dependency. And, SB 313 did this without spending New Hampshire general funds. SB 290 as amended allows New Hampshire to spend general funds on the expanded Medicaid program as well as increasing the population eligible for expanded Medicaid by removing many of the bi-partisan agreed upon work requirements or community engagement aspects from SB 313. Some of the work requirement changes in SB 290 include allowing parents to ignore the work requirement until their children are 13; allowing individuals to self-certify to the medically frail exemption rather than a medical professional; exempting grandparents caring for grandchildren no matter the grandchild's age; and allowing for the complete elimination of the work requirement and community engagement rules if the number of individuals suspended for non-compliance exceeds 500 or approximately 1% of those currently enrolled. These rule changes will all expand the number of Granite Staters that do not need to comply with the work requirements. As a result, the cost of the program will increase and New Hampshire will use general funds to pay for it. The bill also allows for the TANF reserve balance to reach \$5 million, a level not adequate to help support Granite Staters in the next recession. The Department of Health and Human Services was unable to estimate the fiscal impact of the bill but assumed an increase in expenditures. As the costs of these changes are unknown, the minority does not support this bill.

HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

SB 111, relative to the collection of health care data. **MAJORITY: OUGHT TO PASS. MINORITY: OUGHT TO PASS WITH AMENDMENT.**

Rep. Gary Woods for the **Majority** of Health, Human Services and Elderly Affairs. This bill creates a more robust and useful healthcare database and makes it more widely available throughout the entire healthcare community, from researchers to public entities. The commissioner of the Department of Health and Human Services is charged with establishing rules as to the content of the database as well as to whom it can be made available. The commissioner will also have the responsibility of insuring all confidentiality requirements are met. This bill, as amended, will help meet of the need for more data with which good decisions can be made in the healthcare arena. The majority considered the amendment proposed by the minority requiring an annual report on abortion data and believes the bill is complete as it came to us from the other chamber. The majority notes that this chamber has already rejected a different method of collecting data about abortion statistics and sees no reason to revisit the issue in the context of this bill. **Vote 13-7.**

Rep. Walter Stapleton for the **Minority** of Health, Human Services and Elderly Affairs.

This bill is good, but is incomplete without data for pregnancy termination, especially given that New Hampshire collects statistics on virtually all other health care and health-affecting conditions, and publishes them in the aggregate and under strict privacy systems such as "NH Health WISDOM" without disclosure of either patient or provider identities. New Hampshire is one of only three states that does not report pregnancy termination statistics to the national Centers for Disease Control and Prevention. Under present law, the Department of Health and Human Services collects much of this data, and the minority amendment would enable an understanding of how health in New Hampshire is affected by this missing data component.

SB 115, establishing a commission to study the business environment for mental health providers in New Hampshire. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Joe Schapiro for the **Majority** of Health, Human Services and Elderly Affairs. This bill addresses our current severe workforce challenges in the mental health arena by creating a commission to examine a broad array of business related issues that confront providers. These include affordable education, billing practices, reimbursement rates, and insurance provider networks. There was general agreement that an improvement in the business environment would encourage people to go into the field, which, in turn, would improve much-needed access to care. One concern raised by the minority was that discussion about rates might create conflict with anti-trust law. However, after much deliberation the bipartisan majority was unpersuaded that the mere discussion of business practices among representatives from the various professions would rise to the level of agreement and action between competing professionals contemplated by the anti-trust laws. The majority notes that the commission would have access to legal expertise if necessary to navigate such issues. **Vote 17-4.**

Rep. William Marsh for the **Minority** of Health, Human Services and Elderly Affairs. This bill has been brought forward by a group calling themselves "Clinicians United New Hampshire." We clearly heard testimony from these private practitioners that this bill is intended to allow them to negotiate better rates and business practices from the various insurers. While we are sympathetic with their issues, and agree they have been unfairly treated and ought to be better reimbursed, we believe they are proposing a commission intending to take actions contrary to the Sherman Antitrust Act (1890) as adjudicated in the US Supreme Court (*American Medical Association v. United States* 317 U.S. 519 (1943)), and as expounded in the Statement of Antitrust Enforcement Policy in Healthcare issued by the US Department of Justice and the Federal Trade Commission which explicitly states on p. 51 "If an exchange among competing providers of price or cost information results in an agreement among competitors as to the prices for health care services or the wages to be paid to health care employees, that agreement will be considered unlawful per se." Additionally, the membership of the commission is unbalanced, with 7 of 14 members having a vested interest in raising reimbursement rates, and only 1 with a vested interest in not raising rates. If this commission would facilitate the violation of federal antitrust laws, its existence would put the state at risk for the cost of litigating whether it is a party to such violation. Last, we believe if these providers are successful, and reach an agreement to raise the reimbursement they receive for mental health services, a similar remedy would have to apply to a broader range of practitioners, which would have the net effect of driving up the cost of healthcare for all citizens in NH. Therefore, we believe this bill should be Inexpedient to Legislate, and its proponents should instead ask Congress to amend the Sherman Antitrust Act of 1890.

SB 252-FN, relative to the detection and prevention of financial exploitation of vulnerable adults. **MAJORITY: OUGHT TO PASS. MINORITY: OUGHT TO PASS WITH AMENDMENT.**

Rep. Lucy Weber for the **Majority** of Health, Human Services and Elderly Affairs. Currently, a broker-dealer or investment advisor acting under NH's Uniform Securities Act, who suspects that a financial transaction directed by an adult client is the product of financial exploitation, has no authority to delay that transaction. Their only recourse is to report the suspicion to the Department of Health and Human

Services Bureau of Adult and Elderly Services Adult Protection Program. By the time an investigation is complete, the assets may be long gone, and recovery may be impossible. This bill, already adopted in several other states, provides a framework within which a broker may delay disbursement from an account, and sets out the framework for internal procedures the broker-dealer or investment counselor must follow. The bill as presented to the committee, and as favored by the regulated broker-dealers or counselors, provides that the broker-dealer “may” also promptly notify the Secretary of State and any third party previously authorized by the account holder, as long as that person is not the one suspected of exploitation. The discussion in committee centered around whether this disclosure should be governed by the use of the word “may,” and thus be permissive, or by the word “shall,” which would make the disclosure mandatory. The majority decided that enacting the statute with the word “may” was an important first step towards providing protection to the vulnerable adult, and that further revisions could be made in the future if necessary. **Vote 15-6.**

Rep. Bill Nelson for the **Minority** of Health, Human Services and Elderly Affairs. The minority agreed with the majority that more protection for financially vulnerable adults is very much in order. We feel that “may” on page 1, line 26 ought to be “shall” as we find it inconceivable that if a qualified individual feels that financial exploitation is being attempted, they would not report it to the responsible authorities.

JUDICIARY

SB 262-FN, (New Title) relative to the property interest in abandoned personal materials. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS WITH AMENDMENT.**

Rep. Barbara Griffin for the **Majority** of Judiciary. This bill was brought forward to address concerns about the ability of the police community to obtain personal information and then create and maintain a database of that information. The committee heard no testimony that such an issue currently exists. Concerns were raised over what constitutes abandonment, the ability of police to investigate criminal activities, and what activities would be covered at a crime scene. An amendment did pass in committee that limited what information and property would be considered. However, the bipartisan majority believed it was not sufficient to address the identified problems and asks that the majority committee recommendation be supported. **Vote 12-6.**

Rep. Sandra Keans for the **Minority** of Judiciary. This bill puts meat on the bones of the constitutional amendment on privacy which was passed with the support of a substantial majority of the citizens in November 2018. Investigatory techniques are advancing at lightening speed, especially in the area of DNA/RNA. Folks are losing their privacy without even realizing it. This bill changes nothing about the ability of police to collect physical property. However, they must not test for DNA until they can convince a judge a warrant would be appropriate.

SB 263, relative to anti-discrimination protection for students in public schools. **MAJORITY: OUGHT TO PASS. MINORITY: OUGHT TO PASS WITH AMENDMENT.**

Rep. Charlotte DiLorenzo for the **Majority** of Judiciary. This bill creates a cause of action for persons injured by discrimination in public schools. This bill came to Judiciary as a second committee after the House adopted the policy. Judiciary considered several alternatives to the remedy section and decided not to alter the language already adopted by the House. **Vote 13-6.**

Rep. Kurt Wuelper for the **Minority** of Judiciary. The minority believes this bill had several issues needing fixes. No standard for the actions creating potential liability; no clarity about who could bring actions under the new law; the potential liability limits; and failure to define the full scope of activities covered. The minority believes that almost all of these issues would be corrected by its amendment.

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SB 10, establishing the state minimum hourly rate based on whether an employer offers paid sick days to an employee. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Brian Sullivan for the **Majority** of Labor, Industrial and Rehabilitative Services. The majority believes that an increase of the minimum wage to \$10 per hour in 2020 and \$12 per hour in 2021 will benefit the low wage employees who most need help get closer to a living wage. We further believe that this increase will benefit the economy of the state because low wage workers inevitably spend most every dollar they earn. Increasing the tipped minimum wage to 50% returns it to the rate it was at in the 1990s. **Vote 12-8.**

Rep. Jack Flanagan for the **Minority** of Labor, Industrial and Rehabilitative Services. The minority feels that changes to the minimum wage will cause workers to lose hours worked and the benefits that employers provide, and to become victims of automation and out-sourcing. During testimony no one requested an increase in the minimum wage. They all requested better paying jobs. The minority felt that changes to all lower wage employees for the advantage of 1,400 employees that make minimum wage is not a benefit to the State.

LEGISLATIVE ADMINISTRATION

SB 235-FN, relative to sexual harassment complaints in the general court and authorizing an independent human resources professional. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Douglas Ley for the **Majority** of Legislative Administration. Sexual harassment is a real and continuing problem in workplaces across our nation and the New Hampshire General Court is no exception. This bill codifies in statute that the General Court shall have a policy on sexual harassment and the procedures for handling complaints. It authorizes utilization of an independent investigator when deemed necessary, provides for designation of a specific human resources professional to manage intake and initial steps in regards to sexual harassment complaints. Finally, it allows for policy to design methods to notify Chiefs-of-Staff of complaints, while protecting complainants and removing investigations from political Chiefs-of-Staff. It is good legislation which will promote a safer and more professional work environment in the General Court and will be beneficial to legislators, staff, lobbyists and the general public. **Vote 8-4.**

Rep. Gregory Hill for the **Minority** of Legislative Administration. Testimony by the House Counsel was that, notwithstanding the bills passage, the policy outlined in the legislation as amended will become essentially the policy of the General Court regardless. The minority saw little to no benefit of enshrining administrative policy in statute and, in fact, saw a detriment, in that policy can be changed relatively easily and statute can be difficult to amend.

MUNICIPAL AND COUNTY GOVERNMENT

SB 53-LOCAL, relative to maintenance of roads and highways to summer cottages. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Marjorie Porter for the **Majority** of Municipal and County Government. Despite the deceptive name of the title, highways to summer cottages are usually class V dirt roads. Currently, RSA 231:79 exempts towns from keeping open and maintaining these "highways" from December 10 through April 10 if the nature of the road makes using town equipment difficult or impossible. Some of our more rural towns with higher elevations are finding the roads difficult to maintain before and after these deadlines and have asked they be extended. This enabling legislation allows towns to extend that period to November 15 through April 30 after approval by the town's voters. Any year-round inhabitants of homes on these roads are aware of these maintenance restrictions, and as the request for extension must be posted in the town warrant and voted on at town meeting, they would be also aware of the pending change. **Vote 16-2.**

Rep. Kevin Pratt for the **Minority** of Municipal and County Government. This bill reduces the number of days a town would be responsible to plow roads to summer cottages. If approved by a town, it will effectively reduce emergency vehicle response to tax paying property and citizens. The reduced service to properties has proven to be a liability to towns in New Hampshire. This could be a loss of services for the tax payers if towns choose to adopt this bill against the wishes of tax payers on these roads. This could be a safety issue to anyone using these cottages during these months. .

SB 101, relative to procedures for county audits and recodifying provisions for performance and forensic audits. **OUGHT TO PASS.**

Rep. Bruce Tatro for Municipal and County Government. This bill enables county conventions to initiate audits at the county level and to review the audits when complete. **Vote 12-2.**

SB 121-FN, relative to acquisition rights and easements at Weeks Crossing Dam in the town of Warren by the department of environmental services. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Mac Kittredge for the **Majority** of Municipal and County Government. This bill enables the Department of Environmental Services, for the consideration of \$1, to reconstruct a dam destroyed by weather and reestablish a pond that will serve both the recreational activities of the abutters and provide a critical water reservoir for fire fighting. Upon reconstruction at state expense, using existing funds for such purposes, the Town of Warren will henceforth be responsible for future upkeep and maintenance of the replacement dam, relieving the state of this responsibility. The committee heard testimony that the Warren voters have approved this arrangement. **Vote 13-2.**

Rep. Max Abramson for the **Minority** of Municipal and County Government. This bill only refers to a single town, Warren. Members have raised concerns over the years about bills that are specific to one town or even a single dam project. While the minority did not object to what this bill is trying to do for the Town of Warren, the sponsors should have offered this same option for every dam project in the Granite State. This bill should cover them all.

SB 204, (New Title) relative to encouraging the development of electrical energy storage by both private market participants and regulated electric utility companies. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Clyde Carson for the **Majority** of Municipal and County Government. The House has already passed the policy side of the bill, which is to encourage the use of energy storage technology as part of the electric grid in NH. Our committee had this bill as a second committee to review the part of the bill dealing with municipal property tax exemptions. The bill enables the legislative body of municipalities to adopt a property tax exemption for energy storage systems. This exemption is consistent with other renewable energy system exemptions, such as those for solar and wind. The committee received testimony from 3 individuals, who were all in favor of the exemption; no one spoke in opposition to it. The majority of the committee believes that municipalities that wish to extend a property tax exemption for this purpose should be allowed to do so. **Vote 8-7.**

Rep. Tony Piemonte for the **Minority** of Municipal and County Government. The only portion of this bill that applies to Municipal and County Government is the tax exemption which covers two pages of an eight page bill. In essence, we are taking a good portion of the bill and trying to separate the bad parts, when the senate has a similar bill with the same language under their consideration. The senate chose to send a bright shiny red truck attached to a trailer full of junk that can neither be separated nor sorted; furthermore, it is outside the purview of Municipal and County Government to sort the trailer.

SB 307-FN, relative to outdoor lighting. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Julie Gilman for the **Majority** of Municipal and County Government. This bill provides for municipalities to enact local ordinances toward conserving energy consumed by outdoor lighting, and to further carry out dark sky compliance. The bill requires an agency that funds outdoor lights to ensure they have color correlated temperatures. Networked street light controls can be used by municipalities to provide other service such as electric vehicle charging stations. **Vote 12-3.**

Rep. Max Abramson for the **Minority** of Municipal and County Government. The minority felt that the decision about what color of lights to use should be left to the Governor and his department heads. While the bill may shed some light on "dark sky policies," the bill seems to overstep our position and mission as the General Court - providing the voters with the ability to use the Legislative Branch as a check on the power of state government. It is not the purpose of the General Court to dedicate the time of 424 members to constantly dictating the hue of newly installed LEDs. Each bill costs \$17,000 to draft and \$3 per second to debate on the floor of the House. State employees are smart enough to make such decisions without the legislature specifying every picayune detail of daily operations.

PUBLIC WORKS AND HIGHWAYS

SB 39, relative to the repair of roads not maintained by a municipality. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Barry Faulkner for Public Works and Highways. The purpose of this bill is to allow residential properties that are on a private way to qualify for federally-insured mortgages, which generally have more affordable terms than conventional mortgages. The Public Works and Highways Committee was informed that, without this bill, homes on private ways would not qualify for these mortgages unless the owners had a written cost-sharing agreement. The bill codifies the existing common law of easements as it applies to residential properties on private ways, as stated by the New Hampshire Supreme Court in *Village Green Condominium Association v. Hodges*, 167 N.H 497 (2015.) Under current law, all property owners benefitting from use of a private way or other easement are required to contribute jointly to the maintenance and repair of that way, unless those users have an express agreement that provides otherwise. This bill does not require owners to accept any particular agreement and does not impose any new charge or obligation on anyone, unless the court system is required to resolve a dispute among owners, which is the same as the current condition. This bill does not deal with agricultural, timber, commercial, or other users. It is not intended to extend, restrict, or otherwise change the common law with regard to easements. **Vote 14-6.**

SB 241-FN-A, relative to funding for the project development phase of the capitol corridor rail project. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Sue Newman for the **Majority** of Public Works and Highways. This bill funds the project development phase of the capitol corridor rail project in the Ten-Year Transportation Plan. The project development phase is not another study. It will produce the engineering plan, environmental permitting, firm project costs, and funding sources required to apply to the Federal Transit Administration for competitively awarded construction funding. The bill authorizes use of already appropriated Federal Transit Administration funds and Department of Transportation (DOT) matching funds. The DOT is allowed to use toll credits as matching funds; no state funds will be used. Testimony heard supports the concerns about volume of traffic and choked highway conditions experienced by tens of thousands of daily commuters. NH is the only state in the union without passenger rail to a major city. Each day, southern NH families spend hours on congested, grid-locked highways, trying to balance their work, home, and family life here. We cannot pave our way out of solving our traffic problems and reverse the environmental impact caused by the number of cars on the roads. Rail will help mitigate this by removing vehicles from the roadways. Younger people don't have the "car culture" we

have and support “greener footprints.” NH businesses continue to have difficulty hiring qualified workers. We heard from the NH Business for Rail Expansion coalition (a nonpartisan group of more than 110 statewide businesses) who believe that rail is crucial to grow, diversify, and strengthen the NH economy. Rail would facilitate interstate travel for workers, achieve goals of retaining our young homegrown talent, and make it easier for businesses to draw from Boston’s expansive talent pool. Rail would increase state business taxes and be an economic growth engine for the entire state. The project development phase does not obligate the state to move forward with rail construction. But it will answer the questions about how much passenger rail would cost, how it would be paid for, and give us the necessary information to make informed decisions. **Vote 12-8.** Rep. John Graham for the **Minority** of Public Works and Highways. For several reasons, the minority of the committee feels that this bill should not become law. First, although billed as a simple design process, to many of those speaking in favor of the bill it is a foregone conclusion that the rail corridor would be built regardless of the results of this design phase. Second, the overwhelming sentiment appears to be that the study would be paid for with “free money.” We all know that there is no such thing as free money whether it is from the federal government or from the state coffers. Third, within the past decade there have been several studies on the cost of commuter rail in the central corridor; all of which have outlined the considerable capital costs, as high as \$245.6M, involved as well as the requirement for annual outlays of \$15.7M, primarily from property taxes, to cover operating costs. Even the proponents of this bill acknowledge that operating costs will have to be subsidized in some fashion. Fourth, if commuter rail is to be studied, it should be done as a part of the Ten-Year Transportation Plan, which is currently being developed for legislative action in 2020. Finally, since the exact language of this bill is contained in HB2 as amended by the House, the minority believes that it would have been prudent to retain this bill in order to determine what position the governor will take on this issue.

SCIENCE, TECHNOLOGY AND ENERGY

SB 168, relative to class 2 obligations under the electric renewable portfolio standards. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Kenneth Wells for the **Majority** of Science, Technology and Energy. NH faces rising electricity costs on the multi-state regional grid because our neighboring states are driving down their total consumption by aggressively pursuing solar energy. This bill addresses our state’s Renewable Portfolio Standard (RPS), which describes how much of NH’s total energy mix will come from renewable energy. Renewable energy is a good deal for NH because, unlike fossil fuels such as coal, oil and natural gas, we can harvest renewable energy here in our state, paying in-state producers who will hire NH workers. This bill increases incrementally the Class II (solar electricity) portion of the RPS. It grows Class II from the existing 0.6% solar in 2019 to 5.4% by year 2025. **Vote 12-7.**

Rep. Fred Plett for the **Minority** of Science, Technology and Energy. This bill raises the Class II Renewable Portfolio Standard (new solar) from the current 0.6% to 5.4% by 2025, the percentages applicable to the electric supply necessary to provide energy to consumers in megawatt hours. This additional requirement may consume 2,300 acres of land somewhere for new solar panels and cost electric consumers an additional \$30 million per year. The minority objects to this additional burden on our lands and our pocketbooks.

SB 206, excluding the cost of lobbying and political activity from the rates of public utilities. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Chris Balch for the **Majority** of Science, Technology and Energy. The committee heard considerable testimony in favor of this bill and none in opposition. The bill was strongly supported by the Office of Consumer Advocate. Although the Public Utilities Commission has an accounting rule that is currently held to preclude including these political and lobbying costs in rates, the majority believes this prohibition deserves statutory protection. This bill may also facilitate discovery in rate cases to ensure these costs are disallowed. **Vote 10-9.** Rep. Douglas Thomas for the **Minority** of Science, Technology and Energy. The bipartisan minority is in 100 percent agreement that the cost of lobbying and political activity should be excluded from the rates of public utilities. The rub is that the Public Utilities Commission (PUC) already has rules and enforcement in place that prevent this very well. In fact, testimony admitted that not one case of rule breaking has ever occurred in the past or present. The PUC has the integrity and the expertise to determine what costs are allowed for rates and continues to do an exceptional job of maintaining this high level of scrutiny. The Office of Consumer Affairs supports this bill, but could offer not one piece of evidence that they were unable to perform their duties without codifying what was already in place. Its claim of additional authority was not a compelling case, especially when the PUC attorney offered that the bill added very little to what they were already doing. The minority feels an unintended consequence could exist as the bill calls into question contributions to trade organizations and is unclear how they would be treated. This is a major solution looking for a problem and although the “feel good” nature of the name is appealing, it adds nothing to the protection of ratepayers and only clutters up the statutes with an unnecessary law.

TRANSPORTATION

SB 200, relative to wildlife corridors. **OUGHT TO PASS.**

Rep. Cecilia Rich for Transportation. It is necessary to include wildlife corridors and habitat strongholds as an integral piece of the New Hampshire Department of Transportation's review process. This bill implements some of the recommendations of the SB 376 (2016) study on wildlife corridors. **Vote 9-5.**

SB 218, relative to duties of the commissioner of transportation regarding air navigation facilities. **WITHOUT RECOMMENDATION**

Statement in support of Ought to Pass: This bill provides a definition of small unmanned aircraft and makes clear that New Hampshire will follow federal regulations for these aircraft. It also authorizes the state of New Hampshire to enforce these regulations.

Rep. Casey Conley

Statement in support of Inexpedient to Legislate: This bill had two tied votes in Transportation. The first was OTP and the second was Retained. These two votes reflect the committee's uncertainty over the highly detailed technical aspects of the bill. One requirement of the bill makes it a violation to be out of compliance with federal codes. The bill also includes a definition that does not match the definition found in the federal code cited. More time is needed to get this language right and not put New Hampshire DOT in violation of this new statute.

Rep. Steven Smith

WAYS AND MEANS

SB 41-FN, relative to historical racing. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Patrick Abrami for the **Majority** of Ways and Means. There are currently 16 establishments with charitable gaming licenses serving 584 charities across New Hampshire. There is also one former racetrack which also has a simulcast license. This bill allows for the installation of historic racing terminals at licensed racetracks and licensed charitable gaming facilities. Historic horse racing machines are designed to comply with existing pari-mutuel wagering legislation. The machines select from a library of tens of thousands of previously-run horse races. Information about the race, such as the location, date, and names of horses or jockeys are masked so to protect the integrity of the game. Players are provided handicapping data such as odds, jockey, and trainer win percentages and previous results. The player then selects from traditional pari-mutuel wagers. A graphic of the race is displayed on the screen in its entirety or in part. A centralized system accumulates wagers, notifies terminals of the outcome of each race, and withholds customary fees associated with pari-mutuel wagering before paying-out the remaining funds. This bill was amended to accomplish the following: 1) increase the revenues flowing to the state, of which 35% flows to the charities, by changing the formula from 1.25% of handle (what is wagered) to 25% of net revenue. In doing so it is estimated by the Lottery Commission, which oversees charitable gaming, that revenues to the state will increase from \$6.6M to 12.9M. In addition, revenues to the charities will increase from \$2.4M to \$5.7M or from \$4,100 to \$9,800 per charity. 2) Allows use of historic raising terminals only under a charitable gaming license to ensure monies flow to charities. 3) Prevents any new charitable gaming licensee who gained a license after May 1, 2019 from installing these machines until after July 1, 2022; giving time for assessment of machine installation and usage by existing licensees. 4) Strengthens language in several sections to ensure that these machines in the future will not function or be characterized as slot machines. 5) Ensures that no historic racing machine shall be operated except within the location of a licensee during the facility's hours of play of charity games. 6) Makes other technical corrections. The majority of the committee felt that the timing of allowing these machines is crucial with the upcoming opening of the \$2.4B casino in Everett, MA which will cut into the revenues flowing to NH charities; has concluded that these are not slot machines but games with a pace of play slower than a slot machine that enable, when desired, player expertise to slow down the pace and affect betting outcomes; recognizes that with slot machines a player is wagering against the house, but with these machines the player is betting into a wagering pool and that those participating are wagering against each other which is classic pari-mutuel wagering; is confident with the oversight proposed in the bill to ensure the integrity of these machines will be maintained; and the majority of the committee has confidence that the Lottery Commission is more than up to the task of overseeing the implementation of these new machines which will be helping our charities across New Hampshire. **Vote 14-6.**

Rep. Lisa Bunker for the **Minority** of Ways and Means. The minority of the committee felt that, even as amended, the bill brought into the state a new form of charitable gaming significantly different from the established forms, which are generally more social in nature and less susceptible to compulsive solo play. The minority felt that the purported differences between these machines and slot machines were minor and technical, and that as far as potential players were concerned, there is no significant difference. The minority felt that these machines would bring in a new potentially addictive form of gambling not already common in the state and had concerns about local control of this new form of gaming in communities that already have charitable gaming.

SB 74-FN-A, (New Title) relative to register of deeds fees used to support the land and community heritage investment program (LCHIP), and establishing a committee to study the economic impact of land conservation. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Lisa Bunker for the **Majority** of Ways and Means. This bill, as amended, raises certain fees involved in real estate transactions to increase funding for the Land and Community Heritage and Investment Program (LCHIP), the independent state authority that makes matching grants to New Hampshire communities and nonprofits to conserve and preserve the state's most important natural, cultural, and historic resources. LCHIP funds have inspired local entities across the state to raise many times the grant amounts in support of local preservation projects. The program is also currently under-funded, awarding grants to only a fraction of worthy applicants. The proposed change from the current \$25 per document to \$35 per document represents the first increase in a decade. A 2014 study by the Trust for Public Land "found that every \$1 invested in land conservation returned \$11 in natural goods and services to the New Hampshire economy." The bill also establishes a committee to study the economic and demographic impacts of land conservation in general, unrelated to the LCHIP program, on housing and development. The amendment finesses timing of implementation and adds a discussion of register of deeds' compensation and the documents to which the LCHIP fee applies to the committee's purview. **Vote 11-9.**

Rep. Jess Edwards for the **Minority** of Ways and Means. This bill simultaneously expands a state program funded by fees on real estate transfers by increasing a fee 40% while establishing a legislative committee to study the impact of the program. This "Ready, Fire, Aim" to taking taxpayer money runs the serious risk of exacerbating the state's housing issues and is particularly burdensome to lower income homeowners given the number of homeowner related transactions that are impacted – in many cases three or more fee impositions for a loan refinancing or property transfer. While the Land and Community Heritage Investment Program has value, the impacts of this legislation are uncertain and it would be better to understand the results of the study first ("Aim") before raising a burdensome fee.

SB 187, (Second New Title) relative to OHRV dealer and rental agency registration fees and snowmobile registration fees. **OUGHT TO PASS.**

Rep. Edith Tucker for Ways and Means. This bill is designed to solve the financial stress that is an increasing problem for the state's 105 snowmobile clubs. Snowmobiling has always been funded by user-fees. The proposed registration fee structure, to be phased in a two-step process, would cover the cost of trail grooming and trail maintenance, including building bridges. Generally, the clubs would receive full reimbursement for their operational costs. But, unlike today, the state would no longer be involved in groomer equipment purchases; the clubs would raise these funds themselves. This bill, which includes some other positive tweaks, including raising Off-Highway Recreational Vehicle (OHRV) dealer and rental agency registration fees, is the result of many stakeholder meetings: NH Snowmobile Association, local snowmobile clubs, NH Bureau of Trails, and NH Fish and Game Department, all of which advocated for the changes. The OHRV community was also consulted and agreed. The state's costs will be reduced and riders will bear more of the costs of sustaining the state's 7,000-mile snowmobile trail system, much of which is on public corridors. **Vote 20-0.**

SB 190-FN, relative to apportionment of sales under the business profits tax. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Susan Almy for Ways and Means. Apportionment is the way that companies are told to attribute their income for taxation purposes to the various states in which they do business. States vary in how they define apportionment, and in recent years 31 states, including all of our neighbors (Vermont this month), have changed to market-based sourcing of sales. The result is that NH-based businesses often have to pay taxes twice on part of their income, sometimes 80% of it, in full to NH and in part to other states they sell services to. We must change our apportionment system to relieve their burden and avoid their departure, and also to allow us to make up the revenue loss, and more, by extending our reach to outside businesses that sell into NH and are now paying on less than 100% of their income. Apportionment applies mostly to the business profits tax, but also to a small part of the business enterprise formula. The amendment corrects language inadvertently omitted from the original bill when it was copied from department rules, adds the apportionment changes to the business enterprise tax as well, and provides that the changes will apply to tax years beginning on or after January 1, 2021. The Department of Revenue Administration (DRA) needs this time to rewrite the lengthy apportionment rules, change the forms, and publicize the changes here and across the country. This delay provides for two quarterly estimate payments before the end of the FY20-21 budget, which DRA research shows may add at least \$10 million to the budget revenues in the last six months. **Vote 19-0.**

SB 242-FN, requiring notice and approval of certain actions to commence audits of collection liabilities arising under certain sales and use tax statutes and prohibiting New Hampshire remote sellers from disclosing private customer information to foreign taxing authorities in connection with the collection of certain sales and use taxes. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Richard Ames for Ways and Means. On June 21, 2018, in a case titled *South Dakota v. Wayfair*, the United States Supreme Court overturned over 50 years of precedent that had required the physical

presence in a state of a retail seller before the state could impose on the seller its sales and use tax collection requirements. Post-*Wayfair*, retail businesses throughout the country selling remotely into another state, including those located within New Hampshire, are now exposed to new assertions by thousands of foreign taxing jurisdictions of various sales tax collection and remission requirements. These remote New Hampshire retailers are no longer protected by the longstanding physical presence rule. But the *Wayfair* decision left unresolved many questions relating to the scope of constitutionally allowable sales tax impositions on remote sellers. Key is the definition of a constitutionally sufficient safe harbor for the protection of relatively small businesses and other businesses with relatively low levels of sales business in the foreign taxing jurisdiction. The Supreme Court directly invited further examination of these questions, observing that the *Wayfair* case involved only “large, national companies that undoubtedly maintain an extensive virtual presence” and stating that the “question remains whether some other principle in the Court’s Commerce Clause doctrine might invalidate the [South Dakota] Act.” The core purpose of this bill is to authorize and direct the New Hampshire Department of Justice, working collaboratively with the Department of Revenue Administration and with private NH businesses selling remotely into other states, to conduct investigations and take legal action. The goal of legal action shall be to ensure that, post-*Wayfair*, no foreign taxing jurisdiction or authority imposes or attempts to impose sales and use tax collection obligations on a New Hampshire remote seller or accesses private information in a manner that violates the United States or New Hampshire constitutions or any other applicable provision of law. Actions by foreign taxing jurisdictions that impose undue burdens on interstate commerce and/or that unreasonably discriminate against New Hampshire remote sellers will not be tolerated. The committee amendment, developed over the course of several working sessions with the governor’s legal counsel and with representatives of the Department of Justice and Department of Revenue Administration, removes provisions from the original bill that the committee deemed not needed to advance the core purpose of the bill. Requirements for annual reports and the establishment of a commission with special time-limited monitoring responsibilities are included in the bill to ensure continuing legislative oversight of SB 242 implementation activity. **Vote 19-0.**

SB 246-FN, relative to licensing of child daycare, residential care, and child-placing agencies. **OUGHT TO PASS.** Rep. Richard Ames for Ways and Means. This bill came to the Ways and Means Committee for second committee review with respect to its proposed establishment of a new nonlapsing Child Care Licensing Fund. The bill provides for the regular deposit into the new fund of certain fees for state registry and criminal record checks collected by the Department of Health and Human Services. The committee agrees that this arrangement is appropriate and necessary to meet certain federal grant requirements and that there are no revenue implications of concern to the committee. **Vote 20-0.**

SB 270-FN, establishing a tax credit against the business profits tax for donations to career and technical education centers. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Thomas Southworth for the **Majority** of Ways and Means. This bill establishes a tax credit program that encourages businesses to make donations to career and technical education centers (CTEs). In order to qualify for the program, a business must first develop a partnership with a CTE and identify areas of need such as updated equipment, student internships, or even providing a part-time mentor at the CTE. The total tax credit available is \$500,000 and if requests surpass that amount, the credits will be pro-rated. The true value of the program is the long-term partnership between the business and the CTE that “is worth gold.” The majority of the committee believes that this program will provide an added tool to enhance the success of CTEs and ensure a skilled workforce for the future. The amendment contains a sunset in 2022 because committee members thought there might be better methods of funding, and this and required annual reporting provides a trial period for this method. **Vote 18-2.**

Rep. Jerry Stringham for the **Minority** of Ways and Means. The minority feels that this bill is a costly, cumbersome, and inefficient way to incentivize businesses to participate in the Granite State’s very valuable Career and Technical Education (CTE) program. Businesses will have to perform paperwork to secure a potential state tax credit. As the program has a \$500,000 cap, the businesses will not know how much of a credit they will receive until after they have expended the funds. When they do receive the credit, it will not be entirely retained by the company as the funds will be taxable to the business with a percentage being diverted to the federal government. The minority believes a substantial portion of the tax credits will go to businesses already supporting CTE investments and not lead to additional business support. There are better ways to incentivize businesses, particularly those with urgent employee needs. The minority believes that, for example, acknowledgments from the governor during February (CTE month) as prompted by the Department of Business Development would be more effective than an undefined promise of a tax break. There are no provisions for what spending will be cut or taxes increased to offset this \$500,000 tax credit.

