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Wednesday, January 7, 2004

This day, January 7, 2004, the first Wednesday following the first Tuesday in January, being the day designated by the Constitution (Art. 3rd, Part 2nd) for assembling of the second-year session of the 158th General Court of the State of New Hampshire, at the Capitol in the city of Concord, the Speaker convened the 2004 House of Representatives and called the session to order at 1:30 p.m.

His Excellency, Governor Craig Benson and Congressman Jeb Bradley joined the Speaker on the rostrum for the day's opening ceremonies.

Prayer was offered by House Chaplain, The Reverend Hays M. Junkin, Rector of Saint Andrew's Episcopal Church in Hopkinton.

Beloved Lord of all creation, the extremes of weather and of life circumstances remind us daily that we are not in control of our destiny but that we are partners with You in charting the future for ourselves and others. At the beginning of this new year, we ask Your blessing upon all who have been honored to hold the temporary authority of government for the citizens of New Hampshire, especially our governor, members of the Senate and members of the General Court. May all that is accomplished this year be done in accordance with our partnership with You and with Your gifts of liberty and freedom. Help us always to care for those most in need in our beloved New Hampshire.

Lord, may Your protective hand be upon the brave men and women of our armed forces and law enforcement agencies who are serving both near and far to protect us; be also with their loved ones who sacrifice daily on our behalf. May our gratitude for those who have given their lives in our defense never cease and may our daily service be worthy of so great a cost. Amen.

Rep. Alan B. Bemis led the Pledge of Allegiance.

The National Anthem was sung by Jay LaChance, Joe Hayden, Vic Wright and Dean Riley, members of the barbershop quartet, "The Quarterly Quartet" based in Concord.

LEAVES OF ABSENCE

Reps. Almy, Desmarais, Flanagan, Ford, Joseph Harris, Sandra Harris, Hunter, Keans, Langley, Lefebvre, Milligan and Scamman, the day, illness.

Reps. Balcom, Dewhirst, Flayhan, Grassie, Bonnie Ham, Christine Hamm, Holland, Lessard, Musler, Oliver, Perkins, Priestley, Rollo, Katherine Taylor and Kathleen Taylor, the day, important business.

INTRODUCTION OF GUESTS

Airman 1st Class Robert Mora, guest of Rep. Nedeau. Hon. Roland Dupuis, guest of the Municipal and County Government Committee. Hon. Janet Fortnam, guest of the Pembroke delegation.

SPECIAL GUESTS

Members of the 2003 Concord National Little League Softball team, 2003 State Championship team which come in 4th place in the Eastern Regional Championship, with Coach Brett Houston were guests of the House.

CALL OF THE ROLL

With 339 members having answered the call of the roll, the Chair declared a quorum present.

AMENDMENT TO HOUSE RULES

The Rules Committee offered the following:

Amendment (2576h)

Amend House Rule 30(o) to read as follows:

(o) It shall be the duty of the Committee on Public Works and Highways to consider all matters pertaining to public highways, buildings and capital construction; the capital budget; ***matters pertaining to state bonding authority***; matters pertaining to the protection, improvement and preservation of the coastline; the care of state memorials and monuments; and such other matters as may be referred to it.

Amend House Rule 46(e) to read as follows:

(e) ***All bills affecting state bonding authority, if approved by the House when reported by the appropriate policy committee, shall be referred to the Committee on Public Works and Highways.***

(f) The chairmen of committees receiving a bill or referral as outlined in this rule with the approval of the Speaker may decline the referral of any bill from another committee or, notwithstanding the provisions of Rule 43 (a), waive the public hearing on any bill referred from another committee.

Rep. Burling spoke in favor.

Adopted by the necessary two-thirds.

COMMITTEE REPORTS

CONSENT CALENDAR

Rep. Hess moved that the Consent Calendar with the relevant amendments as printed in the day's House Record be adopted.

HB 351, requiring completion of a child impact seminar prior to filing for divorce, removed by Rep. Hopper.

HB 176, relative to listing candidates on ballots, removed by Rep. Burling.

HB 559, relative to grounds for termination of employment, removed by Rep. Lars Christiansen.

HB 493, relative to the municipal budget act, removed by Rep. Patten.

Consent Calendar adopted.

CONSENT CALENDAR

HB 532, relative to notice and filing of divorce petitions. **OUGHT TO PASS WITH AMENDMENT**

Rep. Margaret D. Hallyburton for Children and Family Law: The bill proposes the repeal of what has proven to be a cumbersome means of service of process of divorce papers. The committee was comfortable doing that only after amending the bill to provide an alternate means of service – certified mail with return receipt signed by the addressee only. Vote 17-0.

Amendment (1603h)

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

1 Annulment, Divorce and Separation; Procedure; Venue; Notice. RSA 458:9 is repealed and reenacted to read as follows:

458:9 Venue; Notice. All petitions initiated under RSA 168-A, RSA 458, and RSA 458-C shall be brought in the county in which either party lives and before the superior court; and notice thereof shall be given to the respondent as required by this section.

I. If the parties file a joint petition, the petition shall be filed at the appropriate court without further service or notice required.

II. An individual petition shall be filed with the appropriate court, together with the filing fee, by the petitioner. Upon the filing of a petition, the court shall issue orders of notice, attached to the petition, which the petitioner shall then serve on the respondent as provided in this section:

(a) Service within the state shall be made either by:

(i) A sheriff, in hand or by leaving an attested copy of the petition, orders of notice, and an appearance form at the respondent's abode, within 25 days of the date of filing the petition. The return of service shall state the street and number, or some other description, of the abode. The petitioner shall file the return of service with the court as proof of service.

(ii) Certified mail, return receipt requested, restricted delivery, signed by the addressee only. The petitioner shall file the return receipt with the court as proof of service.

(b) Service outside the state shall be made either by:

(i) An officer authorized to make service of process in the state where the respondent lives. Proof of out-of-state service shall be made by a return of the officer under oath, accompanied by an official certificate of his or her official character or authority. The petitioner shall file the return of service with the court as proof of service.

(ii) Certified mail, return receipt requested, restricted delivery, signed by the addressee only. The petitioner shall file the return receipt with the court as proof of service.

III. When the residence of the respondent is not known, the petition shall state the respondent's last known post office address, and the name and post office address of some near relative of the respondent, if any is known to the petitioner, and otherwise the name and post office address of some friend of the respondent, such facts to be verified by the petitioner's personal affidavit filed with the petition. The petitioner shall file the petition with the court together with the name and address of a newspaper published in the city or town nearest to the respondent's last known address. Service shall then be ordered by publication in the newspaper, with publication to be completed not less than 15 days before the return date, and by certified mail addressed to the respondent, care of the relative or friend of the respondent, or otherwise as the court may order. Publication may be waived for good cause upon motion to the court.

2 Reference Change from Libel to Petition. Amend the following RSA provisions by changing "libel" to "petition": RSA 167-B:1; 458:2; 458:5; 458:7-a; 458:11; 458:12; 458:16; 458:16-b; 458:24; 458:34; and 498:16.

3 Reference Change from Libels to Petitions. Amend the following RSA provisions by changing “libels” to “petitions”: RSA 458:2, 458:27, and 458-D:7.

4 Sheriffs and Constables; Fees of Sheriffs and Deputy Sheriffs; Reference Change. Amend RSA 104:31, II to read as follows:

II. For service of a bill, libel or petition, \$15; provided that service of a ~~[libel]~~ **petition** with restraining order shall be \$25.

5 Domestic Relations; Special Fund; Reference Change. Amend RSA 458:17-b to read as follows:

458:17-b Special Fund Established. The supreme court shall establish a separate fund in which to deposit a percentage of the entry fee paid to each clerk of superior court in each ~~[libel and]~~ petition in marital cases for the compensation of mediators, appointed pursuant to RSA 458:15-a, and guardians ad litem, appointed pursuant to RSA 458:17-a, when the parents are indigent. The supreme court shall determine by rule the percentage amount of the entry fee for each ~~[libel and]~~ petition to be deposited into the fund, but at no time shall the percentage amount exceed 50 percent of the entry fee for each ~~[libel and]~~ petition. Payments for services provided shall be paid by the judicial council.

6 Effective Date. This act shall take effect January 1, 2004.

AMENDED ANALYSIS

This bill:

I. Removes the requirement that the court provide the respondent with 10 days to accept service of a divorce petition.

II. Permits in-state and out-of-state service by certified mail.

III. Changes references to “libel” to “petition”; “libelee” to “respondent”; and “libelant” to “petitioner”.

HB 541, relative to the obligation of religious leaders to report child abuse. **REFER FOR INTERIM STUDY**

Rep. Mary Stuart Gile for Children and Family Law: This bill was introduced to amend RSA 516:35 (Privileged Communications, Religious Leaders) to make it consistent with RSA 169-C (New Hampshire’s Child Protection Act). Both statutes have been in New Hampshire law since 1979. The complexities resulting from the interpretation and application of RSA 516:35 without the amendment have caused confusion and, too often, tragic consequences for children. Interim study will enable the committee to further research and document problems relating to the ambiguity inherent in these two statutes and to make further recommendations, if necessary. Vote 16-1.

HB 551, relative to the effect of parental refusal to administer psychotropic drugs to their children. **OUGHT TO PASS WITH AMENDMENT**

Rep. Daniel C. Itse for Children and Family Law: This bill provides that a parent’s refusal to administer a psychotropic drug to his or her child shall not, in and of itself, provide grounds for the State to take the child into protective custody under RSA 169-C, the Child Protection Act. This bill also establishes a committee to study the prescription and use of psychotropic drugs, including Ritalin, in child care centers, preschools and public schools. Vote 17-0.

Amendment (2524h)

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

AN ACT relative to the effect of parental refusal to administer psychotropic drugs to their children and establishing a committee to study the prescription and use of psychotropic drugs, including Ritalin, in childcare centers, preschools, and public schools.

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

1 New Paragraph; Child Protection Act; Protective Custody; Effect of Parent’s Refusal to Administer Psychotropic Drug. Amend RSA 169-C:6 by inserting after paragraph VII the following new paragraph:

VIII. The refusal of a parent or other person having control of a child to administer or consent to the administration of any psychotropic drug to such child shall not, in and of itself, constitute grounds for the police or a juvenile probation and parole officer to take the child into custody, or for the court to order that such child be taken into custody. However, if the administration of a decreasing dose of the drug is required during withdrawal from the medication, the refusal may constitute grounds for taking the child into protective custody.

2 Purpose. According to the United States Drug Enforcement Agency, New Hampshire has the highest distribution per capita of Methylphenidate, better known as Ritalin, in the United States. Ritalin is a stimulant marketed to help students and young children who are referred to as hyperactive or who have been diagnosed with attention-deficit/hyperactivity disorder (ADHD) to focus on school work in the classroom. Although the drugs are generally considered safe, scientists acknowledge that they do not fully understand how Ritalin and other stimulants affect children's developing brains. The drugs are not approved for children under 6. Yet, physicians increasingly prescribe such psychotropic medication "off label," a worrisome trend with potentially disconcerting effects on young children. Generally, Ritalin and similar drugs are regarded as performance enhancing medication, used to keep children less active in educational settings where curriculum demands may be highly academic and accelerated. Further study is needed to determine the biological or medical reasons for administering psychotropic drugs, such as Ritalin, to students in public schools, preschools, and childcare centers and to investigate the research documenting the medications' effects on their development, progress in school, and health.

3 Committee Established. There is established a committee to study the prescription and use of psychotropic drugs, including Ritalin, in childcare centers, preschools, and public schools.

4 Membership and Compensation.

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

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

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

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

5 Duties. The committee shall:

I. Study the extent of the use of psychotropic drugs, including Ritalin, among children in childcare centers, preschools, and public schools, grades K-12.

II. Study where and under what circumstances, including protocols, referrals, and symptoms, psychotropic drugs are prescribed for children ages infant to 5 years and students in grades K-12.

III. Determine if there are regional or geographic clusters of children on Ritalin and whether any connections exist between the prescription and use of such drugs and a child's gender or socioeconomic status.

IV. Determine the extent to which psychotropic drugs, including Ritalin, are prescribed or used for behavior control purposes or performance enhancement in controlled settings such as childcare centers, preschools, and elementary classrooms.

V. Investigate allegations that a parent or guardian's refusal to administer or consent to the administration of any psychotropic medication to his or her child may constitute grounds for taking the child into protective custody.

VI. Examine and document, through a review of scientifically credible research studies, the long-term effects to date, both positive and negative, of the use of psychotropic drugs administered to children from infancy through high school.

VII. Study other issues deemed relevant to the committee's purpose.

VIII. Solicit information and advice from the commissioners of the departments of education and health and human services, child psychologists and psychiatrists, pediatric neurologists, early childhood specialists or child development specialists from the university

of New Hampshire, Keene state college, or Plymouth state college, the New Hampshire Pediatric Society, the Parent Information Center-New Hampshire, the New Hampshire Children's Alliance, Children and Family Services, and any other organization or individual with relevant information or expertise.

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

7 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2005.

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

AMENDED ANALYSIS

This bill provides that a parent's refusal to administer a psychotropic drug to his or her child shall not, in and of itself, provide grounds for the state to take the child into protective custody under RSA 169-C, the child protection act. This bill also establishes a committee to study the prescription and use of psychotropic drugs, including Ritalin, in childcare centers, preschools, and public schools.

HB 587-FN, relative to reimbursement for services provided in delinquency, children in need of services, and abuse and neglect proceedings. **INEXPEDIENT TO LEGISLATE**
Rep. Karen K. McRae for Children and Family Law: The committee voted this bill Inexpedient to Legislate because all the various stakeholders came to the table and worked together to arrive at a solution that did not require this legislation. Vote 16-1.

HB 726-FN, relative to enforcement of spousal support orders by the department of health and human services. **REFER FOR INTERIM STUDY**
Rep. Cynthia J. Dokmo for Children and Family Law: The committee supports the implementation of a system to enable the Department of Health and Human Services to enforce spousal support orders. However, to do so in a fiscally responsible manner, a change must be made at the federal level. The sponsor has been working with Senator Judd Gregg on this issue, and is hopeful that the federal law will be amended to facilitate this process. Therefore, the committee desires to hold this bill for further study in anticipation of this change. Vote 15-2.

HB 141, prohibiting the use of automatic dialing systems for telephone solicitation. **INEXPEDIENT TO LEGISLATE**
Rep. Leo W. Fraser Jr. for Commerce: Because of the enactment of federal legislation promulgated by the Federal Communications Commission which addresses the use of automatic dialing systems for telephone solicitation, the prime sponsor felt that this legislation was no longer necessary, and she requested that we report the bill as Inexpedient to Legislate. Vote 12-0.

HB 174, relative to homeowner's insurance and the ownership of certain breeds of dogs. **INEXPEDIENT TO LEGISLATE**
Rep. Leo W. Fraser Jr. for Commerce: This legislation would prohibit insurance companies from non-renewing or canceling a homeowner's policy because of ownership of certain breeds of dogs. Finding insurance is a very difficult issue for policyholders who own animals (that were in their care, custody or control). Some companies would not insure if the prospective policyholder owned a certain breed of dog. Others raised concerns that the animal had a propensity to bite, and still other companies wrote the insurance without consideration of the ownership or control of the animal. In other words, the insurance companies ran the gamut

so far as underwriting of homeowners' insurance policies. Now pending before the New Hampshire Insurance Department is a filing (which is expected to be approved immediately) that would offer anyone who owns an animal an exclusion for bodily injury and property damage for the animal in their care, custody or control. If the policyholder accepted the exclusion, which would identify the animal, the carrier could then write the policy. With the introduction of the new filing, the Commerce Committee was unanimous in reporting this legislation to the full House as Inexpedient to Legislate. Vote 12-0.

HB 342, restricting the use and display of social security numbers and establishing a private right of action under the right to privacy act. **REFER FOR INTERIM STUDY**
Rep. Randolph N. Holden for Commerce: This bill would restrict the public display of social security numbers. The subcommittee had 13 meetings, spent over 30 hours, and saw countless amendments. The only people to testify in favor of the bill were the sponsors; those opposed, however, ranged from the banks, to the counties' registry of deeds, to the credit bureaus, and to the Chiefs of Police. The subcommittee could not go forward due to a major impasse. The critical question is whether we should ban the use of social security numbers on documents that are recorded at the registry of deeds. The sponsors feel that the potential abuse by identify fraud outweighs the need by credit bureaus and law enforcement to have social security numbers on the documents, but some court orders and old mortgage forms may have the numbers. No one is required to place his or her social security number on a document that he or she is signing, and there is no law barring someone from removing it. As a result, and out of respect for the subject matter, the full committee voted to recommend Interim Study. Vote 12-1.

HB 347, limiting access to certain business records. **REFER FOR INTERIM STUDY**
Rep. Paul D. Spiess for Commerce: The State of Maine has adopted legislation to maximize tax collection efforts for businesses domiciled out of state. The purpose of this bill is to provide the means for New Hampshire businesses to protect themselves from unrestricted and aggressive collection efforts. Since unrestricted access to business records can place a significant hardship on small businesses, the committee believes that further study of the issue is appropriate. Vote 13-0.

HB 382, relative to state-funded health insurance. **REFER FOR INTERIM STUDY**
Rep. Paul D. Spiess for Commerce: The intent of this bill is to prohibit any increase in benefits to the Healthy Kids Program without prior consent of the Legislature, and to prohibit the expansion of the program to low-income adults. Since the program is funded through the State Budget, the committee questions the need to pass legislation to limit programs that are subject to bi-annual budget scrutiny. The committee was also concerned that passing this legislation could jeopardize future sources of funding from the federal government or third parties. However, since the expansion of programs from outside sources could commit the state to future funding, the committee agreed to study the issue. Vote 12-0.

HB 459, relative to market conduct examinations. **OUGHT TO PASS WITH AMENDMENT**

Rep. Leo W. Fraser Jr. for Commerce: The original proposed legislation was introduced at the request of the New Hampshire Insurance Department. Subsequently, the Department advised that this bill is no longer necessary. The committee, rather than disposing of the bill completely, replaced the entire bill with a non-germane amendment. The bill now is the so-called "manufactured housing bill" that passed the House in the last session. When the bill went to the Senate, an amendment was attached. Because of the amendment, the Governor vetoed the bill. Using HB 459 as a vehicle, the Commerce Committee was unanimous in amending HB 459 to include, in total, the original manufactured housing bill without the

controversial Senate amendment relative to campgrounds. The manufactured housing bill allows taxing manufactured housing as real property. Vote 14-0.

Amendment (2471h)

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

AN ACT relative to the taxation of manufactured housing.

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

1 Property Tax; Manufactured Housing. Amend RSA 72:7-a to read as follows:

72:7-a Manufactured Housing.

I. Manufactured housing suitable for use for domestic, commercial or industrial purposes is taxable ***as real estate*** in the town in which it is located on April 1 in any year if it was brought into the state on or before April 1 and remains here after June 15 in any year; except that manufactured housing as determined by the commissioner of revenue administration, registered in this state for touring or pleasure and not remaining in any one town, city or unincorporated place for more than 45 days, except for storage only, shall be exempt from taxation. This paragraph shall not apply to manufactured housing held for sale or storage by an agent or dealer.

I-a. Manufactured housing suitable for use for domestic, commercial or industrial purposes is taxable ***as real estate*** in the town, city or unincorporated place to which it is brought and located after April 1 and before the following January 1, provided that said manufactured housing remains in said town, city or unincorporated place for more than 10 weeks, except for storage only, and further provided a tax has not been assessed on it elsewhere in the state for that year. The tax shall be for the pro rata part of the tax year remaining when said manufactured housing became located in the town, city or unincorporated place. The selectmen or assessors may so require and it shall be an obligation of the owner to file with the selectmen or assessors a true and correct inventory of the property subject to taxation under this paragraph within 15 days of the location of the manufactured housing in such form as the commissioner of revenue administration may prescribe.

II. There shall be a lien for uncollected taxes upon any manufactured housing suitable for use for domestic, commercial or industrial purposes that has been taxed pursuant to paragraphs I and I-a. Said lien shall take precedence over all other liens and encumbrances upon said manufactured housing and shall continue in force until 1-½ years from the assessment of the tax. ~~[The tax collector shall file with the town or city clerk, and with the register of deeds for the county in which the manufactured housing is then located, a copy of a document stating the existence of any such lien, the amount of the uncollected taxes secured by the lien, the name and address of the person liable for the tax as of the date of its assessment, and a description of the manufactured housing upon which the tax has been assessed. The town or city clerk shall keep a file of such documents, which shall be open to public inspection. Upon payment, release, or satisfaction of the lien, the tax collector shall file a notice thereof with the town or city clerk and with the register of deeds. There shall be no fees chargeable for any such filings with the town or city clerk.]~~ ***Such taxes shall be subject to the collection procedures set forth in RSA 80 for real estate taxes.***

2 New Section; Proceedings Against Real Estate; Manufactured Housing; Mortgage.

Amend RSA 80 by inserting after section 18 the following new section:

80:18-a Definition; Mortgage; Manufactured Housing. In this chapter, "mortgage" shall include a security interest in manufactured housing created and perfected as authorized by RSA 477:44, IV. A mortgagee shall include a holder of such a security interest.

3 Personal Property Lien; Manufactured Housing Removed. Amend RSA 454-C:3, II to read as follows:

II. Except as otherwise provided in RSA 454-C:7, and only as to federal[.] ***and*** state[.] ~~and manufactured housing~~ tax liens, whenever any such lien, or a full release of any such lien, is filed with a city or town clerk, the clerk shall within 2 business days transmit to the

secretary of state, by mail or other medium prescribed or authorized by the secretary of state, a copy of, or an electronic record of all information contained in, the notice of filing of lien or notice of full release of lien submitted by the person or agency filing the lien or release pursuant to RSA 454-C:2. The term "business day" as used in the preceding sentence shall mean a day on which the clerk's office is open for business. Only the notice itself or electronic record thereof shall be so transmitted, not the other lien documentation filed with the notice. The secretary of state within 3 business days of such receipt shall enter an image of the notice or the information contained therein in the index, and shall periodically transmit to each such clerk an acknowledgment of receipt of such notices or electronic records. Pursuant to the statutes providing for the filing of each type of lien listed in RSA 454-C:1, I, no such liens other than federal[;] **and** state[~~;, and manufactured housing~~] tax liens will be filed with city or town clerks subsequent to the effective date of this chapter.

4 Personal Property Lien Index; Transition Period; Manufactured Housing Removed. Amend RSA 454-C:7, IV to read as follows:

IV. Notwithstanding the provisions of RSA 454-C:3, whenever a full release of any pre-effective-date federal[;] **or** state[~~;, or manufactured housing~~] tax lien is filed with a town or city clerk, and (in the case of federal tax liens) a notice of filing of such lien or electronic record thereof has not previously been transmitted to the secretary of state pursuant to paragraph II, such clerk shall remove the lien being released from the file, and shall not forward the notice of full release to the secretary of state; and whenever a full release of any pre-effective-date lien of any type is filed with the secretary of state, and information regarding such lien has not previously been entered in the index pursuant to paragraph III, the secretary of state shall remove the lien being released from the file, and shall not enter an image of the notice of full release, or the information contained therein, in the index.

5 Secretary of State; Removal of Manufactured Tax Lien Index. The secretary of state shall remove from the consolidated lien index maintained pursuant to RSA 454-C:1 all information pertaining to manufactured housing tax liens filed and maintained prior to the repeal by this act of RSA 454-C:1, I(j). Such removal shall not be deemed to invalidate any such lien.

6 Uniform Commercial Code; General Definitions; Security Interest. Amend RSA 382-A:1-201(37) to read as follows:

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. Except as otherwise provided in Section 2-505, the right of a seller or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2-401) is limited in effect to a reservation of a "security interest". ***Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:***

(a) the original term of the lease is equal to or greater than the remaining economic life of the goods,

(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,

(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that

(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(c) the lessee has an option to renew the lease or to become the owner of the goods,

(d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection (37):

(x) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(y) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(z) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

A rent-to-own agreement, as defined in RSA 358-P:2, V, shall not create or be construed as a "security interest".

7 Repeal. RSA 454-C:1, I(j), relative to the index of manufactured housing tax liens, is repealed.

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

AMENDED ANALYSIS

This bill provides that manufactured housing shall be taxed and treated as real estate, and eliminates the separate manufactured housing tax lien system.

The bill makes a change to the definition of security interest in the uniform commercial code.

HB 545, requiring building contractors to disclose the name of any subcontractors involved in the project. **REFER FOR INTERIM STUDY**

Rep. Angeline A. Kopka for Commerce: The sponsor, the homebuilders' industry and the Attorney General's Office are all currently working on more appropriate language to solve

the problem regarding contractors. With this in mind, the committee felt it only prudent to recommend Interim Study. Vote 14-0.

HB 739-FN-A, relative to the medicaid provider reimbursement system; and business and enterprise tax deductions for employers that offer long term care policies; study of the nursing leveraged scholarship program; development of a plan to establish nursing programs at the community technical colleges; the information and referral network for elderly and chronically ill adults and making an appropriation therefor. **INEXPEDIENT TO LEGISLATE**

Rep. Randolph N. Holden for Commerce: Most of the issues in this bill were addressed in the budget and therefore it would be repetitive to pass again. As a result of this, the committee found this legislation unnecessary. Vote 12-0.

HB 759, relative to personal health and financial information privacy. **INEXPEDIENT TO LEGISLATE**

Rep. Paul D. Spiess for Commerce: The purpose of this bill is to extend the provisions of the Health Insurance Portability and Accountability Act (HIPAA) to insurance institutions defined under a different federal law known as Gramm, Leach, Bliley. Under HIPAA, health insurers are required to obtain affirmative authorization from consumers (“opt-in”) before disclosing certain personal health and financial information. Under Gramm, Leach, Bliley, the consumer must choose to “opt out” if they do not want information shared with non-affiliates of the institution. The committee believes that both of these acts are still in the implementation phase, and should be given time to evaluate their effectiveness. Further, the committee did not receive any direct testimony to indicate abuse or the need for preemptive action. The committee is very concerned that any state law that goes beyond these federal statutes could severely affect the price and availability of different health insurance products in New Hampshire. Passage of this bill would make New Hampshire an unattractive state to do business. Vote 11-1.

HB 774-FN, repealing exemptions to the consumer protection act. **REFER FOR INTERIM STUDY**

Rep. Anthony R. DiFruscia for Commerce: The committee recommends that this consumer reform bill be studied further. Extensive study is needed since all members are of the opinion that the law needs a re-examination in its entirety in order to bring it up to the 21st Century. Vote 12-0.

