

HOUSE RECORD

Second Year of the 160th General Court Calendar and Journal of the 2008 Session

Vol. 30

Concord, N.H.

Wednesday, January 16, 2008

No. 10

HOUSE JOURNAL No. 1 (cont.)

Wednesday, January 2, 2008

RECESS

(Rep. Wallner in the Chair)

RESOLUTION

Rep. Irwin offered the following: RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill numbered 1637 and House Resolution numbered 28 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 BILL AND HR

First, second reading and referral

HB 1637, relative to reports to the cancer registry. (MacKay, Merr 11: Health, Human Services and Elderly Affairs)

HR 28, affirming revenue estimates for fiscal years 2008 and 2009. (Almy, Graf 11: Ways and Means)

RECESS

Rep. Wallner moved that the House adjourn.
Adopted.

HOUSE JOURNAL No. 2

Wednesday, January 16, 2008

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

His Excellency, Governor John H. Lynch, joined the Speaker on the rostrum for the day's opening ceremonies.

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

Gracious God, we begin this day with gratitude for Your many blessings in our lives. For parents and spouses, siblings and children, for friends and for the many material benefits we are privileged to enjoy.

Receive our prayer today for those in our lives, and in this House of Representatives, who are experiencing physical or emotional hardship of any kind. We pray especially for Robert Forsing, Peter Cote and Ed Mears.

And as we prepare for the day's work, on the eve of celebrating the life of Rev. Dr. Martin Luther King, Jr., we remember the words of his mentor, Gandhi. O God, in all that we do, we join with them both in praying these words:

Infuse our politics with principle.

Teach us the importance of linking our wealth with honest work.

Let our commerce be morally just.

May our pleasures always be guided by conscience.

May our education be not only for the acquisition of knowledge but for the building of character.

May our science always serve humanity.

And may our service to you be a service willing to sacrifice for the good of others.

In Your Holy Name we pray. Amen.

Rep. Maurice Villeneuve, member from Bedford, led the Pledge of Allegiance.

LEAVES OF ABSENCE

Reps. Beauchesne, Peter Cote, Dumaine, Forsing, Goodwin, Humphries, Hutchinson, Levasseur, Mears, Michael Rollo, David Russell, Warren and Wheeler, the day, illness.

Reps. Jennifer Brown, Chris Christensen, French, Hutz, Ingbertson, Itse, Lessard, Lisle, Long, McGuirk, Plifka, Priestley, Deanna Rollo, Stevens and Tholl, the day, important business.

Reps. Lars Christiansen, Coughlin, Guthrie, Kimberly Shaw and Tupper, the day, illness in the family.

INTRODUCTION OF GUESTS

Christopher Ahlgren, Jr. and William Ahlgren, sons of Rep. Ahlgren. Benjamin Kingston and Lori and Chris Costantino, guests of Rep. O'Connell. Doris 'Granny D' Haddock, guest of Rep. Splaine. Richard Osborne, Nicholas Osborne and Jamie Sulek, husband, son and guest of Rep. Osborne. Jim Lynam, guest of Reps. Forest and Sysyn.

Paul Sanders of Westmoreland, and Amanda Stiles, a senior at Winnacunnet High School in Hampton, granddaughter of Rep. Stiles, Pages for the Day.

UNANIMOUS CONSENT

Rep. Whalley addressed the House.

Without objection, the Speaker ordered the remarks made by Rep. Whalley be printed in the Permanent Journal.

Rep. Whalley: Thank you, Madam Speaker. Over the years, this place has become my second family. We always don't get along. We are different people. In fact, some would say that we politely bicker. The family extends to the staff. We certainly extend it over to the Senate. The Executive Branch has been very kind to me. I hope it is a feeling that you get, no matter how long you are in this legislature, that you get to take some of that home with you. You will be closer to some than others and you will be closer to others than they are to you. But I have to thank you. The last three months have been very difficult and without the prayers, without the kind words, without your thoughts, I don't think I could really get through it. I don't know if I could ever say thank you often enough, but I will never stop trying. The humility that you have taught me and reinforced with me is beyond belief. I started with this small box of cards I've had to grow to a bushel basket. I don't think I will ever throw those cards away. They were not partisan. Friendship goes beyond partisan lines. But I wish to say thank you. I wish to say thank you for all the emails. I wish to say thank you to the Speaker and I wish that I could say thank you more adequately, but I'll never stop trying. Thank you.

