

HOUSE RECORD

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

Vol. 28

Concord, N.H.

Wednesday, January 18, 2006

No. 10

HOUSE JOURNAL No. 1(cont.)

Wednesday, January 4, 2006

RECESS

(Rep. Wendelboe in the Chair)

RESOLUTION

Rep. O'Neil offered the following: RESOLVED, in accordance with the list in the possession of the Clerk, House Bills numbered 1749, 1751 and 1752, shall be by this resolution read a first and second time by the therein listed titles, sent for printing, and referred to the therein designated committees.

Adopted.

INTRODUCTION OF HOUSE BILLS

First, second reading and referral

HB 1749-FN, relative to access to motor vehicle records by certain defense contractors. (Price, Hills 26; Batula, Hills 19; D. Eaton, Ches 2; Movsesian, Hills 22; Welch, Rock 8; Roberge, Dist 9; Foster, Dist 13; Gottesman, Dist 12; Letourneau, Dist 19: Criminal Justice and Public Safety)

HB 1751, relative to penalties for failure to have workers' compensation coverage. (Infantine, Hills 13; Mooney, Hills 19; Holden, Hills 7; Hassan, Dist 23; Bragdon, Dist 11: Labor, Industrial and Rehabilitative Services)

HB 1752, requiring notice regarding the classifications of employee and independent contractor. (Infantine, Hills 13; Mooney, Hills 19; Reardon, Merr 11; Hassan, Dist 23; Bragdon, Dist 11: Labor, Industrial and Rehabilitative Services)

RECESS

(Speaker Scamman in the Chair)

COMMITTEE ASSIGNMENTS

Rep. Duncan D. Chaplin, on Health, Human Services and Elderly Affairs.

Rep. Robert J. Haley, off Transportation.

Rep. Paul Mirski, on Labor, Industrial and Rehabilitative Services.

Rep. Joy K. Tilton, off Election Law; on Health, Human Services and Elderly Affairs.

Rep. Robert L. Theberge, off Municipal and County Government; on Science, Technology and Energy.

Rep. Christopher C. Coates, on Election Law.

Rep. Jean L. Jeudy, on Executive Departments and Administration.

Rep. James D. Aguiar, on Municipal and County Government.

Rep. Bonnie D. Ham, off Children and Family Law

RECESS

(Rep. Whalley in the Chair)

RESOLUTION

Rep. O'Brien offered the following: RESOLVED, in accordance with the list in the possession of the Clerk, House Bills numbered 1753 and 1754, shall be by this resolution read a first and second time by the therein listed titles, sent for printing, and referred to the therein designated committees.

Adopted.

INTRODUCTION OF HOUSE BILLS

First, second reading and referral

HB 1753, allowing municipalities to adopt a property tax exemption for geoexchange energy systems. (Cataldo, Straf 3; Slocum, Hills 6; Harvey, Hills 21; Green, Dist 6: Municipal and County Government)

HB 1754, relative to canteen privileges at veterans' clubs licensed by the liquor commission. (Bishop, Rock 2; Welch, Rock 8; Nowe, Rock 9; Weldy, Rock 2; Weyler, Rock 8; Barnes, Dist 17: State-Federal Relations and Veterans Affairs)

RECESS

(Rep. John Flanders in the Chair)

RESOLUTION

Rep. Villeneuve offered the following: RESOLVED, in accordance with the list in the possession of the Clerk, House Bills numbered 1755 through 1759, shall be by this resolution read a first and second time by the therein listed titles, sent for printing, and referred to the therein designated committees.

Adopted.

INTRODUCTION OF HOUSE BILLS

First, second reading and referral

HB 1755, establishing a statutory property tax relief commission, and relative to information on property tax bills. (Jasper, Hills 27; Almy, Graf 11; Gillick, Rock 15; Mirski, Graf 10; Estabrook, Dist 21; Morse, Dist 22: Municipal and County Government)

HB 1756, relative to alternative regulation of small incumbent local exchange carriers. (J. Garrity, Rock 6; Thomas, Belk 5; Ryan, Merr 2; Odell, Dist 8; Letourneau, Dist 19; Burling, Dist 5: Science, Technology and Energy)

HB 1757, relative to taxation of renewable generation facilities. (Slocum, Hills 6; Cataldo, Straf 3: Municipal and County Government)

HB 1758, classifying biodiesel as a renewable energy source. (Cataldo, Straf 3; Essex, Hills 1; Ober, Hills 27; Flanders, Dist 7; Estabrook, Dist 21; Letourneau, Dist 19: Science, Technology and Energy)

HB 1759, relative to liens for labor and materials. (Infantine, Hills 13: Judiciary)

RECESS

(Rep. Winchell in the Chair)

RESOLUTION

Rep. Welch offered the following: RESOLVED, that in accordance with the list in the possession of the Clerk, House Address numbered 1 shall be by this resolution read a first and second time by the therein listed title, sent for printing, and referred to the therein designated committee.

Adopted.

INTRODUCTION OF HOUSE ADDRESS

First, second reading and referral

HA 1, for the removal of Kenneth R. McHugh, superior court justice, from office. (Marple, Merr; L. Christiansen, Hills 27; Bettencourt, Rock 4; Cataldo, Straf 3: Joint Committee on Address)

RECESS

(Rep. Daniel Eaton in the Chair)

RESOLUTION

Rep. Bruggemann offered the following: RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 1760 through 1764, shall be by this resolution read a first and second time by the therein listed titles, sent for printing, and referred to the therein designated committees.

Adopted.

INTRODUCTION OF HOUSE BILLS

First, second reading and referral

HB 1760, allowing municipalities to adopt a property tax exemption for property using, manufacturing, or supplying bio-heat systems. (Essex, Hills 1; Cataldo, Straf 3; Ober, Hills 27; Estabrook, Dist 21; Flanders, Dist 7: Municipal and County Government)

HB 1761, exempting vacation rentals from regulation as a tenancy and extending the committee to study the appeals process in cases between landlords and tenants, established in 2005, 45. (Wendelboe, Belk 1: Judiciary)

HB 1762, extending a committee and adding a certain duty relative to pharmacy reimbursement. (Wendelboe, Belk 1; Kurk, Hills 7; Martel, Dist 18; Clegg, Dist 14: Legislative Administration)

HB 1763, extending a committee and adding certain duties relative to pharmacy reimbursement. (Wendelboe, Belk 1; Kurk, Hills 7; Martel, Dist 18; Clegg, Dist 14: Health, Human Services and Elderly Affairs)

HB 1764, relative to the committee to study Medicaid reimbursement rates for pharmacy providers. (Wendelboe, Belk 1; Kurk, Hills 7; Martel, Dist 18: Health, Human Services and Elderly Affairs)

RECESS

Rep. Weyler moved that the House adjourn.

Adopted.

HOUSE JOURNAL No. 2

Wednesday, January 18, 2006

The House assembled at 10:00 a.m., the hour to which it stood adjourned, and was called to order by the Speaker.

Prayer was offered by House Chaplain, Reverend Jared A. Rardin, Pastor of the South Congregational Church in Concord.

O God of Tina, Guy, Leo, Terrence, Tony, Phillip, Charles and Keith, O God of homeless persons, God of governors, God of Representatives, God whose compassion stirs us and whose righteousness sometimes shames us, we gather today again to do not only the work of this

state, but to do Your work.

Help us to receive our Governor's State of the State Address with open minds, and to respond in constructive ways. Bless our debates concerning recreational space, prescription drug programs and end-of-life orders with our very best awareness and commentary, and in the waning hours of today's debates O God, we pray simply for the energy to plow through. Let us in our work today remember the needs of those who find themselves at the bottom of the social and economic heap, smothered by a surfeit of good intentions and a lack of adequate response from the systems which tend to benefit us. Bless all who care, support, guide and challenge them. And finally, O God, bless any of us gathered here today who may be suffering in mind, in body, in spirit or in relationship. Grant them a large measure of peace and healing. All this we pray in Your Holy name. Amen.

Rep. Charles B. Yeaton led the Pledge of Allegiance.

The National Anthem was sung by Ashley Campbell, Abigail Dean, Cassidy McKinnon, Lindsey Willett and Sarah Therrien, 4th grade students from Trinity Christian School in Concord.

LEAVES OF ABSENCE

Reps. Mary Allen, Barker, Chabot, Dalrymple, Desmarais, Donahue, Patrick Garrity, Gillick, Goodwin, Heon, Lefebvre, Palangas, Palazzo, Pantelakos, Putnam, Carl Robertson and Weldy, the day, illness.

Reps. Janet Allen, Gene Anderson, Berube, Stephanie Eaton, Hilliard, Hollinger, Klose, Manning, Mears, Morris, Packard, Parker, Reed, and Whiting, the day, important business.

Rep. Hagan, the day, death in the family.

INTRODUCTION OF GUESTS

Tomi Salzmann, coach of today's singers, guest of the House. Martin Bradie, guest of Rep. Gale. Manchester Mayor Frank Giunta, guest of the Manchester delegation. Ruth Ann Williams, wife of Rep. Burton Williams. Former Governor Walter Peterson and Mrs. Peterson, and Bill Shaheen, guests of the House.

COMMUNICATION

	January 12, 2006
--	------------------

W. Douglas Scamman, Speaker
New Hampshire General Court
State House
Concord, New Hampshire

Dear Mr. Speaker:

I regret to inform you that I will resign my position as a member of the New Hampshire General Court from the 13th District, Rockingham County. This resignation will take effect at noon on Tuesday, January 17th, 2006

	Rep. Rogers J. Johnson, District 13
--	--

The Speaker accepted the resignation with regret.

RESOLUTION

Reps. Weyler and Craig offered the following:

RESOLVED, that the House of Representatives, on this date, January 18, 2006, is ready to meet with the Honorable Senate in Joint Convention for the purpose of hearing the State of the State Address by his Excellency, Governor John H. Lynch

Adopted.

MOTION TO VACATE

Rep. King moved that the House vacate the reference of **HB 1349**, relative to costs of personnel and rates for equipment use in hazardous waste incidents, to the Committee on Finance.

Motion adopted.

The Speaker referred **HB 1349** to the Committee on Criminal Justice and Public Safety.

SENATE MESSAGE

The Senate is ready to meet with the House of Representatives in Joint Convention for the purpose of hearing the State of the State Address by his Excellency, Governor John Lynch.

The Senate and Senate President Theodore L. Gatsas joined the House.

INTRODUCTION SPECIAL GUESTS

The 2005 University of New Hampshire Wildcats football team, winners of the I-AA Meadowlands Cup, named the ECAC Team of the Year; earned the number one ranking at the end of the season and a share of the Atlantic 10 Conference championship.

Represented by team members: David Ball, Brent Barbato, Aaron Brown, Tim Carignan, Corey Graham, Brandon Graham, Matt Henery, Evan Loring, Sean Lynch, Connor McCormick, Jeff Pammer, Tucker Peterson, Mark Rutberg, Ricky Santos, Derek Stank, David Sundberg, Alan Tallman, Adam Triscila, Dan Wagner, Chris Ward and Will Yarborough, accompanied by Coach Sean McDonnell.

Speaker Scamman and Senator D'Allesandro addressed the Joint Convention and presented Declarations to the team.

JOINT CONVENTION (Speaker Scamman presiding)

The Sergeant-at-Arms escorted the following to their seats:

Administrative Judge Edwin W. Kelly of the District Court and the Family Division, Administrative Judge John R. Maher of the Probate Court, Superior Court Chief Justice Robert J. Lynn. The Associate Justices of the Supreme Court: Associate Justice Richard Galway, Associate Justice James E. Duggan, Senior Associate Justice Linda S. Dalianis. Supreme Court Chief Justice John T. Broderick, Jr. Executive Councilors Peter J. Spaulding and Raymond J. Wieczorek.

The Speaker introduced Governor John H. Lynch and Dr. Susan Lynch.

Governor Lynch presented his State of the State Address to the Joint Convention.

STATE OF THE STATE ADDRESS

Governor Lynch: Mr Speaker, Mr. President, Mr. Chief Justice, honorable members of the governor's Council, the Judiciary, the House and Senate, my fellow citizens of New Hampshire: Before I begin allow me to recognize my wife, Susan. Her love, support and patience, and that of our children, make it possible for me to do my job every day. Thank you for being a wonderful first lady.

It is an honor and privilege for me to come to this historic chamber to report to you that the state of our state is strong. Through our work together in the past year, we've put our state back on track and addressed together some of our most pressing challenges. Now we must continue to build the future we want for New Hampshire: A future where every child receives a high school diploma; our children grow up safe; our natural beauty is preserved for all to enjoy; more people have affordable, quality health care; and every citizen has the opportunity for a good job. We live in the greatest state in the greatest country in the world

and I want to keep it that way.

A year ago I asked you to work with me by focusing on progress for the people of New Hampshire. Together, we put partisanship aside, and the people of New Hampshire are better off for it. I want to thank the leadership of both parties, Speaker Scamman, Representative Craig, Senate President Gatsas and Senator Larsen for committing wholeheartedly to this bipartisan approach. We have respected our differences and respected one another, and worked together, Democrats and Republicans, every day to get things done. Bipartisanship forces us to decide issues based on the merits, not on party lines; to care not who gets the credit, as long as the right thing gets done; and to listen to the citizens of our state and to each other. It takes more work, but it gets better results for our people.

This spirit of cooperation represents our state's best traditions of communities working together and neighbors helping neighbors. We saw that spirit as we joined to meet the great challenges of the past year. And it is this spirit that will allow us to meet the challenges of the coming year.

On October 9th, floods devastated parts of western New Hampshire. Seven of our citizens lost their lives. Homes and businesses were destroyed; roads and bridges washed away. Our state and our people came together to respond. In Alstead, I met a woman who had lost everything; but there she was at the fire station, answering the phones and helping others. Local electricians worked with state officials and utilities to get generators to everyone who needed them. The Red Cross opened shelters. The Salvation Army fed volunteers and fed families. People from across the state, from school children to businesses donated money, clothes, and toys.

Nearly every state department worked around the clock to help people and to begin rebuilding. Within days, the Department of Transportation was re-opening roads — re-connecting communities and giving people hope that recovery was on the way. Please join me in thanking all of our state employees for their exemplary service. And let me particularly thank Senate President Gatsas, Speaker Scamman, the legislators and local officials from the affected areas, for their outstanding leadership during this disaster. Across western New Hampshire, people told me that seeing the National Guard made them feel safe again. In the past year, our National Guard members have served in Iraq and Afghanistan, gone to the Gulf states after Hurricane Katrina, and helped in our flood recovery. Each time, they left behind their homes, their jobs and their families. Let us thank them for their sacrifices.

We have made great progress in rebuilding after the floods. But the job is not done. Some of our neighbors lost everything, and we must do what we can to help them recover. The federal government normally pays 75% of disaster costs, and the state and local communities normally split the remainder equally, but that's much more than some of these communities can afford. That is why I ask you to pass legislation to have the state cover all but \$5,000 of the match for that community. We must help our communities rebuild.

The Portsmouth Naval Shipyard is the best shipyard in the nation. When the Department of Defense recommended closing the Shipyard, some said we shouldn't try to fight it — that we couldn't beat Washington. But we chose to fight. We had the facts on our side and worked together — shipyard employees, state officials, the congressional delegation, local communities, and thousands of our citizens. And together, together, we saved the Portsmouth Naval Shipyard.

Fuel costs are higher than ever, but Washington still has not met its responsibility to provide fuel assistance to families and seniors. In New Hampshire we were not going to leave our citizens out in the cold. Together, we acted and funded fuel assistance for our families. The new federal prescription drug program got off to a disastrous start, leaving many seniors unable to get their prescriptions filled. In new Hampshire, we were not going to risk the health of our citizens. Together, we acted and made sure our seniors could get the medication that they need.

While scandal dominates the national headlines, we in New Hampshire are working hard to ensure the highest standards of ethics and integrity in state government. We must come together to enact bipartisan ethics reform this year. And while some are attacking our presidential primary, we are going to fight together and we are going to fight hard to protect our first-in-the-nation tradition.

When we gathered last year, we faced a major budget deficit. Together, we balanced the budget without smoke and mirrors, while looking out for the needs of our citizens. We returned our state to sound financial footing, turning deficit to surplus without new taxes. Now, there are many bills before us this year that lay claim to a portion of the surplus. But we must exercise restraint.

First, I believe that we must place a significant portion of the surplus in the Rainy Day Fund. That's the fiscally responsible thing to do, and will provide a much needed cushion in the face of likely federal funding cuts. Second, we should make a few targeted investments in our economy and public safety. And finally, we must address the pressing, unanticipated needs of our citizens, as we are doing with the flood recovery and higher fuel costs. We know that high-energy costs are cutting into the ability of community providers to care for our citizens — from people with developmental disabilities to children in daycare. That is why I ask you to support Rep. Wallner's and Sen. Green's legislation to provide additional support for community providers to meet rising fuel costs.

We want all of our citizens to have access to affordable, quality health care. Last year we took action to stabilize our small business health insurance market. We ended the ability of insurance companies to discriminate based on where a business is located. And we ended the ability of insurance companies to discriminate against sick workers. Providing health care for children is the right thing to do; it is also a wise investment in our future. Children who have access to quality health care do better in school and they do better later in life. That is why we increased our commitment to New Hampshire's Healthy Kids Children's Health Insurance Program. It is an investment we must sustain.

Our working families are struggling to pay for prescription drugs. Later today, the House will vote on a bill establishing the New Hampshire Rx program. This will permit the state to use its bargaining power with drug companies to help families save. I ask you to pass this important legislation.

We were privileged last year to witness the courage of a young cancer victim, Michelle Morse. She faced the choice of staying in school or losing her health insurance. Michelle and her parents worked to make sure other students wouldn't face that same impossible decision. Michelle's parent are in the gallery today. Let us take a moment to thank them for all they and Michelle have done to help others. Sadly, Michelle passed away in November. The House honored her legacy by voting to ensure that college students will not lose their health insurance just when they need it most. I ask the Senate to quickly do the same and pass Michelle's Law.

The increasing cost of health care is not sustainable for government, for businesses, for individuals. Too many of our citizens lack health insurance and don't get the preventative care they need. My goal is that ten years from now New Hampshire will still be the healthiest state in the nation and more of our citizens will have access to quality health care, at a more affordable cost. I created the Citizen's Health Initiative to help turn that vision into a reality. They are moving forward on three important fronts: developing criteria to evaluate and monitor the quality of care; reducing the medical errors and duplication through electronic medical records; and making it easier for people to get information about health care quality and health care costs. We cannot solve our health care problems overnight, or by legislation alone, but with this Initiative, for the first time, New Hampshire has everyone at the table committed to finding solutions.

Childhood obesity is a growing public health problem, and an issue Susan feels passionately about. She has been traveling throughout New Hampshire to raise awareness and to encourage our young people to live healthier and more active lives. Thank you, Susan for

helping address this critical challenge.

Education is the key to opportunity for your children, our families, and our state. The demands of a changing economy require a highly skilled and educated workforce. We improved our education funding system last year, directing more aid to the communities that need it the most; reducing the statewide property tax rate; and eliminating the divisive system of donor towns. Now, I ask you to support eliminating the statewide property tax once and for all.

For our state to compete and our children to succeed, more of them must graduate from high school. Last year an estimated 2,300 of our students dropped out of high school. We must make it clear to our young people that we are not going to give up on them; we don't want them to give up on themselves. We must change the law and require our children to stay in school until age 18. Along with the bipartisan sponsors of this legislation, I recognize that changing the compulsory attendance age is really only one part of the solution. That is why this spring I will host a statewide summit to develop strategies for keeping our young people in school. We must think creatively by looking at alternative programs, vocational high schools, internships, night programs, and at the role of the community technical colleges. Our young people, and our state, cannot afford for us to fail. Every New Hampshire child should receive a high school diploma.

We must continue our efforts to make higher education more affordable. Thanks to our commitment in this budget, first-year New Hampshire students who receive the maximum Pell Grant will now be able to attend our University System institutions for no additional tuition.

By all measures, New Hampshire's economy is strong and poised to grow even stronger in the months and years ahead. However, there are steps that we must take if we want that growth to continue. We must develop a regional plan to combat high electric rates. We need more affordable housing for our workers. Our businesses need streamlined state services. And we must get wireless access to every part of our state by the end of the decade. That is why I will soon create by Executive Order a Jobs Cabinet. Its task will be to address these issues, with concrete recommendations that will make a difference for our economy and will make a difference for our families.

Companies that innovate create jobs. That is why I am asking you to support Sen. Odell's legislation to provide a tax credit for research and development. It is a small investment, with a potentially big payoff for our economy and our citizens.

To demonstrate that New Hampshire is a good place to do business, we should send a clear message that in New Hampshire, we respect property rights. I urge you to pass legislation that will set appropriate limits on eminent domain to protect private property in our state. New Hampshire is at a crossroads. For four decades, we have been the fastest-growing state in New England. This growth has given us unparalleled opportunity. But, if we are not careful, we could put at risk the very things that make New Hampshire such a great place to live and work.

I was disappointed that the budget did not provide more funding for the Land and Community Heritage Investment Program, which has done so much to protect our natural and our cultural resources. We must continue working together to protect all that makes New Hampshire so special. Mercury pollution poisons our waterways. It jeopardizes the health of our citizens. This year, we must pass legislation to reduce mercury emission from power plants in New Hampshire. But it makes no sense to reduce mercury pollution from one source, only to turn around and allow new mercury polluters in our state. Construction and demolition debris is not burned as fuel in any of our neighboring states except Maine, and 80% of that which is burned in Maine comes from out of state. We must not let New Hampshire become the new dumping ground for this toxic material. We need a long-term state policy for protecting our groundwater, an issue that legislative study committees are considering. Until we have that policy in place, we must proceed carefully to avoid further exploitation of our groundwater resources. We must ensure that our citizens always have

clean, safe drinking water.

Our state parks are treasures. We are improving our great park system by working to add a new park on Temple Mountain and creating a specialized ATV park in Berlin. Last year, the legislature created a commission to study the future of our state park system. I look forward to its recommendations, but I want to make clear my guiding principles. Our state parks belong to all of our citizens, and we hold them in trust for future generations. I will not allow them to be turned over to private interests.

The most fundamental duty of state government is to protect the safety of our citizens. Our Bureau of Emergency Management did an extraordinary job during the floods. However, we must continue to work to improve our emergency preparedness and response. An Avian Flu pandemic would be a catastrophe for our citizens. New Hampshire recently conducted a major statewide drill to test our ability to respond. We learned some important lessons from the drill that will improve our ability to protect New Hampshire citizens. I will continue working with Emergency Management, Health and Human Services, the legislature, communities and health care providers to make sure New Hampshire does everything possible to prepare.

Our population and highway traffic is increasing. But in recent years, we've seen a reduction in the number of state troopers. That's not safe for our troopers or for our citizens. That is why I'm asking you to support legislation sponsored by Senators Clegg and D'Allesandro to increase the number of state troopers on our roads.

In New Hampshire, we are seeing an increase in the production and sale of crystal meth, a horribly addictive drug that is ruining lives. I applaud the work of the Legislative Caucus on this issue and I urge you to pass tough legislation this year. We must prevent crystal meth from gaining an even bigger foothold in our state.

We must focus our attention on improving the Corrections system, and our new Commissioner Bill Wrenn will be presenting us with recommendations in the coming months. But one step is clear. We must begin planning the expansion of the prison in Berlin.

People who prey on children are among the most dangerous criminals in our state. Working with the Attorney General and many groups and lawmakers, particularly the bill's sponsors, Rep. Batula and Sen. Foster, we developed legislation that will give New Hampshire the most comprehensive and toughest child protection laws in the nation. This legislation contains 28 provisions aimed at increasing the penalties on people who prey sexually on children; increasing penalties for murdering or permanently injuring a child; improving registration and monitoring of sexual predators; and giving parents better information about whether sexual predators are living in their neighborhoods. Nothing, nothing is more important than keeping our children safe. It's time to send a clear message: If you prey on our children in New Hampshire, we are going to send you to prison and we are going to keep you there for a long time.

As I have traveled the State of New Hampshire, citizens have told me of the pride that they feel in the new tone that we have brought to Concord. They see the spirit of bipartisan cooperation, they see their state government working for them, and they see the results. Let us remain united by our common love for New Hampshire and its people.

I pledge to you that my door will remain open to all of you, Democrat, Republican and Independent. I will continue to work for solutions, not partisan advantage. I will continue to work with you to put the interests and needs of the people of New Hampshire first.

In the past year, we have worked together in the best traditions of New Hampshire to confront the challenges we faced. Let us move forward this year with the same spirit of cooperation, the same resolve, and the same commitment to all of our citizens.

Thank you.

Sen. Clegg and Rep. Weyler moved that the Joint Convention arise.

Adopted.

The Joint Convention adjourned.

The House recessed at 11: 15 a.m.

RECESS

(Speaker Scamman in the Chair)

The House reconvened at 11:25 a.m.

COMMITTEE REPORTS

CONSENT CALENDAR

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

Consent Calendar adopted.

HB 1184, relative to the majority vote required for the use of bond proceeds in certain school districts or municipalities. **OUGHT TO PASS WITH AMENDMENT**

Rep. Nancy Johnson for Municipal and County Government: The bill is a technical correction. Currently, an official ballot municipality passes a bond or serial note by a 3/5 vote. If there is a balance, it takes a 2/3 vote to authorize the municipality to use that remaining sum for any other purposes for which bonds or notes would be issued. This bill changes that 2/3 vote to a 3/5 vote in official ballot municipalities. Vote 15-2.

Amendment (0311h)

Amend the bill by replacing section 2 with the following:

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

HB 1248 FN, relative to the alteration of a portion of the town line between Milford and Amherst. **OUGHT TO PASS**

Rep. Eric G Stohl for Municipal and County Government: This bill changes the boundary line between the towns of Amherst and Milford by transferring a portion of territory from Amherst to Milford. The territory involved is only about 250' wide on one end and only about 35' on the other and extending for about 3400' in length. The present town line divides 15 pieces of property which includes some homes being split in two. Both towns' governing bodies are in complete agreement with this solution. In addition, the legislative body of each municipality will need to ratify this agreement by a 2/3 majority vote. Vote 16-0.

HB 1262, legalizing actions taken at town meeting relative to increasing the board of selectmen from 3 members to 5 members in the town of Pittsfield. **OUGHT TO PASS**

Rep. Eric G. Stohl for Municipal and County Government: This bill legalizes the proceedings, actions, and votes taken on the question of increasing the board of selectmen from 3 members to 5 members at the Pittsfield Town Meeting on March 12, 2005. The committee heard testimony from numerous individuals including past and present selectmen. The petitioners sought advice from the town administrator as to the procedure for having an article to raise the membership of the select board placed on the town warrant. They followed that procedure and submitted the advised number of signatures. The town administrator, the supervisor of the checklist, and the board of selectmen reviewed the petition and placed it on the Town Warrant. The people at the town meeting voted 432-366 in favor of raising the number of selectmen from 3 to 5. Some time later, the vote was ruled invalid due to the fact that the wrong RSA was followed. The committee feels these proceedings, actions and the vote taken should be ratified. Vote 17-0.

REGULAR CALENDAR

HB 1402, defining "occupant" for purposes of liability for construction or maintenance of

recreational trails. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. David H. Russell for the Majority of Resources, Recreation and Development: This bill is extremely critical to the north country and the state as a whole in protecting the billion dollar snowmobile industry. Maintaining and improving trails for public recreational use utilizing volunteers (either paid or not paid) has become essential. This bill addresses the immunity of these volunteers in maintaining and more specifically grooming the large network of snowmobile trails. This bill was requested by the Department of Resources and Economic Development Vote 9-6.

Rep. Sandra B. Keans for the Minority of Resources, Recreation and Development: The purpose of HB 1402 was originally to address the ruling in *Estate of Kenison v. Dubois, et al.* The stated goal of the supporters of the bill was to make volunteer trail groomers immune from liability for negligence. During the hearing, the attorney for the New Hampshire Snowmobile Association represented that they will not be immune from liability for *gross* negligence; however, this is not correct. Under both the original version, and the amended version of HB 1402, even gross negligence is protected. If the bill goes forward, it should be changed to clarify that those who are grossly negligent are not protected from liability. However, as the bill stands, it completely flips on its head the phrase “occupant.” With this bill, the common-sense meaning of the word no longer exists, and an artificial meaning is given, making it ambiguous as best. Furthermore, the bill ambiguously removes all legal protections for all snowmobilers (and all others listed in the bill, hikers, campers, etc.), no matter how poorly constructed, maintained or improved the trail is. Under the confusing language of this bill, the longstanding common law of reasonable care is completely stripped away. None of the persons protected from immunity will have the duty to use “reasonable care,” and because even gross negligence is protected, if the language is enforced by the court, these people will have no duty to use any care at all. There will be absolutely no compensation for medical bills or lost wages to those injured by the gross negligence of those who construct, maintain or improve trails; no accountability whatsoever. The costs for their care, at least where the injuries are substantial, will most likely end up being borne by the taxpayers. There is no problem that needs to be fixed. The mere testimony at the hearing that some groomers are “nervous” based on the Kenison case, should not be sufficient to change longstanding New Hampshire law protecting individuals injured by another’s negligence. The minority intends to offer a floor amendment that will satisfy these concerns.

Majority Amendment (0375h)

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

1 New Paragraph; Liability of Landowners; Duty of Care. Amend RSA 212:34 by inserting after paragraph IV the following new paragraph:

V. In this section, “occupant of premises” means an association, corporation, or other legal entity which is nonprofit, or an individual who performs services for a nonprofit entity that constructs, maintains, or improves trails for public recreational use.

2 Off Highway Recreational Vehicles and Trails; Inherent Dangers of OHRV Operation. Amend RSA 215-A:5-c to read as follows:

215-A:5-c Inherent Dangers of OHRV Operation.

I. It is recognized that OHRV operation may be hazardous. Therefore, each person who drives or rides an OHRV accepts, as a matter of law, the dangers inherent in the sport, and shall not maintain an action against an owner, occupant, or lessee of land for any injuries which result from such inherent risks, dangers, or hazards. The categories of such risks, hazards, or dangers which the OHRV user assumes as a matter of law include, but are not limited to, the following: variations in terrain, trails, paths, or roads, surface or subsurface snow or ice conditions, bare spots, rocks, trees, stumps, and other forms of forest growth or debris, structures on the land, equipment not in use, pole lines, fences, and collisions with other operators or persons.

II. In this section, "occupant" means an association, corporation, or other legal entity which is nonprofit, or an individual who performs services for a nonprofit entity that constructs, maintains, or improves trails for public recreational use.

3 New Paragraph; Snowmobiles; Posted Land. Amend RSA 215-C:55 by inserting after paragraph II the following new paragraph:

III. In this section, "occupant" means an association, corporation, or other legal entity which is nonprofit, or an individual who performs services for a nonprofit entity that constructs, maintains, or improves trails for public recreational use.

4 New Paragraph; Limitation of Actions; Landowner Liability Limited. Amend RSA 508:14 by inserting after paragraph II the following new paragraph:

III. In this section, "occupant" means an association, corporation, or other legal entity which is nonprofit, or an individual who performs services for a nonprofit entity that constructs, maintains, or improves trails for public recreational use.

5 Effective Date.

I. Section 3 of this act shall take effect July 1, 2006 at 12:01 a.m.

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

AMENDED ANALYSIS

This bill defines "occupant" and "occupant of premises" for purposes of landowner liability.

This bill is a request of the department of resources and economic development.

Rep. Spang spoke against.

Amendment failed.

Rep. Spang offered floor amendment (0474h).

Floor Amendment (0474h)

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

AN ACT establishing the standard of care for certain individuals or nonprofit entities in constructing, maintaining, or improving trails for public recreational use, and establishing a committee to study the standard of care applicable to landowners, lessees, and occupants for the use of public recreational land.

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

1 Limitation of Actions; Duty of Care. Amend RSA 508:14, II to read as follows:

II. *Any individual, corporation, or other nonprofit legal entity, or any individual who performs services for a nonprofit entity, that constructs, maintains, or improves trails for public recreational use shall not be liable for personal injury or property damage in the absence of gross negligence or willful or wanton misconduct.*

III. An owner of land who permits another person to gather the produce of the land under pick-your-own or cut-your-own arrangements, provided said person is not an employee of the landowner and notwithstanding that the person picking or cutting the produce may make remuneration for the produce to the landowner, shall not be liable for personal injury or property damage to any person in the absence of willful, wanton, or reckless conduct by such owner.

2 Committee Established. There is established a committee to study the standard of care applicable to landowners, lessees, and occupants for the use of public recreational land.

3 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) Two members of the senate, appointed by the president of the senate.

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

4 Duties. The committee shall study the standard of care applicable to landowners, lessees, and occupants for the use of public recreational land. The committee shall study the provisions of RSA 508:14, RSA 215-A:5-c, RSA 215-C:55, and RSA 212:34 for the purpose of reconciling the standards of care applicable to landowners, lessees, and occupants of lands used for public recreational use.

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 and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2006.

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

AMENDED ANALYSIS

This bill provides that any individual, corporation, or other nonprofit legal entity, or any individual who performs services for a nonprofit entity, that constructs, maintains, or improves trails for public recreational use shall not be liable for personal injury or property damage in the absence of gross negligence or willful or wanton misconduct. The bill also establishes a committee to study the standard of care applicable to landowners, lessees, and occupants for the use of public recreational land.

Reps. Spang and Stohl spoke in favor

Floor amendment (0474h) adopted.

Ought to Pass As Amended adopted and ordered to third reading.

SPECIAL ORDERS FROM JANUARY 4, 2006

HB 634-FN-A, establishing a state recycling program to provide technical services to municipalities and establishing a fee on disposable and recyclable goods sold at retail.

OUGHT TO PASS WITH AMENDMENT

Rep. Burton W. Williams for Environment and Agriculture: This state, as a whole, has not obtained the solid waste diversion goal of 40% established under RSA 149-M:2. Funding and expertise have not been available to our cities and towns to properly address their solid waste issues. Solid waste tonnage at our incinerators and land fills is increasing. This bill addresses the issue before us and directs monies to recycling programs. Vote 15-0.

Amendment (0228h)

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

AN ACT relative to solid waste reduction, establishing a solid waste disposal fee, and renaming the recycling market development steering committee.