HB 815, relative to the duties of corporate directors and the procedure for shareholder inspection of records under the New Hampshire Business Corporation Act. **REFER FOR INTERIM STUDY**

Rep. Stephen B. Stepanek for Commerce: This bill would allow a shareholder, with as little as one share of stock, to initially bypass the court and request a company’s shareholder list through an administrative hearing at the Secretary of State’s Office. This bill would apply only to publicly traded companies incorporated in the State of New Hampshire. Due to the very small number of companies which would actually be subject to this bill, there are questions as to whether there are adequate safeguards to oversee the proper use of the list, and serious questions as to whether this procedure would truly expedite the process. Vote 13-1.

HB 832-FN, relative to the privacy of medical records. **INEXPEDIENT TO LEGISLATE**
Rep. Leo W. Fraser Jr. for Commerce: The committee recommends this bill be voted Inexpedient to Legislate for a number of reasons. The Health Insurance Portability and Accountability Act (HIPAA) just went into effect on April 14, 2003. All health care providers and health plans must comply with the HIPAA privacy rules. The provisions of HB 832 are

stricter than the HIPAA privacy rules. If this bill were adopted, this could impact health care costs in New Hampshire. Health care providers and health plans would have to set up two standards of compliance: state law and federal law. Compliance with a conflicting state privacy standard would be difficult to determine. HIPAA provides specific requirements for what is contained in an authorization form for release of health information. There is no need to duplicate or complicate New Hampshire compliance. In addition, this federal law has a specific and clear definition of marketing, while the definition of marketing in HB 832 is vague. Testimony before the committee did not reveal examples of misuse of medical information in New Hampshire, so the committee did not feel that New Hampshire's laws should be stricter than the federal regulations. Also, RSA 332:I does not need to be changed to include pharmacists because HIPAA covers pharmacists under its privacy rules. Should New Hampshire adopt its own version of privacy legislation which would be in conflict with HIPAA, this would result in undermining last year's legislation to entice more insurance companies and more health insurance options into New Hampshire. The committee was unanimous in the position that unless and until HIPAA has an opportunity to mature, any changes would be untimely and inappropriate. Vote 12-0.

SB 99, relative to high cost mortgage loans. **OUGHT TO PASS WITH AMENDMENT**
Rep. Paul D. Spiess for Commerce: This bill, as originally submitted, was intended to insert parts of the federal Home Ownership and Equity Protection Act (HOEPA) into New Hampshire statutes which regulate first and second mortgage loans. HOEPA sets limits on the rate of interest that can be charged on home equity loans. The committee amended the bill to adopt the provisions of the federal statute in its entirety, and to make a violation of HOEPA a violation of RSA 397 and RSA 398. Vote 11-0.

Amendment (2468h)

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

AN ACT relative to compliance with federal law in the making of first and second mortgage loans.

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

1 New Paragraph; Definitions; "HOEPA." Amend RSA 397-A:1 by inserting after paragraph III the following new paragraph:

III-a. "HOEPA" means the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. section 1639 et. seq., as amended.

2 New Paragraph; License Application; Requirements; HOEPA Compliance. Amend RSA 397-A:5 by inserting after paragraph IV the following new paragraph:

V. Licensees shall comply with the provisions of HOEPA at all times.

3 New Paragraph; Definitions; "HOEPA." Amend RSA 398-A:1 by inserting after paragraph III the following new paragraph:

III-a. "HOEPA" means the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. section 1639 et. seq., as amended.

4 Revocation; Violation of HOEPA. Amend RSA 398-A:1-b, I (a) to read as follows:

(a) Has violated any provisions of this chapter, [or] rules or orders thereunder, **or the provisions of HOEPA;**

5 Effective Date. This act shall take effect January 1, 2005.

AMENDED ANALYSIS

This bill requires first and second mortgage brokers to comply with the provisions of the Home Ownership and Equity Protection Act of 1994, 15 U.S. C. section 1639 et. seq., as amended.

HB 138-FN, relative to interpreters for the deaf in certain governmental or public proceedings. **REFER FOR INTERIM STUDY**

Rep. Alan B. Bemis for Criminal Justice and Public Safety: The committee feels that an interim study is needed because the parties involved cannot agree on this bill. Based on the

lack of agreement, the committee wants to be fair and continue the study. The issue of a 28-a mandate problem still exists in the bill. Vote 17-0.

HB 276-FN, relative to protective custody for intoxicated or incapacitated persons. **REFER FOR INTERIM STUDY**

Rep. Stephen H. Nedeau for Criminal Justice and Public Safety: There was discussion with the Department of Safety and others about there not being enough time to fully study this problem. We have requested more time and information. There is currently an ad hoc committee working within the law enforcement community to help resolve the issues and report back to the Criminal Justice and Public Safety Committee. Vote 18-0.

HB 355-FN, relative to the permissible fireworks review committee, the fireworks license fee, and the authority of the permissible fireworks inspector. **REFER FOR INTERIM STUDY**

Rep. Karl I. Gilbert for Criminal Justice and Public Safety: It was determined that this bill was very similar in content to HB 664-FN. Therefore, it was decided to refer it for interim study while working on HB 664-FN. Vote 16-0.

HB 403, requiring persons who are acquitted of certain sexual assaults by reason of insanity to register as sexual offenders. **OUGHT TO PASS WITH AMENDMENT**

Rep. William V. Knowles for Criminal Justice and Public Safety: This bill requires persons found not guilty of certain sexual offenses by reason of insanity to register as a criminal offender. RSA 651-B has been revised to accommodate this change. The previous statute required a conviction for registration. The new definition reads as follows: 651-B:1 VII "Required to Register" means that a sexual offender or offender against children was charged with an offense or an attempt to commit an offense listed in this chapter that resulted in one of the following outcomes: (a) conviction for the offense; or (b) a finding or not guilty by reason of insanity. RSA 651-B:7, VI (a) was amended to correct an error. The age difference should have been three years or less at the time of the offense, not more than three years, as written. Vote 18-0.

Amendment (2509h)

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

AN ACT requiring a person found not guilty of certain sexual offenses by reason of insanity to register as a criminal offender.

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

1 Registration of Criminal Offenders; Definitions. Amend the introductory paragraph to RSA 651-B:1, III to read as follows:

III. "Sexual offender" means a person who ~~[has been convicted]~~ **is required to register as a result** of any violation or attempted violation of:

2 Registration of Criminal Offenders; Definitions. Amend the introductory paragraph to RSA 651-B:1, V to read as follows

V. "Offender against children" means a person who ~~[has been convicted]~~ **is required to register as a result** of any violation or attempted violation of:

3 New Paragraph; Registration of Criminal Offenders; Definitions. Amend RSA 651-B:1 by inserting after paragraph VI the following new paragraph:

VII. "Required to register" means that a sexual offender or offender against children was charged with an offense or an attempt to commit an offense listed in this chapter that resulted in one of the following outcomes:

(a) Conviction for the offense; or

(b) A finding of not guilty by reason of insanity.

4 Registration of Criminal Offenders; Release of Certain Sexual Offenders into the Community. Amend RSA 651-B:3, I to read as follows:

I. Upon release of any sexual offender or offender against children ~~[after conviction]~~ **required to register**, whether on probation, parole, conditional or unconditional release, completion of sentence, **release from secure psychiatric care**, or for any other reason, the official in charge of such release shall notify the offender of the offender's duty to report under this chapter. The offender shall acknowledge in writing that he has received such notice. The official shall obtain the address at which the offender expects to reside upon release and shall report such address to the department. The department shall inform the local law enforcement agency where the offender expects to reside. The division shall enter the information concerning the offender's release and notification in the LENS system.

5 Registration of Criminal Offenders; Duty to Report. Amend RSA 651-B:4, I(a) to read as follows:

(a)(1) Any person required to be registered under this chapter shall report such person's current mailing address, place of residence or temporary domicile, and place of employment or schooling to the local law enforcement agency within 30 days after the person's release ~~[from custody following conviction]~~ **as required under RSA 651-B:3** or within 30 days after the person's date of establishment of residence in New Hampshire if ~~[convicted elsewhere]~~ **the person is required to register as a result of an offense committed in another jurisdiction**. Such report shall also be made annually within 30 days after each anniversary of the person's date of birth and additionally within 30 days after any change of address or place of residence.

6 Registration of Criminal Offenders; Duration of Registration. Amend RSA 651-B:6 to read as follows:

651-B:6 Duration of Registration.

I. Any sexual offender ~~[convicted]~~ **required to register as a result** of a violation or attempted violation of RSA 632-A:2, 632-A:3, or 645:1, III, and any offender against children ~~[convicted]~~ **required to register as a result** of a violation or attempted violation of RSA 169-B:41, II, 633:1, 633:2, 639:2, 639:3, III, 645:2, II, 649-A:3, I, 649-B:3, 649-B:4, or 650:2, II, or of an equivalent offense in an out-of-state jurisdiction, shall be registered for life.

II. Any sexual offender ~~[convicted]~~ **required to register as a result** of a violation or attempted violation of RSA 632-A:4~~[-I(a)]~~ or RSA 645:1, II, and any offender against children ~~[convicted]~~ **required to register as a result** of a violation or attempted violation of RSA 633:3 or 645:2, I, or of an equivalent offense in an out-of-state jurisdiction, shall be registered for a 10-year period from the date of release ~~[following conviction]~~, provided that any such registration period shall not run concurrently with any registration period resulting from a subsequent ~~[conviction]~~ **violation or attempted violation of an offense for which the person is required to register**.

III. Notwithstanding the provisions of paragraph II, any sexual offender or offender against children who ~~[has been convicted]~~ **is required to register as a result** of more than one offense listed in RSA 651-B:1, III or RSA 651-B:1, V, or who is sentenced to an extended term of imprisonment pursuant to RSA 651:6, I(b) shall be registered for life.

7 Registration of Criminal Offenders; Availability of Information to the Public. Amend RSA 651-B:7, II-III to read as follows:

II.(a) The division shall maintain a separate list of all individuals registered pursuant to this chapter who ~~[have been convicted]~~ **are required to register as a result** of any violation or attempted violation of one of the following offenses, or of any law of another state or the federal government reasonably equivalent to one of the following offenses:

- (1) RSA 632-A:2, I(l).
- (2) RSA 632-A:2, II-III.
- (3) RSA 632-A:3, II, provided that the age difference between the convicted individual and the victim was more than 3 years at the time of the offense.
- (4) RSA 632-A:3, III.
- (5) RSA 645:1, II-III.
- (6) Any offense described in RSA 651-B:1, V.

(b)(1) The list described in subparagraph (a) shall include:

(A) The name, address, and date of birth of the registered individual.

(B) The offense for which the individual ~~[was convicted]~~ **is required to register.**

(C) The date and court of the ~~[conviction]~~ **adjudication on the offense** for which the individual is registered.

(D) Outstanding arrest warrants, and the information listed in subparagraphs (b)(1)(A)-(C), for any sexual offender or offender against children who has not complied with the obligation to register under this chapter.

(E) A photograph or physical description of the individual, if available.

(2) Where such information is available, the list may also include:

(A) The date and court of the individual's other convictions, if any.

(B) Information on the profile of the victim or victims of the individual's offense or offenses.

(C) The method of approach utilized by the individual.

(3) In no event shall the list include the identity of any victim.

III. At periodic intervals, not less frequently than once each month, the commissioner of the department of corrections ~~[and]~~, the superintendent of each county department of corrections, **and the commissioner of the department of health and human services** shall forward to the division a statement identifying every offender who is confined in a facility under their control who ~~[has committed]~~ **is required to register as a result of** an offense described in subparagraph II(a), and who is eligible at that time for any unsupervised work detail, **release into the community following secure psychiatric care**, or other assignment which may bring the offender into contact with members of the public. These statements shall include the information set forth in subparagraphs II(b)(1)(A), (B), and (C), and may also include the information set forth in subparagraphs II(b)(2)(A)-(D). In no event shall the statements include the identity of any victim. These statements shall be incorporated by the division into the list maintained under paragraph II.

8 Registration of Criminal Offenders; Availability of Information. Amend RSA 651-B:7, VI (a) to read as follows:

VI.(a) Notwithstanding the provisions of this section, any individual required to be registered whose name and information is contained on the list described in subparagraph II(a) and who has been convicted of any violation or attempted violation of RSA 632-A:2, III or RSA 632-A:3, II, provided that the age difference between the convicted individual and the victim was ~~[more than]~~ 3 years **or less** at the time of the offense and the person has no prior convictions requiring registration under RSA 651-B:2, may file with the clerk of the superior court for the county in which the judgment was rendered an application for review of the public registration requirement contained in RSA 651-B:7. This application shall not be filed prior to the completion of all the terms and conditions of the sentence and in no case earlier than 10 years after the date of release following conviction. After review of the application, the court may schedule a hearing.

9 Registration of Criminal Offenders; Penalty. Amend RSA 651-B:9, I-III to read as follows:

I. A sexual offender or offender against children **who is required to register under this chapter and** who negligently fails to comply with the requirements of this chapter shall be guilty of a violation.

II. A sexual offender or offender against children **who is required to register under this chapter and** who knowingly fails to comply with the requirements of this chapter shall be guilty of a misdemeanor.

III. A sexual offender or offender against children previously convicted of a misdemeanor pursuant to paragraph II **who is required to register under this chapter and** who knowingly fails to comply with the requirements of this chapter shall be guilty of a class B felony.

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

AMENDED ANALYSIS

This bill clarifies the law regarding registration as a criminal offender and also requires a person found not guilty of committing certain sexual offenses by reason of insanity to register as a criminal offender.

HB 433, establishing a committee to study the feasibility of implementing the Second Chance drug rehabilitation program in the New Hampshire prison system. **INEXPEDIENT TO LEGISLATE**

Rep. John E. Tholl for Criminal Justice and Public Safety: This bill would establish a study committee to study the implementation of the Second Chance drug rehabilitation program in the New Hampshire prison system. The committee's unanimous vote of 18-0 reflects the belief that with all the present problems in the system and the lack of a sitting Commissioner, not to mention the funding problems, now is not the time to consider adding programs, especially in light of the Department of Corrections having to reduce and/or eliminate programs already in existence due to funding cuts. Vote 18-0.

HB 640-FN, relative to post-conviction DNA testing. **OUGHT TO PASS WITH AMENDMENT**

Rep. Stanley E. Stevens for Criminal Justice and Public Safety: This bill makes provision for a person in custody pursuant to a judgment of a court, or adjudication as a delinquent, to petition the court for forensic DNA testing of biological evidence. It sets forth the procedure to be followed in making a petition to the court and the factors that must be established. If the petition is granted, it sets forth the procedure under which the testing will be conducted. Finally, the bill addresses the preservation of biological material and a process to allow for the disposal of evidence after five years. Vote 18-0.

Amendment (2382h)

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

1 New Chapter; Post-Conviction DNA Testing. Amend RSA by inserting after chapter 651-C the following new chapter:

CHAPTER 651-D

POST-CONVICTION DNA TESTING

651-D:1 Definitions. In this chapter:

- I. "Department" means the department of safety.
- II. "Division" means the division of state police, department of safety.
- III. "DNA" means deoxyribonucleic acid.
- IV. "DNA sample" means a blood, tissue, or hair follicle sample provided by any person or submitted to the division for analysis or storage or both.
- V. "Investigating agency" means the law enforcement agency that investigated a case resulting in a conviction in which biological material was collected as evidence during the course of the investigation.

651-D:2 Post-Conviction DNA Testing of Biological Material.

I. A person in custody pursuant to the judgment of court may, at any time after conviction or adjudication as a delinquent, petition the court for forensic DNA testing of any biological material. The petition shall, under penalty of perjury:

(a) Explain why the identity of the petitioner was or should have been a significant issue during court proceedings.

(b) Explain why, in light of all the circumstances, the requested DNA testing will exonerate the petitioner and demonstrate his or her innocence by proving that the petitioner has been misidentified as the perpetrator of, or accomplice to, the crime for which the petitioner was convicted.

(c) Make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing which is sought.

(d) Explain why the evidence sought to be tested by the petitioner was not previously subjected to DNA testing, or explain how the evidence can be subjected to retesting with different DNA techniques that provide a reasonable probability of reliable and probative results.

II. The court shall notify the office of the attorney general, or the county attorney who prosecuted the case, of a petition made under this section and shall afford an opportunity to respond. Upon receiving notice of a petition made under this section, the attorney general, or county attorney who prosecuted the case, shall take such steps as are necessary to ensure that any remaining biological material obtained in connection with the case or investigation is preserved pending the completion of proceedings under this section.

III. The court may order DNA testing pursuant to an application made under this section upon finding that the petitioner has established each of the following factors by clear and convincing evidence:

(a) The evidence to be tested was secured in relation to the investigation or prosecution that resulted in the petitioner's conviction or sentence, and is available and in a condition that would permit the DNA testing that is requested in the motion.

(b) The evidence to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect.

(c) Identity was a significant issue in the proceeding that resulted in the petitioner's conviction or sentence, or the petitioner has presented clear and convincing evidence of mistaken identity in a motion for new trial or in a habeas corpus proceeding asserting ineffective assistance of counsel for failing to assert a defense of mistaken identity.

(d) The evidence sought to be tested is material to the issue of the petitioner's identity as the perpetrator of, or accomplice to, the crime.

(e) DNA results of the evidence sought to be tested would be material to the issue of the petitioner's identity as the perpetrator of or accomplice to, the crime that resulted in his or her conviction or sentence.

(f) If the requested DNA testing produces exculpatory results, the testing will constitute new, noncumulative material evidence that will exonerate the petitioner by establishing that he or she was misidentified as the perpetrator or accomplice to the crime.

(g) The evidence sought to be tested was not previously tested using DNA technology or the technology requested was not available at the time of trial.

(h) If DNA or other forensic testing previously was done in connection with the case, the requested DNA test would provide results that are significantly more discriminating and probative on a material issue of identity, and would have a reasonable probability of contradicting prior test results.

(i) The testing requested employs a method generally accepted within the relevant scientific community.

(j) The motion is timely and not unreasonably delayed.

IV. If the court grants the motion for DNA testing, the court's order shall:

(a) Identify the specific evidence to be tested and the DNA technology to be used.

(b) If the court ordered different testing than requested by the petitioner, the court shall explain why the different test was ordered.

(c) Designate New Hampshire state police forensic laboratory to conduct the test.

(d) Designate a laboratory accredited by the American Society of Crime Laboratories Directors Laboratory Accreditation Board (ASCLD/LAB), unless the petitioner and the attorney general or county attorney agree on the laboratory to conduct the test, if the New Hampshire state police forensic laboratory cannot conduct the DNA testing ordered by the court.

V. The cost of DNA testing ordered under this section shall be paid by the petitioner, or by the state, if the petitioner is indigent as determined by the court. The court may appoint counsel for an indigent petitioner under this section.

VI. (a) If the results of DNA testing conducted under this section are unfavorable to the petitioner, the court shall dismiss the application and in cases where the petitioner was convicted of a sexual offense, the court shall forward the test results to the New Hampshire state prison, sex offender program.

(b) In addition to any other substantive or procedural remedies provided by applicable law, if the results of DNA testing conducted under this section are favorable to the petitioner, the court shall order a hearing and shall enter any order that serves the interests of justice, including an order vacating and setting aside the judgment, discharging the petitioner if the petitioner is in custody, resentencing the petitioner, or granting a new trial.

VII. Nothing in this chapter shall be construed to limit the circumstances under which a person may obtain DNA testing or other post-conviction relief under any other provision of state or federal law.

651-D:3 Preservation of Biological Material for DNA Testing.

I. The investigating agency shall preserve any biological material obtained in connection with a criminal or delinquency investigation or prosecution for 5 years from the date of conviction or adjudication, or as long as any person connected with that case or investigation remains in custody, whichever is longer.

II. The investigating agency may, however, petition the court to destroy or otherwise dispose of biological material after 5 years even if a person connected with the case is still in custody. If the investigating agency petitions the court to destroy evidence before the person is released from custody, the investigating agency must serve a copy of the petition to destroy biological evidence on the person who remains in custody, any counsel of record, and the prosecuting agency. The investigating agency may destroy biological material after 90 days of filing a petition, unless the investigating agency receives:

(a) A court order preventing the destruction of biological evidence; or

(b) A motion to preserve biological evidence on the grounds that the person in custody intends to file a petition for post-conviction DNA testing pursuant to RSA 651-D:2 within 180 days of the motion to preserve.

651-D:4 DNA Testing and Analysis.

I. The DNA testing and analysis under this chapter shall be performed under the direction of the division, following procedures in conformance with the federal "DNA Identification Act of 1994". Identifying characteristics of the resulting DNA profile shall be stored and maintained by the division consistent with division policy.

II. The division shall prescribe procedures to be used in the collection, submission, identification, analysis, storage and disposition of DNA samples and all DNA information obtained pursuant to this chapter.

III. The division may contract with third parties for the purposes of this chapter. Any DNA sample sent to third parties for analysis shall be coded to maintain confidentiality concerning the donor of the sample.

IV. A certificate and the results of the analysis shall be admissible in any court as evidence of the facts stated in the analysis.

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

HB 664-FN, relative to the requirements for the sale of permissible fireworks and prohibiting the retail sale of certain fireworks. **OUGHT TO PASS WITH AMENDMENT**
Rep. Karl I. Gilbert for Criminal Justice and Public Safety: The committee felt that this bill was necessary to clarify the licensing process for vendors to sell fireworks that have been approved by the Fireworks Review Committee for use in the State of New Hampshire. This bill also established guidelines for the meeting of the Fireworks Review Committee. Vote

17-1.

Amendment (2519h)

Amend RSA 160-C:3, II-h as inserted by section 1 of the bill by replacing it with the following:

II-h. The commissioner shall not issue a license under this section unless the commissioner is satisfied that:

(a) The application is complete in all respects.

(b) The applicant, and any principal controlling owners, directors, natural persons who are members of any business entity, or officers disclosed pursuant to paragraphs II-f and II-g, are at least 21 years of age.

(c) In the case of corporate, limited liability company, or partnership applicants controlled by persons who do not reside in the United States, the proposed business would not be managed in a manner which would unduly hinder the commissioner from exercising the commissioner's regulatory responsibilities. Inaccessibility of relevant records or unresponsiveness to inquiries which result from foreign control shall be grounds for revoking or suspending a license which has already been granted.

Amend RSA 160-C:3 as inserted by section 1 of the bill by deleting RSA 160-C:3, II-i and II-j.

Amend RSA 160-C:3, III as inserted by section 1 of the bill by replacing it with the following:

III. The state license may be issued to an applicant who, at the time such license is issued, possesses a permit issued in accordance with the provisions of Title 18, United States Code, governing fireworks, and a permit issued pursuant to RSA 160-C:3, I. No license shall be issued for the sale of permissible fireworks unless the applicant establishes that it will locate its business in a permanent structure which meets all applicable fire safety codes, building codes, zoning codes, and the requirements of local ordinances. No license for the sale of permissible fireworks shall be issued to any person who has been convicted of any offense involving fireworks or explosives within the 2-years prior to the application or who has been found to have violated any fireworks or explosives laws, rules, or regulations within the 2 years prior to the application. No license shall be issued to any person under 21 years of age.

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

4 Permissible Fireworks Review Committee; Meetings. Amend RSA 160-C:13, II to read as follows:

II. The committee shall meet at least once per calendar year, prior to October 1, and 30 days prior to any testing and approval conducted pursuant to RSA 160-C:13, II, or earlier at the discretion of the chairperson, to ensure that testing and approval guidelines are finalized, safety preparations are complete, and issues relative to the division of labor are addressed. In addition, the committee shall meet at the request of 3 or more members of the committee.

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

AMENDED ANALYSIS

This bill:

I. Changes the requirements for obtaining a state license to sell permissible fireworks.

II. Prohibits the retail sale of firecrackers and bottle rockets.

III. Provides the commissioner of the department of safety with rulemaking authority relative to the licensing of persons responsible for the use of flame, pyrotechnics, or special effects before an audience.

IV. Changes the meeting requirements of the permissible fireworks review committee.

HB 715-FN, requiring persons found incompetent to stand trial to be placed in the secure psychiatric unit. **INEXPEDIENT TO LEGISLATE**

Rep. Stephen H. Nedeau for Criminal Justice and Public Safety: After discussion of this bill, the subcommittee felt that the present law, passed in 1999, is a good law. If the law was better used by the system, some of the issues we are facing today would disappear. The Chief Justice should be contacted to explain why the law is not used to its fullest. Vote 17-0.

HB 783-FN, relative to penalties for simple assault, reckless conduct, and unsworn falsification. **INEXPEDIENT TO LEGISLATE**

Rep. John E. Tholl for Criminal Justice and Public Safety: This bill was a multi-subject bill. The sponsor offered several changes to the current statute that he felt would narrow the law. He could only list one case where he felt the law was being misapplied. The committee felt that the changes that had been suggested were either already covered in current law or would make the statute virtually unenforceable. Vote 18-0.

HB 727-FN-L, revising the school administrative unit system. **OUGHT TO PASS WITH AMENDMENT**

Rep. Richard C. Leone for Education: This bill was completely amended to form a School Administrative Unit (SAU) legislative oversight committee to monitor all SAU issues. A subcommittee studied the issue extensively by interviewing several school board members, SAU personnel, special education directors, principals, consultants, and members of the general public. This was the thirteenth SAU study since 1962. SAUs have a life of their own. In fact, there has been a 25% increase in the number of SAUs in the last ten years. There is a need for continuous review. Vote 18-0.

Amendment (2501h)

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

AN ACT establishing a legislative oversight committee for the school administrative unit system.

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

1 New Sections; School Administrative Units; Legislative Oversight Committee. Amend RSA 194-C by inserting after section 10 the following new sections:

194-C:11 Legislative Oversight Committee. An oversight committee shall be established consisting of:

- I. The chairperson of the house education committee, or a designee.
- II. The chairperson of the senate education committee, or a designee.
- III. One member of the house of representatives, appointed by the speaker of the house of representatives.
- IV. One member of the senate, appointed by the senate president.
- V. One member of the house finance committee, appointed by the speaker of the house of representatives.
- VI. One member of the senate finance committee, appointed by the senate president.