COMMITTEE MEETINGS**FRIDAY, MAY 31****JOINT COMMITTEE ON EMPLOYEE CLASSIFICATION (RSA 14:14-C), Room 104, LOB**

11:30 a.m. Regular meeting.

NEW HAMPSHIRE CANADIAN TRADE COUNCIL (RSA 12-O:22), Room 100, SH

1:00 p.m. Regular meeting.

NEW HAMPSHIRE STATE HOUSE BICENTENNIAL COMMISSION (RSA 17-R:1), Room 204, LOB

10:00 a.m. Regular meeting.

MONDAY, JUNE 3**COMMISSION TO STUDY THE EFFECTIVENESS OF THE CURRENT STATUTES RELATED TO MANAGEMENT OF NON-TIDAL PUBLIC WATERWAYS AND THE CONSTRUCTION OR PLACEMENT OF STRUCTURES WITHIN THEM (RSA 482-A:35), Room 305, LOB**

1:00 p.m. Regular meeting.

STATE COMMITTEE ON AGING (RSA 161-F:7, I), New Hampshire Department of Health and Human Services, Brown Building, Room 232, 129 Pleasant Street, Concord

10:00 a.m. Regular meeting.

TUESDAY, JUNE 4**RESOURCES, RECREATION AND DEVELOPMENT, Room 305, LOB**

1:00 p.m. Full committee work session on bills amended by the Senate.

STATE VETERANS ADVISORY COMMITTEE (RSA 115-A:2), New Hampshire National Guard Regional Training Institute, 722 Riverwood Drive, Pembroke

5:00 p.m. Regular meeting.

WEDNESDAY, JUNE 5**CAPITAL BUDGET OVERVIEW COMMITTEE (RSA 17-J:2), Room 201, LOB**

8:30 a.m. Special meeting on DOT toll credits.

FRIDAY, JUNE 7**COMMISSION ON DEMOGRAPHIC TRENDS (RSA 4-C:37), Room 307, LOB**

9:00 a.m. Regular meeting.

SUNDAY, JUNE 9**LEGISLATIVE YOUTH ADVISORY COUNCIL (RSA 19-K:1), New Hampshire Technical Institute Sweeney Crocker Building Room 225 Concord**

1:00 p.m. Regular meeting.

MONDAY, JUNE 10**COMMISSION TO EVALUATE THE EFFECTIVENESS AND FUTURE OF THE NEW HAMPSHIRE GRANITE ADVANTAGE HEALTH CARE PROGRAM (RSA 126-AA:4), Room 201, LOB**

9:00 a.m. Organizational meeting.

INTERBRANCH CRIMINAL AND JUVENILE JUSTICE COUNCIL (RSA 651-E:2), Room 204, LOB

1:30 p.m. Regular meeting.

NEW HAMPSHIRE COMMISSION ON DEAFNESS AND HEARING LOSS (RSA 125-Q), Room 205, LOB

1:30 p.m. Regular meeting.

NEW HAMPSHIRE DRINKING WATER AND GROUNDWATER ADVISORY COMMISSION (RSA 485-F:4), Rooms 206-208, LOB

10:00 a.m. Regular meeting.

TUESDAY, JUNE 11**ELECTION LAW, Room 308, LOB**

10:00 a.m. Full committee work session to review senate amendments.

FISH AND GAME AND MARINE RESOURCES, Bonnie Brae Deer Farm, 601 Daniel Webster Highway, Plymouth

10:00 a.m. Tour.

WEDNESDAY, JUNE 12**JOINT LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE (RSA 17-N:1), Room 212, LOB**

11:00 a.m. Regular meeting.

THURSDAY, JUNE 13**CURRENT USE BOARD (RSA 79-A:3), New Hampshire Department of Revenue Administration, Conference Room 334, 109 Pleasant Street, Concord**

9:00 a.m. Public hearing.

9:30 a.m. Regular meeting.

FRIDAY, JUNE 14**BOARD OF CLAIMS (RSA 541-B:3), Room 307, LOB**

9:00 a.m. Regular meeting.

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

10:00 a.m. Regular meeting.

MONDAY, JUNE 17**NEW HAMPSHIRE VETERANS HOME BOARD OF MANAGERS (RSA 119:3-a), New Hampshire Veterans Home, Tarr South Conference Room, 139 Winter Street, Tilton**

9:00 a.m. Regular meeting.

THURSDAY, JUNE 20**COMMISSION ON POST-TRAUMATIC STRESS DISORDER AND TRAUMATIC BRAIN INJURY (RSA 115-D), Walker Building, Room 274, 21 South Fruit Street, Concord**

2:30 p.m. Regular meeting.

FRIDAY, JUNE 21**ADMINISTRATIVE RULES (RSA 541-A:2), Rooms 306-308, LOB**

9:00 a.m. Regular meeting.

COMMITTEE TO STUDY THE LAWS RELATING TO CONDOMINIUM AND HOMEOWNERS' ASSOCIATIONS (RSA 356-B:70), Room 202, LOB

1:00 p.m. Regular meeting.

ENERGY EFFICIENCY AND SUSTAINABLE ENERGY BOARD (RSA 125-O:5-a), New Hampshire Public Utilities Commission, 21 South Fruit Street, Hearing Room A, Concord

9:00 a.m. Regular meeting.

GOVERNOR'S COMMISSION ON ALCOHOL AND DRUG ABUSE PREVENTION, TREATMENT, AND RECOVERY (RSA 12-J:1), Governor and Council Chambers, SH

9:30 a.m. Regular meeting.

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

10:00 a.m. Regular meeting.

NEW HAMPSHIRE TRANSPORTATION COUNCIL (RSA 238-A:2), Room 203, LOB

9:00 a.m. Regular meeting.

OVERSIGHT COMMISSION ON CHILDREN'S SERVICES (RSA 170-G:19), Room 206, LOB

8:30 a.m. Regular meeting.

MONDAY, JUNE 24

COMMITTEE TO STUDY EXOTIC AQUATIC WEEDS AND EXOTIC AQUATIC SPECIES OF WILD-LIFE IN THE STATE OF NEW HAMPSHIRE (RSA 487:30), Room 301, LOB

11:00 a.m. Regular meeting.

OIL FUND DISBURSEMENT BOARD (RSA 146-D:4), Room 301, LOB *Please Note Room Change***

9:00 a.m. Regular meeting.

TUESDAY, JUNE 25

CAPITAL BUDGET OVERVIEW COMMITTEE (RSA 17-J:2), Room 201, LOB

10:00 a.m. Regular meeting.

JOINT COMMITTEE ON DEDICATED FUNDS (RSA 6:12-i), Room 202, LOB

1:00 p.m. Regular meeting.

LONG RANGE CAPITAL PLANNING AND UTILIZATION COMMITTEE (RSA 17-M:1), Room 201, LOB

10:30 a.m. Regular meeting.

WELLNESS AND PRIMARY PREVENTION COUNCIL (RSA 126-M:3), New Futures Conference Room, 1 Eagle Square, Concord

9:00 a.m. Regular meeting.

THURSDAY, JUNE 27

COMMISSION ON PRIMARY CARE WORKFORCE ISSUES (RSA 126-T), New Hampshire Hospital Association, 125 Airport Road, Concord

2:00 p.m. Regular meeting.

FRIDAY, JUNE 28

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

9:00 a.m. Continued meeting.

MONDAY, JULY 1

STATE COMMITTEE ON AGING (RSA 161-F:7, I), New Hampshire Department of Health and Human Services, Brown Building, Room 232, 129 Pleasant Street, Concord

10:00 a.m. Regular meeting.

OFFICIAL NOTICES**COUNTY DELEGATION NOTICE**

The **Hillsborough** County Executive Committee will meet on **Monday, June 3rd at 9:00 a.m.** at the Hillsborough County Complex, Bouchard Building, 329 Mast Road, Goffstown. At 10:00 a.m., following regular business, the Budget Review will take place.

Rep. Marty Jack, Clerk

COUNTY DELEGATION NOTICE

The **Rockingham** County Executive Committee will meet on **Friday, May 31st at 9:30 a.m.** in the Hilton Auditorium at the Rockingham County Nursing Home in Brentwood for subcommittee chairs to report budget recommendations.

The **Rockingham** County Executive Committee will hold a public hearing for the FY 2020 budget on **Monday, June 10th at 6:00 p.m.** in the Hilton Auditorium at the Rockingham County Nursing Home in Brentwood for subcommittee chairs to report budget recommendations. Executive Committee meeting to follow to consider changes.

The **Rockingham** County Executive Committee will meet on **Wednesday, June 26th at 5:30 p.m.** in the Commissioner's Conference Room of the Rockingham County Nursing Home in Brentwood, to finalize any unfinished business.

The **Rockingham** County Convention meeting will be held on **Wednesday, June 26th at 6:00 p.m.**, in the Hilton Auditorium at the Rockingham County Nursing Home in Brentwood, to adopt the FY 2020 County budget. Additional convention meeting, if needed, will be on **Friday, June 28th at 9:30 a.m.**

Rep. David A. Welch, Clerk

REVISED FISCAL NOTES

The following bills have a revised fiscal note: HB116, HB176, HB224, HB270, HB363, HB506, HB518, HB521, HB557, HB614, HB616, HB621, HB623, HB625, HB630, HB636, HB645, HB680, HB 686, HB692, HB705, HB706, HB709, HB710, HB711, HB712, HB713, HB714, HB715, HB716, HB717, HB 718, HB719, HB721, HB722, HB723, HB724, HB725, HB726, HB727, HB730, HB731, HB732, HB733, HB735, SB5, SB6, SB7, SB41, SB52, SB54, SB88, SB93, SB122, SB134, SB173, SB186, SB187, SB190, SB193, SB205, SB216, SB235, SB246, SB255, SB257, SB263, SB273, SB282, SB285, SB289, SB292, SB296, SB297, SB310.

Paul C. Smith, Clerk of the House

MEMBERS' NOTICES

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

Our State House will be celebrating its Bicentennial in June of 2019. The New Hampshire State House Bicentennial Commission has produced several commemorative items, which are on sale in the State House Visitors' Center, including shirts, cups, bottle openers, stickers, and our challenge coin, all featuring the logo for our big anniversary. More items will be coming over the coming months and all the proceeds go the State House Bicentennial Commemorative Fund. You can follow us online at <https://nhstatehouse200.com> or Facebook and Instagram for event and merchandising updates.

Reps. Robert Renny Cushing and David Welch

In recognition of the 200th anniversary of the State House, the New Hampshire Historical Society has recently published a handsome and very richly illustrated 80-page publication: *The Granite State House*. Produced as a special issue of the Society's journal *Historical New Hampshire*, it documents the design, construction, furnishings, and remodeling of the state house from the 1810s to the present. Copies may be obtained for \$5 each at the New Hampshire Historical Society, diagonally behind the state house at 30 Park Street; or through the Society's online store at nhhistory.org; or by calling 603-228-6688. Copies are also for sale at the State House Visitors' Center.

Rep. Edith Tucker

The Legislative Youth Advisory Council is looking for recommendations of young people aged 15-22, who would be interested in serving on the council. Created in 2006, LYAC is a statutory committee which serves as a link between young people and New Hampshire government, and advises the legislature on issues of concern to youth. Please forward any recommendations to NHLegislativeYouth@gmail.com. Applications will be accepted until July 12, 2019.

Rep. Marjorie Porter

Any Members interested in participating in an animal caucus please contact Rep. Cam Kenney at Cam.Kenney@leg.state.nh.us or Rep. Katherine Rogers at Katbeep@icloud.com and we will set up a time in the future to gather together and discuss future plans.

Reps. Cam Kenney and Katherine Rogers

Members of the House who are also Freemasons, you are eligible to join General Court Lodge, America's only legislative lodge. The lodge meets annually, January through June, at the Concord Masonic Temple with dinner at 5:30 p.m. and lodge at 6:30 p.m. The next (and last for the year) meeting of General Court Lodge will take place on Thursday, June 13. An RSVP for food count is greatly appreciated, kweyler@aol.com or 778-5225.

Rep. Ken Weyler

The House Republican Alliance will meet on every **Tuesday at 8:30 a.m.** in Room 307, LOB. All Republicans are welcome.

Reps. Carol McGuire, Jim Spillane, and Mike Sylvia

The Concord Young Professionals Network, an initiative of the Greater Concord Chamber of Commerce, is hosting a meet-and-greet breakfast for legislators in the State House cafeteria on **Wednesday, June 5th from 8:00 a.m. to 10:00 a.m.** Legislators are invited to breakfast and to meet and interact with young people and others in the community, discuss the future of New Hampshire with the rising generation of local leaders and residents, and to share with them your priorities for the state.

Rep. Kris Schultz

The Veterans Interest Caucus will have a vote to elect new leadership at lunch during session on **Thursday, June 6th**. We'll remain in Representatives Hall for what should be a 5-minute meeting to elect a Chair and Vice Chair. Be prepared to nominate candidates.

Rep. Jess Edwards

The NHARPC is sponsoring a legislative breakfast on **June 6th from 8:00 a.m. to 10:00 a.m.** in the State House cafeteria. The New Hampshire Association of Regional Planning Commissions(NHARPC) is the affiliation of the nine regional planning commissions in the state of New Hampshire. This breakfast gives NHARPC a chance to stay connected with NH legislators on the work of regional planning commissions and to show our appreciation for what our legislators do.

Rep. David Meader

All legislators and staff are invited to the 8th annual Representative Burt's Hot Dog Day on **Thursday, June 13th from 11:30 a.m. to 1:30 p.m.** on the State House lawn. Granite State Paw Rescuers of Goffstown will be hosting this year's event. Visit www.granitestatepaw.org. Please contact Rep. John Burt at john@burtnh.com if you can bring a cold side dish.

Rep. John Burt

STATE HOUSE VISITATION SCHEDULE

As a convenience to the members of the NH General Court, the Visitors' Center offers the following schedule of schools and other groups visiting the State House in 2018-2019. These listings are to ensure all members be notified in a timely manner of visitors from their district. Our schedule is tightly booked for the school year and subject to changes. Note that large groups are divided into smaller groups for tours.

Please contact the Visitor Center concerning school tour booking information. Legislators planning to meet with students should notify the Visitor Center. Thank you for your continued participation with your School Visitation Program.

Virginia J. Drew, Director

<i>DATE</i>	<i>TIME</i>	<i>GROUP</i>	<i>#/GRADE</i>
May 31	9:45	Florence Rideout School – Wilton	44/4
May 31	10:00	Salisbury and Webster Schools	30/4
May 31	10:15/11:30	Symonds School – Keene	63/4
June 5	9:30	Russell Elementary School	20/4
June 5	10:00	SAU 58- Stark, Groveton and Stratford Schools	
June 5	11:00/12:00	Peterborough Elementary School	60/4
June 7	9:45	Marlborough School	17/4
June 7	9:45	Lin-Wood School – Lincoln & Woodstock	20/4`
June 7	11:00	Newfields Elementary School	25/4
June 10	10:00	Whitefield School	22/4
June 10	10:30	Chesterfield School	49/3
June 11	10:15	Effingham Elementary School	20/4
June 11	11:00	UNH – North East Agriculture Summer Conference	30/adults
June 11	12:15	Pleasant St. School – Laconia	55/4
June 12	9:00	Dunbarton Elementary School	42/4

DATE	TIME	GROUP	#/GRADE
June 13	10:00/11:15 SH/HM	Interlakes Elementary School – Meredith	60/4
June 13	10:30	Antrim Area Senior Center	14/Srs
June 14	9:00	Candia Moore School	40/4
June 14	9:30	Benjamin Franklin Elementary School – Keene	47/4
June 14	11:00	NH Association for Justice – Continuing Legal Ed.	15/adults
June 17	10:00/11:00	Hollis Upper Elementary School	98/4
June 19	10:15	Wheelock School – Keene	46/4
June 25	9:00	AARP group	
June 26	9:00	MCPHS Pharmacy Students – Manchester	14/COL
June 26	10:00	St. Marie's Childcare Center	40/3-6

AMENDMENTS

(LISTED IN NUMERICAL ORDER)

Amendment to SB 10 (2019-2138h)

Proposed by the Majority of the Committee on Labor, Industrial and Rehabilitative Services - r
Amend the title of the bill by replacing it with the following:

AN ACT relative to the state minimum hourly rate.

Amend the bill by replacing section 1 with the following:

1 Minimum Hourly Rate. Amend the introductory paragraph of RSA 279:21 to read as follows:

279:21 Minimum Hourly Rate. Unless otherwise provided by statute, no person, firm, or corporation shall employ any employee at an hourly rate lower than that set forth in the federal minimum wage law, as amended ***or the following, whichever is higher:***

From January 1, 2020 to December 31, 2021, \$10 per hour.

From January 1, 2022 and thereafter, \$12 per hour.

Tipped employees of a restaurant, hotel, motel, inn or cabin, or ballroom who customarily and regularly receive more than \$30 a month in tips directly from the customers will receive a base rate from the employer of not less than [45] **50** percent of the applicable minimum wage. If an employee shows to the satisfaction of the commissioner that the actual amount of wages received at the end of each pay period did not equal the minimum wage for all hours worked, the employer shall pay the employee the difference to guarantee the applicable minimum wage.

Tipped employees who are licensed as secondary game operators pursuant to RSA 287-D and who customarily and regularly receive more than \$30 a month in tips directly from the customers will receive a base rate from the employer of not less than \$7.25 per hour. If such an employee shows to the satisfaction of the commissioner that the actual amount of wages received at the end of each pay period did not equal \$12 per hour for all hours worked, the employer shall pay the employee the difference to guarantee the \$12 hourly rate.

The limitations imposed hereby shall be subject to the following exceptions:

2019-2138h

AMENDED ANALYSIS

This bill increases the minimum hourly rate.

Amendment to SB 37 (2019-2297h)

Proposed by the Committee on Transportation - c

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

1 Certificates of Title and Registration of Vehicles; Reciprocity for Nonresidents. Amend RSA 261:46 to read as follows:

261:46 Nonresident Registration. Notwithstanding RSA 261:45, ~~[a nonresident who garages a vehicle exclusively in this state may register such vehicle in this state as a nonresident. No exemption from the payment of a permit fee shall be granted by reason of nonresidence except by the director, who shall in all cases require proof satisfactory to him or her of residence elsewhere, and of the liability of a nonresident owner, otherwise entitled to such exemption, to pay a property tax on the vehicle for the current year in the state of his or her residence.]~~ ***the department shall register motor vehicles owned by individuals who are not residents of New Hampshire upon presentation of an affidavit by the applicant, on a form developed by the department, swearing that the vehicle is principally garaged or is regularly kept overnight in New Hampshire and that the applicant is the owner of at least one other vehicle which is registered and insured in the state of the applicant's residence.***

2 Effective Date. This act shall take effect January 1, 2020.

2019-2297h

AMENDED ANALYSIS

This bill modifies the requirements for nonresidents registration of motor vehicles in the state.

Amendment to SB 39

(2019-2161h)

Proposed by the Committee on Public Works and Highways - r

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

1 Statement of Purpose. The purpose of this act is to codify the common law of easements, as stated in the New Hampshire supreme court decision in *Village Green Condominium Assn. v. Hodges*, 167 N.H. 497 (2015), as it applies to residences on private roads, in order to facilitate the transactions of owners and buyers who apply for certain federally-backed mortgages that require such a statute in the absence of an agreement among the owners. It is not intended to extend or restrict the common law as applied to residences on private roads, nor to affect the rights and obligations of non-residential owners on private roads.

2 New Subdivision; Repair of Roads Not Maintained by a Municipality. Amend RSA 231 by inserting after section 81 the following new subdivision:

Repair of Roads Not Maintained by a Municipality

231:81-a Repair of Roads Not Maintained by a Municipality.

I. In the absence of an express agreement or requirement governing maintenance of a private road, when more than one residential owner enjoys a common benefit from a private road, each residential owner shall contribute equitably to the reasonable cost of maintaining the private road, and shall have the right to bring a civil action to enforce the requirement of this paragraph. This paragraph shall not apply to any highway defined in RSA 229:5.

II. Any owner of a residential property abutting a private road who directly or indirectly damages any portion such road shall be solely responsible for repairing or restoring the portion damaged by such owner.

III. Nothing in this section is intended to extend or restrict the common law as applied to residences on private roads, nor to affect the rights and obligations of non-residential property owners on private roads as they exist under the New Hampshire common law on easements.

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

Amendment to SB 41-FN

(2019-2342h)

Proposed by the Majority of the Committee on Ways and Means - r

Amend RSA 284:6-a, VII as inserted by section 2 of the bill by replacing it with the following:

VII. Notwithstanding the provisions of RSA 284:6-a, VI, the lottery commission shall authorize wagers on historic horse races, whether on an electronic gaming device or otherwise, so long as such wagers meet the requirements of this chapter. The historic racing machines shall be programmed and operated for pari-mutuel wagering only.

Amend the bill by replacing sections 5-6 with the following:

5 New Section; Requirements for Conducting Historic Horse Race Wagering. Amend RSA 284 by inserting after section 15-d the following new section:

284:15-e Requirements for Conducting Historic Horse Race Wagering. Any person who holds a game operator employer license and operates games of chance under RSA 287-D at a facility pursuant to RSA 284:22-b, II may accept wagers on historic horse races.

6 New Section; Pari-Mutuel Pools on Historic Horse Racing. Amend RSA 284 by inserting after section 22-a the following new section:

284:22-b Pari-mutuel Pools on Historic Horse Racing.

I. In this section:

(a) "Historic horse race" means:

(1) Any horse race, whether running or harness, that was previously conducted at a licensed pari-mutuel facility;

(2) Concluded with official results; and

(3) Concluded without scratches, disqualifications, or dead-heat finishes.

(b) "Licensee" means any individual, association, partnership, joint venture, corporation, or other organization or other entity which holds a game operator employer license under RSA 287-D.

(c) "Pari-mutuel method of wagering" means:

(1) For each race or group of up to 10 races, the players shall bet against each other; and

(2) A totalizator shall be used which displays and bases prizes on the variable pari-mutuel payout odds associated with each horse in the historic race.

II. A game operator employer licensed under RSA 287-D may sell pari-mutuel pools on historic horse races provided such sales are within the enclosure of the facility at which the licensee holds its licensed activities under RSA 287-D, provided that such facility was licensed as a facility where games of chance are held as of May 1, 2019.

III. In accordance with the provisions of RSA 284:6-a, wagering on historic horse races may take place on electronic gaming devices provided that:

- (a) All wagers use the pari-mutuel method of wagering;
- (b) A licensee at all times maintains at least 2 terminals offering the same type of wager on historic horse races;
- (c) The terminal makes available true and accurate past performance information on each historic horse race prior to the patron making his or her selections;
- (d) The terminal shall display a replay of each race, or a portion thereof, whether digital or by way of a video recording, and the official results of each race. The identity of each race shall be revealed to the patron after the patron has placed his or her wager;
- (e) The outcome of each wager is based solely on the outcome of the historic horse race or races; no random elements may determine the outcome of the patron's wager;
- (f) The terminals have been tested by an independent testing laboratory to ensure integrity and proper working order; and
- (g) Each terminal displays pool amounts that the patron will receive for a winning wager on each pari-mutuel wagering pool.

IV. Racing officials, any employee or owner of the entity that provides the totalizator system to the licensee, and any person responsible for the operation of the electronic reproduction equipment which operates the historic horse racing and wagering shall be prohibited from participating in wagering, directly or indirectly, on historic horse races offered at the licensee's facility.

V. The licensee commission on all historic horse race pari-mutuel pools shall be at a rate of not greater than 12 percent. In addition to the above commission, 100 percent 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 paid to the lottery commission. Each licensee shall pay the tax provided for in RSA 284:23.

VI. Each licensee shall collect the amount provided for in RSA 284:23, I(d). Each game operator employer as defined in RSA 287-D who is licensed to conduct wagering on historic horse racing under this chapter shall distribute 35 percent of the amount collected to charitable organizations with who the game operator contracts on each licensed game date. The remainder of the total amount collected by the game operator employer under this paragraph shall be paid to the lottery commission for use according to the special fund established by RSA 284:21-j.

VII. The lottery commission shall adopt rules governing historic racing machines.

VIII. No historic racing machine shall be operated except within the location of a licensee during the facility's hours of play of charitable games.

Amend the bill by replacing all after section 7 with the following:

8 New Paragraph; Historic Racing; Breakage Payments. Amend RSA 284:23, I by inserting after paragraph (c) the following new paragraph:

(d) Each person, association, or corporation licensed to conduct historic horse race wagering under this chapter shall collect a sum equal to 25 percent of revenues generated from historic horse race pari-mutuel pools after breakage and payment of winnings to patrons. The licensee shall pay these monies to the charitable organizations and lottery commission as set forth in RSA 284:22-b.

9 Unclaimed Ticket Money. Amend RSA 284:31 to read as follows:

284:31 Unclaimed Ticket Money. On or before January 31 of each year every person, association, or corporation conducting a race or race meet, whether live racing, [or] simulcast racing, **or historic horse racing**, hereunder shall pay to the state treasurer all moneys collected during the previous year of pari-mutuel pool tickets and vouchers which have not been redeemed. The books or records of said person, association, or corporation, which clearly show the tickets entitled to reimbursement in any given race, live, [or] simulcast, **or historic**, shall be forwarded to the lottery commission. Such moneys shall become a part of the special fund established in RSA 284:21-j. The state treasurer shall pay the amount due on any ticket or voucher to the holder thereof from funds not otherwise appropriated upon an order from the lottery commission. Pari-mutuel tickets and vouchers which remain unclaimed after 11 months shall not be paid. Vouchers shall be remitted to the state treasurer on January 31 of the calendar year, 24 months after the year of the unclaimed voucher.

10 Licensed Facilities; Eligible in 2022. RSA 284:22-b, II is repealed and reenacted to read as follows:

II. A game operator employer licensed under RSA 287-D may sell pari-mutuel pools on historic horse races provided such sales are within the enclosure of the facility at which the licensee holds its licensed activities under RSA 287-D.

11 Effective Date.

I. Section 10 of this act shall take effect July 1, 2022.

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

Amendment to SB 58-FN**(2019-2177h)****Proposed by the Committee on Commerce and Consumer Affairs - r**

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

AN ACT relative to payment for low-dose mammography coverage.

Amend the bill by replacing section 1 with the following:

1 New Subparagraph; Managed Care Law; Provider Contract Standards. Amend RSA 420-J:8, VIII by inserting after subparagraph (d) the following new subparagraph:

(e) Provider contracts that include payment for mammography shall include distinct recognition of and additional payment for industry standard coding relating to mammography screening using 3-D tomosynthesis.

2019-2177h

AMENDED ANALYSIS

This bill clarifies payment for low-dose mammography under the managed care law.

Amendment to SB 74-FN-A**(2019-2329h)****Proposed by the Majority of the Committee on Ways and Means - r**

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

AN ACT relative to register of deeds fees used to support the land and community heritage investment program (LCHIP), and establishing a committee to study the economic impact of land conservation and to review the LCHIP surcharge.

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

2 Committee to Study the Economic Impact of Land Conservation and to review the LCHIP Surcharge.

I. There is established a legislative committee to study the economic impact of land conservation on housing prices, whose purpose shall be to develop a strategy balancing the need for responsible housing with the need for responsible land conservation and to review the land and community heritage investment program (LCHIP) surcharge. Members of the committee shall be as follows:

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

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

II. The committee shall study issues related to the economic and demographic impact of land conservation on housing and development throughout New Hampshire and shall solicit testimony from housing, development, and conservation stakeholders. Its duties shall include, but not be limited to:

(a) Reviewing current patterns of land conservation of all types in New Hampshire, including state, municipal, federal, and private land preservation efforts such as, but not limited to, voluntary conservation easements, acquisition by land trusts, and coastal protection efforts;

(b) Analyzing the impact of conservation efforts on the affordability of housing;

(c) Analyzing the extent of land conservation in municipalities to determine if conservation and development is occurring equitably around the state so as not to place undue development burden on neighboring municipalities;

(d) Proposing a permanent state land conservation impact commission to report annually on the annual increase, respectively, in land under conservation and balanced-use housing by municipality and by county, and the effects of such increases on housing and rental prices by community and by county;

(e) Analyzing the impact of land conservation on each municipality's property valuation per pupil;

(f) Analyzing the impact of conservation and housing on local property taxation; and

(g) Proposing legislation derived from the work of the committee.

III. The committee shall also review the types of documents and the compensation to the registries of deeds for collection and remission of the land and community heritage investment program (LCHIP) surcharge under RSA 478:17-g, II.

IV. The committee shall elect a chair from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section.

V. The committee may engage the office of strategic initiatives, the legislative budget assistant, the department of revenue administration, and any other agencies within the state in formulating metrics and acquiring data, so long as such data is de-identified for use in computations and analysis.

VI. Committee members shall receive mileage at the legislative rate when attending to the duties of the committee.

VII. The committee shall submit an interim report of its progress, including any findings and recommendations for proposed legislation, to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2019; and shall submit a final report or before November 1, 2020.

3 Effective Date.

I. Section 1 of this act shall take effect 90 days after its passage.

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

2019-2329h

AMENDED ANALYSIS

This bill increases the fee assessed in addition to register of deeds recording fees used to support the land and community heritage investment program. The bill also establishes a committee to study the economic impact of land conservation and to review the LCHIP surcharge.

Floor Amendment to SB 74-FN-A

(2019-2378h)

Proposed by Reps. Edwards and Bershtein

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

AN ACT establishing a committee to study the economic impact of land conservation.

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

Amend the bill by replacing section 2 with the following:

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

2019-2378h

AMENDED ANALYSIS

This bill establishes a committee to study the economic impact of land conservation.