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

1 Findings. The general court finds and declares that the state did not attain the 40 percent solid waste diversion goal established by the state for the year 2000 under RSA 149-M:2. Additional resources are needed to assist municipalities and businesses in diverting greater amounts of the waste stream from disposal in landfills and incinerators, thereby preserving disposal capacity in New Hampshire. Programs must also be developed to appropriately dispose of household hazardous waste, including the ever-burgeoning quantities of electronic waste.

2 Solid Waste Management; Definition; Source Reduction. Amend RSA 149-M:4, XXIV to read as follows:

XXIV. "Source reduction" means changing industrial processes, technologies, and product components with the specific objective of reducing the amount or toxicity of waste at the source. *Source reduction shall also include any actions taken outside of the manufacturing setting that reduce the amount of waste produced.*

3 New Subdivision; Funding For Waste and Toxicity Reduction. Amend RSA 149-M by inserting after section 57 the following new subdivision:

Funding For Waste and Toxicity Reduction

149-M:58 Solid Waste Disposal Fee.

I. A solid waste disposal fee of \$1 per ton shall be assessed on any solid waste that is landfilled or incinerated at a solid waste facility. The operator of the facility shall be liable for payment of this fee according to paragraph II. If an accurate weight scale is not available at a receiving landfill or incinerator, the disposal fee shall be imposed at a rate of \$0.25 per cubic yard, as can most accurately be determined.

II. Fees shall accrue and be remitted to the department by those responsible for payment on a semiannual basis upon forms provided by the department. The respective 6-month accrual periods shall end on June 30 and December 31, with remittances due on the following July 31 and January 31, respectively.

III. If payment required by this section is not furnished, or is incorrect or insufficient, the department shall make a finding as such, and determine the amount due from information available.

IV. Accurate and complete solid waste weight or volume records relating to the disposal fee imposed by this section shall be kept by those responsible for paying the fees to the department and shall be available for inspection or examination at any time by the commissioner, or the commissioner's duly authorized agents or employees, and shall be preserved for a period of 5 years.

V. The commissioner shall adopt rules, under RSA 541-A, relative to the payment of the fee under this section, including any necessary forms and records.

149-M:59 Exemptions. The following shall not be subject to the disposal fee imposed by RSA 149-M:58:

I. Any material that is delivered to a solid waste facility and is not landfilled or incinerated at that facility.

II. Brush, logs, stumps, leaves, and roots deposited into a stump dump.

III. Roadside wastes delivered to a landfill or incinerator when the facility operator certifies that he or she has accepted those wastes without any disposal charge.

IV. Cover material that is placed over solid waste at a landfill as defined by rules adopted under RSA 149-M:7.

V. Solid waste disposed of at a landfill or incinerator that is owned by a municipality, provided such facility accepts waste generated only within the municipality, with such exemption to be at the option of the qualifying municipality.

(a) For a municipality that opts to be exempt under this paragraph, funds collected under this subdivision shall not be used to provide money or services to the municipality or to residents, businesses, schools or any other entities within the municipality.

(b) This prohibition shall not apply to any entity that has not disposed of its solid waste at the municipal landfill or incinerator within the past 6 months.

(c) This prohibition shall expire if the municipality decides to no longer opt for such exemption and makes at least 2 consecutive, semi-annual payments under RSA 149-M:58, II.

VI. Incinerator ash that is landfilled, provided the ash was generated at an in-state incinerator and such incinerator is not owned by a qualifying municipality that opts to be exempt under paragraph V.

149-M:60 Use of Funds.

I. At least 50 percent of the revenues collected from the solid waste disposal fee shall be available to organizations registered with the secretary of state as nonprofit organizations provided the following conditions are met by each organization:

(a) The organization shall maintain its non-profit status;

(b) The organization's primary mission is to assist municipalities, schools, or businesses in increasing levels of source reduction, recycling, reuse or composting; and
(c) The organization shall only spend proceeds received under this subdivision to provide:

(1) Technical assistance to municipalities and businesses on source reduction, recycling, reuse, and composting issues;
(2) Recycling and composting equipment grants to municipalities;
(3) Support for school source reduction, recycling, reuse, and composting programs; or
(4) Support for educational programs on source reduction, recycling, reuse, composting, the purchase of products with recycled material content, and pay-as-you-throw programs.

(d) An emphasis shall be given to minimizing administrative costs, while effectively delivering such services or grants.

II. The department may expend up to 50 percent of the revenues collected from the solid waste disposal fee, pursuant to appropriations of said sums in the department's operating budget, for the purpose of:

(a) Training solid waste facility operators in recycling and composting practices;
(b) Maintaining accurate information on recycling and composting rates in the state, including the overall diversion rate;
(c) Providing programs for the efficient receipt, transportation, and disposal of household hazardous waste and electronic wastes; and
(d) Collecting the solid waste disposal fee, administering the fund in RSA 149-M:61, and staffing the recycling steering commission established under RSA 149-O.

149-M:61 Fund Established; Administration and Expenditure.

I. There is hereby established the solid waste reduction fund into which all moneys collected under this subdivision shall be deposited. This nonlapsing, special fund is continually appropriated to the department of environmental services to be expended only as provided by contract issued under paragraph II and as provided under RSA 149-M:60, II. The state treasurer shall invest the moneys deposited in the fund as provided by law. Any return on investments made shall also be credited to the fund.

II. The recycling steering commission, established under RSA 149-O, shall determine the types and amounts of grants and services, as identified under RSA 149-M:60, I(c), that are best able to produce long-term, increased rates of solid waste diversion from landfills and incinerators. Based on such determination, the commission shall from time to time, as needed, issue requests for proposals from eligible nonprofit organizations and shall select the organization or organizations to whom a contract shall be awarded. The department shall contract with such organizations, on behalf of the commission, under such terms as specified by the commission and in conformance with applicable state law. Such contracts shall not exceed 3 years in duration and shall include a payment schedule and reporting requirements sufficient to assure that the contract is being fulfilled.

4 Recycling Steering Commission. Amend RSA 149-O to read as follows:

CHAPTER 149-O
RECYCLING ~~[MARKET DEVELOPMENT]~~ STEERING
~~[COMMITTEE]~~ **COMMISSION**

149-O:1 ~~[Committee]~~ **Commission** Established; Duties. There is established a recycling ~~[market development]~~ steering ~~[committee]~~ **commission** to promote the establishment and expansion of recycling-related ~~[industries and companies]~~ **activities** in New Hampshire.

149-O:2 Duties. The ~~[steering committee]~~ **commission** shall have the following duties:

I. Advocating and securing funding for recycling market development.
II. Facilitating close communication and interaction among the state's recycling and economic development agencies and other involved organizations.

III. Providing continuity to the state's recycling market development efforts by reviewing and revising market development priorities, evaluating the impact of market development initiatives, and recommending new directions for market development efforts.

IV. Developing a strategy to increase the amount of solid waste diverted from landfills and incinerators through source reduction, recycling, composting, reuse, the purchase of products with recycled material content, and pay-as-you-throw programs, and to fund such activities in accordance with RSA 149-M:61, II.

149-O:3 Membership.

I. The ~~[steering committee]~~ **commission** shall consist of the following members~~[- representing the major segments of the state's recycling and economic development communities]:~~

(a) One member of the house of representatives, appointed by the speaker.

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

(c) The director of the **office of energy and planning, or designee.** ~~[governor's recycling program.]~~

(d) ~~[The recycling coordinator in]~~ **The commissioner of** the department of environmental services, or **designee** ~~[another appropriate representative of the department, appointed by the commissioner of the department of environmental services].~~

(e) The commissioner of the department of resources and economic development, or designee.

~~[(f) The executive director of the Northeast Resource Recovery Association.]~~

~~[(g) The director of the division of plant and property management, department of administrative services.]~~

(f) A representative of beverage, soft drink, or retail grocer interests, appointed by the governor.

(g) A representative of school recycling interests, appointed by the governor.

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

~~[(i) A representative from the New Hampshire Business Development Corporation, business finance authority, or another statewide economic development organization, appointed by the governor.]~~

~~[(j)]~~ **(i) A representative of New Hampshire's environmental community, appointed by the governor.**

~~[(k) A representative]~~ **(j) Two representatives** from the New Hampshire Municipal Association, appointed by the association.

~~[(l) The commissioner of the department of transportation, or designee.]~~

149-O:4 Meetings **and Staffing.** The ~~[committee]~~ **commission** shall meet quarterly and at such other times as the chairperson may call. **The commission shall be provided staffing services by the department of environmental services.**

149-O:5 Report. The ~~[committee]~~ **commission** shall prepare an annual report detailing the ~~[committee's]~~ **commission's actions and** progress **during the prior fiscal year and any recommendations for legislation.** The ~~[committee]~~ **commission** shall submit the report by ~~[February]~~ **October** 1 each year to the ~~[chairperson of the house environment and agriculture committee, the chairperson of the senate environment committee]~~ **respective house of representatives and senate standing committees having responsibility for the subject matter,** the speaker of the house, the senate president, the house clerk, the senate clerk, the state library, and the governor.

149-O:6 Mileage. Members shall serve without compensation except that legislative members shall receive legislative mileage while conducting ~~[committee]~~ **commission** business.

5 New Subparagraph; Treasury; Application of Receipts Amend RSA 6:12, I(b) by inserting after subparagraph (242) the following new subparagraph:

(243) Moneys deposited in the solid waste reduction fund under RSA 149-M:61.

6 Repeal. RSA 149-M:6, XI, relative to assessing an out-of-state solid waste surcharge, is repealed.

7 Prospective Repeal. The following are repealed.

I. RSA 149-M:58-61, relative to funding for waste and toxicity reduction.

II. RSA 6:12, I(b)(243), relative to the solid waste reduction fund. Any balance remaining in the solid waste reduction fund after all contractual payment obligations are fulfilled shall be deposited in the general fund.

8 Effective Date.

I. Section 7 of this act shall take effect July 1, 2012.

II. The remainder of the act shall take effect July 1, 2006.

AMENDED ANALYSIS

This bill establishes a program administered by the department of environmental services for funding for solid waste reduction, and authorizes fees to be paid to and expended by the department.

The bill also renames the recycling market development steering committee as the recycling steering commission and revises the duties of the commission.

Adopted.

Reps. Kurk spoke against.

Reps William Burton and Essex spoke in favor and yielded to questions.

Rep. John Flanders moved the previous question.

Adopted.

Rep. Camm requested a roll call: sufficiently seconded.

The question being adoption of the committee report.

YEAS 176 NAYS 168			
YEAS 176			
BELKNAP			
Heald, Bruce	Millham, Alida	Morrison, Gail	Pilliod, James
Tobin, William	Veazey, John		
CARROLL			
Ahlgren, Christopher	Babson, David Jr	Buco, Thomas	Dickinson, Howard
Knox, J David	Martin, James	McConkey, Mark	Olimpio, J Lisbeth
Philbrick, Donald			
CHESHIRE			
Allen, Peter	Butcher, Suzanne	Butynski, William	Chase, William
Coates, Christopher	Dunn, J Timothy	Eaton, Daniel	Espieffs, Peter
Foote, Sheila	Hogancamp, Deborah	Mitchell, Bonnie	Parkhurst, Henry
Pelkey, Stephen	Plifka, Stanley Jr	Pratt, John	Richardson, Barbara
Roberts, Kris	Robertson, Timothy	Sawyer, Sheldon	Tilton, Anna
Weed, Charles			
COOS			
Buzzell, Bernard	Merrick, Scott	Remick, William	Theberge, Robert

GRAFTON			
Aguiar, James	Almy, Susan	Benn, Bernard	Bleyler, Ruth
Cooney, Mary	Hammond, Lee	Harding, A Laurie	McLeod, Martha
Mulholland, Catherine	Nordgren, Sharon	Sokol, Hilda	Solomon, Peter
Williams, Burton			
HILLSBOROUGH			
Aboshar, Jeffrey	Allan, Nelson	Baroody, Benjamin	Beaulieu, Jane
Bergin, Peter	Campbell, David	Carew, James	Chase, Claudia
Cote, David	Cote, Peter	Craig, James	Daniuk, Caitlin
DeVries, Betsi	Drisko, Richard	Dyer, Donald	Egbers, Fran
Essex, David	Gargas, Carolyn	Ginsburg, Ruth	Golding, William
Gorman, Mary	Haley, Robert	Hall, Betty	Harvey, Suzanne
Irwin, Anne-Marie	Jean, Claudette	Johnson, Paula	Kopka, Angeline
L'Heureux, Robert	Martin, Mary Ellen	Matarazzo, Anthony Sr	Messier, Irene
Michon, Stephen	Movsesian, Lori	O'Connell, Timothy	Pappas, Christopher
Pilotte, Maurice	Rosenwald, Cindy	Ross, Lawrence	Schulze, Joan
Shattuck, Gilman	Shaw, Barbara	Shaw, Kimberly	Smith, David
Sullivan, Francis	Sullivan, Peter	Velez, Hector	
MERRIMACK			
Blanchard, Elizabeth	Bouchard, Candace	Brueggemann, Donald	DeJoie, John
DeStefano, Stephen	Foose, Robert	French, Barbara	Gile, Mary
Greco, Vincent	Hager, Elizabeth	Hamm, Christine	Kidder, David
Lockwood, Priscilla	McMahon, Patricia	Osborne, Jessie	Owen, Derek
Potter, Frances	Rush, Deanna	Ryan, Jim	Shurtleff, Stephen
Tilton, Joy	Tupper, Frank	Wallner, Mary Jane	Walz, Mary Beth
Williams, Robert	Yeaton, Charles		
ROCKINGHAM			
Abbott, Dennis	Blanchard, MaryAnn	Buxton, Donald	Cali-Pitts, Jacqueline
Casey, Kimberley	Cooney, Richard	DiFruscia, Anthony	Flockhart, Eileen
Gilbert, Karl	Gould, Kenneth	Johnson, Robert	Langley, Jane
Moody, Marcia	Norelli, Terie	Powers, James	Rolston, James
Sanders, Elisabeth	Serlin, Christopher	Splaine, James	Stiles, Nancy
Wells, Roger			
STRAFFORD			
Bickford, David	Brown, Jennifer	Brown, Lawrence	Cilley, Jacalyn
Creteau, Irene	Domingo, Baldwin	Dunlap, Patricia	Grassie, Anne
Hofemann, Roland	Johnson, Nancy	Kaen, Naida	Knowles, William
Miller, Joseph	Rollo, Michael	Rous, Emma	Schmidt, Peter
Smith, Marjorie	Snyder, Clair	Spang, Judith	Taylor, Katherine
Wall, Janet			
SULLIVAN			
Cloutier, John	Converse, Larry	Donovan, Thomas	Franklin, Peter
Houde-Quimby,	Jillette, Arthur Jr	Phinazy, James	Prichard, Stephen

Charlotte			
NAYS 168			
BELKNAP			
Boyce, Laurie	Clark, Charles	Fitzgerald, James	Flanders, Donald
Nedeau, Stephen	Rosen, Ralph	Russell, David	Thomas, John
Tilton, Franklin	Wendelboe, Fran	Whalley, Michael	
CARROLL			
Brown, Carolyn	Chandler, Gene	Merrow, Harry	Patten, Betsey
Stevens, Stanley			
CHESHIRE			
Dexter, Judson	Emerson, Susan	Hunt, John	
COOS			
King, Frederick	Morneau, Renney	Richardson, Herbert	Stohl, Eric
Tholl, John Jr			
GRAFTON			
Gionet, Edmond	Giuda, Robert	Ingbretson, Paul	Mirski, Paul
Naro, Debra	Sorg, Gregory	Ward, John	
HILLSBOROUGH			
Adams, Jarvis IV	Balboni, Michael	Barry, J Gail	Batula, Peter
Bergeron, Jean-Guy	Biundo, Michael	Boehm, Ralph	Brassard, Paul
Brundige, Robert	Buhlman, David	Calawa, Leon Jr	Carlson, Donald
Carter, Mark	Christensen, D L Chris	Christiansen, Lars	Clark, Mark
Coughlin, Pamela	Crane, Elenore Casey	Dokmo, Cynthia	Elliott, Nancy
Emerton, Larry	Foster, Linda	Francoeur, Bea	Gibson, John
Goley, Jeffrey	Goyette, Peter Jr	Graham, John	Hawkins, Ken
Hinkle, Peyton	Hirschmann, Keith	Holden, Randolph	Hunter, Bruce
Infantine, William	Jasper, Shawn	Jeudy, Jean	Kelly, Eugene Jr
Kurk, Neal	Lawrence, James	Lessard, Rudy	Manney, Pamela
McRae, Karen	Mead, Robert	Mooney, Maureen	Moran, Edward
O'Brien, William	Ober, Lynne	Palangas, Eric	Pepino, Leo
Price, Pamela	Reeves, Sandra	Renzullo, Andrew	Rowe, Robert
Ryder, Donald	Scanlon, Michael	Slocum, Lee	Souza, Kathleen
Stepanek, Stephen	Tahir, Saghir	Ulery, Jordan	Vaillancourt, Steve
Villeneuve, Maurice	Wheeler, James	Wheeler, Robert	
MERRIMACK			
Anderson, Eric	Clarke, Claire	Currier, David	Danforth, James
Field, William	Hess, David	L'Heureux, Stephen	Langlais, Thomas
MacKay, James	Marple, Richard	Maxfield, Roy	Reardon, Tara
Soltani, Tony			

ROCKINGHAM			
Asselin, Michael	Belanger, Ronald	Bettencourt, David	Bicknell, Elbert
Bishop, Franklin	Bridle, Russell	Cady, Harriet	Camm, Kevin
Carson, Sharon	Charron, Gene	Coburn, James	Dowd, John
Doyle, Christopher	Dumaine, Dudley	Fesh, Bob	Flanders, John Sr
Forsing, Robert	Francoeur, Sheila	Garrity, James	Griffin, Mary
Headd, James	Hopfgarten, Paul	Hughes, Daniel	Hutchinson, Karen
Ingram, Russell	Introne, Robert	Itse, Daniel	Kobel, Rudolph
Lund, Howie	Major, Norman	Mason, April	McKinney, Betsy
McMahon, Charles	Moore, Benjamin	Nowe, Ronald	O'Neil, Michael
Quandt, Marshall Lee	Quandt, Matthew	Rausch, James	Scamman, Stella
Stone, Joseph	Waterhouse, Kevin	Weare, E Albert	Welch, David
Weyler, Kenneth	Wiley, Robert	Winchell, George	Zolla, William
STRAFFORD			
Albert, Russell	Brown, Julie	Cataldo, Sam	Chaplin, Duncan
Easson, Timothy	Newton, Clifford	Taylor, Kathleen	Twombly, James
SULLIVAN			
Ferland, Brenda	Gale, Harry	Irish, Christopher	Osgood, Philip Sr
Rodeschin, Beverly			

and the committee report was adopted.

Referred to Ways and Means.

HB 624-FN, relative to penalties in certain health and health-related professions. **OUGHT TO PASS WITH AMENDMENT**

Rep. Ronald J. Nowe for Executive Departments and Administration: Under current law there are no penalties for practicing without a license in 21 professions that are identified in this bill. This bill will establish a uniform penalty for knowingly practicing without a license in these 21 regulated professions. Vote 16-4.

Amendment (0201h)

Amend the bill by replacing sections 7-9 with the following:

7 Nursing; Practicing Without a License. Amend RSA 326-B:41, II to read as follows:

II. Practice as a licensee ***without a license or*** when the license to do so has been revoked or suspended or when the license to do so has lapsed.

8 New Section; Nursing Practice Act; Penalties. Amend RSA 326-B by inserting after section 41 the following new section:

326-B:41-a Penalty.

I. Any person who shall practice or attempt to practice as a registered nurse, advanced registered nurse practitioner, licensed practical nurse, or licensed nursing assistant in this state without a license shall be guilty of a class A misdemeanor if a natural person or guilty of a felony if any other person.

II. Any person who violates any of the other provisions of this chapter shall be guilty of a misdemeanor.

9 Certified Midwifery; Penalties. Amend RSA 326-D:6, III to read as follows:

III. The title "certified midwife" shall be used only by persons certified under this chapter. No person shall continue to represent himself or herself as a certified midwife after certification has been suspended under this chapter. Any person whose certification under

this chapter has been suspended or revoked by the council for disciplinary action under RSA 326-D:8, shall not engage in the practice of midwifery unless and until the suspension or revocation of certification has been lifted. ~~[Any person violating any provision of this chapter shall be guilty of a violation.]~~

IV. Any person who shall practice or attempt to practice as a certified midwife in this state without certification shall be guilty of a class A misdemeanor if a natural person or guilty of a felony if any other person. Any person violating any other provision of this chapter shall be guilty of a violation.

Amend the bill by replacing all after section 20 with the following:

21 New Subparagraph; Interpreters For The Deaf And Hard Of Hearing; Exemptions.

Amend RSA 326-I:7, IV by inserting after subparagraph (e) the following new subparagraph:

(f) Court reporters certified under RSA 331-B while employed as court reporters as defined in RSA 331-B:2, III.

22 Effective Date. This act shall take effect July 1, 2006.

Amendment adopted.

Committee report adopted.

Referred to Criminal Justice and Public Safety.

The House recessed at 12:20 p.m.

RECESS

(Speaker Scamman in the Chair)

The House reconvened at 1:20 p.m.

REGULAR CALENDAR (CONT'D.)

Without objection, The House took up the following three bills out of their Regular Calendar order.

CLERK'S NOTE

When less than two-thirds of the elected membership is present, Part II, Article 20 of the state constitution requires the assent of two-thirds of those present and voting to render their acts and proceedings valid.

HB 116, relative to changes in eligibility for state programs. INEXPEDIENT TO LEGISLATE

Rep. Elizabeth S. Hager for Finance: This bill is not necessary. The Legislature has several points of control/information about eligibility for programs; both the Fiscal Committee and the Joint Legislative Committee on Administrative Rules review eligibility standards. This bill would create redundancy. Vote 16-4.

Adopted by the necessary two-thirds.

HB 191-FN, relative to using school building aid for leased classrooms. INEXPEDIENT TO LEGISLATE

Rep. Kenneth H. Gould for Finance: Part of this bill has been passed in other legislation. The remainder of this bill raises questions about school-owned buildings versus leased buildings. It also creates friction between town and school as regards building permit fees. Vote 19-1.

Adopted by the necessary two-thirds.

CLERK'S NOTE

The constitutionally required two-thirds of the membership for action by majority vote was declared present.

HB 298, relative to consolidating statutes relating to driving while intoxicated. **OUGHT TO PASS WITH AMENDMENT**

Rep. Brenda L. Ferland for Transportation: This bill takes all DWI laws relating to any motor vehicle, boats, and OHRVS from a multitude of sections of current statutes and combines them into one section with no major changes, just some language clarification.
Vote 9-0.

Amendment (0217h)

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

1 New Chapter; Alcohol or Drug Impairment. Amend RSA by inserting after chapter 265 the following new chapter:

**CHAPTER 265-A
ALCOHOL OR DRUG IMPAIRMENT**

265-A:1 Definitions. In this chapter:

I. "Authorized agent" means any agent or inspector certified by the commissioner, after training, to police the public waters of the state.

II. "Boat" means and includes every type of watercraft used or capable of being used as a means of transportation on the water.

III. "OHRV" means an off highway recreational vehicle as defined in RSA 259:69 or a snowmobile as defined in RSA 259:102.

IV. "Peace officer" means "peace officer" as defined in RSA 594:1 or any properly trained personnel of the United States Coast Guard.

Driving or Operating Under the Influence of Drugs or Liquor

265-A:2 Driving or Operating Under Influence of Drugs or Liquor; Driving or Operating With Excess Alcohol Concentration.

I. No person shall operate or attempt to operate an OHRV or drive or attempt to drive a vehicle upon any way:

(a) While such person is under the influence of intoxicating liquor or any controlled drug or any combination of intoxicating liquor and controlled drugs; or

(b) While such person has an alcohol concentration of 0.08 or more or in the case of a person under the age of 21, 0.02 or more.

II. No person shall operate or attempt to operate a boat while under the influence of intoxicating liquor or a controlled drug or any combination of intoxicating liquor and a controlled drug or drugs, or while such person has an alcohol concentration of 0.08 or more or in the case of persons under the age of 21, 0.02 or more.

265-A:3 Aggravated Driving While Intoxicated. A person shall be guilty of aggravated driving while intoxicated if the person drives, operates, or attempts to operate an OHRV, or if the person drives or attempts to drive a vehicle upon any way, or if the person operates or attempts to operate a boat:

I. While under the influence of intoxicating liquor or any controlled drug or any combination of intoxicating liquor and controlled drug or drugs and, at the time alleged:

(a) Drives or operates at a speed more than 30 miles per hour in excess of the prima facie limit;

(b) Causes a motor vehicle, boating, or OHRV collision resulting in serious bodily injury, as defined in RSA 625:11, VI, to the person or another;

(c) Attempts to elude pursuit by a law enforcement officer by increasing speed, extinguishing headlamps or, in the case of a boat, navigational lamps while still in motion, or abandoning a vehicle, boat, or OHRV while being pursued; or

(d) Carries as a passenger a person under the age of 16;

II. While having an alcohol concentration of 0.08 or more or, in the case of a person under the age of 21 at the time of the offense, 0.02 or more and, at the time alleged:

(a) Drives or operates at a speed more than 30 miles per hour in excess of the prima facie limit;

(b) Causes a motor vehicle, boating, or OHRV collision resulting in serious bodily injury, as defined in RSA 625:11, VI, to the person or another;

(c) Attempts to elude pursuit by a law enforcement officer by increasing speed, extinguishing headlamps or, in the case of a boat, navigational lights while still in motion, or abandoning a vehicle, boat, or OHRV while being pursued; or

(d) Carries as a passenger a person under the age of 16; or

III. While having an alcohol concentration of 0.16 or more.

265-A:4 Implied Consent of Driver or Operator to Submit to Testing to Determine Alcohol Concentration. Any person who drives, operates, or attempts to operate an OHRV, drives or attempts to drive a vehicle upon the ways of this state, or operates or attempts to operate a boat upon the public waters of the state shall be deemed to have given consent to physical tests and examinations for the purpose of determining whether such person is under the influence of intoxicating liquor or controlled drugs, and to a chemical, infrared molecular absorption, or gas chromatograph test or tests of any or all of any combination of the following: blood, urine, or breath, for the purpose of determining the controlled drug content of such person's blood or alcohol concentration if arrested for any offense arising out of acts alleged to have been committed while the person was driving, operating, attempting to operate, or in actual physical control of an OHRV, driving, attempting to drive, or in actual physical control of a vehicle, or operating, attempting to operate, or in actual physical control of a boat while under the influence of intoxicating liquor or controlled drugs or while having an alcohol concentration in excess of the statutory limits contained in RSA 265-A:2 or RSA 265-A:3. The test or tests shall be administered at the direction of a law enforcement officer, peace officer, or authorized agent having reasonable grounds to believe the person to have been driving, operating, attempting to operate, or in actual physical control of an OHRV, driving or in actual physical control of a vehicle, or operating or in actual physical control of a boat while under the influence of intoxicating liquor or controlled drugs or while having an alcohol concentration of 0.08 or more, or in the case of a person under the age of 21, 0.02 or more. A copy of the report of any such test shall be furnished by the law enforcement agency to the person tested within 48 hours of receipt of the report by the agency by certified mail directed to the address shown on such person's license or other identification furnished by the person. Results of a test of the breath shall be furnished immediately in writing to the person tested by the certified breath testing operator conducting the test. When the incident involves an accident resulting in death or serious bodily injury to any person as provided in RSA 265-A:16, the prerequisites of RSA 265-A:8 shall not apply. Properly trained personnel of the United States Coast Guard may arrest and conduct tests on persons who are believed to be under the influence of intoxicating liquor or controlled drugs, or a combination thereof, and who are in physical control of a boat operating upon the public coastal waters of this state.

265-A:5 Administration of Alcohol Concentration Tests.

I. Only a duly licensed physician, registered nurse, certified physician's assistant, or qualified medical technician or medical technologist acting at the request of a law enforcement officer, authorized agent, or peace officer may withdraw blood for the purpose of a test required by RSA 265-A:4. Such licensed physician, registered nurse, physician's assistant, or qualified medical technician or medical technologist shall not be liable for damages or otherwise to the person from whom blood is withdrawn for any act performed in connection with such withdrawal provided the physician, registered nurse, physician's assistant, or qualified medical technician or medical technologist acts with ordinary care.

II. All such blood and urine tests made under the direction of a law enforcement officer, authorized agent, or peace officer shall be conducted in the forensic science laboratory of the department of safety established in RSA 106-B:2-a or, in the case of blood and urine samples to be tested for the presence of controlled drugs, in any other laboratory capable of conducting such tests which is licensed under the laws of this or any other state and which

has also been licensed by the U.S. Department of Health and Human Services under the Clinical Laboratory Improvement Act of 1988, as amended.

III. The successful completion of the external standard reference check shall be admissible evidence that the instrument was properly calibrated at the time of the test. The external standard reference check shall be performed according to the schedule required in rules adopted by the commissioner of the department of safety pursuant to RSA 541-A.

IV. No tests of blood, urine, or breath authorized by RSA 265-A:4 shall be considered as evidence in any proceeding before any administrative officer or court unless such test is performed in accordance with methods prescribed by the commissioner of the department of safety.

V. The commissioner of the department of safety shall adopt rules pursuant to RSA 541-A relative to:

- (a) Methods and procedures for the testing of blood, urine, and breath to determine alcohol concentration and controlled drug content of a person's blood;
- (b) Techniques or methods for ascertaining the qualifications and competence of individuals to conduct such tests;
- (c) Methods and procedures for the delivery and processing of samples of such tests;
- (d) Forms relative to taking samples for alcohol concentration tests for admission as evidence pursuant to RSA 265-A:12, IV;
- (e) Procedures for certification of any laboratory that conducts tests pursuant to RSA 265-A:7; and
- (f) Such other matters as are required to carry out the provisions of this chapter relative to alcohol concentration tests.

265-A:6 Administration of Physical Tests Added. No post-arrest physical test or examination authorized by RSA 265-A:4 shall be considered as evidence in any proceeding before any administrative officer or court unless such test or examination is performed by a law enforcement officer who has been trained in the administration of such physical tests and examinations by a law enforcement agency or in a training program approved by the police standards and training council.

265-A:7 Additional Tests. Any person to whom RSA 265-A:4 is applicable shall have the right at his or her own expense to have similar tests made by a person of his or her own choosing who is competent to conduct the tests, as determined by the commissioner of the department of safety under RSA 265-A:5, and shall be so informed by the law enforcement officer at the same time as the person is requested to permit a test under the provisions of RSA 265-A:4. The failure or inability of an arrested person to obtain an additional test shall not preclude the admission of any test taken at the direction of a law enforcement officer, authorized agent, or peace officer. Nothing herein shall require the release from custody of the arrested person for the purpose of having such additional test made. For the purpose of this section:

I. The sample of blood taken pursuant to RSA 265-A:4 shall be of sufficient quantity to allow 2 tests; and the testing laboratory shall retain for a period of 30 days subsequent to the test conducted pursuant to RSA 265-A:4 a quantity of said sample sufficient for another test, which quantity shall be made available to the respondent or his or her counsel upon request.

II. The sample or samples of breath taken pursuant to RSA 265-A:4 shall be captured in an appropriate medium approved by the commissioner of the department of safety pursuant to RSA 265-A:5, V, and shall be sufficient to allow an equivalent additional test for each breath sample taken pursuant to 265-A:4. The captured sample or samples shall be given to the respondent in a manner determined by the commissioner of the department of safety.

265-A:8 Prerequisites to Tests.

I. Before any test of a person's blood, urine or breath specified in RSA 265-A:4 is given, the law enforcement officer, authorized agent, or peace officer shall:

(a) Inform the arrested person of his or her right to have a similar test or tests made by a person of his or her own choosing;

(b) Afford the arrested person an opportunity to request such additional test; and

(c) Inform the arrested person of the consequences of his or her refusal to permit a test at the direction of the law enforcement officer.

II. Before any post-arrest physical test specified in RSA 265-A:4 is given, the law enforcement officer, authorized agent, or peace officer shall inform the defendant of the consequences of the defendant's refusal to comply with the law enforcement officer's, authorized agent's, or peace officer's instructions for a post-arrest physical test.

III. If the law enforcement officer, authorized agent, or peace officer fails to comply with the provisions of this section, the test shall be inadmissible as evidence in any proceeding before any administrative officer and court of this state.

265-A:9 Effect of Evidence of Alcohol Concentration Test. The provisions of this subdivision do not limit the introduction of any other competent evidence bearing on the question of whether a person charged with the violation of RSA 265-A:2, I(a), or RSA 265-A:3, I, was under the influence of intoxicating liquor or any controlled drug.

265-A:10 Effect of Evidence of Refusal to Take Alcohol Concentration Test. If a person refuses to submit to a test as provided in RSA 265-A:4, such refusal may be admissible into evidence in a civil or criminal action or proceeding arising out of an act alleged to have been committed by that person while driving, operating, attempting to operate, or in actual physical control of an OHRV, driving, attempting to drive, or in actual physical control of a vehicle, or operating, attempting to operate, or in actual physical control of a boat while under the influence of intoxicating liquor or any controlled drug.

265-A:11 Evidence.

I. Upon complaint, information, indictment, or trial of any person charged with the violation of RSA 265-A:2, the court may admit evidence of physical testing of the defendant for being under the influence of intoxicating liquor or controlled drugs as provided in RSA 265-A:4, and of the controlled drug content of the defendant's blood and the defendant's alcohol concentration, as shown by a test of his or her breath, blood, or urine as provided in RSA 265-A:4. Evidence that there was, at the time alleged, an alcohol concentration of 0.03 or less is prima facie evidence that the defendant was not under the influence of intoxicating liquor. Evidence that there was, at the time alleged, an alcohol concentration of more than 0.03 and less than 0.08 is relevant evidence but is not to be given prima facie effect in indicating whether or not the defendant was under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. Evidence that there was, at the time alleged, an alcohol concentration of 0.08 or more is prima facie evidence that the defendant was under the influence of intoxicating liquor. In addition, evidence that there was, at the time alleged, an alcohol concentration of 0.08 or more shall, in conjunction with the evidence otherwise required by RSA 265-A:2, I(b) of driving or attempting to drive a vehicle upon a way, constitute a separate offense under RSA 265-A:2, I(b); and evidence that there was, at the time alleged, an alcohol concentration of 0.08 or more shall, in conjunction with the evidence otherwise required by RSA 265-A:3, II of driving or attempting to drive a vehicle upon a way and of one or more of the circumstances specified in RSA 265-A:3, II (a), (b), (c), and (d) constitute a separate offense under RSA 265-A:3, II; and evidence that there was, at the time alleged, an alcohol concentration of 0.16 or more shall, in conjunction with the evidence otherwise required by RSA 265-A:3, III of driving or attempting to drive a vehicle upon a way, constitute a separate offense under RSA 265-A:3, III.