194-C:12 Duties of the Legislative Oversight Committee. The oversight committee shall monitor the process of organization and withdrawal of school districts from school administrative units and shall oversee the general operation, creation, or dissolution of school administrative units. The committee shall submit an annual report to the speaker of the house of representatives, the president of the senate, and the state board of education summarizing its findings.

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

AMENDED ANALYSIS

This bill establishes a legislative oversight committee to oversee the school administrative unit system.

HB 119, relative to removing names from the checklist. **INEXPEDIENT TO LEGISLATE**

Rep. Howard C. Dickinson for Election Law: The committee strongly supports an ITL report

on this bill because it would require the supervisors of the checklist to remove names from the checklist based on “reliable documentary evidence”, but nowhere is this type of evidence defined. Vote 13-2.

HB 158, allowing the voter to deposit the ballot into the ballot box. **OUGHT TO PASS**

Rep. Harriet E. Cady for Election Law: Now that election machines are being used, the ease of the voter being able to put their own ballots in the machine, and voters’ resistance to having their ballots viewed, the committee felt this would eliminate any confrontation at the polls. Vote 11-4.

HB 235, relative to removal of political advertising. **INEXPEDIENT TO LEGISLATE**

Rep. Richard B. Drisko for Election Law: The intent of this bill was to amend RSA 664:17, which restricts placement of political advertising on public property, to provide additional clarification and strength. The committee felt that the existing statute was more than adequate. Both state law and local ordinances address in depth the issues proposed in this bill and further emphasis is not necessary, and possibly redundant. Vote 13-0.

HB 236, relative to recount application deadlines. **OUGHT TO PASS**

Rep. Harriet E. Cady for Election Law: This bill allows for additional time for a candidate to request a recount should the declaration of the election results not provide the candidate at least 48 hours to consider their request for a recount. Vote 14-0.

HB 395, relative to proof of qualifications for voter registration. **INEXPEDIENT TO LEGISLATE**

Rep. Harriet E. Cady for Election Law: The Help America Vote Act (HAVA) has provided for the forms of identification, and the committee believes there should not be conflict in federal election requirements and state requirements. Vote 15-0.

HB 583-FN, requiring training for election officials. **INEXPEDIENT TO LEGISLATE**

Rep. Mark S. Derby for Election Law: This legislation would mandate a new annual training program for all election officials. The Secretary of State’s Office and at least one city already have training programs in place, and it is believed that funds may be available through the federal Help America Vote Act of 2001 (HAVA) to expand and/or help finance these programs or other programs consistent with HAVA guidelines. In addition, the automatic disqualification provision could work hardships on election officials in smaller towns where it is sometimes difficult to recruit enough citizens to serve as election officials. Vote 15-0.

HB 775, establishing a New Hampshire presidential primary advisory commission. **REFER FOR INTERIM STUDY**

Rep. Howard C. Dickinson for Election Law: The committee unanimously supports Interim Study for HB 775 because we wish to further explore all means whereby New Hampshire can preserve its first-in-the-nation primary position. To kill HB 775, which sets up a New Hampshire Presidential Primary Advisory Commission, would send a mixed message to the rest of the country, and to pass the bill may limit our options. Vote 13-0.

HB 820-FN-L, relative to armed services and overseas voting. **INEXPEDIENT TO LEGISLATE**

Rep. Harriet E. Cady for Election Law: The Help America Vote Act of 2001 (HAVA) has not been implemented, and because some towns do not have facsimile machines or computers, the committee believes this proposal is an Article 28-a problem. Vote 14-0.

SB 215-FN, relative to the use of prerecorded telephone messages for political advocacy. **INEXPEDIENT TO LEGISLATE**

Rep. Richard B. Drisko for Election Law: The intent of this bill is to require full identification of candidate and financing source in prerecorded political messages within the first sixty seconds of the connection. The thrust of this bill was included in the report of the Committee of Conference on HB 332 last session, which was subsequently accepted by the House and the Senate. HB 332 required "certain identifying information accompany prerecorded political telephone messages". Vote 13-0.

HB 503, relative to septic system construction permits. **OUGHT TO PASS WITH AMENDMENT**

Rep. Burton W. Williams for Environment and Agriculture: This bill clarifies a current statute (RSA 485-A:5-b) and will aid in developing plans for additional in-state disposal capacity to handle existing and future septage volumes. Vote 12-0.

Amendment (2479h)

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

1 Purpose. The general court acknowledges that providing for the proper disposal of domestic septage at New Hampshire facilities is becoming increasingly difficult for septage haulers serving residents who continue to rely on septic systems. It is clear that additional in-state disposal capacity is needed to handle existing and future septage volumes. Further, the municipal responsibility provisions of RSA 485-A:5-b do not clearly articulate what is intended by the terms "shall provide, or assure access to" a department of environmental services approved facility. This act is intended to clarify terms of compliance, and to further restrict development that generates additional septage in those municipalities without a written agreement, by prohibiting the department from issuing new septic system permits.

2 Water Pollution and Waste Disposal; Municipal Responsibility for Septage. RSA 485-A:5-b is repealed and reenacted to read as follows:

485:5-b Municipal Responsibility.

I. Each municipality shall either provide, or assure access to, a department of environmental services approved septage facility or a department approved alternative option for its residents.

II. For the purposes of paragraph I, "provide, or assure access to" shall mean a written agreement with a recipient facility, or department approved alternative option, indicating that the recipient facility agrees to accept septage generated in that municipality. The municipality shall consider providing sufficient annual capacity equal to the number of households with septic multiplied by the average septic tank capacity of 1000 gallons divided by the average septage pump out frequency of 5 years.

III. The department of environmental services shall be prohibited from issuing new septic system construction permits in a municipality after July 1, 2010, until the municipality is in compliance with this section.

3 Report. The commissioner of the department of environmental services shall report to the legislature on the current compliance status of all municipalities under the revised terms of RSA 485-A:5-b, on or before July 1, 2006 and July 1 each year thereafter through 2010.

4 Effective Date.

I. RSA 485-A:5-b, II as inserted by section 2 of this act shall take effect January 1, 2006.

II. The remainder of this act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill clarifies a definition, and prohibits the department of environmental services from issuing new septic system construction permits to any municipality not in compliance after July 1, 2010.

HB 154-FN, establishing a department of financial services. **INEXPEDIENT TO LEGISLATE**

Rep. Nelson S. Allan for Executive Departments and Administration: This bill would establish a commission to recommend legislation allowing the merger of the banking and insurance departments into a department of financial services. This bill duplicates the governor's commission to assess the operating efficiency of state government (HB 171) and is unnecessary. Vote 13-0.

HB 170, relative to the notice of proposed rulemaking under the administrative procedure act. **INEXPEDIENT TO LEGISLATE**

Rep. Nelson S. Allan for Executive Departments and Administration: This bill expands the scope of the fiscal impact statement provided in the notice of proposed rulemaking. The committee felt that the current law (RSA 541-A:3, I and 541-A:6, I(j)) adequately provides fiscal data to law makers to help prevent unfunded mandates. Other revisions to administrative rulemaking will be incorporated through the HB 230 study committee. Vote 13-0.

HB 341, relative to performance budgeting of state programs and agencies. **REFER TO COMMITTEE FOR INTERIM STUDY**

Rep. Michael O'Neil for Executive Departments and Administration: The committee felt strongly that more information is needed to evaluate performance based budgeting for state programs and agencies. Vote 18-0.

HB 473, relative to the board of mental health practice. **INEXPEDIENT TO LEGISLATE**

Rep. Michael O'Neil for Executive Departments and Administration: This bill would make changes to the membership, duties and procedures of the board of mental health practice. The committee was made aware that the legislative performance audit committee has requested a performance audit of the board. In light of this action, the committee believed any legislation should be postponed pending the audit. Vote 13-0.

HB 479-FN, directing the department of administrative services to develop a plan for implementing an electronic purchasing system for the state. **INEXPEDIENT TO LEGISLATE**

Rep. Nelson S. Allan for Executive Departments and Administration: This bill directs the department of administrative services to plan an electronic purchasing system for the state. After discussion with the Commissioner of Administrative Services, it was pointed out that this subject is currently under consideration by his department. Therefore, there is no need for this legislation. Vote 13-0.

HB 511, requiring New Hampshire Hospital security officers to be full-time certified police officers. **OUGHT TO PASS WITH AMENDMENT**

Rep. William R. Zolla for Executive Departments and Administration: RSA 135:41 establishes the hospital security force under the superintendent of the hospital. This bill would require that the security force be certified as full time police officers. The hospital grounds have undergone and are undergoing a metamorphosis as more and more state agencies are located on that property in addition to the hospital. The need for expanded policing and security are needed to accommodate this expansion. Because the property is state owned, the committee felt that it should be the responsibility of the Department of Safety to oversee the security functions. The amendment to this bill transfers the responsibility for a security force from the hospital superintendent to the Department of Safety whereby appropriate certifications with the attendant police powers required could properly accommodate both past and future expansion. Vote 18-0.

Amendment (2402h)

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

AN ACT transferring authority over the New Hampshire hospital security force to the department of safety.

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

1 Hospital Security Force. Amend RSA 135:41 to read as follows:

135:41 Hospital Security Force. The ~~[superintendent of the New Hampshire hospital]~~ **commissioner of safety** is authorized to organize a hospital security force for the purpose of patrolling the hospital's buildings, roads, and grounds of the campus of the state office park south and providing for general security on the campus. The hospital security force shall be under the immediate control of and responsible to the ~~[superintendent of the hospital]~~ **commissioner of safety**.

2 Authority. Amend the introductory paragraph of RSA 135:42 to read as follows:

135:42 Authority. All security officers of the hospital security force shall ~~[be ex-officio constables and shall]~~ possess general police powers including the power of arrest, but such powers shall extend only to the campus of the state office park south and only to the period during which such members are on official active duty. The only 2 instances where the authority of members of the hospital security force shall extend beyond the campus of the state office park south are:

3 Qualifications and Training. RSA 135:43 is repealed and reenacted to read as follows:

135:43 Qualifications and Training. The commissioner of safety shall adopt rules, pursuant to RSA 541-A, establishing qualifications and requirements for police training for New Hampshire hospital security officers.

4 New Subparagraph; Department of Safety; Rulemaking. Amend RSA 21-P:14, II by inserting after subparagraph (dd) the following new subparagraph:

(ee) Qualifications and police training requirements for New Hampshire hospital security officers under RSA 135:43.

5 Effective Date. This act shall take effect January 1, 2005.

AMENDED ANALYSIS

This bill transfers authority over the New Hampshire hospital security force from the department of health and human services to the department of safety.
Referred to Finance.

HB 651-FN, relative to portability of retirement plan funds into the New Hampshire retirement system and the purchase of prior service. **OUGHT TO PASS WITH AMENDMENT**

Rep. William R. Zolla for Executive Departments and Administration: The committee felt that this approach would place a severe liability on the system already under pressure from several years of adverse market conditions. The original bill was amended to set up a procedure for ultra vires or unapproved legislative plans to enter the system under specific guidelines that are in consonance with the IRS Regulations thus protecting the tax-exempt status of the system. In addition, the amendment repeals RSA 100-A:16, I(c) relative to additional contribution by or on behalf of a member in an attempt to further reduce the liabilities of the system thus protecting the longevity of the system. Vote 13-0.

Amendment (2375h)

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

AN ACT relative to the purchase of prior service credit by certain political subdivision employee members, and repealing certain provisions permitting additional contributions.
Amend the bill by replacing all after the enacting clause with the following:

1 Retirement System; Political Subdivision Employees; Purchase of Certain Prior Service Credit. Amend RSA 100-A:28 to read as follows:

100-A:28 Limitation on Membership. This retirement system and the provisions hereof shall not apply to any person benefited by or entitled to participate under any other provisions of law which provides wholly or in part at the expense of the state or any other

employer, for retirement benefits for employees, teachers, permanent policemen, and permanent firemen employed by the state or such other employer, their widows or other dependents, with respect to the same period of service for which they are eligible for benefits under the terms of this chapter. The provisions of this section shall not apply to any person participating in, or receiving or eligible to receive benefits under the old-age and survivors insurance provisions of Title II of the federal Social Security Act, as amended or under a retirement arrangement federally tax-qualified under sections 403(b) or 457 of the United States Internal Revenue Code of 1986, as amended. ***The provisions of this section shall not apply with respect to the purchase of prior service credit under RSA 100-A:3, VI by any person who had participated in or deemed eligible to receive benefits under a retirement arrangement funded, wholly or in part, by contributions from a political subdivision of the state, or an agency or instrumentality of a political subdivision of the state; provided, that such arrangement shall first be terminated in full, but in no event later than December 31, 2004; and, further provided, that the benefits thereunder shall be distributed in their entirety to eligible participants and beneficiaries in accordance with the terms and conditions of such terminated retirement arrangement.***

2 Repeal. RSA 100-A:16, I(c), relative to additional contributions by or on behalf of a member, is repealed.

3 Effective Date.

I. Section 2 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect July 1, 2004.

AMENDED ANALYSIS

This bill allows certain political subdivision employee members of the retirement system to purchase prior service credit where the member participated in a local retirement plan. The bill also repeals the provisions for making additional contributions for the benefit of a member's retirement allowance.
Referred to Finance.

HB 686-FN, relative to health insurance provided through the state. **INEXPEDIENT TO LEGISLATE**

Rep. Maurice L. Pilotte for Executive Departments and Administration: The purpose of this bill was to allow interested citizens to purchase health insurance through the state health plan. There was little interest expressed from the public for such a program. Vote 13-0.

HB 704-FN, relative to the retirement system classification for the director of field services, department of corrections. **INEXPEDIENT TO LEGISLATE**

Rep. William R. Zolla for Executive Departments and Administration: Testimony by the current Director of Field Services stated that prior to this job, he was a probation officer in the group II retirement group. When he was offered the position, he knew that he would be giving up his group II retirement status. However, the position offered a substantial salary increase at a group I retirement status. This individual knowingly made the decision to take the position. Then, having second thoughts about his retirement status, he has come to the legislature. The committee felt that this was an "individual" bill and under current law this individual would qualify for split benefits. Therefore, it would be imprudent to pass legislation for one individual who freely made a decision to take the position at a higher salary with group I retirement. Vote 13-0.

HB 712-FN, relative to long-term care. **OUGHT TO PASS WITH AMENDMENT**

Rep. Peter F. Bergin for Executive Departments and Administration: The original bill required the Department of Health and Human Services to develop a computer based system for managing, overseeing and collecting uniform data regarding the medicaid waiver program. Also, the bill required the department to publish an annual report on the

availability of, need for, and quality of long term care service in each county of the state. In addition, the bill required the Department of Insurance to create an annual consumer guide regarding long term care insurance in New Hampshire. The committee found that presently data is not available to assess the availability of long-term care in each county of the state. As a result, this bill will establish a committee to study methods of improving data collection and services delivery relative to home and community based long-term care services. It will also study the need of a consumer guide on long term care insurance. Vote 17-1.

Amendment (2400h)

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

AN ACT: establishing a committee to study methods of improving data collection and service delivery relative to home and community-based long-term care services.

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

1 Committee Established. There is established a committee to study methods of improving data collection and service delivery relative to home and community-based long-term care services.

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.

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

II. The committee shall solicit input from representatives of organizations, including but not limited to:

(a) The New Hampshire Institute for Health Policy and Practice at the university of New Hampshire.

(b) County human services departments.

(c) The Community Services Council of New Hampshire.

(d) The division of elderly and adult services, department of health and human services.

(e) The office of state planning and energy programs.

(f) Providers of services for the Home and Community-Based Care for the Elderly and Chronically Ill program (HCBC-ECI).

(g) The department of insurance.

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

3 Duties. The committee shall:

I. Study computer-based case management systems and costs related to implementation of such systems.

II. Identify gaps in service in various regions across the state and how to track such gaps.

III. Review the findings of the committee to study the development of home and community-based long-term supports for the elderly and adults with disabilities (2002, 55), and consider its recommendations for future legislation.

IV. Develop strategies for ensuring that the appropriate providers are aware of the provisions of RSA 151-E:7, pertaining to needs assessments for applicants for nursing facility services, and that clients are provided such assessments, and information and assistance, as set forth in RSA 151-E:9 prior to entering nursing homes.

V. Identify the cost data that would be most useful and meaningful and determine the most appropriate method for obtaining such data, including the basis for each cost, from providers for the Home and Community-Based Care for the Elderly and Chronically Ill Program to assist the state in adopting reimbursement rates that would support appropriate levels of staffing.

VI. Review the need for a consumer guide on long-term care insurance and the type of information that should be included in such a guide. Information considered for publication in a consumer guide shall include, but shall not be limited to: a list of all of the companies that sell long-term care insurance in the state, and the number of complaints and valid complaints filed against each company relative to its long-term care products. If it is determined that a consumer guide should be published, the committee shall determine the appropriate agency to develop, publish, and disseminate such guide.

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

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2004.

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

AMENDED ANALYSIS

This bill establishes a committee to study methods of improving data collection and service delivery relative to home and community-based long-term care services.

HB 781-FN-A, establishing the office of corrections ombudsmen. OUGHT TO PASS WITH AMENDMENT

Rep. Anne Marie Irwin for Executive Departments and Administration: The purpose of this bill is to establish the position of corrections ombudsman. The ombudsman will be an autonomous unclassified employee who will conduct independent investigations of complaints filed by employees and inmates of the Department of Corrections, as well as the general public. The ombudsman will submit reports to the governor and appropriate policy committee's chairmen. This bill was crafted at the request of the study committee established in 2001, and was worked on jointly with the house criminal justice and public safety committee. The position will be administratively attached to the Department of Administrative Services and will take effect July 1, 2005, unless grant funded in advance. \$75,000 is appropriated in FY 2006 for purposes of hiring clerical staff, and purchasing supplies. Vote 18-0.

Amendment (2415h)

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

1 New Subdivision; Office of Corrections Ombudsman. Amend RSA 21-H by inserting after section 15 the following new subdivision:

Office of Corrections Ombudsman

21-H:16 Purpose. The position of corrections ombudsman is established to provide for an autonomous unclassified employee to conduct independent investigations of complaints filed by employees and inmates of the department of corrections.

21-H:17 Office of Corrections Ombudsman Established; Qualifications.

I. There is hereby established the office of corrections ombudsman which shall be administratively attached to the department of administrative services pursuant to RSA 21-G:10. The primary office shall not be physically located at any department of corrections site.

II. The principal executive officer of the office shall be the corrections ombudsman who shall be appointed by the governor with the consent of the council for a term of 5 years. The ombudsman may be re-appointed to serve additional terms. The governor and council may remove the ombudsman only as provided by RSA 4:1.

III. The corrections ombudsman shall be a person of recognized knowledge, judgment, objectivity, and integrity, and shall be qualified to hold the position by reason of

education and experience. This may include advanced education in criminal justice, law, or other relevant areas, or experience in security and investigations in the military, corrections, or law enforcement.

IV. The salary of the corrections ombudsman shall be as specified in RSA 94:1-a.

21-H:18 Duties of the Corrections Ombudsman. The corrections ombudsman shall be responsible for:

I. Receiving, investigating, and referring complaints or problems received from inmates of the department of corrections, employees of the department of corrections, members of the general court, and the general public.

II. Upon the corrections ombudsman's own initiative, investigating allegations of harassment and issues related to inmate health or safety.

III. Investigating acts or omissions of department of corrections personnel acting in an official capacity including their compliance with policies and procedures directives adopted by the department.

21-H:19 Staff. The ombudsman shall be authorized to hire clerical support staff necessary for the office to carry out its functions.

21-H:20 Access to Information. Upon request, the corrections ombudsman shall have access to all information, records, and documents in the possession of the department of corrections which the ombudsman deems necessary to conduct the investigation. The department shall assist the ombudsman in obtaining the necessary releases of those documents which are restricted or privileged under law. Upon request, the ombudsman shall be granted entrance to inspect at any time any premises under the control of the department of corrections.

21-H:21 Investigative Process.

I.(a) Upon receiving a complaint from an inmate, department of corrections personnel, a member of the general court, or the general public, and deciding to investigate the complaint, the ombudsman shall notify the complainant and the department of corrections of the existence of the complaint. If the ombudsman declines to investigate, the ombudsman shall notify the complainant in writing of the reasons for the decision. In any case, the ombudsman shall advise a complainant to pursue all administrative remedies available to the complainant prior to the ombudsman beginning an investigation. An ombudsman may commence an investigation prior to the completion of the administrative remedy process.

(b) In the case of sexual harassment or sexual assault cases, a copy of the initial complaint filed with the department shall be forwarded by the department to the ombudsman immediately upon its filing providing that the complainant agrees. The ombudsman shall not be obliged to act upon that initial complaint, but shall retain a copy of such complaint on file at least until the matter is finalized.

(c) The ombudsman may utilize any resources deemed appropriate during the course of the investigation of a complaint.

II. (a) Any written correspondence from the complainant to the ombudsman, and any written correspondence from the ombudsman to the complainant shall be delivered immediately and unopened.

(b) The ombudsman shall maintain confidentiality with respect to all matters under investigation including the identity of the complainant and respondent, and any persons from whom information related to the investigation is acquired, except as necessary in performing the duties of the office.

III. Upon conclusion of an investigation the ombudsman may:

(a) Make recommendations to the department of corrections regarding action to be taken.

(b) Refer the case to the county attorney, attorney general, or to the human resources office of the department of corrections, as the ombudsman deems appropriate.

(c) Notify the legislature concerning desirable statutory changes.

IV. Investigative proceedings conducted by the ombudsman shall not be considered public proceedings under RSA 91-A:1-a, and any associated minutes or records shall not be considered public records under RSA 91-A:4.

V. The ombudsman may publish conclusions, recommendations and suggestions and transmit them to the governor, or to the legislature or any of its committees.

21-H:22 Immunity. No civil action or proceeding shall be commenced against the ombudsman for any act or omission performed pursuant to the provisions of this chapter unless the act or omission is actuated by malice or is grossly negligent, nor shall the ombudsman be compelled to testify in any court or state agency proceeding with respect to any matter involving the exercise of the ombudsman's official duties except as may be necessary to enforce the provisions of this chapter.

21-H:23 Annual Report. The ombudsman shall annually submit a written report summarizing the investigative activities conducted by the office of the ombudsman during that year. Such report shall include any recommendations for legislative action and shall be submitted to the governor and the chairpersons of the policy committees in the house and senate with jurisdiction over the department.

2 Compensation of State Officers; Corrections Ombudsman. Amend RSA 94:1-a, I(b) by inserting in Grade EE the following:

EE Department of corrections ombudsman

3 New Paragraph; Access to Public Records and Meetings; Exemption. Amend RSA 91-A:5 by inserting after paragraph VI the following new paragraph:

VII. Records of investigative proceedings conducted by the office of corrections ombudsman.

4 Appropriation. There is hereby appropriated the sum of \$75,000, for the fiscal year ending June 30, 2006, to the office of corrections ombudsman for the purposes of funding the costs of hiring part-time clerical staff, and purchasing office equipment and supplies necessary for the operation of the office. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

5 Applicability; Availability of Federal Funds. This act shall take effect July 1, 2005, or on the date that the commissioner of the department of administrative services certifies to the secretary of state and the director of the office of legislative services that federal funds sufficient to implement this act are available, whichever is earlier.

6 Effective Date.

I. Sections 1-4 of this act shall take effect as provided in section 5 of this act.

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

AMENDED ANALYSIS

This bill establishes the office of corrections ombudsman which shall be administratively attached to the department of administrative services and includes a \$75,000 appropriation for the fiscal year ending June 30, 2006.

This bill is a request of the study committee established in 2001, 217 (HB361).
Referred to Finance.

SB 128-FN, transferring the bureau of vital records and health statistics from the department of health and human services to the department of state. **OUGHT TO PASS WITH AMENDMENT**

Rep. Maurice L. Pilotte for Executive Departments and Administration: The provisions of this bill was adopted in HB 4 on September 4, 2003. Three oversights subsequently were identified. 1. RSA Section 5-C:24,I established an advisory committee to assist the secretary of state in administering the vital records improvement fund. The list of members of the committee failed to include the secretary of state or designee. 2. RSA Section 5-C:24,II had not established the length of term of the chairperson. 3. RSA 5-C:24,II limited the terms of all members of the advisory committee. This amendment limits the terms of appointed members only. The term limits shall not apply to ex officio members of the advisory

committee, i.e. (a) the director of the division of information technology management, department of administrative services, or designee, (b) the state archivist, or designee, (c) the commissioner of health and human services, or designee, (d) the secretary of state or designee. Vote 13-0.

Amendment (2377h)

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

AN ACT relative to the advisory committee assisting the secretary of state in administering the vital records improvement fund.

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

1 New Subparagraph; Advisory Committee, Member Added. Amend RSA 5-C:24, I by inserting after subparagraph (l) the following new subparagraph:

(m) The secretary of state, or designee.

2 Advisory Committee; Terms of Members. Amend RSA 5-C:24, II to read as follows:

II. The members of the committee shall choose a chairperson by majority vote. ***The chairperson shall serve for a term of one year, but may be reconfirmed by majority vote for as long as the chairperson remains a member.*** Members of the advisory committee shall serve 2-year terms and no ***appointed*** member shall serve more than 2 consecutive terms. The city and town clerk members shall serve staggered terms [~~and initially one town clerk and one city clerk shall serve for 2 years and one town clerk and one city clerk shall serve for 3 years~~].

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

AMENDED ANALYSIS

This bill adds a member to the advisory committee assisting the secretary of state in administering the vital records improvement fund. The bill also clarifies the terms of the members of the advisory committee.

HB 274-A, making an appropriation for the restoration of the White Island Light Station. **INEXPEDIENT TO LEGISLATE**

Rep. Joseph E. Stone for Finance: The committee was informed that Department of Resources and Economic Development, through the Conservation Plate Fund, will be able to match the dollar-for-dollar requirement of the \$250,000 federal "Save our Treasures" grant. As a result there is no need to appropriate the additional \$125,000 requested in the bill by DRED for the repair of the White Island Light Station. Vote 21-0.

HB 643-FN, relative to establishing the family division of the courts statewide. **OUGHT TO PASS WITH AMENDMENT**

Rep. MaryAnn N. Blanchard for Finance: The amendment clarifies the legislature's intent to support a family division of the judicial branch. This bill makes the Rockingham and Grafton divisions permanent and asks the Task Force on Family Law to recommend further expansion of the family division. Vote 18-0.