COMMITTEE REPORTS – RETAINED BILLS

REGULAR CALENDAR

HB 47, exempting inheritances from marital assets for purposes of divorce settlements.

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

Rep. Elizabeth D. Blanchard for the Majority of Children and Family Law: This bill sought to exempt property from a divorce acquired by one spouse during a marriage by gift or bequest. We discovered the current statutes are adequate. It was the opinion of the committee that HB 47 would create more problems than it would solve. Vote 14-3.

Rep. Anthony P. Matarazzo for the Minority of Children and Family Law: This bill proposed to relieve some of the pain in divorce by taking inheritance of property, tangible and intangible, off the judge's table. Divorce is expensive and painful. Parents have worked hard to save and acquire property and no one should interfere with their right to private property. Its time to join with other states and take the family farm, as a matter of law, out of the property settlement arena.

Rep. Matarazzo spoke against.

Rep. Blanchard spoke in favor.

Majority committee report adopted.

HB 267, relative to certain small loans. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Stephen T. DeStefano for the Majority of Commerce: This bill would impose a 36% annual percentage rates (APR) cap for two different kinds of loan products: payday advances and title loans. Although the federal government requires payday and title loan companies to disclose an APR, the committee majority recognizes that this is not a true indicator of cost for these loan products. Title loans are collateralized by a motor vehicle, and are for a period of 30 days. The annualized rate cap proposed in HB 267 would translate into \$2.96 interest per \$100 borrowed on a 30 day title loan. Payday advances are loans of \$100 - \$500 for a typical period of 14 days. The annualized rate cap proposed in HB 267 would translate into a 14-day payday loan equaling \$1.38 per \$100 borrowed, which is less than 10 cents a day.

The rate cap proposed in HB 267 would force both the payday advance and title loan industry to close doors in our state. Once this industry leaves, consumers would have few, if any, real options: resort to bouncing checks and incurring fees that have an equivalent APR cost of 1,300%, paying credit card late fees that can reach an equivalent of 700%, take out unregulated internet loans with no usury cap, or visiting a pawn shop and potentially losing something of value. All these options provide a more costly option. The committee found that there is a need for regulated payday and title loan products and that these products can

provide valuable financial tools for many New Hampshire residents who have an unplanned expense between paychecks. Banning the industry, as HB 267 does, would do nothing to address this need. The unintended consequence is to force consumers into less safe and more costly options. Vote 12-6.

Rep. Stephen P. Spratt for the Minority of Commerce: The minority of the committee feels that HB 297 ought to pass. Strong testimony was given by representatives from NH Legal Assistance and the Welfare Administrators association. The testimony described a cycle of debt known as 'debt traps' which are nearly impossible to get away from once someone is ensnared. Interest rate charges at the low end equate to 250% APR. One argument against the bill was that these lending institutions were the only place of choice for its customers. The committee heard testimony to the contrary that local banks, credit unions through their community outreach programs, churches, friends, family, town assistance, etc. were all viable options and had been in place long before the 3 plus year history of the industry. Additionally it was clear to the minority of the committee that the effects of these debt traps go far beyond the original borrowers. Efforts to help relieve the situations caused by these loans are a burden on both agencies and a strain on local community resources when town aid must be used to ameliorate the situation. These loans for the most part target this state's most economically vulnerable citizens and the minority of the committee believes that we should strive to provide consumers with far less predatory sources of emergency funds. The minority remains committed to protecting consumers from the high cost long term debt traps which these products create. Along with the aforementioned support of local agencies and legislators the committee received full support from the banking commissioner in a letter which stated, "I remain committed to HB 267, ... That bill contains a cap of interest rates of 36% APR for both payday and title loans. I will oppose amendments that remove the rate cap." The commissioner concludes his letter with, "I support ... the bill including the 36% APR rate cap."

Reps. Marsh, Kidder and Spratt spoke against.

Rep. Loll spoke in favor.

Reps. Marshall Quandt and DeStefano spoke in favor and yielded to questions.

Rep. Marsh requested a roll call, sufficiently seconded.