II. Upon complaint, information, indictment, or trial of any person charged with a violation of the provisions of RSA 265-A:2, II relative to the operation of boats by a person under the influence of intoxicating liquor or a controlled drug, the court may admit evidence

of the defendant's alcohol concentration at the time alleged, as shown by a chemical, infrared molecular absorption, or gas chromatograph test or tests of his or her breath, urine, or blood. Evidence that there was, at the time alleged, an alcohol concentration of 0.08 or more, is prima facie evidence that the defendant was under the influence of intoxicating liquor. Evidence that the defendant had, at the time alleged, an alcohol concentration of more than 0.03 and less than 0.08 is relevant evidence and may be considered with other competent evidence in determining whether or not the defendant was under the influence of intoxicating liquor. Evidence that the defendant had, at the time alleged, an alcohol concentration of 0.03 or less is prima facie evidence that the defendant was not under the influence of intoxicating liquor.

265-A:12 Official Record of Tests.

I. Any person who is arraigned on a charge arising under RSA 265-A:4 shall file notice in said court, within 30 days immediately following the receipt by the person of the results of any alcohol concentration test administered to such person, requiring the attendance of the person who conducted the breath test, or in the case of any other chemical test, the certifying scientist. Failure to file notice shall be deemed a waiver to require attendance of the person who conducted the breath test, or in the case of any other chemical test, the certifying scientist at the trial. The official report of the test issued pursuant to RSA 265-A:4 shall be deemed conclusive evidence of the conduct and result of said test.

II. A copy of the preventive maintenance check form filled out by the forensic breath testing supervisor who performed the last preventive maintenance check on the breath testing machine in question prior to the time of the test at issue shall be admissible evidence of the performance and successful completion of such check. Such check shall have been performed according to the schedule required in the rules adopted by the commissioner of the department of safety.

III. The successful completion of the external standard reference check shall be admissible evidence that the instrument was properly calibrated at the time of the test. The external standard reference check shall be performed according to the schedule required in rules adopted by the commissioner of the department of safety pursuant to RSA 541-A.

IV. A copy of the appropriate form filled out and signed by the person who took the sample for the alcohol concentration test in question shall be admissible evidence that the sample was taken by such person at the stated time on the stated date according to the procedures prescribed in the rules adopted by the commissioner of the department of safety pursuant to RSA 265-A:5, V.

V. Any person who is arraigned on a charge arising under RSA 265-A:2, RSA 265-A:3, or RSA 265-A:43 shall file, within 10 days of such person's receipt of the results of any toxicology test administered to such person for the presence of any controlled drug, a notice in said court requiring the attendance of the certifying scientist. Failure to file notice shall be deemed a waiver to require attendance of the certifying scientist at trial. The official report of the test issued pursuant to RSA 265-A:4 shall be deemed conclusive evidence of the conduct of the result of such test.

265-A:13 Incapacity to Give Consent. Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusing shall be deemed not to have withdrawn the consent provided by RSA 265-A:4 and the test or tests may be administered. The provisions of RSA 265-A:8 shall not apply to persons incapable of giving consent as provided for in this section.

265-A:14 Refusal of Consent.

I. If a person under arrest for any violation or misdemeanor under RSA 265 or RSA 215-A refuses upon the request of a law enforcement officer, authorized agent, or peace officer to submit to physical tests or to a test of blood, urine, or breath designated by the law enforcement officer, authorized agent, or peace officer to as provided in RSA 265-A:4, none shall be given, but:

(a) If this is the first refusal with no prior driving or operating while intoxicated or aggravated driving or operating while intoxicated convictions:

(1) The director shall suspend his or her license to drive or nonresident driving privilege for a period of 180 days; or

(2) If the person is a resident without a license or permit to drive a motor vehicle in this state, the director shall deny to the person the privilege to drive and the issuance of a license for a period of 180 days after the date of the alleged violation.

(b) If the person has a prior driving or operating while intoxicated or aggravated driving or operating while intoxicated conviction or a prior refusal of consent under this section:

(1) The director shall suspend his or her license to drive or nonresident driving privilege for a period of 2 years; or

(2) If the person is a resident without a license or permit to drive a motor vehicle in this state, the director shall deny to the person the privilege to drive and the issuance of a license for a period of 2 years after the date of the alleged violation.

II. The 180-day or 2-year suspension period or denial of issuance period imposed pursuant to this section shall not run concurrently with any other penalty imposed under the provision of this title. Any such suspension or denial of a license or privilege to drive shall be imposed in addition to any other penalty provided by law, subject to review as provided in RSA 265-A:31.

III. A refusal of consent for both post-arrest physical testing and testing of blood, urine, or breath following any one arrest shall be deemed one refusal for the purposes of this section.

IV. The provisions and penalties of this section, relative to the refusal of consent, shall apply to any person under arrest for any violation or misdemeanor involving the operation of a boat, after a hearing and upon satisfactory proof of the following:

(a) That the authorized agent or peace officer had reasonable grounds to believe the arrested person had been operating, had been attempting to operate, or was in actual physical control of a boat upon the public waters of this state while under the influence of intoxicating liquor or controlled drugs or any combination thereof;

(b) That the person has been arrested;

(c) That the person refused to submit to the test upon request of the authorized agent or peace officer;

(d) That the agent or officer informed the person arrested that his or her refusal to submit to such a test would constitute a violation; and

(e) That the agent or officer informed the arrested person of his or her right to have a similar test or tests conducted by a person of his or her own choosing.

265-A:15 Preliminary Breath Test.

I. Any law enforcement officer, authorized agent, or peace officer, who has been certified by the police standards and training council according to standards for such certification contained in rules adopted by said council pursuant to RSA 541-A, having reasonable grounds to believe that a person has been driving, operating, attempting to operate, or in actual physical control of an OHRV, driving, attempting to drive, or in actual physical control of a vehicle, or operating, attempting to operate, or in actual physical control of a boat upon the public waters of the state while under the influence of intoxicating liquor or controlled drug or while the person's alcohol concentration was 0.08 or more or in the case of a person under the age of 21, 0.02 or more or in the case of a person licensed to operate and operating a commercial vehicle or operating a commercial vessel and licensed pursuant to RSA 270-E:22 at the time of the offense, 0.04 or more may, without making an arrest, request that such person submit to a preliminary breath test for alcohol concentration to be administered by the officer. The results of any test administered under this section may be introduced into evidence in a court for any relevant purpose. Failure to submit to the test shall not constitute a violation of this chapter. Evidence of a failure to submit to a

preliminary breath test shall not be admissible in court in any prosecution under this subdivision, except for the purpose of determining whether the officer had probable cause to arrest the person. The provisions of this section shall not limit the introduction of any other competent evidence bearing on the question of whether a person charged with violating RSA 265-A:2, I(a), RSA 265-A:2, II, or RSA 265-A:3 was under the influence of intoxicating liquor or any controlled drug. Nothing contained in this section shall be construed to prevent or require a subsequent test pursuant to RSA 265-A:4. The police officer requesting the test shall advise orally the person to be tested that his or her failure to take the test or his or her taking of the test shall not be construed to prevent or require a subsequent test pursuant to RSA 265-A:4. The results of the test shall be furnished immediately to the person tested by the police officer administering the test and in writing, if requested.

II. No device may be used to give a chemical test under the provisions of this section unless it has been approved as to type and make by the department of safety.

III. The commissioner of the department of safety shall adopt rules, pursuant to RSA 541-A, relative to methods and procedures for evaluation and approval of preliminary breath test devices.

265-A:16 Blood Testing of Certain Motor Vehicle Fatalities. When a collision, boating accident, or OHRV accident results in death or serious bodily injury to any person, all drivers or operators involved, whether living or deceased, and all deceased vehicle, boat, or OHRV occupants and pedestrians involved shall be tested for evidence of alcohol or controlled drugs. A law enforcement officer, authorized agent, or peace officer shall request a licensed physician, registered nurse, certified physician's assistant, or qualified medical technician or medical technologist to withdraw blood from each driver or operator involved if living and from the body of each deceased driver or operator, deceased occupant, or deceased pedestrian, in accordance with RSA 611:6, II, for the purpose of testing for evidence of alcohol content or controlled drugs; provided that in the case of a living driver or operator the officer has probable cause to believe that the driver or operator caused the collision or accident. All tests made under this section shall be conducted by the forensic science laboratory established in RSA 106-B:2-a or in any other laboratory capable of conducting such tests which is licensed under the laws of this or any other state and which has also been licensed by the U.S. Department of Health and Human Services under the Clinical Laboratory Improvement Act of 1988, as amended. A copy of the report of any such test shall be kept on file by the medical examiner. The filed report is not a public record under RSA 91-A. However, the report shall be made available to the following:

I. Any highway safety agency for use in compiling statistics to evaluate the effectiveness of its program; and

II. Any person, including his or her legal representative, who is or may be involved in a civil, criminal, or administrative action or proceeding arising out of an accident in connection with which the test was performed.

265-A:17 Arrest Without a Warrant. Notwithstanding any other statutory provision of law to the contrary, a law enforcement officer may, without a warrant, arrest any person involved in a traffic accident, OHRV accident, or boating accident when the officer has probable cause to believe that such person has committed an offense, an element of which is driving under the influence of intoxicating liquors, controlled drugs or both. Notwithstanding any statutory provision of law to the contrary, a law enforcement officer may make such an arrest in such officer's own jurisdiction or on the property of any medical facility in another jurisdiction in this state where the person or others are taken for treatment for injuries suffered in such traffic accident.

265-A:18 Penalties for Intoxication or Under Influence of Drugs Offenses.

I. Except as otherwise provided in this section:

(a) Any person who is convicted of any offense under RSA 265-A:2, I shall be:

- (1) Guilty of a class B misdemeanor;
- (2) Fined not less than \$500;

(3) Required to furnish proof of successful completion of an impaired driver intervention program prior to the restoration of the person's driver's license or privilege to drive, provided that, if the person has previously completed, or been required by a court or the department of safety to complete, an impaired driver intervention program (I.D.I.P.) or any similar program in any jurisdiction, the person shall be required to furnish proof of successful completion of the multiple DWI offender intervention detention center program (M.O.P.) or an equivalent 7-day residential intervention program approved by the commissioner of health and human services;

(4) The person's driver's license or privilege to drive shall be revoked for not less than 9 months and, at the discretion of the court, such revocation may be extended for a period not to exceed 2 years. The court may suspend up to 6 months of this sentence, provided that the person has entered into the relevant driver intervention program required by subparagraph (3) within 45 days after conviction, or as soon thereafter as any extenuating circumstances approved by the department of health and human services allow;

(5) The sentencing court may sentence the person to additional alcohol and/or drug treatment and counseling, or to a treatment program approved by the commissioner of health and human services, or both. In addition, the court may require the person to submit to random urinalysis or such other tests as the court may deem appropriate; and

(6) The court in which the person was convicted may reduce the conviction to a violation upon a motion filed by either party at least one year after the date of the conviction. In deciding whether to reduce the conviction to a violation, the court may consider the person's subsequent driving record, any evidence of drug or alcohol treatment, the hardship that having a criminal record may cause for the person, and any other factors that the court deems relevant.

(b) Any person who is convicted of any aggravated DWI offense under RSA 265-A:3, except as provided in subparagraph (c), shall be:

(1) Guilty of a class A misdemeanor;

(2) Fined not less than \$750;

(3) Sentenced to a mandatory sentence of not less than 10 consecutive days of which 3 consecutive 24-hour periods shall be served in the county correctional facility and 7 consecutive 24-hour periods shall be served at the state-operated 7-day multiple DWI offender intervention detention center established under RSA 265-A:40, which sentence shall begin no later than 21 days after conviction. In the event that the state-operated 7-day multiple DWI offender intervention detention center has no available space, the person shall be assigned to an equivalent 7-day residential intervention program approved by the commissioner of health and human services. The person shall begin following any treatment recommendations arising out of the final evaluation given to the person at the multiple DWI offender intervention detention center or equivalent program within 60 days after the person has completed serving the required 7 consecutive 24-hour periods or such other time as the court may order;

(4) The person's driver's license or privilege to drive shall be revoked for not less than 18 months and, at the discretion of the court, such revocation may be extended for a period not to exceed 2 years. Except for good cause found by the court and noted in writing, the court may suspend up to 6 months of this sentence, provided that the person has entered into the relevant driver intervention program required by subparagraph (3) as soon as any circumstances approved by the department of health of human services allow;

(5) The sentencing court may sentence the person to additional alcohol and/or drug treatment and counseling, or to a treatment program approved by the commissioner of health and human services, or both. In addition, the court may require the person to submit to random urinalysis or such other test as the court may deem appropriate; and

(6) A person who leaves the relevant driver intervention program required by subparagraph IV(a)(3) before completion and fails to return and complete it as soon as extenuating circumstances approved by the department of health and human services allow or who fails to begin following treatment recommendations within the time required by subparagraph IV(a)(3) shall be in contempt of court and shall serve a minimum of 14 days in the county correctional facility.

(c) Any person who is convicted of aggravated DWI under RSA 265-A:3, I(b) or II(b), shall be:

(1) Guilty of a class B felony;

(2) Fined not less than \$1,000;

(3) Sentenced to a mandatory sentence of not less than 21 consecutive days of which 14 consecutive 24-hour periods shall be served in the county correctional facility followed by 7 consecutive 24-hour periods served at the state-operated 7-day multiple DWI offender intervention detention center established under RSA 265-A:40, which sentence shall begin no later than 21 days after conviction. In the event that the state-operated 7-day multiple DWI offender intervention detention center has no available space the person shall be assigned to an equivalent 7-day residential intervention program approved by the commissioner of health and human services, and the remainder of the sentence may be deferred at the court's discretion. The person shall begin following any treatment recommendations arising out of the final evaluation given to the person at the multiple DWI offender intervention detention center or equivalent program within 60 days after the person has completed serving the required 7 consecutive 24-hour periods or such other time as the court may order. The court may, at the satisfactory completion of any ordered treatment, suspend any remaining deferred sentence. Failure to successfully complete any court-ordered intervention program or recommended treatment shall result in the imposition of any remaining deferred sentence; and

(4) The person's driver's license or privilege to drive shall be revoked for not less than 18 months and, at the discretion of the court, such revocation may be extended for a period not to exceed 2 years. Except for good cause found by the court and noted in writing, the court may suspend up to 6 months of this sentence, provided that the person has entered into the relevant driver intervention program required by subparagraph (3) as soon as any extenuating circumstances approved by the department of health and human services allow.

II. Any person convicted of a violation of RSA 265-A:19, II shall be subject to the penalties set out in this section for a violation of RSA 265-A:3. Any person convicted of a violation of any other provision in RSA 265-A:19 or a violation of RSA 265-A:2, II shall be subject to the penalties set out in this section for a violation of RSA 265-A:2, I.

III. Any person who is convicted of an offense under RSA 265-A:2, I, RSA 265-A:3, or RSA 630:3, II and the offense occurred while the person was under the age of 21 shall be sentenced according to the provisions of this section, except that in all cases the person's driver's license or privilege to drive shall be revoked for not less than one year.

IV. Upon conviction of any offense under RSA 265-A:2, I or RSA 265-A:3, based on a complaint which alleged that the person has had one or more prior convictions under RSA 265-A:2, I or RSA 265-A:3, or RSA 630:3, II, or under reasonably equivalent offenses in an out-of-state jurisdiction, within 10 years preceding the date of the second or subsequent offense, the person shall be subject to the following penalties in addition to those provided in paragraph I:

(a) For a second offense:

(1) The person shall be guilty of a class A misdemeanor.

(2) The person shall be fined not less than \$750.

(3)(A) If the complaint alleges that the prior conviction occurred within 2 years preceding the date of the second offense, the person shall be sentenced to a mandatory sentence of not less than 37 consecutive days of which 30 consecutive 24-hour periods shall be served in the county correctional facility followed by 7 consecutive 24-hour periods to be

served at the state-operated 7-day multiple DWI offender intervention detention center established under RSA 265-A:40 within 21 days after conviction, except that in circumstances where the state-operated 7-day multiple DWI offender intervention detention center has no available space the person shall be assigned to an equivalent 7-day residential intervention program approved by the commissioner of health and human services. The person shall begin following any treatment recommendations arising out of the final evaluation given to the person at the multiple DWI offender intervention detention center or equivalent program within 60 days after the person has completed serving the required 30 consecutive 24-hour periods or such other time as the court may order.

(B) If the complaint alleges that the prior conviction occurred more than 2 but not more than 10 years preceding the date of the second offense, the person shall be sentenced to a mandatory sentence of not less than 10 consecutive days of which 3 consecutive 24-hour periods shall be served in the county correctional facility and 7 consecutive 24-hour periods shall be served at the state-operated 7-day multiple DWI offender intervention detention center established under RSA 265-A:40, which sentence shall begin no later than 21 days after conviction. In the event that the state-operated 7-day multiple DWI offender intervention detention center has no available space the person shall be assigned to an equivalent 7-day residential intervention program approved by the commissioner of health and human services. The person shall begin following any treatment recommendations arising out of the final evaluation given to the person at the multiple DWI offender intervention detention center or equivalent program within 60 days after the person has completed serving the required 7 consecutive 24-hour periods or such other time as the court may order.

(4) The person's driver's license or privilege to drive shall be revoked for not less than 3 years.

(5) The person shall pay a fee to the commissioner, as established under RSA 126-A:43, for the costs of the state-operated 7-day multiple DWI offender intervention detention center program prior to license restoration. If the person attends an approved equivalent 7-day residential intervention program, the fees and costs shall be paid to the program.

(6) A person who leaves the program before completion and fails to return and complete it as soon thereafter as extenuating circumstances approved by the department of health and human services allow, or who fails to begin following treatment recommendations within the time required by subparagraph IV(a)(3) shall be in contempt of court and shall serve a minimum of 30 days in the county correctional facility.

(7) The sentencing court may sentence the person to additional alcohol and/or drug treatment and counseling, or to a treatment program approved by the commissioner of health and human services, or both. In addition, the court may require the person to submit to random urinalysis or such other tests as the court may deem appropriate.

(b) For a third offense, any person convicted under this paragraph shall be subject to all the penalties of subparagraph (a) except that:

(1) The person's driver's license or privilege to drive shall be revoked indefinitely and shall not be restored for at least 5 years. At the end of the 5-year minimum revocation period the person may petition the court for eligibility to reapply for a driver's license and the court, for good cause shown, may grant such eligibility subject to such terms and conditions as the court may prescribe. Any untimely petition under this subparagraph shall be dismissed without a hearing. If such petition is granted and the person is otherwise eligible for license restoration, the person may then apply to the director for restoration of driver's license, but the license shall not be restored until the provisions of RSA 263:65-a and all other requirements under law are met.

(2) The person shall be sentenced to a mandatory sentence of not less than 180 consecutive days of which 30 consecutive 24-hour periods shall be served in the county

correctional facility following which the person shall complete at the person's own expense a residential treatment program of at least 28 days duration or an intensive course of substance abuse treatment based upon a formal evaluation by a licensed alcohol and other drug counselor and approved by the department of health and human services before the driver's license may be restored. The remainder of the sentence may be deferred for a period of up to 2 years. The court may, at the satisfactory completion of any ordered treatment, suspend any remaining deferred sentence. Failure to successfully complete any court-ordered intervention program or recommended treatment shall result in the imposition of any remaining deferred sentence.

(3) The sentencing court may sentence the person to additional alcohol and/or drug treatment and counseling or to a treatment program approved by the commissioner of health and human services, or both. In addition, the court may require the person to submit to random urinalysis or such other tests as the court may deem appropriate.

(c) For a fourth or subsequent offense, any person convicted under this paragraph shall be subject to all the penalties of subparagraphs (a) and (b) except that the person shall be guilty of a felony, and the person's driver's license or privilege to drive shall be revoked indefinitely and the person shall not petition for eligibility to reapply for a driver's license as provided in subparagraph (b)(1) for at least 7 years.

(d) For a third or subsequent offense when any prior offense under this paragraph is negligent homicide under RSA 630:3, II, or reasonably equivalent offense in an out-of-state jurisdiction, the person convicted under this paragraph shall be subject to all the penalties of subparagraphs (a) and (b) except that the person's driver's license or privilege to drive shall be revoked indefinitely and the person shall not petition for eligibility to reapply for a driver's license as provided in subparagraph (b)(1) for at least 10 years.

V. Voluntary completion of an impaired driver intervention program, or an appropriate equivalent, and commencement of treatment recommended by the program may be considered by a court when determining a sentence under this section.

VI. If any person is convicted of a violation of RSA 265-A:2, I or RSA 265-A:3, and the conviction is not based upon a complaint which alleges prior convictions as provided in paragraph IV, but the person is found to have had one or more such prior convictions in this state or in an out-of-state jurisdiction within 10 years preceding the date of the offense, the person's driver's license or privilege to drive shall be revoked for not less than one year nor more than 3 years. Except for good cause found by the court and noted in writing, the court may suspend up to 6 months of this sentence, provided that within 45 days after conviction the person has entered the 7-day program at the state-operated multiple DWI offender intervention detention center program or an equivalent 7-day residential intervention program approved by the commissioner of health and human services, as provided in RSA 265-A:40 and RSA 265-A:42. The person's license shall not be restored until the person has successfully completed the program. The court may further order attendance at a residential treatment center, for a period not to exceed 30 days, at the person's own expense.

VII. For the purposes of this section:

(a) "Revocation" or "revoked" means revocation as defined in RSA 259:90 and also includes, if the person is a nonresident, the revocation of the person's privilege as an out-of-state driver to drive on any ways of this state.

(b) "Out-of-state jurisdiction" includes any governmental entity that issues driver's licenses that are valid for operating a motor vehicle on the ways of this state as provided in RSA 263:37, and that has laws relating to driving while intoxicated that are reasonably equivalent to the laws of this state.

(c) "Successful completion" means meeting further counseling requirements, if any, arising out of the final evaluation given to the offender at the I.D.I.P. or the M.O.P. or its equivalent; provided, however, that the offender shall have the right to a hearing before the commissioner or designee, who shall determine whether the further counseling

requirements arising out of the final evaluation are warranted and appropriate, and whether the offender should be eligible for license restoration. The definition in this subparagraph shall also apply to RSA 265-A:42.

(d) A person shall be presumed to have furnished proof of successful completion of an impaired driver intervention program if the person furnishes a report indicating that he or she has completed attendance at the I.D.I.P., the M.O.P., or an equivalent program, and that he or she has paid all assessed program fees. The presumption may be overcome by a hearing requested by the department, or the I.D.I.P., the M.O.P., or an equivalent program, with notice to and an opportunity to be heard by the person, where the department and/or the I.D.I.P., the M.O.P., or an equivalent program shall have the burden of proving that the person has not successfully completed an impaired driver intervention program.

(e) The I.D.I.P., the M.O.P., or an equivalent program shall inform the department of safety in writing of any further treatment it deems necessary in order to be considered a completed program before a license suspension should be restored. The department of safety shall notify the licensee of his or her ability to request a hearing to dispute the findings and the licensee shall inform the department of safety if the licensee requests a hearing within 20 days of receipt of such notice. At such hearing the I.D.I.P., the M.O.P., or an equivalent program shall have the burden of proving the person has not successfully completed an impaired driver intervention program. The I.D.I.P., the M.O.P., or an equivalent program shall inform the department of safety in writing within 5 days after the end of the program attended by the licensee.

VIII. No portion of the minimum mandatory sentence of imprisonment and no portion of the mandatory sentence of the period of revocation and no portion of any fine imposed under this section shall be suspended or reduced by the court. No case brought to enforce this section shall be continued for sentencing for longer than 35 days. No person serving the minimum mandatory sentence under this section shall be discharged pursuant to authority granted under RSA 651:18, released pursuant to authority granted under RSA 651:19, or in any manner, except as provided in RSA 623:1, prevented from serving the full amount of such minimum mandatory sentence under any authority granted by RSA title LXII or any other provision of law.

IX. Upon conviction under the provisions of RSA 265-A:2, I or RSA 265-A:3, the prosecutor shall present to the court a certified copy of the defendant's record of convictions of motor vehicle offenses under RSA title XXI and reasonably equivalent offenses in out-of-state jurisdictions which are on record at the New Hampshire division of motor vehicles or known to the prosecutor, or a signed statement that the defendant has no such prior convictions within the preceding 7 years. Prior to sentencing the court shall note on the complaint the number of prior convictions for drug or alcohol-related motor vehicle offenses, or the absence of any such prior convictions, as shown on such report or statement.

X. Any conviction under RSA 265-A:2, I or RSA 265-A:3 shall be reported to the department of safety, division of motor vehicles, and shall become a part of the motor vehicle driving record of the person convicted.

XI. Any person convicted of a violation of RSA 265-A:2, RSA 265-A:3, or RSA 265-A:19, II, and who at the time of driving or attempting to drive a vehicle or off highway recreational vehicle or operating or attempting to operate a boat was transporting a person under the age of 16, shall have the driver's license or privilege to drive revoked for the maximum time period under the section violated and the person's license or privilege to drive shall not be restored until the offender has successfully completed a 7-day program at the state-operated multiple DWI offender program or an equivalent 7-day residential intervention program approved by the commissioner at the person's own expense.

265-A:19 Penalties for Boating While Intoxicated.

I. Any person convicted of a violation of RSA 265-A:2, II or RSA 630:2 or RSA 630:3, or RSA 631:1, RSA 631:2, RSA 631:2-a, or RSA 631:3 when the offense was committed by means of his or her operation or attempted operation of a boat shall not operate a boat on the

waters of this state for a period of one year from the date of his or her conviction, whether or not such conviction is appealed. Any person operating or attempting to operate a boat during such a period is guilty of a misdemeanor.

II. Any person convicted of a violation of RSA 265-A:2, II who at the time of the violation was transporting a person under the age of 16 shall not operate a boat on the waters of this state until the offender has successfully completed a 7-day program at the state operated multiple DWI offender program or an equivalent 7-day residential intervention program approved by the department of health and human services at the person's own expense. Any person operating a boat in violation of this paragraph is guilty of a misdemeanor.

III. Any conviction under this section shall be reported to the commissioner of the department of safety, division of motor vehicles, and shall become a part of the motor vehicle driving record of the person convicted.

IV. Any person who is convicted of a violation of RSA 265-A:2, II shall be subject to the same penalties as a person convicted of a violation of RSA 265-A:2, I as specified in RSA 265-A:18. Any person who is convicted of a violation of paragraph II of this section shall be subject to the same penalties as a person convicted of a violation of RSA 265-A:3 as specified in RSA 265-A:18.

V. Notwithstanding the provisions of title LXII and in addition to any other penalty imposed under this section, any person who operates a boat in violation of this subdivision shall be fined not more than \$500.

265-A:20 Loss of Motorboat Privileges. Any person who is convicted of a violation of RSA 265-A:2, II involving a motor vehicle shall lose the privilege to operate a motorboat on the waters of this state for a period of one year from the date of conviction.

265-A:21 Annulment; Plea Bargaining.

I. Notwithstanding the provisions of RSA 651:5, no court shall order an annulment of any record of conviction of driving or attempting to drive a vehicle upon any way or driving, operating, attempting to operate, or being in actual physical control of an OHRV or operating or attempting to operate a boat on the waters of this state while under the influence of intoxicating liquor or any controlled drug or while having an alcohol concentration of 0.08 or more or of aggravated drunken driving until 10 years after the date of conviction. Any record thus annulled shall be retained in a permanent file, to be opened only for purposes of sentencing in the case of an offense under RSA 265-A:3.

II. Notwithstanding any other provision of law to the contrary, in any case in which a person is arrested for and charged with the offense of driving or attempting to drive a vehicle on any way or driving, operating, attempting to operate, or being in actual physical control of an OHRV or operating or attempting to operate a boat while under the influence of intoxicating liquor or drugs or while having an alcohol concentration of 0.08 or more and that charge is reduced from a second or subsequent offense to a first offense or in which the original charge is reduced to or in any manner substituted with another charge or a nolle prosequi entered in exchange for an agreement to plead guilty or nolo contendere to another charge, the prosecutor shall submit to the attorney general a written report describing such agreement. All such written reports shall be submitted to the attorney general on a monthly basis. The report shall contain such information as the attorney general shall prescribe; provided, however, that the attorney general shall not be subject to the provisions of RSA 541-A in prescribing such information. The report required by this paragraph shall be a public record and shall be available for public inspection as provided in RSA 91-A:4.

III. Notwithstanding any other provision of law to the contrary, if a person is arrested for driving or attempting to drive a motor vehicle upon any way or driving, operating, attempting to operate, or being in actual physical control of an OHRV or operating or attempting to operate a boat while under the influence of intoxicating liquor or drugs or while having an alcohol concentration of 0.08 or more, no prosecutor shall enter into any agreement with such person or such person's attorney if such agreement would result in a

charge that removed the case from consideration under any provision of RSA 259-RSA 266. The provisions of this paragraph, however, shall not prevent the bringing of any charge under RSA 630:2 or RSA 630:3.

265-A:22 Payment of all Obligations Prior to Restoration or Renewal. The director of motor vehicles shall not restore or renew a person's license or privilege to drive, if it was revoked pursuant to RSA 265-A:2; RSA 265-A:3; RSA 265-A:35; RSA 265-A:43; RSA 630:2; or RSA 630:3, or if the revocation was connected with an alcohol-related or drug-related offense, until all obligations of such person resulting from the arrest and conviction for the offense are met. For the purposes of this section, the word "obligations" shall mean fines and penalty assessments, court-ordered restitution or reimbursement to any person injured as a result of the offense, successful completion of all treatment and rehabilitation programs the person is required to take, full payment of all fees for such programs, and any other costs which may be ordered by the court. The word "obligations" shall not mean completion of probation or parole or completion of a condition of probation or parole. In any case where the court orders periodic payment of fines, penalty assessments, restitution, or reimbursement, the obligations of such periods shall be deemed to have been met if such person is current in all such court-ordered payments.

265-A:23 Commercial Licensing; Penalties; Driving Under the Influence. Any person who drives a commercial motor vehicle with or without a valid commercial driver license and commits one of the following offenses shall be punished as follows:

I. The commissioner shall suspend for at least one year, the commercial driver license of a person who is found to have committed a first violation of driving a commercial motor vehicle under the influence of alcohol or with an alcohol concentration of 0.04 or greater, or other controlled substances, notwithstanding RSA 265-A:11, I;

II. If the driver commits a violation of paragraph I while carrying hazardous materials, the suspension shall be for a period of 3 years.

III. The commissioner shall suspend for life, or a period of not less than 10 years, according to federal Department of Transportation regulations, the commercial driver license of a person who is found to have committed a second violation of driving a commercial motor vehicle under the influence of alcohol or with an alcohol concentration of 0.04 or greater, or other controlled substance, notwithstanding RSA 265-A:11, I.

265-A:24 Commercial Drivers Prohibited From Driving with any Alcohol in Their Systems.

I. Notwithstanding any other provision of law, a person shall not drive a commercial motor vehicle while having alcohol in his or her system.

II. A person who drives a commercial motor vehicle while having alcohol in his or her system, or who refuses to take a test to determine his alcohol concentration, shall be placed out-of-service for 24 hours.

265-A:25 Implied Consent Requirements for Commercial Motor Vehicle Drivers.

I. Any person who drives a commercial motor vehicle upon the ways of New Hampshire shall be deemed to have given consent, subject to the provisions of RSA 265-A:4, to a test or tests of any or all or any combination of the following: blood, breath, or urine, for the purpose of determining that person's alcohol concentration, or the presence of other drugs.

II. A test or tests may be administered at the direction of a law enforcement officer who, after stopping or detaining the commercial motor vehicle driver, has probable cause to believe that the driver was driving a commercial motor vehicle while having alcohol in his system.

III.(a) Upon the first refusal of any person to submit to a test or tests as administered by a law enforcement officer for the purposes of determining the person's alcohol concentration or the presence of other drugs, the director shall revoke his or her commercial license for a period of not less than one year.

(b) If the person has a prior refusal under subparagraph III(a) then, upon the second or subsequent refusal of such person to submit to a test or tests as administered by a law enforcement officer for the purposes of determining the person's alcohol concentration or the presence of other drugs, the director shall revoke his or her commercial license for a period of not less than 10 years.

IV. If the person refuses testing, or submits to a test which discloses an alcohol concentration of 0.04 or more, the law enforcement officer shall submit a sworn report to the department certifying that the test was requested pursuant to paragraph I and that the person refused to submit to testing, or submitted to a test which disclosed an alcohol concentration of 0.04 or more.

V. Upon receipt of the sworn report of a law enforcement officer submitted under paragraph IV, the department shall disqualify the driver from driving a commercial motor vehicle under RSA 265-A:23.

VI. The driver shall have the opportunity for a hearing and appeal as provided in RSA 265-A:31 and RSA 265-A:34.

265-A:26 Revocation of License for Driving While Intoxicated and Appeal.

I. Upon a conviction of a violation of RSA 265-A:2 or RSA 265-A:3, the court shall report to the department and shall immediately revoke the license or driving privilege of the person so convicted, or the right of a nonresident so convicted to drive within the state of New Hampshire; and said court in the case of holders of New Hampshire licenses shall return such license with its findings marked thereon, together with the court return, to the department; and the department may revoke the license of any person who shall be convicted of a similar offense by a court of any other state in a criminal proceeding, or who shall be found to have committed a similar act by a court of any other state in a civil proceeding.