Amendment to SB 80

(2019-2276h)

Proposed by the Committee on Executive Departments and Administration - c

Amend the bill by replacing sections 3 and 4 with the following:

3 New Section; License Application Procedure; Criminal History Record Check. Amend RSA 330-A by inserting after section 15 the following new section:

330-A:15-a Processing License Applications; Criminal History Record Check.

I. License applications shall be processed as follows:

(a) The board shall either request additional information or documentation within 15 days or act on an application for licensure as a mental health practitioner within 30 days of receipt of a completed application.

(b) The board shall review complete applications received at least 10 days prior to a regularly scheduled meeting at its next regularly scheduled meeting.

II. Every applicant for initial licensure shall submit to the board a criminal history record release form, as provided by the New Hampshire division of state police, department of safety, which authorizes the release of his or her criminal history record, if any, to the board.

III. The applicant shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the department of safety. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints shall be necessary in order to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the board may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

IV. The board shall submit the criminal history records release form and fingerprint form to the division of state police which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the records check, the division of state police shall release copies of the criminal history records to the board. The board shall maintain the confidentiality of all criminal history records information received pursuant to this section.

V. The applicant shall bear the cost of a criminal history record check.

4 Mental Health Practice; Applicants From Other States. Amend RSA 330-A:26, II to read as follows:

II. An applicant whose state licensure meets the requirements in paragraph I shall be ~~[deemed able]~~ **allowed** to practice in this state not more than ~~[60]~~ **30** days after the application is received by the board, pending final approval or denial **of the license** for other reason by the board. The board shall adopt rules under RSA ~~[541-A]~~ **330-A:10, I and I-a** to ensure the timely review and approval of applications under this section.

2019-2276h

AMENDED ANALYSIS

This bill adds 2 members to the board of mental health practice and provides for the timely action on license applications by the board for qualified applicants. The bill adds a criminal history records check requirement for applicants. The bill also clarifies the procedure for insurance credentialing of out-of-state mental health practitioners and psychologists applying for state licensure.

Amendment to SB 82-FN**(2019-2145h)****Proposed by the Committee on Finance - r**

Amend the bill by replacing section 2 with the following:

2 School Boards; Food and Nutrition Programs. Amend RSA 189:11-a, VII(b) to read as follows:

(b) Such school which demonstrates to the department of education that an approved school wellness policy, as required under the ~~[Child Nutrition and WIC Reauthorization Act of 2004]~~ ***Healthy, Hunger-Free Kids Act of 2010, Public Law 111-296, and the Richard B. Russell National School Lunch Act, 42 U.S.C. section 1758b*** is in effect, and that such school is providing breakfast meals to pupils that meet or exceed the United States Department of Agriculture's child nutrition criteria may apply for and receive a 3 cent reimbursement for each breakfast meal served to a pupil ***and an additional 27 cent reimbursement for each meal served to students eligible for a reduced price meal.*** The department of education shall request biennial appropriations in an amount sufficient to meet projected school breakfast reimbursements ***to ensure students eligible for reduced price meals are offered breakfast at no cost.*** The department of education shall prescribe forms as necessary under this paragraph.

2019-2145h

AMENDED ANALYSIS

This bill requires schools to make at least one free or reduced cost meal available to children who meet federal eligibility guidelines and increases reimbursement to schools offering breakfast at no cost to eligible students.

Amendment to SB 85**(2019-2035h)****Proposed by the Committee on Health, Human Services and Elderly Affairs - c**

Amend RSA 126-A:73-a, II(a)(1)-(11) as inserted by section 2 of the bill by replacing them with the following:

(1) Five members of the house of representatives, 3 of whom shall be appointed by the speaker of the house of representatives and 2 of whom shall be appointed by the house minority leader.

(2) Two members of the senate, one of whom shall be a member of the minority party, appointed by the president of the senate.

(3) The program manager of the environmental public health tracking program, department of health and human services, or designee.

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

(5) The director of the university of New Hampshire institute for health policy and practice, or designee.

(6) The director of Boston University public health policy and practice, or designee.

(7) A representative from the New Hampshire Medical Society, appointed by the society.

(8) The chair of the board of trustees of the New Hampshire Hospital Association, or designee.

(9) An advanced practice registered nurse, appointed by the New Hampshire Nurse Practitioner Association.

(10) Two community members with backgrounds in environmental science and/ or public health, one of whom shall be appointed by the president of the senate and one of whom shall be appointed by the speaker of the house of representatives.

Amend RSA 126-A:73-a, III as inserted by section 2 of the bill by inserting after subparagraph (b) the following new paragraph:

(c) The commission may, with input from a state agency or agencies, decide whether additional appropriations are necessary to complete the work of the commission. The commission may recommend additional appropriations for approval by the general court.

Amend RSA 126-A:73-a, V as inserted by section 2 of the bill by replacing it with the following:

V. The commission may form subcommittees or appoint technical committees composed of commission members and non-voting nonmembers to advance the goals of this section.

VI. The commission shall submit interim reports on November 1 of each year beginning November 1, 2020 containing its findings and any recommendations for proposed legislation and a final report on or before November 1, 2024 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.

Amend the bill by replacing all after section 6 with the following:

7 Contingency. If SB 85 and HB 736 of the 2019 regular legislative session both become law, HB 736 shall not take effect.

8 Effective Date.

I. Section 6 of this act shall take effect November 1, 2024.

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

Amendment to SB 103-LOCAL

(2019-1799h)

Proposed by the Committee on Municipal and County Government - c

Amend the bill by replacing section 1 with the following:

1 Agreements Between Government Units; Funds; Issuance of Bonds or Notes. Amend RSA 53-A:6 to read as follows:

53-A:6 Funds ***Issuance of Bonds or Notes.***

I. The respective counties, towns, cities and other governmental units involved in any agreements as set forth in this chapter are hereby authorized to appropriate the funds necessary to carry out their contractual obligations thus incurred. In cases involving the expenditure of capital funds they are authorized to borrow such funds under the terms of the municipal finance act, RSA 33, as amended, and to issue bonds in accordance with the provisions of such act or to set up a capital reserve fund for such purposes under the provisions of RSA chapters 34 or 35.

II. Any 2 or more public agencies participating in such an agreement may jointly issue bonds or notes under RSA 33 for any purpose for which they may be issued under that chapter.

(a) Any agreement entered into under RSA 53-A:3 shall specify each participating public agency's proportionate share of the debt represented by any jointly issued bond or note.

(b) Each public agency participating in the joint issuance of a bond or note shall comply separately with the requirements of RSA 33:8 through 33:10 applicable to that public agency, and the bond or note shall not be issued until authorized by each participating public agency as provided in the applicable section or sections.

(c) Each participating public agency's proportionate share of the debt represented by the bond or note shall be counted toward its debt limit under RSA 33:4 or 33:4-a unless excluded by other provisions of RSA 33.

(d) All other applicable provisions of RSA 33 shall apply to the participating public agencies jointly as if the bond or note were issued by a single political subdivision.

Amendment to SB 110

(2019-2111h)

Proposed by the Committee on Commerce and Consumer Affairs - r

Amend RSA 153:13-a, V as inserted by section 1 of the bill by replacing it with the following:

V. The recipient of any information furnished pursuant to this section shall hold the information in confidence and not release it, except to another official referred to in paragraph I, until such time as its release is required pursuant to a criminal or civil proceeding.

2019-2111h

AMENDED ANALYSIS

This bill authorizes the fire marshal to obtain information from the insurance company when investigating a fire loss, building collapse, or incident involving the release of carbon monoxide other than from a motor vehicle.

Amendment to SB 111

(2019-1789h)

Proposed by the Minority of the Committee on Health, Human Services and Elderly Affairs - r

Amend RSA 126:28 as inserted by section 4 of the bill by replacing it with the following:

126:28 Availability of Data.

I. Notwithstanding any other provision of law, data collected under RSA 126:25 shall be made available:

(a) To the public upon request, provided that individual patients or health care practitioners shall not be directly or indirectly identifiable.

(b) To individuals or entities for research, public health, or health care operations as defined by HIPAA, or any other individual or entity as allowable by law, demonstrating a legitimate need for such information, if such disclosure is consistent with all applicable HIPAA standards and approved by the commissioner, or designee, in accordance with rules adopted under RSA 126:27. Use of data disclosed shall not be for marketing or fundraising targeted to individuals except such use or disclosure shall be permissible for market analysis.

(c) To the insurance department, the department of justice, or any other state or federal agency, and any agency's contractors, for review of health care matters within the agency's respective jurisdictional authority. An agency or contractor receiving health care data under this section shall comply with all state and federal confidentiality, privacy, and security protections.

II. The commissioner of the department of health and human services shall publish an annual report relative to pregnancy terminations, commencing with data to be reported as of January 1, 2020, to be posted on the department's website not later than June 30 of the subsequent year, based on an aggregate summary of all data collected through the uniform healthcare facility discharge data set (UHFDDS), and data collected from facilities pursuant to RSA 126:25, relative to pregnancy terminations as contained in current procedural terminology (CPT) codes 59840 thru 59857 or healthcare common procedure coding system (HCPCS) codes S01999, S2260 thru S2267 and S8055. In preparing this report, the bureau of public health statistics and informatics shall collect, review, and utilize relevant data from available resources, including statistical data from the insurance department, and shall publish aggregate results at New Hampshire Health WISDOM system, and provide in annual reporting to the National Centers for Disease Control and Prevention. No data shall be released by the department that may personally identify either the health care provider who performed an induced termination of pregnancy or the patient on whom it was performed.

**Amendment to SB 115
(2019-2030h)**

Proposed by the Majority of the Committee on Health, Human Services and Elderly Affairs - r

Amend RSA 330-A:26-a, II(f)-(j) as inserted by section 1 of the bill by replacing them with the following:

(f) One member representing individual or small mental health practices, appointed by the Clinicians United chapter of the State Employees' Association of New Hampshire, SEIU Local 1984.

(g) One member representing individual or small mental health practices, appointed by the New Hampshire Providers Association.

(h) One member representing individual or small mental health practices, appointed by the New Hampshire chapter of the National Association of Social Workers.

(i) One member representing patients of mental health providers in New Hampshire, appointed by the National Alliance on Mental Illness New Hampshire chapter.

(j) One member representing large mental health practices, appointed by the National Association of Social Workers New Hampshire chapter.

Amend RSA 330-A:26-a, II as inserted by section 1 of the bill by inserting after subparagraph (k) the following new subparagraph:

(l) One member representing community mental health centers, appointed by the New Hampshire Community Behavioral Health Association.

Amend RSA 330-A:26-a, V as inserted by section 1 of the bill by replacing it with the following:

V. The members of the study commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Four members of the commission shall constitute a quorum.

**Amendment to SB 120
(2019-2284h)**

Proposed by the Committee on Executive Departments and Administration - c

Amend RSA 318-B:32, III as inserted by section 3 of the bill by replacing it with the following:

III. Prescription information held by the program relating to any individual shall be deleted 3 years after the initial prescription was dispensed. All de-identified data may be kept for statistical and analytical purposes for perpetuity.

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

5 Controlled Drug Prescription Health and Safety Program; Operation. Amend RSA 318-B:33, VI and VII to read as follows:

VI. The program *administrator* may issue a waiver to a dispenser that is unable to submit prescription information by electronic means. Such waiver may permit the dispenser to submit prescription information by paper form or other means, provided all information required by paragraph IV is submitted in this alternative format and within the established time limit.

VII. The program *administrator* may grant a reasonable extension to a dispenser that is unable, for good cause, to submit all the information required by paragraph IV within the established time limits.

6 Controlled Drug Prescription Health and Safety Program; Confidentiality. Amend RSA 318-B:34, II and III to read as follows:

II. The ~~board~~ *office* shall establish and maintain procedures to ensure the privacy and confidentiality of patients and patient information.

III. The [board] **office** may use and release information and reports from the program for program analysis and evaluation, statistical analysis, public research, public policy, and educational purposes, provided that the data are aggregated or otherwise de-identified.

7 Controlled Drug Prescription Health and Safety Program; Providing Controlled Drug Prescription Health and Safety Information. Amend the introductory paragraph of RSA 318-B:35, I to read as follows:

I. The program **administrator** may provide information in the prescription health and safety program upon request only to the following persons:

8 Controlled Drug Prescription Health and Safety Program; Information. Amend RSA 318-B:35, I(b)(3) to read as follows:

(3) Authorized law enforcement officials on a case-by-case basis for the purpose of investigation and prosecution of a criminal offense when presented with a court order based on probable cause. No law enforcement agency or official shall have direct access to [the] **query program information**.

9 New Subparagraph; Controlled Drug Prescription Health and Safety Program; Providing Controlled Drug Prescription Health and Safety Information. Amend RSA 318-B:35, I(b) by inserting after subparagraph (4) the following new subparagraph:

(5) A practitioner or consultant retained by the office to review the system information of an impaired practitioner program participant or a referral who has agreed to be evaluated or monitored through the program and who has separately agreed in writing to the consultant's access to and review of such information.

10 Controlled Drug Prescription Health and Safety Program; Providing Controlled Drug Prescription Health and Safety Information. Amend RSA 318-B:35, II and III to read as follows:

II. The program **administrator** shall notify the appropriate regulatory board listed in subparagraph I(b) (2) and the prescriber or dispenser at such regular intervals as may be established by the [board] **office** if there is reasonable cause to believe a violation of law or breach of professional standards may have occurred. The program **administrator** shall provide prescription information required or necessary for an investigation.

III. The program **administrator** shall review the information to identify information that appears to indicate whether a person may be obtaining prescriptions in a manner that may represent misuse or abuse of schedule II-IV controlled substances. When such information is identified, the program **administrator** shall notify the practitioner who prescribed the prescription.

IV. The program administrator shall make a report, at least annually, commencing on November 1, 2019, to the senate president, the speaker of the house of representatives, the oversight committee on health and human services, established in RSA 126-A:13, the advisory council established in RSA 318-B:38 and the licensing boards of all professions required to use the program relative to the effectiveness of the program.

11 Controlled Drug Prescription Health and Safety Program; Unlawful Act and Penalties. Amend RSA 318-B:36, I and II to read as follows:

I. Any [person] **dispenser or prescriber** who fails to submit the information required in RSA 318-B:33 or knowingly submits incorrect information shall be subject to a warning letter and provided with an opportunity to correct the failure. Any [person] **dispenser or prescriber** who subsequently fails to correct or fails to resubmit the information may be subject to discipline by the [board] **appropriate regulatory board**.

II. Any [person] **dispenser or prescriber** whose failure to report the dispensing of a schedule II-IV controlled substance that conceals a pattern of diversion of controlled substances into illegal use shall be guilty of a violation and subject to the penalties established under RSA 318-B:26 and the [board's] **office's and appropriate regulatory board's** rules as applicable. In addition, such [person] **dispenser or prescriber** may be subject to appropriate criminal charges if the failure to report is determined to have been done knowingly to conceal criminal activity.

12 Controlled Drug Prescription Health and Safety Program; Rulemaking. Amend the introductory paragraph of RSA 318-B:37 to read as follows:

318-B:37 Rulemaking. ~~[By June 30, 2013, the board]~~ **The office** shall adopt rules, pursuant to RSA 541-A, necessary to implement **and maintain** the program including:

13 Controlled Drug Prescription Health and Safety Program; Advisory Council. RSA 318-B:38 is repealed and reenacted to read as follows:

318-B:38 Advisory Council Established.

I. There is hereby established an advisory council to carry out the duties under this subdivision. Members of the council shall not be compensated for serving on the council, or serve on the council for more than one 5-year term except for the attorney general, or designee, or the commissioner of the department of health and human services, or designee. The members of the council shall be as follows:

- (a) A member of the board of medicine, appointed by such board.
- (b) A member of the pharmacy board, appointed by such board.
- (c) A member of the board of dental examiners, appointed by such board.
- (d) A member of the New Hampshire board of nursing, appointed by such board.
- (e) A member of the board of veterinary medicine, appointed by such board.

- (f) A physician appointed by the New Hampshire Medical Society.
- (g) A dentist appointed by the New Hampshire Dental Society.
- (h) A chief of police appointed by the New Hampshire Association of Chiefs of Police.
- (i) A community pharmacist appointed jointly by the New Hampshire Pharmacists Association, the New Hampshire Independent Pharmacy Association, and the New Hampshire Association of Chain Drug Stores.
- (j) Two public members appointed by the governor's commission on alcohol and drug abuse prevention, treatment, and recovery, one of whom may be a member of the commission.
- (k) A hospital administrator appointed by the New Hampshire Hospital Association.
- (l) A nurse practitioner appointed by the New Hampshire Nurse Practitioner Association.
- (m) A veterinarian appointed by the New Hampshire Veterinary Medical Association.
- (n) The attorney general, or designee.
- (o) The commissioner of the department of health and human services, or designee.
- (p) A member of the senate, appointed by the president of the senate.
- (q) Two members of the house of representatives, appointed by the speaker of the house of representatives.

II. The council shall:

- (a) Make recommendations to the office relating to the design, implementation, and maintenance of the program, including recommendations relating to:
 - (1) Rules.
 - (2) Legislation.
 - (3) Sources of funding, including grant funds and other sources of federal, private, or state funds;
- (b) Review the program's annual report and make recommendations to the office regarding the operation of the program.
- (c) Provide ongoing advice and consultation on the implementation and operation of the program, including recommendations relating to:
 - (1) Changes in the program to reflect advances in technology and best practices.
 - (2) Changes to statutory requirements.
 - (3) The design and implementation of an ongoing evaluation component of the program.
- (d) Advise the executive director regarding the implementation of this subdivision.
- (e) Adopt rules necessary for the operation of the council.
- (f) Develop a mission statement for the program and strategic goals for its implementation, develop metrics in conjunction with the legislative budget assistant to measure the program's efficient operation, review the performance of the program against the metrics, and make recommendations to the program and ensure they are incorporated.

III. The council shall meet at least quarterly to effectuate its goals. A chairperson shall be elected by the members. A majority of the members of the council constitutes a quorum for the transaction of business. Action by the council shall require the approval of a majority of the members of the council.

14 Controlled Drug Prescription Health and Safety Program. Amend 2012, 196:3, I to read as follows:

I. In the event that there is not adequate funding for the controlled drug prescription health and safety program established in section 2 of this act, the ~~[pharmacy board]~~ **office** may curtail, temporarily suspend, or cancel the program.

15 Applicability.

I. Members serving on the advisory council under RSA 318-b:38 on the effective date of this act:

- (a) Who have served for 6 or more years, shall not be eligible to continue in office;
- (b) Who have served between 5 and 6 years, shall be eligible to continue to serve for one additional year beyond the effective date;
- (c) Who have served for fewer than 5 years, shall be eligible to serve for a total of 5 years.

II. Members appointed to serve on the council after the effective date of this act shall be eligible to serve only one 5-year term.

16 Repeal. The following are repealed:

I. RSA 318-B:31, I, relative to the definition of "board."

II. 2012, 196:3, III, relative to a reporting requirement.

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

Amendment to SB 168

(2019-1894h)

Proposed by the Majority of the Committee on Science, Technology and Energy - r

Amend the footnote to RSA 362-F:3 as inserted by section 1 of the bill by replacing it with the following:

*Class I increases an additional 0.9 percent per year from 2015 through 2025. A set percentage of the class I totals shall be satisfied annually by the acquisition of renewable energy certificates from qualifying renewable energy technologies producing useful thermal energy as defined in RSA 362-F:2, XV-a. The set percentage shall be 0.4 percent in 2014, 0.6 percent in 2015, 0.8 percent in 2016, and increased annually by 0.2 percent

per year from 2017 through 2023, after which it shall remain unchanged. Class II shall increase to 0.5 percent beginning in 2018, 0.6 percent beginning in 2019, ~~[and 0.7]~~ **1.4 percent beginning in 2020, 2.2 percent beginning in 2021, 3.0 percent beginning in 2022, 3.8 percent beginning in 2023, 4.6 percent beginning in 2024, and 5.4 percent beginning in 2025**~~[-otherwise]~~. Classes ~~[H]~~ **III-IV** shall remain at the same percentages from 2015 through 2025 except as provided in RSA 362-F:4, ~~[V-VI]~~ **VI. The requirements for classes I-II are subject to the provisions of RSA 362-F:4, V.**

Amendment to SB 190-FN

(2019-2182h)

Proposed by the Committee on Ways and Means - r

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

AN ACT relative to apportionment of sales under the business profits tax and the apportionment of dividends under the business enterprise tax.

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

1 Business Profits Tax; Apportionment of Sales. Amend RSA 77-A:3, I(c) to read as follows:

(c) The percentage of the total sales, including charges for services, made by the business organization everywhere as is made by it within this state~~[-]~~:

(1) Sales of tangible personal property are made in this state if the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of f.o.b. point or other conditions of sale, or the property is shipped from an office, store, warehouse, factory or other place of storage in this state and ~~[(1)]~~ **(A)** the purchaser is the United States government, or ~~[(2)]~~ **(B)** the business organization is not taxable in the state of the purchaser.

(2) Sales other than sales of tangible personal property are in this state if the ~~[income-producing activity is performed in this state, or the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance]~~ **business organization's market for the sales is in this state, as follows:**

(A) In the case of sale, rental, lease or license of real property, if and to the extent the property is located in this state;

(B) In the case of rental, lease or license of tangible personal property, if and to the extent the property is located in this state;

(C) In the case of sale of a service, if the service is delivered to a location in this state;

(D) In the case of sale, rental, lease or license of intangible property, if and to the extent the property is used in this state;

(E) In the case of interest income, if and to the extent the debtor or encumbered property is located in this state;

(F) In the case of dividend income, if and to the extent the business organization's commercial domicile is in this state; and

(G) In the case of other income, if and to the extent the income is derived from sources in this state.

(3) In the case of sales other than sales of tangible personal property, if the state or states of assignment cannot be determined, the state or states of assignment shall be reasonably approximated.

(4) In the case of sales other than sales of tangible personal property, if the taxpayer is not taxable in a state to which a sale is assigned, or if the state of assignment cannot be determined or reasonably approximated, such sale shall be excluded from the denominator of the sales factor.

2 Business Enterprise Tax; Apportionment of Dividends. Amend RSA 77-E:4, I(c)(3) to read as follows:

(3) The percentage of the total sales, including charges for services, made by the business enterprise everywhere as is made by it within this state~~[-]~~:

(A) Sales of tangible personal property are made in this state if the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of free on board point or other conditions of sale, or the property is shipped from an office, store, warehouse, factory or other place of storage in this state and ~~[(A)]~~ **(i)** the purchaser is the United States government, or ~~[(B)]~~ **(ii)** the business enterprise is not taxable in the state of the purchaser.

(B) Sales other than sales of tangible personal property are in this state if the ~~[revenue-producing activity is performed in this state, or the revenue-producing activity is performed both in and outside this state and a greater proportion of the revenue-producing activity is performed in this state than in any other state, based on costs of performance]~~ **business enterprise's market for the sales is in this state, as follows:**

(i) In the case of sale, rental, lease or license of real property, if and to the extent the property is located in this state;

(ii) In the case of rental, lease or license of tangible personal property, if and to the extent the property is located in this state;

(iii) In the case of sale of a service, if and to the extent the service is delivered to a location in this state;

(iv) In the case of sale, rental, lease or license of intangible property, if and to the extent the property is used in this state;

(v) In the case of interest income, if and to the extent the debtor or encumbered property is located in this state;

(vi) In the case of dividend income, if and to the extent the business enterprise's commercial domicile is in this state; and

(vii) In the case of other income, if and to the extent the income is derived from sources in this state.

(C) In the case of sales other than sales of tangible personal property, if the state or states of assignment cannot be determined, the state or states of assignment shall be reasonably approximated.

(D) In the case of sales other than sales of tangible personal property, if the taxpayer is not taxable in a state to which a sale is assigned, or if the state of assignment cannot be determined or reasonably approximated, such sale shall be excluded from the denominator of the sales factor.

3 Applicability. Sections 1 and 2 of this act shall apply to taxable periods ending on or after December 31, 2021.

4 Effective Date.

I. Sections 1 and 2 of this act shall take effect January 1, 2021.

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

2019-2182h

AMENDED ANALYSIS

This bill modifies the apportionment to this state of sales of a business organization with activity in other states and the apportionment of dividends of a business enterprise based on sales made within this state.

Amendment to SB 192

(2019-2066h)

Proposed by the Committee on Commerce and Consumer Affairs - c

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

1 Self-Service Storage Facility Liens. RSA 451-C is repealed and reenacted to read as follows:

CHAPTER 451-C

SELF-SERVICE STORAGE FACILITY LIENS

451-C:1 Definitions. In this chapter:

I. "Abandoned rented space" means any rented space for which the renter is in default for at least 30 days and that the owner finds empty or the personal property within the rented space has a value of less than \$500, or the renter surrenders possession of the rented space and any personal property therein.

II. "Default" means the violation or failure to perform any obligation or duty set forth in this chapter or the rental agreement.

III. "Electronic mail" means the transmission, by use of a computer or through other electronic means, of information or a communication that is sent to a person identified by a unique address.

IV. "Emergency" means any occurrence or circumstance at or near a rented space at a self-service storage facility that requires prompt action to avoid injury to persons or damage to property at or near the rented space at the self-service storage facility.

V. "Last known address" means that postal address or electronic mail address provided by the renter in the rental agreement or the postal address or electronic mail address provided by the renter in a subsequent written notice of a change of address.

VI. "Late fee" means any fee or charge assessed for a renter's failure to pay rent or other fees, charges, or costs when due. "Late fee" does not include interest on a debt, reasonable expenses, fees, costs, or charges incurred in the collection of unpaid rent or expenses, costs, fees, or charges associated with the enforcement of any other remedy provided by law or the rental agreement.

VII. "Lienholder" means a person entitled to enforce a lien or security interest legally acquired and properly recorded on a motor vehicle in accordance with RSA 382-A or RSA 261.

VIII. "Motor vehicle" means a motor vehicle as defined in RSA 259:60, a motorcycle as defined in RSA 259:63, and any boat, watercraft, or motorized vehicle including any off highway recreational vehicle as defined in RSA 215-A:1, VI, or any snowmobile as defined in RSA 215-C:1.

IX. "Renter" means a person, or any agent or representative of the person, entitled to the use of rented space at a self-service storage facility under a rental agreement, to the exclusion of others.

X. "Owner" means the owner, lessor, or sublessor of a self-service storage facility, the owner's agent, or any other person authorized by the owner to manage the facility, or to receive rent from a renter.

XI. "Personal property" means movable property not affixed to land, and includes, but is not limited to goods, merchandise, trailers, motor vehicles, watercraft, household items and furnishings.

XII. "Rented space" means the individual storage space at the self-service storage facility that is rented to a renter under a rental agreement.

XIII. "Rental agreement" means any written agreement that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of a rented space at a self-service storage facility.

XIV. "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space in which the renters themselves customarily store and remove their own personal property on a self-service basis. A self-service storage facility is not a warehouse as the term "warehouse" is used in RSA 382-A:7.

XV. "Verified mail" shall have the same meaning as that term is defined in RSA 21:53.

451-C:2 Restrictions on Use.

I. An owner shall not knowingly permit a rented space at a self-service storage facility to be used for residential purposes.

II. A renter shall not use a rented space for residential purposes.

451-C:3 Entry of Owner into Rented Space. An owner may enter a rented space without notice to the renter in the event of an emergency or to provide services that are reasonably necessary or were agreed to by the renter.

451-C:4 Storage Lien; Contents of Rental Agreement.

I. The owner of a self-service storage facility has a lien on all personal property stored within each rented space for rent, fees, labor, or other charges, and for expenses reasonably incurred in its sale pursuant to this chapter.

II. The rental agreement shall contain a statement, in bold type, advising the renter:

(a) That property stored in the rented space is not insured by the owner against loss or damage;

(b) Of the existence of the lien;

(c) That property stored in the rented space may be sold to satisfy the lien if the renter is in default;

(d) If the rental agreement contains a limit on the value of property stored in the rented space, the limit is deemed to be the maximum value of the property stored in that space and the maximum liability of the owner for any claim; and

(e) That a late fee may be charged by the owner for each service period that the renter does not pay rent when due.

III. The rental agreement shall state the date on which rent is due and the date on which any late fee accrues, provided that such late fee shall comply with the requirements of RSA 451-C:7.

IV. The rental agreement shall state the notice required prior to any sale of property under this chapter.

V. The rental agreement shall contain a provision allowing the renter to disclose any lienholders with an interest in the property that is or will be stored in the rented space.

VI. If the owner offers notice by electronic mail, the rental agreement shall, in bold typeface, contain an affirmative statement that the renter may agree to receive notice by electronic mail only. If the renter chooses to receive notices by electronic mail only, the renter's assent shall be indicated in the rental agreement.

451-C:5 Control of Property in Rented Space. Except as otherwise provided in this chapter or as stated in the rental agreement, the exclusive care, custody, and control of all property stored in the rented space shall vest in the renter until a lien sale under the provisions of this chapter.

451-C:6 Denial of Access.

I. The owner may immediately deny the renter and all others access to the rented space and the self-service storage facility if the owner reasonably suspects that the rented space is being used for residential or other unlawful purposes.

II. If a renter is in default for a period of 5 days or more, the owner may deny the renter access to the rented space in a reasonable and peaceable manner. Such denial of access may last until the unpaid rent, charges, fees, and expenses are paid in full.

451-C:7 Late Fees.

I. An owner may impose a reasonable late fee in accordance with this section for each service period that a renter does not pay all rent, charges, fees, or expenses when due. A late fee shall not be imposed if the renter pays all rent, charges, fees, and expenses in full by the fifth day after the due date.

II. An owner shall not impose a late fee unless the amount of that fee and the conditions for imposing that fee are stated in the rental agreement.

III. A late fee of \$20 or 20 percent of the amount of each rental payment, whichever is greater, is deemed reasonable and does not constitute a penalty. Any late fee imposed by the owner pursuant to this section shall be in addition to any other remedy provided by law or contract.

451-C:8 Enforcement of Owner's Lien; Notice of Sale. After default, an owner's lien may be enforced by selling the property stored in the rented space at a public or private sale, but only in accordance with the following procedure:

I. No sooner than 5 days after such default, the renter and all other lienholders identified in the rental agreement shall be notified by first class mail or electronic mail sent to the last known address of any person to be notified.

II. No sooner than 14 days after such default, a notice of the sale shall be delivered to the renter in person, by electronic mail, or by verified mail to the last known address, stating the time and place of sale, the property to be sold, and the amount of the rent, charges, fees, or expenses owed.

III. The notice of sale shall include:

- (a) A statement that the contents of the rented space are subject to the owner's lien;
- (b) A general description of the contents, if known, by the owner;
- (c) A statement of the owner's claim, indicating the charges due on the date of the notice, the amount of any additional charges which shall become due before the date of sale, and the date such additional charges shall become due;
- (d) A demand for payment of the charges due within a specified time, not less than 14 days after delivery of notification;
- (e) A statement that unless the claim is paid within the time stated, the contents of the renter's space will be sold at a public or private sale at the date, time, and place specified; and
- (f) The name, street address, and telephone number of the owner, or the owner's designated agent, whom the renter may contact to respond to the notice.

IV. If the sale is to be a public sale at a physical location, notwithstanding the date and time specified in the notice of the sale, the owner may postpone the sale due to inclement weather on the day of the sale. In the event of a postponement, a notice of the sale shall be delivered to the renter in person, by electronic mail, or by verified mail at the last known address, no less than 5 days before the new date of the sale, stating:

- (a) That the sale was postponed due to inclement weather;
- (b) The new date, time, and place of the sale; and
- (c) The amount of the rent, charges, fees, and expenses owed.

V. Notice by verified mail or first-class mail shall be deemed delivered when deposited with the United States Postal Service or any other carrier if it is properly addressed with postage prepaid. Notice by electronic mail shall be deemed delivered when properly addressed and sent to the last known electronic mail address for the renter.