Amendment (2539h)

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

AN ACT relative to the family division of the courts.

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

1 Intent. It is the intent of the general court that a family division of the courts be implemented statewide in a manner which most expeditiously achieves the goal of providing enhanced services to parties involved in cases relating to divorce, custody, children, domestic violence, and other family law matters. The general court finds that this area of law requires the skills and attention of experienced and committed individuals who are dedicated to serving families and to the appropriate, timely resolution of family law cases in a manner which best services the public interest. The goals of the family division are the respectful

treatment of all citizens by justices, marital masters and other family division staff, the prompt and fair resolution of family issues by justices and marital masters specially selected and trained to deal effectively with such issues, the use of alternative dispute resolution to reduce the adversarial nature of proceedings involving families, and the assignment of all family matters of a single family to one family division justice or marital master located in a family division that is geographically accessible to the family.

2 New Subdivision; Family Division Established. Amend RSA 490 by inserting after section 32 the following new subdivision:

Family Division

490:33 Family Division. The family division of the courts operating in Rockingham and Grafton counties, pursuant to 1995, 152, shall become a permanent component of the judicial branch on the effective date of this subdivision.

490:34 Jurisdiction. Notwithstanding any law to the contrary, for Grafton county and Rockingham county, jurisdiction over the following matters shall be exclusively exercised through the family division as jurisdiction was previously exercised in the superior, district, and probate courts:

- I. Petitions and libels of divorce, and petitions of nullity of marriage, alimony, custody of children, support, and to establish paternity.
- II. Actions for support or custody for children of unwed parties.
- III. Actions under RSA 169-B, relating to delinquent children.
- IV. Actions under RSA 169-C, relating to abused and neglected children.
- V. Actions under RSA 169-D, relating to children in need of services.
- VI. Actions under RSA 173-B, relating to protection of persons from domestic violence except for concurrent jurisdiction with the superior and district courts to enter temporary protective orders under RSA 173-B:6.
- VII. The adoption of children.
- VIII. The guardianship of the person of minors.
- IX. The termination of parental rights.
- X. The change of names of persons who apply therefor in matters relating to jurisdiction in paragraphs I-IX.

490:35 Equity. Notwithstanding any law to the contrary, the family divisions in Grafton county and Rockingham county shall have the powers of courts of equity in cases where subject matter jurisdiction lies with the family division. Suits in equity where subject matter jurisdiction lies with the family division including, but not limited to, petitions and libels of divorce, and petition of nullity of marriage, alimony, custody of children, support, and other similar proceedings may be heard upon oral testimony or depositions, or both, or when both parties consent, or service having been made and a notice of the time and place of the hearing having been given, when both parties appear. Such suits may be heard by any justice of the family division at any time, but nothing contained in this section shall be construed as limiting the power of the family division to have issues of fact framed and tried by a jury, according to the rules in equity, or the course of such proceedings at common law.

3 New Subparagraph; Duty Added. Amend 2002, 250:2, II by inserting after subparagraph (c) the following new subparagraph:

(d) Recommendations for expanding the family division of the courts. In developing its recommendations, the task force shall consider the recommendations in the Report of the Resolution of Family Issues in the Courts Study Committee, dated January 15, 1995. The task force shall also consider any more recent studies and reports on the family division, including recommendations made by any commission established to study the operations of the family division in Grafton county.

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

AMENDED ANALYSIS

This bill makes the family division of the courts currently operating as a pilot program in Grafton and Rockingham counties a permanent component of the judicial branch.

The bill also requires the task force on family law to study and make recommendations on expanding the family division statewide.

HB 649-FN-A, establishing a building permit surcharge to fund regional planning initiatives. **INEXPEDIENT TO LEGISLATE**

Rep. Eric Anderson for Finance: This bill proposes enhanced funding to support UNH's GRANIT system (Geographically Referenced Analysis and Information Transfer) and additional resources for regional planning commissions. Due to major organizational changes ongoing at the Office of State Planning and a flawed funding mechanism, it was not feasible to move these initiatives forward at this time. Vote 18-2.

HB 746-FN-A, revising the property tax relief program. **INEXPEDIENT TO LEGISLATE**

Rep. Frederick W. King for Finance: The committee felt that it is inappropriate to modify the property tax relief program since the most recent modifications are only one-year old and fiscal impacts are still under review. The plan will need to be reviewed again when the total effect has been determined. Vote 21-0.

HB 785-FN, requiring the commissioner of the department of education to establish a public school choice initiative. **REFER FOR INTERIM STUDY**

Rep. Robert K. Dodge for Finance: The committee agreed that the Fiscal Note contained a lot of assumptions and this bill requires a lot of work to proceed with a viable initiative. We feel that to attain this goal we should work with the Education Committee to further study this legislation. Vote 14-5.

SB 132-FN-A, extending the Parents as Teachers program in Sullivan county and making an appropriation therefor. **INEXPEDIENT TO LEGISLATE**

Rep. Daniel A. Eaton for Finance: The committee supports the content of this bill and was pleased that it was included in other legislation passed last session. As a result, this bill is unnecessary. Vote 19-0.

HB 329-FN, establishing a pilot program for the introduction of Grass Carp into Flints Pond in the town of Hollis. **INEXPEDIENT TO LEGISLATE**

Rep. Peter R. Goyette for Fish and Game: This bill, while well intentioned, proposes to introduce an exotic species to control weeds in Flints Pond. There is no conclusive evidence that these carp will eliminate the milfoil and testimony on the adverse effects to state waterways if the carp ever escape made it a risky experiment at best. Vote 15-0.

HB 440, relative to the discharge of firearms on or across highways in pursuit of wild birds or animals. **OUGHT TO PASS WITH AMENDMENT**

Rep. David S. Woodward for Fish and Game: The bill amends present law to clearly define parameters while hunting in the vicinity of public highways. In addition to firearms, it also includes the discharge of a bow and arrow or crossbow and bolt. Vote 16-0.

Amendment (2513h)

Amend RSA 207:3-c as inserted by section 1 of the bill by replacing it with the following:

207:3-c Use of Firearms in or Across Highway Prohibited. No person shall discharge a firearm in pursuit of wild birds or wild animals from ***within 15 feet of the traveled portion of*** or across any class I through V public highway of the state ~~[including the rights of way thereof]~~ ***or 15 feet from the public right-of-way, whichever is closer to the traveled portion of said highway.*** This section shall not apply to those persons holding a special permit pursuant to RSA 207:7-a. Any person convicted of discharging a firearm under the provisions of this section shall be guilty of a violation. ***For purposes of this***

section, "traveled portion" means the portion of public highway normally used by vehicular traffic.

HB 465, relative to the rulemaking authority of the department of health and human services and relative to licensing rules for health facilities. **OUGHT TO PASS WITH AMENDMENT**

Rep. Janeen A. Dalrymple for Health, Human Services and Elderly Affairs: This bill, as amended, is in response to the concerns of administrators of several health care facilities who found omnibus administrative rules - one set of regulations for many types of facilities - to be burdensome and even inappropriate in some instances. To correct this problem, the intent of this bill is that each of the several health facilities listed in statute, Chapter 151, have their own separate set of administrative rules based on the care setting. In addition, those facilities listed under the same statute that have overnight beds must have rules that take into consideration acuity level and facility size. The Department of Health and Human Services will be required to address certain criteria which must be met in writing administrative rules for health care facilities: the criteria are listed under Section 2, IX (a) and (b). The department will be required to write rules separately for each type of health facility. The committee felt that as we move the healthcare system into the future, the "one size fits all" mentality of rules and regulations to be cumbersome and inappropriate in many instances and is not in the best interests of the healthcare system and the general public. This amended bill focuses on bringing the systems rules up to date without sacrificing safety issues necessary for the protection of the public. Vote 11-0.

Amendment (2378h)

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

1 Health Care Facilities; Rulemaking. Amend the introductory paragraph of RSA 151:9, I to read as follows:

I. The commissioner of the department of health and human services shall adopt ~~[rules, pursuant to RSA 541-A]~~ ***a separate set of rules under RSA 541-A, for each classification of health facility based on the care setting and also taking into consideration acuity levels and facility size for those facilities with overnight beds,*** relative to:

2 New Paragraph; Rulemaking; Analysis Required. Amend RSA 151:9 by inserting after paragraph VIII the following new paragraph:

IX.(a) When adopting, readopting, or amending rules relative to health facilities, the commissioner of health and human services shall address the following criteria and shall ensure that all criteria are met:

(1) The number of rules and regulations shall be kept at the minimum level necessary to adequately protect the health and safety of consumers.

(2) Rules shall be appropriate to the setting in which services are delivered and the size of the provider delivering services.

(3) Rules shall strike an appropriate balance between the protection afforded and the cost to implement, considering the cost to both the state and the provider.

(b) Any rule that fails to meet the criteria established in subparagraphs (a)(1)-(3) shall be considered to exceed the statutory authority of the agency, be contrary to legislative intent, and be contrary to public interest, and shall be null and void.

3 Home Health Care Providers; Rulemaking. Amend the introductory paragraph of RSA 151:9-a to read as follows:

151:9-a Rules for Home Health Care Providers. The commissioner of the department of health and human services shall adopt rules~~[pursuant to RSA 541-A]~~ ***under RSA 541-A,*** relative to the licensing of home health care providers ***that are separate from rules relative to other health facilities.*** Such rules shall be subject to the requirements of RSA 151:9, II-V ***and RSA 151:9, IX*** and shall include the following:

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

AMENDED ANALYSIS

This bill clarifies the rulemaking authority of the department of health and human services for health care facilities.

HB 784-FN-L, relative to long-term care services. **INEXPEDIENT TO LEGISLATE**

Rep. James R. MacKay for Health, Human Services and Elderly Affairs: This bill was retained at a time when several bills and budget requests regarding long-term-care health services were being considered by the legislature. These services had been initiated in a previous session by the passage of SB 409. Essentially, this bill addressed the following issues: (1) It strongly supported the Service-Link information and referral service for elderly and chronically ill adults, but provided no appropriation for those services; (2) It provided for an information and assistance process for those who are Medicaid-eligible for nursing home care to choose other, alternative services such as home-based care and mid-level care; and (3) The bill authorized individuals who are Medicaid-eligible for nursing home care to choose, if appropriate, settings such as home-based care or mid-level care at a cost not to exceed the cost of a nursing facility. The Service-Link Program was included in the new '04-'05 budget. Therefore, the program will continue. Legislation also passed this session to provide information and data analysis about health care providers and health care facilities, including data as to quality of services. The current state budget in fact increased the average cost for mid-level care from fifty percent to sixty percent of the cost for services in nursing facilities. The average cost for home-based care was increased from thirty-three percent to fifty percent of the cost for services in nursing facilities. The committee felt that these actions continue to support an individual's freedom to choose from a spectrum of services appropriate to their needs. The increase in the capped percentages of payments is viewed as a significant incremental increase. In addition, the committee agreed that there should be a continuing review of long-term-care services. The already existing Statutory Oversight Committee on Elderly and Adult Services has the authority and willingness to conduct the review. In consideration of the foregoing, the committee voted Inexpedient to Legislate and understood that additional legislation may be generated by the Oversight Committee in the future to provide additional incremental cost changes, as appropriate. Vote 16-0.

SB 78-FN, establishing the New Hampshire health care information council

INEXPEDIENT TO LEGISLATE

Rep. James R. MacKay for Health, Human Services and Elderly Affairs: The committee felt that the health care resources information gathering proposed by this bill was important and should be implemented. Such information would be very valuable to those serving on the Certificate of Need Board. In addition, it was felt that consumers should have accurate information to help them make informed decisions as to whom they choose to be their health care providers and information as to the quality of care provided by health care facilities. However, when the committee reviewed the final action taken on bills concerning the Certificate of Review process and data gathering and analysis, it was reported by the prime sponsor that this bill had been attached to another bill in the Senate, and it passed. Therefore, any further action on this bill would be redundant. Vote 16-0.

HB 74, establishing a task force on the siting of new district courts. **INEXPEDIENT TO LEGISLATE**

Rep. Gregory M. Sorg for Judiciary: This bill would have established a task force to develop standard, objective criteria for determining the future siting of new district courts, and propose model legislation. The committee learned that such a task force had been created in 1991 by HB 193, and that it had issued a final report on February 14, 1992. A review of that report indicated that its findings and recommendations remained valid and useful, and that

no useful purpose would be served by a new study. Vote 12-0.

HB 145, relative to the Claremont and Newport district courts. **INEXPEDIENT TO LEGISLATE**

Rep. Gregory M. Sorg for Judiciary: This bill would have separated the present Claremont-Newport judicial district into separate Claremont and Newport districts, and specify the towns to be included in each district. While the committee favors this separation in principle, the lack of an adequate court facility in Claremont at this time made it seem undesirable to consider passage of the bill before Claremont first upgrades their facility. Since other considerations would involve the State with capital improvements and bonding, it was concluded that this type of proposal should have broader legislative review. Senator Odell, one of its prime sponsors, has agreed to introduce it as a new bill in the Senate. Vote 13-2.

HB 217, relative to emergency powers of the supreme court. **INEXPEDIENT TO LEGISLATE**

Rep. Tony F. Soltani for Judiciary: This bill granted certain authority to the Supreme Court in the event of a gubernatorial state of emergency declared pursuant to RSA 4:45. The scope of the authority extended to statutory areas reserved for the Legislature. Also, the duration of the authority was undefined. Finally, this bill did not take notice of the Legislature's independent and concurrent authority to declare an emergency. The court, under its own rules, has the ability to suspend deadlines imposed under court rules for good cause. Vote 12-6.

HB 325, relative to the Henniker-Hillsborough district court and the New London district court. **INEXPEDIENT TO LEGISLATE**

Rep. Gregory M. Sorg for Judiciary: This bill would have amended RSA 502-A by transferring the Town of Bradford from the Henniker-Hillsborough judicial district to the New London district. The bill was filed by a member on behalf and at the request of a constituent. The member expressed no opinion on the bill, and no one testified in its favor, while the Bradford police chief testified against it on the ground that it would subject his department to more inconvenience. Vote 16-0.

HB 328, relative to the allocation of costs in court actions. **INEXPEDIENT TO LEGISLATE**

Rep. Harry M. Haytayan for Judiciary: The committee found that existing law provides protection against frivolous lawsuits and the proposed bill would lead to unintended consequences which could lead to abuse against those with limited resources. Vote 19-0.

HB 422, relative to the selection of replacement justices for supreme court justices who are disqualified to hear cases. **OUGHT TO PASS WITH AMENDMENT**

Rep. Tony F. Soltani for Judiciary: This bill clarifies the method of selecting a substitute for a disqualified Supreme Court justice. In the event of such disqualification, a retired Supreme Court justice will serve. If a retired Supreme Court justice is not available, then a retired full-time Superior, District, or Probate Court justice will serve. If none is available, then a full-time Superior, District, or Probate Court justice will be selected. All selections for substitute justices will be made randomly. Vote 15-0.

Amendment (2526h)

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

1 Supreme Court Justices; Method for Choosing Replacement Justices for Disqualified Justices.

Amend RSA 490:3 to read as follows:

490:3 Disqualification; Temporary Justices.

I. The provisions as to the disqualification of justices of the superior court apply to justices of the supreme court. Whenever a justice of the supreme court shall be disqualified or otherwise unable to sit in any cause or matter pending before such court, the chief or senior associate justice of the supreme court may assign another justice to sit according to the provisions of paragraph II of this section.

II. Upon the retirement, disqualification, or inability to sit of any justice of the supreme court, the chief justice or senior associate justice of the supreme court may assign a justice of the supreme court who has retired from regular active service ***or, if a retired supreme court justice is unavailable, shall assign a full-time justice from the superior, district, or probate court who has retired from regular active service*** to sit during supreme court sessions while the vacancy continues~~[, or he may notify the chief justice or senior associate justice of the superior court of such vacancy. Upon such notification, the chief justice or senior associate justice of the superior court shall provide the supreme court for each day of sitting during a session while the vacancy shall continue with the names of 2 or more superior court justices in regular active service or who are retired and are not otherwise disqualified. The chief justice or senior associate justice of the supreme court may then assign a justice to sit temporarily on the court from among those superior court justices whose names have been provided].~~ ***The selection of a retired supreme, superior, district, or probate court justice shall be on a random basis. However if no retired supreme, superior, district, or probate court justice is available, then the selection of a replacement justice shall be made on a random basis from a pool of full-time justices of the superior, probate, and district courts. The clerk of the supreme court shall maintain a list of judges who are willing to serve as temporary supreme court judges.***

III. A justice assigned to sit temporarily on the supreme court pursuant to paragraph II of this section shall have all the authority of a supreme court justice to hear arguments, render decisions, and file opinions. No justice shall be assigned to sit on the supreme court in the determination of any cause or matter upon which ~~he~~ ***the justice*** has previously sat or for which ~~he~~ ***such justice*** is otherwise disqualified nor without ~~his~~ ***such justice's*** consent.

2 Effective Date. This act shall take effect January 1, 2005.

HB 444, relative to summoning witnesses from another state. OUGHT TO PASS WITH AMENDMENT

Rep. James E. Wheeler for Judiciary: This bill will make the statute that allows a material witness who lives in another state to be subpoenaed in criminal cases, apply in juvenile justice civil cases, like juvenile delinquency, and child abuse and neglect. The committee believes that this proposal will help protect the best interest of New Hampshire children, by having witnesses available with material knowledge of abuse or juvenile delinquency available through subpoena even though they may live out of state. The amendment narrows the bill to better tailor it to its intended purpose. Vote 19-0.

Amendment (1509h)

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

AN ACT relative to summoning witnesses from another state in certain actions involving children.

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

1 Adjudicatory Hearing; Witnesses From Another State Summoned to Testify in This State.

Amend RSA 169-B:16, II to read as follows:

II. Following arraignment, the court shall proceed to hear the case in accordance with the due process rights afforded a minor charged with delinquency. The prosecution shall present witnesses to testify in support of the petition and any other evidence necessary

to support the petition. The minor shall have the right to present evidence and witnesses on behalf of the minor and to cross-examine adverse witnesses. ***The provisions of RSA 613:3, I, relative to the summoning of out-of-state witnesses, shall apply to the proceedings.***

2 Adjudicatory Hearing; Witnesses From Another State Summoned to Testify in This State. Amend RSA 169-C:18, III to read as follows:

III. The petitioner shall present witnesses to testify in support of the petition and any other evidence necessary to support the petition. The petitioners shall have the right to present evidence and witnesses on their own behalf and to cross-examine adverse witnesses. The admissibility of all evidence in this hearing shall be determined by RSA 169-C:12. ***The provisions of RSA 613:3, I, relative to the summoning of out-of-state witnesses, shall apply to the proceedings.***

3 Adjudicatory Hearing; Witnesses From Another State Summoned to Testify in This State. Amend RSA 169-D:14, II to read as follows:

II. Following the initial appearance the court shall proceed to hear the case in accordance with the due process rights afforded a child alleged to be in need of services. The prosecution shall present witnesses to testify in support of the petition and any other evidence necessary to support the petition. The child shall have the right to present evidence and witnesses on his behalf and to cross-examine adverse witnesses. ***The provisions of RSA 613:3, I, relative to the summoning of out-of-state witnesses, shall apply to the proceedings.***

4 Effective Date. This act shall take effect January 1, 2004.

AMENDED ANALYSIS

This bill adds certain actions relative to children to the causes of action which allow the summoning of a witness from another state.

HB 622-FN, excluding tax abatement sessions from nonpublic sessions and including costs for non-attorney representatives under the right-to-know law. **OUGHT TO PASS WITH AMENDMENT**

Rep. Tony F. Soltani for Judiciary: This bill amends the Right-to-Know Law in order to clarify an ambiguity affecting the local governments. Under this bill, applications for relief such as tax abatements will be debated publicly unless the application is based on inability to pay. The local officials will deliberate matters in non-public session – matters involving inability to pay or where a legal action has been filed or threatened in writing. Vote 20-0.

Amendment (2381h)

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

AN ACT clarifying certain exemptions from the right-to-know law.

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

1 Right-to-Know Law; Exemptions. Amend RSA 91-A:3, II(c)-(e) to read as follows:

(c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the body or agency itself, unless such person requests an open meeting. ***This exemption shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on need, inability to pay or poverty of the applicant.***

(d) Consideration of the acquisition, sale or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.

(e) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the body or agency or any subdivision thereof, or against any member thereof because of his ***or her*** membership in such body or agency, until the claim or litigation has been fully adjudicated or otherwise settled. ***Any application filed for relief, pursuant to law, with any body or board shall not constitute a***

threatened or filed litigation against any body, board, or agency for the purposes of this subparagraph.

2 Effective Date. This act shall take effect January 1, 2005.

AMENDED ANALYSIS

This bill clarifies certain exemptions from the right-to-know law relating to reputation and pending claims or litigation.

HB 656-FN, repealing the family division pilot program. OUGHT TO PASS WITH AMENDMENT

Rep. Janet G. Wall for Judiciary: After extensive testimony and study, the committee agreed to support the establishment of a commission to determine whether the operations of the family division court in Grafton County, as established in 1995, fulfills the legislative purposes as determined in 1995 (Chapter 152:1). The commission shall make recommendations regarding continuation or abolishing the family division court in Grafton County and shall include in its report further recommendations for making the family division court a workable alternative in rural settings, as opposed to how these family division courts operate in urban settings. Vote 16-0.

Amendment (2485h)

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

AN ACT establishing a commission to study the operations of the family division court in Grafton county.

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

1 Purpose. The purpose of this act is to establish a commission to determine whether the operations of the family division court in Grafton county, established by 1995, 152, fulfill the legislative purposes as stipulated in 1995, 152:1, the purpose statement of the chapter law.

2 Commission Established. There is established a commission to study the operations of the family division court in Grafton county.

3 Membership and Compensation.

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

(a) Three members of the house of representatives, 2 of whom shall be members of the judiciary committee, appointed by the speaker of the house.

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

(c) Two district court judges, one who regularly sits on the family division court and one who does not regularly sit on the family division court, appointed by the administrative judge of the district courts.

(d) Two chiefs of police from towns or cities within Grafton county, appointed by the Grafton County Police Chiefs Association.

(e) One family court case manager, appointed by the supervisory judge of the Grafton county family division court.

(f) Two attorneys with extensive experience practicing both in the Grafton county family division court and in at least one other county which does not have a family division court, one of whom shall reside in Grafton county, appointed by the President of the New Hampshire Bar Association.

(g) Two current members of the task force on family law established in 2002, 250:1, one of whom shall be appointed by the chairperson of the task force and one of whom shall be appointed by the speaker of the house.

(h) One employee of the division for children, youth and families who has experience with family courts, appointed by the commissioner of health and human services.

(i) One juvenile parole and probation officer with work experience in Grafton county, appointed by the commissioner of health and human services.

(j) Two public members, who reside in Grafton county and are knowledgeable of family court operations.

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

4 Duties. The commission shall study the operations of the family division court in Grafton county to determine if the family division court in Grafton county is meeting the purposes for which it was originally established. The commission shall make a recommendation for continuing or abolishing the family division court in Grafton county and, if the recommendation is for continuing the family division court, shall include in its report further recommendations on making the family division court a workable alternative to regular court in a rural setting.

5 Chairperson; Quorum. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named house member. The first meeting of the commission shall be held within 45 days of the effective date of this section.

6 Report. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2004.

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

AMENDED ANALYSIS

This act establishes a commission to study the operations of the Grafton county family division court.

HB 716-FN, repealing procedures for administration of small estates. INEXPEDIENT TO LEGISLATE

Rep. John M. Pratt for Judiciary: Both the Probate Clerk who originally requested this legislation and the Probate Court itself informed the committee that the Court would attempt to solve the problems addressed in it through improvements in court procedures. The committee agreed that legislation was therefore not needed. Vote 17-1.

HB 730-FN-L, relative to workers' compensation benefits for firefighters, rescue workers, and safety workers who contract certain communicable diseases. OUGHT TO PASS WITH AMENDMENT

Rep. Jarvis M. Adams for Labor, Industrial and Rehabilitative Services: This bill establishes a committee to study the feasibility and cost of providing workers' compensation benefits for firefighters, rescue workers, and safety workers who contract certain communicable diseases. Vote 12-0.

Amendment (2557h)

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

AN ACT establishing a committee to study workers' compensation benefits for firefighters, rescue workers, and safety workers who contract certain communicable diseases.

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

1 Committee Established. There is established a committee to study the feasibility and cost of providing workers' compensation benefits for firefighters, rescue workers, and safety workers who contract certain communicable diseases.

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.

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

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

3 Duties. The committee shall study the feasibility and cost of providing workers' compensation benefits for firefighters, rescue workers, and safety workers who contract certain communicable diseases.

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

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2004.

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

AMENDED ANALYSIS

This bill establishes a committee to study the feasibility and cost of providing workers' compensation benefits for firefighters, rescue workers, and safety workers who contract certain communicable diseases.

HB 230, establishing a committee to study procedures for the joint legislative committee on administrative rules to introduce legislative changes. **OUGHT TO PASS WITH AMENDMENT**

Rep. Nelson S. Allan for Legislative Administration: This bill establishes a "directed study" on specific issues that may significantly improve the effectiveness of the Joint Legislative Committee on Administrative Rules (JLCAR) process. During an extensive set of public hearings on this bill, many positive suggestions were brought forward that require further refinement before implementation in legislation. Ten specific areas of further study are identified. A report is due by November 2004. Several revisions to the current RSA 541-A are also presented to amend the conditional rule approval process, expedite the rule appeal process, and waive deadlines in certain cases. Vote 11-0.

Amendment (2534h)

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

AN ACT establishing a committee to study how to improve the processes of the joint legislative committee on administrative rules and making certain revisions to RSA 541-A, the Administrative Procedure Act.

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

1 Committee Established. There is established a committee to study how to improve the processes of the joint legislative committee on administrative rules.

2 Membership and Compensation.

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

(a) Five members of the house of representatives, appointed by the speaker of the house of representatives, including at least one member of the legislative administration committee, one member of the executive departments and administration committee, and one member from the joint legislative committee on administrative rules.

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

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

3 Duties. The committee shall solicit input on and consider:

I. The development of a process to record a clear statement of legislative intent on every bill sent out of a house or senate committee with a favorable report; such process may involve requiring a purpose clause to be included in every bill in the form of either chapter law or statute, requiring a statement of intent to be included in every bill file, requiring a

statement of intent to be included in each house committee report, or requiring all house hearings and executive sessions to be recorded.