II. Whenever any person convicted of a violation of RSA 265-A:2 or RSA 265-A:3 appeals, the district court shall forthwith revoke the license or driving privilege of such person and, in case of a holder of a New Hampshire license, shall return such license together with the court return to the department which shall not reissue any license until the period of revocation determined by the court has elapsed.

265-A:27 Not Guilty Finding; Return of License. Any person whose license was revoked under the provisions of RSA 265-A:26 who appeals and is not found guilty shall have any previously held license returned. No additional fee requirements shall be imposed in connection with such license restoration.

265-A:28 License Restored Upon Proof of Financial Responsibility. Notwithstanding the provisions of RSA 263:71, the director shall not restore a license or driving privilege to a person whose license or driving privileges have been revoked pursuant to RSA 265-A:18 until such person has furnished proof of financial responsibility as required by other provisions of the law.

265-A:29 Revocation of Nonresident Privilege. When it has been finally determined under the procedures of this subdivision that a nonresident's privilege to drive a motor vehicle in this state has been revoked, the department shall give information in writing or by electronic means of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

265-A:30 Administrative License Suspension.

I. If any person refuses a test as provided in RSA 265-A:14 or submits to a test described in RSA 265-A:4 which discloses an alcohol concentration of 0.08 or more or, in the case of a person under the age of 21 at the time of the violation, 0.02 or more, the law enforcement officer shall submit a sworn report to the department. In the report the officer shall certify that the test was requested pursuant to RSA 265-A:4 and that the person refused to submit to testing or submitted to a test which disclosed an alcohol concentration of 0.08 or more, or, in the case of a person under the age of 21, 0.02 or more.

II. Upon receipt of the sworn report of a law enforcement officer submitted under paragraph I, the department shall suspend the person's driver's license or privilege to drive as follows:

(a) In the case of a refusal to take a test described in RSA 265-A:4, the suspension shall be for the period specified in RSA 265-A:14.

(b) In the case of a person who submits to a test described in RSA 265-A:4 which discloses an alcohol concentration of 0.08 or more or, in the case of a person under the age of 21 at the time of the violation, 0.02 or more, the suspension shall be for:

(1) Six months if there is no prior refusal under RSA 265-A:14, no prior driving while intoxicated or aggravated driving while intoxicated convictions, and no prior administrative license suspension pursuant to RSA 265-A:30.

(2) Two years if there is a prior refusal under RSA 265-A:14, or a prior driving while intoxicated or aggravated driving while intoxicated conviction, or a prior administrative suspension pursuant to RSA 265-A:30.

III. On behalf of the department, the law enforcement officer submitting the sworn report under paragraph I shall serve immediate notice of suspension on the person, and the suspension shall be effective 30 days after the date of service. If the person has a valid New Hampshire driver's license, an officer shall take the driver's license of the person, and issue a temporary license valid for the notice period. The officer shall send the license to the department along with the sworn report under paragraph I.

IV. If the person submits to a test described in RSA 265-A:4 and the results of the test are not immediately available and therefore no notice has been served by the law enforcement officer, the department shall mail such notice and the suspension shall be effective 30 days after the date of service. If the address shown in the law enforcement officer's report differs from that shown on the department records, the notice shall be mailed to both addresses. The notice shall be presumed to have been served 3 days after mailing. Upon receipt of the notice of suspension and before requesting any review or hearing under RSA 265-A:31, if the person has a New Hampshire driver's license that has not been surrendered, the person shall surrender such person's license at a place designated by the department and shall be issued a temporary driving permit valid for the notice period.

V. In the case of a person who has a driver's license from another jurisdiction, all provisions of this subdivision shall apply except that surrender of the out-of-state driver's license and issuance of a temporary driving permit shall not be required. The department shall transmit a copy of the suspension order to the motor vehicle authorities in the jurisdiction where the person's license was issued, and also in the jurisdiction of the person's residence if different from that where the license was issued.

265-A:31 Administrative Review and Hearings.

I.(a) Any person whose license is suspended or revoked under this subdivision may request either an administrative review or a hearing. The request shall be in writing and shall state the grounds upon which the person seeks to have the order of suspension or revocation rescinded, which grounds shall be limited to those provided in paragraph II. The filing of the request shall not stay the suspension or revocation. A request for either administrative review or hearing received by the department after 30 days from the date the notice is issued shall be denied as untimely.

(b) If the request is for an administrative review, the request may be accompanied by any statement or other evidence which the person wants the department to consider. Upon receiving the request the department shall review the order, the evidence upon which it is based, including whether the person was driving or in actual physical control of a motor vehicle, and any other information brought to the attention of the department, and shall determine whether sufficient cause exists to sustain the order.

(c) If the request is for a hearing, the request shall also indicate whether or not the person desires to have the law enforcement officer present. The hearing shall be held within 20 days after the filing of the request unless the person requests a continuance. A

request for a continuance by the person shall not stay the order of suspension or revocation. The hearing shall be recorded, and be conducted by the department's designated agent. The hearing may be conducted upon a review of the law enforcement officer's report if there is no request to have the officer present. If there is a request that the law enforcement officer be present at the hearing and the officer fails to appear without good cause shown, the case shall be dismissed and the order rescinded. If the person requesting the hearing fails to appear without good cause shown, the right to a hearing shall be waived and the order sustained.

II. The scope of the administrative review or hearing shall be limited to the issues of:

(a) Whether the officer had reasonable grounds to believe the arrested person had been driving, attempting to drive, or was in actual physical control of a vehicle upon the ways of this state or operating or attempting to operate a boat on the waters of this state or was driving, operating, attempting to operate, or in actual physical control of an OHRV while under the influence of intoxicating liquor, narcotics, or drugs;

(b) The facts upon which the reasonable grounds to believe such are based;

(c) Whether the person had been arrested;

(d) Whether the person has refused to submit to the test upon the request of the law enforcement officer or whether a properly administered test or tests disclosed an alcohol concentration of 0.08 or more, or, in the case of a person under 21 years of age, 0.02 or more;

(e) Whether the officer informed the arrested person of his or her right to have a similar test or tests conducted by a person of his or her own choosing; and

(f) Whether the officer informed the arrested person of the fact that refusal to permit the test would result in suspension of his or her license or driving privilege and that testing above the alcohol concentration level specified in RSA 265-A:2 or RSA 265-A:3 would also result in suspension.

III. In the case of either an administrative review or a hearing, the hearing examiner shall issue his or her recommendation on the order of suspension or revocation within 15 days of the request for administrative review or the hearing date. The recommendation shall be in writing and a copy shall be provided to the parties. The recommendation shall be final unless a review or appeal is filed under RSA 265-A:33 or RSA 265-A:34.

265-A:32 Period of License Suspension. Where a license or driving privilege has been suspended under RSA 265-A:30 and the person is also convicted on criminal charges arising out of the same event both the suspension and the court-ordered revocation shall be imposed but the total period of suspension and revocation shall not exceed the longer of the 2 periods; provided, however, that any suspension for refusing to submit to a test under the provisions of RSA 265-A:14 shall not run concurrently with any other penalty imposed under the provisions of this title.

265-A:33 Review. Within 10 days following the examiner's ruling, a person whose license has been suspended or revoked, or the law enforcement officer, may petition the director for a review of the ruling. The filing of the petition shall not stay a suspension or revocation of the person's driver's license or privilege to drive if imposed, or the restoration of the person's driver's license or privilege to drive. The review shall determine whether the ruling is erroneous as a matter of law or cannot be sustained by the facts as presented at the hearing. After a review of the ruling, the director shall issue within 10 days a finding either affirming the ruling or granting a new hearing. Any grant of a new hearing shall be accompanied by a written explanation setting forth the specific error of law or the reason why the ruling cannot be sustained by the facts.

265-A:34 Appeal; Administrative License Suspension.

I. Any person aggrieved by a decision of the department under this subdivision, after the administrative hearing or review, may appeal the decision as provided in this section. The court shall have the full authority to determine whether any license suspension or revocation should be stayed during the pendency of the appeal.

II. If the suspension is sustained after a hearing as provided in RSA 265-A:31, a person shall have the right to file a petition in the superior court in the county in which he or she was arrested to review the final order by the director or the director's authorized agent within 30 days of the date of the final order. Jurisdiction to hear such appeals is vested in the superior court.

III. At the earliest practical time, the court shall review the record as developed before the director or authorized agent, together with any written legal argument presented to the court. Based on that review, the court may affirm or reverse the decision of the director or agent or order that oral argument be held. As justice may require, the court may remand the case to the director or authorized agent for further findings or rulings. In no event shall the oral argument be held less than 14 days after notice has been provided to the director. The petition for appeal shall set forth all the grounds upon which the final order is sought to be overturned. Issues not raised by the appellant before the director or agent shall not be raised before the superior court. The burden of proof shall be upon the appellant to show that the decision of the director or agent was clearly unreasonable or unlawful, and all findings of the director or agent upon all questions of fact properly before him or her shall be deemed to be prima facie lawful and reasonable. The order or decision appealed from shall not be set aside or vacated except for errors of law, unless the court is satisfied, by a clear preponderance of the evidence before it, that the order is unjust or unreasonable.

IV. No new or additional evidence shall be introduced in the superior court, but the case shall be determined upon the record and evidence transferred, except that in any case, if it shall be necessary in order that no party shall be deprived of any constitutional right, or if the court shall be of the opinion that justice requires the reception of evidence of facts which have occurred since the hearing, or which by reason of accident, mistake, or misfortune could not have been offered before the director or authorized agent, it shall remand the case to the director or authorized agent to receive and consider such additional evidence.

265-A:35 Probationary Licenses.

I. Any person who shall apply for reissuance of his or her driver's license following revocation or suspension for an offense under RSA 265:79, RSA 265-A:2, RSA 265-A:3, or RSA 265-A:43 for an offense involving a vehicle is an "at risk" driver and his or her driver's license shall be probationary for at least 5 years following the date of reissuance.

II. No holder of a probationary license shall drive or attempt to drive a vehicle upon any way when he or she is under the influence of intoxicating liquor or any controlled drug or any combination of intoxicating liquor and controlled drugs, so that the alcohol concentration is 0.03 or more. Driving with an alcohol concentration of 0.03 or more is a per se violation of a probationary license and subjects the probationary license holder to administrative suspension of his or her driver's license for not less than 90 days and not more than 180 days. Such administrative suspension shall be in addition to any court imposed suspension or revocation periods.

III. Any probationary license holder whom the police have reasonable cause to believe is driving with an alcohol concentration of 0.03 or more and who refuses to submit to a test for alcohol concentration shall have his or her driver's license administratively suspended for a period of 90 days.

Alcohol Ignition Interlock Program

265-A:36 Alcohol Ignition Interlock Program Established.

I. Any person whose license or permission to drive has been revoked or suspended for an aggravated DWI offense under RSA 265-A:18, I(b), I(c), or a subsequent DWI offense under RSA 265-A:18, IV may be required by the court after the period of revocation or suspension to install an ignition interlock device as defined in RSA 259:43-a in any vehicle registered to that person or used by that person on a regular basis, for not less than 6 months nor more than 2 years. Installation and monitoring costs shall be paid by the offender. A certificate proving installation of the device shall be provided to the division of

motor vehicles as a condition precedent to reinstatement of the individual's license to drive, and the division may mark the person's license accordingly.

I-a. Any person who is convicted of driving while under suspension or revocation resulting from a DWI offense shall be required by the court to install an ignition interlock device in any vehicle registered to that person or used by that person on a regular basis, for the remaining period of suspension or revocation plus an additional period not less than 6 months nor more than 2 years. The court may order such installation on a temporary basis prior to conviction as a condition of bail.

I-b. To the extent that technology does not exist to permit the installation or safe operation of any particular vehicle type when equipped with an interlock, the court may order that a restraining device which disables the vehicle be placed on any such vehicle registered to or used on a regular basis by a person required to install an ignition interlock device.

II. Nothing in this section shall prohibit a court of competent jurisdiction from requiring the installation of an ignition interlock device for any person convicted of a violation of RSA 265-A:2 involving a vehicle, where the conviction is not based upon a complaint which alleges prior convictions as provided in RSA 265-A:18, IV, but the person is found to have had one or more such prior convictions in this state or in an out-of-state jurisdiction.

III. Any person under the age of 21 whose license or permission to drive has been revoked or suspended under RSA 265-A:18 may be required by the court after the period of revocation or suspension to install an ignition interlock device as defined in RSA 259:43-a in any vehicle registered to that person or used by that person on a regular basis, until the age of 21 or for not less than 12 months, whichever is longer.

IV. An ignition interlock device may not be sold or distributed in this state without the device being approved by the commissioner or the department of safety.

V. The department of safety shall establish rules, pursuant to RSA 541-A, for the approval of ignition interlock devices and for the licensing of approved interlock service providers.

VI. The commissioner shall adopt rules and regulations to create an ignition interlock program that will control the delivery of interlock service in this state under this subdivision. The rules adopted for the licensing of approved interlock service providers shall require that each provider, at a minimum:

(a) Provide recalibration of each device within 30 days of installation and every 60 days thereafter, unless otherwise ordered by the court;

(b) Maintain at least that number of locations across the state for the installation, service, calibration, and monitoring of an ignition interlock device as might be required from time to time by the program operating protocol developed by the commissioner;

(c) Provide periodic reports as determined by the court or in department rules, to the probation office and treatment provider, if applicable; if the offender is not placed on probation, to the arresting agency and the court of jurisdiction;

(d) Retain all data-logger records for 12 months after the end of the period to which the offender is sentenced;

(e) Provide installation and service to those offenders determined by the court to be unable to pay the full cost of an interlock program by reserving for this purpose a hardship credit equal to 2 percent of the service provider's gross receipts, excluding the purchase or rental cost of the interlock device, which credit and free service shall be reported annually to the department; and

(f) Provide a certificate of installation to the vehicle's owner upon installation of the device in a form to be determined by the department's interlock rules.

265-A:37 Alcohol Ignition Interlock Circumvention.

I. Any person required by the court to install an ignition interlock device shall not drive any motor vehicle not equipped with this device.

II. A person shall not tamper with, or in any way attempt to circumvent the operation of an ignition interlock device that has been installed in a motor vehicle.

III. A person shall not start or attempt to start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person who is restricted by law to drive only a motor vehicle so equipped. The provisions of this section do not apply if the starting of a motor vehicle, or the request to start a motor vehicle equipped with an ignition interlock device, is done for the purpose of safety or mechanical repair of the device or the vehicle, and the person subject to the court order does not drive the vehicle.

IV. A person shall not knowingly provide a motor vehicle not equipped with a functioning ignition interlock device to another person whom the provider of the vehicle knows was sentenced to drive only a motor vehicle equipped with an ignition interlock device.

V. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

265-A:38 Violating Court Order.

I. Upon written notice, by affidavit, that any person has violated an order of the court with regard to the installation of an ignition interlock device after the period of revocation or suspension imposed in RSA 265-A:18, 265:79, or 630:3, a hearing shall be scheduled within 14 business days of the notice. Pending the hearing and upon a finding of probable cause that a violation has occurred based upon the affidavit, the court shall immediately suspend the defendant's privilege to drive a motor vehicle. After the hearing and upon a finding of violation by a preponderance of the evidence, the privilege to drive shall not be restored until the court is satisfied that the person is in compliance with its order.

II. If it is found that a person required to drive a motor vehicle equipped with an ignition interlock device has failed to comply with any requirement for the maintenance or calibration of the device, or shows a consistent pattern of failures to pass the breath test provided by the device, the court may order a hearing to determine if the person should be held in contempt of court. Upon a finding of contempt, the court may sentence the defendant to up to 6 months in a county department of corrections facility, may make such other orders as necessary to bring about compliance, and may order a further license suspension or revocation for a period of not more than 12 months. The period of suspension or revocation under this section shall be added to any previously ordered suspension or revocation.

Impaired Driver Intervention Programs

265-A:39 Impaired Driver Intervention Programs.

I. Except as provided in paragraph IV, the commissioner of the department of health and human services shall be responsible for biennially approving the impaired driver intervention programs and 7-day residential intervention programs equivalent to the multiple DWI offender intervention detention center program (M.O.P.) which persons convicted under RSA 265-A:2 or RSA 265-A:3 shall attend in order to regain their driver's licenses or driving privileges; but the commissioner of the department of health and human services shall not approve any impaired driver intervention program unless such program is conducted without cost to the state. Notwithstanding RSA 6:12, any fees collected under subparagraph V(c) of this section shall be placed in a nonlapsing revolving account and shall be used by the commissioner for the purposes of this subdivision only.

II. Notwithstanding any other law to the contrary, the impaired driver intervention programs operated by the department of corrections shall be deemed approved programs for purposes of the attendance required at such programs for restoration of driver's licenses or driving privileges under RSA 265-A:42.

III. An impaired driver intervention program shall consist, at a minimum, of 20 hours of standardized educational curriculum and an exit interview.

IV. The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, relative to the impaired driver intervention programs and those programs equivalent to the M.O.P. as required in RSA 265-A:18 and RSA 265-A:42 with respect to:

(a) Procedures and forms to be followed in order for drivers who have completed such programs to regain their licenses or driving privileges.

(b) Place of business and areas of the state in which approved programs may operate.

(c) Records and reports.

(d) Schedule of fees and charges.

(e) Such other matters as the commissioner of the department of health and human services and the commissioner of safety may prescribe for the protection of the public.

V. The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, relative to the operation of impaired driver intervention programs with respect to:

(a) Course content and standards of instruction.

(b) Certification and recertification of instructors.

(c) A per client fee to be paid by program providers sufficient to cover the costs of monitoring course content, establishing and maintaining standards of instruction, data collection, and administrative support.

(d) Any other matter related to the proper administration of this section.

265-A:40 Multiple DWI Offender Intervention Detention Center Program.

I. The commissioner of the department of health and human services shall be responsible for administration and operation of the 7-day multiple DWI offender intervention detention center program which persons convicted under RSA 265-A:2 or RSA 265-A:3 or sentenced pursuant to RSA 651:2, V(h) may be required to attend.

II. Any person who attends the 7-day multiple DWI offender intervention detention center program shall be required to pay the fees for confinement and intervention costs, except that prior payment shall not be required of any person. The fees shall be sufficient to make the program self-supporting, exclusive of start-up costs. The fees collected shall be deposited in a special account in the office of the state treasurer and utilized as provided in RSA 265-A:41.

III. The state-operated 7-day multiple DWI offender intervention detention center program shall furnish to the courts a report indicating when a person has completed attendance at the program, and shall furnish to the division of motor vehicles, department of safety, a report indicating when a person who attends the program pursuant to RSA 265-A:18 has successfully completed the program and treatment or involvement in a substance abuse program when appropriate and warranted.

IV. The commissioner of the department of health and human services shall submit an annual report on the 7-day state-operated multiple DWI offender intervention detention center program, on or before January 1 of each year, to the speaker of the house of representatives and the president of the senate.

V. The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, relative to the operation of the 7-day multiple DWI offender intervention detention center program with respect to:

(a) Program curriculum and content.

(b) Bed availability schedules.

(c) Any other matter related to the proper administration of this section.

265-A:41 Utilization of Funds. All funds derived from the fees collected by the commissioner of the department of health and human services under RSA 265-A:18 shall be paid over to the state treasurer within 10 days of the subsequent month, or at an earlier

date, for deposit into a separate account in the treasury known as the 7-day multiple DWI offender intervention detention center program account. These funds are appropriated as indicated in the operating budget as a source of funds for the 7-day multiple DWI offender intervention detention center program. Any funds remaining in the account over the appropriation indicated in the operating budget shall lapse into the general fund at the end of each fiscal year.

265-A:42 Attendance at Impaired Driver Intervention Program Required.

I. The director shall not restore the license or driving privilege of any person whose license or privilege has been revoked or suspended pursuant to RSA 265-A:2, I or 265-A:3 until such person has furnished proof of successful completion of an impaired driver intervention program which is:

- (a) Approved by the commissioner of the department of health and human services and the commissioner of safety pursuant to RSA 265-A:39 and RSA 265-A:40;
- (b) Approved by the court or the department of safety, in the case of a person who is not a resident of this state; or
- (c) Operated by the department of corrections and approved pursuant to RSA 265-A:39, II.

II. For the purposes of this section, "successful completion" means meeting further counseling requirements, if any, arising out of the final evaluation given to the offender at the I.D.I.P. or the M.O.P. or its equivalent; provided, however, that the offender shall have the right to a hearing before the commissioner or designee, who shall determine whether the further counseling requirements arising out of the final evaluation are warranted and appropriate, and whether the offender should be eligible for license restoration.

III. Successful completion shall also include payment of all assessed I.D.I.P., M.O.P., and equivalent program fees, except in the case of attendance at programs operated by the department of corrections. Failure of the offender to make full payment of the assessed fee may also result in petition for contempt of court charges against the offender.

IV.(a) Upon enrolling in an impaired driver intervention program, a person shall provide to the program an original certified copy of the person's driver's license record. Such record shall be secured from the division of motor vehicles, or from the state in which the person holds a driver's license, if an out-of-state resident. The person shall pay for all costs involved in securing the certified copy.

(b) In the case of enrollment in the state-operated 7-day multiple DWI offender intervention detention center, a person shall provide such certified copy at the time of enrollment or prior to the issuance of a report under RSA 265-A:40, III and RSA 265-A:18, VIII.

V.(a) A person shall be presumed to have furnished proof of successful completion of an impaired driver intervention program if the person furnishes a report indicating that he or she has completed attendance at the I.D.I.P., the M.O.P., or an equivalent program, and that he or she has paid all assessed program fees. The presumption may be overcome by a hearing requested by the department, or the I.D.I.P., the M.O.P., or an equivalent program, with notice to and an opportunity to be heard by the person, where the department and/or the I.D.I.P., the M.O.P., or an equivalent program, shall have the burden of proving that the person has not successfully completed an impaired driver intervention program.

(b) The I.D.I.P., the M.O.P., or an equivalent program shall inform the department in writing of any further treatment it deems necessary in order to be considered a completed program before a license suspension should be restored. The department shall notify the licensee of his or her ability to request a hearing to dispute the findings and the licensee shall inform the department of safety if the licensee requests a hearing within 20 days of receipt of such notice. At such hearing the I.D.I.P., the M.O.P., or an equivalent program shall have the burden of proving the person has not successfully completed an impaired driver intervention program. The I.D.I.P., the M.O.P., or an equivalent program

shall inform the department in writing within 5 days after the end of the program attended by the licensee.

Other Alcohol and Drug Offenses

265-A:43 Possession of Drugs. Any person who drives on any way a vehicle while knowingly having in his or her possession or in any part of the vehicle a controlled drug or controlled drug analog in violation of the provisions of RSA 318-B shall be guilty of a misdemeanor, and his or her license shall be revoked or his or her right to drive denied for a period of 60 days and at the discretion of the court for a period not to exceed 2 years.

265-A:44 Transporting Alcoholic Beverages.

I. The words "liquor" and "beverage" as used in this section shall have the same meanings as defined in RSA 175:1.

II. Except as provided in paragraph V, no driver shall transport, carry, possess, or have any liquor or beverage within the passenger area of any motor vehicle upon any way in this state except in the original container and with the seal unbroken. Securely capped partially filled containers of liquor or beverages shall be stored and transported in the trunk of the motor vehicle. If the motor vehicle does not have a trunk, such containers shall be stored and transported in that compartment or area of the vehicle which is the least accessible to the driver.

III. Except as provided in paragraph V, no passenger shall carry, possess, or have any liquor or beverage within any passenger area of any motor vehicle upon any way or in an area principally used for public parking in this state except in the original container and with the seal unbroken. Securely capped partially filled containers of liquor or beverages may be stored and transported in that compartment or area of the vehicle which is the least accessible to the driver.

IV. A person who violates this section shall be guilty of a violation and shall be subject to a fine of \$150. In addition, a person who violates paragraph II of this section may have his or her drivers' license, if a resident, or driving privilege, if a nonresident, suspended 60 days for a first offense and up to one year for a second or subsequent offense.

V. This section shall not apply to persons transporting, carrying, possessing, or having any liquor or beverage in a chartered bus, in a taxi, or in a limousine for hire; provided, however, that the driver of any of said vehicles is prohibited from having any liquor or beverage in or about the driver's area.

VI. For the purposes of this section only:

(a) "Passenger area of any motor vehicle" shall not include any section of a motor vehicle which has been designed or modified for the overnight accommodation of persons or as living quarters.

(b) "Way" shall mean the entire width between the boundary lines of any public highway, street, avenue, road, alley, park, or parkway, or any private way laid out under authority of statute, or any such way provided and maintained by a public institution to which state funds are appropriated for public use or any such way which has been used for public travel for 20 years.

265-A:45 Transportation of Alcoholic Beverages by a Minor.

I. Notwithstanding RSA 265-A:44, II, no driver under the age of 21 shall, except when accompanied by a parent, legal guardian, or legal age spouse, transport any liquor or beverage in any part of a vehicle. A driver violating this section may have his or her license or privilege to drive suspended for 60 days. The words "liquor" and "beverage" as used in this section shall have the same meanings as defined in RSA 175:1. "Legal age spouse" means a person 21 years of age or older.

II. This section shall not apply to a driver under 21 years of age employed under RSA 179:23.

2 Reference Changed. Amend RSA 6:12, I(b)(147) to read as follows:

(147) Moneys deposited in the 7-day multiple DWI offender intervention detention center program account under RSA [~~172-B:2-e~~] **265-A:41**.

3 Reference Changed. Amend RSA 6:12, I(b)(175) to read as follows:

(175) Moneys deposited in the alcoholism and alcohol abuse account under RSA ~~[172-B:2-a]~~ **265-A:39**.

4 Reference Changed. Amend RSA 21-P:14, II(dd) to read as follows:

(dd) The methods, procedures, and techniques for the testing of blood, urine, and breath to determine alcohol concentration as described under RSA ~~[265:85]~~ **265-A:5**, V.

5 References Changed. Amend RSA 21-P:14, IV(j)-(k) to read as follows:

(j) Suspension or revocation of a driver's license or driving privilege, as authorized by RSA ~~[263:53-66]~~ **263:53 through RSA 263:65**, ~~[and]~~ RSA 263:73, **265-A:26, and RSA 265-A:29**.

(k) Appeals of driver's license denial, suspension, or revocation, as authorized by RSA 263:75, **RSA 265-A:34**, and 263:76.

6 Reference Changed. Amend RSA 21-P:14, IV(r) to read as follows:

(r) Administrative suspension of motor vehicle licenses pursuant to RSA ~~[265:91-a]~~ **265:91-b and RSA 265:91-c and RSA 265-A:30 through RSA 265-A:32**, including notices, forms, temporary driving permits, hearing procedures, and procedures for restoration after the suspension period.

7 Reference Changed. Amend RSA 179:27-a, II to read as follows:

II. Any partially consumed bottle of table wine which is to be removed from the premises under paragraph I shall be securely sealed and bagged, by the licensee, either to be in conformance with any applicable local open container law for those patrons on foot, or transported as required by RSA ~~[265:81]~~ **265-A:44**, in the trunk of a motor vehicle. If the vehicle is not equipped with a trunk, the securely sealed opened table wine bottles may be stored and transported in that compartment or area of the vehicle which is the least accessible to the driver.

8 Reference Changed. Amend RSA 214:20-f to read as follows:

214:20-f Administration of Blood Alcohol Concentration Tests. All and any alcohol concentration tests performed as authorized in RSA 214:20-d shall be conducted pursuant to the requirements of RSA ~~[265:85]~~ **265-A:5**, relative to the testing of blood, urine, and breath.

9 Reference Changed. Amend RSA 214:20-g to read as follows:

214:20-g Additional Tests. The provisions of RSA ~~[265:86]~~ **265-A:7**, relative to the right of an arrested person to obtain additional tests, shall apply to any person to whom RSA 214:20-d is applicable.

10 Reference Changed. Amend RSA 214:20-j to read as follows:

214:20-j Official Record of Tests. The provisions of RSA ~~[265:90]~~ **265-A:12**, relative to notice to the court and the admissibility of the official report of tests, shall govern admissibility of the official records related to the tests taken pursuant to this RSA 214:20-d as well as the notice required to compel the attendance of any person who conducted such tests at trial.

11 References Changed. Amend RSA 215-A:19, VII(b)-(c) to read as follows:

(b) RSA ~~[215-A:11]~~ **265-A:2, I and RSA 265-A:3**, relative to operating an OHRV while intoxicated or under the influence of drugs.

(c) RSA ~~[215-A:11-b]~~ **265-A:14**, relative to refusal of consent.

12 References Changed. Amend RSA 215-A:29, XIX(b) to read as follows:

(b) Any person who violates this section by operating an OHRV in this state during the period of suspension or revocation of such person's license or driving privilege for a violation of ~~[RSA 215-A:11, 215-C:11,]~~ RSA 265:79, RSA ~~[265:82, RSA 265:82-a]~~ **265-A:2, I, RSA 265-A:3**, and RSA 630:3, II shall be guilty of a misdemeanor and shall be sentenced in accordance with RSA 263:64, IV.

13 References Changed. Amend RSA 259:39, I(k)-(l) to read as follows:

(k) Conviction of any offense *involving a vehicle* specified in RSA ~~[265:82]~~ **265-A:2, I**;

(l) Conviction of any offense *involving a vehicle* specified in RSA ~~[265:82-a]~~ **265-A:3**;

14 Reference Changed. Amend RSA 259:43-b to read as follows:

259:43-b Interlock Service Provider. An approved interlock service provider means an entity that installs, services, calibrates, monitors, and provides reports as required by RSA ~~[265:93-a]~~ **265-A:36**, VI(c) who is approved by the commissioner of the department of safety to do so; no person shall provide any of the services of an approved interlock service provider without such prior approval.

15 References Changed. Amend RSA 259:125, II to read as follows:

II. For the purposes of RSA 265:79, RSA ~~[265:82]~~ **265-A:2, I**, and RSA ~~[265:82-a]~~ **265-A:3**, any public highway, street, avenue, road, alley, park, parking lot, or parkway; any private way laid out under authority of statute; ways provided and maintained by public institutions to which state funds are appropriated for public use; any privately owned and maintained way open for public use; and any private parking lots, including parking lots and other out-of-door areas of commercial establishments which are generally maintained for the benefit of the public.

16 Reference Changed. Amend RSA 260:16 to read as follows:

260:16 Appropriation. The department may destroy, at the end of 5 years from the date of filing, originals or copies, including photographs, microphotographs, or photographic film, of reports required by law of accidents and applications for licenses to drive motor vehicles and for the registration thereof. The department may destroy any obsolete number plates and forms which, in the director's opinion, are no longer of any value to the state. The time limit provided herein shall not apply in the case of the destruction of original records, papers, or documents as provided in RSA 260:19. This section shall not be construed as allowing the destruction of any record of conviction maintained for the purposes of RSA ~~[265:82]~~ **265-A:2, I**.

17 References Changed. Amend RSA 261:180, III to read as follows:

III. The commissioner, when suspending a driver's license or privilege to drive because the driver is an habitual offender or has been convicted of negligent homicide involving the use of a motor vehicle, manslaughter involving the use of a motor vehicle, a subsequent offense of driving *or attempting to drive* under the influence of intoxicating liquor or any controlled drug under RSA ~~[265:82]~~ **265-A:2, I**, or aggravated driving while intoxicated *or attempted aggravated driving while intoxicated* under RSA ~~[265:82-a]~~ **265-A:3**, shall also revoke the registration of any vehicle registered to the individual whose license is being revoked or suspended, for the period of revocation or suspension of the license or privilege to drive.

18 References Changed. Amend RSA 262:23, II to read as follows:

III. Notwithstanding paragraph I, any person who qualifies under RSA 259:39 shall not be subject to the minimum mandatory provisions of paragraph I if, and only if, that person's certification was not based on any conviction under RSA ~~[265:82]~~ **265-A:2, I** or any misdemeanor or felony motor vehicle conviction pursuant to RSA title XXI, and that person has not been convicted of any such offense, or any reasonably similar offense in any jurisdiction within the United States and Canada, since the date of the certification; provided, however, that any such person shall be guilty of a class A misdemeanor and may be sentenced to one year or less. Any person incarcerated upon the effective date of this paragraph, pursuant to certification as an habitual offender under RSA 259:39, who does not have a conviction under RSA ~~[265:82]~~ **265-A:2, I involving a vehicle** or any misdemeanor or felony motor vehicle convictions pursuant to RSA title XXI, may apply immediately to the superior court for sentence review and reduction.

19 References Changed. Amend the introductory paragraph of RSA 262:44 to read as follows:

Any person charged with a violation of the provisions of title XXI on vehicles, excluding a violation of RSA 263:1-a, **RSA 265:79**, ~~[265:82, 265:82-a]~~ **RSA 265-A:2, RSA 265-A:3, RSA**

265:115, **RSA 265:117**, a speeding offense under RSA 265:60 for which the defendant must appear in court, and any offense which is a misdemeanor or felony, may plead guilty, nolo contendere, or not guilty by mail in the following manner:

20 References Changed. Amend RSA 263:56-a, II(b) to read as follows:

(b) The director shall purge the record of violations in default, related suspensions, and all fees and fines assessed against these defaults and suspensions under this section that have been on file for more than 7 years; provided, however, that the director shall not purge such records for a violation of RSA 265:79, RSA ~~[265:82]~~ **265-A:2, I**, RSA ~~[265:82-a]~~ **265-A:3**, RSA 265:115, RSA 265:117, and any offense which is a misdemeanor or felony during the defendant's lifetime until the defendant's driver's license or driving privilege is reinstated. All courts shall notify the director of any such failure on a form prescribed by the director.

21 Reference Changed. Amend RSA 263:56-e, II(c) to read as follows:

(c) The person has successfully completed a program required by RSA ~~[263:65-a]~~ **265-A:42** at approximately the same time he *or she* would have been required to take the driver attitude program.