VI. If the personal property upon which the lien is claimed is a motor vehicle or trailer, the owner shall comply with the requirements of RSA 451-C:9 and RSA 451-C:10.

451-C:9 Motor Vehicles and Trailers; Towing. If the personal property in the rented space is a motor vehicle or trailer, and any of the rent, charges, fees, or expenses remain unpaid for at least 30 days, the owner may have the motor vehicle or trailer towed by an insured towing company. If the owner has the motor vehicle or trailer towed, the owner need not comply with RSA 451-C:10. The owner has no liability to any person for the removal of the motor vehicle or trailer or any damage to the motor vehicle or trailer. Alternatively, the owner may sell the motor vehicle in accordance with RSA 451-C:8, RSA 451-C:10, and 451-C:11.

451-C:10 Notice to Lienholder with Regard to a Motor Vehicle.

I. An owner shall inquire in writing, by verified mail, personal delivery, or any other method permitted by the division of motor vehicles or the secretary of state, to determine from the division of motor vehicles and the secretary of state with regard to a motor vehicle whether a lien exists upon the title to said motor vehicle. Any such written inquiry that requests information on financing statements filed under RSA 382-A shall be in the form, and subject to the fees, required by that chapter. If no lien is found, or in the case where the inquiry had been made in writing and no response is received from the division of motor vehicles or the secretary of state within 14 days after such inquiry is sent by verified mail or otherwise delivered, the owner may proceed to sell or otherwise dispose of such motor vehicle as prescribed by this chapter.

II. If determination is made under the procedure described in paragraph I that a lien exists, a notice of sale under this chapter shall be sent by verified mail to the last known address of each holder of a security interest or lienholder no less than 14 days before the sale. The notice shall state the time and place of the sale, the property to be sold, and the amount of the rent, charges, fees, or expenses owed. Notwithstanding any other provision of this chapter, any lienholder having a properly perfected lien or security interest shall be entitled to remove such personal property from the owner's possession or from the renter's rented space within 14 days of the date of delivery of the notice of the sale upon payment of all unpaid rents, fees, charges, and expenses for the rented space. The lienholder's right to possession of the motor vehicle in accordance with this paragraph is established notwithstanding the lack of breach by the owner of such motor vehicle under the debt instrument or security agreement creating the lien or security interest on such motor vehicle. The owner shall not be responsible for determining priority as between any competing lienholders. If the owner and the lienholder who has received the notice agree to store the motor vehicle at the facility, the lienholder shall pay the amount of the rent, charges, fees, and expenses due from and after the date of the notice to the lienholder, and pay the monthly rental fee until such personal property is removed from the facility.

III. Notice by verified mail shall be deemed delivered when deposited with the United States Postal Service or any other carrier if it is properly addressed with postage prepaid.

451-C:11 Sale of Personal Property.

I. If after 30 days, any of the rent, charges, fees, or expenses remain unpaid, the owner may remove any locks, may remove any personal property from the rented space and retain such personal property, and after first satisfying the notice provisions of RSA 451-C:8 and RSA 451-C:10, may proceed to sell such personal property to satisfy the lien. The owner may sell such personal property as a unit or in parcels at a private or public sale. The sale may be conducted in person or online where the property is held or stored or through a publicly accessible Internet website.

II. Proceeds from the sale shall be distributed as provided in paragraph III. If proceeds of the sale are not sufficient to satisfy the renter's outstanding obligations to the owner, the renter remains liable to the owner for such deficiency. A renter who purposely or knowingly accesses a rented space or removes property from a rented space after being denied access in accordance with RSA 451-C:6 may be prosecuted under RSA 635:2 and RSA 638:9.

III. The proceeds shall first be applied to satisfy such rent, charges, fees, and expenses. Proceeds remaining after the sale and payment of rent, charges, fees, and expenses to the owner shall then be held for 90 days from the date of sale for delivery on demand to any lienholders of record or to the renter. If the balance is not claimed after 90 days, the owner shall report the balance in accordance with RSA 471-C:19.

451-C:12 Disposal of Stored Personal Property.

I. The owner may dispose of stored personal property without liability to any person if:

(a) The owner has complied with the provisions of RSA 451-C:8 through RSA 451-C:11 and no qualified buyer has purchased the personal property; or

(b) After removing any locks in accordance with RSA 451-C:11, the owner reasonably determines that the personal property has a value less than \$500. Prior to disposing of stored personal property pursuant to this section, the owner shall comply with RSA 451-C:10 but need not comply with RSA 451-C:8 or RSA 451-C:11.

II. The owner shall notify the renter in writing by electronic mail or first-class mail no later than 10 days before disposing of the renter's property that the owner will dispose of the property unless the renter pays all rent, charges, fees, and expenses by the date provided in the notice. The owner may include this notice as part of the notice provided pursuant to RSA 451-C:8.

451-C:13 Purchaser. A purchaser in good faith of personal property under the provisions of this chapter shall take the personal property free and clear of any other's rights, even if the owner has not complied with the provisions of this chapter or the rental agreement.

451-C:14 Liability. An owner acting in accordance with the provisions of this chapter shall not be liable to the renter, lienholder, or any other person.

451-C:15 Value of Stored Property. If a rental agreement contains a limit on the value of personal property that may be stored in the rented space, the limit is deemed to be the maximum value of the stored personal property and the maximum liability of the owner for any claim by any person.

451-C:16 Savings Clause. All rental agreements, entered into before the effective date of this chapter which have not been extended or renewed after that date, shall remain valid and may be enforced or terminated in accordance with their terms or as permitted by any other law of this state. Nothing in this chapter shall be construed to impair or affect the right of the parties to create additional rights, duties, and obligations in and by virtue of the rental agreement.

2 New Section; Statutory Construction; Definition of Verified Mail Added. Amend RSA 21 by inserting after section 52 the following new section:

21:53 Verified Mail. The term "verified mail" means any method of mailing that is offered by the United States Postal Service or any other carrier, and which provides evidence of mailing.

3 Reference Change. Amend the following RSA provisions by replacing "RSA 451-C:1, VII" with "RSA 21:53": RSA 231:43, II; 262:2, III; 262:36-a, III; 325-A:3, III; 444:4-a; 451-B:3, III; 674:27, V; 674:66, I(a); 676:4, I(d) (1); 676:4-a, III; and 676:7, I(a).

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

Amendment to SB 194-FN

(2019-1607h)

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

Amend RSA 420-P:6, III as inserted by section 1 of the bill by replacing it with the following:

III. A licensee shall notify consumers by complying with RSA 359-C:20, I(a) and (c), II-IV, and VI, and providing a copy of the notice sent to consumers under that statute to the commissioner, when a licensee is required to notify the commissioner under paragraph I.

Amend RSA 420-P:9, I as inserted by section 1 of the bill by replacing it with the following:

420-P:9 Exceptions.

I. The following exceptions shall apply to this chapter:

(a) A licensee with fewer than 20 employees, including any independent contractors, shall be exempt from RSA 420-P:4.

(b) An employee, agent, representative, or designee of a licensee, who is also a licensee, shall be exempt from RSA 420-P:4 and need not develop its own program to the extent that the employee, agent, representative, or designee is covered by the information security program of the other licensee.

(c) A continuing care retirement community, as defined by RSA 420-D, shall be exempt from RSA 420-P:4.

(d) A life settlement provider, as defined by RSA 408-D, shall be exempt from RSA 420-P:4.

(e) A licensee that is a bank or a credit union, as defined in RSA 383-A:2-201, that has established and maintains programs and procedures regarding administrative, technical, and physical safeguards for customer information that are prescribed by section 501(b) of the Gramm-Leach-Bliley Act, 15 U.S.C. section 6801 et seq. and by section 216 of the Fair and Accurate Credit Transaction Act of 2003, and that is subject to periodic examination by its federal regulatory authorities, shall be exempt from RSA 420-P:4, and those provisions of this chapter that apply to a bank or credit union apply only to the extent that it involves insurance. Notification to affected consumers for security breaches relating to insurance business shall be made consistent with the requirements of the Gramm-Leach Bliley Act. Notification to the commissioner shall be made consistent with the requirements of RSA 420-P:6.

(f) A portable electronics insurance vendor, licensed under RSA 402-K, shall be exempt from RSA 420-P:4. Amend RSA 420-P:11 as inserted by section 1 of the bill by replacing it with the following:

420-P:11 Safe Harbor for New York Regulatory Compliance. A licensee that is in compliance with N.Y. Comp. Codes R. & Regs. Title 23, section 500, Cybersecurity Requirements for Financial Services Companies, effective March 1, 2017, shall be considered to meet the requirements of this chapter, provided that the licensee submits a written statement to the commissioner certifying such compliance. However, any licensee subject to this New York Regulatory Safe Harbor shall continue to be subject to, and shall comply with, the investigation requirements of RSA 420-P:5, the commissioner notification requirements of RSA 420-P:6, I and II, and the consumer notification requirements of RSA 420-P:6, III.

Amendment to SB 226-FN

(2019-2128h)

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

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

2 New Chapter; Pharmacy Benefits Managers. Amend RSA by inserting after chapter 402-M the following new chapter:

CHAPTER 402-N

PHARMACY BENEFITS MANAGERS

402-N:1 Definitions. In this chapter:

I. "Claims processing services" means the administrative services performed in connection with the processing and adjudicating of claims relating to pharmacist services that include:

(a) Receiving payments for pharmacist services.

(b) Making payments to pharmacists or pharmacies for pharmacist services.

II. "Commissioner" means the commissioner of the insurance department.

III. "Health carrier" means "health carrier" as defined in RSA 420-J:3, XXIII.

IV. "Health benefit plan" means "health benefit plan" as defined in RSA 420-J:3, XIX.

V. "Pharmacist" means an individual licensed as a pharmacist by the pharmacy board.

VI. "Pharmacist services" means products, goods, and services, or any combination of products, goods, and services, provided as a part of the practice of pharmacy.

VII. "Pharmacy" means the place licensed by the pharmacy board in which drugs, chemicals, medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail.

VIII.(a) "Pharmacy benefits manager" means a person, business, or other entity, including a wholly or partially owned or controlled subsidiary of a pharmacy benefits manager, that, pursuant to a contract with a health carrier, manages the prescription drug coverage provided by the health carrier, including, but not limited to, providing claims processing services for prescription drugs, performing drug utilization review, processing drug prior authorization requests, adjudication of grievances or appeals related to prescription drug coverage, contracting with network pharmacies, and controlling the cost of covered prescription drugs.

(b) "Pharmacy benefits manager" shall not include any:

(1) Health care facility licensed in this state;

(2) Health care professional licensed in this state;

(3) Consultant who only provides advice as to the selection or performance of a pharmacy benefits manager;

(4) Service provided to the Centers for Medicare and Medicaid Services; or

(5) Health insurer licensed in this state if the health insurer or its subsidiary is providing pharmacy benefits management services exclusively to its own insureds.

IX. "Rebate" means a discount or price concession attributable to the utilization of a prescription drug that is paid by the pharmaceutical manufacturer of the drug directly to a pharmacy benefits manager or health carrier after the pharmacy benefits manager or health carrier processes a claim from a pharmacy for a prescription drug manufactured by such pharmaceutical manufacturer. "Rebate" shall not include bona fide service fees, administrative fees, or any other amount which does not qualify as a rebate under this paragraph.

402-N:2 Registration to do Business; Rulemaking; Penalties.

I. A person or organization shall not establish or operate as a pharmacy benefits manager in this state for health benefit plans without registering with the insurance commissioner under this chapter.

II. The commissioner shall adopt rules pursuant to RSA 541-A relative to:

(a) Prescribing the application format for registration as a pharmacy benefits manager, including a requirement to submit the registrant's corporate charter, articles of incorporation, or other formation documents.

(b) Establishing application fees and renewal fees, not to exceed \$500 per year.

(c) Delineating procedures for handling consumer complaints and coordinating with the department's consumer services unit, including supplying designated contact information to enable the department to reach the pharmacy benefits manager regarding consumer complaints.

III. If the commissioner finds after notice and hearing that any person has violated any provision of this chapter, or rules adopted pursuant to this chapter, the commissioner may order:

(a) For each separate violation, a penalty in the amount of \$2,500.

(b) Revocation or suspension of the pharmacy benefits manager registration.

402-N:3 Provider Contract Standards for Pharmacy Benefit Managers.

I. All contracts between a carrier or pharmacy benefit manager and a contracted pharmacy shall include:

(a) The sources used by the pharmacy benefit manager to calculate the drug product reimbursement paid for covered drugs available under the pharmacy health benefit plan administered by the carrier or pharmacy benefit manager.

(b) A process to appeal, investigate, and resolve disputes regarding the maximum allowable cost pricing. The process shall include the following provisions:

(1) A provision granting the contracted pharmacy or pharmacist at least 30 business days following the initial claim to file an appeal;

(2) A provision requiring the carrier or pharmacy benefit manager to investigate and resolve the appeal within 30 business days;

(3) A provision requiring that, if the appeal is denied, the carrier or pharmacy benefit manager shall:

(A) Provide the reason for the denial; and

(B) Identify the national drug code of a drug product that may be purchased by contracted pharmacies at a price at or below the maximum allowable cost; and

(4) A provision requiring that, if an appeal is granted, the carrier or pharmacy benefits manager shall within 30 business days after granting the appeal:

(A) Make the change in the maximum allowable cost; and

(B) Permit the challenging pharmacy or pharmacist to reverse and rebill the claim in question.

II. For every drug for which the pharmacy benefit manager establishes a maximum allowable cost to determine the drug product reimbursement, the pharmacy benefit manager shall:

(a) Include in the contract with the pharmacy information identifying the national drug pricing compendia or sources used to obtain the drug price data.

(b) Make available to a contracted pharmacy the actual maximum allowable cost for each drug.

(c) Review and make necessary adjustments to the maximum allowable cost for every drug for which the price has changed at least every 14 days.

III. A pharmacy benefit manager shall not require accreditation of providers other than requirements set forth by the New Hampshire pharmacy board or other state or federal entity.

402-N:4 Prescription Drugs.

I. A pharmacy benefits manager or insurer shall require a contracted pharmacy to charge an enrollee or insured person the pharmacy's usual and customary price of filling the prescription or the contracted copayment, whichever is less.

II. Once it has settled a claim for filling a prescription for an enrollee or insured person and notified the pharmacy of the amount the pharmacy benefits manager or insurer shall pay to the pharmacy for that prescription, the pharmacy benefits manager or insurer shall not lower the amount to be paid to the pharmacy by the pharmacy benefits manager or the insurer for such settled claim; provided, however, that this paragraph shall not apply if the claim was submitted fraudulently or with inaccurate or misrepresented information.

402-N:5 Complaints Relative to Pharmacy Benefit Managers.

I. Consumers may file a complaint related to a registered pharmacy benefit manager pursuant to RSA 400-A:15-e.

II. The commissioner shall adopt rules, pursuant to RSA 541-A, to implement RSA 402-N:4. Such rules shall include procedures for addressing complaints, provisions for enforcement, the receipt of complaints referred to the insurance department under RSA 318:47-h, III(b), and for reporting to the board of pharmacy on the status of complaints referred.

402-N:6 Pharmacy Benefits Manager Reporting.

I. Each pharmacy benefits manager shall submit an annual report to the commissioner containing a list of health benefit plans it administered, and the aggregate amount of all rebates it collected from pharmaceutical manufacturers that were attributable to patient utilization in the state of New Hampshire during the prior calendar year.

II. Information reported to the commissioner pursuant to this paragraph shall be confidential and protected from disclosure under the commissioner's examination authority and shall not be considered a public record subject to disclosure under RSA 91-A. Based on this reporting, the commissioner shall make public aggregated data on the overall amount of rebates collected on behalf of covered persons in the state, but shall not release data that directly identifies a specific insurer or pharmacy benefit manager.

402-N:7 Authority to Examine and Directly Bill Pharmacy Benefits Managers for Certain Examinations. The commissioner may examine and directly bill a pharmacy benefits manager required to be registered under this chapter for the costs of any examination pursuant to RSA 400-A:37 as necessary to determine and enforce compliance with this chapter. In addition, if the commissioner finds through an investigation or examination that a carrier has not received information required under RSA 420-J:7-b, from a pharmacy benefit manager, the commissioner may require that the pharmacy benefit manager provide the required information, and the commissioner may investigate or examine and directly bill the pharmacy benefit manager for the cost of any portion of the examination or investigation pertaining to obtaining the required information.

402-N:8 Non-Exclusivity. Nothing in this chapter shall be interpreted to invalidate or render inapplicable any other provision of Title XXXVII that is otherwise applicable to an entity that qualifies as a pharmacy benefit manager under this chapter.

402-N:9 Severability. If any provision of this chapter or the application of this chapter to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or application, and to this end, the provisions of this chapter are declared severable.

3 Pharmacists and Pharmacies; Definition of Pharmacy Benefits Manager. Amend RSA 318:1, XI-a to read as follows:

XI-a. "Pharmacy benefits manager" means ~~[any person or entity as defined in RSA 420-J:3, XXVIII-a]~~ **"pharmacy benefits manager" as defined in RSA 402-N:1, VIII.**

4 Managed Care Law; Definition of Pharmacy Benefits Manager. Amend RSA 420-J:3, XXVIII-a to read as follows:

XXVIII-a. "Pharmacy benefits manager" means ~~[a person who performs pharmacy benefits management services, including a person acting on behalf of a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management services for a covered entity. "Pharmacy benefits manager" shall not include a health insurer licensed in this state if the health insurer or its subsidiary is providing pharmacy benefits management services exclusively to its own insureds, or a private single employer self-funded plan that provides such benefits or services directly to its beneficiaries. "Pharmacy benefits management" means the administration of prescription drug benefits provided by a covered entity under the terms and conditions of the contract between the pharmacy benefits manager and the covered entity and the provision of mail order pharmacy services]~~ **"pharmacy benefits manager" as defined in RSA 402-N:1, VIII.**

5 New Section; Commission to Study Greater Transparency in Pharmaceutical Costs and Drug Rebate Programs. Amend RSA 126-A by inserting after section 77 the following new section:

126-A:77-a Commission to Study Greater Transparency in Pharmaceutical Costs and Drug Rebate Programs.

I. There is established a commission to study greater transparency in pharmaceutical costs and drug rebate programs.

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

(1) Three 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) The insurance commissioner, or designee.

(4) The commissioner of the department of health and human services, or designee.

(5) A representative of the New Hampshire Hospital Association, appointed by the association.

(6) A physician licensed under RSA 329, appointed by the New Hampshire Medical Society.

(7) The executive director of New Futures, or designee.

(8) A representative of the New Hampshire Pharmacists Association, appointed by the association.

(9) A representative of the Business and Industry Association of New Hampshire, appointed by the association.

(10) A member representing pharmacy benefit managers, appointed by the Pharmaceutical Care Management Association.

(11) A representative of America's Health Insurance Plans (AHIP), appointed by that organization.

(12) A representative of Pharmaceutical Research and Manufacturers of America, appointed by that organization.

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

II.(a)(1) The commission shall study how to achieve greater transparency in pharmaceutical costs by identifying and analyzing certain critical prescription drugs and their role in overall health care spending in the New Hampshire and by analyzing the amounts rebated by drug manufacturers for certain high cost and high utilization prescription drugs. The commission's study shall include, but not be limited to:

(A) Studying strategies available to achieve greater transparency in pharmaceutical costs by identifying and analyzing certain critical prescription drugs and their role in overall health care spending and the impact of price increases on patients and their families.

(B) Reviewing legislative efforts in other states and taking advantage of any other analysis by outside organizations or foundations.

(C) Analyzing the impact of drug prices on insurance premium costs, consumer out-of-pocket costs for prescription drugs, and state and county purchasing of prescription drugs.

(D) Analyzing the potential impact of transparency in relation to the practices of pharmaceutical manufacturers and pharmacy benefits managers, including how research and development, marketing, and rebates affect drug prices.

(E) Proposing changes to New Hampshire law, as needed, to reduce the rising cost of pharmaceuticals.

(2) The commission shall also study the role pharmacy benefit managers play in the cost, administration, and distribution of prescription drugs; if greater transparency in pharmaceutical costs to purchasers would lower costs in overall health care spending in New Hampshire; and analyzing the amounts rebated by drug manufacturers for prescription drugs passed to purchasers and patients. The goal shall be to determine if any changes to New Hampshire laws could reduce the rising cost of pharmaceuticals to purchasers or patients.

(b) The commission may solicit input from any person or entity the commission deems relevant to its study.

III. 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. Eight members of the commission shall constitute a quorum.

IV. The commission shall make a report with its findings and any recommendations for proposed legislation on or before November 1, 2020 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.

6 Repeal. RSA 126-A:77-a, relative to a commission to study greater transparency in pharmaceutical costs and drug rebate programs, is repealed.

7 Repeal. RSA 402-N:3, III, relative to accreditation of providers, is repealed.

8 Membership of the Commission to Study Greater Transparency in Pharmaceutical Costs and Drug Rebate Programs. To the extent possible, the membership of the commission to study greater transparency in pharmaceutical costs and drug rebate programs established in section 6 of this act shall remain the same as the commission established in former RSA 126-A:77.

9 Effective Date.

I. Sections 1-4 of this act shall take effect January 1, 2020.

II. Section 6 of this act shall take effect November 1, 2020.

III. Section 7 of this act shall take effect June 30, 2020.

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

Amendment to SB 228-FN

(2019-2129h)

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

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

1 Statement of Purpose. The purpose of this act is to provide legislative authorization for initiatives to improve the health coverage available through this state's individual and small employer markets, including authorizing new forms of multiple employer welfare arrangements contingent on the establishment of the legal validity of the United States Department of Labor's Association Health Plan Rule codified at 29 C.F.R. section 2510.3-5(b), authorizing the insurance commissioner to apply for a waiver on an expedited basis

under section 1332 of the Affordable Care Act to create a market stabilization mechanism for the individual market, and creating a legislative commission on the status of health coverage markets for individuals and small employers. The general court hereby seeks to help individuals and small businesses obtain more affordable health care coverage and new coverage options while preserving protections for higher risk individuals and groups and while protecting against adverse impacts on New Hampshire's existing individual and small group health insurance markets.

2 Title. This act shall be known as the Individual and Small Business Health Care Reform Act of 2019.

3 Multiple-Employer Welfare Arrangements; Definitions. RSA 415-E:1 is repealed and reenacted to read as follows:

415-E:1 Definitions. In this chapter:

I. "Bona fide association" means a bona fide pathway I association or a bona fide pathway II association.

II. "Bona fide pathway I association" means a group or association that satisfies the criteria established by the United States Department of Labor prior to the adoption in 2018 of 29 C.F.R. section 2510.3-5, including the guidance provided in the United States Department of Labor publication entitled "MEWAS, Multiple-Employer Welfare Arrangements under the Employee Retirement Income Security Act (ERISA): A Guide to Federal and State Regulation, Revised August 2013" and including published United States Department of Labor ERISA Advisory Opinion Letters.

III. "Bona fide pathway II association" means a group or association that meets the requirements of 29 C.F.R. section 2510.3-5(b).

IV. "Commissioner" means the insurance commissioner of the state of New Hampshire.

V. "Eligible employee" means a full-time or part-time employee who meets the requirements for eligibility for group coverage set forth in RSA 415:18, I(q).

VI. "Employee welfare benefit plan" has the same meaning as in 29 U.S.C. section 1002(1).

VII. "Fully insured health benefit plan" means a policy, contract, certificate, or agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health services, that is offered or issued to bona fide association by a health insurer licensed to do business in New Hampshire and that bears the risk under the plan.

VIII. "Fund balance" means the total assets in excess of total liabilities, except that assets pledged to secure debts not reflected on the books of the multiple-employer welfare arrangement shall not be included in the fund balance. Fund balance shall include other contributed capital, retained earnings, and surplus notes.

IX. "Insolvency termination" means the termination of an arrangement where the fund balance as of the termination date is inadequate.

X. "Insurer" means any insurer, nonprofit hospital or medical service corporation, health maintenance organization, or managed care organization, including but not limited to an insurer offering health coverage as defined in RSA 420-G:2, IX.

XI. "Multiple-employer welfare arrangement (MEWA)" or "association" means an employee welfare benefit plan or any other arrangement which is established or maintained for the purpose of offering or providing health benefits to the eligible employees of 2 or more employers, or to their beneficiaries, and shall include a MEWA as defined in the Employee Retirement Income Security Act of 1974, 29 U.S.C. section 1001 et seq. (ERISA). This shall include plans established by any political subdivision of the state or religious organization, but shall not include any plan or arrangement established or maintained under or pursuant to one or more agreements deemed collective bargaining agreements under section 3(40)(A)(i) of (ERISA). For the purposes of this chapter, 2 or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are under common ownership or within the same control group as defined under section 3(40)(B) of ERISA.

4 Multiple-Employer Welfare Arrangements; Applicability; General Eligibility. Amend RSA 415-E:2, I and II to read as follows:

I. No person shall ~~[-after April 1, 1992,]~~ operate a multiple-employer welfare arrangement unless such arrangement is approved by the commissioner. ~~[No person shall, after April 1, 1992, operate a multiple-employer welfare arrangement in existence prior to April 1, 1992, unless such arrangement has submitted for approval in compliance with RSA 415-E:4, or otherwise meets the special requirements of paragraph III of this section.]~~ ***A foreign or domestic MEWA or association shall be subject to the jurisdiction of this state if it provides a health benefit plan that covers the employees of at least one employer that maintains a work location in New Hampshire, which is the primary workplace of at least one New Hampshire resident, including any self-employed New Hampshire resident who is qualified to enroll in the plan.***

II. This chapter shall not apply to a multiple-employer welfare arrangement ***that is a bona fide pathway I association*** which offers or provides benefits which are fully insured by an authorized insurer or under the provisions of RSA 5-B.

5 Multiple-Employer Welfare Arrangements. RSA 415-E:3 is repealed and reenacted to read as follows:

415-E:3 General Eligibility; Pathway I and Pathway II. To meet the requirements for approval and to maintain a multiple employer welfare arrangement, an association not exempted under RSA 415-E:2, II shall be approved either as a self-insured bona fide pathway I association or as a bona fide pathway II association as follows:

I. An association seeking approval as a self-insured bona fide pathway I association shall:

- (a) Meet the definition in RSA 415-E:1, II of a bona fide pathway I association.
- (b) Sponsor health coverage that is self-insured.
- (c) Be nonprofit.

(d) Be established by a trade association, industry association, political subdivision of the state, religious organization, or professional association of employers or professionals which has a constitution or bylaws and which has been organized and maintained in good faith for a continuous period of one year for purposes other than that of obtaining or providing insurance.

(e) Be operated pursuant to a trust agreement by a board of trustees which shall have complete fiscal control over the arrangement and which shall be responsible for all operations of the arrangement. The trustees selected shall be owners, partners, officers, directors, or employees of one or more employers in the arrangement. A trustee may not be an owner, officer, or employee of the administrator or service company of the arrangement. The trustees shall have the authority to approve applications of association members for participation in the arrangement and to contract with an authorized administrator or service company to administer the day-to-day affairs of the arrangement.

(f) Be neither offered nor advertised to the public generally.

(g) Be operated in accordance with sound actuarial principles.

II. An association seeking approval as a bona fide pathway II association shall:

(a) Meet the definition in RSA 415-E:1, III of a bona fide pathway II association.

(b) Have a formal organizational structure with a governing body, bylaws, and other similar indications of formality, and complies with RSA 415-E:3, I-a(e) and with all other organizational requirements under this chapter and, if the association offers fully insured coverage, under RSA 420-M.

(c) Have its functions and activities controlled by its employer members, and the association's employer members that participate in the group health plan shall control the plan, both in form and in substance.

(d) Have a commonality of interest with its employer members, such that one or both of the following standards are met, in a manner that is not a subterfuge for discrimination as prohibited under RSA 415-E:1-e:

- (1) The employers are in the same trade, industry, line of business, or profession; or
- (2) Each employer has a principal place of business in the same region.

(e) Have at least one substantial business purpose unrelated to offering and providing health coverage or other employee benefits to its employer members and their employees.

(f) Have each employer member of the association participating in the group health plan who is a person acting directly as an employer of at least one employee who is a participant covered under the plan.

(g) Not make health coverage through the association's group health plan available other than to:

- (1) An employee of a current employer member of the association; and
- (2) A beneficiary of an individual eligible under subparagraph (1).

(h) Not be a health insurance issuer, or owned or controlled by a health insurance issuer, or by a subsidiary or affiliate of a health insurance issuer, other than to the extent such entities participate in the association in their capacity as employer members of the association.

6 New Sections; Multiple-Employer Welfare Arrangements. Amend RSA 415-E by inserting after section 3 the following new sections:

415-E:3-a Bona Fide Pathway I and II Association Coverage; General Authorization. Bona fide pathway association coverage as set forth in the United States Department of Labor's June 21, 2018 amendment to 29 C.F.R. section 2510, 83 Fed. Reg. 28,961 (codified at 29 C.F.R. section 2510.3-5) shall be permissible in New Hampshire provided it conforms with this chapter and all of the provisions of Title XXXVII concerning this coverage.

415-E:3-b Bona Fide Pathway I and II Association Coverage: Option to Offer Fully-Insured Coverage.

I. A bona fide pathway I association may offer coverage on a fully insured basis if it is a qualified association trust as defined in RSA 420-G:2, XV.

II. A bona fide pathway II association may offer coverage on a fully insured basis if it is licensed as a qualified purchasing alliance under RSA 420-M and meets all of the pathway II requirements under this chapter.

III. No insurer shall issue a fully-insured health benefit plan to an association or MEWA with covered lives in New Hampshire unless the association or MEWA meets the requirements of either paragraphs I or II.

IV. A fully-insured association or MEWA that is a qualified association trust or that has been licensed by the department as a qualified purchasing alliance shall not be subject to the financial reporting and solvency requirements of this chapter that are applicable only to self-funded associations.

V. An insurer issuing a fully insured health benefit plan to an association or MEWA shall ensure that the terms of the plan conform with all applicable requirements of this chapter with respect to bona fide association coverage and that the coverage has received all required approvals from the department.

415-E:3-c Bona Fide Pathway II Association Coverage; Benefit Requirements.

I. Each health benefit plan offered to or by a bona fide pathway II association, whether on a fully insured or self-funded basis, shall, at a minimum, provide the following benefits:

- (a) Coverage for each of the 10 essential health benefits as defined in 42 U.S.C. section 18022(b)(1), subject to approval of the commissioner based on the New Hampshire benchmark plan;
- (b) Cost sharing requirements of 42 U.S.C. section 18022(c)(1)-(c)(3);
- (c) Lifetime and annual limits as prescribed in 29 C.F.R. section 2590.715-2711;
- (d) A level of coverage equal to or greater than that designed to provide benefits that are actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan; and
- (e) All other benefits required to comply with applicable federal laws and regulations and with any provision of title XXXVII that applies to large group health insurance coverage.

II. Every health benefit plan offered by any bona fide pathway II association, whether offering coverage on a self-funded basis or fully insured basis, and any insurer contracting with an offering association, shall comply with the following:

- (a) Except as otherwise specifically provided herein, all requirements of RSA 420-G, including claims data and other reporting requirements;
- (b) Requirements contained in RSA 420-J, and any rules adopted thereunder by the commissioner including, but not limited to, network adequacy, balance billing protections, and appeal and grievance processes;
- (c) Payment of premium tax as provided in RSA 400-A:31-35 and administrative assessment under RSA 400-A:39;
- (d) Requirements pertaining to examinations under RSA 400-A:37;
- (e) Requirements pertaining to unfair insurance trade practices under RSA 417;
- (f) Vaccine association assessment under RSA 126-Q; and
- (g) Individual market assessment under RSA 404-G.

III. No health benefit plan or related policy, contract, certificate, or agreement offered or issued in this state to a bona fide pathway II association, whether offering coverage on a self-funded basis or fully insured basis, shall reserve discretion to the insurer or sponsoring association to interpret the terms of the contract or to provide standards of interpretation or review that are inconsistent with the laws of this state. Any such policy, contract, certificate, or agreement shall be void and unenforceable to the extent it conflicts with this section.