YEAS 126 NAYS 205

YEAS 126

BELKNAP

Allen, Janet
Nedeau, Stephen
Tobin, William

Clark, Charles
Pilliod, James
Wendelboe, Fran

Flanders, Donald
Thomas, John
Whalley, Michael

Millham, Alida
Tilton, Franklin

CARROLL

Ahlgren, Christopher
Merrow, Harry

Brown, Carolyn
Patten, Betsey

Chandler, Gene

Denley, William

CHESHIRE

Emerson, Susan
Parkhurst, Henry

Hunt, John
Pelkey, Stephen

Lerandeau, Alfred

Loll, Thomas

COOS

King, Frederick

Remick, William

GRAFTON

Bulis, Lyle
Sorg, Gregory

Dingman, Vernon III

Eaton, Stephanie

Lovett, Sid

HILLSBOROUGH

Barry, Richard
Crane, Elenore Casey
Elliott, Nancy
Francoeur, Bea
Haefner, Robert
Infantine, William
McRae, Karen
O'Connell, Timothy
Reeves, Sandra
Stepanek, Stephen
Villeneuve, Maurice

Batula, Peter
Daniels, Gary
Essex, David
Gorman, Mary
Hawkins, Ken
Jasper, Shawn
Messier, Irene
Ober, Lynne
Renzullo, Andrew
Sullivan, Francis
Winters, Joel

Bergeron, Jean-Guy
Day, Russell
Fletcher, Richard
Goyette, Peter
Hinkle, Peyton
Lawrence, James
Mooney, Maureen
Ober, Russell III
Shaw, Barbara
Tahir, Saghir

Clark, Mark
Drisko, Richard
Forest, Armand
Graham, John
Hogan, Edith
Manney, Pamela
Moran, Edward
Price, Pamela
Soucy, Connie
Vaillancourt, Steve

MERRIMACK

Anderson, Eric
MacKay, James

Boutin, David
Reardon, Tara

DeStefano, Stephen
Reed, Dennis

Hess, David

ROCKINGHAM

Allen, Mary
Bettencourt, David
Case, Frank
Emiro, Frank
Gleason, John
Howard, Doreen
Lund, Howie
Nowe, Ronald
Rausch, James
Weare, Everett
Winchell, George

Baldasaro, Alfred
Bishop, Franklin
Charron, Gene
Fesh, Bob
Griffin, Mary
Ingram, Russell
Major, Norman
Pearson, Mark
Sanders, Elisabeth
Welch, David

Bedrick, Jason
Camm, Kevin
Dalrymple, David
Flanders, John Sr
Headd, James
Introne, Robert
McKinney, Betsy
Quandt, Marshall
Stiles, Nancy
Weyler, Kenneth

Belanger, Ronald
Carson, Sharon
Devine, James
Garcia, Marilinda
Hopfgarten, Paul
Kappler, Lawrence
McMahon, Charles
Quandt, Matthew
Waterhouse, Kevin
Wickson, Rick

STRAFFORD

DeChane, Marlene
Sprague, Dale

Domingo, Baldwin

Fargo, Thomas

Hilliard, Dana

SULLIVAN

Rodeschin, Beverly

NAYS 205

BELKNAP

Arsenault, Beth

Morrison, Gail

Reever, Judith

Wood, Jane

CARROLL

Bridgham, Robert
Heard, Virginia

Buco, Thomas
Knox, J. David

Butler, Edward
Martin, James

Cunningham, Howard

CHESHIRE

Allen, Peter

Burrige, Delmar

Butcher, Suzanne

Butterworth, Timothy

Butynski, William
Johnson, Jane
Sad, Tara

Dunn, J. Timothy
Mitchell, Bonnie
Weber, Lucy

Eaton, Daniel
Richardson, Barbara
Weed, Charles

Espiefs, Peter
Robertson, Timothy

COOS

Hatch, William
Theberge, Robert

Ingersoll, Paul Sr
Thomas, Yvonne

Merrick, Evalyn

Stohl, Eric

GRAFTON

Aguiar, James
Bleyler, Ruth
Gionet, Edmond
Matheson, Robert
Pierce, David

Almy, Susan
Cooney, Mary
Hammond, Lee
McLeod, Martha
Preston, Philip

Andersen, Gene
Estes, Carole
Harding, A Laurie
Mulholland, Catherine
Solomon, Peter

Benn, Bernard
Friedrich, Carol
Laliberte, Suzanne
Nordgren, Sharon
Williams, Burton