22 References Changed. Amend RSA 263:64, IV to read as follows:

IV. Any person who violates this section by driving *or attempting to drive* a motor vehicle in this state during the period of suspension or revocation of his or her license or driving privilege for a violation of RSA 265:79 shall be guilty of a misdemeanor. Any person who violates this section by driving *or attempting to drive* a motor vehicle or by operating *or attempting to operate* an OHRV or snowmobile in this state during the period of suspension or revocation of his or her license or driving privilege for a violation of RSA ~~[215-A:11, 215 C:11, RSA 265:82]~~ **265-A:2, I**, RSA ~~[265:82-a]~~ **265-A:3**, or RSA 630:3, II shall be guilty of a misdemeanor and shall be sentenced to imprisonment for a period not less than 7 consecutive 24-hour periods to be served within 6 months of the conviction, shall be fined not more than \$1,000, and shall have his or her license or privilege revoked for an additional year. No portion of the minimum mandatory sentence of imprisonment shall be suspended by the court. No case brought to enforce this paragraph shall be continued for sentencing for longer than 35 days. No person serving the minimum mandatory sentence under this paragraph shall be discharged pursuant to authority granted under RSA 651:18, released pursuant to authority granted under RSA 651:19, or in any manner, except as provided in RSA 623:1, prevented from serving the full amount of such minimum mandatory sentence under any authority granted by title LXII or any other provision of law.

23 Reference Changed. Amend the subdivision heading preceding RSA 263:65 and RSA 263:65 to read as follows:

Effect of Reckless Driving ~~[or Driving While Under Influence of Alcohol or Drugs]~~

263:65 Revocation for Reckless Driving ~~[or Driving While Under Influence of Alcohol or Drugs]~~. Upon a conviction of a violation of RSA 265:79, ~~[82 or 82-a]~~ the court shall report to the department and shall immediately revoke the license or driving privilege of the person so convicted, or the right of a nonresident so convicted to drive within the state of New Hampshire; and said court in the case of holders of New Hampshire licenses shall return such license with its findings marked thereon, together with the court return, to the department; and the department may revoke the license of any person who shall be convicted of a similar offense by a court of any other state in a criminal proceeding, or who shall be found to have committed a similar act by a court of any other state in a civil proceeding.

24 Alcohol and Controlled Substance Provisions Deleted. Amend RSA 263:94, I(a)-(c) to read as follows:

(a) The commissioner shall suspend for at least one year, the commercial driver license of a person who is found to have committed a first violation of:

(1) ~~[Driving a commercial motor vehicle under the influence of alcohol with an alcohol concentration of 0.04 or greater, or other controlled substances, notwithstanding RSA 265:89;~~

~~(2)~~ Leaving the scene of an accident while driving a commercial motor vehicle; and

~~[(3)]~~ **(2)** Driving a commercial motor vehicle in the commission of a felony, except a controlled substance felony as described in subparagraph (d).

(b) If the driver commits any of the violations listed in subparagraph (a) while carrying hazardous materials, the suspension shall be for a period of 3 years.

(c) The commissioner shall suspend for life, or a period of not less than 10 years, according to federal Department of Transportation regulations, the commercial driver license of a person who is found to have committed a second violation of:

(1) ~~[Driving a commercial motor vehicle under the influence of alcohol with an alcohol concentration of 0.04 or greater, or other controlled substance, notwithstanding RSA 265:89;~~

~~(2)~~ Leaving the scene of an accident while driving a commercial motor vehicle; or

~~[(3)]~~ **(2)** Using a commercial motor vehicle in the commission of a felony.

25 Scope of Administrative Review or Hearing. Amend RSA 265:91-b, II to read as follows:

II. The scope of the administrative review or hearing shall be limited to the ~~[issues]~~ *issue* of[~~:~~

~~(a) Whether the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a vehicle upon the ways of this state while under the influence of intoxicating liquor, narcotics or drugs;~~

~~(b) The facts upon which the reasonable grounds to believe such are based;~~

~~(c) whether the person had been arrested[;~~

~~(d) Whether the person has refused to submit to the test upon the request of the law enforcement officer or whether a properly administered test or tests disclosed an alcohol concentration of 0.08 or more, or, in the case of a person under 21 years of age, 0.02 or more;~~

~~(e) Whether the officer informed the arrested person of his right to have a similar test or tests conducted by a person of his own choosing; and~~

~~(f) Whether the officer informed the arrested person of the fact that refusal to permit the test would result in suspension of his license or driving privilege and that testing above the alcohol concentration level specified in RSA 265:91-a would also result in suspension].~~

26 Reference Changed. Amend RSA 270:12-a, I(b) to read as follows:

(b) The provisions of RSA ~~[270:48-a]~~ **265-A**, relative to the operation *or attempted operation* of boats by a person under the influence of intoxicating liquor or a controlled drug or other unlawful operation of boats thereunder and all other crimes and offenses occurring on the public bodies of inland waters of the state;

27 References Changed. Amend RSA 270:46-a, I(c)-(d) to read as follows:

(c) RSA ~~[270:50]~~ **265-A:14**, refusal of consent.

(d) RSA ~~[270:48-a]~~ **265-A:2, II**, operating *or attempting to operate* boats under the influence of liquor or drugs.

28 Reference Changed. Amend RSA 270:83 to read as follows:

270:83 Chocorua Lake. No person shall use, operate, or have aboard or attached to any boat as defined in RSA ~~[270:48]~~ **265-A:1**, II a petroleum- or electric-powered inboard or outboard motor, or any other type of power motor, upon the waters of Chocorua Lake in Tamworth. Whoever violates the provisions of this section shall be guilty of a violation.

29 Reference Changed. Amend RSA 422:29, VI to read as follows:

VI. Any person who operates or attempts to operate an aircraft while under the influence of intoxicating liquor or of any controlled drug as prohibited by this chapter or 14 C.F.R. ~~[Part]~~ **part** 91 as amended shall be guilty of a class B felony and be subject to the same penalties as a person convicted of a violation of RSA ~~[265:82]~~ **265-A:2, I** as specified in RSA ~~[265:82-b]~~ **265-A:18**, I(c). Any conviction under this section shall be reported to the

department of safety, division of motor vehicles and shall become a part of the motor vehicle driving record of the person convicted.

30 Reference Changed. Amend RSA 502-A:19-b, I to read as follows:

I. Such defendant shall receive, in addition to ~~his~~ **a** summons, a uniform fine schedule entitled "Notice of Fine, New Hampshire District and Municipal Courts" which shall contain the usual fines for violations of the provisions of title XXI on vehicles, excluding violations of RSA 265:79, ~~[265:82]~~ **RSA 265-A:2, I** or any offense which is a misdemeanor or felony; the usual fines for violations of the provisions of RSA 270, 270-A, and 270-E, excluding any offense which is a misdemeanor or felony; the usual fines for violations of the provisions of title XVIII on fish and game laws, excluding any offense which is a misdemeanor or felony; and the usual fines for violations of the provisions of title XIX-A on forestry laws, excluding any offense which is a misdemeanor or felony. The defendant shall be given a notice of fine indicating the amount of the fine plus penalty assessment at the time the summons is issued; except, if, for cause, the summoning authority wishes the defendant to appear personally. Defendants summoned to appear personally must do so on the arraignment date specified in the summons, unless otherwise ordered by the court. Defendants who are issued a summons and notice of fine and who wish to plead guilty or nolo contendere shall enter their plea on the summons and return it with payment of the fine plus penalty assessment to the division of motor vehicles within 30 days of the date of summons. Defendants in violation of the provisions of title XVIII shall be subject to the provisions of RSA 207:18 and RSA 214:19.

31 Applicability; Pleas by Mail. Section 30 of this act shall apply only to courts which are not computerized in coordination with the division of motor vehicles.

32 References Changed. Amend RSA 630:3, II-III to read as follows:

II. A person is guilty of a class A felony when in consequence of being under the influence of intoxicating liquor or a controlled drug or any combination of intoxicating liquor and controlled drug while operating a propelled vehicle, as defined in RSA 637:9, III or a boat as defined in RSA ~~[270:48]~~ **265-A:1**, II, he **or she** causes the death of another.

III. In addition to any other penalty imposed, if the death of another person resulted from the negligent driving of a motor vehicle, the court may revoke the license or driving privilege of the convicted person for up to 7 years. In cases where the person is convicted under paragraph II, the court shall revoke the license or driving privilege of the convicted person indefinitely and the person shall not petition for eligibility to reapply for a driver's license for at least 7 years. In a case in which alcohol was involved, the court may also require that the convicted person shall not have a license to drive reinstated until after the division of motor vehicles receives certification of installation of an ignition interlock device as described in RSA ~~[265:93-a]~~ **265-A:36**, which shall remain in place for a period not to exceed 5 years.

33 Reference Changed. Amend RSA 651:2, V(h) to read as follows:

(h) In cases of a person convicted of a felony or class A misdemeanor, a court may sentence such person to 7 consecutive 24-hour periods to be served at the state-operated 7-day multiple DWI offender intervention detention center program established under RSA ~~[172-B:2-b]~~ **265-A:40**, if the evidence demonstrates that alcohol was a contributing factor in the commission of the offense and provided that space is available in the program and such person pays the fees for the program in full prior to admission.

34 References Changed. Amend the introductory paragraph of RSA 651:5, III to read as follows:

III. Except as provided in RSA ~~[265:82-e]~~ **265-A:21** or in paragraphs V and VI, any person convicted of an offense may petition for annulment of the record of arrest, conviction, and sentence when the petitioner has completed all the terms and conditions of the sentence and has thereafter been convicted of no other crime, except a motor vehicle offense classified as a violation other than driving while intoxicated under RSA ~~[265:82]~~ **265-A:2, I**, for a period of time as follows:

35 References Changed. Amend RSA 651:6, II(b)-(c) to read as follows:

(b) Has previously been convicted of a violation of RSA 630:3, II, RSA ~~[265:82-a]~~ **265-A:3**, I(b) or II(b), or any crime in any other jurisdiction involving driving **or attempting to drive** a motor vehicle under the influence of controlled drugs or intoxicating liquors, or both, and such person has committed a crime as defined under RSA 630:3, II or RSA ~~[265:82-a]~~ **265-A:3**, I(b) or II(b); or

(c) Has twice previously been convicted in this state or any other jurisdiction, for driving **or attempting to drive** a motor vehicle under the influence of intoxicating liquors or controlled drugs, or both, and such person has committed a crime as defined under RSA 630:3, II or RSA ~~[265:82-a]~~ **265-A:3**, I(b) or II(b).

36 Repeal. The following are repealed:

- I. RSA 172-B:2-a through 172-B:2-c, relative to impaired driver intervention programs.
- II. RSA 215-A:11 through 215-A:11-q, relative to DWI provisions for OHRVs.
- III. RSA 263:14-a, relative to probationary licenses.
- IV. RSA 263:65-a, relative to attendance at impaired driver intervention programs.
- V. RSA 263:66, relative to revocation of license for driving while intoxicated and appeals.
- VI. RSA 263:67, relative to not guilty findings; return of license.
- VII. RSA 263:71-a, relative to license restoration upon proof of financial responsibility.
- VIII. RSA 263:95, relative to commercial drivers prohibited from driving with any alcohol in their systems.
- IX. RSA 263:96, relative to implied consent requirements for commercial motor vehicle drivers.
- X. RSA 265:80, relative to possession of drugs.
- XI. RSA 265:81, relative to transporting alcoholic beverages.
- XII. RSA 265:81-a, relative to transportation of alcoholic beverages by a minor.
- XIII. RSA 265:82, relative to driving under influence of drugs or liquor; driving with excess alcohol concentration.
- XIV. RSA 265:82-a, relative to aggravated driving while intoxicated.
- XV. RSA 265:82-b, relative to penalties for intoxication or operating under the influence of drugs offenses.
- XVI. RSA 265:82-c, relative to annulment; plea bargaining.
- XVII. RSA 265:82-d, relative to payment of all obligations prior to restoration.
- XVIII. RSA 265:83, relative to arrests without a warrant.
- XIX. RSA 265:84, relative to implied consent of driver to submit to testing.
- XX. RSA 265:85, relative to administration of alcohol concentration tests.
- XXI. RSA 265:85-a, relative to administration of physical tests.
- XXII. RSA 265:86, relative to additional tests.
- XXIII. RSA 265:87, relative to prerequisites to tests.
- XXIV. RSA 265:88, relative to effect of evidence of alcohol concentration tests.
- XXV. RSA 265:88-a, relative to evidence of refusal to take alcohol concentration tests.
- XXVI. RSA 265:89, relative to evidence.
- XXVII. RSA 265:90, relative to official records of tests.
- XXVIII. RSA 265:91, relative to incapacity to give consent.
- XXIX. RSA 265:91-a, relative to administrative license suspensions.
- XXX. RSA 265:92, relative to refusal of consent.
- XXXI. RSA 265:92-a, relative to preliminary breath test.
- XXXII. RSA 265:93, relative to blood testing of certain motor vehicle fatalities.
- XXXIII. RSA 265:93-a through 265:93-c, relative to alcohol ignition interlock program.

XXXIV. RSA 270:47 through 270:58-b, relative to implied consent for boaters.

XXXV. RSA 215-C:11 through 215-C:27, relative to DWI provisions for snowmobiles.

37 Effective Date. This act shall take effect January 1, 2007.

Amendment adopted.

Committee report adopted.

Referred to Criminal Justice and Public Safety.

HB 685-FN-A, permitting casino gambling. MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.

Rep. James M. Fitzgerald for the Majority of Executive Departments and Administration: The committee felt that the bill, as written, was too restrictive in that it designated that a casino be built in the White Mountains. The committee heard conflicting testimony as to the economic benefit that a casino would have in the White Mountains and there was concern about the social impact it might have. The committee felt that if the State should decide that it wants to expand gaming in New Hampshire to include casino gambling, a thorough study should be done to determine what type of casino, the number of casinos and what locations would best serve the needs of the state. Also the committee felt that it is premature to consider expanding gaming in New Hampshire before the committee established in the last legislative session to look into expanded gaming in New Hampshire has made its report.

Vote 18-2.

Rep. Pamela V. Manney for the Minority of Executive Departments and Administration: For decades, the State of New Hampshire has been wrestling with the idea of establishing casino gambling in the State of New Hampshire. Study committees were formed to discuss the impact of expanded gambling in New Hampshire. Proponents, for and against, have had ample opportunity to express their opinions on the matter. It is now time to vote. Are you in favor of establishing a casino in the White Mountain Region or not? Proponents believe to do so would be an economic boon to the local economy and to the local citizens starving for year round employment in that area of New Hampshire. They also believe it would be a boon to the state economy as well.

Reps. Manney and Gionet spoke against and yielded to questions.

Rep. Fitzgerald spoke in favor.

Rep. Mirski requested a roll call; sufficiently seconded.

The question being adoption of the majority committee report.

YEAS 250 NAYS 99			
YEAS 250			
BELKNAP			
Boyce, Laurie	Clark, Charles	Fitzgerald, James	Flanders, Donald
Heald, Bruce	Millham, Alida	Morrison, Gail	Nedeau, Stephen
Pilliod, James	Rosen, Ralph	Thomas, John	Tilton, Franklin
Tobin, William	Wendelboe, Fran	Whalley, Michael	
CARROLL			
Ahlgren, Christopher	Babson, David Jr	Brown, Carolyn	Chandler, Gene
Knox, J David	Martin, James	McConkey, Mark	Morrow, Harry
Patten, Betsey	Philbrick, Donald	Stevens, Stanley	
CHESHIRE			
Allen, Peter	Butcher, Suzanne	Chase, William	Coates, Christopher
Dexter, Judson	Eaton, Daniel	Emerson, Susan	Espieffs, Peter

Foote, Sheila	Hunt, John	Mitchell, Bonnie	Parkhurst, Henry
Plifka, Stanley Jr	Pratt, John	Richardson, Barbara	Robertson, Timothy
Sawyer, Sheldon	Tilton, Anna	Weed, Charles	
COOS			
Merrick, Scott	Morneau, Renney	Remick, William	Stohl, Eric
Tholl, John Jr			
GRAFTON			
Aguiar, James	Almy, Susan	Benn, Bernard	Bleyler, Ruth
Cooney, Mary	Giuda, Robert	Hammond, Lee	Harding, A Laurie
Ingbretson, Paul	McLeod, Martha	Mirski, Paul	Mulholland, Catherine
Naro, Debra	Nordgren, Sharon	Sokol, Hilda	Solomon, Peter
Williams, Burton			
HILLSBOROUGH			
Aboshar, Jeffrey	Adams, Jarvis IV	Allan, Nelson	Balboni, Michael
Batula, Peter	Beaulieu, Jane	Bergeron, Jean-Guy	Bergin, Peter
Biundo, Michael	Brassard, Paul	Brundige, Robert	Carew, James
Carter, Mark	Chase, Claudia	Clark, Mark	Coughlin, Pamela
Daniuk, Caitlin	Dokmo, Cynthia	Drisko, Richard	Egbers, Fran
Elliott, Nancy	Emerton, Larry	Essex, David	Foster, Linda
Gargas, Carolyn	Golding, William	Goley, Jeffrey	Graham, John
Hall, Betty	Harvey, Suzanne	Hellwig, Steve	Hinkle, Peyton
Hirschmann, Keith	Hunter, Bruce	Infantine, William	Irwin, Anne-Marie
Jasper, Shawn	Kelly, Eugene Jr	Kopka, Angeline	Kurk, Neal
Martin, Mary Ellen	Matarazzo, Anthony Sr	Mead, Robert	Messier, Irene
Mooney, Maureen	Movsesian, Lori	O'Brien, William	O'Connell, Timothy
Ober, Lynne	Pepino, Leo	Pilotte, Maurice	Price, Pamela
Reeves, Sandra	Rochette, Eric	Rosenwald, Cindy	Rowe, Robert
Ryder, Donald	Scanlon, Michael	Schulze, Joan	Shattuck, Gilman
Slocum, Lee	Smith, David	Souza, Kathleen	Stepanek, Stephen
Sullivan, Francis	Sullivan, Peter	Tahir, Saghir	Ulery, Jordan
Vaillancourt, Steve	Velez, Hector	Wheeler, James	Wheeler, Robert
MERRIMACK			
Anderson, Eric	Blanchard, Elizabeth	Bouchard, Candace	Brueggemann, Donald
Clarke, Claire	Danforth, James	DeStefano, Stephen	Field, William
Foose, Robert	French, Barbara	Gile, Mary	Hager, Elizabeth
Hamm, Christine	Hess, David	Kidder, David	L'Heureux, Stephen
Langlais, Thomas	Lockwood, Priscilla	MacKay, James	Marple, Richard
McMahon, Patricia	Owen, Derek	Potter, Frances	Reardon, Tara
Rush, Deanna	Ryan, Jim	Shurtleff, Stephen	Soltani, Tony
Tilton, Joy	Tupper, Frank	Wallner, Mary Jane	Walz, Mary Beth
Williams, Robert	Yeaton, Charles		
ROCKINGHAM			
Abbott, Dennis	Bettencourt, David	Bicknell, Elbert	Blanchard, MaryAnn
Bridle, Russell	Cady, Harriet	Cali-Pitts, Jacqueline	Camm, Kevin
Carson, Sharon	Casey, Kimberley	Coburn, James	Dowd, John

Dowling, Patricia	Dumaine, Dudley	Flanders, John Sr	Flockhart, Eileen
Forsing, Robert	Francoeur, Sheila	Garrity, James	Gilbert, Karl
Gould, Kenneth	Headd, James	Hopfgarten, Paul	Hughes, Daniel
Introne, Robert	Itse, Daniel	Katsakiores, George	Kobel, Rudolph
Langley, Jane	Lund, Howie	Major, Norman	Mason, April
McKinney, Betsy	Nowe, Ronald	O'Neil, Michael	Powers, James
Quandt, Marshall Lee	Quandt, Matthew	Rolston, James	Sanders, Elisabeth
Scamman, Stella	Serlin, Christopher	Splaine, James	Stone, Joseph
Weare, E Albert	Welch, David	Winchell, George	Zolla, William
STRAFFORD			
Albert, Russell	Bickford, David	Brown, Lawrence	Chaplin, Duncan
Creteau, Irene	Dunlap, Patricia	Easson, Timothy	Johnson, Nancy
Kaen, Naida	Keans, Sandra	Miller, Joseph	Newton, Clifford
Rollo, Michael	Rous, Emma	Schmidt, Peter	Smith, Marjorie
Snyder, Clair	Spang, Judith	Twombly, James	Wall, Janet
SULLIVAN			
Cloutier, John	Franklin, Peter	Houde-Quimby, Charlotte	Irish, Christopher
Jillette, Arthur Jr	Osgood, Philip Sr	Phinizy, James	Prichard, Stephen
Rodeschin, Beverly			
NAYS 99			
BELKNAP			
Russell, David	Veazey, John		
CARROLL			
Buco, Thomas	Dickinson, Howard		
CHESHIRE			
Butynski, William	Dunn, J Timothy	Hogancamp, Deborah	Pelkey, Stephen
Roberts, Kris			
COOS			
King, Frederick	Lary, Bruce	Richardson, Herbert	Theberge, Robert
GRAFTON			
Gionet, Edmond	Ham, Bonnie	Maybeck, Margie	Sorg, Gregory
Ward, John			
HILLSBOROUGH			
Baroody, Benjamin	Barry, J Gail	Boehm, Ralph	Buhlman, David
Calawa, Leon Jr	Campbell, David	Christensen, D L Chris	Christiansen, Lars
Clemons, Jane	Cote, David	Cote, Peter	Craig, James
Crane, Elenore	DeVries, Betsi	Dyer, Donald	Francoeur, Bea

Casey			
Gibson, John	Ginsburg, Ruth	Gorman, Mary	Goyette, Peter Jr
Haley, Robert	Hawkins, Ken	Holden, Randolph	Jean, Claudette
Jeudy, Jean	Johnson, Paula	L'Heureux, Robert	Lasky, Bette
Lawrence, James	Lessard, Rudy	Manney, Pamela	McRae, Karen
Michon, Stephen	Palangas, Eric	Pappas, Christopher	Renzullo, Andrew
Ross, Lawrence	Shaw, Barbara	Shaw, Kimberly	Villeneuve, Maurice
MERRIMACK			
Currier, David	DeJoie, John	Greco, Vincent	Kennedy, Richard
Maxfield, Roy	Oliver, James	Osborne, Jessie	
ROCKINGHAM			
Asselin, Michael	Belanger, Ronald	Bishop, Franklin	Charron, Gene
Cooney, Richard	DiFruscia, Anthony	Doyle, Christopher	Fesh, Bob
Griffin, Mary	Hutchinson, Karen	Ingram, Russell	Johnson, Robert
Katsakiores, Phyllis	McMahon, Charles	Moody, Marcia	Rausch, James
Stiles, Nancy	Waterhouse, Kevin	Wells, Roger	Weyler, Kenneth
STRAFFORD			
Brown, Jennifer	Brown, Julie	Campbell, W Packy	Cataldo, Sam
Cilley, Jacalyn	Domingo, Baldwin	Hofemann, Roland	Knowles, William
Taylor, Katherine	Taylor, Kathleen		
SULLIVAN			
Converse, Larry	Donovan, Thomas	Ferland, Brenda	Gale, Harry

and the majority report was adopted.

SB 110-FN-A, establishing the New Hampshire Rx plus program for prescription drugs.

MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.

Rep. Cindy Rosenwald for the Majority of Health, Human Services and Elderly Affairs:

Approximately 135,000 citizens of New Hampshire, more than 10% of our population, do not have health insurance or prescription drug benefits and are of lower income. For individuals and families living on low incomes, being able to afford prescription medicines is a significant hardship. Pharmacists report that often customers ask which of their prescriptions they should fill because they cannot afford to fill all of them. Individuals with no health insurance are the people who pay the highest prices for their medicines when they can least afford it. This discount drug program was studied over a period of months beginning last February, with subcommittees meeting a total of nine times. During that period, a number of amendments were considered, and testimony was heard from all interested parties, including pharmacies and pharmaceutical manufacturers. The final amendment, voted OTP 6-1 by subcommittee, is based on a similar bill enacted in Hawaii last year, offering a combination of discounts from both pharmacies and the pharmaceutical industry to individuals up to 300% of federal poverty limit who have no insurance for prescription drugs or have reached the limit of their coverage. Since that time, similar programs have been enacted in Michigan and Montana. The committee amendment has several distinct advantages. Participation for both pharmacies and pharmaceutical manufacturers is completely voluntary. Therefore, no federal Waiver from Medicaid officials is required, and the state Medicaid plan does not need to be amended. The Pharmaceutical industry

representatives who attended subcommittee meetings did not oppose the program; nor have they in Hawaii. In addition, the pharmaceutical industry has sponsored a ballot initiative in California that creates a similar voluntary discount program and has collected \$78 million from member drug companies for marketing efforts in support of it. The committee amendment received supportive testimony from the coordinator of New Hampshire's program to help low income people obtain free medications from drug companies. We heard testimony that bridge program cannot meet the full need of New Hampshire's under-insured. The majority of the committee believes that this program will increase retail pharmacy purchases from customers who will pay cash and buy other items when they are in the stores. Members of the retail industry in New Hampshire attended some of the subcommittee meetings, and did not oppose the bill. The majority of the committee felt there was a need in our state for a prescription drug discount program for the lower income under-insured population. Vote 17-4.

Rep. Fran Wendelboe for the Minority of Health, Human Services and Elderly Affairs: This bill creates a bureaucratic state program with at least a million dollar fiscal note for start up costs and a Health and Human Service Department fiscal note stating that drug company rebates will not cover yearly administrative costs in the first three years of the program. The drug industry currently has a nationwide free/or nearly free program for all ages who are uninsured and under 150-200% of poverty. This is where our efforts should be – supporting outreach and enrollment in the free programs. Additionally, no pharmacies have agreed to participate and it is unlikely they will since this legislation does not provide any reimbursement for discounts the pharmacies are required to provide or any payment of a dispensing fee. Since it is voluntary participation, pharmacies are likely to not participate. Drug companies also have not committed to participate with “rebates” to the state for non medicaid population. BRA 98 requires discount rebates for the “poverty” medicaid program but are under no obligation to give kickback (rebates) for uninsured people who make up to \$65,000 a year. While the minority agrees some people need assistance with their drug costs, there are other ways to get them assistance at little cost to the state.

Majority Amendment (0011h)

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

AN ACT establishing the New Hampshire Rx plus program for prescription drugs and continually appropriating a special fund.

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

1 Statement of Purpose. The general court finds that affordability is critical in providing access to prescription drugs for New Hampshire residents. The general court hereby creates the New Hampshire Rx Plus Program to enable the state to make prescription drugs more affordable for qualified New Hampshire residents, thereby increasing the overall health of New Hampshire residents, promoting healthy communities, and protecting the public health and welfare. It is not the intent of this act to discourage employers from offering to pay or paying for prescription drug benefits for their employees or to supplant employer-sponsored prescription drug benefit plans.

2 New Chapter; New Hampshire Rx Plus Program for Prescription Drugs. Amend RSA by inserting after chapter 161-K the following new chapter:

CHAPTER 161-L

NEW HAMPSHIRE RX PLUS PROGRAM

161-L:1 Definitions. In this chapter:

I. “Commissioner” means the commissioner of the department of health and human services.

II. “Committee” means the pharmacy and therapeutics advisory committee established in 2003, 319:176 that advises the department on the medicaid preferred drug list.

III. “Department” means the department of health and human services.

IV. "Initial discounted price" as it pertains to a drug means the average wholesale price less 10 percent.

V. "Participating pharmacy" or "retail pharmacy" means a retail pharmacy located in this state that elects to participate in the program.

VI. "Preferred drug" includes but is not limited to:

- (a) A drug listed on the state's medicaid preferred drug list;
- (b) An antipsychotic drug;
- (c) An antidepressant drug;
- (d) A chemotherapy drug;
- (e) An antiretroviral drug;
- (f) An immunosuppressive drug; and
- (g) Any other drug approved pursuant to this chapter.

VII. "Program" means the New Hampshire Rx plus program.

VIII. "Qualified resident" means a resident of the state who has a family income equal to or less than 300 percent of the federal poverty level, who does not have prescription drug coverage or has exceeded the extent of their benefits, and who is enrolled in the program.

IX. "Secondary discounted price" as it pertains to a drug means the initial discounted price less any further discounts paid out of the Rx plus fund.

161-L:2 Rx Plus Preferred Drug List; Duties of Committee.

I. The department shall establish a Rx plus preferred drug list that includes but is not limited to:

- (a) Drugs listed on the state's medicaid preferred drug list;
- (b) Antipsychotic drugs;
- (c) Antidepressant drugs;
- (d) Chemotherapy drugs;
- (e) Antiretroviral drugs;
- (f) Immunosuppressive drugs; and
- (g) Any other drugs approved pursuant to this chapter.

II. The committee shall review and recommend drugs for placement on the Rx plus preferred drug list, striving to identify the safest and most efficacious drugs that are available at the lowest cost. The committee's recommendations may take into consideration any of the following factors:

- (a) Therapeutic value for the disease or condition under treatment;
- (b) Clinical efficacy;
- (c) Safety;
- (d) Cost; and
- (e) Other relevant factors as determined by the committee.

III. When considering categories of drugs designed to treat specialized chronic medical conditions and diseases, the committee shall consult with physicians and other health care professionals with specialized clinical knowledge and expertise in this area, either in their capacity as consultants serving on the committee, or as physicians or pharmacists with a practice or specialty in chronic diseases.

IV. The determination of a drug's safety and efficacy shall be consistent with the standards set forth in the peer-reviewed literature and other available sources including, but not limited to the American Hospital Formulary Service Drug Information, the United States Pharmacopoeia Drug Information, the DRUGDEX Information System, and the American Medical Association Drug Evaluations.

V. The determination of a drug's net cost shall consider the pharmacy reimbursement amount, authorized under RSA 161-L:8, as adjusted by manufacturer's rebates to be paid to the department. The committee shall not consider a drug's net cost unless it determines that the drug has no significant clinical or safety advantages over one or more alternative drugs, when used for a given purpose.

161-L:3 New Hampshire Rx Plus Program.

I. There is established within the department, the New Hampshire Rx plus program. The program shall combine the purchasing power of all qualified residents to enable the state to reduce prescription drug costs and to improve the quality of health care for qualified New Hampshire residents in the program, thereby increasing the overall health of New Hampshire residents, promoting healthy communities, and protecting the public health and welfare, and to integrate the program as part of any statewide program for the uninsured.

II. The program shall utilize manufacturer rebates and pharmacy discounts to reduce prescription drug prices.

III. The department may administer the program or contract with a third party or third parties to administer any single component, or combination of components of the program including outreach, eligibility, claims, administration, rebate negotiations and recovery and redistribution in order to achieve the maximum possible discount for New Hampshire residents. Any contract to administer any program component shall prohibit the contractor from receiving any compensation or other benefits from any manufacturer participating in the program.

IV. The department shall conduct ongoing quality assurance activities similar to those used in the medicaid program.

161-L:4 Program Eligibility.

I. All qualified residents of the state shall be eligible to participate in the Rx plus program.

II. The department:

(a) Shall establish procedures to determine eligibility and shall issue program enrollment cards to eligible qualified residents;

(b) Shall undertake outreach efforts to build public awareness of the program and maximize the enrollment of eligible qualified residents; and

(c) May adjust the requirements and terms of the program by rule, pursuant to RSA 541-A, to accommodate any federally-funded or authorized prescription drug program.

161-L:5 Rebate Agreement.

I. A drug manufacturer or labeler that sells prescription drugs in the state may enter into a rebate agreement with the department for this purpose. The rebate agreement shall require the manufacturer to make rebate payments to the state each calendar quarter or according to a schedule established by the department.

II. The commissioner shall negotiate the amount of the rebate required from a manufacturer in accordance with this section.

III. The commissioner shall take into consideration the rebate calculated under the medicaid rebate program pursuant to title 42 U.S.C. section 1369r-8, the average wholesale price of prescription drugs, and any other information on prescription drug prices and price discounts.

IV. The commissioner shall use his or her best efforts to obtain an initial rebate amount equal to or greater than the rebate calculated under the medicaid program pursuant to 42 U.S.C. section 1369r-8.

V. With respect to rebates effective July 1, 2008, the commissioner shall use his or her best efforts to obtain a rebate amount equal to or greater than the amount of any discount, rebate, or price reduction for prescription drugs provided to the federal government.

161-L:6 Participating and Nonparticipating Manufacturers.

I. The names of manufacturers that enter and do not enter into rebate agreements pursuant to this chapter shall be deemed public information. The department shall release this information to health care providers and the public annually.

II. The department may also provide to health care providers information about the relative cost of drugs produced by manufacturers that enter into rebate agreements compared to the cost of drugs produced by those that do not enter into rebate agreements.

The department shall adopt rules, under RSA 541-A, establishing procedures for the implementation of this section.

161-L:7 Discounted Retail Prices for Program Participants.

I. Each retail pharmacy participating in the program shall sell drugs to qualified residents at the lowered initial discounted price, in addition to the secondary discounted price as such discounted prices are determined by the department pursuant to this chapter.

II. The department shall establish discounts for drugs covered by a rebate agreement and shall promote the use of safe, efficacious, and cost-effective drugs, taking into consideration:

- (a) Reduced prices for state and federally-capped drug programs;
- (b) Differential dispensing fees;
- (c) Administrative costs of the department; and
- (d) The recommendation of the committee.

III. Beginning July 1, 2007, a participating pharmacy shall offer the initial discounted price.

IV. No later than July 1, 2008, a participating pharmacy shall offer the secondary discounted price, if available.

161-L:8 Pharmacy Reimbursement.

I. A pharmacy shall submit claims to the department to verify the amount charged to program participants. On a schedule to be determined by the department, the department shall reimburse each pharmacy for the discounts of prescription drugs provided to program participants less any administrative costs incurred by the department.

II. The department shall collect pharmacy use data necessary to calculate the amount of the manufacturer rebate under RSA 161-L:5. The department shall protect the confidentiality of information received as required under state or federal law, rule, or regulation.

III. The department shall not impose transaction charges on participating pharmacies that submit claims or receive payments under the program.

161-L:9 Rx Plus Fund Established.

I. There is hereby established in the office of the state treasurer a fund to be known as the Rx plus fund into which shall be deposited:

(a) All moneys received from manufacturers who pay rebates as provided in RSA 161-L:5.

- (b) Appropriations made by the general court to the fund; and
- (c) Any other revenues designated for the fund.

II. Moneys in the fund shall be used for the following purposes:

(a) Reimbursement payments to participating pharmacies for discounts provided to program participants;

(b) The cost of administering the Rx plus program, including salary and benefits of employees, computer costs, and contracted services as provided in RSA 161-L:3; and

(c) Any other purpose deemed necessary by the department for the purpose of operating and administering the Rx plus program.