IV. A bona fide pathway II association, whether offering coverage on a self-funded basis or fully insured basis, shall not offer, and an insurer shall not deliver or issue for delivery to such association, a health benefit plan covering lives located in this state that contains an exclusion or limitation for pre-existing conditions or a waiting period on the coverage of pre-existing conditions.

V. For any bona fide pathway II association, whether offering coverage on a self-funded basis or fully insured basis, if coverage is issued to a sole proprietor, the association sponsoring the coverage shall be responsible for monitoring and ensuring that the sole proprietor meets the requirements to qualify as an employer under 29 C.F.R. section 2510.3-5(b) and meets the per month hourly work requirement contained in RSA 126-AA:2, III. Failure to ensure compliance with this provision shall be a violation of this chapter.

415-E:3-d Rating Requirements for Bona Fide Pathway I Fully Insured Coverage and all Pathway II Coverage; Rating Requirements.

I. Any fully insured bona fide pathway I association and any pathway II association, whether self-funded or fully insured, or any insurer contracting with such bona fide pathway I or II association to provide a health benefit plan, shall comply with all requirements of RSA 420-G, except that, for any such association with 250 or more New Hampshire covered lives, the association as a whole may be rated as a single risk pool separately from the small employer market.

II. Coverage for a fully insured bona fide pathway I association with 250 or more New Hampshire covered lives and any bona fide pathway II association with 250 or more New Hampshire covered lives may be rated as a single large group based on the association's group experience and in accordance with all standards applicable to large employer groups under RSA 420-G. The following additional requirements shall apply to such coverage:

- (a) All premium rates charged shall be guaranteed for a rating period of at least 12 months, and shall not be changed for any reason, including, but not limited to, a change in the group's case characteristics.
- (b) For fully insured bona fide pathway I associations, the association may vary rates among member small employers only in accordance with the provisions in RSA 420-G:10 applying to qualified association trusts.
- (c) For any pathway II association, whether self funded or fully insured, the association may vary rates among member small employers, including participating self-employed New Hampshire members, as follows:
 - (1) Variation associated with age shall not exceed 5:1.

(2) Variation associated with tobacco use shall not exceed 1.5 to 1.

(3) No other variation shall be permitted.

(d) The same rating methodology shall apply to newly covered member employer groups and employee members renewing at each annual renewal date or anniversary date. The rating methodology shall not be construed to include health carrier incentives to individual subscribers or members to participate in wellness and fitness programs provided such incentives are approved by the insurance department.

(e) Nothing in this chapter shall be construed to allow a member small employer group within any association to be rated separately under large group rating standards.

415-E:3-e Bona Fide Pathway II Association Coverage; Nondiscrimination Requirements. In accordance with 29 C.F.R. section 2590.702, bona fide pathway II association coverage shall comply with the following:

I. The group or association shall not condition employer membership in the group or association on any health factor of any individual who is or may become eligible to participate in the group health plan sponsored by the group or association.

II. The group health plan sponsored by the group or association shall comply with 29 C.F.R. section 2590.702(b) with respect to nondiscrimination in rules for eligibility of benefits.

III. The group health plan sponsored by the group or association shall comply with 29 C.F.R. section 2590.702(c) with respect to nondiscrimination in premiums or contributions required by any participant or beneficiary for coverage under the plan.

IV. In applying the nondiscrimination provisions of paragraphs II and III, the group or association shall not treat the employees of different employer members of the group or association as distinct groups of similarly-situated individuals based on a health factor of one or more individuals.

415-E:3-f Free Movement Between Bona Fide Association Coverage and Small Group Coverage. A small employer that leaves the small group market for bona fide pathway I or II association coverage or that leaves pathway I or II association coverage for the small group market shall not be subjected to a waiting period before being permitted to return to the original market, nor shall an insurer or administrator be permitted to impose such a waiting period.

415-E:3-g Bona Fide Pathway II Association Coverage; Mitigation of Small Group Market Impacts of Pathway II Association Coverage.

I. In order to mitigate potential adverse effects of pathway II association coverage on the existing small group markets, the commissioner shall retain an independent actuarial firm to model and quantify the impacts of pathway II coverage on the existing small group markets and to perform the actuarial review necessary to support the small group risk adjustment program required under RSA 420-K. The plan of operation for the small group risk adjustment program required under RSA 420-K shall be approved and in place before any pathway II association coverage may be issued.

II. Upon the recommendation of the commission on the status of health coverage markets for individuals and small employers established under RSA 404-J, or upon the commissioner's own initiative, the commissioner may limit pathway II associations to the writing of existing business only and may adjust the risk score differential amount in RSA 420-K:4, I(d) as necessary to prevent the pathway II association market from having an adverse impact on the availability and choice of coverage in the small group market and as necessary to prevent average premiums for small groups from increasing at a rate that is significantly higher than the trend in claims costs.

7 Multiple-Employer Welfare Arrangements; Filing of Application. Amend the section heading and the introductory paragraph of RSA 415-E:4 to read as follows:

415-E:4 **Self-Funded Arrangements**; Filing of Application. **For self-funded arrangements**, the sponsoring association shall file with the commissioner an application for approval of the arrangement upon a form to be furnished by the commissioner, which shall include or have attached the following:

8 Multiple-Employer Welfare Arrangements; Termination Liability Fund. RSA 415-E:5 is repealed and reenacted to read as follows:

415-E:5 Self-Funded Arrangements: Termination Liability Fund.

I. Each self-funded multiple-employer welfare arrangement shall maintain a termination liability fund wherein the fund balance of the multiple-employer welfare arrangement shall at no time, for a consecutive 90-day period, be less than \$750,000 or 33 percent of the aggregate premiums billed during the 12 prior months, whichever is greater. For purposes of this paragraph, that surety amount, if any, deposited with the commissioner pursuant to RSA 415-E:7, I, may be credited as a fund balance asset toward the termination liability fund amount.

II. Each self-funded multiple-employer welfare arrangement shall file with the commissioner, not later than 4 months following the end of each fiscal year, a report on the financial status of the termination liability fund, which report is filed under oath by a member of its board of trustees, or by an administrative executive duly appointed by the board, and further certified to by an independent certified public accountant.

9 Multiple-Employer Arrangements, Financial Condition, Loss Reserves. Amend RSA 415-E:6 to read as follows:

415-E:6 **Self-Funded Arrangements**; Financial Condition, Loss Reserves, Reinsurance, or Working Capital; Determination of Inadequacy.

I. Each self-funded arrangement shall maintain specific excess insurance with a retention level determined in accordance with sound actuarial principles and approved by the commissioner.

II. Each self-funded arrangement shall establish and maintain appropriate loss reserves determined in accordance with sound actuarial principles and approved by the commissioner.

[I-] **III.** The commissioner may, upon reasonable notice, conduct an examination of the loss reserves, financial condition, specific excess insurance, and working capital of a multiple-employer welfare arrangement **the costs of which shall be borne by the arrangement**. If the commissioner preliminarily finds that the reserves, specific excess insurance, or financial condition may be inadequate, or that the arrangement does not have a combined working capital in an amount establishing the financial strength and liquidity of the arrangement to pay claims promptly and showing evidence of the financial ability of the arrangement to meet its obligations to covered employees, the commissioner shall notify the arrangement of such inadequacy. Upon being so notified, the arrangement shall within 30 days file with the commissioner all information which, in the belief of the arrangement, proves the reasonableness and adequacy of the condition noted as being inadequate.

[H-] **IV.** If the commissioner determines, after reviewing the information filed, that an inadequate condition exists, the arrangement shall implement, within 30 days, a plan to correct the inadequacy and shall file proof of reasonable improvement or adequate condition with the commissioner within 6 months of the implementation of the plan. If the commissioner is satisfied that the plan submitted to improve the inadequate condition of the arrangement is sufficient, he shall so notify the arrangement. The arrangement shall report quarterly to the commissioner until the causes of the inadequate condition have been corrected.

[H-] **V.** The commissioner may suspend or revoke the approval of an arrangement if he finds that the arrangement has failed to correct or reasonably improve an inadequate condition within the time authorized by paragraph [H] **IV**.

10 Multiple-Employer Arrangements; Insolvency Protection. Amend RSA 415-E:7, I to read as follows:

I. To assure the faithful performance of its obligations to its member employers and covered employees **who are Hampshire residents** and their dependents, every arrangement shall, within 30 days after the close of the arrangement's fiscal year, deposit with the commissioner cash, securities, or any combination of these or other measures acceptable to the commissioner, in an amount equal to ~~[25 percent of the preceding 12 months' health care claims expenditures or 5 percent of gross annual premiums for the succeeding year], \$100,000 or 25 percent of the aggregate premiums billed during the 12 prior months attributable to New Hampshire residents,~~ whichever is greater~~[-; however, in no case shall the amount of the deposit exceed \$100,000]~~. All income from deposits shall belong to the depositing arrangement and shall be paid to it as it becomes available. An arrangement that has made a securities deposit may withdraw that deposit, or any part of such deposit, after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value, upon approval by the commissioner. No judgment creditor or other claimant of a multiple-employer welfare association shall have the right to levy upon any of the assets or securities held in this state as a deposit under this section.

11 Multiple-Employer Arrangements. Amend RSA 415-E:8 through RSA 415-E:13 to read as follows:

415-E:8 Policy Forms.

I. Whether an arrangement is self-funded or fully insured, no policy or contract form, application form, certificate, rider, endorsement, summary plan description, or other evidence of coverage shall be **sponsored or** issued by an arrangement unless the form and all changes to it have been filed with the commissioner by or on behalf of the arrangement which proposed to use such form and have been approved by the commissioner.

II. The commissioner shall disapprove any form filed under this section, or withdraw any previous approval, only if the form:

- (a) Is in any respect in violation of, or does not comply with, this chapter.
- (b) Contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.
- (c) Has any title, heading, or other indication of its provisions which is misleading.
- (d) Is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible.
- (e) Contains provisions which are unfair or inequitable, or contrary to the public policy of this state or which encourage misrepresentation.

III. Each self-funded arrangement shall issue to each covered employee a policy contract, certificate, summary plan description, or other evidence of the benefits and coverages provided. The evidence of the benefits and coverages provided shall contain in boldfaced print in a conspicuous location, the following statement: "The benefits and coverages described herein are provided through a trust fund established and funded by a group of employers."

IV. Each self-funded arrangement shall provide to each covered employee, on request, a written statement of the dollar amount of allowable benefit for any procedure which is requested by the appropriate procedure code.

415-E:9 Self-Funded Arrangements; Employer Participants' Liability. For self-funded arrangements:

I. The liability of each employer participant for the obligations of the multiple-employer welfare arrangement shall be individual, several, and proportionate, but not joint.

II. Each employer participant shall have a contingent assessment liability pursuant to 415-E:10 for payment of actual losses and expenses incurred while the policy was in force.

III. Each policy issued by the arrangement shall contain a statement of the contingent liability. Both the application for insurance and policy shall contain, in contrasting color and not less than 10-point type, the following statement: "This is a fully assessable policy. In the event the arrangement is unable to pay its obligations, policyholders (employers) shall be required to contribute on a pro rata earned premium basis the money necessary to meet any unfulfilled obligations."

415-E:10 Self-Funded Arrangements; Termination of Arrangement. For self-funded arrangements, if an arrangement is terminated for any reason, it shall pay all outstanding claims, debts, and obligations. The arrangement may retain sufficient funds to provide coverage for such additional period as the trustees of the arrangement consider prudent. In addition, the trustees may purchase such additional insurance as they consider necessary for protection against potential future claims. Any funds remaining in the arrangement after satisfaction of all obligations upon termination shall be paid to participating employers and/or covered employees as of the termination date in some equitable manner meeting with the approval of the commissioner, including, without ruling out other alternatives, equally on a per capita basis to each participating employer and/or employee who is covered under the arrangement as of the effective date of termination.

415-E:11 Self-Funded Arrangements; Annual Reports and Triennial Actuarial Reports. For self-funded arrangements:

I. Every **such** arrangement shall, annually within 4 months of the end of the fiscal year or within such extension of time as the commissioner for good cause may grant, file a report with the commissioner, verified by the oath of a member of the board of trustees or by an administrative executive appointed by the board, showing its condition on the last day of the preceding fiscal year. The report shall contain a financial statement of the arrangement, including its balance sheet and a statement of operations for the preceding year certified by an independent certified public accountant. The report shall also include an analysis of the adequacy of reserves and contributions or premiums charged, based on a review of past and projected claims and expenses.

II. In addition to information called for and furnished in connection with the annual report, if reasonable grounds exist, the commissioner may request information which summarizes paid and incurred expenses, and contributions or premiums received, and may request evidence satisfactory to the commissioner that the arrangement is actuarially sound. Such information and evidence shall be furnished to the commissioner by the arrangement as soon as reasonably possible after requested by the commissioner, but no later than 30 days after such request, unless the commissioner, for good cause, grants an extension.

III. At least once every 3 years, each **such** arrangement shall have a report prepared by an actuary who is a member of the Society of Actuaries of the American Academy of Actuaries as to the actuarial soundness of the arrangement. The report shall be made available to the commissioner upon request. The report shall consist of, but shall not be limited to, the following:

(a) Adequacy of contribution rate in meeting the level of benefits provided and changes, if any, needed in the contribution rates to achieve or preserve a level of funding deemed adequate to enable payment of the benefit amounts provided under the arrangement, which shall include a valuation of present assets, based on statement value, and prospective assets and liabilities of the plan and the extent of any unfunded accrued liabilities.

(b) A plan to amortize any unfunded liabilities and a description of actions taken to reduce unfunded liabilities.

(c) A description and explanation of actuarial assumptions.

(d) A schedule illustrating the amortization of any unfunded liabilities.

(e) A comparative review illustrating the level of funds available to the arrangement from rates, investment income, and other sources realized over the period covered by the report, indicating the assumptions used.

(f) A statement by the actuary that the report is complete and accurate and that in his opinion the techniques and assumptions used are reasonable and meet the requirements and intent of this chapter.

(g) Other factors or statements as may be reasonably required by the commissioner in order to determine the actuarial soundness of the plan.

415-E:12 [Place of Business;] Maintenance of Records. Each arrangement shall ~~have and maintain its principal place of business in this state and shall~~ make available to the commissioner complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary for, or suitable to, the kind or kinds of business transacted.

415-E:13 ***Qualification for Approval and*** Suspension[;] ***or*** Revocation of Approval.

I. Subject to other provisions in this chapter, the commissioner shall deny, suspend, or revoke an arrangement's approval if it finds that the arrangement:

(a) Has failed to meet the financial requirements of this chapter, RSA 420-G, or has violated any lawful order or rules.

(b) Has refused to be examined or to produce its accounts, records and files for examination, or if any of its officers has refused to give information with respect to its affairs or to perform any other legal obligation as to such examination, when required by the commissioner.

(c) Has failed to pay any final judgment rendered against it in this state within 60 days after the judgment became final.

(d) No longer meets the requirements for the authority originally granted.

II. The commissioner may, in his discretion, deny, suspend, or revoke the approval of any arrangement if it finds that the arrangement:

(a) Has violated any lawful order or rule of the commissioner, provision of this chapter, RSA 420-J, or relevant provision of RSA 161-H.

(b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs or to perform any other legal obligation as to such examination, when required by the commissioner.

III. The commissioner shall not grant or continue approval until such time as the arrangement replaces any trustee found by the commissioner, upon the presentation of sufficient evidence:

(a) To be incompetent;

(b) To be guilty of, or to have pled guilty or no contest to a felony, or a crime involving moral turpitude;

(c) To have had any type of insurance license revoked in this or any other state;

(d) To have improperly manipulated assets, accounts, or specific excess insurance or to have otherwise acted in bad faith.

IV. To qualify for and retain approval to transact business, an arrangement shall make all contracts with administrators or service companies available for inspection by the department initially, and thereafter upon reasonable notice.

V. Failure to maintain compliance with applicable eligibility or filing requirements established by this section shall be grounds for suspension or revocation of approval of an arrangement, provided, however, that such arrangement shall have 60 days after notification by the commissioner to take such action necessary to correct the deficiency.

12 Multiple Employer Arrangements; Rehabilitation; Rulemaking. Amend RSA 415-E:15 and RSA 415-E:16 to read as follows:

415-E:15 Rehabilitation, Dissolution. Any rehabilitation, liquidation, conservation, ***supervision***, or dissolution of a multiple-employer welfare arrangement shall be conducted under the supervision of the commissioner, who shall have all power with respect thereto granted to it under the laws governing the rehabilitation, liquidation, conservation, ***supervision***, or dissolution of insurers.

415-E:16 Rulemaking. The commissioner may adopt such rules, pursuant to RSA 541-A, as ~~[he deems]~~ ***are*** reasonable and necessary in order to carry out properly the functions and responsibilities assigned the insurance department under ~~[the laws of the state]~~ ***this chapter***. ~~[This rulemaking authority shall expire on January 1, 1993, at which time this section, unless replaced by a later legislative enactment, shall be deemed repealed. Any rules adopted under this section shall be drafted in as narrow a manner as possible, consistent with the authority granted the department under the laws of this state.]~~

13 Health Coverage; Definitions. Amend RSA 420-G:2, XVI(a) to read as follows:

XVI.(a) "Small employer" means a business or organization which employed on average, one and up to 50 employees, including owners and self-employed persons, on business days during the previous calendar year. A small employer is subject to this chapter whether or not it becomes part of an association, multi-employer plan, trust, or any other entity cited in RSA 420-G:3 provided it meets this definition. ***However, with respect to coverage written under RSA 415-E to a bona fide pathway II association, whether self funded or fully insured, if such association has at least 250 New Hampshire covered lives and meets all applicable standards under RSA 415-E and all large group standards under this chapter, coverage offered by such association may be offered to sole proprietors or self-employed persons.***

14 Purchasing Alliances; Definitions. Amend RSA 420-M:2, X to read as follows:

X. "Qualified purchasing alliance" means a purchasing alliance that has obtained certification from the commissioner under RSA 420-M:13 as a qualified purchasing alliance with authority to ~~[operate in the same manner as a qualified association trust pursuant to RSA 420-G:10]~~ ***sponsor fully-insured bona fide pathway II association coverage under RSA 415-E.***

15 Purchasing Alliances. RSA 420-M:13 is repealed and reenacted to read as follows:

420-M:13 Qualified Purchasing Alliance. A purchasing alliance that has a minimum of 500 enrollees may elect to obtain certification from the commissioner as a qualified purchasing alliance. To obtain certification, a purchasing alliance shall demonstrate:

I. That the purchasing alliance meets all requirements under RSA 415-E to operate as a bona fide pathway II association; and

II. That certification of the applicant as a qualified purchasing alliance will promote the purposes set out in RSA 420-M:1; and

III. That the purchasing alliance has the capacity to monitor and screen sole proprietor members purchasing pathway II association coverage to ensure that they meet all requirements to qualify as an "employee" under 29 C.F.R. section 2510.3-5(b) and meets the per month hourly work requirement contained in RSA 126-AA:2, III.

16 Definition of Qualified Association Trust. Amend the introductory paragraph of RSA 420-G:2, XV to read as follows:

XV. "Qualified association trust or other entity" means an association established trust or other entity in existence on January 1, 1995, and providing health coverage within the state of New Hampshire to at least ~~[1,000]~~ **250** employees and/or the dependents of association members, which association:

17 Health Coverage; Qualified Association Trust. Amend RSA 420-G:10 to read as follows:

420-G:10 Qualified Association Trust ~~[and Qualified Purchasing Alliance]~~.

I. A qualified association trust or other entity, as defined in RSA 420-G:2, XV, ~~and a qualified purchasing alliance, as defined in RSA 420-M:2, X,~~ shall:

(a) Comply with the rating restrictions outlined in RSA 420-G:4 for all small employer members with 50 or fewer employees based upon the association's or alliance's group experience, except that ~~[for a qualified association trust,]~~ no rating factor shall be utilized without the express written consent of the association.

(b) Offer all eligible members, as defined under the applicable trust or other documents, coverage and rates on a guaranteed issue and renewable basis.

(c) Comply with the regulations concerning medical underwriting in RSA 420-G:5.

(d) Comply with the preexisting conditions provision of RSA 420-G:7.

~~[(e) Prohibit any employer that voluntarily discontinues participation in either a qualified association trust or a qualified purchasing alliance from rejoining for a period of at least 24 months.]~~

II. Nothing in this chapter shall be interpreted to limit the size of employers who may participate in coverage with a qualified association trust ~~[or a qualified purchasing alliance]~~.

18 Small Employer Health Reinsurance Pool. Amend the chapter heading of RSA 420-K to read as follows:

SMALL EMPLOYER HEALTH ~~[REINSURANCE POOL]~~

RISK ADJUSTMENT PROGRAM

19 Small Employer Health Reinsurance Pool; Definitions. RSA 420-K:1 is repealed and reenacted to read as follows:

420-K:1 Definitions. In this chapter:

I. "Assessment" means the liability of the member insurer to the reinsurance pool.

II. "Board" means the board of directors of the small employer health reinsurance pool.

III. "Bona fide pathway II association coverage" means coverage, whether self-funded or fully insured, that constitutes an employee welfare benefit plan sponsored by a bona fide pathway II association as defined in RSA 415-E:1.

IV. "Commissioner" means the insurance commissioner.

V. "Covered lives" shall include all persons who have health insurance via a health carrier and who are employees or dependents of employees of a small employer, including sole proprietors covered under bona fide pathway II association coverage.

VI. "Health insurance" means "health insurance" as defined in RSA 404-G:2, VII.

VII. "Plan of operation" means the plan of operation of the small employer health risk adjustment program, including articles, bylaws and operating rules, procedures and policies approved by the commissioner and adopted by the pool.

VIII. "Small employer" means "small employer" as defined in RSA 420-G:2, XVI.

IX. "Small employer health carrier" means any entity licensed pursuant to RSA 402, RSA 420-A, or RSA 420-B that delivers, issues for delivery or maintains in force policies of health insurance in New Hampshire to any small employer. For purposes of this chapter, health carrier shall include any association, organization or arrangement offering or sponsoring bona fide pathway II association coverage.

20 Establishment of the Risk Adjustment Program. Amend RSA 420-K:2 to read as follows:

420-K:2 Establishment of the ~~[Pool]~~ **Risk Adjustment Program**.

I. There is established a nonprofit entity to be known as the "New Hampshire small employer health ~~[reinsurance pool]~~ **risk adjustment program**." All **small employer** health carriers~~[-writers of health insurance, and other insurers]~~ issuing or maintaining health insurance in this state shall be members of the ~~[pool]~~ **program**.

II. ~~[On or before July 1, 2005,]~~ The commissioner shall give notice to all members of the ~~[pool]~~ **program** of the time and place for the initial organizational meeting~~[, which shall take place by July 15, 2005]~~. The members shall select the initial board at the organizational meeting and such initial board shall be subject to approval by the commissioner. The members shall elect each subsequent board at the annual meeting of members and each such subsequent board shall be subject to approval by the commissioner. The initial board and each subsequent board shall consist of at least 5 and not more than 9 representatives of members. There shall be no more than one board member on the initial board and each subsequent board representing any one member company. In determining voting rights at the organizational meeting and all subsequent meetings of members, each member shall be entitled to vote in person or by proxy. All such votes shall be proportional to the member's covered lives. To the extent possible, at least 2/3 of members of each board shall be small employer health carriers. ~~[At least one member of each board shall be a small employer health carrier with less than \$100,000,000 in net small employer health insurance premium in this state.]~~ The commissioner, or designee, shall be an ex-officio voting member of the board. In approving selection of each board, the commissioner shall assure that all members are fairly represented.

III. If the initial board is not elected at the organizational meeting, the commissioner shall appoint the initial board within 15 days of the organizational meeting.

IV. Within 60 days after the appointment of such initial board, the board shall submit to the commissioner a plan of operation and thereafter any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the ~~[pool]~~ **program**. The commissioner shall, after notice and hearing, approve the plan of operation provided he or she determines it to be suitable to assure the fair, reasonable, and equitable administration of the ~~[pool, and provides for the sharing of pool gains or losses on an equitable proportionate basis in accordance with the provisions of paragraph VI of this section]~~ **program**. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this section shall be made available. If the board fails to submit a suitable plan of operation within 60 days after its appointment, or at any time thereafter fails to submit suitable amendments to the plan of operation, the commissioner shall, after notice and hearing, adopt and promulgate a plan of operation or amendments ~~[no later than October 1, 2005]~~. The commissioner shall amend any plan adopted by him or her, as necessary at the time a plan of operation is submitted by the board and approved by the commissioner.

V. The board shall select ~~[reinsurance pool]~~ **risk adjustment program** administrators through a competitive bidding process to administer the ~~[pool]~~ **program**. The board shall evaluate bids submitted based on criteria established by the board. ~~[Each month, total payments to administrators shall not exceed the larger of \$2,500 or an amount equal to \$10 per life for which the reinsurance pool has any potential claims liability.]~~

VI. The plan of operation shall establish procedures for:

(a) Handling and accounting of assets and moneys of the pool, and for annual fiscal reporting to the commissioner.

(b) Filling vacancies on the board, subject to the approval of the commissioner.

(c) Selecting an administrator and setting forth the powers and duties of the administrator.

(d) ~~[Reinsuring risks in accordance with the provisions of this chapter]~~ **Establishing risk adjustment parameters.**

(e) Collecting assessments from all members to provide for ~~[claims reinsured]~~ **risk adjustment payments** by the ~~[pool]~~ **program** and for administrative expenses incurred or estimated to be incurred during the period for which the assessment is made.

(f) Any additional matters at the discretion of the board.

21 Powers of the Program. RSA 420-K:3 and RSA 420-K:4 are repealed and reenacted to read as follows:

420-K:3 Powers of the Program. The program may:

I. Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter, including the authority, with the approval of the commissioner, to enter into contracts with programs of other states for the joint performance of common functions, or with persons or other organizations for the performance of administrative functions.

II. Sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against members.

III. Take such legal action as necessary to avoid the payment of improper claims against the program.

IV. Define the array of health coverage products for which risk adjustment will be applied in accordance with the requirements of this chapter.

V. Establish rules, conditions, and procedures pertaining to the risk adjustment mechanism, including implementation and measurement time frames and the permitted risk corridor where no transfer of risk adjustment funds shall take place.

VI. Establish appropriate rates, rate schedules, rate adjustments, rate classifications, and any other actuarial functions appropriate to the operation of the program.

VII. Assess members in accordance with the provisions of this chapter, and to make advance interim assessments as may be reasonable and necessary for organizational and interim operating expenses and to pay claims by the program. Any such interim assessments shall be credited as offsets against any regular assessments due following the close of the fiscal year.

VIII. Appoint from among the members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the program, policy, and other contract design, and any other function within the authority of the program.

IX. Borrow money to effectuate the purposes of the program. Any notes or other evidence of indebtedness of the program not in default shall be legal investments for insurers and may be carried as admitted assets.

420-K:4 Risk Adjustment Program.

I. The board shall:

(a) Develop and monitor a measure of risk to be used in comparing populations covered by small employer health insurance coverage and bona fide pathway II association coverage. The population covered by qualified association trust coverage or by bona fide pathway I association coverage, whether self-funded or fully insured, shall not be a part of the risk adjustment program and, for the purposes of this chapter, shall not be considered to be small group coverage.

(b) Access from the New Hampshire comprehensive health care information system (CHIS), as described under RSA 420-G:11-a, member level information, including length of coverage, gender, age, and diagnosis, sufficient to measure and monitor risk for carriers issuing or administering small employer health insurance.

(c) Perform risk adjustment analysis which may include the use of data from the CHIS, including calculating New Hampshire specific relative weights as necessary, to analyze the difference in the medical care resources expected to be necessary to treat the 2 different populations, one covered in the small group insurance risk pool and the other covered by bona fide pathway II association coverage.

(d) Subject to the limitation in paragraph II, establish risk adjustment payments between carriers that are triggered whenever the average risk over any calendar year between bona fide pathway II association coverage and all other small group coverage differs by more than the maximum allowed amount, and that serve to create a net effect of reducing future expected risk score differences after payments to approximately the target amount. The commissioner shall establish the maximum allowed amount and the target amount by retaining actuarial experts. The standard that the actuarial experts shall use in recommending values for the maximum allowed amount and the target amount is that such amounts should be so determined as to prevent the pathway II association market from having an adverse impact on the availability and choice of coverage in the small group market and to prevent adverse selection against the small group market that is sufficient to cause the average premiums for small groups to increase at a rate that is significantly higher than the trend in claims costs.

(e) Provide a report to the insurance commissioner in a form and format acceptable to the commissioner.

II. The board shall not implement any adjustments until the number of lives covered by bona fide pathway II association coverage exceeds 2,000 member months for 3 consecutive months.

22 Immunity and Indemnification. Amend RSA 420-K:7 to read as follows:

420-K:7 Immunity and Indemnification.

I. Neither the participation in the [pool] **program** as members, the establishment of rates, forms, or procedures, nor any other joint or collective action required by this chapter shall be the basis of any legal action against the [pool] **program** or any of its members.

II. Any person or member made a party to any action, suit, or proceeding because the person or member served on the board or on a committee or was an officer or employee of the [pool] **program** shall be held harmless and be indemnified by the [pool] **program** against all liability and costs, including the amounts of judgments, settlements, fines or penalties, and expenses and reasonable attorney's fees incurred in connection with the action, suit, or proceeding. The indemnification shall not be provided on any matter in which the person or member is finally adjudged in the action, suit, or proceeding to have committed a breach of duty involving gross negligence, dishonesty, willful misfeasance, or reckless disregard of the responsibilities of office. Costs and expenses of the indemnification shall be prorated and paid for by all members. The right of indemnification shall not be exclusive of other rights or defenses to which such person or the legal representative or successors of such person, may be entitled to as a matter of law. The commissioner may retain actuarial consultants necessary to carry out his or her responsibilities pursuant to this chapter and such expenses shall be paid by the [pool] **program** established in this chapter.

23 New Chapter; Commission on the Status of Health Coverage Markets for Individuals and Small Employers. Amend RSA by inserting after chapter 404-I the following new chapter:

CHAPTER 404-J

COMMISSION ON THE STATUS OF HEALTH COVERAGE MARKETS FOR INDIVIDUALS AND SMALL EMPLOYERS

I. There is hereby established a commission on the status of health coverage markets for individuals and small employers.

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

(1) Three members of the senate, one of whom shall be a member of the minority party, appointed by the president of the senate.

(2) Three members of the house of representatives, one of whom shall be a member of the minority party, appointed by the speaker of the house of representatives.

(3) The insurance commissioner, or designee.

(4) Three persons representing health carriers, appointed by the insurance commissioner, as follows:

(A) One person representing a health carrier with a significant presence in the individual market;

(B) One person representing a health carrier with a significant presence in the small employer market; and

(C) One person representing a health carrier with an interest in providing or administering health coverage in the pathway II association market.

(5) Two producers, appointed by the insurance commissioner, one of whom shall be a producer with a significant clientele in the individual market and the other a producer with a significant clientele in the small employer market.

(6) A public member from an academic institution or charitable foundation who has health care and health insurance expertise, appointed by the senate president.

(7) A public member who shall represent the interests of persons who obtain their coverage through that market, appointed by the speaker of the house of representatives.

(8) A public member who shall represent the interests of persons who obtain their coverage through the individual market, appointed by the president of the senate.

(9) Two public members from organizations that represent the interests of the medically underserved, persons with pre-existing conditions, or persons with chronic health conditions, including mental health or substance use disorders, appointed by the governor.

(10) A public member who shall represent the interests of small employers sponsoring health coverage for their employees, appointed by the governor.

(11) A public member from the Business and Industry Association of New Hampshire or a New Hampshire chamber of commerce, appointed by the governor.

(12) A public member from a national organization with a New Hampshire chapter that is interested in qualifying as a bone fide pathway II association, as defined in RSA 415-E:1, III, appointed by the governor.