HILLSBOROUGH

Baroody, Benjamin
Brunelle, Michael
Daler, Jennifer
Garrity, Patrick
Haley, Robert
Harvey, Suzanne
Johnson, Stephen
Knowles, Mary Ann
Lasky, Bette
Marshall, Seth

Beaulieu, Jane
Chase, Claudia
Dokmo, Cynthia
Ginsburg, Ruth
Hall, Betty
Hebert, Roger
Kaelin, Michael
Kopka, Angeline
Leishman, Peter
Matarazzo, Anthony
Sr

Beck, Catriona
Clemons, Jane
Foster, Linda
Goley, Jeffrey
Hammond, Jill
Irwin, Anne-Marie
Kelley, John
Kurk, Neal
Levesque, Melanie
Movsesian, Lori

Bergin, Peter
Cote, David
Gargasz, Carolyn
Hackel, Paul
Hansen, Ryan
Jean, Claudette
Knowles, John
L'Heureux, Robert
Mack, Ron
Nagle, Maureen

O'Brien, Michael Sr
Reuschel, Michael
Schulze, Joan
Spaulding, Jayne

O'Neil, James
Rosenwald, Cindy
Shattuck, Gilman
Spratt, Stephen

Peterson, Andy
Rowe, Robert
Simon, Anthony
Sullivan, Daniel

Pilotte, Maurice
Scannell, David
Smith, David
Sysyn, Mary

MERRIMACK

Blanchard, Elizabeth
Clarke, Claire
Foose, Robert
Hamm, Christine

Bouchard, Candace
Davis, Frank
Gile, Mary
Kelly, Sally

Brown, Carole
DeJoie, John
Greco, Vincent
Kidder, David

Brueggemann, Donald
Ehlers, Eileen
Hager, Elizabeth
Kjellman, Eleanor
Glynn

Lockwood, Priscilla
Potter, Frances
Tilton, Joy
Williams, Robert

Osborne, Jessie
Richardson, Gary
Wallner, Mary
Yeaton, Charles

Owen, Derek
Ryan, Jim
Walz, Mary

Porter, Margaret
Shurtleff, Stephen
Webb, Leigh

ROCKINGHAM

Abbott, Dennis
Casey, Kimberley
Garrity, James
Kennedy, James
McEachern, Paul
Nord, Susi
Reagan, John
Snow, Richard

Borden, David
Day, Judith
Gould, Kenneth
Kepner, Susan
McKenna, Daniel
Pantelakos, Laura
Robertson, Carl
Splaine, James

Brown, C. Pennington
Elliott, Robert
Grote, Otto
Lister, Charlotte
Moody, Marcia
Pettersen, Don
Russell, Trink
Webber, James

Cali-Pitts, Jacqueline
Flockhart, Eileen
Henson, John
Marsh, Michael
Moore, Bennett
Powers, James
Serlin, Christopher
Wells, Roger

STRAFFORD

Berube, Roger	Billian, Deborah	Brennan, William	Brown, Julie
Brown, Larry	Burke, Rachel	Cyr, James	Grassie, Anne
Hofemann, Roland	Hubbard, Pamela	Kaen, Naida	Knowles, William
Mickelonis, Shawn	Miller, Joseph	Perry, Robert	Rous, Emma
Schmidt, Peter	Smith, Marjorie	Spang, Judith	Srnc, Robert
Vachon, Dennis	Wall, Janet	Watson, Robert	

SULLIVAN

Cloutier, John	Converse, Larry	Donovan, Thomas	Ferland, Brenda
Franklin, Peter	Gagnon, Raymond	Gottling, Suzanne	Houde, Matthew
Jillette, Arthur Jr	Nielsen, Ellen	Phinizy, James	Skinder, Carla

and the majority committee report failed.
Rep. Boyce did not vote and notified the Clerk that she wished to be recorded in favor.

Rep. David Smith moved Ought to Pass.

Rep. Matthew Quandt requested a roll call, sufficiently seconded.