III. All interest on Rx plus fund balances shall accrue to the Rx plus fund. Moneys in this fund shall be nonlapsing and continually appropriated to the department.

161-L:10 Annual Report. The department shall make a report relative to the enrollment and financial status of the Rx plus program to the speaker of the house of representatives, the president of the senate, and the governor no later than 20 days prior to the convening of each regular legislative session, beginning with the 2007 regular legislative session.

161-L:11 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

I. The application process.

II. Rebate agreements under RSA 161-L:5.

III. The administration of the Rx plus fund established in RSA 161-L:9.

IV. The contracting process, including confidentiality procedures, under RSA 161-L:3.

V. Any adjustments to accommodate any federally-funded or authorized prescription drug program pursuant to RSA 161-L:4, II(c).

VI. The content and form of information to be provided under RSA 161-L:6.

VII. The schedule for reimbursement to pharmacies under RSA 161-L:8.

3 New Subparagraph; Rx Plus Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (242) the following new subparagraph:

(243) Moneys deposited in the Rx plus fund pursuant to RSA 161-L.

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

AMENDED ANALYSIS

This bill establishes the New Hampshire Rx plus program for prescription drugs. Under this bill, participating pharmacies shall sell prescription drugs to qualified residents at a discounted price. The bill grants rulemaking authority to the commissioner of the department of health and human services for the purposes of the bill.

Majority amendment adopted.

Majority report adopted.

Referred to Finance

SPECIAL ORDER

Reps. O'Neil and Craig moved that **HB 656-FN**, relative to medical decision making for those adults without capacity to make health care decisions for themselves and establishing procedures for Do Not Resuscitate Orders, be made a Special Order for Wednesday, February 15, 2006.

Motion adopted.

REGULAR CALENDAR (CONT'D.)

HB 653-FN-L, relative to bonds for construction, development, improvement, and acquisition of broadband facilities. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Robert W. Brundige for the Majority of Municipal and County Government: This bill allows the issuance of municipal bonds or notes for the purpose of financing the development, construction, reconstruction, renovation, improvement, and acquisition of broadband infrastructure in any area of a municipality that is not served by a wireless or facilities based broadband service or provider. The municipality would be prohibited from bonding unless it first sent out a request for proposals (RFP) to the private sector to see whether any private vendor was willing to build the broadband infrastructure. If no RFPs were positively replied to within two months or if there was not activity on the part of a private vendor within 14 months of the RFP process, then the municipality could undertake its own proposal to bond and build the infrastructure. As with any bond or note in excess of \$100,000, a public hearing is required prior to the vote on the bond or note, along with a super majority to pass the bond question. The amendment only authorizes the bonding for broadband infrastructure, and does not authorize the municipality to become broadband carrier, service, or provider. It is anticipated that with the passage of this bill economic development will be stimulated in those areas not currently served by broadband carriers. Vote 12-3.

Rep. Laurie J. Boyce for the Minority of Municipal and County Government: The intention of this bill was to give municipalities, with no available broadband service, the opportunity to issue bonds to build the necessary infrastructure to provide broadband. With a last minute amendment, it was expanded so any municipality without 100% broadband coverage will have the ability to issue bonds that will have to be paid for by the broadband users, not the town, although the town will have issued the bond. What happens if the "town broadband" goes broke? What is the cost for this service going to be that only a few have to pay? Much progress has taken place in getting broadband to the New Hampshire rural areas. Passage

of this bill could have a negative effect on future private investments in broadband and put an undue burden on the local taxpayer. Proponents of this bill say they will build networks with public monies so private providers could then use them. We were told at the public hearing that private companies would not want to use infrastructure set up by someone else because of the “unreliability” of their system and the cost. There are just too many unanswered questions that could cost taxpayers money.

Majority Amendment (0181h)

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

1 Bonds for Broadband Infrastructure Added to Permissible Bonds for Counties and Municipalities. Amend RSA 33:3 to read as follows:

33:3 Purpose of Issue of Bonds or Notes. A municipality or county may issue its bonds or notes for the acquisition of land, for planning relative to public facilities, for the construction, reconstruction, alteration, and enlargement or purchase of public buildings, for other public works or improvements of a permanent nature ***including broadband infrastructure as defined in RSA 38:38, I(e), to be purchased or constructed in areas not served by an existing broadband carrier or provider***, for the purchase of departmental equipment of a lasting character, for the payment of judgments, and for purposes of economic development which shall include public-private partnerships involving capital improvements, loans, and guarantees. The public benefit in any public-private partnership must outweigh any benefit accruing to a private party. Bonds or notes for the purposes of economic development may be issued only after the governing body of the municipality or county has held hearings and presented the public benefit findings to the public and after such issuance has been approved by the legislative body. A municipality or county shall not issue bonds or notes to provide for the payment of expenses for current maintenance and operation except as otherwise specifically provided by law.

2 Issue of Bonds for Certain Preliminary Expenses. RSA 33:3-c is repealed and reenacted to read as follows:

33:3-c Issue of Bonds for Preliminary Expenses.

I. A municipality or county may issue its bonds or notes for the purpose of defraying the cost of preliminary or final plans and specifications or other preliminary expenses incidental to, or connected with, any proposed public work or improvement of a permanent nature consisting of the construction, reconstruction, alteration, enlargement, or improvement of the following:

- (a) A public building.
- (b) A water works.
- (c) A sewerage system or sewage or waste treatment facility.
- (d) A solid waste disposal or resource recovery facility.
- (e) Broadband infrastructure as defined in RSA 38:38 to be purchased or

constructed in areas not served by an existing broadband carrier or provider.

II. Bonds or notes shall mature over a period of not more than 5 years from the date of issue unless they are issued at the same time as bonds or notes for the public work or improvement for which such expenses were incurred, in which case said bonds or notes shall mature over a period not exceeding the expected useful life of such public work or improvement. A municipality or county may issue its bonds or notes in accordance with this section for planning and other preliminary expenses relating to solid waste disposal or resource recovery facilities to serve the municipality or county, notwithstanding that the facilities may later be owned by a private entity, but only for such expenses incurred prior to any binding contractual commitment to a proposed private owner, and only if such bonds or notes do not constitute “private activity bonds” as defined in section 103(n)(7) of the United States Internal Revenue Code of 1954, as amended.

3 New Section; Broadband Infrastructure Bonds Authorized. Amend RSA 33 by inserting after section 3-f the following new section:

33:3-g Broadband Infrastructure Bonds.

I. A municipality may issue bonds for the purpose of financing the development, construction, reconstruction, renovation, improvement, and acquisition of broadband infrastructure in areas not served by an existing broadband carrier or provider that would be provided at a fee to broadband carriers that provide broadband services. Without limiting the foregoing, broadband infrastructure may be the subject of public-private partnerships established in accordance with the provisions of RSA 33:3.

II. Bonds issued under this section shall be payable in annual payments so that the amount of annual payment of principal and interest in any year on account of any bond shall be not less than the amount of principal and interest payable in any subsequent year by more than 5 percent of the principal of the entire bond. The total amount of payments shall be sufficient to extinguish the entire bond at such bond's maturity. The first payment of principal on any bond shall be made no later than 5 years and the last payment not later than 30 years after the date issued. Each authorized issue of bonds shall be a separate and distinct loan.

III. A municipality shall not issue bonds for the purpose of financing the development, construction, reconstruction, renovation, improvement, and acquisition of broadband infrastructure in areas not served by an existing broadband carrier or provider unless a request for proposals has been issued and no broadband carrier or provider has responded positively within 2 months or deployed broadband service within 14 months of the issuance of the request for proposals.

4 New Section; Extension From Debt Limit; Broadband Infrastructure. Amend RSA 33 by inserting after section 6-e the following new section:

33:6-f Exclusion From Debt Limit; Broadband Infrastructure. Municipalities may incur debt for broadband infrastructure as defined in RSA 38:38, I(e) by the issue of bonds or notes authorized under this chapter. Any debt incurred for this purpose shall be outside the debt limit prescribed in this chapter. Such debt shall at no time be included in the net indebtedness of any municipality for the purposes of determining its borrowing capacity.

5 Definitions; "Broadband Infrastructure" Added to Definition of "Revenue-Producing Facilities." Amend RSA 33-B:1, VI to read as follows:

VI. "Revenue-producing facilities" means water works, ***broadband infrastructure as defined in RSA 38:38, I(e), purchased or constructed in areas not served by an existing broadband carrier or provider***, sewerage systems, sewage treatment or disposal facilities, solid waste disposal or resource recovery facilities, parking facilities, facilities for the production, generation, transmission, or distribution of electricity or gas and any other real or personal property or interests in a municipality or regional water district owned or controlled by the municipality or regional water district, from the operation of which revenues are or are expected to be derived by the municipality, or regional water district.

6 New Subdivision; Broadband Access. Amend RSA 38 by inserting after section 37 the following new subdivision:

Broadband Access

38:38 Broadband Access.

I. In this section:

(a) "Access tariff" means the fee charged on a monthly or annual basis to broadband carriers for access to the broadband infrastructure.

(b) "Areas not served" means any part of a municipality without a wireless or facilities based broadband service or a wireless or facilities based broadband service provider. Wireless shall not include subscription satellite service.

(c) "Broadband" means the transmission of information, between or among points specified by the user, with or without change in the form or content of the information as sent and received, at rates of transmission defined by the Federal Communications Commission as "broadband."

(d) “Broadband carrier” means any provider of broadband services, except aggregators of broadband services, as defined in section 226 of the 1996 Telecommunications Act.

(e) “Broadband infrastructure” means all equipment and facilities, including all changes, modifications, and expansions to existing facilities, as well as the customer premises equipment used to provide broadband, and any software integral to or related to the operations, support, facilitation, or interconnection of such equipment, including upgrades, and any installation, operations and support, maintenance, and other functions required to support the delivery of broadband.

(f) “Broadband service” means the offering of broadband for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(g) “Open network” means any broadband infrastructure which is open to any third party users in a nondiscriminatory manner on a fair and equitable basis using publicly available access tariffs for services.

(h) “Open network interfaces” means the technical and operational means, manners, and methods for any third party access to the broadband infrastructure, which shall be provided on the basis of generally acceptable industry standards available at the time of access.

II. A municipality may use its broadband infrastructure for the purpose of providing an open network and assuring that third party access is available in accordance with current state and federal regulations.

38:39 Broadband Access Tariffs. For defraying the cost of acquisition, construction, payment of the interest on any debt incurred, management, maintenance, operation, and repair of broadband infrastructure, or the construction, enlargement, or improvement of such systems, the governing body may establish a scale of rates called access tariffs, may prescribe the manner and the time for the payment of such tariffs, and may change such tariffs when it deems advisable.

38:40 Broadband Fund.

I. The funds received from the collection of access tariffs shall be kept as a separate fund to be known as the broadband fund. Such fund shall be allowed to accumulate from year to year, shall not be commingled with town or city tax revenues, and shall not be deemed part of the municipality’s general fund accumulated surplus. Such fund may be expended only for the purposes specified in RSA 38:38, or for the previous expansion or replacement of broadband infrastructure.

II. Except when a capital reserve fund is established pursuant to paragraph III, all broadband funds shall be held in the custody of the municipal treasurer. Estimates of anticipated revenues and anticipated expenditures from the broadband fund shall be prepared and submitted to the governing body as a special warrant article as set forth in RSA 32, if applicable, and shall be included as part of the municipal budget submitted to the local legislative body for approval. Expenditures shall be within amounts appropriated by the local legislative body.

III. At the option of the local governing body, all or part of any surplus in the broadband fund may be placed in one or more capital reserve funds held in the custody of the trustees of trust funds pursuant to RSA 35:10. If such a reserve fund is created, then the governing body, may expend such funds pursuant to RSA 35:15 without prior approval or appropriation by the local legislative body, but all such expenditures shall be reported to the municipality pursuant to RSA 38:41. This paragraph shall not be construed to prohibit the establishment of other capital reserve funds for any lawful purpose relating to broadband access.

38:41 Broadband Fund Report. The governing body shall annually make a report of the broadband fund to the municipality showing the expenses and income of the fund, and all other material facts. This report shall be published in the annual report of the municipality.

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

AMENDED ANALYSIS

This bill, in areas not served by an existing broadband carrier or provider:

I. Authorizes a county or municipality to issue bonds for broadband infrastructure.

II. Exempts broadband infrastructure bonds from municipal debt limits.

III. Authorizes municipalities to charge broadband access tariffs, to be kept in broadband funds and expended only for broadband infrastructure.

Majority amendment adopted.

Rep. Giuda spoke against and yielded to questions.

Rep. Ober spoke against.

Rep. Patten spoke in favor.

(Deputy Speaker Weyler in the Chair)

Rep. Brundige spoke in favor.

Rep. Lund requested a roll call; sufficiently seconded.

The question being adoption of the majority committee report.

YEAS 221 NAYS 118			
YEAS 221			
BELKNAP			
Clark, Charles	Fitzgerald, James	Flanders, Donald	Heald, Bruce
Millham, Alida	Morrison, Gail	Nedeau, Stephen	Pilliod, James
Thomas, John	Tobin, William	Veazey, John	
CARROLL			
Brown, Carolyn	Buco, Thomas	Chandler, Gene	Knox, J David
McConkey, Mark	Merrow, Harry	Patten, Betsey	Stevens, Stanley
CHESHIRE			
Allen, Peter	Butcher, Suzanne	Butynski, William	Chase, William
Coates, Christopher	Dexter, Judson	Dunn, J Timothy	Eaton, Daniel
Emerson, Susan	Espieffs, Peter	Foote, Sheila	Hunt, John
Mitchell, Bonnie	Parkhurst, Henry	Pratt, John	Richardson, Barbara
Roberts, Kris	Robertson, Timothy	Tilton, Anna	Weed, Charles
COOS			
King, Frederick	Merrick, Scott	Richardson, Herbert	Stohl, Eric
Theberge, Robert	Tholl, John Jr		
GRAFTON			
Aguiar, James	Almy, Susan	Benn, Bernard	Bleyler, Ruth
Cooney, Mary	Ham, Bonnie	Hammond, Lee	Harding, A Laurie
Maybeck, Margie	McLeod, Martha	Mulholland, Catherine	Sokol, Hilda
Solomon, Peter	Ward, John	Williams, Burton	
HILLSBOROUGH			
Allan, Nelson	Baroody, Benjamin	Batula, Peter	Bergin, Peter
Biundo, Michael	Brundige, Robert	Calawa, Leon Jr	Campbell, David

Carew, James	Chase, Claudia	Clemons, Jane	Cote, David
Cote, Peter	Coughlin, Pamela	Craig, James	Daniuk, Caitlin
DeVries, Betsi	Dokmo, Cynthia	Dyer, Donald	Egbers, Fran
Emerton, Larry	Essex, David	Foster, Linda	Gargasz, Carolyn
Ginsburg, Ruth	Goley, Jeffrey	Gorman, Mary	Haley, Robert
Harvey, Suzanne	Holden, Randolph	Hunter, Bruce	Infantine, William
Irwin, Anne-Marie	Jean, Claudette	Jeudy, Jean	Johnson, Paula
Kelly, Eugene Jr	Kopka, Angeline	Lasky, Bette	Lessard, Rudy
Manney, Pamela	Martin, Mary Ellen	Matarazzo, Anthony Sr	Michon, Stephen
Movsesian, Lori	O'Connell, Timothy	Palangas, Eric	Pappas, Christopher
Pepino, Leo	Pilotte, Maurice	Price, Pamela	Rochette, Eric
Rosenwald, Cindy	Ross, Lawrence	Ryder, Donald	Schulze, Joan
Shattuck, Gilman	Shaw, Barbara	Shaw, Kimberly	Smith, David
Sullivan, Francis	Sullivan, Peter	Velez, Hector	Wheeler, Robert
MERRIMACK			
Blanchard, Elizabeth	Bouchard, Candace	Brueggemann, Donald	Clarke, Claire
Danforth, James	DeJoie, John	DeStefano, Stephen	Foose, Robert
French, Barbara	Gile, Mary	Hager, Elizabeth	Hamm, Christine
Kidder, David	Lockwood, Priscilla	MacKay, James	Maxfield, Roy
McMahon, Patricia	Oliver, James	Osborne, Jessie	Owen, Derek
Potter, Frances	Reardon, Tara	Rush, Deanna	Ryan, Jim
Shurtleff, Stephen	Tilton, Joy	Tupper, Frank	Wallner, Mary Jane
Walz, Mary Beth	Yeaton, Charles		
ROCKINGHAM			
Abbott, Dennis	Asselin, Michael	Blanchard, MaryAnn	Bridle, Russell
Cali-Pitts, Jacqueline	Carson, Sharon	Casey, Kimberley	Charron, Gene
DiFruscia, Anthony	Dowd, John	Dowling, Patricia	Fesh, Bob
Flanders, John Sr	Flockhart, Eileen	Forsing, Robert	Gould, Kenneth
Griffin, Mary	Hughes, Daniel	Hutchinson, Karen	Ingram, Russell
Johnson, Robert	Katsakiores, George	Kobel, Rudolph	Langley, Jane
Moody, Marcia	Norelli, Terie	O'Neil, Michael	Powers, James
Rausch, James	Rolston, James	Sanders, Elisabeth	Serlin, Christopher
Splaine, James	Stone, Joseph	Waterhouse, Kevin	Welch, David
Wells, Roger	Zolla, William		
STRAFFORD			
Bickford, David	Brown, Jennifer	Brown, Lawrence	Creteau, Irene
Domingo, Baldwin	Dunlap, Patricia	Hofemann, Roland	Johnson, Nancy
Knowles, William	Miller, Joseph	Rollo, Michael	Rous, Emma
Schmidt, Peter	Smith, Marjorie	Snyder, Clair	Spang, Judith
Taylor, Kathleen	Wall, Janet		
SULLIVAN			
Cloutier, John	Converse, Larry	Donovan, Thomas	Ferland, Brenda
Franklin, Peter	Gale, Harry	Houde-Quimby, Charlotte	Irish, Christopher
Jillette, Arthur Jr	Phinizy, James	Prichard, Stephen	

NAYS 118			
BELKNAP			
Boyce, Laurie	Rosen, Ralph	Russell, David	Tilton, Franklin
Wendelboe, Fran	Whalley, Michael		
CARROLL			
Ahlgren, Christopher	Dickinson, Howard	Martin, James	Philbrick, Donald
CHESHIRE			
Pelkey, Stephen	Sawyer, Sheldon		
COOS			
Lary, Bruce	Morneau, Renney	Remick, William	
GRAFTON			
Gionet, Edmond	Giuda, Robert	Ingbretson, Paul	Mirski, Paul
Naro, Debra	Sorg, Gregory		
HILLSBOROUGH			
Aboshar, Jeffrey	Adams, Jarvis IV	Balboni, Michael	Barry, J Gail
Beaulieu, Jane	Bergeron, Jean-Guy	Boehm, Ralph	Brassard, Paul
Buhlman, David	Carter, Mark	Christensen, D L Chris	Christiansen, Lars
Crane, Elenore Casey	Elliott, Nancy	Francoeur, Bea	Gibson, John
Golding, William	Goyette, Peter Jr	Graham, John	Hall, Betty
Hansen, Ryan	Hawkins, Ken	Hellwig, Steve	Hinkle, Peyton
Hirschmann, Keith	Jasper, Shawn	Kurk, Neal	Lawrence, James
McRae, Karen	Mead, Robert	Messier, Irene	Mooney, Maureen
Moran, Edward	O'Brien, William	Ober, Lynne	Reeves, Sandra
Renzullo, Andrew	Rowe, Robert	Scanlon, Michael	Slocum, Lee
Souza, Kathleen	Tahir, Saghir	Ulery, Jordan	Vaillancourt, Steve
Villeneuve, Maurice	Wheeler, James		
MERRIMACK			
Anderson, Eric	Currier, David	Field, William	Hess, David
Kennedy, Richard	L'Heureux, Stephen	Langlais, Thomas	Marple, Richard
Soltani, Tony			
ROCKINGHAM			
Belanger, Ronald	Bettencourt, David	Bicknell, Elbert	Bishop, Franklin
Cady, Harriet	Camm, Kevin	Coburn, James	Cooney, Richard
Doyle, Christopher	Dumaine, Dudley	Francoeur, Sheila	Garrity, James
Gilbert, Karl	Headd, James	Hopfgarten, Paul	Introne, Robert
Itse, Daniel	Katsakiores, Phyllis	Lund, Howie	Major, Norman
Mason, April	McKinney, Betsy	McMahon, Charles	Nowe, Ronald
Quandt, Marshall Lee	Quandt, Matthew	Scamman, Stella	Stiles, Nancy
Weare, E Albert	Winchell, George		

STRAFFORD			
Albert, Russell	Brown, Julie	Campbell, W Packy	Cataldo, Sam
Chaplin, Duncan	Cilley, Jacalyn	Easson, Timothy	Kaen, Naida
Newton, Clifford	Twombly, James		
SULLIVAN			
Osgood, Philip Sr	Rodeschin, Beverly		

and the majority committee report was adopted.

Reps. Keans and Nordgren did not vote and notified the Clerk that they wished to be recorded in favor.

Rep. Stepanek declared a conflict of interest and did not participate.

HB 695-FN, requiring the university system of New Hampshire to make payments in lieu of taxes for purchased property. **MAJORITY: INEXPEDIENT TO LEGISLATE.**

MINORITY: OUGHT TO PASS WITH AMENDMENT.

Rep. John P. Dowd for the Majority of Municipal and County Government: The university system has a statutory tax exemption that has been in effect since the middle of the 1800s along with the tradition of not taxing state, local, county-owned property. The statutory tax exemption actually dates back to 1842 and has not been changed significantly since. There is recognition that the host communities do bear some costs for the university system but also reap many benefits. In order to be partners together in the public arena, the university system requested that the presidents of each university negotiate with their host communities and come up with an agreement or contract that would address the needs of both the community and the university – either in services supplied or payment in lieu of taxes. If there are differences of opinions, there is a permanent Public Higher Education Study Committee in RSA 187-A:28-a that shall examine the goals, purposes, organization, and financing of public higher education in New Hampshire, and shall evaluate and make recommendations on the university of New Hampshire, Plymouth State University, Keene State College, the Granite State College, and the Regional Community-Technical College System. This bill is the latest in a long line of bills attempting to do away with the tax exemption for Plymouth State University (PSU) properties. It is specific to the town of Plymouth and Plymouth State University. The bill is a ruse to negate a contract between the town of Plymouth and PSU, which was agreed to and unanimously signed by the selectmen of Plymouth in February 2002. The contract is in effect for a period of seven years. This agreement more than doubled the dollars in payment in lieu of taxes (to more than \$800K) that the university system pays the town from the previous contract. This is a local issue that should be settled locally. Vote 10-5.

Rep. Mary R. Cooney for the Minority of Municipal and County Government: The problem of the university system of New Hampshire buying property and thereby removing it from the tax roles varies in magnitude in different communities. In the small town of Plymouth, whose resident population is less than 3,000, the problem is greater than in a city or larger community. The issue is fairness and loss of local control in all host communities. Since the inception of the university system of New Hampshire, millions of dollars worth of property has been taken off the tax roles. This bill would not affect past property purchased, only future property. Presently, USNH host communities have no control over the university purchasing property, nor over what the university does with that property. The immediate effect is that the host community loses the tax revenue on that property but is still responsible for providing services to that property. Plymouth State University has a \$250 million dollar master plan which will require the purchasing of additional property. The host communities have no control over the taking of property. This bill as amended would simply

mitigate that impact by requiring the university to make a payment in lieu of taxes for 5 years, reducing the amount by 20% each subsequent year. The citizens of Plymouth at the town meeting have supported efforts to achieve a fairness in reimbursement agreements with the university. The select boards of the towns of Plymouth and Holderness, the city of Keene, along with the New Hampshire Municipal Association, gave written testimony in support of this bill. The state must recognize that the shifting of costs from USNH to local taxpayers has reached an untenable level. The provisions of this bill are reasonable and fair. Rep. Mary Cooney spoke against.
Rep. Dowd spoke in favor.
On a division vote, 244 members having voted in the affirmative and 88 in the negative, the majority report was adopted.
Rep. Aguiar declared a conflict of interest and did not participate.

HB 317-FN, relative to mooring permits and fees. **OUGHT TO PASS WITH AMENDMENT**

Rep. Donald A. Brueggemann for Resources, Recreation and Development: The original bill set up a process whereby residents in a community could petition the Commissioner of the Department of Safety to have a lake or pond included in the moorings program which currently requires permits for moorings on the six largest lakes. Currently, lakes may be added only through legislative action and the committee felt strongly against delegating this authority. The portion of this bill that provided for increases in the mooring fee for those six lakes in the mooring program is being recommended in an effort to have the program support itself. The initial decal or permit would require a \$125 fee. The initial mooring permit requires a site visit. The annual renewal fee under this bill would be \$50 (up from \$25). The committee felt this increase was more than justified given the time and effort needed to coordinate and monitor the program. These fees are more in line with the actual cost of program to the state. Vote 20-1.

Amendment 0074(h)

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

AN ACT relative to mooring fees.

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

1 Mooring of Boats on Public Waters; Annual Mooring Fee. Amend RSA 270:62, V to read as follows:

V. A fee of \$125 shall be charged for each initial decal issued pursuant to this subdivision which shall be deposited in the navigation safety fund established under RSA 270-E:6-a. An annual mooring fee of [~~\$25~~] **\$50** shall be charged for each decal [issued] **renewed** pursuant to this subdivision which shall be deposited in the navigation safety fund established under RSA 270-E:6-a.

2 Effective Date. This act shall take effect January 1, 2007.

AMENDED ANALYSIS

This bill increases mooring fees.

Reps. O'Neil and Currier moved recommit and spoke in favor.

Adopted.

Recommitted to Resources, Recreation and Development.

SB 128-FN, relative to the establishment of emissions reduction standards as required by the Clean Power Act. **INEXPEDIENT TO LEGISLATE**

Rep. Lynne M. Ober for Science, Technology and Energy: This bill, recognizing that no proven technology was currently available to achieve proposed reduction levels, provided for a cap and trade program as well as a mitigation program. The committee retained the bill until results were available from testing at the PSNH power plant, done under the direction of the Department of Environmental Services (DES). Testing results showed limited

mercury reduction. The committee held numerous public hearings. DES, which originally requested this bill, now recommends legislation supporting the installation of scrubber technology by 2013 and legislation has been filed to support this new, revised request. Vote 9-5.

Rep. Phinizy spoke against and yielded to questions.

Rep. Ross spoke in favor.

(Speaker Scamman in the Chair)

MOTION TO LAY ON THE TABLE

Rep. Ryan moved that ***SB 128-FN***, relative to the establishment of emissions reduction standards as required by the Clean Power Act, be laid on the table.

Rep. Clemons requested a roll call; sufficiently seconded.

The question being adoption of the motion to lay SB 128 on the table.

YEAS 144 NAYS 195			
YEAS 144			
BELKNAP			
Heald, Bruce	Morrison, Gail	Nedeau, Stephen	
CARROLL			
Buco, Thomas			
CHESHIRE			
Allen, Peter	Butynski, William	Chase, William	Dunn, J Timothy
Espiefs, Peter	Parkhurst, Henry	Richardson, Barbara	Roberts, Kris
Robertson, Timothy	Tilton, Anna	Weed, Charles	
COOS			
Merrick, Scott	Morneau, Renney		
GRAFTON			
Almy, Susan	Benn, Bernard	Bleyler, Ruth	Cooney, Mary
Gionet, Edmond	Ham, Bonnie	Hammond, Lee	Harding, A Laurie
Maybeck, Margie	Mirski, Paul	Mulholland, Catherine	Sokol, Hilda
Sorg, Gregory			
HILLSBOROUGH			
Aboshar, Jeffrey	Baroody, Benjamin	Batula, Peter	Beaulieu, Jane
Brassard, Paul	Calawa, Leon Jr	Campbell, David	Chase, Claudia
Christiansen, Lars	Clemons, Jane	Cote, David	Cote, Peter
Daniuk, Caitlin	Dokmo, Cynthia	Egbers, Fran	Elliott, Nancy
Essex, David	Foster, Linda	Ginsburg, Ruth	Goley, Jeffrey
Gorman, Mary	Graham, John	Harvey, Suzanne	Hellwig, Steve
Hunter, Bruce	Irwin, Anne-Marie	Jean, Claudette	Johnson, Paula
Kopka, Angeline	Kurk, Neal	Lasky, Bette	Martin, Mary Ellen
Michon, Stephen	Movsesian, Lori	Palangas, Eric	Pappas, Christopher
Renzullo, Andrew	Rochette, Eric	Rosenwald, Cindy	Rowe, Robert

Schulze, Joan	Shaw, Barbara	Shaw, Kimberly	Smith, David
Stepanek, Stephen	Sullivan, Francis	Sullivan, Peter	
MERRIMACK			
Bouchard, Candace	Brueggemann, Donald	Clarke, Claire	DeJoie, John
DeStefano, Stephen	Foose, Robert	French, Barbara	Gile, Mary
Greco, Vincent	Hamm, Christine	Osborne, Jessie	Potter, Frances
Reardon, Tara	Rush, Deanna	Ryan, Jim	Shurtleff, Stephen
Tilton, Joy	Wallner, Mary Jane	Walz, Mary Beth	Williams, Robert
Yeaton, Charles			
ROCKINGHAM			
Abbott, Dennis	Blanchard, MaryAnn	Casey, Kimberley	DiFruscia, Anthony
Flockhart, Eileen	Hopfgarten, Paul	Hughes, Daniel	Johnson, Robert
Kobel, Rudolph	Langley, Jane	Lund, Howie	Moody, Marcia
Norelli, Terie	Powers, James	Serlin, Christopher	Splaine, James
Welch, David			
STRAFFORD			
Albert, Russell	Brown, Jennifer	Brown, Lawrence	Cataldo, Sam
Cilley, Jacalyn	Domingo, Baldwin	Hofemann, Roland	Johnson, Nancy
Kaen, Naida	Keans, Sandra	Knowles, William	Miller, Joseph
Rollo, Michael	Rous, Emma	Schmidt, Peter	Smith, Marjorie
Snyder, Clair	Spang, Judith	Taylor, Kathleen	Wall, Janet
SULLIVAN			
Cloutier, John	Converse, Larry	Donovan, Thomas	Ferland, Brenda
Franklin, Peter	Houde-Quimby, Charlotte	Jillette, Arthur Jr	Phinizy, James
Prichard, Stephen			
NAYS 195			
BELKNAP			
Boyce, Laurie	Clark, Charles	Fitzgerald, James	Flanders, Donald
Millham, Alida	Pilliod, James	Rosen, Ralph	Russell, David
Thomas, John	Tilton, Franklin	Tobin, William	Veazey, John
Wendelboe, Fran	Whalley, Michael		
CARROLL			
Ahlgren, Christopher	Babson, David Jr	Brown, Carolyn	Chandler, Gene
Dickinson, Howard	Knox, J David	Martin, James	McConkey, Mark
Marrow, Harry	Patten, Betsey	Philbrick, Donald	Stevens, Stanley
CHESHIRE			
Coates, Christopher	Dexter, Judson	Emerson, Susan	Foote, Sheila
Hogancamp, Deborah	Hunt, John	Pelkey, Stephen	Sawyer, Sheldon

COOS			
King, Frederick	Lary, Bruce	Remick, William	Richardson, Herbert
Stohl, Eric	Theberge, Robert	Tholl, John Jr	
GRAFTON			
Aguiar, James	Giuda, Robert	Ingretson, Paul	McLeod, Martha
Naro, Debra	Nordgren, Sharon	Solomon, Peter	Ward, John
Williams, Burton			
HILLSBOROUGH			
Adams, Jarvis IV	Allan, Nelson	Balboni, Michael	Barry, J Gail
Bergeron, Jean-Guy	Bergin, Peter	Biundo, Michael	Boehm, Ralph
Brundige, Robert	Buhlman, David	Carew, James	Carter, Mark
Christensen, D L Chris	Clark, Mark	Coughlin, Pamela	Crane, Elenore Casey
DeVries, Betsi	Drisko, Richard	Dyer, Donald	Emerton, Larry
Francoeur, Bea	Gargas, Carolyn	Gibson, John	Golding, William
Goyette, Peter Jr	Hall, Betty	Hansen, Ryan	Hawkins, Ken
Hinkle, Peyton	Hirschmann, Keith	Holden, Randolph	Infantine, William
Jasper, Shawn	Kelly, Eugene Jr	L'Heureux, Robert	Lawrence, James
Lessard, Rudy	Manney, Pamela	Matarazzo, Anthony Sr	McRae, Karen
Mead, Robert	Messier, Irene	Mooney, Maureen	Moran, Edward
O'Brien, William	O'Connell, Timothy	Ober, Lynne	Pilotte, Maurice
Price, Pamela	Reeves, Sandra	Ross, Lawrence	Ryder, Donald
Scanlon, Michael	Shattuck, Gilman	Slocum, Lee	Souza, Kathleen
Tahir, Saghir	Ulery, Jordan	Vaillancourt, Steve	Villeneuve, Maurice
Wheeler, James	Wheeler, Robert		
MERRIMACK			
Anderson, Eric	Blanchard, Elizabeth	Currier, David	Danforth, James
Field, William	Hager, Elizabeth	Hess, David	Kidder, David
L'Heureux, Stephen	Langlais, Thomas	Lockwood, Priscilla	MacKay, James
Marple, Richard	Maxfield, Roy	McMahon, Patricia	Oliver, James
Soltani, Tony	Tupper, Frank		
ROCKINGHAM			
Asselin, Michael	Belanger, Ronald	Bettencourt, David	Bicknell, Elbert
Bishop, Franklin	Bridle, Russell	Cady, Harriet	Cali-Pitts, Jacqueline
Camm, Kevin	Carson, Sharon	Charron, Gene	Coburn, James
Cooney, Richard	Dowd, John	Dowling, Patricia	Doyle, Christopher
Dumaine, Dudley	Fesh, Bob	Flanders, John Sr	Forsing, Robert
Francoeur, Sheila	Garrity, James	Gilbert, Karl	Gould, Kenneth
Griffin, Mary	Headd, James	Hutchinson, Karen	Ingram, Russell
Introne, Robert	Itse, Daniel	Katsakiores, George	Katsakiores, Phyllis
Major, Norman	Mason, April	McKinney, Betsy	McMahon, Charles
Nowe, Ronald	O'Neil, Michael	Quandt, Marshall Lee	Quandt, Matthew
Rausch, James	Rolston, James	Sanders, Elisabeth	Scamman, Stella
Stiles, Nancy	Stone, Joseph	Waterhouse, Kevin	Weare, E Albert
Wells, Roger	Weyler, Kenneth	Winchell, George	Zolla, William

STRAFFORD			
Bickford, David	Brown, Julie	Campbell, W Packy	Chaplin, Duncan
Creteau, Irene	Dunlap, Patricia	Easson, Timothy	Newton, Clifford
Twombly, James			
SULLIVAN			
Gale, Harry	Irish, Christopher	Osgood, Philip Sr	Rodeschin, Beverly

and the motion to lay on the table failed.