II. The development of a formal process for ensuring that the joint legislative committee on administrative rules receives input from the appropriate policy committees on proposed rules; such process may involve the establishment of a rules review subcommittee within each policy committee of the house and senate and/or participation by a policy committee member prior to the agency public comment period.

III. Adopting methods to provide for an expedited rulemaking process to adopt rule changes with minimal impact, including the adoption or revision of forms used by agencies.

IV. Expanding the membership of the joint legislative committee on administrative rules and establishing subcommittees of the committee.

V. Developing a RSA 541-A training program for members newly appointed to the joint legislative committee on administrative rules and an educational program on rules for all house members.

VI. Methods for ensuring uniformity in granting rulemaking authority and avoiding overbroad rulemaking authority provisions. Such methods may involve the development of guidelines for policy committees or bill drafters to follow.

VII. Revising RSA 541-A relative to fiscal impact statement requirements.

VIII. The processes for rulemaking employed by the agencies that are exempt from the provisions of RSA 541-A, and the effectiveness of this approach towards rulemaking.

IX. Revisions to the drafting and procedure manual.

X. Revising RSA 541-A to permit the electronic filing of documents at various stages of the rulemaking process.

XI. Such other related issues as the committee deems appropriate.

4 Sources of Information. The committee may solicit information and testimony from the rules staff of the office of legislative services, the rulemaking administrators at the department of administrative services, agency rulemaking coordinators, and any other source that the committee deems appropriate.

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

6 Report. The committee shall report its findings, any recommendations for proposed legislation and any specific recommendations for implementing procedures designed to improve rulemaking that do not require statutory changes. Such report shall be submitted to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2004.

7 Administrative Procedure Act; Amending Conditional Approval Process. Amend RSA 541-A:13, V(a) to read as follows:

(a) If the committee objects to the final proposal as filed or as amended pursuant to paragraph II, it shall so inform the agency. In lieu of a preliminary objection, the committee may vote to conditionally approve the rule with an amendment, provided that the committee specifies in its conditional approval the language of the amendment to address the basis for a preliminary objection. The committee shall notify the agency in writing of its conditional approval. Within ~~[14]~~ **30** days of the meeting, ***or in the case of a board or commission, 7 days following its next regularly scheduled meeting***, the agency shall submit a written explanation to the committee in the form of a letter and an annotated text of the final proposed rule detailing how the rule has been amended in accordance with the conditional approval. The written explanation shall be signed by the individual holding rulemaking authority, or, if a body of individuals holds rulemaking authority, by a voting member of that body, provided that a quorum of the body has approved. Failure to submit a written explanation in accordance with the conditional approval and this paragraph shall cause the conditional approval to be deemed a committee vote to make a preliminary

objection on the date of the conditional approval. If the office of legislative services determines that the agency has amended the rule in accordance with the conditional approval and this paragraph, the office of legislative services shall promptly send written confirmation of compliance to the agency. The agency may then adopt the rule as amended.

8 New Section; Administrative Procedure Act; Expedited Repeal of Rules. Amend RSA 541-A by inserting after section 19 the following new section:

541-A:19-a Expedited Repeal of Rules.

I. An agency may repeal any rules using the expedited procedures of this section and without meeting the requirements of RSA 541-A:5-7 and RSA 541-A:9-14 if:

(a) The proposed repeal has been approved by the official or the group of individuals with rulemaking authority.

(b) The rule proposed for repeal encompasses at least a full rules section, as described in the drafting and procedure manual for administrative rules pursuant to RSA 541-A:8.

(c) The repeal is not being proposed for purposes of being superseded later by adoption of a new rule with a text amended from the repealed rule.

(d) The repeal of the rule pursuant to this section does not deprive a person of any right, duty, or privilege of that person which is protected by the due process provisions of the state or federal constitutions.

II. Notice of an agency's intent to repeal a rule shall include:

(a) The name and address of the agency.

(b) The statutory rulemaking authority for the rule.

(c) The rule number and title.

(d) An explanation of the reason for the proposed repeal.

(e) The name, address, electronic address, and telephone number of an individual in the agency able to answer questions about the proposed repeal and to arrange for reasonable accommodation for persons with disabilities wishing to attend the public comment hearing.

(f) The date, time, and location of the public comment hearing.

III. The notice required by paragraph II shall be:

(a) Published in the rulemaking register and in a newspaper of daily statewide circulation.

(b) Filed with the director of legislative services no later than 7 calendar days before the date of publication in the rulemaking register.

(c) Published in a newspaper of daily statewide circulation no later than the date of publication in the rulemaking register.

IV. At the same time that the notice required by RSA 541-A:19-a, III is filed, the agency shall file the text of the rule to be repealed with the director of legislative services.

V. There shall be a public comment hearing on the proposed repeal no sooner than 7 calendar days after the date of publication of the notice in the rulemaking register. There shall be a period for the submission to the agency of written or electronic public comment ending on the 3rd calendar day after the date of the public comment hearing. Copies of the text of the rules subject to repeal shall be available at the public comment hearing.

VI. If on the basis of public comment the official or the group of individuals with rulemaking authority determines that the rule should not be repealed, the agency shall so notify the director of legislative services and the rule shall not be repealed.

VII. The proposed repeal shall be placed on the agenda of the committee for review at the first regularly scheduled or special meeting at least 5 calendar days after the close of the period for written or electronic comment described in paragraph V. The committee may approve or object to the repeal. The committee may object to the repeal if the repeal is:

(a) Beyond the authority of the agency;

(b) Contrary to the intent of the legislature; or

(c) Deemed by the committee not to meet the requirements of paragraph I.

VIII. If the committee objects to the repeal, the repeal shall not be adopted. The committee's objection shall not preclude the agency from repealing the rule by meeting the requirements of RSA 541-A:3.

IX. If the committee approves the repeal, the agency may adopt the repeal and file a statement of the repeal with the director of legislative services. The repeal shall be effective as of 12:01 a.m. on the day after filing of the statement or as of 12:01 a.m. on the date specified by the agency, or such other date and time as specified, provided that the filing occurs before such effective date and time.

9 New Paragraph; Administrative Procedure Act; Waiver by Director of Legislative Services. Amend RSA 541-A:40 by inserting after paragraph III the following new paragraph:

IV. Notwithstanding any other provision of this chapter, the director of legislative services, after consultation with the chair and vice-chair of the joint legislative committee on administrative rules, may, for good cause shown, waive any deadline contained in any provision of this chapter.

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

AMENDED ANALYSIS

The bill:

I. Establishes a committee to study how to improve the processes of the joint legislative committee on administrative rules.

II. Amends the conditional rules approval process.

III. Establishes an expedited repeal process for administrative rules.

IV. Authorizes the director of legislative services to waive rulemaking deadlines in certain cases.

HB 381-FN, requiring proposed bills and rules to include an analysis of their impact on personal privacy. **INEXPEDIENT TO LEGISLATE**

Rep. George N. Katsakiores for Legislative Administration: The committee did not doubt the importance of targeting personal privacy impacts contained in pending legislation. What concerned the committee was the added administrative burden that would be placed on legislative staff. There also was concern that legislative authority could erode in the process. The committee agreed that the goal of this legislation could be achieved without legislation. A simpler solution would be to amend the manual for committee Chairmen to require them to alert their committees as to personal privacy issues and to take them into consideration while studying and acting on bills. Vote 9-1.

HB 734-FN-A, establishing a pilot program to open the state house on Saturdays.

INEXPEDIENT TO LEGISLATE

Rep. David P. Currier for Legislative Administration: There was no opposition to the concept of establishing a pilot program to open the State House on Saturdays. There were concerns about security and the potential for vandalism. After considerable review, it was recommended that legislation was not needed. The Joint Committee on Facilities has the authority to open the State House on weekends. Therefore, those interested in pursuing a pilot program will petition the Joint Committee on Facilities to open the State House on specific Saturdays next summer and fall. The cost of security staff would be borne by the private sector. The prime sponsor supported the Inexpedient to Legislate motion. Vote 10-0.

HB 85-FN-L, requiring the exclusion of certain one-time expenditures prior to the adoption of a default budget in cities and towns that have adopted official ballot voting. **OUGHT TO PASS WITH AMENDMENT**

Rep. Robert W. Brundige for Municipal and County Government: This bill clarifies the definition of "default budget" and requires the default budget to be disclosed at the first budget hearing held pursuant to RSA 32:5 or RSA 197:6. The governing body shall

demonstrate how the default budget amount was determined by showing the appropriations contained in the previous year's operating budget and the reductions and increases made on a budget form created by the Department of Revenue Administration. The governing body in SB 2 towns and school districts shall post a certified copy of the default budget form or any amended default budget form, along with the proposed operating budget and warrant. Vote 13-0.

Amendment (2495h)

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

AN ACT relative to the budget adoption procedure in political subdivisions which have adopted official ballot voting.

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

1 Use of Official Ballot; Operating Budget. Amend RSA 40:13, IX-XI to read as follows:

IX.(a) "Operating budget" as used in this subdivision means "budget," as defined in RSA 32:3, III, exclusive of "special warrant articles," as defined in RSA 32:3, VI, and exclusive of other appropriations voted separately.

(b) ***"Default budget" as used in this subdivision means the amount of the same appropriations as contained in the operating budget authorized for the previous year, reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, and reduced by one-time expenditures contained in the operating budget. For the purposes of this paragraph, one-time expenditures shall be appropriations not likely to recur in the succeeding budget, as determined by the governing body of the local political subdivision.***

X. If no operating budget article is adopted, the local political subdivision either shall be deemed to have approved ~~[the same appropriations as contained in the operating budget authorized for the previous year, reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, or reduced by one-time expenditures contained in the operating budget.]~~ ***the default budget*** or the governing body may hold a special meeting pursuant to paragraph XVI to take up the issue of a revised operating budget only; provided that RSA 31:5 and RSA 197:3 shall not apply to such a special meeting. If no operating budget article is adopted the estimated revenues shall nevertheless be deemed to have been approved. ~~[For the purposes of this paragraph, one-time expenditures shall be appropriations not likely to recur in the succeeding budget, as determined by the governing body of the local political subdivision].~~

XI. The ~~[amount of the previous year's operating budget, as adjusted pursuant to paragraph X,]~~ ***default budget*** shall be disclosed ~~[to the voters at the first session]~~ ***at the first budget hearing held pursuant to RSA 32:5 or RSA 197:6. The governing body shall demonstrate how the default budget amount was determined by showing the appropriations contained in the operating budget authorized for the previous year and the reductions and increases made pursuant to paragraph IX(b) on a default budget form created by the department of revenue administration.*** This amount shall not be amended by the legislative body. However, this amount may be adjusted by the governing body, acting on relevant new information at any time before the ballots are printed, ***provided the governing body completes an amended default budget form.*** The wording of the second session ballot question concerning the operating budget shall be as follows:

"Shall the (local political subdivision) raise and appropriate as an operating budget, not including appropriations by special warrant articles and other appropriations voted separately, the amounts set forth on the budget posted with the warrant or as amended by vote of the first session, for the purposes set forth therein, totaling \$_____? Should this article be defeated, the ~~[operating]~~ ***default*** budget shall be \$_____, which is the same as last year, with certain adjustments required by previous action of the (local political

subdivision) or by law; or the governing body may hold one special meeting, in accordance with RSA 40:13, X and XVI, to take up the issue of a revised operating budget only.”

2 Municipal Budget Law; Budget Preparation. Amend RSA 32:5, VII to read as follows:

VII.(a) The governing body shall post certified copies of the budget with the warrant for the meeting. In the case of towns, the budget shall also be printed in the town report made available to the legislative body at least one week before the date of the annual meeting. A school district or village district may vote, under an article inserted in the warrant, to require the district to print its budget in an annual report made available to the district’s voters at least one week before the date of the annual meeting. Such district report may be separate or may be combined with the annual report of the town or towns within which the district is located.

(b) The governing body in official ballot referenda jurisdictions operating under RSA 40:13 shall post certified copies of the default budget form or any amended default budget form with the proposed operating budget and the warrant.

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

AMENDED ANALYSIS

This bill provides for certain changes to the budget adoption procedure in political subdivisions which have adopted official ballot voting.

HB 161-FN-L, relative to residency in determining entitlement to local welfare assistance. INEXPEDIENT TO LEGISLATE

Rep. Robert W. Brundige for Municipal and County Government: This bill would have required individuals in need of local welfare assistance to be a resident of the town in which they apply for assistance. This requirement is not possible to meet in all circumstances due to the transient situation of the individual. One of the consequences of refusal of assistance could result in an individual being forced to return to a domestic violence situation. The committee retained this bill and asked the commission to study problems related to the delivery of local assistance (HB 1109), to consider the change. The final commission report included a process to allow cooperation between the “home” town and “assisting” town in funding the required assistance. Since the committee approved the commission’s recommendation to file a bill that addresses this delivery, changing the residency requirement was not favored. Vote 16-0.

HB 285, relative to establishing non-amendable articles by voter petition. OUGHT TO PASS WITH AMENDMENT

Rep. Nancy K. Johnson for Municipal and County Government: Currently, in official ballot referendum towns or school districts, neither the governing body nor the budget committee, if one exists, has the ability to revise their recommendations if the budget appropriations are changed during the deliberative session. This bill gives them the ability to change their noted recommendation prior to printing the ballot. In addition, this bill makes the original recommendation of the budget committee the amount to be used in calculating the ten-percent limitation. Vote 15-0.

Amendment (2530h)

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

AN ACT relative to warrant article recommendations in towns which have adopted the official ballot referendum form of meeting.

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

1 Budget Preparation. RSA 32:5, V is repealed and reenacted to read as follows:

V. When any purpose of appropriation, submitted by a governing body or by petition, appears in the warrant as part of a special warrant article:

(a) The article shall contain a notation of whether or not that appropriation is recommended by the governing body, and, if there is a budget committee, a notation of whether or not it is recommended by the budget committee;

(b) If the article is amended at the first session of the meeting in an official ballot referendum municipality, the governing body and the budget committee, if one exists, may revise its recommendation on the amended version of the special warrant article and the revised recommendation shall appear on the ballot for the second session of the meeting provided, however, that the 10 percent limitation on expenditures provided for in RSA 32:18 shall be calculated based upon the initial recommendations of the budget committee.

(c) Defects or deficiencies in these notations shall not affect the legal validity of any appropriation otherwise lawfully made; and,

(d) All appropriations made under special warrant articles shall be subject to the hearing requirements of paragraphs I and II of this section.

2 Limitations of Appropriations. Amend the introductory paragraph of RSA 32:18 to read as follows:

32:18 Limitation of Appropriations. In any municipality electing this subdivision, or any district wholly within a town electing this subdivision, the total amount appropriated at any annual meeting shall not exceed by more than 10 percent the total amount recommended by the budget committee for such meeting. ***In official ballot referendum municipalities, the recommendation of the budget committee made for the first session of the meeting shall be used for determining the 10 percent limitation.*** These totals shall include appropriations contained in special warrant articles. Money may be raised and appropriated for purposes included in the budget or in the warrant and not recommended by the budget committee, but not to an amount which would increase the total appropriations by more than the 10 percent allowed under this paragraph. The 10 percent increase allowable under this paragraph shall be computed on the total amount recommended by the budget committee less that part of any appropriation item which constitutes fixed charges. Fixed charges shall include appropriations for:

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

AMENDED ANALYSIS

This bill allows the budget committee or the governing body to change a recommendation of a budget article if the article has been amended.

HB 307, relative to municipal regulation of public highways. **INEXPEDIENT TO LEGISLATE**

Rep. Robert W. Brundige for Municipal and County Government: This bill would have allowed municipalities to adopt bylaws and fee structures to regulate a utility's use of public highways and rights of ways which could result in more than 200 additional sets of fees for the same utility services provided throughout the state. The committee heard testimony that this additional cost would be passed through to the consumer. The committee determined it would be better to have a comprehensive process formulated at the state level to deal with any additional costs borne by the municipalities that only users of a utility should pay, instead of having the cost added to the property tax. Vote 16-0.

HB 426, relative to the monitoring and approval of appraisers by the commissioner of revenue administration. **OUGHT TO PASS WITH AMENDMENT**

Rep. Eric G. Stohl for Municipal and County Government: The original intent of this bill was to create a process for the Department of Revenue Administration to measure local assessing practices, instead of requiring a certification cycle for municipalities which was accomplished by the passage of SB 54 last year. The committee retained the rest of the bill and completed the additional parts of the bill – some being housekeeping in nature. The bill removes the financial responsibility of the appraisers while at the same time it changes the penalty for certification non-compliance of the assessors from a violation to a Class B misdemeanor. The

bill clarifies two minor issues dealing with tax maps. The last issue the bill addresses is returning rulemaking authority to the Assessing Standards Board in order to regulate certification, continuing education, and revocation and suspension standards for assessing officials that was removed by SB 54 as an oversight. Vote 15-0.

Amendment (2532h)

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

1 Commissioner of Revenue Administration; Municipal Assessments; Reference Corrected. Amend RSA 21-J:3, XXVI to read as follows:

XXVI. Review and report each municipality's assessments once within every 5 years pursuant to RSA 21-J:11-a~~[, H]~~.

2 Revenue Administration; Rulemaking; Appraisers. Amend RSA 21-J:13, VI(a) and (b) to read as follows:

(a) Evidence of the ~~[financial responsibility and]~~ professional capability of personnel to be employed under contract under RSA 21-J:11; and

(b) The content of the contract to be approved under RSA 21-J:11, **as provided in RSA 71-B**.

3 Certification of Assessors; Reference Corrected. Amend RSA 21-J:14-f, II to read as follows:

II. No person, except boards of assessors and selectmen making appraisals pursuant to RSA 75:1, shall make appraisals of a municipality for tax assessment purposes without first obtaining the certification required by this section. Certification is non-assignable and cannot be transferred. Any person who willfully fails to obtain certification as provided in this section shall be subject to the penalties imposed under RSA ~~[21-J:39]~~ **21-J:39, IV**.

4 Certified Appraisers; Criminal Penalties. Amend RSA 21-J:39, IV(c) to read as follows:

(c) Any person who violates subparagraph (a) or (b) shall be guilty of ~~[violation]~~ **class B misdemeanor**.

5 Tax Maps; Scale; Updating. Amend RSA 31:95-a, II-IV read as follows:

II.(a) The scale on a tax map shall be meaningful and adequately represent the land contained on the map, taking into consideration the urban or rural character of the land. The scale shall be sufficient to allow the naming and numbering of, and the placement of dimensions within, **if possible**, the parcel represented in the individual plat.

(b) Nothing in this paragraph shall apply to any city or town which, prior to the imposition of such scale requirements, has drawn a tax map, appropriated funds or contracted with any person or firm to prepare a tax map or expended funds in the initial phase of preparing a tax map.

III. Each parcel shall be identified by a map and parcel number and shall be indexed alphabetically by owner's name and numerically by parcel number.

IV. Tax maps shall be ~~[continually]~~ updated **at least annually** to indicate ownership and parcel size changes.

6 Board of Tax and Land Appeals; Petitions for Reassessment. Amend RSA 71-B:5, V to read as follows:

V. To hear and determine petitions filed by the commissioner of revenue administration pursuant to RSA ~~[21-J:11-a, II(b)]~~ **21-J:3, XXV**. The board shall give such petitions priority for scheduling hearings and for final rulings. In addition to the ~~[standards utilized]~~ **review** by the commissioner of revenue administration in the ~~[certification of assessments]~~ **assessment report** pursuant to RSA 21-J:11-a, the board shall consider the criteria in ~~[a]~~ RSA 71-B:16-a. The board's decision on such petitions shall be final, subject to appeal to the supreme court. Any appeal shall be filed with the clerk of the supreme court within 20 days after the date the decision is issued. The supreme court shall give any appeal it hears under this section priority in the court calendar.

7 New Paragraph; Rulemaking by Assessing Standards Board. Amend RSA 21-J:14-b by inserting after paragraph I the following new paragraph:

I-a. The assessing standards board shall adopt rules, pursuant to RSA 541-A, relative to the establishment of certification, continuing education, and revocation and suspension standards for assessing officials. The department of revenue administration shall be responsible for the enforcement of those standards.

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

AMENDED ANALYSIS

This bill changes the monitoring and approval of appraisers of taxable property by the commissioner of revenue administration and the assessing standards board.

The bill also allows towns and cities to change the scale and updating of tax maps.

HB 474, relative to the appointment of alternates to sit at meetings of the planning and zoning boards and the rules of order used by local land use boards. **INEXPEDIENT TO LEGISLATE**

Rep. Nancy K. Johnson for Municipal and County Government: This bill would require a chairman of a land use board to assign alternates to sit according to seniority and to adopt a set of rules of order every year for their proceedings. The committee felt that this would be cumbersome, unnecessary and determined to leave these matters to the local land use boards. Vote 16-0.

HB 488, relative to leaf and yard waste. **INEXPEDIENT TO LEGISLATE**

Rep. Jessie L. Osborne for Municipal and County Government: RSA 149-M:27 prohibits the disposal of leaf or yard waste in a solid waste landfill or incinerator. The original bill repealed the exemption given to those municipalities formed as solid waste management districts pursuant to an intergovernmental agreement in RSA 53-A or as a solid waste district pursuant to RSA 53-B. This would have yielded more landfill space because the solid waste tonnage would be reduced. Losing this exemption would have impacted the City of Concord. The City Council instituted fall and spring yard waste pickup this year, and is planning a regular recycling program. Since Concord is progressing toward full leaf, yard waste and recycling pickup, the committee determined that this bill may have discouraged that program. Vote 16-0.

HB 501, ratifying certain actions of the Rye conservation commission. **INEXPEDIENT TO LEGISLATE**

Rep. Peter B. Schmidt for Municipal and County Government: This bill sought to ratify certain property acquisitions by the Rye Conservation Commission. Inasmuch as the issue has been resolved within and by the Town of Rye, the matter is moot. The committee, therefore, voted the bill Inexpedient to Legislate, with the approval of the sponsor. Vote 15-0.

HB 618-FN-A, establishing a property tax cap for persons over 65 years of age. **OUGHT TO PASS WITH AMENDMENT**

Rep. Laurie J. Boyce for Municipal and County Government: This bill was retained to examine the idea of a property tax cap for the elderly. However, the cap that was proposed worked in a reverse way – the more income received, the more relief given. The bill was amended to address two technicalities in the law: (1) where an elderly individual who placed his or her property in trust is not considered the owner of the property, and therefore could not apply for the elderly exemption on the property to which he or she was otherwise entitled, and (2) reducing the five-year residency requirement for disabled persons. This bill authorizes/recognizes the elderly individuals as “owner” for life and reinstates the five-year residency requirement for disabled persons, which was inadvertently deleted last session. Vote 13-0.

Amendment (2533h)

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

AN ACT making technical corrections to certain local property tax laws.

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

1 Elderly Exemption References Changed; Definitions. Amend RSA 72:29, VI to read as follows:

VI. For purposes of RSA 72:28, 29-a, 30, 31, 32, 33, 35, 36-a, 37, 37-a, 37-b, 38-a, ~~39, 43-b, 43-f, 43-h~~ **39-a**, 62, 66, and 70, the ownership of real estate, as expressed by such words as “owner”, “owned” or “own”, shall include those who have equitable title or the beneficial interest for life in the subject property.

2 New Subparagraph; Exemption for Disabled; Residency Requirement. Amend RSA 72:37-b, III by inserting after subparagraph (b) the following new subparagraph:

(c) Has been a New Hampshire resident for at least 5 years.

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

AMENDED ANALYSIS

This bill makes technical corrections to certain local property tax laws allowing for exemptions.

HB 645-FN-A-L, establishing a pilot program for partial tax abatements on new construction of private schools. **UGHT TO PASS WITH AMENDMENT**
Rep. Nancy K. Johnson for Municipal and County Government: The bill, as first introduced, dealt with the concept of a pilot program for property tax abatement for private institutions that had plans for new construction of dormitories, dining rooms and kitchens, which are presently taxed under current law. The focus of the original bill was to reimburse through the abatement process property taxes paid by the private institutions to the towns and cities. After much discussion, the focus of the bill changed whereby a special fund would be established known as the Property Tax Reimbursement and Educational Scholarship Fund. The Fund would consist of such monies received and deposited pursuant to RSA 471-C:31, III. The Fund would be managed by the State Treasurer and would be continually appropriated to the Postsecondary Education Commission for the purpose of this subdivision. The source of funds would be from abandoned property delivered from out-of-state holders and the income earned from the working capital fund. Funds would be deposited in the Property Tax Reimbursement and Educational Scholarship Fund established in RSA 188-D:44. Any private educational institution that pays property taxes on the value of the dormitories, dining rooms, and kitchens pursuant to RSA 72:23, IV, and which has New Hampshire residents comprising more than ten percent of its boarding students, may apply for and, within the available funds, receive a reimbursement of such property taxes paid for the purpose of funding educational scholarships at the institution, as determined by rules of the Postsecondary Education Commission adopted under RSA 188-D:8-a, IV. The effective date is in the year 2005 which will require this policy to go through the budget process for the next biennium. Vote 10-5.

Amendment (2511h)

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

AN ACT relative to the reimbursement of certain property taxes paid by qualifying private education institutions for the purpose of educational scholarship grants.

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

1 New Paragraph; Property Tax Exemption; School Dormitories, Dining Rooms, Kitchens. Amend RSA 72:23 by inserting after paragraph IV the following new paragraph:

IV-a. To the extent property taxes are due and paid on the value of the dormitories, dining rooms, and kitchens of schools, seminaries of learning, colleges, academies and universities pursuant to paragraph IV, the schools, seminaries of learning, colleges,

academies, and universities which qualify as provided in RSA 188-D:43 shall be eligible for reimbursement of a portion of the property tax paid.

2 New Paragraph; Postsecondary Education Commission; Rulemaking. Amend RSA 188-D:8-a by inserting after paragraph III the following new paragraph:

IV. The procedure for application, method of disbursement, and administration of funds in the property tax reimbursement and educational scholarship fund under RSA 188-D:43.