YEAS 207 NAYS 124

YEAS 207

BELKNAP

Arsenault, Beth	Millham, Alida	Morrison, Gail	Reever, Judith
Wood, Jane			

CARROLL

Bridgham, Robert	Buco, Thomas	Butler, Edward	Cunningham, Howard
Heard, Virginia	Knox, J. David	Martin, James	

CHESHIRE

Allen, Peter	Burridge, Delmar	Butcher, Suzanne	Butterworth, Timothy
Butynski, William	Dunn, J. Timothy	Eaton, Daniel	Espiefs, Peter
Johnson, Jane	Lerandeau, Alfred	Mitchell, Bonnie	Richardson, Barbara
Robertson, Timothy	Sad, Tara	Weber, Lucy	Weed, Charles

COOS

Hatch, William	Ingersoll, Paul Sr	Merrick, Evalyn	Stohl, Eric
Theberge, Robert	Thomas, Yvonne		

GRAFTON

Almy, Susan	Andersen, Gene	Benn, Bernard	Bleyler, Ruth
Cooney, Mary	Estes, Carole	Friedrich, Carol	Hammond, Lee
Harding, A Laurie	Laliberte, Suzanne	Lovett, Sid	Matheson, Robert
McLeod, Martha	Mulholland, Catherine	Nordgren, Sharon	Pierce, David
Preston, Philip	Solomon, Peter	Williams, Burton	

HILLSBOROUGH

Baroody, Benjamin	Beaulieu, Jane	Beck, Catriona	Bergin, Peter
Brunelle, Michael	Chase, Claudia	Clemons, Jane	Cote, David
Daler, Jennifer	Dokmo, Cynthia	Forest, Armand	Foster, Linda

Gargas, Carolyn
Hackel, Paul
Hansen, Ryan
Jean, Claudette
Knowles, John
L'Heureux, Robert
Mack, Ron

Nagle, Maureen
Pilotte, Maurice
Scannell, David
Smith, David
Sysyn, Mary

Garrity, Patrick
Haley, Robert
Harvey, Suzanne
Johnson, Stephen
Knowles, Mary Ann
Lasky, Bette
Marshall, Seth

O'Brien, Michael Sr
Reuschel, Michael
Schulze, Joan
Spaulding, Jayne

Ginsburg, Ruth
Hall, Betty
Hebert, Roger
Kaelin, Michael
Kopka, Angeline
Leishman, Peter
Matarazzo, Anthony
Sr

O'Neil, James
Rosenwald, Cindy
Shattuck, Gilman
Spratt, Stephen

Goley, Jeffrey
Hammond, Jill
Irwin, Anne-Marie
Kelley, John
Kurk, Neal
Levesque, Melanie
Movsesian, Lori

Peterson, Andy
Rowe, Robert
Simon, Anthony
Sullivan, Daniel

MERRIMACK

Anderson, Eric
Brueggemann, Donald
Ehlers, Eileen
Hager, Elizabeth
Kjellman, Eleanor
Glynn
Porter, Margaret
Shurtleff, Stephen
Webb, Leigh

Blanchard, Elizabeth
Clarke, Claire
Foos, Robert
Hamm, Christine
Lockwood, Priscilla

Potter, Frances
Tilton, Joy
Williams, Robert

Bouchard, Candace
Davis, Frank
Gile, Mary
Kelly, Sally
Osborne, Jessie

Richardson, Gary
Wallner, Mary
Yeaton, Charles

Brown, Carole
DeJoie, John
Greco, Vincent
Kidder, David
Owen, Derek

Ryan, Jim
Walz, Mary

ROCKINGHAM

Abbott, Dennis
Casey, Kimberley
Garrity, James
Kennedy, James
McEachern, Paul
Nord, Susi
Robertson, Carl
Splaine, James

Borden, David
Day, Judith
Gould, Kenneth
Kepner, Susan
McKenna, Daniel
Pantelakos, Laura
Russell, Trink
Webber, James

Brown, C. Pennington
Elliott, Robert
Grote, Otto
Lister, Charlotte
Moody, Marcia
Pettersen, Don
Serlin, Christopher
Wells, Roger

Cali-Pitts, Jacqueline
Flockhart, Eileen
Henson, John
Marsh, Michael
Moore, Bennett
Powers, James
Snow, Richard

STRAFFORD

Berube, Roger
Brown, Larry
Hofemann, Roland
Mickelson, Shawn
Schmidt, Peter
Vachon, Dennis

Billian, Deborah
Burke, Rachel
Hubbard, Pamela
Miller, Joseph
Smith, Marjorie
Wall, Janet