The question now being adoption of the committee report.

Adopted.

HB 645-FN, relative to fire-safe cigarettes. **OUGHT TO PASS WITH AMENDMENT**

Rep. Steve Vaillancourt for Ways and Means: After passing the House by a 199-134 vote on March 9, 2005, this bill was referred to Ways and Means to study any possible fiscal impact should New Hampshire require that all cigarettes sold in the state be “fire safe.” These cigarettes are manufactured so as to be more likely to go out if left unintentionally on a chair or sofa and thus reduce the potential for fires. After retaining the bill and studying it over the summer, the committee could find no evidence that there would be a fiscal impact. Cigarettes would not increase in price, and all indications are that these cigarettes would taste the same and smoke the same as cigarettes currently sold in the state. In fact, there is ample evidence that smokers will not even recognize the difference. The committee amendment does three things. While an exploration of the efficacy of these cigarettes in preventing fires was beyond the scope of the committee, it was agreed that “fire safer” would be a more appropriate name than “fire safe,” lest anyone think that these cigarettes would be totally fire safe. So that no money will be spent developing standards for such cigarettes, the committee mandated that the New York safety standards be used. Vermont and California have passed legislation using this standard as well. The committee believes that a nationwide standard would be appropriate and that congress could mandate fire safer cigarettes in all 50 states. Since that does not appear likely any time soon, New Hampshire can join an increasing number of states which are passing such legislation. So as to make the transition a smooth one, the amendment gives the Commissioner of Safety, in consultation with the State Fire Marshal, until January 1, 2007 to adopt the standards and does not require that only “fire safer” cigarettes be available in New Hampshire until July 1, 2007. Vote 17-2.

Amendment (0064h)

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

AN ACT relative to fire-safer cigarettes.

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

2 New Chapter; Trade and Commerce; Sale of Fire-Safer Cigarettes. Amend RSA by inserting after chapter 339-E the following new chapter:

CHAPTER 339-F

SALE OF FIRE-SAFER CIGARETTES

339-F:1 Definitions. In this chapter:

I. “Cigarette” means any roll for smoking made wholly or in part of tobacco, and wrapped in any material except tobacco.

II. “Commissioner” means the commissioner of safety.

III. “Manufacturer” means any person engaged in the business of importing, exporting, producing, or manufacturing tobacco products who sells his or her product only to licensed wholesalers.

IV. "Retailer" means any person who sells tobacco products to consumers, and any vending machine in which tobacco products are sold.

V. "Sale" or "sell," means any transfer, whether by bargain, gift, exchange, barter, or otherwise.

VI. "Vending machine operator" means any person operating one or more tobacco product vending machines on property or premises other than his or her own.

VII. "Wholesaler" means any person doing business in this state who shall purchase all of his or her unstamped tobacco products directly from a licensed manufacturer, and who shall sell all of his or her products to licensed wholesalers, sub-jobbers, vending machine operators, retailers, and those persons exempt from the tobacco tax under RSA 78:7-b.

339-F:2 Rulemaking; Cigarette Fire-Safety Standards. Pursuant to RSA 541-A:3-b, the commissioner, in consultation with the state fire marshal, shall incorporate by reference the New York fire safety standards for cigarettes effective June 28, 2004 as amended, as the fire safety standards for cigarettes sold or offered for sale in this state.

339-F:3 Prohibited Sales.

I. On and after July 1, 2007, no cigarettes shall be sold or offered for sale in this state unless the manufacturer has certified in writing to the department of safety and the department of justice that such cigarettes meet the performance standards established under RSA 339-F:2. Copies of such written certifications shall be provided by the certifying manufacturer to all wholesale dealers and all agents.

II. The commissioner also shall adopt, by rule, procedures by which retail dealers are notified of which cigarettes have been certified by manufacturers as meeting the performance standards prescribed by the department of safety.

III. Nothing in this section shall be construed to prohibit any person or entity from selling cigarettes that have not been certified by the manufacturer in accordance with RSA 339-F:2 if such cigarettes are or shall be stamped for sale in another state or are packaged for sale outside the United States.

IV. No person shall sell tobacco products through a vending machine unless access to the machine is readily available or it is constructed so as to permit the commissioner, or his or her agent, to readily determine whether the packages of tobacco products being sold comply with the requirements of this chapter.

339-F:4 Penalties; Enforcement.

I. A person who violates this section shall be guilty of a violation for a first offense and a misdemeanor for each subsequent offense.

II. Any cigarettes sold, offered for sale, or possessed for sale in this state, in violation of RSA 339-F:3 shall be deemed contraband under RSA 78:16 and such cigarettes shall be subject to seizure and forfeiture, and all such cigarettes so seized and forfeited shall be destroyed and not resold.

339-F:5 Enforcement by Department of Justice. The department of justice may bring an action to enforce the criminal penalties in RSA 339-F:4 and to enjoin further acts in violation of this chapter. In any action brought pursuant to this section, the department shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees.

3 Date for Adoption of Fire-Safety Standards. The commissioner of safety shall adopt the rules required under this chapter by January 1, 2007.

4 Access to Vending Machines. Amend RSA 78:2, III to read as follows:

III. No person shall sell tobacco products through a vending machine unless access to said machine is readily available or it is constructed so as to permit the commissioner, or his *or her* agent, to readily determine whether the packages of tobacco products being sold have proper stamps affixed to them which show payment of the tobacco tax imposed under RSA 78:7 *and whether they comply with RSA 339-F*.

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

Reps. Lund and Gibson spoke against.
 Reps. Vaillancourt and Jasper spoke in favor.
 Rep. Hinkle spoke against and yielded to questions.
 Rep. Weare spoke in favor and yielded to questions.
 Rep. Hinkle requested a roll call; sufficiently seconded.
 The question being adoption of the committee report.

YEAS 259 NAYS 73			
YEAS 259			
BELKNAP			
Clark, Charles	Fitzgerald, James	Flanders, Donald	Heald, Bruce
Millham, Alida	Morrison, Gail	Nedeau, Stephen	Pilliod, James
Russell, David	Thomas, John	Tobin, William	Whalley, Michael
CARROLL			
Ahlgren, Christopher	Babson, David Jr	Brown, Carolyn	Buco, Thomas
Knox, J David	Martin, James	McConkey, Mark	Merrow, Harry
Patten, Betsey	Stevens, Stanley		
CHESHIRE			
Allen, Peter	Butcher, Suzanne	Butynski, William	Chase, William
Coates, Christopher	Dexter, Judson	Dunn, J Timothy	Emerson, Susan
Espiefs, Peter	Foote, Sheila	Hunt, John	Parkhurst, Henry
Pelkey, Stephen	Richardson, Barbara	Roberts, Kris	Robertson, Timothy
Sawyer, Sheldon	Tilton, Anna	Weed, Charles	
COOS			
King, Frederick	Lary, Bruce	Merrick, Scott	Remick, William
Richardson, Herbert	Stohl, Eric	Tholl, John Jr	
GRAFTON			
Aguiar, James	Almy, Susan	Benn, Bernard	Bleyler, Ruth
Cooney, Mary	Ham, Bonnie	Hammond, Lee	Harding, A Laurie
McLeod, Martha	Mulholland, Catherine	Naro, Debra	Nordgren, Sharon
Sokol, Hilda	Solomon, Peter	Sorg, Gregory	Williams, Burton
HILLSBOROUGH			
Aboshar, Jeffrey	Baroody, Benjamin	Barry, J Gail	Beaulieu, Jane
Bergin, Peter	Brassard, Paul	Brundige, Robert	Calawa, Leon Jr
Campbell, David	Carter, Mark	Chase, Claudia	Christensen, D L Chris
Clark, Mark	Clemons, Jane	Cote, David	Cote, Peter
Coughlin, Pamela	Craig, James	Crane, Elenore Casey	Daniuk, Caitlin
DeVries, Betsi	Dokmo, Cynthia	Drisko, Richard	Dyer, Donald
Egbers, Fran	Emerton, Larry	Essex, David	Foster, Linda
Gargas, Carolyn	Ginsburg, Ruth	Golding, William	Goley, Jeffrey

Gorman, Mary	Graham, John	Hall, Betty	Harvey, Suzanne
Hunter, Bruce	Infantine, William	Irwin, Anne-Marie	Jasper, Shawn
Jean, Claudette	Johnson, Paula	Kelly, Eugene Jr	Kopka, Angeline
Kurk, Neal	L'Heureux, Robert	Lasky, Bette	Lawrence, James
Manney, Pamela	Martin, Mary Ellen	Matarazzo, Anthony Sr	Messier, Irene
Michon, Stephen	Mooney, Maureen	Movsesian, Lori	O'Connell, Timothy
Palangas, Eric	Pappas, Christopher	Pilotte, Maurice	Price, Pamela
Reeves, Sandra	Rochette, Eric	Rosenwald, Cindy	Ross, Lawrence
Ryder, Donald	Scanlon, Michael	Schulze, Joan	Shattuck, Gilman
Slocum, Lee	Smith, David	Souza, Kathleen	Sullivan, Francis
Sullivan, Peter	Ulery, Jordan	Vaillancourt, Steve	Villeneuve, Maurice
Wheeler, Robert			
MERRIMACK			
Anderson, Eric	Blanchard, Elizabeth	Bouchard, Candace	Brueggemann, Donald
Clarke, Claire	Danforth, James	DeJoie, John	DeStefano, Stephen
Field, William	Foose, Robert	French, Barbara	Gile, Mary
Greco, Vincent	Hager, Elizabeth	Hamm, Christine	Hess, David
Kidder, David	L'Heureux, Stephen	Langlais, Thomas	Lockwood, Priscilla
MacKay, James	McMahon, Patricia	Oliver, James	Osborne, Jessie
Potter, Frances	Reardon, Tara	Rush, Deanna	Ryan, Jim
Shurtleff, Stephen	Tilton, Joy	Tupper, Frank	Wallner, Mary Jane
Walz, Mary Beth	Williams, Robert	Yeaton, Charles	
ROCKINGHAM			
Abbott, Dennis	Asselin, Michael	Bicknell, Elbert	Blanchard, MaryAnn
Bridle, Russell	Cady, Harriet	Cali-Pitts, Jacqueline	Camm, Kevin
Casey, Kimberley	Charron, Gene	Coburn, James	Cooney, Richard
Dowd, John	Dowling, Patricia	Doyle, Christopher	Fesh, Bob
Flanders, John Sr	Flockhart, Eileen	Forsing, Robert	Francoeur, Sheila
Garrity, James	Gilbert, Karl	Gould, Kenneth	Griffin, Mary
Hughes, Daniel	Ingram, Russell	Johnson, Robert	Katsakiores, George
Kobel, Rudolph	Langley, Jane	Major, Norman	Mason, April
McMahon, Charles	Moody, Marcia	Norelli, Terie	O'Neil, Michael
Powers, James	Rausch, James	Rolston, James	Sanders, Elisabeth
Serlin, Christopher	Splaine, James	Stiles, Nancy	Stone, Joseph
Waterhouse, Kevin	Weare, E Albert	Welch, David	Wells, Roger
Winchell, George	Zolla, William		
STRAFFORD			
Albert, Russell	Bickford, David	Brown, Jennifer	Brown, Julie
Brown, Lawrence	Chaplin, Duncan	Cilley, Jacalyn	Creteau, Irene
Domingo, Baldwin	Dunlap, Patricia	Hofemann, Roland	Johnson, Nancy
Kaen, Naida	Keans, Sandra	Miller, Joseph	Rollo, Michael
Rous, Emma	Schmidt, Peter	Smith, Marjorie	Spang, Judith
Taylor, Kathleen	Twombly, James	Wall, Janet	
SULLIVAN			
Cloutier, John	Donovan, Thomas	Ferland, Brenda	Franklin, Peter
Gale, Harry	Houde-Quimby,	Jillette, Arthur Jr	Osgood, Philip Sr

	Charlotte		
Prichard, Stephen	Rodeschin, Beverly		
NAYS 73			
BELKNAP			
Boyce, Laurie	Rosen, Ralph	Tilton, Franklin	Veazey, John
Wendelboe, Fran			
CARROLL			
Dickinson, Howard			
CHESHIRE			
Eaton, Daniel			
COOS			
Morneau, Renney	Theberge, Robert		
GRAFTON			
Gionet, Edmond	Giuda, Robert	Maybeck, Margie	Mirski, Paul
Ward, John			
HILLSBOROUGH			
Adams, Jarvis IV	Allan, Nelson	Balboni, Michael	Batula, Peter
Bergeron, Jean-Guy	Biundo, Michael	Boehm, Ralph	Buhlman, David
Carew, James	Christiansen, Lars	Elliott, Nancy	Gibson, John
Goyette, Peter Jr	Hansen, Ryan	Hawkins, Ken	Hellwig, Steve
Hinkle, Peyton	Hirschmann, Keith	Holden, Randolph	Lessard, Rudy
McRae, Karen	Mead, Robert	Moran, Edward	O'Brien, William
Ober, Lynne	Pepino, Leo	Renzullo, Andrew	Rowe, Robert
Shaw, Barbara	Stepanek, Stephen	Tahir, Saghir	Wheeler, James
MERRIMACK			
Kennedy, Richard	Marple, Richard	Soltani, Tony	
ROCKINGHAM			
Belanger, Ronald	Bettencourt, David	Bishop, Franklin	Carson, Sharon
DiFruscia, Anthony	Dumaine, Dudley	Headd, James	Hopfgarten, Paul
Hutchinson, Karen	Introne, Robert	Itse, Daniel	Lund, Howie
McKinney, Betsy	Nowe, Ronald	Quandt, Marshall Lee	Quandt, Matthew
Scamman, Stella	Weyler, Kenneth		
STRAFFORD			
Cataldo, Sam	Easson, Timothy	Newton, Clifford	
SULLIVAN			
Converse, Larry	Irish, Christopher	Phinizy, James	

--	--	--	--

and the committee report was adopted.
Ordered to third reading.

SPECIAL ORDER

HB 397, relative to authority to file an abuse or neglect petition under the Child Protection Act. **OUGHT TO PASS WITH AMENDMENT**

Rep. Sheila A. Foote for Children and Family Law: This bill will preclude private abuse or neglect petitions under RSA 169-C. The Division of Children, Youth and Families will become the sole petitioner in all cases of abuse and neglect. This bill is a consequence of the misuse of the process by individuals which has resulted in a wasteful drain of limited resources that could have been better used by DCYF. This bill does not prevent law enforcement officers from obtaining verbal or written court orders for taking protective custody or protective supervision of children and for the placement of children who are found to be in imminent danger. Vote 17-0.

Amendment (0121h)

Amend the bill by inserting after section 1 the following and renumbering the original sections 2-3 to read as 3-4, respectively:

2 Emergency Interim Relief; Petition Filed by Department of Health and Human Services. Amend RSA 169-C:6-a, IV to read as follows:

IV. If the court issues ex parte orders, the department [~~or law enforcement officer~~] shall file a petition meeting the requirements of RSA 169-C:7 within 72 hours of the issuance of the orders, excluding Sundays and holidays.

Amend the bill by replacing section 4 with the following:

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

Adopted.

Committee report adopted and ordered to third reading.

REGULAR CALENDAR (CONT'D.)

HB 485, relative to the basis for awarding custody to a stepparent or grandparent.

MAJORITY: REFER FOR INTERIM STUDY. MINORITY: OUGHT TO PASS WITH AMENDMENT.

Rep. Mary Beth Walz for the Majority of Children and Family Law: This bill attempted to make New Hampshire statutes consistent with state and federal court decisions. However, the committee believes that further changes are necessary to comport with Supreme Court decisions. Thus, the committee voted to send this bill to Interim Study to allow time to complete the work needed. Vote 10-3.

Rep. David J. Bettencourt for the Minority of Children and Family Law: The bill originally passed with amendment 17-0, then a week later was reconsidered. The minority strongly felt that the law allowing grandparents and stepparents to take custody away from parents during the parents' custody action is unconstitutional. The minority feels it is unwise to leave unconstitutional laws in statute. The interim study is directed toward an unrelated issue to solve court jurisdiction. We feel that issue should have come under a different bill. Majority committee report adopted.

HB 590, excluding stepchildren from the definition of "child" in the context of support orders. **OUGHT TO PASS**

Rep. David A. Bickford for Children and Family Law: This bill removes "stepchild" from the definition of "dependent child." It also amends RSA 546-A:1, Uniform Civil Liability for Support, that leaves stepchildren liable to support stepparents. Vote 10-5.

Committee report adopted and ordered to third reading.

HB 610-FN, relative to the right to trial by jury in parental rights termination cases.

MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.

Rep. Mary Stuart Gile for the Majority of Children and Family Law: This bill proposed that any person at risk of having parental rights terminated, as defined in RSA 170-C:10, shall have the right to a trial by jury upon written request. The committee struggled to address key issues for both parents and children. The majority was concerned that the current process of reaching termination of parental rights decisions which protects the best interest of the child would be materially compromised. A jury trial could considerably lengthen the time before permanency could be achieved and result in additional costs for both state and counties. Also, there was no evidence presented that jury trials would improve outcomes. Rep. Daniel C. Itse for the Minority of Children and Family Law: The minority believes that this is a clear New Hampshire Constitutional issue. The New Hampshire Supreme Court has held that parenting is an inherent and fundamental right under Part 1, Article 2. The minority believes that both Part 1 Article 15 and Article 20 require that parents have a right to trial by jury in termination of parental rights cases. Vote 9-6. Majority committee report adopted.

SPECIAL ORDER

HB 203-FN, relative to the use of tracking devices in consumer products. **OUGHT TO PASS WITH AMENDMENT**

Rep. Sheila T. Francoeur for Commerce: This bill, as introduced, would have required informing a consumer either in writing or verbally of the presence of a tracking device (RFID) in any consumer article purchased. The committee recognized the privacy concerns with this type of device, but also understood the benefits this technology has for industry. The amendment balances the concern for privacy with future technological development by setting definitions, disclosure requirements and establishing a commission to track the development and implementation of this technology and its effects on the citizens of New Hampshire. Vote 19-0.

Amendment (0132h)

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

AN ACT relative to the regulation of tracking devices and establishing a commission on the use of tracking devices.

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

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

CHAPTER 358-S REGULATION OF TRACKING DEVICES

358-S:1 Definitions.

I. "Consumer product" means a physical object that is, or is intended to be, used or consumed by a consumer and includes food, alcoholic and nonalcoholic beverages, and prescription and nonprescription drugs; clothing; merchandise; motor vehicles and their component parts; advertising and sales documents and literature; and books, magazines, and greeting and business cards. A "consumer product" does not include an identification document.

II. "Identification document" means any document or object containing personal information that an individual uses alone or in conjunction with any other information to establish his or her identity, to engage in government-regulated activities, or to engage in financial transactions. Identification documents shall include but shall not be limited to:

- (a) Drivers' licenses, identification cards, and license plates issued by the director of the division of motor vehicles, department of safety;
- (b) E-Z Pass transponders;
- (c) Identification cards or badges issued to employees or contractors;

- (d) Insurance benefit cards;
- (e) Identification cards issued by public and private schools and educational institutions;
- (f) Benefit cards issued in conjunction with any government-supported aid program;
- (g) Credit, debit, and financial account cards;
- (h) Licenses, certificates, registrations, or other means to engage in a business or profession regulated by the state or its political subdivisions; and
- (i) Library cards issued by any public library.

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

IV. "RFID" or "radio frequency identification" means technologies that use radio waves to identify individual physical objects.

V. "Tracking device" means any item or application that is passively or actively capable of transmitting unique identification or location information. Tracking devices shall include devices that use radio frequency identification technology; tracking device shall not include bar codes or similar markings that do not transmit information.

VI. "Universally accepted symbol" means a graphical system designed to provide a standard way to show the presence of an RFID transponder, its frequency, and data structure.

358-S:2 Labels Required; Consumer Products.

I. No consumer product or identification document, to which a tracking device or devices have been affixed or implanted, shall be sold or offered for sale or provided to a consumer without a label containing a universally accepted symbol. This requirement shall also apply to any packaging relating to an individual consumer product or identification document that may contain a tracking device. A single such label may be used on a product or identification document that contains more than one tracking device.

II. Identifying labels shall be affixed to the consumer product, identification document, or its packaging, by the entity that implants the tracking device in the product or by the entity that imports products that contain tracking devices.

358-S:3 Human Implantation Prohibited. No person shall implant or attempt to implant a tracking device into any individual without the informed, written consent of the individual, or an individual's legal guardian. No individual shall be offered an incentive, denied an opportunity, or in any way treated differently from any other individual as a consequence of providing or withholding such consent.

358-S:4 Restrictions on State Use of Tracking Devices.

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

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

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

(c) To locate a state employee engaged in the performance of his or her official duties during normal working hours.

II. No identification document issued pursuant to this section shall contain, transmit, or enable the remote reading of any personal information other than a unique personal identifier number issued by the state.

358-S:5 Penalties.

I. Any person convicted of violating RSA 358-S:2 shall be guilty of a misdemeanor. Each such act shall constitute a separate offense.

II. Any person convicted of violating RSA 358-S:3 shall be guilty of a felony.

III. The state may bring suit for civil penalties for up to \$10,000, plus court costs and reasonable attorney's fees, for each violation of this chapter.

2 Commission on the Use of Tracking Devices.

I. There is hereby established a commission on the use of tracking devices. The commission shall study the use of tracking devices in government and business and monitor their effect on the economy and society.

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

(a) Three members of the house of representatives, including one member from the house commerce committee and one member from the house science, technology, and energy committee, appointed by the speaker of the house of representatives.

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

(c) Two members of the public, appointed by the governor.

(d) The attorney general, or designee.

(e) One member of the New Hampshire High Technology Council, appointed by such council.

(f) One member representing the Retail Merchants Association of New Hampshire, appointed by such association.

(g) One member representing the Business and Industry Association of New Hampshire, appointed by such association.

(h) One member representing the financial services industry, appointed by the New England Financial Services Association.

(i) One member representing consumer or privacy interests, appointed by the governor.

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

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

V. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library annually on or before November 1 and shall submit a final report before dissolving on or before November 1, 2009.

3 Effective Date. This act shall take effect January 1, 2007.

AMENDED ANALYSIS

This bill establishes labeling requirements for and prohibitions on the use of tracking devices and establishes a commission on the use of tracking devices.

Adopted.

Committee report adopted and ordered to third reading.

SPECIAL ORDER

SB 211-FN, relative to pharmaceutical marketers. **REFER FOR INTERIM STUDY**

Rep. Jane S. Langley for Commerce: This bill would require annual reports by the pharmaceutical manufacturers to be filed with the Secretary of State. The committee agreed that this is an important issue, but the bill as proposed would not accomplish a reduction in

the cost of prescription drugs. With additional study it is hoped that will be accomplished.
Vote 19-0.
Adopted.

SPECIAL ORDER

HB 459, relative to access to criminal records and enhanced 911 system records and excluding information brokers from private detective licensing. **OUGHT TO PASS WITH AMENDMENT**

Rep. Stanley E. Stevens for Criminal Justice and Public Safety: This was a housekeeping bill clarifying the access to criminal justice data for proper investigative purposes. It allows access to criminal justice information by persons who maintain the data base. This bill as originally written would have allowed unlimited access to criminal records by information brokers. This provision was removed by the amendment. Vote 14-0.

Amendment (2152h)

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

AN ACT relative to access to criminal records and enhanced 911 system records.

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

2 Confidentiality of Enhanced 911 System Information and Records. Amend RSA 106-H:14 to read as follows:

106-H:14 Information not Subject to Right-to-Know Law. Any information or records compiled under this chapter shall not be considered a public record for the purposes of RSA 91-A. ***Notwithstanding any provision of law to the contrary, the bureau shall only make information or records compiled under this chapter available to a law enforcement agency that requires the information or records for investigative purposes.***

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

AMENDED ANALYSIS

This bill clarifies that law enforcement personnel have access to criminal justice data for proper investigative purposes. The bill allows access to criminal justice information by persons who maintain the state criminal justice information database.

Adopted.

Rep. Kurk offered floor amendment (0283h).

Floor Amendment (0283h)

Amend the bill by replacing section 2 with the following:

2 Confidentiality of Enhanced 911 System Information and Records. Amend RSA 106-H:14 to read as follows:

106-H:14 Information not Subject to Right-to-Know Law. Any information or records compiled under this chapter shall not be considered a public record for the purposes of RSA 91-A. ***Notwithstanding any provision of law to the contrary, the bureau shall only make information or records compiled under this chapter available on a case-by-case basis to a law enforcement agency that requires the information or records for investigative purposes.***

Rep. Kurk spoke in favor.

Floor amendment (0283h) adopted.

Committee report adopted as amended.

Ordered to third reading.

REGULAR CALENDAR (CONT'D.)

HB 258-L, relative to the terms of a collective bargaining agreement in a school district.

MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.

Rep. Michael B. Asselin for the Majority of Education: The majority of committee members

believe that this bill will disrupt the school collective bargaining agreements by allowing school administrators to increase the salary/benefits of a teacher to retain them if they have received another offer of employment. Merit pay already addresses the issue of rewarding more qualified teachers. Vote 11-4.

Rep. Mark S. Carter for the Minority of Education: New Hampshire is experiencing growing teacher shortages. These shortages fall disproportionately on our poorer districts. The minority of the committee feels that something can and should be done about the shortages. The minority will put forward a floor amendment should the ITL recommendation of the committee majority be overturned by the House. The legislature should enable local school districts, so that they have the ability to negotiate to keep their best and most necessary teachers.

Majority report adopted.

SPECIAL ORDER

HB 249, relative to delivery of absentee ballots to city or town clerks. **INEXPEDIENT TO LEGISLATE**

Rep. Keith D. Hirschmann for Election Law: This bill was an attempt to make it more convenient to return a ballot to a town or city clerk by allowing a family member to hand-deliver the ballot. Testimony from the New Hampshire City and Town Clerks Association, opposing the bill, raised questions about proper identification and appropriate safeguards to maintain the integrity of the ballot. The Secretary of State was also concerned and opposed the bill. Vote 15-3.

Rep. Vaillancourt spoke against and yielded to questions.

Rep. Hirshmann spoke in favor.

On a division vote, 181 members having voted in the affirmative and 138 in the negative, the committee report was adopted.

(Deputy Speaker Weyler in the Chair)

REGULAR CALENDAR (CONT'D.)

HB 309-FN-A, establishing a commission to recodify laws relating to financial contributions and disclosures and conflicts of interest and making an appropriation therefor.

INEXPEDIENT TO LEGISLATE

Rep. Richard B. Drisko for Election Law: This bill would have established a commission to revise, clarify, simplify and recodify laws relating to financial contribution and disclosure and conflicts of interest and create funding for same. The committee recommended ITL as SB 206 would pre-empt the work of such a commission by providing omnibus ethical legislation to fulfill this need. Vote 10-4.

Adopted.

HB 403, limiting permissible gifts to elected officials. **INEXPEDIENT TO LEGISLATE**

Rep. Richard B. Drisko for Election Law: This bill would have limited permissible gifts to elected officials to meals, tickets, and other non-cash items with a value of less than \$250. by incorporating this bill into SB 206, this action will yield a uniform omnibus ethics bill. Vote 10-4.

Rep. Cali-Pits requested a roll call; sufficiently seconded.

The question being adoption of the committee report.

YEAS 208 NAYS 106			
YEAS 208			
BELKNAP			

Boyce, Laurie	Fitzgerald, James	Flanders, Donald	Heald, Bruce
Millham, Alida	Nedeau, Stephen	Pilliod, James	Rosen, Ralph
Russell, David	Thomas, John	Tilton, Franklin	Tobin, William
Veazey, John	Wendelboe, Fran	Whalley, Michael	
CARROLL			
Ahlgren, Christopher	Babson, David Jr	Brown, Carolyn	Chandler, Gene
Dickinson, Howard	Knox, J David	Martin, James	McConkey, Mark
Morrow, Harry	Patten, Betsey	Stevens, Stanley	
CHESHIRE			
Dexter, Judson	Emerson, Susan	Foote, Sheila	Hogancamp, Deborah
Hunt, John	Sawyer, Sheldon		
COOS			
King, Frederick	Lary, Bruce	Morneau, Renney	Remick, William
Richardson, Herbert	Stohl, Eric	Tholl, John Jr	
GRAFTON			
Gionet, Edmond	Giuda, Robert	Ham, Bonnie	Maybeck, Margie
Mirski, Paul	Naro, Debra	Solomon, Peter	Sorg, Gregory
Ward, John	Williams, Burton		
HILLSBOROUGH			
Adams, Jarvis IV	Balboni, Michael	Barry, J Gail	Batula, Peter
Bergeron, Jean-Guy	Bergin, Peter	Biundo, Michael	Boehm, Ralph
Brassard, Paul	Brundige, Robert	Buhlman, David	Calawa, Leon Jr
Campbell, David	Carew, James	Carter, Mark	Christensen, D L Chris
Christiansen, Lars	Clark, Mark	Coughlin, Pamela	Crane, Elenore Casey
DeVries, Betsi	Dokmo, Cynthia	Drisko, Richard	Dyer, Donald
Elliott, Nancy	Emerton, Larry	Essex, David	Foster, Linda
Gargas, Carolyn	Gibson, John	Golding, William	Goley, Jeffrey
Goyette, Peter Jr	Graham, John	Hansen, Ryan	Hawkins, Ken
Hellwig, Steve	Hinkle, Peyton	Holden, Randolph	Infantine, William
Jasper, Shawn	Kelly, Eugene Jr	Kurk, Neal	L'Heureux, Robert
Lawrence, James	Lessard, Rudy	Manney, Pamela	Matarazzo, Anthony Sr
McRae, Karen	Mead, Robert	Mooney, Maureen	Moran, Edward
Movsesian, Lori	O'Brien, William	O'Connell, Timothy	Pilotte, Maurice
Price, Pamela	Reeves, Sandra	Renzullo, Andrew	Rosenwald, Cindy
Ross, Lawrence	Rowe, Robert	Ryder, Donald	Scanlon, Michael
Shaw, Barbara	Slocum, Lee	Smith, David	Souza, Kathleen
Stepanek, Stephen	Sullivan, Francis	Ulery, Jordan	Villeneuve, Maurice
Wheeler, James	Wheeler, Robert		
MERRIMACK			
Anderson, Eric	Danforth, James	Field, William	Foose, Robert

Hager, Elizabeth	Hess, David	Kennedy, Richard	Kidder, David
L'Heureux, Stephen	Langlais, Thomas	Lockwood, Priscilla	Mackay, James
Marple, Richard	Oliver, James	Soltani, Tony	Williams, Robert
ROCKINGHAM			
Abbott, Dennis	Asselin, Michael	Belanger, Ronald	Bettencourt, David
Bicknell, Elbert	Bishop, Franklin	Bridle, Russell	Cady, Harriet
Camm, Kevin	Carson, Sharon	Charron, Gene	Coburn, James
Cooney, Richard	DiFruscia, Anthony	Dowd, John	Dowling, Patricia
Doyle, Christopher	Dumaine, Dudley	Fesh, Bob	Forsing, Robert
Francoeur, Sheila	Garrity, James	Gould, Kenneth	Griffin, Mary
Headd, James	Hopfgarten, Paul	Hughes, Daniel	Ingram, Russell
Introne, Robert	Itse, Daniel	Johnson, Robert	Katsakiores, George
Kobel, Rudolph	Langley, Jane	Lund, Howie	Major, Norman
McKinney, Betsy	McMahon, Charles	Nowe, Ronald	O'Neil, Michael
Quandt, Marshall Lee	Quandt, Matthew	Rausch, James	Rolston, James
Sanders, Elisabeth	Scamman, Stella	Scamman, W Douglas	Stiles, Nancy
Stone, Joseph	Waterhouse, Kevin	Weare, E Albert	Welch, David
Winchell, George	Zolla, William		
STRAFFORD			
Albert, Russell	Bickford, David	Brown, Julie	Cataldo, Sam
Chaplin, Duncan	Dunlap, Patricia	Easson, Timothy	Kaen, Naida
Newton, Clifford	Twombly, James		
SULLIVAN			
Ferland, Brenda	Gale, Harry	Irish, Christopher	Osgood, Philip Sr
Rodeschin, Beverly			
NAYS 106			
BELKNAP			
Morrison, Gail			
CARROLL			
Buco, Thomas			
CHESHIRE			
Butcher, Suzanne	Butynski, William	Chase, William	Coates, Christopher
Dunn, J Timothy	Eaton, Daniel	Espiefs, Peter	Parkhurst, Henry
Pelkey, Stephen	Richardson, Barbara	Roberts, Kris	Robertson, Timothy
Tilton, Anna	Weed, Charles		
COOS			
Merrick, Scott	Theberge, Robert		
GRAFTON			
Aguiar, James	Almy, Susan	Benn, Bernard	Bleyler, Ruth

Cooney, Mary	Hammond, Lee	Harding, A Laurie	McLeod, Martha
Mulholland, Catherine	Nordgren, Sharon	Sokol, Hilda	
HILLSBOROUGH			
Allan, Nelson	Baroody, Benjamin	Beaulieu, Jane	Chase, Claudia
Clemons, Jane	Cote, David	Craig, James	Daniuk, Caitlin
Egbers, Fran	Ginsburg, Ruth	Gorman, Mary	Hall, Betty
Harvey, Suzanne	Hirschmann, Keith	Irwin, Anne-Marie	Johnson, Paula
Kopka, Angeline	Lasky, Bette	Messier, Irene	Michon, Stephen
Ober, Lynne	Rochette, Eric	Schulze, Joan	Sullivan, Peter
Vaillancourt, Steve			
MERRIMACK			
Bouchard, Candace	Brueggemann, Donald	Clarke, Claire	DeJoie, John
DeStefano, Stephen	French, Barbara	Gile, Mary	Greco, Vincent
Hamm, Christine	McMahon, Patricia	Osborne, Jessie	Potter, Frances
Rush, Deanna	Ryan, Jim	Shurtleff, Stephen	Tilton, Joy
Tupper, Frank	Wallner, Mary Jane	Walz, Mary Beth	Yeaton, Charles
ROCKINGHAM			
Cali-Pitts, Jacqueline	Casey, Kimberley	Flockhart, Eileen	Moody, Marcia
Norelli, Terie	Powers, James	Serlin, Christopher	Splaine, James
STRAFFORD			
Brown, Jennifer	Brown, Lawrence	Cilley, Jacalyn	Creteau, Irene
Domingo, Baldwin	Hofemann, Roland	Johnson, Nancy	Keans, Sandra
Miller, Joseph	Rollo, Michael	Rous, Emma	Schmidt, Peter
Smith, Marjorie	Spang, Judith	Taylor, Kathleen	Wall, Janet
SULLIVAN			
Cloutier, John	Converse, Larry	Donovan, Thomas	Franklin, Peter
Houde-Quimby, Charlotte	Jillette, Arthur Jr	Phinizy, James	Prichard, Stephen

and the committee report was adopted.