(b) Of the commission members listed under subparagraph (a), only the 6 legislative members shall be voting members. All other members shall serve in an advisory capacity only.

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

(d) The commission shall be a public body subject to RSA 91-A, and its meetings shall be considered public proceedings.

II.(a) The commission shall evaluate the status of health coverage markets for individuals and small employers. This shall include the individual market, the small employer market, and alternative sources of coverage that may be available to individuals and small employers, including pathway II association coverage, transitional coverage, and short-term limited duration coverage. These markets shall be evaluated in terms of their performance in making available to individuals and small employers affordable coverage that provides access to medically necessary care on affordable terms. Consideration shall be given to market competitiveness, price, choice of plans, market size, market segmentation, the risk profile of the covered population in each market, adverse selection against specific markets, migration between markets, the rate of growth or diminution in the overall number of covered lives, and other similar factors that may affect the coverage available to individuals and small employers. Specifically, the commission shall evaluate markets and make recommendations on the following:

(1) The performance and effectiveness of the small group market in itself and in conjunction with other markets that may be available to small employers and their employees, including, if applicable, pathway II association coverage. This shall include consideration of coverage for pre-existing conditions and essential health benefits, premium rates and product offerings, impact on premiums, the availability and choice of plans, the number of covered lives, and the overall impact on the availability and affordability of coverage for higher risk individuals and small employer groups. Based on this evaluation, the commission shall make recommendations in its annual report for future program or legislative modifications, including, if applicable, modifications to the risk adjustment program authorized under RSA 420-K, as well as a final recommendation as to whether the general court should allow the continuation or should phase out the market for pathway II association coverage.

(2) The performance and effectiveness of the individual market in itself and in conjunction with other markets that may be available to individuals and sole proprietors, including, if applicable, pathway II association coverage. This shall include consideration of the migration of sole proprietors to the pathway

II market and the effectiveness of screening procedures in validating sole proprietorship status, the price and availability of coverage for individuals who do not qualify for an advanced premium tax credit or cost sharing reduction assistance through the marketplace exchange, and the design and effectiveness of the risk sharing mechanism and 1332 waiver for the individual market authorized under RSA 420-N:6-a. Based on this evaluation, the commission shall make recommendations concerning the individual market risk sharing mechanism under the 1332 waiver, any changes that are needed to screening and monitoring procedures for compliance with the hourly work standard to qualify as a sole proprietor under pathway II association coverage, and any other legislative or regulatory measures that would promote market stability and growth in the individual market.

(b) The commission shall not make any recommendation that includes the use of new general funds.

(c) The commission shall solicit information from any person or entity the commission deems relevant to its study.

III. The insurance commissioner shall provide information and reports to the commission on a biannual basis concerning the status of the individual, small employer and, if applicable, pathway II association markets as necessary to allow the commission to carry out its duties. The commission shall have the authority, at any time, upon a finding that pathway II association coverage is having an adverse impact on the availability and choice of coverage in the individual or small employer markets or is causing average premiums for individuals or small groups to increase at a rate that is significantly higher than the trend in claims costs, to recommend that the commissioner limit pathway II associations to the writing of existing business only or adjust the risk score differential amount in RSA 420-K:4, I(d), and the commissioner shall have authority to implement this recommendation by order pursuant to RSA 400-A:14 and this paragraph.

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 senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Four of the 6 voting members of the commission shall constitute a quorum.

V. The commission shall submit an annual report on or before November 1 of each year with its findings and any recommendations for proposed legislation, and a final report on December 1, 2024 to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library. If applicable, the commission's reports shall contain the commission's recommendation regarding whether the market for pathway II association coverage should continue or be phased out.

24 Individual Health Insurance; Market; Contingency. RSA 404-G:12, I and II are repealed and reenacted to read as follows:

I. Notwithstanding RSA 404-G:11, and if supported by the recommendations of actuarial experts retained by the department, the commissioner may request that the board of directors of the association develop a plan of operation to support the affordability and accessibility of health insurance in the state's individual health insurance market. The proposal may include resumption of a risk sharing program similar to that referenced in RSA 404-G:5, creation and operation of a reinsurance program, or such other program as the board finds will best support the availability and affordability of health insurance in the state and may also include the development of a waiver application under the Act. The commissioner shall approve the revised plan of operations if the commissioner finds that the plan will further the purpose of this chapter as stated in RSA 404-G:1, I, and is otherwise consistent with New Hampshire and federal law.

II. The board's proposal may include a recommendation that the state apply for a waiver under the Act, or any successor to the Act. If the approved plan includes an application for a waiver, the commissioner and the board shall proceed in accordance with RSA 420-N:6-a. If the waiver is approved by the federal government, the board shall prepare a revised plan of operations consistent with the terms of the waiver, and shall implement it upon approval by the commissioner.

25 Federal Health Care Reform 2010; Waiver. RSA 420-N:6-a is repealed and reenacted to read as follows:

420-N:6-a Waiver. If such action is supported by the recommendations of actuarial experts retained by the department as being consistent with the purposes of RSA 404-G:1, I, the commissioner shall, at the earliest practicable date, submit an application on behalf of the state to the United States Secretary of the Treasury, and if required, to the United States Secretary of Health and Human Services, to waive certain provisions of the Act, as provided in section 1332 of the Act, or any other applicable waiver provision in order to create a risk sharing or reinsurance mechanism for the individual market under RSA 404-G which is eligible to draw down federal pass-through funding to support such mechanism. The commissioner shall publish and accept public comment on the 1332 waiver application and the plan of operation for the individual market mechanism prior to approving such plans. Upon approval of the joint health care reform oversight committee, the commissioner shall implement any federally approved waiver, including but not limited to overseeing the implementation of a revised plan of operations under RSA 404-G:12.

26 Repeal. The following are repealed:

I. RSA 404-J, relative to the commission on the status of health insurance markets for individuals and small employers.

II. 2017, 221:8, relative to the 2020 repeal of RSA 404-G:12.

III. 2017, 221:11, relative to the 2020 repeal of RSA 420-N:6-a.

27 Applicability. Sections 3-23 of this act shall take effect 60 days after the insurance commissioner, with the advice of the department of justice, certifies to the secretary of state and the director of legislative services that the federal rule codified at 29 C.F.R. section 2510.3-5(b) is legally valid and the issues raised by the opinion issued on March 28, 2019 in *State of New York v. United States Department of Labor*, United States District Court of the District of Columbia, Civil Action No. 18-1747 have been resolved. However, in no event shall sections 3-23 of this act take effect at a date later than December 1, 2021.

28 Effective Date.

I. Sections 3-23 of this act shall take effect as provided in section 27 of this act.

II. Paragraph I of section 26 of this act shall take effect December 1, 2024.

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

Amendment to SB 235-FN

(2019-2191h)

Proposed by the Majority of the Committee on Finance - r

Amend the bill by replacing section 1 with the following:

1 New Subdivision; General Court Administrative Office. Amend RSA 14 by inserting after section 51 the following new subdivision:

General Court Administrative Office

14:52 Administrative Office.

I. There shall be a general court administrative office in the state house under a director of the administrative office. The director may employ and contract for such additional professional, technical, clerical, or other employees necessary to perform the functions and duties of the office.

II. The director shall designate a person as the independent human resources professional. The director shall ensure the person designated has had or will receive training or certification in sexual harassment investigations. In addition to the procedure in RSA 14-B:3, I(d), the designated person shall carry out obligations as set forth in the general court's sexual harassment policy, including but not limited to, the receipt, investigation, and processing of verbal or written complaints from legislative staff, members of the public, or other members of the general court concerning current members of the general court, or members of the general court whose service ceased within 2 years prior to the complaint. The independent human resources professional shall reasonably ensure that any investigation shall be independent from the office of the senate president and the office of the speaker of the house of representatives.

III. A sexual harassment complaint filed with the general court administrative office shall be confidential and not subject to disclosure to any third party, including but not limited to the attorney general's office; provided that the complainant may waive such confidentiality protections with informed, written consent. Nothing in this paragraph shall prevent the independent human resources professional from consulting with any person reasonably necessary to conduct an investigation.

Amend the bill by replacing section 3 with the following:

3 Effective Date. This act shall take effect January 1, 2020.

Amendment to SB 238-FN

(2019-1753h)

Proposed by the Committee on Transportation - c

Amend RSA 261:157-a, I as inserted by section 2 of the bill by replacing it with the following:

I. Is a former prisoner of war and was captured and incarcerated while serving in a qualifying war or armed conflict as defined in RSA 72:28, V, including those serving in military operations in Iraq and Afghanistan, and who was honorably discharged, provided that such person has furnished the city or town clerk with satisfactory proof of these circumstances; or

Amendment to SB 242-FN

(2019-2275h)

Proposed by the Committee on Ways and Means - r

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

AN ACT providing for protection of private customer information and rights of New Hampshire remote sellers in connection with certain foreign sales and use taxes.

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

1 New Chapter; Protection of Private Customer Information and Rights of New Hampshire Remote Sellers in Connection With Certain Foreign Sales and Use Taxes. Amend RSA by inserting after chapter 78-D the following new chapter:

CHAPTER 78-E
PROTECTION OF PRIVATE CUSTOMER INFORMATION AND RIGHTS
OF NEW HAMPSHIRE REMOTE SELLERS IN CONNECTION WITH
CERTAIN FOREIGN SALES AND USE TAXES

78-E:1 Findings and Purpose. The general court finds that:

I. Over 10,000 state and local jurisdictions within the United States impose sales and use taxes. Many of these jurisdictions have their own laws, regulations, policies, and standards for determining sales and use tax obligations.

II. The state of New Hampshire does not impose a traditional broad-based sales and use tax on customers making purchases of goods and services in New Hampshire, nor on goods and services purchased by its residents out of state for use, storage, or consumption in New Hampshire. New Hampshire law and policy does not require New Hampshire businesses to suffer the cost and burdens of establishing administrative systems to comply with the collection and remission provisions of a traditional broad-based sales and use tax law.

III. The state of New Hampshire is a year-round destination visited by millions of persons from various states that impose sales and use tax on their own residents. Complying with the complexities of these multiple and various foreign sales and use tax laws and regulations will impose very costly burdens on all affected New Hampshire retail businesses. These burdens will be especially difficult for smaller businesses that seek to expand their customer base by using old and new technologies such as traditional mail and communications using the Internet.

IV. On June 21, 2018, the United States Supreme Court issued its decision in *South Dakota v. Wayfair, Inc.*, et al. The Court overturned over 50 years of precedent that had required the physical presence in a state of a retail seller before the state could impose on the seller its sales and use tax collection requirements. This decision exposes remote retail businesses, including those located within New Hampshire, to assertions by thousands of foreign taxing jurisdictions of various collection and remission requirements on remote retail businesses that were previously protected by the longstanding physical presence rule.

V. The Wayfair decision left unresolved many questions relating to the scope of constitutionally allowable sales tax impositions on remote sellers, including the definition of a constitutionally sufficient safe harbor for the protection of relatively small businesses and others with relatively low levels of sales business in the foreign taxing jurisdiction. The Court directly invited further examination of these questions, observing that the Wayfair case involved only “large, national companies that undoubtedly maintain an extensive virtual presence” and stating that the “question remains whether some other principle in the Court’s Commerce Clause doctrine might invalidate the [South Dakota] Act.”

VI. New Hampshire has enacted the business enterprise tax (BET), which is a form of value-added or consumption tax imposed directly on the business, and not on the consumer. The enactment of the BET represents the affirmative adoption by New Hampshire of a fundamentally different consumption tax policy than other states’ adoption of retail sales and use taxes, and further reflects New Hampshire’s direct rejection of complexities and undue administrative burdens that result from traditional retail sales and use taxes and their third-party collection regimes.

VII. Because New Hampshire has never enacted a traditional broad-based sales and use tax law, New Hampshire retailers selling intrastate and remotely to other states had been fully protected pre-Wayfair from the burden of sales tax collection and remittance responsibilities. Post-Wayfair, New Hampshire has a compelling governmental interest in providing for the continuing protection of these retailers, especially relatively small retailers, from any unlawful imposition of this burden. The establishment and expansion of small and “micro-businesses” represent a particularly valuable segment of New Hampshire’s economy and comprise a majority of employers in the state. The high cost and practical difficulty of compliance with sales and use tax requirements in a state that has chosen not to impose sales and use tax obligations would disproportionately and negatively impact these businesses and discourage other aspiring entrepreneurs from starting new businesses in New Hampshire.

VIII. New Hampshire has a compelling governmental interest in protecting the privacy of an individual’s personal information that may be used to facilitate the sale of goods and services within this state.

IX. New Hampshire has a compelling governmental interest in protecting its remote sellers and the private, personal information they possess from consumers from persons who may attempt to steal money or sensitive information from remote sellers by impersonating a foreign taxing jurisdiction or foreign taxing authority.

X. New Hampshire has a compelling governmental interest in protecting New Hampshire remote sellers from tax assessment and collection practices by foreign taxing jurisdictions and authorities that unlawfully discriminate against out-of-state persons in favor of in-state persons.

XI. The purpose of this chapter is to (a) ensure that no foreign taxing jurisdiction or authority imposes or attempts to impose sales and use tax collection obligations on a New Hampshire remote seller in a manner that violates the United States or New Hampshire constitutions or any other applicable provision of law and (b) protect New Hampshire remote sellers and the private, personal information they possess from consumers from persons who may attempt to steal money or sensitive information from remote sellers by impersonating a foreign taxing jurisdiction or foreign taxing authority.

78-E:2 Definitions. In this chapter:

I. “Foreign taxing authority” means an agency or other instrumentality of, or a person acting on behalf of, a foreign taxing jurisdiction that is authorized to administer, audit, and enforce sales or use tax laws of the foreign taxing jurisdiction.

II. “Foreign taxing jurisdiction” means a state, territory, the District of Columbia, a local government, political subdivision, or any other entity which assesses a retail sales tax or use tax on its persons with respect to the use, storage, and consumption of goods and services.

III. “New Hampshire remote purchase transaction” means any sale of services or goods, or both, for any purpose other than resale in the regular course of business where the customer takes possession of the services or goods in a foreign taxing jurisdiction.

IV.(a) “New Hampshire remote seller” means any individual, trust, estate, fiduciary, partnership, corporation, or other legal entity, including a retailer as defined in RSA 78-D, located within the state, that engages in New Hampshire remote purchase transactions, and that does not have a physical presence within the foreign taxing jurisdiction.

(b) For purposes of this paragraph, a person has a “physical presence” in a foreign taxing jurisdiction only if such person’s business activities within the jurisdiction include any of the following:

(1) Maintaining its commercial or legal domicile in the foreign taxing jurisdiction;

(2) Owning, holding a leasehold interest in, or maintaining real property for business purposes such as a retail store, warehouse, distribution center, manufacturing operation, assembly facility, or any other facility in the foreign taxing jurisdiction;

(3) Leasing or owning tangible personal property for business purposes (other than computer software) of more than de minimis value in the foreign taxing jurisdiction;

(4) Having one or more employees or independent sales persons present in the foreign taxing jurisdiction actively soliciting sales;

(5) Maintaining an office in the foreign taxing jurisdiction at which it regularly employs three or more employees for any purpose.

(c) For purposes of this paragraph, the term “physical presence” shall not include:

(1) Entering into an agreement under which a person, for a commission or other consideration, directly or indirectly refers potential purchasers to a person outside the foreign taxing jurisdiction, whether by an Internet-based link or platform, Internet website or otherwise;

(2) Any presence in a foreign taxing jurisdiction, as described in this paragraph, for less than 15 days in a taxable year (or a greater number of days if provided by foreign taxing jurisdiction law);

(3) Product placement, setup, or other services offered in connection with delivery of products by an interstate or in-state carrier or other service provider;

(4) Internet advertising services provided by in-state residents which are not exclusively directed towards, or do not solicit exclusively, in-state customers;

(5) Ownership by a person outside the foreign taxing jurisdiction of an interest in a limited liability company or similar entity organized or with a physical presence in the foreign taxing jurisdiction;

(6) The furnishing of information to customers or affiliates in such foreign taxing jurisdiction, or the coverage of events or other gathering of information in such foreign taxing jurisdiction by such person, or his or her representative, which information is used or disseminated from a point outside the foreign taxing jurisdiction; or

(7) Business activities directly relating to such person’s potential or actual purchase of goods or services within the foreign taxing jurisdiction if the final decision to purchase is made outside the foreign taxing jurisdiction.

V. “Person” means any individual, trust, estate, fiduciary, partnership, corporation, or any state, territory, the District of Columbia, a local government or political subdivision, or any other legal entity.

VI. “Private customer transaction information” means, with respect to any New Hampshire remote seller, any documents, records, and other information possessed or maintained by a New Hampshire remote seller in any form which contain information concerning the name, address, or telephone number of any customer, or any other information related to a customer such as credit card, debit card, or checks used to complete a customer transaction, a description of the goods or service purchased, the identity of any person for whom the goods or services were purchased, and the identification of the point of transfer of any goods or services that comprise a transaction of sales used for the calculation of sales or use tax liability.

VII. “Streamlined Sales and Use Tax Agreement” means the Streamlined Sales and Use Tax Agreement as adopted and amended from time to time by the Streamlined Sales Tax Governing Board.

VIII. “Written notice” means a notice in writing, by physical letter, addressed and physically mailed to the New Hampshire department of justice. No other form of notice shall be deemed to meet the requirements of this chapter.

78-E:3 Voluntary Information Sharing and Collaboration.

I. In furtherance of the purposes of this chapter, the department of justice shall develop a system providing for voluntary information sharing and collaboration between the department of justice and New Hampshire remote sellers.

II. In collaboration with the department of revenue administration and through such other means as it determines appropriate, the department of justice shall transmit periodic bulletins to businesses located in New Hampshire providing information about the provisions of this chapter and about new developments relating to the collection and remission of sales taxes to foreign taxing jurisdictions and authorities. The department of revenue administration is hereby authorized to collaborate with the department of justice in developing and distributing such bulletins.

III. The system established by the department of justice shall encourage and enable the confidential transmission to the department of justice by New Hampshire remote sellers of information regarding sales tax collection or remission actions, including actions seeking private customer information, taken or threatened against said sellers by foreign taxing jurisdictions and authorities or by other persons. Such information shall be exempt from disclosure under RSA 91-A.

78-E:4 Notice Requirements; Prohibitions.

I. A foreign taxing authority shall provide written notice to the department of justice at least 45 days prior to taking any action to determine or impose sales or use tax liability against a New Hampshire remote seller. The written notice regarding a particular New Hampshire remote seller shall state that it is an "RSA 78-E Notice," shall provide the full legal name and address of the seller, shall contain the reasons for the request or examination, shall cite the legal authorities that authorize imposition of a tax collection obligation on the seller, and shall explain why the seller is subject to those laws.

II. No foreign taxing authority shall request from a New Hampshire remote seller any private customer transaction information for use in the determination of sales or use tax liability of the customer or for use in the determination, collection, and remittance of sales or use tax by the seller with respect to a customer transaction, nor shall a foreign taxing authority proceed with conducting such an examination or imposing sales and use tax collection obligations, unless the foreign taxing authority has first provided the department of justice with written notice of its intent to request such information or conduct such an examination from a particular New Hampshire remote seller pursuant to paragraph I and 45 days from the date of such written notice have elapsed.

III.(a) A New Hampshire remote seller should provide to the department of justice notice of a foreign taxing authority's first request for any private customer transaction information for use in the determination of sales or use tax liability of the customer or for use in the determination, collection, and remittance of sales or use tax by the seller with respect to a customer transaction, to insure that the foreign taxing authority has provided the notice required by paragraph I.

(b) Notwithstanding the provisions of subparagraph (a), a New Hampshire remote seller may elect immediate compliance with a request or directive of a foreign taxing authority if the seller determines that such compliance is in its best interests. If a New Hampshire remote seller elects immediate compliance, that seller should remit notice to the department of justice after such compliance to insure that the foreign taxing authority has provided the notice required by paragraph I. Immediate compliance by a New Hampshire remote seller shall not relieve a foreign taxing authority's obligation to comply with the notice requirements contained in paragraph I.

(c) A New Hampshire remote seller may satisfy the notice provisions under this paragraph through email, phone call, letter, or other method established and specified by the department of justice.

IV. A New Hampshire remote seller who elects immediate compliance under paragraph II of this section may do so under protest while reserving all rights provided under this chapter, the United States or New Hampshire Constitutions, or any other provision of law.

78-E:5 No person shall impersonate or attempt to impersonate a foreign taxing jurisdiction, foreign taxing authority, or any other government agency for any reason and, any person who does shall be deemed to have committed an unfair or deceptive act or practice within the meaning of RSA 358-A:2. Any right, remedy, or power set forth in RSA 358-A, including those set forth in RSA 358-A:4, II, may be used to enforce the provisions of this section. The exemptions provided for in RSA 358-A:3, I shall not apply to this paragraph.

78-E:6 Administration; Enforcement.

I. Upon receipt of a written notice of a foreign taxing authority's intent to request private customer information from, conduct an examination of, or impose sales and use tax collection obligations on one or more New Hampshire remote sellers, the department of justice shall determine whether the laws of the foreign taxing jurisdiction meet the requirements of the United States and New Hampshire Constitutions and, if they do, whether they can be applied to the New Hampshire remote seller or sellers based on the reasons provided in the required written notice. In conducting the review required by this paragraph, the department of justice shall consider all laws and regulations existing as of the time of the review, and all applicable principles of the United States and New Hampshire Constitutions, including but not limited to:

whether or not the foreign taxing jurisdiction's laws provide a satisfactory safe harbor for New Hampshire remote sellers that conduct only limited business within the jurisdiction; whether or not the laws ensure that no obligation to remit sales or use tax may be applied retroactively; whether or not the foreign taxing jurisdiction has adopted the Streamlined Sales and Use Tax Agreement or otherwise adopted laws that are substantially compliant with each of the requirements set forth in the Streamlined Sales and Use Tax Agreement; whether or not the foreign taxing jurisdiction's laws provide for deduction, reimbursement, or exemption for the cost of compliance of the New Hampshire remote seller in collecting, accounting, and remitting the foreign taxing jurisdiction's sales or use taxes; whether or not the laws require substantial compliance and enforcement of the entirety of such laws, including whether or not the laws include a use tax and the requirement that persons report and pay use tax liability; whether or not the foreign taxing jurisdiction or authority is actively seeking to enforce its own requirement that persons report and pay use tax liability; and whether or not the application of such laws in practice are fairly related to the tangible benefits provided by such state to the New Hampshire remote seller.

II. Whenever the department of justice has reason to believe that a foreign taxing jurisdiction or authority or any other person has taken, is taking, or is threatening to take any tax assessment or collection action against any New Hampshire remote seller, and the department further determines that said action constitutes an undue burden on interstate commerce within the meaning of Article 1, Section 8, Clause 3 of the United States Constitution, or that said action violates any other provision of the United States Constitution or New Hampshire constitution or of any other applicable state or federal law, including but not limited to the notice requirements in RSA 78-E:4, the department may bring a civil action in the name of the state against such person to restrain by temporary, preliminary, or permanent injunction the said action and may petition the court for an order of restitution of money or property to any person or class of persons injured thereby. The department of justice may further bring a declaratory judgment action against any foreign taxing authority or jurisdiction to establish that the proposed assertion of an obligation to collect and remit sales tax by one or more New Hampshire remote sellers violates applicable state or federal law. The action may be brought in any court of competent jurisdiction. Nothing in this chapter shall be construed as creating a cause of action against the state of New Hampshire or any of its officials or employees. Any action taken by the department of justice pursuant to the provisions of this chapter shall not be read to preclude a New Hampshire remote seller from bringing its own action under paragraph IV, or upon any other legal basis, and nothing in this chapter shall be construed to require or permit the department of justice to act as legal counsel or provide legal advice to a New Hampshire remote seller or any other person to whom the department of justice is not otherwise authorized by law to provide legal counsel.

III. Any information, testimony, or documentary material obtained under the authority of this section shall be used only for one or more of the following purposes:

(a) In connection with investigations instituted under this chapter or for the prosecution of legal proceedings instituted under this chapter or any other provision of New Hampshire law; and

(b) In connection with any formal or informal program of or request for information exchange between the department of justice and any other local, state, or federal agency. However, no information or material obtained or used pursuant to the authority of this section shall be released publicly by any governmental agency except in connection with the prosecution of legal proceedings instituted under this chapter or any other provision of New Hampshire law. In addition, any information, testimony, or documentary material obtained or used pursuant to a protective order shall not be exchanged or released, as provided herein, publicly except in compliance with such protective order.

IV. A New Hampshire remote seller who is subject to collection, audit, or examination by a foreign taxing authority in connection with alleged sales tax collection or remission obligations may file an action in any court of competent jurisdiction seeking immediate, emergency relief to enjoin any collection, audit, or examination attempt that is occurring or will occur in violation of rights provided by this chapter or of any other provision of constitutional or statutory law. Any New Hampshire remote seller who prevails in such an action shall be entitled to recover any damages suffered as a result of the violation of rights provided by this chapter and reasonable attorney fees and costs incurred in maintaining the action. Nothing in this paragraph is intended to limit a New Hampshire remote seller's judicial recourse to enforcement of this chapter.

78-E:7 Reimbursement for Sales and Use Tax Collection. Notwithstanding the provisions of this chapter, if a New Hampshire remote seller is determined to be obligated to collect and remit a sales or use tax on behalf of a foreign taxing jurisdiction or foreign taxing authority, then that New Hampshire remote seller shall be entitled to recover or deduct from any taxes collected on behalf of such foreign taxing jurisdiction or foreign taxing authority any reasonable costs, including any initial set up and ongoing maintenance costs, incurred in the collection and remission of sales and use taxes to that jurisdiction or authority.

78-E:8 Rulemaking. The department of justice may establish procedures, in rules adopted by the attorney general under RSA 541-A, to facilitate the department of justice's implementation of this chapter, including the creation of forms, schedules, explanatory documents, or other materials. Such rules may be adopted through emergency rulemaking under RSA 541-A:18.

78-E:9 Supplement to RSA 78-D. The protections for New Hampshire remote sellers provided by this chapter are intended to supplement, and not replace or supplant, protections provided to retailers under RSA 78-D. Therefore, in any situation where a provision of this chapter conflicts with the provisions of RSA 78-D, the provision that provides greater protection from sales and use tax collection liabilities to a New Hampshire remote seller or retailer, as that term is defined in RSA 78-D, shall control.

78-E:10 On or before November 1 of each year, the department of justice shall report on the status of implementation of the provisions of RSA 78-E along with any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the chairs of the senate and house committees on ways and means, the senate clerk, the house clerk, the governor, and the state library.

78-E:11 Commission Established. There shall be a commission established to monitor changes in federal and state-level legislation and actions concerning the imposition of tax collection obligations on New Hampshire remote sellers.

I. The commission shall be composed of 7 members, as follows:

(a) The attorney general, or designee.

(b) The commissioner of the department of revenue administration, or designee.

(c) Three members of the house of representatives, one of whom shall be from the minority party, appointed by the speaker of the house of representatives.

(d) Two members of the senate, one of whom shall be from the minority party, appointed by the president of the senate.

II. The duties of the commission shall include, but are not limited to:

(a) Monitoring subsequent United States Supreme Court decisions relating to the issues raised in *South Dakota v. Wayfair, Inc.*, and any other relevant court decisions that may impact New Hampshire businesses' obligations to collect sales and use taxes on behalf of foreign taxing jurisdictions or authorities.

(b) Monitoring attempts by other states to impose sales and use tax collection obligations on New Hampshire remote sellers and remote service providers.

(c) Addressing concerns related to costs incurred by New Hampshire businesses in the collection of sales and use taxes on behalf of a foreign taxing jurisdiction or authority.

(d) Monitoring implementation by the department of justice and the department of revenue administration of RSA 78-E.

(e) Proposing further legislation or other state action intended to address these concerns.

III. The commission may solicit information from any person or entity the commission deems relevant to its duties.

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 senate member. The first meeting of the commission shall be held within 30 days of the effective date of this section. Four members of the commission shall constitute a quorum.

V. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the chairpersons of the senate and house ways and means committees, the governor, and the state library, in an initial report on or before November 1, 2019 and a final report on or before November 1, 2020.

78-E:12 Severability. If any provision of this chapter or the application thereof to any agency, person, or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

2 Repeal of Commission. RSA 78-E:11, relative to the establishment of a commission, is repealed.

3 Effective Dates.

I. Section 2 of this act shall take effect November 1, 2020.

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

2019-2275h

AMENDED ANALYSIS

This bill prohibits foreign taxing jurisdictions from requesting private customer information from, conducting examinations of, or imposing sales and use tax collection obligations on sellers in New Hampshire, unless the foreign taxing jurisdiction provides notice to the New Hampshire department of justice. This bill allows sellers to comply with any directive of a foreign taxing authority, while preserving the seller's rights under the statute, if the seller determines that such compliance is in the seller's best interest. The bill also establishes a commission to monitor changes in federal and state legislation concerning the imposition of tax collection obligations on New Hampshire remote sellers.

**Amendment to SB 250-FN
(2019-2349h)**

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 New Paragraph; Forgery and Fraudulent Practices Generally. Amend RSA 638:1 by inserting after paragraph III the following new paragraph:

III-a. Forgery is a class A misdemeanor if the writing is or purports to be a fake or counterfeit certificate of insurance.

2 New Subparagraph; Limitations. Amend RSA 625:8, I by inserting after subparagraph (e) the following new subparagraph:

(f) For an offense defined in RSA 638:1, III-a, 2 years.

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

2019-2349h

AMENDED ANALYSIS

This bill establishes a class A misdemeanor for forgery involving a fake or counterfeit certificate of insurance and increases the statute of limitations for such offenses to 2 years.

This bill is a request of the insurance department.

**Amendment to SB 251
(2019-2005h)**

Proposed by the Committee on Commerce and Consumer Affairs - c

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

1 New Chapter; Life and Health Insurance Guaranty Association of 2019. Amend RSA by inserting after chapter 408-E the following new chapter:

CHAPTER 408-F

LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION OF 2019

408-F:1 Title. This chapter shall be known and may be cited as the New Hampshire Life and Health Insurance Guaranty Association Act of 2019.

408-F:2 Purpose.

I. The purpose of this chapter is to protect, subject to certain limitations, the persons specified in RSA 408-F:5, I against failure in the performance of contractual obligations, under life, health and annuity policies, plans, or contracts specified in RSA 408-F:5, II, because of the impairment or insolvency of the member insurer that issued the policies, plans, or contracts.

II. To provide this protection, an association of member insurers is created to pay benefits and to continue coverages as limited herein, and members of the association are subject to assessment to provide funds to carry out the purpose of this chapter.

408-F:3 Construction. This chapter shall be liberally construed to effect the purpose under RSA 408-F:2 which shall constitute an aid and guide to interpretation.

408-F:4 Definitions. In this chapter:

I. "Account" means either of the 2 accounts created under RSA 408-F:6.

II. "Association" means the New Hampshire life and health insurance guaranty association created under RSA 408-F:6.

III. "Commissioner" means the commissioner of insurance.

IV. "Contractual obligation" means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under RSA 408-F:5.

V. "Covered contract" or "covered policy" means any policy or contract within the scope of this chapter under RSA 408-F:5.

VI. "Health benefit plan" means any hospital or medical expense policy or certificate, or health maintenance organization subscriber contract or any other similar health contract. "Health benefit plan" does not include:

(a) Accident only insurance.

(b) Credit insurance.

(c) Dental only insurance.

(d) Vision only insurance.

(e) Medicare supplement insurance.

(f) Benefits for long-term care, home health care, community-based care, or any combination thereof.

(g) Disability income insurance.

(h) Coverage for on-site medical clinics.

(i) Specified disease, hospital confinement indemnity, or limited benefit health insurance if the types of coverage do not provide coordination of benefits and are provided under separate policies or certificates.