Brennan, William
Cyr, James
Kaen, Naida
Perry, Robert
Spang, Judith
Watson, Robert

Brown, Julie
Grassie, Anne
Knowles, William
Rous, Emma
Srnc, Robert

SULLIVAN

Cloutier, John
Franklin, Peter
Jillette, Arthur Jr

Converse, Larry
Gagnon, Raymond
Nielsen, Ellen

Donovan, Thomas
Gottling, Suzanne
Phinzy, James

Ferland, Brenda
Houde, Matthew
Skinder, Carla

NAYS 124

BELKNAP

Allen, Janet

Clark, Charles

Flanders, Donald

Nedeau, Stephen

Pilliod, James
Wendelboe, Fran

Thomas, John
Whalley, Michael

Tilton, Franklin

Tobin, William

CARROLL

Ahlgren, Christopher
Morrow, Harry

Brown, Carolyn
Patten, Betsey

Chandler, Gene

Denley, William

CHESHIRE

Emerson, Susan
Pelkey, Stephen

Hunt, John

Loll, Thomas

Parkhurst, Henry

COOS

King, Frederick

Remick, William

GRAFTON

Aguiar, James
Gionet, Edmond

Bulis, Lyle
Sorg, Gregory

Dingman, Vernon III

Eaton, Stephanie

HILLSBOROUGH

Barry, Richard
Crane, Elenore Casey
Elliott, Nancy
Gorman, Mary
Hawkins, Ken
Jasper, Shawn
Messier, Irene
Ober, Lynne
Renzullo, Andrew
Sullivan, Francis
Winters, Joel

Batula, Peter
Daniels, Gary
Essex, David
Goyette, Peter
Hinkle, Peyton
Lawrence, James
Mooney, Maureen
Ober, Russell III
Shaw, Barbara
Tahir, Saghir

Bergeron, Jean-Guy
Day, Russell
Fletcher, Richard
Graham, John
Hogan, Edith
Manney, Pamela
Moran, Edward
Price, Pamela
Soucy, Connie
Vaillancourt, Steve

Clark, Mark
Drisko, Richard
Francoeur, Bea
Haefner, Robert
Infantine, William
McRae, Karen
O'Connell, Timothy
Reeves, Sandra
Stepanek, Stephen
Villeneuve, Maurice

MERRIMACK

Boutin, David
Reardon, Tara

DeStefano, Stephen
Reed, Dennis

Hess, David

MacKay, James

ROCKINGHAM

Allen, Mary
Bettencourt, David
Case, Frank
Emiro, Frank
Gleason, John
Howard, Doreen
Lund, Howie
Nowe, Ronald
Rausch, James
Waterhouse, Kevin
Wickson, Rick

Baldasaro, Alfred
Bishop, Franklin
Charron, Gene
Fesh, Bob
Griffin, Mary
Ingram, Russell
Major, Norman
Pearson, Mark
Reagan, John
Weare, Everett
Winchell, George

Bedrick, Jason
Camm, Kevin
Dalrymple, David
Flanders, John Sr
Headd, James
Introne, Robert
McKinney, Betsy
Quandt, Marshall
Sanders, Elisabeth
Welch, David

Belanger, Ronald
Carson, Sharon
Devine, James
Garcia, Marilinda
Hopfgarten, Paul
Kappler, Lawrence
McMahon, Charles
Quandt, Matthew
Stiles, Nancy
Weyler, Kenneth

STRAFFORD

DeChane, Marlene
Sprague, Dale

Domingo, Baldwin

Fargo, Thomas

Hilliard, Dana

SULLIVAN

Rodeschin, Beverly

and the motion was adopted.

Ordered to third reading.

Rep. Roberts declared a conflict of interest on **HB 267** and did not participate.

Rep. Boyce did not vote and notified the Clerk that she wished to be recorded against.

HB 461, relative to purchasing alliances. **OUGHT TO PASS.**

Rep. Donald H. Flanders for Commerce: This bill establishes a law governing purchasing alliances which may be formed for the purposes of purchasing health insurance. It is the same as SB 515 which was passed by this House last year and died in the Senate. It is based on the concept of using a purchasing alliance to foster competition among carriers and does not change any mandates or rating criteria adopted under SB 125 (Chapter 225, Laws of 2005) and is supported by the Insurance Department. Vote 15-2.