Rep. Stone did not vote and notified the Clerk that he wished to be recorded in favor.

HB 589, establishing a committee to study gifts and political contributions.

INEXPEDIENT TO LEGISLATE

Rep. Richard B. Drisko for Election Law: This bill would have established a committee to study gifts and political contributions and would duplicate the efforts on SB 206 that produced an omnibus ethics bill. Vote 11-3.

Committee report adopted.

HB 607-FN, relative to gifts to elected officials. **INEXPEDIENT TO LEGISLATE**

Rep. Richard B. Drisko for Election Law: This bill would have placed certain restrictions on gifts to elected officials. Its content was similar to HB 403 and is covered by SB 206. Vote 11-3.

Rep. Osborne requested a roll call; sufficiently seconded.

The question being adoption of the committee report.

YEAS 202 NAYS 116			
YEAS 202			
BELKNAP			
Boyce, Laurie	Clark, Charles	Fitzgerald, James	Flanders, Donald
Heald, Bruce	Millham, Alida	Nedean, Stephen	Pilliod, James
Rosen, Ralph	Russell, David	Thomas, John	Tilton, Franklin
Tobin, William	Veazey, John	Wendelboe, Fran	Whalley, Michael
CARROLL			
Babson, David Jr	Brown, Carolyn	Chandler, Gene	Dickinson, Howard
Knox, J David	Martin, James	McConkey, Mark	Merrow, Harry
Patten, Betsey	Stevens, Stanley		
CHESHIRE			
Dexter, Judson	Emerson, Susan	Foote, Sheila	Hogancamp, Deborah
Hunt, John	Pelkey, Stephen	Sawyer, Sheldon	
COOS			
King, Frederick	Lary, Bruce	Morneau, Renney	Remick, William
Richardson, Herbert	Stohl, Eric	Tholl, John Jr	
GRAFTON			
Gionet, Edmond	Giuda, Robert	Ham, Bonnie	Maybeck, Margie
McLeod, Martha	Mirski, Paul	Naro, Debra	Solomon, Peter
Sorg, Gregory	Ward, John	Williams, Burton	
HILLSBOROUGH			
Aboshar, Jeffrey	Adams, Jarvis IV	Balboni, Michael	Barry, J Gail
Batula, Peter	Bergeron, Jean-Guy	Bergin, Peter	Biundo, Michael
Boehm, Ralph	Brundige, Robert	Buhlman, David	Calawa, Leon Jr
Campbell, David	Carew, James	Carter, Mark	Christensen, D L Chris
Christiansen, Lars	Clark, Mark	Coughlin, Pamela	Crane, Elenore Casey
Dokmo, Cynthia	Drisko, Richard	Dyer, Donald	Elliott, Nancy
Emerton, Larry	Gargas, Carolyn	Golding, William	Goyette, Peter Jr
Graham, John	Hansen, Ryan	Hawkins, Ken	Hellwig, Steve
Hinkle, Peyton	Hirschmann, Keith	Holden, Randolph	Jasper, Shawn
Kelly, Eugene Jr	Kurk, Neal	L'Heureux, Robert	Lawrence, James
Lessard, Rudy	Manney, Pamela	McRae, Karen	Mead, Robert
Messier, Irene	Mooney, Maureen	Moran, Edward	O'Brien, William
O'Connell, Timothy	Ober, Lynne	Price, Pamela	Reeves, Sandra
Renzullo, Andrew	Ross, Lawrence	Rowe, Robert	Ryder, Donald
Scanlon, Michael	Slocum, Lee	Smith, David	Souza, Kathleen
Stepanek, Stephen	Sullivan, Francis	Ulery, Jordan	Villeneuve, Maurice
Wheeler, James	Wheeler, Robert		

MERRIMACK			
Anderson, Eric	Danforth, James	Field, William	Foose, Robert
Greco, Vincent	Hager, Elizabeth	Hess, David	Kennedy, Richard
Kidder, David	L'Heureux, Stephen	Langlais, Thomas	Lockwood, Priscilla
MacKay, James	Marple, Richard	Oliver, James	Soltani, Tony
ROCKINGHAM			
Abbott, Dennis	Asselin, Michael	Belanger, Ronald	Bettencourt, David
Bicknell, Elbert	Bishop, Franklin	Bridle, Russell	Cady, Harriet
Camm, Kevin	Carson, Sharon	Charron, Gene	Coburn, James
Cooney, Richard	DiFruscia, Anthony	Dowd, John	Dowling, Patricia
Doyle, Christopher	Dumaine, Dudley	Fesh, Bob	Forsing, Robert
Francoeur, Sheila	Garrity, James	Gould, Kenneth	Griffin, Mary
Headd, James	Hopfgarten, Paul	Hughes, Daniel	Ingram, Russell
Introne, Robert	Itse, Daniel	Johnson, Robert	Katsakiores, George
Kobel, Rudolph	Langley, Jane	Lund, Howie	Major, Norman
McKinney, Betsy	McMahon, Charles	Nowe, Ronald	O'Neil, Michael
Quandt, Marshall Lee	Quandt, Matthew	Rausch, James	Rolston, James
Sanders, Elisabeth	Scamman, Stella	Stiles, Nancy	Stone, Joseph
Waterhouse, Kevin	Weare, E Albert	Welch, David	Wells, Roger
Weyler, Kenneth	Winchell, George	Zolla, William	
STRAFFORD			
Albert, Russell	Bickford, David	Cataldo, Sam	Chaplin, Duncan
Dunlap, Patricia	Easson, Timothy	Kaen, Naida	Newton, Clifford
Twombly, James			
SULLIVAN			
Ferland, Brenda	Gale, Harry	Irish, Christopher	Osgood, Philip Sr
Rodeschin, Beverly			
NAYS 116			
BELKNAP			
Morrison, Gail			
CARROLL			
Ahlgren, Christopher	Buco, Thomas		
CHESHIRE			
Butcher, Suzanne	Butynski, William	Chase, William	Coates, Christopher
Dunn, J Timothy	Eaton, Daniel	Espiefs, Peter	Parkhurst, Henry
Richardson, Barbara	Roberts, Kris	Robertson, Timothy	Tilton, Anna
Weed, Charles			
COOS			
Merrick, Scott	Theberge, Robert		

GRAFTON			
Almy, Susan	Benn, Bernard	Bleyler, Ruth	Cooney, Mary
Hammond, Lee	Harding, A Laurie	Mulholland, Catherine	Nordgren, Sharon
Sokol, Hilda			
HILLSBOROUGH			
Allan, Nelson	Baroody, Benjamin	Beaulieu, Jane	Brassard, Paul
Chase, Claudia	Clemons, Jane	Cote, David	Craig, James
Daniuk, Caitlin	DeVries, Betsi	Egbers, Fran	Essex, David
Foster, Linda	Gibson, John	Ginsburg, Ruth	Goley, Jeffrey
Gorman, Mary	Hall, Betty	Harvey, Suzanne	Infantine, William
Irwin, Anne-Marie	Johnson, Paula	Kopka, Angeline	Lasky, Bette
Martin, Mary Ellen	Matarazzo, Anthony Sr	Michon, Stephen	Movsesian, Lori
Pilotte, Maurice	Rochette, Eric	Rosenwald, Cindy	Schulze, Joan
Shattuck, Gilman	Shaw, Barbara	Sullivan, Peter	Vaillancourt, Steve
MERRIMACK			
Bouchard, Candace	Brueggemann, Donald	Clarke, Claire	DeJoie, John
DeStefano, Stephen	French, Barbara	Gile, Mary	Hamm, Christine
McMahon, Patricia	Osborne, Jessie	Potter, Frances	Rush, Deanna
Ryan, Jim	Shurtleff, Stephen	Tilton, Joy	Tupper, Frank
Wallner, Mary Jane	Walz, Mary Beth	Williams, Robert	Yeaton, Charles
ROCKINGHAM			
Cali-Pitts, Jacqueline	Casey, Kimberley	Flockhart, Eileen	Moody, Marcia
Norelli, Terie	Powers, James	Serlin, Christopher	Splaine, James
STRAFFORD			
Brown, Jennifer	Brown, Julie	Brown, Lawrence	Cilley, Jacalyn
Creteau, Irene	Domingo, Baldwin	Hofemann, Roland	Johnson, Nancy
Keans, Sandra	Miller, Joseph	Rollo, Michael	Rous, Emma
Schmidt, Peter	Smith, Marjorie	Spang, Judith	Taylor, Kathleen
Wall, Janet			
SULLIVAN			
Cloutier, John	Converse, Larry	Donovan, Thomas	Franklin, Peter
Houde-Quimby, Charlotte	Jillette, Arthur Jr	Phinizy, James	Prichard, Stephen

and the committee report was adopted.

HB 470-FN-A, relative to the annual funding of placement costs for juvenile diversion and alternative disposition programs and relative to an effectiveness study of such programs.

INEXPEDIENT TO LEGISLATE

Rep. Elizabeth S. Hager for Finance: The juvenile diversion money is some of the most effective state money in New Hampshire. It is administered through the counties, so there is some local control and we know it keeps children out of our expensive institutions. This bill asked for an increase in the funds which a majority of the committee does not believe we can

do right now. It also called for a study of the various programs and the Finance committee is committed to working with DHHS to look at the effectiveness of diversion services. Vote 13-7.

Committee report adopted.

HB 638-FN, relative to county liability for payment of nursing home costs. **OUGHT TO PASS WITH AMENDMENT**

Rep. Neal M. Kurk for Finance: This bill deals with the county-state financial relationship. The counties have expressed a variety of concerns on this subject ever since the most recent major overhaul of the relationship in the 1990s. (SB 409, Ch. 388, Laws of 1998). As introduced, the bill returned the cost-sharing on non-federal Medicaid nursing home care from the current 50%-50% to the pre-1998 61% counties – 31% state, and it eliminated any cost-sharing by the counties for the home- and community-based care program. A subcommittee carefully examined these and other programs in which costs were shared between the counties and the state and considered a wide variety of options to change them in ways that were “revenue neutral.” Several options were presented to the full Finance Committee. However, none was satisfactory to a majority of the committee or to a majority of the counties. The committee amendment makes no change in the current county-state financial cost-sharing relationship. However, in addition to extending the current moratorium on new nursing home and rehabilitation beds until June 30, 2009, it provides two significant benefits to the counties. First, it requires the Department of Health and Human Services to seek a federal match for un-reimbursed nursing home costs paid by the counties and to pay such revenue, if obtained, to the counties. Second, it reversed the downshifting to the counties of certain costs imposed by the 2005-06 budget. These costs related to recipients of old age assistance and aid to the permanently and totally disabled, and would have cost county taxpayers approximately \$5.4 million from the anticipated biennium surplus to pay for the change. It is the committee’s understanding that work on the county-state financial relationship will continue in the next session through a variety of legislative vehicles. Vote 14-2.

Amendment (0250h)

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

AN ACT relative to county and state financing of nursing home services.

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

1 Certificate of Need; Nursing Home Beds; Moratorium Extended. Amend RSA 151-C:4, III(a) to read as follows:

III.(a) No certificate of need shall be granted by the board for any nursing home, skilled nursing facility, intermediate care facility or rehabilitation facility from the effective date of chapter 310, laws of 1995, department of health and human services reorganization act, through the period ending ~~December 31, 2006~~ **June 30, 2009**, except that a certificate of need shall be issued for replacement or renovation of existing beds as necessary to meet life safety code requirements or to remedy deficiencies noted in a licensing inspection pursuant to RSA 151 or state survey and certification process pursuant to titles XVIII and XIX of the Social Security Act.

2 Rehabilitation Beds. Amend 2004, 260:27 to read as follows:

260:27 Health Services Planning and Review Board; Rehabilitation Beds and Services. Through the period ending ~~December 31, 2006~~ **June 30, 2009** unless sooner authorized by the general court, the health services planning and review board shall not authorize changes regarding the licensure or certification of any rehabilitation beds in any type of facility, shall not authorize the addition of any rehabilitation beds in any type of facility, and shall not grant any certificate of need related to the board’s administrative standards for comprehensive physical rehabilitation services. This section shall not prohibit the voluntary transfer of rehabilitation beds between 2 licensed health care facilities; provided, that any

such transaction does not result in an increase in the number of any type of rehabilitation beds in the state.

3 New Paragraph; County Reimbursement of Funds; Limitations on Payments. Amend RSA 167:18-b by inserting after paragraph VI the following new paragraph:

VII.(a) Any shortfall between the state audited Medicaid allowances incurred by the state's county operated ICF nursing homes and amounts otherwise reimbursed by federal 50 percent Medicaid matching funds or other income, shall be certified as a public expenditure and be eligible for additional federal funding match.

(b) The department of health and human services shall seek federal Medicaid assistance match for any state audited county nursing home Medicaid expense which is not fully reimbursed through rates. Any revenue realized through such a match shall be paid to the nursing homes which incurred the unreimbursed expense, provided, however, that no state general funds are expended directly or indirectly for this purpose.

4 County Nursing Homes; Local Medical Assistance Contribution. Amend RSA 167:18-f to read as follows:

167:18-f Local Medical Assistance Contribution. In addition to any other reimbursement required by law, each county shall, within 60 days from notice thereof, reimburse the public assistance fund at the rate of [~~\$27~~] **\$6** per month for each recipient of old age assistance and [~~\$52~~]**\$23** per month for each recipient of aid to the permanently and totally disabled for whom the county would be liable under the provisions of RSA 166, except that no reimbursement shall be required for any recipient for whom the county has an obligation under RSA 167:18-b.

5 Appropriation; Health and Human Services. The sum of \$5,400,000 for the biennium ending June 30, 2007 is hereby appropriated to the department of health and human services, for the purpose of funding the change to the local medical assistance contribution made in section 4 of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

6 County Credit for Contributions. Any county reimbursement under RSA 167:18-f made from July 1, 2005 until June 30, 2006 which exceeds the rate for reimbursement provided in section 4 of this act shall be credited to the counties for the year ending June 30, 2006 for fulfilling the local medical assistance contribution.

7 Effective Date.

I. Section 4 of this act shall take effect July 1, 2005, at 12:01 a.m.

II. Sections 5 and 6 of this act shall take effect June 30, 2006.

III. The remainder of this act shall take effect July 1, 2006.

AMENDED ANALYSIS

The bill removes the increase in county payments for old age assistance and aid to the permanently and totally disabled. This bill also extends the moratoriums on nursing home and rehabilitation beds.

Adopted.

Committee report adopted and ordered to third reading.

HB 670-FN-A, relative to the land and community heritage investment program.

INEXPEDIENT TO LEGISLATE

Rep. Kenneth L. Weyler for Finance: This bill was retained so that the budget process could be completed. It appropriated \$4 million in FY '06 and \$6 million in FY '07. In the budget, the Senate came up with the novel idea of dedicating the highway mitigation funds of \$3.5 million each year plus \$1.5 million or the same \$10 million. Highway fund monies are to be used to buy open space in the highway corridor towns or nearby. Most proponents of LCHIP do not acknowledge this \$3.5 million and insist that our appropriation is only \$1.5 million. This new idea has not had a fair demonstration. We should wait to see its effect before we change the funding sources. Vote 12-7.

Committee report adopted.

Rep. Mirski declared a conflict of interest and did not participate.

HB 506, including employees of charitable organizations under the protection of the state law against discrimination. **OUGHT TO PASS WITH AMENDMENT**

Rep. Mary J. Gorman for Labor, Industrial and Rehabilitative Services: This bill includes employees of non-profit charitable organizations under the protection of the state's anti-discrimination employment law so claims can be investigated and resolved by the New Hampshire Commission for Human Rights, just like employees of for-profit employers. Exempt are clubs exclusively social, or fraternal or religious association, or corporation, if such club, association, or corporation is not organized for private profit, as evidenced by declarations filed with the Internal Revenue Service, nor does it include any employer with fewer than six persons in its employ, but shall include the state and all political subdivisions, boards, departments, and commissions thereof. Vote 8-2.

Amendment (0595h)

Amend RSA 354-A:2, VII as inserted by section 1 of the bill by replacing it with the following:

VII. "Employer" does not include a club exclusively social, or a fraternal or religious association or corporation, if such club, association, or corporation is not organized for private profit, as evidenced by declarations filed with the Internal Revenue Service, nor does it include any employer with fewer than 6 persons in its employ, but shall include the state and all political subdivisions, boards, departments, and commissions thereof.

Adopted.

Committee report adopted and ordered to third reading.

SPECIAL ORDER

HB 642-FN-L, relative to the regulation of home inspectors. **OUGHT TO PASS WITH AMENDMENT**

Rep. Robert W. Brundige for Municipal and County Government: The intent of this bill is to require the licensing of home inspectors to assure that New Hampshire consumers of home inspection services can rely on the competence of the home inspector. Currently there is no accountability for the home inspection industry except through the court system. The amendment to license home inspectors was mirrored after the plumbing and electrical licensing statutes. The committee does not routinely address licensing issues, but voted to support the concept of licensure. During our executive session the committee noted that this bill needs to go to the Executive Departments and Administration Committee to be sure that all the licensure requirements for home inspectors comply with the committee accepted standards. Vote 15-0.

Amendment (0141h)

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

1 New Chapter; Home Inspectors. Amend RSA by inserting after chapter 329-A the following new chapter:

**CHAPTER 329-B
HOME INSPECTORS**

329-B:1 Purpose. The purpose of this chapter is to protect the people of the state of New Hampshire by requiring the licensing of home inspectors to assure that consumers of home inspection services can rely on the competence of a home inspector.

329-B:2 Definitions. In this chapter:

I. "Apprentice" means any person who is engaged in learning and assisting in home inspection under an apprenticeship program acceptable to the board.

II. "Board" means the board of home inspectors, established by RSA 329-B:3.

III. "Home inspection" means a visual analysis for the purposes of providing a professional opinion of the condition of a residential building and its related structures, any

reasonably accessible installed components and the operation of the building systems, including the controls normally operated by the owner, for the following components of a residential building of 4 units or less: heating system, electrical system, cooling system, plumbing system, structural components, foundation, roof covering, exterior and interior components and site aspects as they affect the building. Home inspection shall not require identifying concealed conditions or latent defects.

IV. "Home inspector" means any person who is licensed by the board as a home inspector and who engages in the business of performing home inspections and writing home inspection reports.

V. "Home inspection" report means a written report prepared by a home inspector for compensation and issued after a home inspection. The inspector shall report:

(a) On those systems and components inspected which, in the professional opinion of the inspector, are significantly deficient or are near the end of their service lives.

(b) A reason why, if not self-evident, the system or component is significantly deficient or near the end of its service life.

(c) The inspector's recommendations to correct or monitor the reported deficiency.

(d) Any systems and components designated for inspection which were present at the time of the inspection but were not inspected, and a reason they were not inspected.

VI. "Residential building" means a structure consisting of from one to 4 family dwelling units, and including a single-family home, a multifamily dwelling, manufactured housing as defined in RSA 384:16-d, II, and any single family condominium unit, wholly or partly used or occupied, or intended to be used or occupied, as the home or residence of one or more persons.

329-B:3 Board.

I. There shall be a board of home inspectors, consisting of 5 members, including 2 home inspectors, one real estate broker licensed under RSA 331-A, one attorney licensed to practice in this state, and one public member, each to be appointed by the governor, with the approval of the council, to a term of 4 years. No member of the board shall be appointed to more than 2 terms.

II. The public member of the board of home inspectors shall be a person who is not, and never has been, a home inspector or the spouse of a home inspector, and who does not have, and never has had, a material financial interest in either the provision of home inspection services or an activity directly related to the home inspection profession at any time during the 5 years preceding appointment.

III. The board shall be an administratively attached agency, under RSA 21-G:10, to the department of state.

329-B:4 Compensation and Expenses. Members of the board shall each be allowed the sum of \$30 per day and their necessary traveling expenses incurred in carrying out their official duties.

329-B:5 Organization and Meetings. The board shall hold at least 4 regular meetings each year, and special meetings may be held at such times as the business of the board may require. Notice of all meetings shall be given in such manner as the rules of the board may provide. The board shall annually elect a chairperson and a vice-chairperson from among its members. A quorum of the board shall consist of not less than 3 members, at least one of whom shall be a public member.

329-B:6 Fees. The board shall establish fees for examination of applicants, for licensure and for renewal of licensure to practice under this chapter, and for transcribing and transferring records and other services. The fees established by the board shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the board for the previous fiscal year.

329-B:7 Receipts and Disbursements. The board shall receive and account at least monthly for all moneys derived under the provisions of this chapter, and shall pay the same

to the state treasurer. The board may employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures from this fund for any purpose which, in the opinion of the board, is reasonably necessary for the proper performance of its duties under this chapter. Under no circumstances shall the total amount of payments made hereunder exceed the amount of the fees collected hereunder. Any balance in the account shall lapse at the end of each fiscal year.

329-B:8 Examinations. The board shall have authority to examine and license home inspectors. When issued, such license shall be valid throughout the state, and the licensee shall be entitled to perform the work of a home inspector anywhere within the state without any payment or additional fee. Each applicant for a license shall present to the board on a blank furnished by the board a written application for license, containing such information as the board may require, accompanied by the required fee. Such examinations shall be held at such times and places as the board shall determine. The scope of such examinations and the methods of procedure shall be prescribed by the board.

329-B:9 Rulemaking. The board shall adopt rules, pursuant to RSA 541-A, relative to:

- I. The design and content of all forms and applications required under this chapter.
- II. The application procedure for a license to practice under this chapter.
- III. The qualifications of applicants in addition to those requirements set under this chapter.
- IV. How an applicant shall be examined, including the time, place, type and form of the examination.
- V. The disposition of examinations, including provision of test results to examinees.
- VI. How a license to practice under this chapter shall be renewed, including the requirements for continuing education.
- VII. The establishment of all fees required under this chapter.
- VIII. Ethical and professional standards required to be met by each holder of a license to practice under this chapter and how disciplinary actions by the board shall be implemented for violations of these standards.
- IX. The training and experience requirements of home inspectors, and of apprentices.
- X. Procedures for the conduct of hearings consistent with the requirements of due process.

329-B:10 License Criteria.

I. No person shall provide, nor present, call or represent himself or herself as able to provide a home inspection for compensation unless licensed in accordance with the provisions of this chapter. No business entity may provide home inspection services unless each of the home inspectors employed by the business entity is licensed in accordance with the provisions of this chapter. No business entity may use, in connection with the name or signature of the business entity, the title "home inspectors" to describe the business entity's services, unless each of the home inspectors employed by the business entity is licensed in accordance with the provisions of this chapter.

II. To be eligible for a license as a home inspector, an applicant shall fulfill the following requirements:

- (a) Be of good moral character.
- (b) Have successfully completed high school or its equivalent.
- (c) Have completed a course of study of no less than 80 hours that covers all of the following components of a residential building of 4 units or less: heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof covering, exterior and interior components and site aspects as they affect the building.
- (d) Have acquired the required training and experience requirements as established by the board.

329-B:11 Expiration and Renewal. Notwithstanding any outstanding license to the contrary, all licenses issued by the board shall expire on the last day of the month of the

licensee's birth, but may be renewed during the following month, retroactive to the first day of the month. The fee for renewal of all licenses issued under this chapter shall be established by the board. Upon failure to pay the renewal fee within the required period, a licensee may renew his or her license by submitting the required fee plus \$10 before the last day of the second month following the month of his or her birth. Any application received thereafter shall be rejected, unless accompanied by proof of successful completion of the examination required under RSA 329-B:8. A licensed home inspector shall complete at least 20 hours of board approved continuing education during each calendar year in order to maintain his or her license.

329-B:12 Exclusions. A licensed home inspector shall not be required to perform any action or make any determination unless specifically required by lawful authority.

Inspectors are not required to determine:

- I. The condition of systems or components which are not readily accessible.
- II. The remaining life of any system or component.
- III. The strength, adequacy, effectiveness or efficiency of any system or component.
- IV. The causes of any condition or deficiency.
- V. The methods, materials, or costs of corrections.
- VI. Future conditions including, but not limited to, failure of systems and components.
- VII. The suitability of the property for any specialized use.
- VIII. Compliance with regulatory requirements (codes, regulations, laws, ordinances, etc.).
- IX. The market value of the property or its marketability.
- X. The advisability of the purchase of the property.
- XI. The presence of potentially hazardous plants or animals including, but not limited to, wood destroying organisms or diseases harmful to humans.
- XII. The presence of any environmental hazards including, but not limited to, toxins, carcinogens, noise, and contaminants in soil, water and air.
- XIII. The effectiveness of any system installed or methods utilized to control or remove suspected hazardous substances.
- XIV. The operating costs of systems or components.
- XV. The acoustical properties of any system or component.

329-B:13 Reciprocity. Upon payment to the board of a fee and the submission of a written application form provided by the board, the board shall issue a home inspector license to any person who holds a valid license, certificate, or registration issued by another state or possession of the United States or the District of Columbia that has standards substantially equivalent to, or exceeding, those of this state, as determined by the board.

329-B:14 Persons Not Required to be Licensed. Nothing in this chapter prevents:

- I. A person who is employed by a governmental entity from inspecting residential buildings if the inspection is within official duties and responsibilities.
- II. A person from performing a home inspection if the inspection will be used solely by a bank, savings and loan association or credit union to monitor progress on the construction of a residential structure.
- III. A person who is employed as a property manager for a residential structure and whose official duties and responsibilities include inspecting the residential structure from performing an inspection on the structure if the person does not receive separate compensation for the inspection work.
- IV. A person who is regulated in another profession from acting within the scope of that person's license, registration or certification.

329-B:15 Disciplinary Action.

- I. The board may undertake disciplinary proceedings:
 - (a) Upon its own initiative; or

(b) Upon written complaint of any person which charges that a person licensed by the board has committed misconduct under paragraph II and which specifies the grounds therefor.

II. Misconduct sufficient to support disciplinary proceedings under this section shall include:

- (a) The practice of fraud or deceit in procuring or attempting to procure a license to practice under this chapter;
- (b) Conviction of a felony or any offense involving moral turpitude;
- (c) Any unprofessional conduct, or dishonorable conduct unworthy of, and affecting the practice of, the profession;
- (d) Unfitness or incompetency by reason of negligent habits or other causes; or negligent or willful acts performed in a manner inconsistent with the health or safety of persons under the care of the licensee;
- (e) Addiction to the use of alcohol or other habit-forming drugs to a degree which renders him or her unfit to practice under this chapter;
- (f) Mental or physical incompetency to practice under this chapter;
- (g) Willful or repeated violation of the provisions of this chapter; or
- (h) Suspension or revocation of a license, similar to one issued under this chapter, in another jurisdiction and not reinstated.

III. The board may take disciplinary action in any one or more of the following ways:

- (a) By reprimand;
- (b) By suspension, limitation or restriction of license or certification for a period of up to 5 years;
- (c) By revocation of license or certification;
- (d) By requiring the person to participate in a program of continuing education in the area or areas in which he or she has been found deficient;
- (e) By requiring the home inspector to obtain insurance against loss, expense and liability resulting from errors and omissions or neglect in the performance of services as a home inspector; or
- (f) By requiring the home inspector to file with the board a bond that is furnished by a company authorized to do business in this state and is in the amount approved by the board.

329-B:16 Prohibited Acts. A licensed home inspector shall be prohibited from the following:

I. Performing or offering to perform, for an additional fee, any repairs to a structure on which the inspector, or the inspector's company, has prepared a home inspection report in the past 12 months, except that a home protection company that is affiliated with or that retains a home inspector does not violate this section if it performs repairs pursuant to a claim made under a home protection contract.

II. Inspecting for a fee any property in which the inspector, or the inspector's company, has any financial interest or any interest in the transfer of the property.

III. Offering or delivering any compensation, inducement or reward to the owner of the inspected property, the broker or agent, for the referral of any business to the inspector or the inspection company.

IV. Accepting an engagement to make an inspection or to prepare a report in which the inspection itself, or the fee payable for the inspection, is contingent upon either the conclusions in the report, preestablished findings, or the close of escrow.

329-B:17 Liability of Home Inspectors.

I. An action to recover damages for any act or omission of a home inspector relating to a home inspection that he or she conducts may only be commenced within 1 year after the date that a home inspection is completed.

II. Only a client and no other party shall have an action to recover damages arising from a home inspection or a home inspection report.

329-B:18 Appeals. Any person affected by a final decision of the board may appeal such final decision pursuant to RSA 541.

2 Effective Date. This act shall take effect January 1, 2007.

AMENDED ANALYSIS

This bill establishes the licensure of persons providing home inspection services and the regulation of such persons by a board of home inspectors.

The question being adoption of the committee amendment.

Rep. Patten yielded to questions.

On a division vote, 201 members having voted in the affirmative and 113 in the negative, the committee amendment was adopted.

On a division vote, 187 members having voted in the affirmative and 126 in the negative, the committee report was adopted.

Referred to Executive Departments and Administration.

Rep. Mirski declared a conflict of interest and did not participate.

HB 91-FN, repealing the local property tax exemption for wooden poles and conduits.

INEXPEDIENT TO LEGISLATE

Rep. Susan W. Almy for Ways and Means: This bill is the exact opposite of SB 11 which was thoroughly agreed and passed last year. The majority of the committee agreed that the issue should only be raised once in a term, at most. Vote 11-5.

Committee report adopted.

SPECIAL ORDER

HB 524, relative to outsourcing of jobs. **INEXPEDIENT TO LEGISLATE**

Rep. William J. Infantine for Labor, Industrial and Rehabilitative Services: While the intent is laudable, this bill would be grossly punitive and contrary to the accepted reality of globalization which in fact can result in substantial cost savings and job savings if offshore sourcing is managed rather than repudiated. This bill's provisions would not prevent large companies from dropping New Hampshire as a market, and could cause greater loss of jobs if passed. Vote 10-0.

Rep. Infantine moved recommit to committee.

Adopted.

Recommitted to Labor, Industrial and Rehabilitative Services.

COMMITTEE APPOINTMENTS

The Speaker appointed the following members to the Joint Committee for House Address 1:

Reps. Dokmo, Mooney, Sheila Francoeur, Kurk, Shurtleff and Pratt.

SPECIAL ORDER

The Speaker Special Ordered the remaining bills on today's calendar to February 1, 2006.

RESOLUTION

Rep. O'Neil 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 Wednesday, February 1, 2006 at 10:00 a.m.

Adopted.

LATE SESSION

Third reading and final passage

HB 1184, relative to the majority vote required for the use of bond proceeds in certain school

districts or municipalities.

HB 1248 FN, relative to the alteration of a portion of the town line between Milford and Amherst.

HB 1262, legalizing actions taken at town meeting relative to increasing the board of selectmen from 3 members to 5 members in the town of Pittsfield.

HB 1402, establishing the standard of care for certain individuals or nonprofit entities in constructing, maintaining, or improving trails for public recreational use, and establishing a committee to study the standard of care applicable to landowners, lessees, and occupants for the use of public recreational land.

HB 653-FN-L, relative to bonds for construction, development, improvement, and acquisition of broadband facilities.

HB 645-FN, relative to fire-safer cigarettes.

HB 397, relative to authority to file an abuse or neglect petition under the Child Protection Act.

HB 590, excluding stepchildren from the definition of "child" in the context of support orders.

HB 203-FN, relative to the regulation of tracking devices and establishing a commission on the use of tracking devices.

HB 459, relative to access to criminal records and enhanced 911 system records.

HB 638-FN, relative to county and state financing of nursing home services.

HB 506, including employees of charitable organizations under the protection of the state law against discrimination.

UNANIMOUS CONSENT

Rep. Houde-Quimby addressed the House.

PERSONAL PRIVILEGE

Rep. Mirski addressed the House.

Rep. Craig addressed the House

RECESS MOTION

Rep. O'Neil 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 5:25 p.m.

RECESS

(Speaker Scammann in the Chair)

COMMITTEE ASSIGNMENT

Rep. David W. Hess, on Health, Human Services and Elderly Affairs.

RECESS

SENATE MESSAGES

CONCURRENCE

HB 406, revising certain provisions of the home education statutes.

HB 505, relative to recording mailing addresses on property deeds.

NONCONCURRENCES

HB 66, regulating mandatory overtime for nurses and assistants.

HB 365, relative to recount fees.

HB 372, relative to notification of interested parties in medical parole cases.

HB 533-FN, relative to penalties for aggravated felonious sexual assault.

HB 696-FN, relative to enhanced penalties for certain crimes against the elderly and persons with disabilities.

CONCURRENCE WITH AMENDMENTS

SB 72, relative to the licensing of public adjusters.

SB 175, requiring insurance coverage for certified midwives.

SCR 3, relative to the Boys Scouts of America.

RECESS