VII. "Impaired insurer" means a member insurer which, on or after January 1, 2020, is not an insolvent insurer, and:

- (a) Is deemed by the commissioner to be potentially unable to fulfill its contractual obligations, or
- (b) Is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

VIII. "Insolvent insurer" means a member insurer which on or after January 1, 2020, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

IX. "Member insurer" means any insurer or health maintenance organization licensed or which holds a certificate of authority to transact in this state any kind of insurance or health insurance organization business for which coverage is provided under RSA 408-F:5, and includes any insurer or health maintenance organization whose license or certificate of authority in this state may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include:

- (a) A nonprofit hospital or medical service organization.
- (b) A fraternal benefit society.
- (c) A mandatory state pooling plan.
- (d) A mutual assessment company or any entity that operates on an assessment basis.
- (e) An insurance exchange.

(f) An organization that has a certificate or license limited to the issuance of charitable gift annuities under RSA 403-E.

- (g) Any entity similar to any of the above.

X. "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

XI. "Person" means any individual, corporation, partnership, association, or voluntary organization.

XII. "Premiums" means amounts received on covered policies or contracts less premiums, considerations, and deposits returned on such policies or contracts and less dividends and experience credits on such policies or contracts. "Premiums" does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under RSA 408-F:5, II, except that assessable premium shall not be reduced on account of RSA 408-F:5, II(b)(3) relating to interest limitations and RSA 408-F:5, III(b) relating to limitations with respect to any one individual, any one participant and any one policy or contract holder; provided that "premiums" shall not include:

(a) Any premiums in excess of \$5,000,000 on any unallocated annuity contract not issued under a governmental retirement plan established under section 401, 403(b) or 457 of the United States Internal Revenue Code; or

(b) With respect to multiple non-group policies of life insurance owned by one owner, whether the policy or contract owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees or other persons, premiums in excess of \$5,000,000 with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.

XIII. "Resident" means a person to whom a contractual obligation is owed and who resides in this state at the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer, whichever occurs first. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business. Citizens of the United States that are either: (a) residents of foreign countries or (b) residents of United States possessions, territories or protectorates that do not have an association similar to the association created by this chapter, shall be deemed residents of the state of domicile of the member insurer that issued the policies or contracts.

XIV. "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

XV. "Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.

XVI. "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

408-F:5 Coverage and Limitations.

I. This chapter shall provide coverage for the policies and contracts specified in paragraph II:

(a) To persons who, regardless of where they reside (except for nonresident certificate holders under group policies or contracts), are the beneficiaries, assignees, or payees, including health care providers rendering services covered under health insurance policies or certificates of the persons covered under subparagraph (b); and

(b) To persons who are owners of or certificate holders or enrollees under the policies or contracts, (other than unallocated annuity contracts and structured settlement annuities) and in each case who:

(1) Are residents; or

(2) Are not residents, but only under all of the following conditions:

(A) The member insurers that issued the policies or contracts are domiciled in this state;

(B) The states in which the persons reside have associations similar to the association created by this chapter; and

(C) The persons are not eligible for coverage by an association in any other state because the insurer or health maintenance organization was not licensed in the state at the time specified in the state's guaranty association law.

(c) For unallocated annuity contracts specified in paragraph II, subparagraphs (a) and (b) shall not apply, and this chapter shall, except as provided in subparagraphs (e) and (f), provide coverage to:

(1) Persons who are the owners of the unallocated annuity contracts if the contracts are issued to or in connection with a specified benefit plan whose plan sponsor has its principal place of business in this state; and

(2) Persons who are owners of unallocated annuity contracts issued to or in connection with government lotteries if the owners are residents.

(d) For structured settlement annuities specified in paragraph II; subparagraphs (a) and (b) shall not apply, and this chapter shall, except as provided in subparagraphs (e) and (f), provide coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

(1) Is a resident, regardless of where the contract owner resides; or

(2) Is not a resident, but only under both of the following conditions:

(A)(i) The contract owner of the structured settlement annuity is a resident; or

(ii) The contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state, and the state in which the contract owner resides has an association similar to the association created by this chapter; and

(B) Neither the payee or beneficiary nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides.

(e) This chapter shall not provide coverage to:

(1) A person who is a payee or beneficiary of a contract owner resident of this state, if the payee or beneficiary is afforded any coverage by the association of another state;

(2) A person covered under subparagraph (c), if any coverage is provided by the association of another state to the person; or

(3) A person who acquires rights to receive payments through a structured settlement factoring transaction as defined in 26 U.S.C. section 5891(c)(3)(A), regardless of whether the transaction occurred before or after such section became effective.

(f) This chapter is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, the person shall not be provided coverage under this chapter. In determining the application of the provisions of this paragraph in situations where a person could be covered by the association of more than one state, whether as an owner, payee, enrollee, beneficiary, or assignee, this chapter shall be construed in conjunction with other state laws to result in coverage by only one association.

II.(a) This chapter shall provide coverage to the persons specified in paragraph I for policies and contracts of direct, non-group life insurance, health insurance, including health maintenance organization subscriber contracts and certificates, or annuities, and supplemental contracts to any of these, for certificates under direct group policies and contracts, and for supplemental contracts to any of these, and for unallocated annuity contracts issued by member insurers, except as limited by this chapter. Annuity contracts and certificates under group annuity contracts include, but are not limited to, guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, annuities issued to or in connection with government lotteries and any immediate or deferred annuity contracts.

(b) Except as otherwise provided in subparagraph (3), this chapter shall not provide coverage for:

(1) A portion of a policy or contract not guaranteed by the member insurer, or under which the risk is borne by the policy or contract owner;

(2) Any policy or contract of reinsurance, unless assumption certificates have been issued;

(3) A portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or change in value:

(A) Averaged over the period of 4 years prior to the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds a rate of interest determined by subtracting 2 percentage points from Moody's Corporate Bond Yield Average averaged for that same 4-year period or for such lesser period if the policy or contract was issued less than 4 years before the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier; and

(B) On and after the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting 3 percentage points from Moody's Corporate Bond Yield Average as most recently available;

(4) Any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association, or similar entity under:

(A) A multiple-employer welfare arrangement as defined in 29 U.S.C. section 1002(40);

(B) A minimum premium group insurance plan;

(C) A stop-loss group insurance plan; or

(D) An administrative services only contract;

(5) Any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of the policy or contract;

(6) Any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(7) Any unallocated annuity contract issued to an employee benefit plan protected under the federal Pension Benefit Guaranty Corporation;

(8) Any portion of any unallocated annuity contract which is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery;

(9) Any portion of a policy or contract to the extent that the assessments required by RSA 408-F:9 with respect to the policy or contract are preempted by federal or state law;

(10) A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subparagraph, the interest or change in value determined by using the procedures defined in the policy or contract shall be credited as if the contractual date of the crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and shall not be subject to forfeiture;

(11) A policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to Part C or Part D of subchapter XVIII, chapter 7 of Title 42 of the United States Code, commonly known as Medicare Part C and D, or subchapter XIX, chapter 7 of Title 42 of the United States Code (commonly known as Medicaid), or any regulations issued pursuant thereto; and

(12) Structured settlement annuity benefits to which a payee or beneficiary has transferred his or her rights in a structured settlement factoring transaction as defined in 26 U.S.C. section 5891(c)(3)(A), regardless of whether the transaction occurred before or after such section became effective.

(c) The exclusion from coverage referenced in subparagraph (b)(3) of this section shall not apply to any portion of a policy or contract, including a rider, that provides long-term care or any other health insurance benefits.

III. The benefits for which the association may become liable shall in no event exceed the lesser of:

(a) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(b)(1) With respect to any one life, regardless of the number of policies or contracts:

(A) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance;

(B) For health insurance benefits:

(i) \$100,000 for coverages not defined as disability income insurance or health benefit plans or long-term care insurance, as defined in RSA 415-D, including any net cash surrender and net cash withdrawal values;

(ii) \$300,000 for disability income insurance, and \$300,000 for long-term care insurance, as defined in RSA 415-D;

(iii) \$500,000 for health benefit plans;

(C) \$250,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; or

(2) With respect to each individual participating in a governmental retirement plan established under Section 401, 403(b) or 457 of the United States Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, \$250,000 in present value annuity benefits, including net cash surrender and net cash withdrawal values; or

(3) With respect to each payee of a structured settlement annuity or beneficiary or beneficiaries of the payee if deceased, \$250,000 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal value, if any.

(4) However, in no event shall the association be obligated to cover more than:

(A) An aggregate of \$300,000 in benefits with respect to any one life under subparagraphs (b)(1), (2) and (3) except with respect to benefits for health benefit plans under subparagraph (b)(1)(B)(iii), in which case the aggregate liability of the association shall not exceed \$500,000 with respect to any one individual; or

(B) With respect to one owner of multiple, non-group policies of life insurance, whether the policy or contract owner is an individual, firm, corporation or other person, and whether the persons insured are officers, managers, employees, or other persons, more than \$5,000,000 in benefits, regardless of the number of policies and contracts held by the owner.

(5) With respect to either one contract owner provided coverage under subparagraph I(c)(2); or one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in subparagraph (b)(2) of this paragraph, \$5,000,000 in benefits, irrespective of the number of contracts with respect to the contract owner or plan sponsor. However, in the case where one or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of 2 or more plan sponsors, coverage shall be afforded by the association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state and in no event shall the association be obligated to cover more than \$5,000,000 in benefits with respect to all these unallocated contracts.

(6) The limitations set forth in this paragraph are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignments rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

(7) For purposes of this chapter, benefits provided by a long-term care rider to a life insurance policy or annuity contract shall be considered the same type of benefits as the base life insurance policy or annuity contract to which it relates.

(8) In performing its obligations to provide coverage under RSA 408-F:8, the association shall not be required to guarantee, assume, reinsure, reissue or perform, or cause to be guaranteed, assumed, reinsured, reissued or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

408-F:6 Creation of the Association.

I. There is created a nonprofit legal entity to be known as the New Hampshire life and health insurance guaranty association, which shall be the same association created under RSA 404-D:6. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance or a health maintenance organization business in this state. The association shall perform its functions under the plan of operation established and approved under RSA 408-F:10 and shall exercise its powers through a board of directors established under RSA 408-F:7. For purposes of administration and assessment, the association shall maintain 2 accounts:

(a) The life insurance and annuity account which includes the following subaccounts:

(1) Life insurance account;

(2) Annuity account, which shall include annuity contracts owned by a governmental retirement plan (or its trustee) established under section 401, 403(b) or 457 of the United States Internal Revenue Code, but shall otherwise exclude unallocated annuities; and

(3) Unallocated annuity account which shall exclude contracts owned by a governmental retirement benefit plan, or its trustee established under section 401, 403(b), or 457 of the United States Internal Revenue Code.

(b) The health account.

II. The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association.

408-F:7 Board of Directors.

I. The board of directors of the association shall consist of not less than 7 nor more than 11 member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner.

II. In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

III. Members of the board may be reimbursed from the assets of the association for expense incurred by them as members of the board of directors but members of the board shall not otherwise be compensated by the association for their services.

408-F:8 Powers and Duties of the Association.

I. If a member insurer is an impaired domestic insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, that are approved by the commissioner, and that are, except in cases of court-ordered conservation or rehabilitation, also approved by the impaired insurer:

(a) Guarantee, assume, reissue or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, any or all of the policies or contracts of the impaired insurer;

(b) Provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate subparagraph (a) and assure payment of the contractual obligations of the impaired insurer pending action under subparagraph (a); and

(c) Loan money to the impaired insurer.

II.(a) If a member insurer is an impaired insurer and the insurer is not paying claims timely, then subject to the preconditions specified in subparagraph (b), the association shall, in its discretion, either:

(1) Take any of the actions specified in paragraph I, subject to the conditions in such paragraph; or

(2) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.

(b) The association shall be subject to the requirements of subparagraph (a) only if:

(1) The laws of its state of domicile provide that until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations:

(A) The delinquency proceeding shall not be dismissed;

(B) Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management;

(C) It shall not be permitted to solicit or accept new business or have any suspended or revoked license restored; and

(2)(A) The impaired insurer is a domestic insurer, and it has been placed under an order of rehabilitation by a court of competent jurisdiction in this state; or

(B) The impaired insurer is a foreign insurer, and

(i) It has been prohibited from soliciting or accepting new business in this state;

(ii) Its certificate of authority has been suspended or revoked in this state; and

(iii) A petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state.

III. If a member insurer is an insolvent insurer, the association shall, in its discretion, either:

(a)(1) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, the policies or contracts of the insolvent insurer; or

(2) Assure payment of the contractual obligations of the insolvent insurer; and

(3) Provide such monies, pledges, guarantees, or other means as are reasonably necessary to discharge such duties; or

(b) With respect only to policies and contracts, provide benefits and coverages in accordance with paragraph IV.

IV. When proceeding under paragraph II(a)(2) or III(b), the association shall, with respect to policies and contracts:

(a) Assure payment of benefits that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

(1) With respect to group policies and contracts, not later than the earlier of the next renewal date under such policies or contracts or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies and contracts.

(2) With respect to individual policies, contracts and annuities, not later than the earlier of the next renewal date (if any) under the policies or contracts or one year, but in no event less than 30 days, from the date on which the association becomes obligated with respect to the policies or contracts.

(b) Make diligent efforts to provide all known insureds, enrollees or annuitants or group policyholders or contract owners with respect to group policies and contracts 30 days notice of the termination of the benefits provided.

(c) With respect to individual policies and contracts covered by the association, make available to each known insured, enrollee, or annuitant or owner if other than the insured, and with respect to an individual formerly an insured, enrollee, or annuitant under a group policy or contract who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subparagraph (d), if the insureds, enrollees, or annuitants had a right under law or the terminated policy, contract or annuity to convert coverage to individual coverage or to continue an individual policy, contract, or annuity in force until a specified age or for a specified time, during which the insurer or health maintenance organization had no right unilaterally to make changes in any provision of the policy, contract, or annuity or had a right only to make changes in premium by class.

(d)(1) In providing the substitute coverage required under subparagraph (c), the association may offer either to reissue the terminated coverage or to issue an alternative policy or contract at actuarially justified rates, subject to the approval of the commissioner.

(2) Alternative or reissued policies or contracts shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy or contract.

(3) The association may reinsure any alternative or reissued policy or contract.

(e)(1) Alternative policies or contracts adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies or contracts of various types for future issuance without regard to any particular impairment or insolvency.

(2) Alternative policies or contracts shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy or contract was last underwritten.

(3) Any alternative policy or contract issued by the association shall provide coverage of a type similar to that of the policy or contract issued by the impaired or insolvent insurer, as determined by the association.

(f) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy or contract, the premium shall be actuarially justified and set by the association in accordance with the amount of insurance or coverage provided and the age and class of risk, subject to prior approval of the commissioner.

(g) The association's obligations with respect to coverage under any policy or contract of the impaired or insolvent insurer or under any reissued or alternative policy or contract shall cease on the date such coverage or policy or contract is replaced by another similar policy or contract by the policy or contract owner, the insured, the enrollee, or the association.

V. When proceeding under paragraphs II(a)(2) or III with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with RSA 408-F:5, II(b)(3).

VI. Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative or reissued policy or contract or substitute coverage shall terminate the association's obligations under the policy or contract, or coverage under this chapter with respect to the policy, contract, or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this chapter.

VII. Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association, and the association shall be liable for unearned premiums due to policy or contract owners arising after the entry of the order.

VIII. The protection provided by this chapter shall not apply where any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

IX. In carrying out its duties under paragraphs II and III, the association may, subject to approval by the court:

(a) Impose permanent policy or contract liens in connection with any guarantee, assumption, or reinsurance agreement, if the association finds that the amounts which can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the association's duties under this chapter, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens, to be in the public interest.

(b) Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value.

X. If the association fails to act within a reasonable period of time as provided in paragraphs II(a)(2), III, and IV, the commissioner shall have the powers and duties of the association under this chapter with respect to impaired or insolvent insurers.

XI. The association may render assistance and advice to the commissioner, upon the commissioner's request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

XII. The association shall have standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, reissuing, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over a third party against whom the association may have rights through subrogation of the insurer's policyholders.

XIII.(a) Any person receiving benefits under this chapter shall be deemed to have assigned the rights under, and any causes of action relating to, the covered policy or contract to the association to the extent of the benefits received because of this chapter, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative policies, contracts, or coverages. The association may require an assignment to it of such rights and cause of action by any enrollee, payee, policy or contract owner, beneficiary, insured or annuitant, as a condition precedent to the receipt of any right or benefits conferred by this chapter upon such person.

(b) The subrogation rights of the association under this paragraph shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

(c) In addition to subparagraphs (a) and (b), the association shall have all common law rights of subrogation and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or owner, beneficiary, enrollee, or payee of a policy or contract with respect to such policy or contracts.

XIV. The association may:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this chapter.

(b) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under RSA 408-F:9 and to settle claims or potential claims against it.

(c) Borrow money to effect the purposes of this chapter; any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic member insurers and may be carried as admitted assets.

(d) Employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this chapter.

(e) Take such legal action as may be necessary to avoid payment of improper claims.

(f) Exercise, for the purposes of this chapter and to the extent approved by the commissioner, the powers of a domestic life insurer, health insurer, or health maintenance organization, but in no case may the association issue policies or contracts other than those issued to perform its obligations under this chapter.

(g) Unless prohibited by law, in accordance with the terms and conditions of the policy or contract, file for actuarially justified rate or premium increases for any policy or contract for which it provided coverage under this chapter.

XV. The association may join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association.

XVI. In carrying out its duties in connection with guaranteeing, assuming, reissuing or reinsuring policies or contracts under paragraph I or II, the association may issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with the following provisions:

(a) In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contracts provides for:

(1) A fixed interest rate; or

(2) Payment of dividends with minimum guarantees; or

(3) A different method for calculating interest or changes in value;

(b) There is no requirement for evidence of insurability, waiting period or other exclusion that would not have applied under the replaced policy or contract, and;

(c) The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.

408-F:9 Assessments.

I. For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than 30 days after prior written notice to the member insurers.

II. There shall be 2 assessments, as follows:

(a) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of RSA 408-F:12, V. Class A assessments may be made whether or not related to a particular impaired or insolvent insurer.

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under RSA 408-F:8 with regard to an impaired or an insolvent insurer.

III.(a) The amount of any Class A assessment shall be determined by the board and may be made on a pro rata or non-pro rata basis. If pro rata, the board may provide that it be credited against future Class B assessments.

(b) The amount of any Class B assessment, except for assessments related to long-term care insurance, shall be allocated for assessment purposes between the accounts and among the subaccounts of the life insurance and annuity account pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

(c) The amount of the class B assessment for long-term care insurance written by the impaired or insolvent insurer shall be allocated according to a methodology included in the plan of operation and approved by the commissioner. The methodology shall provide for 50 percent of the assessment to be allocated to accident and health member insurers and 50 percent to be allocated to life and annuity member insurers.

(d) Class B assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this state by each assessed member insurer or policies or contracts covered by each account for the 3 most recent calendar years for which information is available preceding the year in which the member insurer became impaired or insolvent, as the case may be, bears to such premiums received on business in this state for such calendar years by all assessed member insurers.

(e) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this chapter. Classification of assessments under paragraph II and computation of assessments under this paragraph shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

IV. The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

V.(a) Subject to the provisions of subparagraph (b), the total of all assessments authorized by the association with respect to a member insurer for each subaccount of the life insurance and annuity account and for the health account shall not in any one calendar year exceed 2 percent of that member insurer's average annual premiums received in this state on the policies and contracts covered by the subaccount or account during the 3 calendar years preceding the year in which the member insurer became an impaired or insolvent insurer. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.

(b) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(c) If a one percent assessment for any subaccount of the life and annuity account in any one year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subparagraph III(b), the board shall access all subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in subparagraph V(a).

VI. The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each member insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains, and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses.

VII. It shall be proper for any member insurer, in determining its premium rates and policy owner dividends as to any kind of insurance or health maintenance organization business within the scope of this chapter, to consider the amount reasonably necessary to meet its assessment obligations under this chapter.

VIII. The association shall issue to each member insurer paying an assessment under this chapter, other than Class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the member insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

408-F:10 Plan of Operation.

I.(a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon the commissioner's written approval or unless the commissioner has not disapproved it within 30 days.

(b) If the association fails to submit a suitable plan of operation within 120 days after January 1, 2020, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt such reasonable rules under RSA 541-A as are necessary or advisable to effectuate the provisions of this chapter. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

II. All member insurers shall comply with the plan of operation.

III. The plan of operation shall, in addition to requirements enumerated elsewhere in this chapter:

(a) Establish procedures for handling the assets of the association.

(b) Establish the amount and method of reimbursing members of the board of directors under RSA 408-F:7.

(c) Establish regular places and times for meetings including telephone conference calls of the board of directors.

(d) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(e) Establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner.

(f) Establish any additional procedure for assessments under RSA 408-F:9.

(g) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

IV. The plan of operation may provide that any or all powers and duties of the association, except those under RSA 408-F:8, XIII(c) and RSA 408-F:9, are delegated to a corporation, association or other organization which performs or will perform functions similar to those of this association, or its equivalent, in 2 or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this paragraph shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter.

408-F:11 Duties and Powers of the Commissioner. In addition to the duties and powers enumerated elsewhere in this chapter:

I. The commissioner shall:

(a) Upon request of the board of directors, provide the association with a statement of the premiums in this and any other appropriate states for each member insurer.

(b) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time; notice to the impaired insurer shall constitute notice to its shareholders, if any; the failure of the impaired insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this chapter.

(c) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator.

II. The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed 5 percent of the unpaid assessment per month, but no forfeiture shall be less than \$100 per month.

III. Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if the appeal is taken within 60 days of the final action being appealed. If a member company is appealing an assessment, the amount assessed shall be paid to the association and available to

meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

IV. The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this chapter.

408-F:12 Prevention of Insolvencies. To aid in the detection and prevention of member insurer insolvencies or impairments:

I. It shall be the duty of the commissioner:

(a) To notify the commissioners of all the other states, territories of the United States, and the District of Columbia when the commissioner takes any of the following actions against a member insurer:

(1) Revocation of license;

(2) Suspension of license; or

(3) Makes any formal order that such member insurer restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policy owners, contract owners, certificate holders, or creditors. The notice shall be mailed to all commissioners within 30 days following the action taken or the date on which such action occurs.

(b) To report to the board of directors when the commissioner has taken any of the actions set forth in subparagraph (a) or has received a report from any other commissioner indicating that any such action has been taken in another state. The report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner.

(c) To report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member company that the company may be an impaired or insolvent insurer.

(d) To furnish to the board of directors the NAIC Insurance Regulatory Information System (IRIS) ratios and listings of companies not included in the ratios developed by the National Association of Insurance Commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. The report and the information contained therein shall be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority.

II. The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the duties and responsibilities of the commissioner regarding the financial condition of member insurers and insurers and health maintenance organizations seeking admission to transact business in this state.

III. The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any insurer or health maintenance organization seeking to do business in this state. Such reports and recommendations shall not be considered public documents.

IV. It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be an impaired or insolvent insurer.

V. The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within 30 days of the receipt of such request, the commissioner shall begin an examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the commissioner designates. The cost of the examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall the examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with paragraph I. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner, but it shall not be open to public inspection prior to the release of the examination report to the public.

VI. The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of member insurer insolvencies.

VII. The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report to the commissioner containing such information as it may have in its possession bearing on the history and causes of the insolvency. The board shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer, and may adopt by reference any report prepared by such other associations.

408-F:13 Credits for Assessments Paid.

I. A member insurer may offset against its tax liability under RSA 400-A any assessment described in RSA 408-F:9, II(b) for the life insurance and annuity account, and for the health account for guaranteeing the performance of contractual obligations of an impaired or insolvent insurer in regard to disability income coverages

only, to the extent of 20 percent of the amount of the assessment for each of the 5 calendar years following the year in which the assessment was paid. If a member insurer ceases doing business, all uncredited assessments described above may be credited against its tax liability under RSA 400-A for the year it ceases doing business.

II. Any sums acquired by refund from the association by member insurers, as stated in RSA 408-F:9, VI, and which were previously offset against taxes as described in paragraph I, shall be paid by these member insurers to the state of New Hampshire in the manner required by the commissioner. The association shall notify the commissioner that refunds have been made.

408-F:14 Miscellaneous Provisions.

I. Nothing in this chapter shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

II. Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under RSA 408-F:8. Records of the negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this paragraph shall limit the duty of the association or render a report of its activities under this section.

III. For the purpose of carrying out its obligations under this chapter, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee, pursuant to RSA 408-F:8, XIII. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. Assets attributable to covered policies or contracts, as used in this subsection, are that proportion of the assets which the reserves that should have been established for such policies or contracts bear to the reserves that should have been established for all policies of insurance or health benefit plans written by the impaired or insolvent insurer.

IV.(a) Prior to the termination of any liquidation, rehabilitation or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, contract owners, certificate holders, enrollees and policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. In such a determination, consideration shall be given to the welfare of the policy owners, contract owners, certificate holders, and enrollees of the continuing or successor member insurer.

(b) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under RSA 408-F:8 with respect to the member insurer have been fully recovered by the association.

V.(a) If an order for liquidation or rehabilitation of a member insurer domiciled in this state has been entered, the receiver appointed under the order shall have a right to recover on behalf of the member insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the member insurer on its capital stock, made at any time during the 5 years preceding the petition for liquidation or rehabilitation subject to the limitations of subparagraphs (b)-(d).

(b) No such distribution shall be recoverable if the member insurer shows that when paid the distribution was lawful and reasonable, and that the member insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the member insurer to fulfill its contractual obligations.

(c) Any person who was an affiliate that controlled the member insurer at the time the distributions were paid shall be liable up to the amount of distributions received. Any person who was an affiliate that controlled the member insurer at the time the distributions were declared, shall be liable up to the amount of distributions which would have been received if they had been paid immediately. If 2 or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this paragraph shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(e) If any person liable under subparagraph (c) is insolvent, all its affiliates that controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

408-F:15 Examination of the Association; Annual Report. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner each year, not later than 120 days after the association's fiscal year, a financial report in a form approved by the commissioner and a report of its activities during the preceding fiscal year.

408-F:16 Tax Exemptions. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

408-F:17 Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or the commissioner's representatives, for any action or omission by them in the performance of their powers and duties under this chapter. Such immunity shall extend to the participation in any organization of one or more other state associations of similar purposes and to any such organization and its agents or employees.

408-F:18 Stay of Proceedings; Reopening Default Judgments. All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed 60 days from the date an order of liquidation, rehabilitation or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict, or finding based on default, the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

408-F:19 Prohibited Advertisement of Insurance Guaranty Association Act in Insurance Sales; Notice to Policyholders.

I. No person, including a member insurer, agent or affiliate of a member insurer shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation or inducement to purchase any form of insurance, or other coverage covered by the New Hampshire life and health insurance guaranty association act. Provided, however, that this paragraph shall not apply to the New Hampshire life and health insurance guaranty association or any other entity which does not sell or solicit insurance or coverage by a health maintenance organization. The use of the protection afforded by this chapter, other than as provided by this paragraph, by any person in the sale, marketing, or advertising of insurance constitutes unfair competition and unfair practices under the New Hampshire unfair trade practices act, and is subject to sanctions imposed in that chapter.

II. Within 180 days after January 1, 2020, the association shall prepare a summary document describing the general purposes and current limitations of the chapter and complying with paragraph III. This document shall be submitted to the commissioner for approval. Unless paragraph IV applies, at the expiration of the 60th day after the date on which the commissioner approves the document, a member insurer may not deliver a policy or contract covered by a guaranty fund to a policy owner, contract owner, certificate holder, or enrollee unless the summary document is delivered to the policy owner, contract owner, certificate holder, or enrollee prior to or at the time of delivery of the policy or contract. The document shall also be available upon request by a policy owner, contract owner, certificate holder, or enrollee. The distribution, delivery or contents or interpretation of this document does not guarantee that either the policy or the contract or the policy owner, contract owner, certificate holder, or enrollee is covered in the event of the impairment or insolvency of a member insurer. The description document shall be revised by the association as amendments to the chapter may require. Failure to receive this document does not give the policy owner, contract owner, certificate holder, enrollee, or insured any greater rights than those stated in this chapter.

III. The document prepared under paragraph II shall contain a clear and conspicuous disclaimer on its face. The commissioner shall approve the disclaimer. The disclaimer shall:

(a) State the name, address and telephone number of the life and health insurance guaranty association and insurance department.

(b) Prominently warn the policy owner, contract owner, certificate holder, or enrollee that the life and health insurance guaranty association may not cover the policy or contract or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the state.

(c) State the types of policies or contracts for which guaranty funds will provide coverage.

(d) State that the member insurer and its agents are prohibited by law from using the existence of the life and health insurance guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance or health maintenance organization coverage.

(e) State that the policy owner, contract owner, certificate holder, or enrollee should not rely on coverage under the life and health insurance guaranty association when selecting an insurer or health maintenance organization.

(f) Explain rights available and procedures for filing a complaint to allege a violation of any provisions of this chapter.

(g) Provide other information as directed by the commissioner, including but not limited to, sources for information about the financial condition of insurers provided that the information is not proprietary and is subject to disclosure under that state's public records law.

IV. No insurer or agent may deliver a policy or contract not covered by the association unless the insurer or agent, prior to or at the time of delivery, gives the policy owner, contract owner, certificate holder, or enrollee a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the life and health insurance guaranty association. The commissioner shall approve the notice.

408-F:20 Prospective Application. This chapter shall not apply to any member insurer which is insolvent or unable to fulfill its contractual obligations on December 31, 2019.

2 New Subparagraph; Unfair Insurance Practices; Certain Prescriptions. Amend RSA 417:4, VIII by inserting after subparagraph (g) the following new subparagraph:

(h) For life, life annuity, or disability coverage, refusing to insure or to continue to insure, or limiting the amount, extent, or kind of coverage based on the applicant who is also the proposed insured having filled a prescription for an opioid antagonist, when that prescription is not relevant to the applicant's health, but rather is designed to promote the health of someone else. For any such prescription, the carrier shall inquire with the applicant as to the reason for the prescription and may request documentation that verifies the applicant's response prior to issuing an underwriting decision.

3 Effective Date.

I. Section 1 of this act shall take effect January 1, 2020.

II. Section 2 of this act shall take effect July 1, 2019.

2019-2005h

AMENDED ANALYSIS

This bill establishes the Life and Health Insurance Guaranty Association of 2019.

This bill also makes it an unfair insurance practice to refuse to insure an applicant who has filled a prescription for certain medications.

Amendment to SB 252-FN

(2019-2158h)

Proposed by the Minority of the Committee on Health, Human Services and Elderly Affairs - r

Amend the introductory paragraph of RSA 421-B:5-507-A, (2) as inserted by section 1 of the bill by replacing it with the following:

(2) If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual shall promptly notify:

Amendment to SB 262-FN

(2019-1713h)

Proposed by the Minority of the Committee on Judiciary - r

Amend RSA 644:23 as inserted by section 1 of the bill by replacing it with the following:

644:23 Property Interest in Abandoned Personal Materials.

I. In this section:

(a) "Abandoned personal materials" means physical items owned, possessed, or used by an individual and physically left intentionally or unintentionally in private or public places.

(b) "Government" means the federal government, the state government, and its political subdivisions, and state and municipal agencies and departments, including employees, agents, and contractors.

(c) "Individual" means a living human being.

(d) "Informational content" includes DNA/RNA, genetic sequences and any portion thereof.

II.(a) The informational content contained in or on abandoned personal material is the property of the individual to whom it pertains regardless of the abandonment of the item in or on which the informational content exists.

(b) Subject to the exceptions in paragraph III, no government shall acquire, collect, retain, or use that informational content. Nothing in this section shall prevent or exclude law enforcement from taking physical possession of property containing abandoned personal material pursuant to existing legal authority.

(c) Informational content obtained in violation of this section shall not be admissible in a criminal, civil, administrative, or other proceeding, except as proof of a violation of this section.