3 New Subdivision; Property Tax Reimbursement and Educational Scholarship Fund. Amend RSA 188-D by inserting after section 42 the following new subdivision:
Property Tax Reimbursement and Educational Scholarship Fund

188-D:43 Property Tax Reimbursement and Educational Scholarships. The postsecondary education commission shall administer a program for the granting of educational scholarship funds in the form of property tax reimbursement to qualifying private, secondary and postsecondary, educational institutions in this state as follows:

I. A private educational institution that pays property taxes on the value of the dormitories, dining rooms, and kitchens pursuant to RSA 72:23, IV, and which has New Hampshire residents comprising more than 10 percent of its boarding students, may apply for and, within the available funds, receive a reimbursement of such property taxes paid for the purpose of funding educational scholarships at the institution, as determined by rules of the postsecondary education commission adopted under RSA 188-D:8-a, IV.

II. Any property tax reimbursement granted under this section shall be for the purpose of providing educational scholarships at the educational institution.

III. The grant amount shall be limited to the amount of educational scholarship funds provided to New Hampshire students by the educational institution.

IV. Grants from the available funds under RSA 188-D:44 shall be awarded in proportion to the amount of reimbursement requested in applications of all qualifying educational institutions.

188-D:44 Fund Established. There is hereby established a special fund to be known as the property tax reimbursement and educational scholarship fund. The fund shall consist of such moneys received and deposited pursuant to RSA 471-C:31, III for the purposes of this subdivision. The fund shall be managed by the state treasurer and shall be continually appropriated to the postsecondary education commission for the purposes of this subdivision.

4 Custody and Escheat of Unclaimed and Abandoned Property; Certain Income Appropriated to Educational Scholarship Fund. Amend RSA 471-C:31, III to read as follows:

III. Property delivered from out-of-state holders *and the income earned from the working capital fund* shall ~~[escheat to the general fund]~~ **be deposited in the property tax reimbursement and educational scholarship fund established in RSA 188-D:44.**

5 New Subparagraph; State Accounts; Application of Receipts. Amend RSA 6:12, I(b) by inserting after subparagraph (222) the following new subparagraph:

(223) Moneys received under RSA 471-C:31, III, which shall be deposited in the property tax reimbursement and educational scholarship fund established in RSA 188-D:44.

6 Effective Date. This act shall take effect July 1, 2005.

AMENDED ANALYSIS

This bill establishes a program to be administered by the postsecondary education commission for the reimbursement of certain property taxes paid by qualifying private education institutions for the purpose of educational scholarship grants.
Referred to Ways and Means.

HB 681-FN-L, relative to the allocation of a municipality's share of county taxes. **REFER FOR INTERIM STUDY**

Rep. Eric G. Stohl for Municipal and County Government: The method used currently to determine a municipality's share of the county taxes is simply to apportion the amount

according to the equalized value of each town or city. This bill suggests the possibility of determining the municipality's share using different methods, such as a possible percentage of the county's population plus a percentage of use of services in addition to a percentage of equalized value. The committee worked on this bill extensively and then established a subcommittee to further look into the issue. The subcommittee learned that the New Hampshire Association of Counties had established a tax equity commission to examine this very same issue and was serious enough about it that they raised \$10,000 to fund their study. The issue of donor towns weighs in when it comes to municipalities and how much county tax they pay compared to the amount of county services they receive. The committee feels there is a great deal of work it needs to do before establishing a more equitable formula, and an interim study will accomplish that goal. Vote 16-0.

HB 713-FN, relative to the penalty for violating a zoning ordinance. OUGHT TO PASS WITH AMENDMENT

Rep. James E. Twombly for Municipal and County Government: The purpose of this bill is to strengthen and clarify the statutes in regard to zoning ordinances. Municipalities experience difficulty in enforcing certain zoning ordinances because the penalty is not enough of a deterrent to ensure compliance. HB 713 doubles the daily fine for a second offense at the same location, from \$275 to \$550. It also clarifies the statute which states that a person who violates an ordinance is "guilty of a misdemeanor" and "shall be subject to a civil penalty". Some judges were interpreting the present law as "or". Also, the word "may" is changed to "shall" to mandate that municipalities will be able to collect attorneys' fees in pursuing ordinance cases. The district courts were consulted and approved of these changes. An additional part of HB 713 concerns governmental land use. This would change the hearing process only slightly to require governmental entities to hold public hearings before change in use or new use. Also, it would require the planning board to submit comments in writing on the project within thirty days after the hearing. The change would eliminate problems arising from projects going forth without productive input from concerned citizens. An additional section of HB 713 deletes a statute requiring municipalities to compose an annual list of all residential properties that are located in commercial zones, and register this list with the Registrar of Deeds. This list will be kept locally without the added expense of recording, which the committee determined to serve no purpose. The last section of HB 713 is a housekeeping measure on "motion for rehearing" notices. A person may apply for a rehearing on a local land board within thirty days of a decision. The change merely states that abutters will be notified of the rehearing as they are for the original hearing. Vote 15-0.

Amendment (2541h)

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

AN ACT relative to the penalty for violating a zoning ordinance, relative to governmental land uses, and relative to notice of zoning rehearings.

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

1 Fines and Penalties; Second Offense. Amend RSA 676:17, I and II to read as follows:

I. Any person who violates any of the provisions of this title, or any local ordinance, code, or regulation adopted under this title, or any provision or specification of any application, plat, or plan approved by, or any requirement or condition of a permit or decision issued by, any local administrator or land use board acting under the authority of this title[:

~~(a)~~ shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person[~~;~~ **and**

~~(b)~~ shall be subject to a civil penalty not to exceed \$275 **for the first offense and \$550 for subsequent offenses** for each day that such violation is found to continue after the conviction date or after the date on which the violator receives written notice from the municipality that the violator is in violation, whichever is earlier.

II. In any legal action brought by a municipality to enforce, by way of injunctive relief as provided by RSA 676:15 or otherwise, any local ordinance, code or regulation adopted under this title, or to enforce any planning board, zoning board of adjustment or building code board of appeals decision made pursuant to this title, or to seek the payment of any fine levied under paragraph I, the municipality ~~may~~ **shall** recover its costs and reasonable attorney's fees actually expended in pursuing the legal action if it is found to be a prevailing party in the action. For the purposes of this paragraph, recoverable costs shall include all out-of-pocket expenses actually incurred, including but not limited to, inspection fees, expert fees and investigatory expenses.

2 Governmental Land Uses; Local Governing Body or Planning Board Hearing and Comments. Amend RSA 674:54, II to read as follows:

II. The state, university system, county, town, city, school district, or village district shall give written notification to the governing body and planning board, if such exists, of a municipality of any proposed governmental use of property within its jurisdiction, which constitutes a ~~substantial~~ change in use or a ~~substantial~~ new use. Written notification shall contain plans, specifications, explanations of proposed changes ~~[available at the time]~~, a statement of the governmental nature of the use as set forth in paragraph I, and a proposed construction schedule. Such notification shall be provided at least 60 days prior to the beginning of construction. Either the governing body or planning board of the municipality ~~may~~ **shall** conduct a public hearing relative to the proposed governmental use. Any such hearing shall be held within 30 days after receipt of notice by the governing body or planning board. A representative of the governmental entity which provided notice shall be available to present the plans, specifications, and construction schedule, and to provide explanations. The governing body or planning board ~~may~~ **shall** issue nonbinding written comments relative to conformity or nonconformity of the proposal ~~[with]~~ **to** normally applicable land use regulations to the sponsor of the governmental use within 30 days after the hearing.

3 Governmental Land Use; Local Land Use Regulations. Amend RSA 674:54, II-a to read as follows:

II-a. Any use, construction, or development of land occurring on governmentally owned or occupied land, but which is not a governmental use as defined in paragraph I, shall be fully subject to **all** local land use regulations.

4 Motion for Rehearing; Notice Required. Amend RSA 677:2 to read as follows:

677:2 Motion for Rehearing of Board of Adjustment, Board of Appeals, and Local Legislative Body Decisions. Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor; and the board of adjustment, a board of appeals, or the local legislative body, may grant such rehearing if in its opinion good reason therefor is stated in the motion. This 30-day time period shall be counted in calendar days beginning with the date upon which the board voted to approve or disapprove the application; provided however, that if the moving party shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 144 hours of the vote pursuant to RSA 676:3, II, the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefor, within 30 days after the date on which the written decision was actually filed. If the decision complained against is that made by a town meeting, the application for rehearing shall be made to the board of selectmen, and, upon receipt of such application, the board of selectmen shall hold a rehearing within 30 days after receipt of the petition. Following the rehearing, if in the judgment of the selectmen the protest warrants action, the selectmen shall call a special town meeting. ***Notice of any rehearing shall be provided in accordance with RSA 676:7.***

5 Repeal. RSA 75:11, V, requiring assessing officials to file with the register of deeds a list of residences located in an industrial or commercial zone which are eligible for special appraisal, is repealed.

6 Effective Date.

I. Sections 1 and 4 of this act shall take effect January 1, 2005.

II. The remainder of this act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill:

I. Establishes a higher civil penalty for second and subsequent violations of a zoning ordinance and provides that a prevailing municipality shall recover the costs and attorney's fees it incurred in pursuing the violation.

II. Requires the planning board or the governing body of a municipality to hold a public hearing on any proposed governmental land use and requires the body to issue nonbinding written comments relative to the conformity or nonconformity of the proposal to normally applicable land use regulations.

III. Makes nongovernmental use, construction, or development of governmentally owned or occupied land, subject to all local land use regulations.

IV. Repeals the provision of the law which requires assessing officials to file with the register of deeds a list of residences located in an industrial or commercial zone which are eligible for special appraisal.

V. Requires that when a zoning order or decision is granted a rehearing, abutters shall be notified in the same manner as for the original hearing.

HB 756-L, promoting parental choice in education and providing for an abatement from the education taxes for parents of children not enrolled in the public school system.

INEXPEDIENT TO LEGISLATE

Rep. Kenneth H. Gould for Municipal and County Government: This bill calls for a \$300 abatement for resident taxpayers to use to send their children to private schools. Although the rights of parents to choose an education other than that provided by their town is respected, that choice should not adversely impact the funding necessary to operate our public schools. This bill raises more inequities regarding the treatment of taxpayers who send their children to private schools, and taxpayers who have no children. Diverting funds from our public schools erodes the principle that public school education is a community's obligation. We feel it is not appropriate to further burden taxpayers by this abatement, which comes from the municipal – not the school district – budget. Vote 15-1.

HB 761, enabling towns to adopt subdivision regulations that require innovative land use controls on certain lands when supported by the master plan, making a change in an innovative land use control, and relative to the preliminary review of subdivisions. **OUGHT TO PASS WITH AMENDMENT**

Rep. David L. Buhlman for Municipal and County Government: This bill enables the local planning board to allow density rights to be transferred along with development rights; to require, when supported by the master plan, an innovative land use control to be used by an applicant; to require preliminary review in their subdivision and site plan regulations; and negate the ability of an applicant to forego or engage in the pre-application process. The committee feels that these changes will enhance the communication between the applicant and the land use board. Vote 14-0.

Amendment (0293h)

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

AN ACT enabling towns to adopt subdivision and site plan review regulations that require innovative land use controls on certain lands when supported by the master plan, making a

change in an innovative land use control, and relative to the preliminary review of subdivisions.

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

1 Innovative Land Use Controls; Transfer of Development Rights; Density Added.

Amend RSA 674:21, I(d) to read as follows:

(d) Transfer of ***density and*** development rights.

2 Innovative Land Use Controls; Use When Supported by Master Plan. Amend RSA 674:21, II to read as follows:

II. An innovative land use control adopted under RSA 674:16 ***may be required when supported by the master plan and*** shall contain within it the standards which shall guide the person or board which administers the ordinance. An innovative land use control ordinance may provide for administration, including the granting of conditional or special use permits, by the planning board, board of selectmen, zoning board of adjustment, or such other person or board as the ordinance may designate. If the administration of the innovative provisions of the ordinance is not vested in the planning board, any proposal submitted under this section shall be reviewed by the planning board prior to final consideration by the administrator. In such a case, the planning board shall set forth its comments on the proposal in writing and the administrator shall, to the extent that the planning board's comments are not directly incorporated into its decision, set forth its findings and decisions on the planning board's comments.

3 Power to Regulate Subdivisions; Preliminary Review Added. Amend RSA 674:35, I to read as follows:

I. A municipality may by ordinance or resolution authorize the planning board ***to require preliminary review of subdivisions, and*** to approve or disapprove, in its discretion, plats, and to approve or disapprove plans showing the extent to which and the manner in which streets within subdivisions shall be graded and improved and to which streets water, sewer, and other utility mains, piping, connections or other facilities within subdivisions shall be installed.

4 New Subparagraph; Innovative Land Use Controls Required. Amend RSA 674:36, II by inserting after subparagraph (l) the following new subparagraph:

(m) Require innovative land use controls on lands when supported by the master plan.

5 New Subparagraph; Site Plan Review Regulations; Requirement for Innovative Land Use Controls Permitted. Amend RSA 674:44, II by inserting after subparagraph (h) the following new subparagraph:

(i) Require innovative land use controls on lands when supported by the master plan.

6 Board's Procedures on Plats; Election to Forego Preapplication Review Removed. Amend RSA 676:4, II(c) to read as follows:

(c) ~~[The applicant may elect to forego or engage in preapplication review or either phase thereof as provided in subparagraphs (a) and (b).]~~ Preapplication review shall be separate and apart from formal consideration under paragraph I, and the time limits for acting under subparagraph I(c) shall not apply until formal application is submitted under subparagraph I(b).

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

AMENDED ANALYSIS

This bill:

I. Adds density rights to innovative land use controls.

II. Enables towns to require innovative land use controls on certain lands, when supported by the master plan.

III. Gives planning boards the power to require preliminary subdivision review.

IV. Removes an applicant's option to forego a preapplication review when such review is required by subdivision regulations.

SB 176, relative to standards for plats recorded in the registry of deeds. OUGHT TO PASS WITH AMENDMENT

Rep. David L. Buhlman for Municipal and County Government: The Registrar of Deeds Association wanted to set uniform standards for "plat(s)" that are recorded. The original statute stated that a plat of a subdivision or a plat showing existing property lines had to be prepared by a licensed or registered land surveyor. There was no uniform definition of plat and the Registrars of Deeds are running out of space. Many large plats were being recorded which appeared to have no specific use. This bill satisfied the requirements expressed by the Registrars of Deeds by setting up the uniform standards for recording of plats. The standards for plats will be displayed in a like manner as the standards for the recording of deeds pursuant to RSA 478:4-a. Vote 16-0.

Amendment (2392h)

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

- 1 Registers of Deeds; Recording of Plats. Amend RSA 478:1-a to read as follows:
478:1-a Recording of Plats.

I. No register of deeds shall file or record a plat of a subdivision, or a plat prepared for the purpose of showing existing property lines, if such plat has not been prepared and certified by a licensed land surveyor, since July 1, 1981, or by a registered land surveyor between January 1, 1970 and June 30, 1981, and any such filing or recording shall be void. For the purposes of this section the definition of the word "subdivision" shall be that contained in RSA 672:14. ***A "plat" for the purpose of this section shall be a map of a specific land area whose boundaries are defined by metes and bounds. A plat may show:***

(a) Newly created parcels, streets, alleys, and easements as in a subdivision; or

(b) A lot-line-adjustment or site plan depicting existing parcels defined by legal descriptions contained in deeds, grants, or other legal documents.

II. ***Each register of deeds shall establish a policy for providing adequate space, on the plat, for recording the registry plan number and recording information.***

III. ***The register of deeds shall refuse for recording any map that does not meet the definition of a plat under paragraph I and any plat that does not contain the information or meet the specifications required by this section. Construction plans, construction details, and maps that do not define the limits or extent of legal rights or interest in land shall not be recorded.***

IV. ***All plats shall be drawn with the following sizes: 8.5" x 11," 11" x 17," 17" x 22," 22"x 34," or such specifications and sizes as may be required by the register of deeds. The material composition of the plats shall be suitable for electronic scanning and archiving by the register of deeds.***

V. ***All plats shall have a minimum of 1/2 inch margins on all sides.***

VI. ***All text and dimensions shall be legible for reproduction, and the text sizes shall be no smaller than .08 of an inch for mechanical drafting and 1/8 inch for hand drafting.***

VII. ***All certifications, seals, and approval blocks shall have original dates and signatures in a legible, permanent black ink.***

VIII. ***All title blocks shall be located in the lower right hand corner, when possible, and shall indicate the following:***

(a) Type of survey, such as a boundary survey, subdivision, American Land Title Association (ALTA) survey, or lot line adjustment.

(b) Owner of record.

(c) Title of plat or development.

(d) Tax map number.

(e) Name of the town in which the parcel is located.

(f) Plat and revision dates.

IX. All plats shall have a scale both as a written and graphic representation.

X. All plats shall have a north arrow with reference to magnetic grid or astronomic north, as applicable. The north arrow shall be labeled with its reference direction.

XI. Shading over any text shall not be permitted on any plat. Cross hatching or other hatching at a scale large enough not to interfere with text legibility, before and after reproduction, may be permitted.

XII. No lines, whether hatching, boundary lines, or topographic contours shall obstruct or interfere with the legibility, either before or after reproduction, of any bearings, dimensions, or text.

XIII. The minimum line widths on plats shall not be smaller than .01 inches.

2 Repeal. RSA 478:13-a, relative to recording of plans, is repealed.

3 Effective Date. This act shall take effect January 1, 2005.

HB 567-FN-L, relative to telecommunications infrastructure in state-owned rights-of-way.
REFER FOR INTERIM STUDY

Rep. Leon S. Kenison for Public Works and Highways: The committee voted to reconsider this bill based on information that the New Hampshire Department of Transportation and industry representatives furnished, suggesting that unintended consequences may result unless further study resolves the uncertainties revealed since the committee vote. Interim study will allow a more complete evaluation of all related interests and factors. Vote 8-6.

HB 607-FN, relative to the determination of just compensation in eminent domain proceedings. **REFER FOR INTERIM STUDY**

Rep. Kevin K. Waterhouse for Public Works and Highways: This bill would allow New Hampshire to join Florida as the only state to allow the actual replacement cost of the property taken. The committee felt recently passed legislation increasing the relocation assistance for businesses in eminent domain proceedings from \$10,000 to \$100,000 to be a step toward more equitable compensation. The committee felt that the time spent evaluating the reorganization and training of the Right-of-Way Bureau will be beneficial. Vote 11-3.

HB 697-FN, relative to the sale of motor fuel. **OUGHT TO PASS WITH AMENDMENT**

Rep. Saghir A. Tahir for Public Works and Highways: This bill updates the statutes relative to the road toll and its collection process. It also increases the penalties for violators of the report requirement and avoidance of the payment of the road toll. The committee worked on this bill during several sessions and received input from the Department of Safety and the Attorney General's Office. Vote 15-0.

Amendment (2547h)

Amend the bill by replacing sections 3-7 with the following:

3 Application for License; Licensing of Distributors. Amend RSA 260:36 to read as follows:

260:36 Application for License; Licensing of Distributors. It shall be unlawful for any person to sell or use motor fuel upon which the road toll imposed and collected under this subdivision has not been paid, unless the person is the holder of a valid license to engage in business as a distributor of motor fuels. To procure a motor fuel distributor license, an application, signed subject to prosecution for unsworn falsification and accompanied by a bond, shall be filed with the department in such form as the commissioner may prescribe. Once approved, the department shall issue a license certificate valid only for the distributor

in whose name issued. The license shall be unassignable and shall remain in full force and effect ***on a fiscal year basis from July 1 through June 30*** ~~until~~ ***unless*** cancelled, suspended, or revoked. ***The license shall be renewable upon completion of an application renewal form, provided that the distributor is in good standing with the division.*** The department shall furnish each distributor, monthly, a list of current licenses issued under this section.

4 Motor Fuel and Petroleum Products Transporter; License. Amend RSA 260:42, IV to read as follows:

IV. The commissioner shall issue a license certificate when the application has been accepted and approved, and all other conditions and requirements of this subdivision have been fully complied with. The license shall be valid only for the transporter in whose name it is issued. The license shall not be assignable and shall remain in full force and effect ***on a fiscal year basis from July 1 through June 30*** ~~until~~ ***unless*** cancelled, suspended, or revoked. ***The license shall be renewable upon completion of an application renewal form, provided that the transporter is in good standing with the division.***

5 Motor Fuel and Petroleum Products Transporter; Penalty. Amend RSA 260:42, VI to read as follows:

VI.(a) Any person who fails, neglects, or refuses to file the monthly report required by this section shall be assessed a penalty of ~~[\$50]~~ ***\$500***. Such penalty shall immediately accrue and shall bear interest as specified in RSA 260:40-a.

(b) Any person who fails to report a delivery of petroleum fuel or petroleum products within the time period specified in this section shall be assessed a penalty of \$500 or \$50 per unreported delivery, whichever is greater. Such penalty shall immediately accrue and shall bear interest as specified in RSA 260:40-a.

6 New Section; Road Tolls; Retail Dealer Inspections. Amend RSA 260 by inserting after section 42 the following new section:

260:42-a Retail Dealer Inspections.

I. Every retail dealer shall be subject to reasonable inspections during the regular business hours of the retail dealer. Inspections may consist of the review of records of motor fuel and petroleum products, including:

- (a) Purchases of product;
- (b) Opening and closing inventory readings; and
- (c) Pump meter readings.

II. Any person authorized by the department is hereby given the authority, during the usual business hours of the day, to enter any retail dealer's premises for the purpose of making an inspection or investigation as deemed necessary by the department. If the owner or occupant refuses to permit such inspection, the commissioner or the commissioner's authorized officers may apply under oath for a search warrant as provided in RSA 595-B.

7 New Section; Road Tolls; Retention of Records by Retail Dealers. Amend RSA 260 by inserting after section 43 the following new section:

260:43-a Retention of Records by Retail Dealers, and Transporters. Each retail dealer shall maintain and keep for a period of 4 years records of motor fuel and petroleum products, including purchases of product, opening and closing inventory readings, and pump meter readings.

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

10 Road Tolls; Penalties. RSA 260:55 is repealed and reenacted to read as follows:

260:55 Penalties.

I.(a) The term "person," as used in this section, shall include, but not be limited to, a natural person, a corporation, a limited liability company, a partnership, a professional association, an officer or employee of a corporation, a member, officer, or employee of a partnership, or a trustee, member, or employee of a trust who as such trustee, member, or employee is under a duty either to perform or to refrain from performing the act with respect

to which the violation occurs. This section shall apply to persons acting in any fiduciary capacity.

(b) The term “wilfully,” as used in this section, shall have the same meaning as provided in RSA 626:2, IV.

II. With respect to any road toll, penalty, or interest imposed by this subdivision, no person shall:

(a) Wilfully attempt in any manner to evade any tax or the payment thereof.

(b) Wilfully fail to collect, truthfully account for, and pay over any road toll, penalty, or interest which such person is required to collect, account for, and pay over to the department.

(c) Wilfully fail to make a return, report, or declaration, to keep records, or to supply any information, which such person is required to do under this subdivision or under rules adopted under authority of this subdivision, to make such return, report, or declaration, to keep such records, or to supply such information, at the time or times required by statute or rules.

(d) Make and submit to the department any return, report, statement, or other document, that is incomplete due to wilful omissions.

(e) Wilfully make and submit to the department any return, report, statement, or other document that he or she does not believe to be true and correct as to every material matter.

(f) Aid or assist in, or procure, counsel, or advise the preparation of or presentation under, or in connection with any matter arising with respect to the road tolls imposed under this subdivision, a return, affidavit, claim, or other document, which the person knows is fraudulent or false as to any material matter, whether or not such falsity or fraud is with the knowledge and consent of the person authorized or required to present such return, affidavit, claim, or document.

(g) Wilfully simulate, or falsely or fraudulently execute or sign, any bond, license, permit, or other document required by the department with respect to motor fuel laws, or by any rule adopted relative to such laws, or wilfully procure such documents to be falsely or fraudulently executed or advise, aid in, or connive at such execution.

(h) Wilfully remove, deposit, or conceal, or direct the removing, depositing, or concealing of any goods, chattels, or commodities for, or in respect to, any road toll which is or is to be imposed, or any property upon which levy is authorized by law, with intent to evade the assessment or collection of any road toll, penalty, or interest.

(i) Wilfully deliver or disclose to the department any list, return, account, statement, declaration, or other document, known by him or her to be fraudulent or to be false as to any material matter.

(j) Wilfully corrupt or by force or threat of force, including any threatening letter or communication, endeavor to obstruct or impede an officer or employee of the state acting in an official capacity under this subdivision, or in any other way corrupt or by force or threats of force, including any threatening letter or communication, obstruct or impede, or endeavor to obstruct or impede, the due administration of any tax administered by the department. The term “threats of force,” as used in this subparagraph, means threats of bodily harm to the officer or employee of the department or to a member of his or her family.

(k) Wilfully accepts delivery of motor fuel upon which the road tolls have not been paid, unless such motor fuel is exempt under the law from the payment of road tolls.

III.(a) Any natural person who violates subparagraph II(a), (b), (e), (f), or (j) shall be guilty of a class B felony and shall be fined as provided in paragraph IV and subject to the penalties provided in RSA 651:2. Any other person who violates subparagraph II(a), (b), (e), (f), or (j) shall be guilty of a felony and shall be fined as provided in paragraph IV and subject to the penalties provided in RSA 651:2.

(b) Any natural person who violates subparagraph II(c), (d), (g), (h), (i), or (k) shall be guilty of a misdemeanor and shall be fined as provided in paragraph IV and subject

to the penalties provided in RSA 651:2. Any other person who violates subparagraph II(c), (d), (g), (h), (i), or (k) shall be guilty of a misdemeanor and shall be fined as provided in paragraph IV and subject to the penalties provided in RSA 651:2.

IV. In addition to any penalties provided in RSA 651:2, any person convicted under this section shall be subject to a criminal penalty of at least 10 percent, but not more than 30 percent, of the outstanding road toll.

V. The motor fuel licenses issued to any distributor by the department shall be revoked upon the conviction of the distributor of any crime under this section. Such convicted distributors shall be ineligible to renew or obtain any motor fuel license issued by the department for a period of at least 5 years from the date of conviction.

11 Road Tolls; Determining Amount. Amend RSA 260:38, I to read as follows:

I. For the purpose of determining the amount of road toll imposed and to be collected under this subdivision, ***the sole proprietor, president, managing partner, chief executive officer, or equivalent thereof, of*** each distributor shall on or before the twentieth day of each calendar month render a return to the department on forms prescribed and furnished by the commissioner, ***and shall certify under the pains and penalties of perjury that the return is true, accurate, and complete in all material respects.*** The return shall show the total number of gallons sold and used in the state during the previous calendar month together with such other information as the commissioner may require for the reasonable administration of this subdivision. Each distributor shall accompany the return with a check payable to the state treasurer for the total amount of road toll shown by such return to be due.

12 Road Tolls; Determining Amount. Amend RSA 260:38, III to read as follows:

III. Each person manufacturing alcohol, ethanol, methanol, or any other product within the state of New Hampshire for use in gasohol shall obtain a license and, on or before the twentieth day of each calendar month, ***the sole proprietor, president, managing partner, chief executive officer, or equivalent thereof, of said person shall*** render a return to the commissioner on forms prescribed and furnished by the commissioner, ***and shall certify under the pains and penalties of perjury that the return is true, accurate, and complete in all material respects.*** The return shall show the total number of gallons sold to distributors of gasohol, or to persons purchasing the product for the purpose of resale to the distributors, together with such other information as the commissioner may require for the reasonable administration of this subdivision.

13 Road Tolls; Penalty Waiver. Amend RSA 260:42, VII to read as follows:

VI. The commissioner is authorized to waive any ***civil*** penalty and interest when it is proved to the commissioner's satisfaction that the failure to file a monthly report on time ***or to report all deliveries of petroleum fuel or petroleum products within the time period specified in this section*** was not ~~[willful]~~ ***wilful.***

14 Effective Date. This act shall take effect July 1, 2004.

HB 698-FN, relative to electronic toll collections. OUGHT TO PASS WITH AMENDMENT

Rep. William E. Leber for Public Works and Highways: This bill establishes electronic toll collection systems in statute and provides video enforcement of the E-Z Pass system. The bill provides for accounting of the collection and identifying violators. It provides for administrative procedures for collection and policy for referral to the Department of Safety for enforcement, and penalties, including administrative fines and suspension. The amendment limited procedures for drawing funds from the turnpike fund with approval of the Fiscal Committee and Governor and Council. This is important to the system to make the E-Z Pass system on the turnpike efficient and safe. Vote 12-1.

Amendment (2475h)

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

1 Evasion of Tolls and Charges. RSA 236:31 is repealed and reenacted to read as follows:

236:31 Evasion of Tolls and Charges.

I. For purposes of this section:

- (a) "Department" means the department of transportation.
- (b) "Driver" means driver as defined in RSA 259:25.
- (c) "Electronic toll collection system" means a system for electronically transmitting information from a device on a motor vehicle to receiving equipment located in a toll collection facility, in order to charge a valid electronic toll account holder the appropriate toll or charge for use of the highway or bridge.
- (d) "Electronic toll collection monitoring system" means a system whereby a vehicle sensor is placed in a location to work in conjunction with an electronic toll collection system to produce at least one photograph, microphotograph, videotape, recorded image, or written record of a portion of the vehicle when the vehicle is used or operated in violation of the electronic toll collection system rules. "Electronic toll collection monitoring system" shall also include any other technology that identifies a vehicle by a photographic, electronic, or other method.
- (e) "License" means license as defined in RSA 259:48.
- (f) "Owner" means owner as defined in RSA 259:72.
- (g) "Pay" means the transfer of funds in cash or by instructions to a financial service allowing withdrawal by debit or credit to an account maintained to satisfy the obligation to pay a toll or charge established by law for use of a highway or bridge in this state.
- (h) "Violation" means to fail, neglect, or refuse to pay the toll or charge for the use of a bridge, highway, or part thereof, by a motor vehicle.

II. No person shall fail, neglect, or refuse to pay the toll or charge for the use of any bridge, highway, or part thereof; or use, or attempt to use, any device or method which results in an electronic toll collection monitoring system being unable to accurately assess or collect the toll or charge due or to detect the non-payment of the toll or charge. Any person violating this section shall be subject to the provisions of this section and to an order of suspension pursuant to RSA 263:56-f.

III. The owner of a vehicle using a bridge or highway subject to a toll or charge shall be responsible for payment of the toll and charges due, plus any administrative fees the department assesses in accordance with its rules, and to an order of suspension under RSA 263:56-f, unless:

- (a) The vehicle was taken without owner's consent, pursuant to RSA 262:12, or was a stolen vehicle at the time of the violation and the owner provides to the department, or its designee, upon receipt of notice of a violation of this section, a copy of a report of the unauthorized taking or theft made to a law enforcement agency; or
- (b) The vehicle was leased or rented to another person, and the owner submits to the department, or its designee, a copy of the rental agreement, lease, or other contract document covering the vehicle on the date of the violation with the name and address of the renter or lessee clearly legible; at which time the renter or lessee of the vehicle on the date of the violation shall be deemed to be the owner of the vehicle for the purposes of this section, and shall be subject to the notice and order of suspension under RSA 263:56-f.

IV. Notwithstanding RSA 237:16-d, the department shall adopt rules under RSA 541-A for the implementation of a system to detect, record, verify, and administratively enforce violations of this section. The rules shall include:

- (a) The criteria used to establish that a toll or charge has not been paid.
- (b) A procedure to promptly resolve inadvertent violations in the accounts of electronic toll system customers otherwise in good standing.
- (c) A procedure for processing all other violations of this section, which shall require the department, or its designee, to send by regular mail, or other agreed upon

method, an advisory and payment request to the owner of the vehicle, within 30 days of the date of the violation. The advisory and payment request shall notify the owner of the date, time, and location of the alleged violation, give the owner the opportunity to resolve the alleged violation by payment of the toll or charge due and a reasonable administrative fee, and advise the owner that failure to pay the required toll or charge and administrative fee within 60 days of the date of the violation shall cause the department to file a report with the department of safety, division of motor vehicles, seeking an order of suspension pursuant to RSA 263:56-f.

(d) A schedule of administrative fees to be imposed upon those who violate this section. Such administrative fees shall be set from time to time in an amount sufficient to permit the department to fully recover its costs, and the costs incurred by the department of safety, to administer, maintain, and upgrade the violation enforcement system. All funds received under this section shall be deposited in the turnpike fund. The department of transportation may, with the approval of the fiscal committee of the general court and the governor and council, draw from the turnpike fund to administer the electronic toll system.

V. Any electronic toll collection monitoring equipment acquired, operated by, or used by the department, or its designee, shall be designed to make a record of the front, or rear, or both, portions of the vehicle, including any registration plates affixed to the vehicle. Such equipment shall not be designed to produce a photograph, microphotograph, videotape, or other recorded image of the face of the operator or any passenger in the motor vehicle, unless the production of such image is unavoidable because the operator or passenger is not in a passenger compartment, as on a motorcycle.

VI. The department, and any designee of the department, shall maintain the confidentiality of all information acquired in connection with the administration and enforcement of toll evasion, including but not limited to credit and account data, photographs or other images, and all personally identifying information obtained relative to owners of vehicles. Such information shall not be a public record subject to disclosure under RSA 91-A and shall be used solely for enforcement of this section.

2 New Paragraph; Owner; Electronic Toll Collection. Amend RSA 259:72 by inserting after paragraph IV the following new paragraph:

V. For the purposes of the provisions of this title relative to electronic toll collection, any person holding title to a vehicle, or having the exclusive right to the use thereof under a written rental or lease agreement, for any period of time.

3 New Section; Suspension for Evasion of Electronic Toll Collection System. Amend RSA 263 by inserting after section 56-e the following new section:

263:56-f Suspension for Evasion of Electronic Toll Collection System.

I. Upon receiving a report from the commissioner of the department of transportation or designee, that the owner of a vehicle, as defined in RSA 236:31, has violated the terms of RSA 236:31, the director shall notify the owner in writing by first class mail that the owner's driving privileges, registration, resident plates, or motor vehicle registration privileges may be suspended on the date which is 30 days from the date of notification unless the toll and any administrative fees assessed by the department of transportation are paid. The director shall also notify the owner that he or she may request an administrative hearing before the suspension takes effect. A request for a hearing shall be in writing. A request for a hearing received by the division more than 30 days from the date the notice is issued shall be denied as untimely.

II.(a) The director shall, pursuant to RSA 541-A, adopt by rule, a uniform administrative fine schedule for each separate violation that shall not exceed:

- (1) \$250 for a first offense.
- (2) \$500 for a second offense within a 12-month period.
- (3) \$1,000 for a third or subsequent offense within a 12-month period.

(b) No fine shall take effect unless approved by the commissioner. The commissioner shall have the authority to modify the amount of the fine assessed.

Notwithstanding any other law to the contrary, all administrative fines collected under this section shall be deposited into the turnpike fund.

III. The director shall adopt rules under RSA 260:5 establishing a uniform administrative hearing process.

IV.(a) The scope of the hearing shall be limited to:

(1) Whether the owner has paid all tolls and administrative fees owed to the department of transportation;

(2) Whether the report from the department of transportation correctly identified the owner of the vehicle at the time of the incident; or

(3) Whether the vehicle, identified as having violated the duty to pay a toll, had been reported as taken without the owner's consent, pursuant to RSA 262:12, or stolen to a law enforcement agency in a timely manner.

(b) A notice of violation may be based in whole or in part upon inspection of any photographic or other recorded image of a vehicle using the bridge or highway subject to a toll or charge. The written certification of any person employed by or under contract with the department of transportation that the notice is so based shall be admissible in any hearing held hereunder and shall create a rebuttable presumption that the owner is liable for such violation.

V. The driving privileges, resident plates, and motor vehicle registration of any vehicle, if applicable, of an owner shall be reinstated upon:

(a) Notice to the director from the department of transportation that all tolls, fees, and fines have been paid; and

(b) Payment to the director of a fee of \$100 for license or driving privilege restoration, and \$25 for each motor vehicle registration restored. Such restoration fees shall be in lieu of any other reinstatement fees. All funds received under this subparagraph shall be deposited in the highway fund.

VI. The department shall draw against the turnpike fund to administer the electronic toll collection system, up to the limits of the reinstatement fees and administrative fines deposited therein as a result of enforcement actions taken pursuant to this section. In the event that the amounts available in the turnpike fund for this purpose are insufficient to meet the actual and reasonable costs of the department as a result of administering the enforcement actions taken pursuant to this section, the department may draw from the turnpike fund to recover such insufficiency and for any new positions that may be required by the department to administer the enforcement actions of this section; provided, that any withdrawals shall first be approved by the fiscal committee of the general court and by the governor and council.

4 New Paragraph; Records and Certification; Evasion of Electronic Toll Collection. Amend RSA 260:14 by inserting after section III the following new paragraph:

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

5 Implementation of Electronic Toll Collection System; Applicability. The commissioner of the department of transportation shall certify to the commissioner of the department of safety that a toll facility has in place the equipment, procedures, and trained staff required to implement the electronic toll collection and enforcement system before violations as set forth under this act may be assessed at the facility.

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

HB 765-FN, relative to consideration of a light rail commuter system and establishing a

commission to oversee light rail progress. **INEXPEDIENT TO LEGISLATE**

Rep. Chris S. Malloy for Public Works and Highways: The committee fully acknowledges the current and future need of rail as a form of transportation, both in-state and regionally. This particular bill set up an overlapping commission and urged the Department of Transportation to consider light rail, which it has. The approved plans for the I-93 widening currently include a 90-foot right-of-way for future light rail construction. We could possibly restrict our options for future rail technology by requiring light rail only. The committee felt this bill was not the appropriate vehicle to planning and constructing a rail system. Vote 16-1.

HB 794, allowing the department of transportation to lease space for the provision of food service at state highway and turnpike rest stops. **INEXPEDIENT TO LEGISLATE**

Rep. Candace C.W. Bouchard for Public Works and Highways: This legislation would have allowed the Commissioner of the Department of Transportation to lease space for the provision of food service at state, interstate and turnpike rest areas. The committee appreciated the sponsors' concern for motorist convenience and safety while traveling on New Hampshire's interstate system. However, during testimony, the committee learned the following: New Hampshire interstate exits, unlike those in other states, are close together, usually within ten miles of each other. This legislation would have a negative impact on an estimated 4,000 currently established businesses located off the interstate exits providing safe, convenient services to traveling motorists. Also, this legislation conflicted with RSA 186-B:9 and the Federal Transportation Act giving priority to blind services specific to providing vending facilities on property controlled by the state. Vote 13-0.

HB 812, relative to state acquisition of privately-owned airports. **OUGHT TO PASS WITH AMENDMENT**

Rep. Chris S. Malloy for Public Works and Highways: The committee felt this bill would allow the State to purchase an airport with the intention of having it remain as a viable operating airport and not used for other purposes. The bill also makes the State sell the land for any purpose and to any party after five years. It is the intent of this committee to keep airports open whenever possible, purchase an airport as a last resort, and dispose of the property if continued use as an airport is not viable. Vote 14-1.

Amendment (2552h)

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

1 Purchase or Transfer of Airports. RSA 422:19 is repealed and reenacted to read as follows:

422:19 Purchase or Transfer of Airports.

I. All registered privately owned airports open to the public within the state offered for sale by its owner after July 2, 1989, shall be offered for sale to the state of New Hampshire in the first instance. The state of New Hampshire, acting through the commissioner with the approval of governor and council and the long range capital planning and utilization committee, shall have a right to match any verifiable bona fide offer made for such airports within the limits of funds available to the director for this purpose. The state shall have 90 days from the date of notification by owner that said airport is for sale to serve notice of intent to acquire under this section and to notify the long range capital planning and utilization committee.

II. Airports purchased under this section shall be held and maintained as airports in the statewide airport system and shall be offered for sale or transfer to a local municipality, county, or airport authority. If the state is unable to sell or transfer an airport to a local municipality, county, or airport authority within 5 years, the property shall be offered for sale or lease to any party for any purpose.

III. The commissioner shall request and maintain through the budget process, bonding authority in the amount of \$5,000,000 for purchase of airports or option to purchase in accord with this chapter.

IV. The state of New Hampshire, acting through the director, with the approval of the commissioner, shall present a request for a proposed purchase under this section or a public taking under RSA 4:29, to the long range capital planning and utilization committee for its approval.

V. The long range capital planning and utilization committee shall have 30 days after receipt of the request to render its decision on an airport acquisition.

VI. After approval of an airport acquisition by the long range capital planning and utilization committee, the commissioner shall seek final approval of the airport acquisition from the governor and executive council. As part of the approval process, the executive council shall hold a public hearing, within 30 days after approval by the long range capital planning and utilization committee, or comment in the municipality where the airport facility is located and shall render a decision within 30 days after the hearing.

2 Report Required. The director of the division of aeronautics, department of transportation, and the aviation users advisory board shall study and prepare a report on the preservation of privately-owned airports, in coordination with municipalities. The director of the division of aeronautics shall submit the report, on or before November 1, 2004, to the members of the long range planning and utilization committee, the governor, and the executive council.

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

AMENDED ANALYSIS

This bill establishes new requirements for state acquisition of airports in New Hampshire.

The bill also requires the director of the division of aeronautics and the aviation users advisory board to prepare a report on the preservation of privately owned airports, in coordination with municipalities.

Referred to Finance.

HB 835-FN, relative to federal highway grant anticipation bonds. **REFER FOR INTERIM STUDY**

Rep. Mark E. McConkey for Public Works and Highways: A subcommittee met to explore the merits of this bill relative to financing the widening of Interstate 93 through the use of grant anticipation bonds (GARVEE). After a lengthy discussion with the Department of Transportation and the State Treasurer, the committee agreed that this funding tool warrants refinement, and further questions need to be answered. The committee voted to commit the bill to Interim Study. Vote 13-3.

SB 35, relative to the transfer and exchange of certain state-owned land for certain land owned by the Manchester water works. **INEXPEDIENT TO LEGISLATE**

Rep. John A. Graham for Public Works and Highways: The sponsors have indicated that this bill is no longer required. It appears that the matter will be addressed through a non-legislative process. Vote 13-1.

HB 152, relative to regulation by political subdivisions of OHRV trails and exempting certain rail trails use from the state trail evaluation process. **REFER FOR INTERIM STUDY**

Rep. David M. Lawton for Resources, Recreation and Development: This bill would prohibit local municipalities from restricting public OHRV trails on private lands which have been authorized by landowner permission. This bill is not necessary at this time since a recent Superior Court decision stated that municipalities do not have the authority to regulate trail siting for public trails. The Court did, however, enumerate several restrictions that the municipality can put in place to control the operation of OHRVs on the public trails in their

community. The committee recommends that this legislation be retained for interim study in case future action is needed on this controversial subject. Vote 16-0.

HB 385, requiring compliance with local ordinances in the establishment of public ATV and trail bike trails on private lands. **REFER FOR INTERIM STUDY**

Rep. David M. Lawton for Resources, Recreation and Development: This bill would change RSA 215-A:43 to allow local municipalities to require any public OHRV trails on private lands to be in compliance with local ordinances and bylaws. A recent Superior Court decision in a related case found that the local municipality, while it may not regulate trail siting, may regulate numerous aspects of OHRV operation on public trails. The committee, therefore, did not want to take any action at this time, and recommends Interim Study. Vote 16-0.

HB 429, relative to processing excavating and dredging permits. **INEXPEDIENT TO LEGISLATE**

Rep. D. L. Chris Christensen for Resources, Recreation and Development: This bill covered the same subject matter as HB 810, which was effective July 1, 2003. Testimony was received that excavation and dredge permits were being dealt with well within the parameters of HB 810. Vote 14-0.

HB 537, establishing a 211 commission. **INEXPEDIENT TO LEGISLATE**

Rep. John H. Thomas for Science, Technology and Energy: This bill was before the Science, Technology and Energy Committee as HB 707 in 2001. A committee of conference changed HB 707 in its entirety to form a study committee. The study committee recommended essentially the same legislation. In this session, the Committee saw the same problems as in the original bill in the 2001 Session – those being financing duplicity and a growing entity. Vote 11-0.

HB 65, relative to educational assistance for national guard members. **OUGHT TO PASS**

Rep. James F. Headd for State-Federal Relations and Veterans Affairs: The purpose of this bill is to eliminate the consideration of the Montgomery GI Bill benefits in the tuition formula for tuition waiver for National Guard members. Guard members will have available to them empty seats, thereby eliminating any additional expense to the taxpayers. The committee felt to help our volunteer Guard members grow and be the best educated individuals protecting our State and country. Vote 11-1.

HCR 17, urging the posthumous promotion of Colonel Edward Ephraim Cross to brigadier general. **OUGHT TO PASS**

Rep. Ken Hawkins for State-Federal Relations and Veterans Affairs: After hearing much testimony from a number of historians regarding Colonel Cross, the committee felt that his leadership was crucial to victory at the Battle of Gettysburg while Colonel Cross was the Commander of the 5th Regiment NH Volunteers. He was killed July 2, 1863 during the battle in the line of duty and deserves promotion to Brigadier General. Vote 11-0.

HB 53, relative to retail motor vehicle sales. **OUGHT TO PASS WITH AMENDMENT**

Rep. Sherman A. Packard for Transportation: The amendment to HB 53 is a consumer protection issue. Under existing law, any vehicle that is a rebuilt vehicle shall be marked on the title after being rebuilt. This bill adds that a registration be also marked “rebuilt vehicle”. This will allow a consumer or dealer buying any motor vehicle to immediately identify it as a rebuilt vehicle, preventing any chance of fraud. Vote 15-0.

Amendment (2512h)

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

AN ACT relative to the sale of salvage and rebuilt vehicles.

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

1 Title and Registration; Dismantling or Destruction of Vehicle; Notice of Rebuilt Vehicle on Registration. Amend RSA 261:22 to read as follows:

261:22 Dismantling or Destruction of Vehicle.

I. Any owner who sells or in any manner disposes of a vehicle as salvage, or who scraps, dismantles or destroys a vehicle, shall immediately cause the certificate of title and any other information or supporting documents the director reasonably requires to be mailed or delivered to the department for cancellation. Should the vehicle be rebuilt, a certificate of title or registration shall not again be issued without first obtaining approval of the director, who shall cause such vehicle to be inspected for verification of the vehicle identification number and bills of sale or title for major component parts used to rebuild the vehicle. When necessary, a new vehicle identification number shall be attached to the vehicle and shall take precedence over any other number that may be engraved on or attached to the vehicle. Any new title **and registration** issued shall contain the legend "rebuilt vehicle."

II. Any insurance firm or representative thereof who shall declare a motor vehicle other than an exempt vehicle as provided in RSA 261:3 as having been a total loss shall make application for a salvage certificate of title within 20 days of the total loss payment. Such application shall be accompanied by:

(a) Any certificate of title;

(b) Any other information and documents the director reasonably requires to establish ownership of the vehicle and the existence or nonexistence of security interest in it; and

(c) The required fee of \$10.

III. The department shall file each application received and when satisfied as to its genuineness and regularity and when satisfied that the applicant is entitled to the issuance of a salvage certificate of title shall issue a salvage certificate of title of the vehicle to the owner. The salvage certificate of title shall serve as proof of ownership and shall contain a legend indicating that the vehicle has been declared a total loss. The department may adopt rules relative to the circumstances, if any, under which a salvage certificate of title should reflect any legend pertaining to recovered theft.

IV. If a vehicle upon which a salvage certificate of title has been issued by the department after the vehicle has been declared a total loss because physically or economically impractical to repair is rebuilt and restored for highway operation, the owner shall not apply for title or registration again until the vehicle has been inspected by the director or his authorized representative. The inspection of the vehicle shall include verification of the vehicle identification number and bills of sale or titles for major component parts used to rebuild the vehicle. The department shall also issue a decal bearing the legend "salvage vehicle" which the title bureau investigator shall affix to the vehicle on the rear of the left front door post. Each "salvage vehicle" decal shall include a statement indicating that removing the decal or causing the decal to be removed is a misdemeanor under RSA 261:22, V.

IV-a. Before selling to any buyer any used vehicle, the title to which is required to be marked "salvage" pursuant to this section, **or the title and the registration to which is required to be marked "rebuilt" pursuant to this section**, the seller shall disclose to the buyer in writing that the vehicle is a salvage vehicle and the reasons for such designation. Failure to comply with the provisions of this paragraph shall constitute an unfair or deceptive act or practice under RSA 358-A:2.

V. It shall be a misdemeanor for any person to remove or cause to be removed a "salvage vehicle" decal from a motor vehicle to which it has been affixed pursuant to paragraph IV. A bona fide purchaser for value of a motor vehicle which is not properly accompanied by the disclosure required by RSA 261:22, IV-a, or from which the seller has removed or caused to be removed a "salvage vehicle" decal in violation of this paragraph may rescind the purchase within 3 business days after receiving a certificate of title disclosing

that the vehicle is a salvage vehicle *or receiving a certificate of title or registration disclosing that the vehicle be a rebuilt vehicle.*

VI. For purposes of this section, a total loss vehicle shall mean either an unrecovered stolen vehicle or one which has sustained damage or injury so extensive that it is physically or economically impractical to repair.

AMENDED ANALYSIS

This bill requires the title and registration for a rebuilt vehicle to indicate that it is a “rebuilt vehicle.”

HB 388, permitting the reduction of the speed limit within a business or urban residence district or within the compact part of cities or towns to 15 miles per hour. **INEXPEDIENT TO LEGISLATE**

Rep. Brenda L. Ferland for Transportation: This bill was permitting a reduction of speed limits within business or urban residence areas. The main part of the bill was for a situation that was happening on a city’s back alley roads. That issue was taken up and put as an amendment to another bill that passed the House, therefore making this bill unnecessary. Vote 13-0.

HB 689-FN, relative to drivers' licenses issued to persons under the age of 21.

INEXPEDIENT TO LEGISLATE

Rep. Sherman A. Packard for Transportation: The youth operator license issues proposed in HB 689 became law as a result of passage of HB 819. The bill was retained to look at an amendment offered during the hearing. This amendment was felt to be a bad idea by both the committee and the Department of Safety. Vote 14-0.

SB 222-FN-A, relative to motor vehicle fees. **INEXPEDIENT TO LEGISLATE**

Rep. Sherman A. Packard for Transportation: The subject matter in this bill was addressed in other legislation during the 2003 Session, making this bill unnecessary. Vote 14-0.

HB 830-FN-A, creating enterprise zones in which qualifying businesses are eligible for tax credits. **INEXPEDIENT TO LEGISLATE**

Rep. Jeffrey D. Gilbert for Ways and Means: The fall, the study committee authorized by a similar bill, SB 73, has held extensive hearings both at the State House and around the state on the subject matter of HB 830, as well as other strategies and tactics to encourage economic development. Last spring, the committee had voted to retain this bill for possible further consideration in the event that the study committee established under SB 73 recommended further action on HB 830. The SB 73 committee has advised the Ways and Means Committee that it does not recommend such further action, but rather, will shortly file its report and propose legislation on the subject matter of HB 830. Vote 18-0.

BILLS REMOVED FROM CONSENT CALENDAR

HB 351, requiring completion of a child impact seminar prior to filing for divorce.

INEXPEDIENT TO LEGISLATE

Rep. Carolyn M. Gargasz for Children and Family Law: The committee strongly supports the value of the Child Impact Seminar and the importance of parents taking it very early in the divorce process to lessen the negative impact on children. The subcommittee consulted with the Task Force on Family Law, Superior Court personnel, marital masters, Child Impact Seminar providers and interested members of the public to discuss possible amendments. The Task Force on Family Law is working on divorce issues and how to make the system less adversarial. It is aware of the importance of the Child Impact Seminars. The task force will be reporting its recommendations in November 2004. The committee decision to ITL this bill is so that the task force can address Child Impact Seminars in its overall recommendations. The committee has sent a letter to the task force in strong support of Child Impact Seminars,

noting the benefit accruing to early parental education in the process. Vote 15-1.

Rep. Hopper spoke against.

Rep. Gargasz spoke in favor.

Rep. Quandt requested a roll call; sufficiently seconded.

The question being adoption of the committee report.