III. Notwithstanding the provisions of paragraph II, nothing in this section shall limit the acquisition, collection, retention, or use of the informational content of abandoned personal materials:

(a) Pursuant to a warrant supported by probable cause pursuant to Part I, Art. 19 of the New Hampshire constitution or a judicially-recognized exception to the warrant requirement;

(b) By a law enforcement agency at a crime scene or through examination and analysis of such crime scene materials by forensic laboratories; or

(c) By the judicial branch or any state regulatory or other agency within the branch's or agency's statutory adjudicatory or regulatory function.

IV. If the government acquires, collects, retains, or uses the informational content pursuant to paragraph III, directly or indirectly, it shall acquire, collect, retain, or use such informational content only for the specific purpose for which it was acquired, collected, or retained. The government may use the informational content acquired pursuant to paragraph III in another active case if it has reasonable and articulable suspicion to believe that the source of the informational content is a suspect in that case.

V. If federal law preempts any provision of this section, such provision shall not apply to the federal government.

**Amendment to SB 263
(2019-2310h)**

Proposed by the Minority of the Committee on Judiciary - r

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

1 New Subdivision; Discrimination in Public Schools. Amend RSA 193 by inserting after section 37 the following new subdivision:

Discrimination in Public Schools

193:38 Discrimination in Public Schools. No pupil shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in public schools because of their age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or national origin, all as defined in RSA 354-A. Any pupil claiming to be aggrieved by a discriminatory practice prohibited under this section, may initiate or have initiate on his or her behalf by a parent, guardian, or person having legal custody of the pupil a civil action against a school or school district in superior court for legal or equitable relief, or with the New Hampshire commission for human rights, as provided in RSA 354-A:27-28. The relief for a legal action in superior court shall be for actual damages but shall not exceed the liability limits in RSA 507-B:4.

193:39 Discrimination Prevention Policy Required. Each school district and chartered public school shall develop a policy that guides the development and implementation of a coordinated plan to prevent, assess the presence of, intervene in, and respond to incidents of discrimination on the basis of age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, national origin, or any other classes protected under RSA 354-A.

2 New Subdivision; Opportunity for Public Education Without Discrimination a Civil Right. Amend RSA 354-A by inserting after section 26 the following new subdivision:

Opportunity for Public Education Without Discrimination a Civil Right

354-A:27 Opportunity for Public Education Without Discrimination a Civil Right. No pupil shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in public schools because of their age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion or national origin, all as defined in this chapter.

354-A:28 Procedure on Public School Complaints.

I. Any pupil claiming to be aggrieved by a discriminatory practice prohibited under RSA 354-A:27 may initiate or have initiated on his or her behalf by a parent, guardian or person having legal custody of the pupil, a civil action in superior court against a school or school district for legal or equitable relief, or file a complaint with the commission as provided in RSA 354-A:21. The attorney general may also initiate a complaint with the commission.

II. Any complaint filed with the commission pursuant to paragraph I shall comply with and be subject to the procedures outlined in this chapter, with the exception that such complaints may be removed to superior court at any time in compliance with RSA 508:4

3 Effective Date. This act shall take effect January 1, 2020.

2019-2310h

AMENDED ANALYSIS

This bill creates a cause of action for pupils injured by discrimination in public schools.

**Amendment to SB 270-FN
(2019-2280h)**

Proposed by the Majority of the Committee on Ways and Means - r

Amend RSA 188-E:9-a as inserted by section 1 of the bill by inserting after paragraph VII the following new paragraph:

VIII. On or before October 1 of each year, the department of education shall report to the speaker of the house of representatives, the senate president, and the chairpersons of the house and senate ways and means committees on the total value of charitable donations received by school districts under this section, the tax credits issued to all donors, and the department's determination of the effect the tax credit program has on educational programs offered by CTE centers and their apprenticeship and training programs.

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

3 Repeal; 2022. RSA 188-E:9-a, relative to donations to regional career and technical education center programs, is repealed.

4 Effective Date.

I. Section 3 of this act shall take effect June 30, 2022.

II. The remainder of this act shall take effect July 1, 2019.

2019-2280h

AMENDED ANALYSIS

This bill establishes a tax credit against business profits taxes for donations to career and technical education centers. The donation program is repealed June 30, 2022.

Amendment to SB 272-FN**(2019-2139h)****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 mental health parity under the insurance laws and relative to vehicle repair standards.

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

3 New Sections; Vehicle Repair Standards. Amend RSA 407-D by inserting after section 3-a the following new sections:

407-D:3-b Vehicle Repair Standards.

I. Insurers shall pay a claim to the claimant or repairer based upon the repairer's utilization of repair procedures or specifications that conform to the original equipment manufacturer's recommended procedures, specifications, or allowable tolerances of such vehicle year, make, model, and trim level. If the repair procedure or specification from an original equipment manufacturer includes a directive to conduct a scan, calibration, or diagnostic test of a vehicle's electronics systems before or after the commencement of repairs, such directive shall be considered as a required part of the repair procedure. The insurer shall reimburse the repairer if the repairer follows the directive. Notwithstanding any statements or recommendations contained in the original equipment manufacturer's repair procedures or specifications relative to the use of original equipment manufacturer parts, governance of the use of after market parts in the course of an insurer-funded repair shall be solely dictated by RSA 407-D:3-a.

II. This section shall not apply to vehicle glass repair and emplacement services including, but not limited to, the calibration of Advanced Driver Assistance System (ADAS), when done by an automobile glass company. The company shall notify their customer after repair whether calibration has been performed.

407-D:3-c Paint and Materials Estimates. When an automobile repairer follows the paint and materials estimate from a paint manufacturer, nationally recognized third party, or some combination thereof, the insurer shall reimburse the repairer invoice based on such estimate or a comparable paint and materials estimate from another paint manufacturer, nationally recognized third party guide, or some combination thereof.

4 Effective Date.

I. Sections 1 and 2 of this act shall take effect January 1, 2020.

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

2019-2139h

AMENDED ANALYSIS

This bill authorizes the insurance commissioner to enforce the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 and requires the commissioner to examine and evaluate health insurers, health service corporations, and health maintenance organizations for compliance.

This bill also requires an insurer to reimburse an automobile repairer for all repairs if the repairer follows an original equipment manufacturer recommended collision repair procedures. Section 3 of this bill is a result of the committee to study reimbursement rates under automobile insurance policies, established by 2018, 13.

Amendment to SB 279-FN**(2019-2101h)****Proposed by the Majority of the Committee on Commerce and Consumer Affairs - r**

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

1 Findings. The general court hereby finds that infertility is a disease of the reproductive system that affects 1 in 6 couples in New Hampshire. One-third of infertility is due to male factors, one-third to female factors, and the remainder is attributed to factors in both partners or diagnostically unexplained. Some of the individuals impacted are women born without a uterus, men with azoospermia (no sperm), women with uterine abnormalities or endometriosis, women with a history of ectopic pregnancies, cancer survivors, and military veterans who received explosive shrapnel injuries. Infertility is treatable. Ninety seven percent of infertility cases are treated with conventional drug therapy or surgical procedures. Only 3 percent of cases require assisted reproductive technology, such as in vitro fertilization (IVF). IVF can be a cost-effective treatment option because, with insurance benefits, patients are known to make health care decisions based on appropriate medical advice rather than financial concerns, and thus transfer fewer embryos per cycle. This can result in a savings of \$80,000 or more per pregnancy in maternity care and neonatal care costs. Individuals facing medical conditions where treatment, like chemotherapy, is known to impact future fertility, as well

as hopeful parents who are carriers for serious genetic conditions, are also impacted by a lack of affordable access to fertility care. The general court finds that it is in the public interest to make medical treatment for infertility and related conditions affordable for New Hampshire residents and employers, so as to attract and retain young families, expand the state's health care resources, reduce overall health care costs, and improve health outcomes for the resulting children.

2 New Chapter; Access to Fertility Care. Amend RSA by inserting after chapter 417-F the following new chapter:

CHAPTER 417-G ACCESS TO FERTILITY CARE

417-G:1 Definitions. In this chapter:

- I. "Commissioner" means the insurance commissioner.
- II. "Experimental infertility procedure" means a procedure for which the published medical evidence regarding risks, benefits, and overall safety and efficacy is not sufficient to regard the procedure as an established medical practice.
- III. "Fertility treatment" means health care services or products provided with the intent to achieve a pregnancy that results in a live birth with healthy outcomes.
- IV. "Health carrier" means an entity subject to the insurance laws and rules of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurance company, a health maintenance organization, a health service corporation, or any other entity providing a plan of health insurance, health benefits, or health services.
- V. "Infertility" means a disease, caused by an illness, injury, underlying disease, or condition, where an individual's ability to become pregnant or to carry a pregnancy to live birth is impaired, or where an individual's ability to cause pregnancy and live birth in the individual's partner is impaired.
- VI. "Medically necessary" means health care services or products provided to an enrollee for the purpose of preventing, stabilizing, diagnosing, or treating an illness, injury, or disease or the symptoms of an illness, injury, or disease in a manner that is:
 - (a) Consistent with generally accepted standards of medical practice;
 - (b) Clinically appropriate in terms of type, frequency, extent, site, and duration;
 - (c) Demonstrated through scientific evidence to be effective in improving health outcomes;
 - (d) Representative of "best practices" in the medical profession; and
 - (e) Not primarily for the convenience of the enrollee or physician or other health care provider.
- VII. "Standard fertility preservation services" means procedures consistent with established medical practices and professional guidelines published by the American Society for Reproductive Medicine or the American Society of Clinical Oncology.

417-G:2 Diagnosis of Infertility, Fertility Treatment, and Fertility Preservation.

- I. Each health carrier that issues or renews any group policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses, shall provide to certificate holders of such insurance coverage for the diagnosis of the etiology of infertility.
- II. Each health carrier that issues or renews any group policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses, shall provide to certificate holders of such insurance coverage for medically necessary fertility treatment. Enrollees shall be provided coverage for evaluations, laboratory assessments, medications, and treatments associated with the procurement of donor eggs, sperm, and embryos.
- III. Each health carrier that issues or renews any group policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses, shall provide to certificate holders of such insurance coverage for fertility preservation when a person is expected to undergo surgery, radiation, chemotherapy, or other medical treatment that is recognized by medical professionals to cause a risk of impairment of fertility. Coverage under this section shall include coverage for standard fertility preservation services, including the procurement and cryopreservation of embryos, eggs, sperm, and reproductive material determined not to be an experimental infertility procedure. Storage shall be covered from the time of cryopreservation for the duration of the policy term. Storage offered for a longer period of time, as approved by the health carrier, shall be an optional benefit.
- IV. Coverage under paragraphs I-III shall not apply to plans available through the Small Business Health Options Program (SHOP) or to Extended

Transition to Affordable Care Act-Compliant Policies.

417-G:3 Prohibited and Permissible Limitations on Coverage.

- I. No health carrier shall:
 - (a) Impose deductibles, copayments, coinsurance, benefit maximums, waiting periods or any other limitations on coverage for required benefits which are different from those imposed upon benefits for services not related to infertility or any limitations on coverage of fertility medications that are different from those imposed on any other prescription medications.

(b) Impose pre-existing condition exclusions or pre-existing condition waiting periods on coverage for required benefits or use any prior diagnosis of or prior treatment for infertility as a basis for excluding, limiting or otherwise restricting the availability of coverage for required benefits.

(c) Impose limitations on coverage based solely on arbitrary factors including, but not limited to, number of attempts or dollar amounts or age, or provide different benefits to, or impose different requirements upon, a class protected under RSA 354-A than that provided to, or required of, other patients.

II. Limitations on coverage shall be based on clinical guidelines and the enrollee's medical history. Clinical guidelines shall be maintained in written form and shall be available to any enrollee upon request. Standards or guidelines developed by the American Society for Reproductive Medicine, the American College of Obstetrics and Gynecology, or the Society for Assisted Reproductive Technology may serve as a basis for these clinical guidelines. Making, issuing, circulating, or causing to be made, issued or circulated, any clinical guidelines that are based upon data that are not reasonably current or that do not cite with specificity any references relied upon shall constitute an unfair and deceptive act and practice in the business of insurance under RSA 417:4.

III. This chapter shall not be construed to provide benefits for:

- (a) An experimental infertility procedure.
- (b) Non-medical costs related to third party reproduction.
- (c) Reversal of voluntary sterilization.

IV. In instances where an enrollee is utilizing a surrogate or gestational carrier due to a medical cause of infertility unrelated to voluntary sterilization or failed reversal, the enrollee's coverage shall not extend to medical costs relating to the preparation for reception or introduction of embryos, oocytes, or donor sperm into a surrogate or gestational carrier.

417-G:4 Rulemaking. The commissioner shall adopt necessary rules, under RSA 541-A, relative to the proper administration of this chapter. Until such rules are adopted, health carriers shall fulfill their obligations under this chapter by conforming to the standards of the American Society for Reproductive Medicine.

417-G:5 Severability. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

3 Effective Date. This act shall take effect January 1, 2020.

Amendment to SB 279-FN (2019-2240h)

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 establishing a committee to study insurance coverage for fertility care.

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

- 1 Committee Established. There is established a committee to study insurance coverage for fertility treatment.
- 2 Membership and Compensation.

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

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

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

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

3 Duties.

I. The committee shall study insurance coverage for fertility care.

II. At the first meeting, the committee shall ask the insurance commissioner to exercise the commissioner's authority under RSA 400-A:39-b, III to conduct a review and evaluation of a requirement for all group health insurance policies in the state to cover fertility treatment at a level matching that in the current state employee health plan. The insurance commissioner shall report the results of this study to the committee.

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

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2019.

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

2019-2240h
AMENDED ANALYSIS

This bill establishes a committee to study insurance coverage for fertility treatment.

Amendment to SB 285-FN
(2019-2245h)

Proposed by the Committee on Public Works and Highways - c

Amend RSA 228:116 as inserted by section 6 of the bill by replacing it with the following:

228:116 Coastal Risk and Hazards Preparedness. If abandonment of any state highway is considered because of sea-level rise, storm surge, and extreme precipitation events, or in anticipation of such events as projected by the Coastal Risk and Hazards Commission final report, "Preparing New Hampshire for Projected Storm Surge, Sea-Level Rise, and Extreme Precipitation," and subsequent science and technical advisory panel reports under RSA 483-B:22, the department of transportation shall coordinate procedures with affected municipalities, the Rockingham planning commission, the Strafford regional planning commission, the department of business and economic affairs, and with business, real estate, tourism, and other affected economic interests. The process shall also consider mitigation policies and potential funding for owners of affected properties served by such roadways and projected impacts to the environment and natural and cultural resources. The final approval for such projects and related funding shall be through the 10-year plan process and shall be included in the 10-year plan.

Amendment to SB 286-FN-LOCAL
(2019-1946h)

Proposed by the Committee on Municipal and County Government - c

Amend RSA 53-E:4, I as inserted by section 4 of the bill by replacing it with the following:

I. An aggregator operating under this chapter shall not be considered a utility engaging in the wholesale purchase and resale of electric power and shall not be considered a municipal utility under RSA 38. Providing electric power or energy services to aggregated customers within a municipality or county shall not be considered a wholesale utility transaction. However, a municipal or county aggregation may elect to participate in the ISO New England wholesale energy market as a load serving entity for the purpose of procuring or selling electrical energy or capacity on behalf of its participating retail electric customers, including itself.

Amend RSA 53-E:7, VI as inserted by section 4 of the bill by replacing it with the following:

VI. The commission may adopt rules, under RSA 541-A, to implement this chapter, including but not limited to rules governing the relationship between municipal or county aggregators and distribution utilities, metering, notice of the commencement or termination of aggregation services and products, and the re-establishment of a municipal or county aggregation that has substantially ceased to provide services. Where the commission has adopted rules in conformity with this chapter, complaints to and proceedings before the commission shall not be subject to RSA 541-A:29 or RSA 541-A:29-a.

Amendment to SB 289-FN
(2019-1792h)

Proposed by the Majority of the Committee on Finance - r

Amend the bill by replacing section 4 with the following:

4 Services for the Developmentally Disabled; Definition of Area Agency. Amend RSA 171-A:2, I-b to read as follows:

I-b. "Area agency" means an entity established as a nonprofit corporation in the state of New Hampshire which is established by rules adopted by the commissioner to provide *or coordinate* services to developmentally disabled persons in the area *in accordance with 42 C.F.R. section 441.301*.

Amendment to SB 290-FN
(2019-2331h)

Proposed by the Majority of the Committee on Finance - r

Amend the introductory paragraph of RSA 126-AA:2, III(b) as inserted by section 3 of the bill by replacing it with the following:

(b) If an individual in a family receiving benefits under this paragraph fails to comply with the work or community engagement activities required in accordance with this paragraph, ~~[the assistance shall be terminated:]~~ *has been provided an opportunity to cure, and has subsequently refused assistance under 2018, 342:5 that was both available and offered by the commissioner in writing and verbally and that offer and refusal is documented, the assistance shall then be suspended. In this chapter, an "opportunity to cure" means the forgiveness of at least one month of noncompliance, other than the first month of application of the requirement, and there shall be at least 20 days advance notice, in writing and verbally, detailing the next month's work and community engagement obligations,*

with such notices documented. Individuals shall be allowed to carry forward additional hours worked in one month to the next month. Any hours in participation in assistance activities under 2018, 342:5 shall qualify for the work and community engagement requirement. The commissioner shall adopt rules under RSA 541-A to determine good cause and other exceptions to termination. Following approval by the joint health care reform oversight committee, pursuant to RSA 161:11, to initiate rulemaking, any rules proposed under this subparagraph shall be submitted to the fiscal committee of the general court, which shall review the rules prior to submission to the joint legislative committee on administrative rules and make recommendations to the commissioner regarding the rules. An individual may apply for good cause exemptions which shall include, at a minimum, the following verified circumstances:

Amend RSA 126-AA:2, III(d)(2) as inserted by section 3 of the bill by replacing it with the following:

(2) A person participating in a [state-] ***federal, state, or other*** certified drug court program, as certified by the administrative office of the [superior court] ***courts***.

Amend the bill by replacing section 12 with the following:

12 Termination of Granite Workforce Program. Amend 2018, 342:9, I to read as follows:

I. The commissioner of the department of health and human services shall be responsible for determining, every 3 months commencing no later than December 31, 2018, whether available TANF reserve funds total at least [\$40,000,000] ***\$5,000,000***. If at any time the commissioner determines that available TANF reserve funds have fallen below [\$40,000,000] ***\$5,000,000***, the commissioners of the departments of health and human services and employment security shall, within 20 business days of such determination, terminate the Granite Workforce program. The commissioners shall notify the governor, the speaker of the house of representatives, the president of the senate, the chairperson of the fiscal committee of the general court, and Granite Workforce participants of the program's pending termination.

Amendment to SB 98

(2019-2059h)

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 the New Hampshire trust code and establishing a committee to study the effects of past trust code legislation.

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

1 New Section; New Hampshire Trust Code; Precatory Language. Amend RSA 564-B by inserting after section 1-112 the following new section:

564-B:1-113 Precatory Language.

(a) For purposes of this section, the following definitions apply:

(1) "Letter of wishes" means a record that:

- (A) Is not a trust instrument;
- (B) Is created by a settlor; and
- (C) Contains precatory language.

(2) "Precatory language" means language that:

- (A) Is not binding on any trustee, trust advisor, or trust protector;
- (B) Expresses the settlor's wishes regarding the exercise of any discretionary power by a trustee, trust advisor, or trust protector; and
- (C) Is not inconsistent with the terms of the trust.

(b) In exercising a discretionary power, a trustee, trust advisor, or trust protector may consider precatory language contained in the trust instrument or a letter of wishes.

(c) Precatory language does not impose any duty on any trustee, trust advisor, or trust protector, and the fact that a trustee, trust advisor, or trust protector does not exercise a discretionary power in accordance with precatory language shall not create an inference that the trustee, trust advisor, or trust protector improperly exercised the power.

(d) In determining whether a trustee, trust advisor, or trust protector exercised a discretionary power in a manner that is consistent with the settlor's intent, a court may consider precatory language contained in the trust instrument or a letter of wishes. A court may consider precatory language contained in a letter of wishes regardless of whether the trust instrument is ambiguous.

(e) Except as provided under the terms of the trust or by court order, a trustee, trust advisor, or trust protector shall not have any duty to provide any beneficiary a copy of a letter of wishes.

2 New Hampshire Trust Code; Creditor's Claim Against a Beneficiary of a Discretionary Trust. Amend RSA 564-B:5-504(e)(3)(B) to read as follows:

(B) The maximum amount of trust property that can be distributed to or for the benefit of the [settlor] ***beneficiary*** from the trust.

3 New Hampshire Trust Code; Specific Powers of Trustee. Amend RSA 564-B:8-816(a)(19) to read as follows:

(19) *On terms and conditions that the trustee considers to be fair and reasonable under the circumstances:*

(A) *Guarantee loans or secure other obligations, including loans made by others to the beneficiary; or*

(B) *Pledge trust property to guarantee loans or secure other obligations, including loans made by others to the beneficiary;*

4 New Section; New Hampshire Trust Code; Limitation on Personal Liability of Settlers. Amend RSA 564-B by inserting after section 5-510 the following new section:

564-B:5-511 Limitation on Personal Liability of Settlers.

(a) A settlor of an irrevocable trust is not personally liable on a contract into which a trustee, trust advisor, or trust protector properly enters in the course of administering the trust, unless the settlor expressly agrees to be personally liable on that contract.

(b) A settlor of an irrevocable trust is not personally liable for torts committed by a trustee, trust advisor, or trust protector in the course of administering the trust, unless the settlor is personally at fault.

(c) A settlor of an irrevocable trust is not personally liable for claims or obligations arising from the ownership or control of trust property by a trustee, trust advisor, or trust protector, unless the settlor is personally at fault. Claims arising from the ownership or control of trust property include liability for any violation of environmental law.

(d) This section does not limit or otherwise affect:

(1) A settlor's obligations under an agreement with a trustee, trust advisor, or trust protector;

(2) The rights of a settlor's creditor under this chapter; or

(3) The application of RSA 564-B:4-406(f), RSA 564-B:8-812, RSA 564-B:8-817(d), or any other provision of this chapter.

5 Committee Established. There is established a committee to study the effects of past New Hampshire trust code legislation.

6 Membership and Compensation.

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

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

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

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

7 Duties. The committee shall investigate whether past New Hampshire trust legislation is having its desired effect. The committee shall determine if it is in the best interest for the state to continue to evolve the trust code to make it more favorable to trust settlers and trust companies. If the committee determines that there have been unintended consequences resulting from prior legislation, the committee shall make recommendations to mitigate any possible risk or exposure to the state. Additionally, the committee shall consider if there is a state revenue opportunity to be generated from the assets which reside within these New Hampshire chartered trust companies to offset the cost of administration by the state of New Hampshire.

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

9 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2019.

10 Effective Date.

I. Section 2 of this act shall take effect upon its passage.

II. Sections 1, 3, and 4 of this act shall take effect 60 days after its passage.

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

2019-2059h

AMENDED ANALYSIS

This bill makes certain changes to the New Hampshire trust code. This bill also establishes a committee to study the effects of past trust legislation.

Amendment to SB 98

(2019-1538h)

Proposed by the Minority of the Committee on Commerce and Consumer Affairs - r

Amend section 1 of the bill by inserting after paragraph III the following new paragraph:

IV. Over the past several decades, trusts have become commonplace in estate planning. People use trusts as a means of privately managing and transferring assets to family, friends, charities, and other persons.

Trust instruments and related financial documents contain private and personal information. On occasion people need to seek judicial resolution of matters affecting trusts. The public has a right to access court records. At the same time, individuals have a natural, essential, and inherent right to privacy. In judicial proceedings involving trusts, the state has a compelling interest in balancing those rights. That balance is properly achieved by ensuring that trust instruments and financial documents filed with a court generally remain private, except to the extent that a part of those documents is important and directly relevant to a determination made by the court in its adjudicatory function.

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

6 New Section; New Hampshire Trust Code; Privacy in Judicial Proceedings. Amend RSA 564-B:2-205 by inserting after section 2-205 the following new section:

564-B:2-206 Privacy in Judicial Proceedings.

(a) Subject to sections (b) and (c), the following documents shall be confidential, exempt from public disclosure, and upon filing with a court, automatically sealed:

(1) Any trust instrument; and

(2) Any report described in RSA 564-B:8-8013(d), any statement of the trust's assets, liabilities, receipts, or disbursements, or any similar record.

(b) To the extent that a part of a document described in subsection (a) is important and directly relevant to a determination made by the court in its adjudicatory function, that part of the document is not confidential, is not exempt from public disclosure, and may be unsealed by the court, unless a party demonstrates a sufficiently compelling reason why that part of the document should remain sealed.

(c) Each of the following persons shall have the right to access the documents described in subsection (a):

(1) A party to the judicial proceeding, other than a person who is a party solely for the purpose of seeking the disclosure of all or any part of a document described in subsection (a);

(2) A settlor;

(3) A beneficiary;

(4) A trustee;

(5) A trust advisor;

(6) A trust protector;

(7) A person who, under the terms of the trust, has the power to enforce the terms of the trust;

(8) A guardian ad litem appointed by the court to represent one or more persons in the judicial proceeding;

(9) In the case of a charitable trust, the director of charitable trusts;

(10) The department of health and human services;

(11) The banking department in furtherance of any examination or investigation conducted under authority granted in Title XXXV;

(12) Any other interested person whom, upon a showing of a right or need, the court determines has the right to access the documents described in subsection (a); and

(13) An attorney for any person described in subsections (1) through (12).

(d) This section shall not affect any person's right to request that a court seal all or any part of any document filed with the court in a judicial proceeding.

(e) This section shall not apply to a trust created by a will.

7 New Hampshire Trust Code; Default and Mandatory Rules. Amend RSA 564-B:1-105(b)(2) to read as follows:

(2) The duty of a trustee to act in good faith and in accordance with the terms of the trust, the purposes of the trust, and the interests of the beneficiaries, **and the duty of a trustee to defend the trust;**

8 New Hampshire Trust Code; Enforcement and Defense of Claims. Amend RSA 564-B:8-811 to read as follows:

564-B:8-811 Enforcement and Defense of Claims.

(a) A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

(b) A trustee has a duty to defend the trust. Defending the trust includes defending against any claim that the trust is invalid, any claim that any of the terms of the trust is invalid, and any claim that would frustrate or defeat the settlor's intent. To the extent that a trustee properly exercises the trustee's power to defend the trust, the reasonable costs of defense, including attorney's fees, are expenses incurred in the administration of the trust.

9 New Hampshire Foundation Act; Formation. Amend RSA 564-F:3-301(c)(4) to read as follows:

(4) If the foundation will exist only for a limited period, the date on which the foundation shall [terminate] **dissolve;**

10 New Hampshire Foundation Act; Subject-Matter Jurisdiction. Amend RSA 564-F:16-1603(1) to read as follows:

(1) The formation, ~~[termination]~~ **dissolution**, and management of foundations;

11 New Hampshire Foundation Act; Cy Pres. Amend RSA 564-F:17-1703(a)(3) to read as follows:

(3) ~~[Terminating]~~ **Dissolving** the foundation.

12 New Hampshire Foundation Act; Damages for Breach of Duty. Amend the introductory paragraph of RSA 564-F:18-1802(a) to read as follows:

(a) A foundation official who commits a breach of duty is liable to the **foundation and, if the foundation has one or more beneficiaries, the** affected beneficiaries for the greater of:

13 New Hampshire Foundation Act; Damages for Breach of Duty. Amend RSA 564-F:18-1802(b) to read as follows:

(b) Except as otherwise provided in subsection (c) or (d), a foundation official is entitled to contribution from the other foundation officials to the extent permitted by RSA 507:7-f if more than one foundation official is liable to the **foundation or the** beneficiaries for a breach of duty.

14 New Hampshire Foundation Act; Damages in Absence of Breach of Duty. Amend RSA 564-F:18-1803(b) to read as follows:

(b) Absent a breach of duty, a foundation official is not liable to **the foundation or** a beneficiary for a loss or depreciation in the value of the foundation property or for not having made a profit.

15 New Hampshire Foundation Act; Revocation of Dissolution. Amend RSA 564-F:20-2004(f) to read as follows:

(f) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the ~~[corporation]~~ **foundation** resumes carrying on its business as if dissolution had never occurred.

16 New Hampshire Foundation Act; Effects of Administrative Dissolution. Amend RSA 564-F:20-2010(c)(2) to read as follows:

(2) A trade name registered by the ~~[limited liability company]~~ **foundation** under RSA 349.

17 New Hampshire Foundation Act; Reinstatement after Administrative Dissolution. Amend RSA 564-F:20-2011(c)(1) to read as follows:

(1) The secretary of state determines that the ~~[notice]~~ **application** contains the information required under subsection (b);

18 New Hampshire Foundation Act; Reinstatement after Administrative Dissolution. Amend RSA 564-F:20-2011(d)(1) to read as follows:

(1) Cancelling the notice of administrative dissolution; **and**

19 New Hampshire Foundation Act; Reinstatement After Administrative Dissolution. Amend RSA 564-F:20-2011(f)(4) to read as follows:

(4) All of the foundation's otherwise legally valid actions during the period ~~[if]~~ **of** its dissolution shall be legally valid.

20 New Hampshire Foundation Act; Appeal from Denial of Reinstatement. Amend RSA 564-F:20-2012(g) to read as follows:

(g) The court may summarily order the secretary of state to reinstate the dissolved ~~[corporation]~~ **foundation** or may take other action that the court considers appropriate.

21 New Hampshire Foundation Act; Judicial Dissolution. Amend RSA 564-F:20-2013(b)(1) and (2) to read as follows:

(1) All of the foundation officials consent to the ~~[termination]~~ **dissolution**;

(2) All of the beneficiaries consent to the ~~[termination]~~ **dissolution**;

22 New Hampshire Foundation Act; Restated Certificate of Registration. Amend RSA 564-F:21-2104(a) to read as follows:

(a) A foreign foundation may restate its certificate of ~~[formation]~~ **registration** by filing with the secretary of state a restated certificate of registration.

23 New Hampshire Foundation Act; Restated Certificate of Registration. Amend RSA 564-F:21-2104(c) to read as follows:

(c) The restated certificate of ~~[formation]~~ **registration** may contain one or more amendments to the certificate of registration as permitted in a certificate of amendment under RSA 564-F:21-2103.

24 New Hampshire Foundation Act; Registered Agent. Amend RSA 564-F:21-2107(a) to read as follows:

(a) Each **registered** foreign foundation shall continuously maintain a registered agent in this state.

25 New Hampshire Foundation Act; Date of Domestication. Amend RSA 21-2120(a) to read as follows:

(a) A foreign foundation's domestication shall be effective upon:

(1) If certificate of domestication does not specify a delayed effective time and date in accordance with ~~[RSA 564-F:21-2120(b)(5) and (c)]~~ **RSA 564-F:21-2119(b)(5) and (d)**, the filing of the certificate of domestication; or

(2) If certificate of domestication specifies a delayed effective time and date in accordance with ~~[RSA 564-F:21-2120(b)(5) and (c)]~~ **RSA 564-F:21-2119(b)(5) and (d)**, the effective time and date specified in the certificate of domestication.

26 New Hampshire Foundation Act; Effects of Domestication. Amend RSA 564-F:21-2121(d)(3) to read as follows:

(3) The laws applicable to a foundation before the filing of its certificate of ~~[formation]~~ **registration**.

27 New Hampshire Foundation Act; Annual Reports. Amend RSA 564-F:22-2201(f)(1) to read as follows:

1) Subject to subsection (f)(2), a registered foreign foundation shall file its initial annual report on or before April 1 of the year following the calendar year in which the foundation was ~~[formed]~~ **registered**.

28 Effective Date.

I. Sections 3 and 7 through 28 of this act shall take effect upon its passage.

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

2019-1538h

AMENDED ANALYSIS

This bill:

I. Makes certain changes to the New Hampshire trust code.

II. Makes certain trust instruments exempt from public disclosure in court proceedings to except with regard to enumerated parties