YEAS 278 NAYS 72

YEAS 278

BELKNAP

Allen, Janet
Flanders, Donald
Pilliod, James
Whalley, Michael

Bartlett, Gordon
Holbrook, Robert
Rice, Thomas

Clark, Charles
Lawton, David
Russell, David

Fitzgerald, James
Nedeau, Stephen
Thomas, John

CARROLL

Babson, David Jr
Hatch, Paul
Olimpio, J Lisbeth

Brown, Carolyn
Kenney, Bettie
Patten, Betsey

Derby, Mark
McConkey, Mark
Philbrick, Donald

Dickinson, Howard
Merrow, Harry
Stevens, Stanley

CHESHIRE

Allen, Peter
Espieffs, Peter
Liebl, George
Parkhurst, Henry
Robertson, Timothy
Tilton, Anna

Dexter, Judson
Fish, Douglas
Manning, Joseph
Pratt, Irene
Royce, H Charles
Webber, Amy

Dunn, James
Hunt, John
Meador, David
Pratt, John
Slack, Pamela
Weed, Charles

Eaton, Daniel
Laurent, John
Mitchell, McKim
Richardson, Barbara
Smith, Edwin

COOS

King, Frederick
Theberge, Robert

Mears, Edgar
Tholl, John Jr

Richardson, Herbert

Stohl, Eric

GRAFTON

Alger, John
Cooney, Mary
Dudley, Terri
Naro, Debra
Solomon, Peter

Barker, Robert
Densmore, Edward
Gionet, Edmond
Nordgren, Sharon
Sorg, Gregory

Benn, Bernard
Diamond, Estelle
Hammond, Lee
Scovner, Nancy

Bleyler, Ruth
Dorsett, Andrew
Maybeck, Margie
Sokol, Hilda

HILLSBOROUGH

Allan, Nelson
Batula, Peter
Brundige, Robert
Carlson, Donald
Christensen, D L
Chris

Allen, Timothy
Beaton, William
Bruno, Pierre
Carter, Jeffrey
Clayton, William

Baroody, Benjamin
Bergin, Peter
Buckley, Raymond
Carter, Mark
Clemons, Jane

Barry, J Gail
Brassard, Paul
Cail, Kenneth
Cernota, Albert
Cote, David

Cote, Peter
Dionne, Kimberley
Emerton, Larry
Gorman, Mary
Hallyburton, Margaret
Irwin, Anne-Marie
Katsiantonis, Thomas
Lasky, Bette
Martin, Mary Ellen

Coughlin, Pamela
Dokmo, Cynthia
Fields, Dennis
Goyette, Peter Jr
Hawkins, Ken
Jasper, Shawn
Kopka, Angeline
Lawrence, James
McDonough-Wallace,
Alice

Craig, James
Drisko, Richard
Fletcher, Richard
Graham, John
Holden, Randolph
Jean, Claudette
L'Heureux, Robert
Leach, Edward
McRae, Karen

Crane, Elenore Casey
Elliott, Larry
Gargasz, Carolyn
Haley, Robert
Infantine, William
Johnson, Lionel
LaFlamme, Paul
Malloy, Chris
Mercer, Robert

Messier, Irene
Movsesian, Lori

Michon, Stephen
O'Brien, Lori

Mooney, Maureen
Ober, Russell III

Moran, Edward
Pappas, Christopher

Pappas, Marc
Reeves, Sandra
Slocum, Lee
Tahir, Saghir

Pepino, Leo
Ross, Lawrence
Spiess, Paul
Tate, Joan

Pilotte, Maurice
Scanlon, Michael
Sullivan, Francis
Wheeler, Robert

Price, Pamela
Shaw, Barbara
Sweeney, Cynthia

MERRIMACK

Anderson, Eric

Blanchard, Elizabeth

Bouchard, Candace

Brueggemann,
Donald

Clarke, Claire
DeStefano, Stephen
Fraser, Leo Jr
Hess, David
Langer, Ray
Maxfield, Roy
Potter, Frances
Wallner, Mary Jane

Currier, David
Dunne, Christopher
French, Barbara
Jacobson, Alf
Lockwood, Priscilla
McCormick, Tom
Reardon, Tara

Davis, Frank
Field, William
Gile, Mary
Kenison, Leon
MacKay, James
Osborne, Jessie
Reed, Dennis

DeJoie, John
Foley, Albert
Hager, Elizabeth
Kennedy, Richard
Marple, Richard
Owen, Derek
Rush, Deanna

ROCKINGHAM

Belanger, Ronald
Camm, Kevin
Coes, Betsy
Duffy, James
Francoeur, Sheila
Gleason, John
Headd, James
Johnson, Robert
Langone, John
McEachern, Paul
Norelli, Terie
Pantelakos, Laura
Robertson, Carl
Smith, Donald
Tufts, J Arthur
Welch, David

Blanchard, MaryAnn
Carson, Sharon
Cooney, Richard
Dumaine, Dudley
Gilbert, Jeffrey
Gould, Kenneth
Hutchinson, Karen
Johnson, Rogers
Major, Norman
McMahon, Charles
Noyes, Richard
Pitts, Jacqueline
Roessner, Kurt
Smith, Paul
Vallone, Matthew
Wiley, Robert

Bridle, Russell
Casey, Kimberley
Corbin, Corey
Fesh, Bob
Gilbert, Karl
Griffin, Mary
Ingram, Russell
Katsakiores, George
Manning, John
Moore, Benjamin
O'Neil, Michael
Putnam, Ed II
Ruffner, Walter
Splaine, James
Waterhouse, Kevin
Winchell, George

Cady, Harriet
Clark, Vivian
Dalrymple, Janeen
Flanders, John Sr
Gillick, Thomas
Hamel, Albert
Introne, Robert
Kelley, Jane
McCann, Richard
Morris, Richard
Packard, Sherman
Rausch, James
Shultis, Elizabeth
Stone, Joseph
Weare, E Albert
Zolla, William

STRAFFORD

Bemis, Alan
Campbell, W Packy
Easson, Timothy
Kaen, Naida
Snyder, Clair

Berube, Roger
Cataldo, Sam
Heon, Richard
Knowles, William
Vachon, Dennis

Bickford, David
Creteau, Irene
Hofemann, Roland
Rous, Emma
Wall, Janet

Brown, Julie
Dunlap, Patricia
Johnson, Nancy
Smith, Marjorie

SULLIVAN

Allison, David
Ferland, Brenda
Leone, Richard

Burling, Peter
Flint, Gordon Sr
Phinizy, James

Cloutier, John
Franklin, Peter
Rodeschin, Beverly

Donovan, Thomas
Jones, Constance

NAYS 72

BELKNAP

Ahern, Omer Jr

Boyce, Laurie

Laflam, Robert

Wendelboe, Fran

CARROLL

Mock, Henry

CHESHIRE

None

COOS

Brady, Mark

Guay, Lawrence

Poulin, Richard

Pratt, Leighton

Woodward, David

GRAFTON

Akins, Ralph
Williams, Burton

Gilman, G Michael

Giuda, Robert

Ingbretson, Paul

HILLSBOROUGH

Adams, Jarvis
Bergeron, Jean-Guy
Christiansen, Lars
Hagan, Barbara
Hinkle, Peyton
McElroy, Henry Jr
Souza, Kathleen
Wheeler, James

Arnold, Thomas Jr
Bouchard, David
Gibson, John
Hall, Charles
Hopper, Gary
McHugh, Claire
Stepanek, Stephen

Artz, Lawrence
Buhlman, David
Gonzalez, Carlos
Hansen, Ryan
Kurk, Neal
Mosher, William
Sullivan, Peter

Balboni, Michael
Chabot, Robert
Greenberg, Gary
Harrington, Paul
Luebker, Bernard
Schulze, Joan
Vaillancourt, Steve

MERRIMACK

Leber, William

Nutter, Edward

Soltani, Tony

ROCKINGHAM

Allen, Mary
Dodge, Robert
Letourneau, Robert
Weldy, Norman Jr

Bicknell, Elbert
Hughes, Daniel
McKinney, Betsy
Weyler, Kenneth

Bishop, Franklin
Itse, Daniel
Quandt, Matthew

DiFruscia, Anthony
Katsakiores, Phyllis
Varrell, Thomas

STRAFFORD

Albert, Russell
Newton, Clifford
Spang, Judith

Callaghan, Frank
Pelletier, Arthur
Twombly, James

Harrington, Michael
Schmidt, Peter
Woods, Phyllis

Miller, Joseph
Scott, David

SULLIVAN

None
and the report was adopted.

HB 176, relative to listing candidates on ballots. **OUGHT TO PASS**

Rep. Howard C. Dickinson for Election Law: This bill changes the current form of the ballot, used in recent years, so that the names of the candidates will be listed in party columns on the General Election ballot. A majority of the committee believes that this will make the ballot simpler to read and clarify a candidate's identify with a specific party. Vote 11-4.
Rep. Burling spoke against and yielded to questions.
Rep. Dickinson spoke in favor and yielded to questions.
Adopted and ordered to third reading.

MOTION TO PRINT REMARKS

Rep. Densmore moved that the debate on HB 176 be printed in the Permanent Journal.
Rep. Buckley requested a roll call; sufficiently seconded.
The question being adoption of the motion to print remarks.

YEAS 143 NAYS 207

YEAS 143

BELKNAP

None

CARROLL

None

CHESHIRE

Allen, Peter

Dunn, James

Eaton, Daniel

Espieffs, Peter

Mitchell, McKim
Robertson, Timothy
Weed, Charles

Parkhurst, Henry
Slack, Pamela

Pratt, Irene
Tilton, Anna

Richardson, Barbara
Webber, Amy

COOS

Brady, Mark
Theberge, Robert

Mears, Edgar

Poulin, Richard

Pratt, Leighton

GRAFTON

Akins, Ralph
Densmore, Edward
Nordgren, Sharon

Benn, Bernard
Diamond, Estelle
Scovner, Nancy

Bleyler, Ruth
Dudley, Terri
Sokol, Hilda

Cooney, Mary
Hammond, Lee
Solomon, Peter

HILLSBOROUGH

Arnold, Thomas Jr
Brassard, Paul
Clemons, Jane
Dokmo, Cynthia
Gorman, Mary
Hinkle, Peyton
Irwin, Anne-Marie
Lasky, Bette

Baroody, Benjamin
Buckley, Raymond
Cote, David
Drisko, Richard
Hagan, Barbara
Holden, Randolph
Jean, Claudette
Malloy, Chris

Beaton, William
Carter, Jeffrey
Cote, Peter
Elliott, Larry
Haley, Robert
Hopper, Gary
Johnson, Lionel
Martin, Mary Ellen

Bergeron, Jean-Guy
Clayton, William
Craig, James
Fletcher, Richard
Hallyburton, Margaret
Infantine, William
Kopka, Angeline
McDonough-Wallace,
Alice
Pappas, Christopher
Price, Pamela
Souza, Kathleen
Tahir, Saghir

Messier, Irene
Pappas, Marc
Reeves, Sandra
Sullivan, Francis
Wheeler, James

Michon, Stephen
Pepino, Leo
Schulze, Joan
Sullivan, Peter

Movsesian, Lori
Pilotte, Maurice
Shaw, Barbara
Sweeney, Cynthia

MERRIMACK

Bouchard, Candace

Brueggemann,
Donald

Clarke, Claire

Currier, David

Davis, Frank
French, Barbara
Osborne, Jessie
Rush, Deanna

DeJoie, John
Gile, Mary
Owen, Derek
Wallner, Mary Jane

DeStefano, Stephen
Hager, Elizabeth
Potter, Frances

Field, William
Nutter, Edward
Reardon, Tara

ROCKINGHAM

Allen, Mary
Clark, Vivian
Hughes, Daniel
Norelli, Terie
Shultis, Elizabeth

Blanchard, MaryAnn
Coes, Betsy
Itse, Daniel
Pantelakos, Laura
Splaine, James

Cady, Harriet
Corbin, Corey
McEachern, Paul
Pitts, Jacqueline
Stone, Joseph

Casey, Kimberley
Dumaine, Dudley
McKinney, Betsy
Robertson, Carl
Vallone, Matthew

STRAFFORD

Brown, Julie
Hofemann, Roland
Miller, Joseph
Smith, Marjorie
Wall, Janet

Callaghan, Frank
Johnson, Nancy
Pelletier, Arthur
Snyder, Clair

Creteau, Irene
Kaen, Naida
Rous, Emma
Spang, Judith

Heon, Richard
Knowles, William
Schmidt, Peter
Vachon, Dennis

SULLIVAN

Allison, David
Ferland, Brenda
Phinizy, James

Burling, Peter
Franklin, Peter

Cloutier, John
Jones, Constance

Donovan, Thomas
Leone, Richard

NAYS 207

BELKNAP

Ahern, Omer Jr

Allen, Janet

Bartlett, Gordon

Boyce, Laurie

Clark, Charles
Laflam, Robert
Rice, Thomas
Whalley, Michael

Fitzgerald, James
Lawton, David
Russell, David

Flanders, Donald
Nedeau, Stephen
Thomas, John

Holbrook, Robert
Pilliod, James
Wendelboe, Fran

CARROLL

Babson, David Jr
Hatch, Paul
Mock, Henry
Stevens, Stanley

Brown, Carolyn
Kenney, Bettie
Olimpio, J Lisbeth

Derby, Mark
McConkey, Mark
Patten, Betsey

Dickinson, Howard
Merrow, Harry
Philbrick, Donald

CHESHIRE

Dexter, Judson
Liebl, George
Royce, H Charles

Fish, Douglas
Manning, Joseph
Smith, Edwin

Hunt, John
Meader, David

Laurent, John
Pratt, John

COOS

Guay, Lawrence
Tholl, John Jr

King, Frederick
Woodward, David

Richardson, Herbert

Stohl, Eric

GRAFTON

Alger, John
Gionet, Edmond
Naro, Debra

Barker, Robert
Giuda, Robert
Sorg, Gregory

Dorsett, Andrew
Ingbretson, Paul
Williams, Burton

Gilman, G Michael
Maybeck, Margie

HILLSBOROUGH

Adams, Jarvis
Balboni, Michael
Bouchard, David
Cail, Kenneth
Chabot, Robert

Allan, Nelson
Barry, J Gail
Brundige, Robert
Carlson, Donald
Christensen, D L
Chris

Allen, Timothy
Batula, Peter
Bruno, Pierre
Carter, Mark
Christiansen, Lars

Artz, Lawrence
Bergin, Peter
Buhlman, David
Cernota, Albert
Coughlin, Pamela

Crane, Elenore
Casey
Gargas, Carolyn
Graham, John
Harrington, Paul
Katsiantonis,
Thomas
Lawrence, James
Mercer, Robert
O'Brien, Lori
Slocum, Lee
Vaillancourt, Steve

Dionne, Kimberley

Gibson, John
Greenberg, Gary
Hawkins, Ken
Kurk, Neal

Luebkert, Bernard
Mooney, Maureen
Ober, Russell III
Spiess, Paul
Wheeler, Robert

Emerton, Larry

Gonzalez, Carlos
Hall, Charles
Haytayan, Harry Jr
L'Heureux, Robert

Fields, Dennis

Goyette, Peter Jr
Hansen, Ryan
Jasper, Shawn
LaFlamme, Paul

McHugh, Claire
Moran, Edward
Ross, Lawrence
Stepanek, Stephen

McRae, Karen
Mosher, William
Scanlon, Michael
Tate, Joan

MERRIMACK

Anderson, Eric
Fraser, Leo Jr
Kennedy, Richard
Lockwood, Priscilla
McCormick, Tom

Blanchard, Elizabeth
Hess, David
L'Heureux, Stephen
MacKay, James
Reed, Dennis

Dunne, Christopher
Jacobson, Alf
Langer, Ray
Marple, Richard
Soltani, Tony

Foley, Albert
Kenison, Leon
Leber, William
Maxfield, Roy

ROCKINGHAM

Belanger, Ronald
Camm, Kevin
DiFruscia, Anthony
Flanders, John Sr
Gillick, Thomas
Hamel, Albert

Bicknell, Elbert
Carson, Sharon
Dodge, Robert
Francoeur, Sheila
Gleason, John
Headd, James

Bishop, Franklin
Cooney, Richard
Duffy, James
Gilbert, Jeffrey
Gould, Kenneth
Hutchinson, Karen

Bridle, Russell
Dalrymple, Janeen
Fesh, Bob
Gilbert, Karl
Griffin, Mary
Ingram, Russell

Introne, Robert	Johnson, Robert	Johnson, Rogers	Katsakiores, George
Katsakiores, Phyllis	Kelley, Jane	Langone, John	Letourneau, Robert
Major, Norman	Manning, John	McCann, Richard	McMahon, Charles
Moore, Benjamin	Morris, Richard	Noyes, Richard	O'Neil, Michael
Packard, Sherman	Putnam, Ed II	Quandt, Matthew	Rausch, James
Roessner, Kurt	Ruffner, Walter	Smith, Donald	Smith, Paul
Tufts, J Arthur	Varrell, Thomas	Waterhouse, Kevin	Weare, E Albert
Welch, David	Weldy, Norman Jr	Weyler, Kenneth	Wiley, Robert
Winchell, George	Zolla, William		

STRAFFORD

Albert, Russell	Bemis, Alan	Berube, Roger	Bickford, David
Campbell, W Packy	Cataldo, Sam	Dunlap, Patricia	Easson, Timothy
Harrington, Michael	Newton, Clifford	Scott, David	Twombly, James
Woods, Phyllis			

SULLIVAN

Flint, Gordon Sr Rodeschin, Beverly
and the motion to print remarks was defeated.

HB 559, relative to grounds for termination of employment. **OUGHT TO PASS WITH AMENDMENT**

Rep. Jarvis M. Adams for Labor, Industrial and Rehabilitative Services: The committee heard testimony in favor of this bill which convinced us that this bill will reinforce the freedom of speech for public employees without the fear of retribution. Vote 17-1.

Amendment (2496h)

Amend RSA 275:61, I and II as inserted by section 1 of the bill by replacing them with the following:

- I. "Employee" means any person employed by a public employer except:
 - (a) Persons elected by popular vote;
 - (b) Persons appointed to office by the chief executive or legislative body of the public employer;
 - (c) Persons whose duties imply a confidential relationship to the public employer;

or

- (d) Persons in a probationary or temporary status, or employed seasonally, irregularly or on call. For the purposes of this chapter, however, no employee shall be determined to be in a probationary status who shall have been employed for more than 12 months or who has an individual contract with his employer, nor shall any employee be determined to be in a temporary status solely by reason of the source of funding of the position in which he or she is employed.

II. "Employer" means the state and any political subdivision thereof, the judicial branch of the state, any quasi-public corporation, council, commission, agency or authority, and the state university system.

Amend RSA 275:62, I and II as inserted by section 1 of the bill by replacing them with the following:

I. No employer shall discharge, threaten or, otherwise discriminate against any employee regarding such employee's compensation, terms, conditions, location, or privileges of employment because the employee has exercised the right of free speech including the public discussion of issues of public interest concerning his or her employment.

II. Without in any way limiting the rights and protections afforded to employees under RSA 275-E, the right of protected speech shall not extend to fiduciary relationships, the divulgence of confidential financial information, trade secrets, patents, or the personal or

medical records of patients, clients, or other employees without the prior consent of the patient, client, or employee.

AMENDED ANALYSIS

This bill protects a public employee from discharge or discrimination when the public employee has spoken about a matter that is of public interest concerning his or her employment. Protected speech does not include speech that divulges trade secrets, patents, or certain other confidential information, or information from a fiduciary relationship.

Question being adoption of the committee amendment.

Rep. Gilman spoke against.

Committee amendment failed.

Rep. Holden offered floor amendment (0022h).

Floor Amendment (0022h)

Amend RSA 275:61, I and II as inserted by section 1 of the bill by replacing them with the following:

I. "Employee" means any person employed by a public employer except:

(a) Persons elected by popular vote;

(b) Persons whose duties imply a confidential relationship to the public

employer; or

(c) Persons in a probationary or temporary status, or employed seasonally. For the purposes of this chapter, however, no employee shall be determined to be in a probationary status who shall have been employed for more than 12 months or who has an individual contract with his employer, nor shall any employee be determined to be in a temporary status solely by reason of the source of funding of the position in which he or she is employed.

II. "Employer" means the state and any political subdivision thereof, the judicial branch of the state, any quasi-public corporation, council, commission, agency or authority, and the state university system.

Amend RSA 275:62, I and II as inserted by section 1 of the bill by replacing them with the following:

I. No employer shall discharge, threaten or, otherwise discriminate against any employee regarding such employee's compensation, terms, conditions, location, or privileges of employment because the employee has exercised the right of free speech including the public discussion of issues of public interest concerning his or her employment.

II. Without in any way limiting the rights and protections afforded to employees under RSA 275-E, the right of protected speech shall not extend to fiduciary relationships, the divulgence of confidential financial information, trade secrets, patents, or the personal or medical records of patients, clients, or other employees without the prior consent of the patient, client, or employee.

Amend the bill by replacing section 2 with the following:

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

AMENDED ANALYSIS

This bill protects a public employee from discharge or discrimination when the public employee has spoken about a matter that is of public interest concerning his or her employment. Protected speech does not include speech that divulges trade secrets, patents, or certain other confidential information, or information from a fiduciary relationship.

Rep. Jasper spoke in favor and yielded to questions.

Amendment adopted.

Report adopted and ordered to third reading.

HB 493, relative to the municipal budget act. **OUGHT TO PASS WITH AMENDMENT**

Rep. Eric G. Stohl for Municipal and County Government: This bill is a result of two bills that were submitted with similar desires. One bill clearly defines "purpose" to prevent any

further situations that arise when a warrant article is defeated at the annual meeting and the governing body still funds the purpose by transferring funds to the defeated purpose account. The other bill addressed the need to have the budget that is submitted by the Budget Committee be the one that is discussed at the annual meeting. The committee feels this bill addresses both issues well. Vote 11-0.

Amendment (2538h)

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

1 Municipal Budget Law; Definitions. Amend RSA 32:3, V to read as follows:

V. "Purpose" means a goal or aim to be accomplished through the expenditure of public funds. In addition, as used in RSA 32:8 and RSA 32:10, I(e), concerning the limitation on expenditures, a line on the budget form posted with the warrant ***submitted by the budget committee, or the governing body if there is not a budget committee***, or form submitted to the department of revenue administration, or an appropriation contained in ~~a special~~ ***any*** warrant article, shall be considered a single "purpose."

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

Question being adoption of the committee amendment.

Rep. Patten spoke against.

Committee amendment failed.

Rep. Patten offered floor amendment (2575h).

Floor Amendment (2575h)

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

1 Transfer of Appropriations. Amend RSA 32:10, I (e) to read as follows:

(e) The town or district meeting may vote separately on individual purposes of appropriation contained within any warrant article or budget, but such a separate vote shall not affect the governing body's legal authority to transfer appropriations, provided, however, that if the meeting deletes a purpose, or reduces the amount appropriated for that purpose to zero ***or does not approve an appropriation contained in a separate article***, that purpose ***or article*** shall be deemed one for which no appropriation is made, and no amount shall be transferred to or expended for such purpose.

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

AMENDED ANALYSIS

This bill includes a warrant article as a purpose for which appropriations may be changed or transferred.

Rep. Patten spoke in favor.

Amendment adopted.

Report adopted and ordered to third reading.

RESOLUTION

Rep. Hess offered the following: RESOLVED, that the House now adjourn from the early session, that the business of the late session be in order at the present time, that the reading of bills be by title only and resolutions by caption only and that all bills ordered to third reading be read a third time by this resolution, and that all titles of bills be the same as adopted, and that they be passed at the present time, and when the House adjourns today it be to meet Thursday, January 15, 2004 at 10:00 a.m.

Adopted.

LATE SESSION

Third reading and final passage

HB 532, relative to notice and filing of divorce petitions.

HB 551, relative to the effect of parental refusal to administer psychotropic drugs to their children and establishing a committee to study the prescription and use of psychotropic drugs, including Ritalin, in childcare centers, preschools, and public schools.

HB 459, relative to the taxation of manufactured housing.

SB 99, relative to high cost mortgage loans.

HB 403, requiring a person found not guilty of certain sexual offenses by reason of insanity to register as a criminal offender.

HB 664-FN, relative to the requirements for the sale of permissible fireworks and prohibiting the retail sale of certain fireworks.

HB 727-FN-L, establishing a legislative oversight committee for the school administrative unit system.

HB 158, allowing the voter to deposit the ballot into the ballot box.

HB 236, relative to recount application deadlines.

HB 503, relative to septic system construction permits.

HB 712-FN, establishing a committee to study methods of improving data collection and service delivery relative to home and community-based long-term care services.

SB 128-FN, transferring the bureau of vital records and health statistics from the department of health and human services to the department of state.

HB 643-FN, relative to the family division of the courts.

HB 440, relative to the discharge of firearms on or across highways in pursuit of wild birds or animals.

HB 465, relative to the rulemaking authority of the department of health and human services and relative to licensing rules for health facilities.

HB 422, relative to the selection of replacement justices for supreme court justices who are disqualified to hear cases.

HB 444, relative to summoning witnesses from another state in certain actions involving children.

HB 622-FN, clarifying certain exemptions from the right-to-know law.

HB 656-FN, establishing a commission to study the operations of the family division court in Grafton county.

HB 730-FN-L, establishing a committee to study workers' compensation benefits for firefighters, rescue workers, and safety workers who contract certain communicable diseases.

HB 230, establishing a committee to study how to improve the processes of the joint legislative committee on administrative rules and making certain revisions to RSA 541-A, the Administrative Procedure Act.

HB 85-FN-L, relative to the budget adoption procedure in political subdivisions which have adopted official ballot voting.

HB 285, relative to warrant article recommendations in towns which have adopted the official ballot referendum form of meeting.

HB 426, relative to the monitoring and approval of appraisers by the commissioner of revenue administration.

HB 618-FN-A, making technical corrections to certain local property tax laws.

HB 713-FN, relative to the penalty for violating a zoning ordinance, relative to governmental land uses, and relative to notice of zoning rehearings.

HB 761, enabling towns to adopt subdivision and site plan review regulations that require innovative land use controls on certain lands when supported by the master plan, making a change in an innovative land use control, and relative to the preliminary review of subdivisions.

SB 176, relative to standards for plats recorded in the registry of deeds.

HB 697-FN, relative to the sale of motor fuel.

HB 65, relative to educational assistance for national guard members.

HCR 17, urging the posthumous promotion of Colonel Edward Ephraim Cross to brigadier general.

HB 53, relative to the sale of salvage and rebuilt vehicles.

HB 176, relative to listing candidates on ballots.

HB 559, relative to grounds for termination of employment.

HB 493, relative to the municipal budget act.

UNANIMOUS CONSENT

Rep. Jacobson addressed the House.

RECESS MOTION

Rep. Hess moved that the House stand in recess for the purpose of introduction of bills, enrolled bill amendments, enrolled bill reports and receiving Senate messages only.
Adopted.

The House recessed at 2:55 p.m.

RECESS