Committee report adopted.

Ordered to third reading.

HB 620-FN, repealing the statutory provisions regarding small loans, title loans, and payday loans and establishing a general statutory usury rate. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Stephen T. DeStefano for Commerce: This bill implements new, dramatic reforms to protect consumers and further regulate the payday loan industry. The committee recognizes that there is a potential for abuse of payday loans, but also realizes that there is a need for this product in our state. A payday loan can provide a valuable option to many New Hampshire residents who have an unexpected expense between paychecks. These loans are for between \$100-\$500 and to qualify, the individual must have a paycheck and a checking account. Consumers pay a one time fee based on the amount of the loan with the right to rescind the next day. There are protections already in place for individuals who chose to take out a payday loan. The maximum amount of the loan is \$500. A new loan can not be taken out until the first is paid back in full and no additional fees are charged even if payment is late. The committee heard from several individuals and groups while working on this legislation including state and local agencies, nonprofit groups, payday loan customers, payday loan employees and companies that provide these loans. After listening to all their concerns, the committee crafted this legislation that toughens the current law, further protects consumers and ensures this loan option continues to be available in our state. This bill will place a cap on fees paid by consumers of \$15 per \$100 borrowed. It will require a next day cooling off period between loans and a 2 day cooling off after the fifth consecutive loan. It will also require payday lenders to offer an extended payment plan without additional fees if a customer is not able to pay the loan back on time. When consumers find themselves unexpectedly in need of financial assistance between paychecks, they will consider all the options and pick what works best for them and their family. In some cases, they will choose a payday loan. It is our job as their elected representatives to ensure the product is a safe option. HB 620 will do that by cracking down on the industry and protecting borrowers but at the same time, allowing them access to this product in our state. Vote 15-3.

Amendment (2530h)

Amend the title by replacing it with the following:

AN ACT relative to payday loans.

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

- 1 Payday Loan; Definition. RSA 399-A:1, X is repealed and reenacted to read as follows:

X. "Payday loan" means a small-dollar, short-maturity, secured or unsecured loan, other than a title loan, where the lender contracts for, exacts or receives, directly or indirectly, or where the borrower pays for, directly or indirectly, in connection with any such loan, any charges which in the aggregate are greater than 50 percent per annum.

2 Small Loan; Definition. Amend RSA 399-A:1, XIV to read as follows:

XIV. "Small loan" means a closed-end loan in the amount of \$10,000 or less or an open-end loan with a line of credit of \$10,000 or less, and where the lender contracts for, exacts or receives, directly or indirectly, ***or where the borrower pays for directly or indirectly*** in connection with any such loan any charges, whether for interest, ***examination commission***, compensation, ***service***, brokerage, endorsement fees, ***other fees***, consideration, expense or otherwise, which in the aggregate are greater than 10 percent per annum ***except for the lawful fees, if any, actually and necessarily paid out by the lender to any public officer, for filing or recording in any public office any instrument securing such loan and except for the reasonable costs, charges, and expenses, including court costs actually incurred in connection with a repossession of the security or an actual sale of the security.***

3 No Refinancing of Payday Loans. Amend RSA 399-A:11, X-XI to read as follows:

X. If a borrower desires to renew an existing closed-end loan [~~payday loan, or title loan~~] for the purpose of obtaining additional cash a new contract shall be drawn up in its entirety and such prior loan shall be paid in full from such proceeds of the new loan. ***Payday loans shall not be rolled over, renewed, or refinanced.*** All legal papers in connection with such prior loan shall be stamped "PAID IN FULL" and returned to such borrower.

XI. No charge for any examination, service, brokerage, commission, or other fee shall be directly or indirectly made or contracted for on closed-end ***small*** loans, ***including*** payday loans, or title loans except the lawful fees, if any, actually and necessarily paid out by the lender to any public officer, for filing or recording in any public office any instrument securing such loan, which fees may be collected when such loan is made, or at any time thereafter and except the reasonable costs, charges, and expenses, including court costs actually incurred in connection with a repossession of the security or an actual sale of the security in foreclosure proceedings or upon entry of judgment.

4 Debit Authorization. Amend RSA 399-A:13, II(d)-(e) to read as follows:

(d) Evidence of receipt from the borrower of a check ***or other account debit authorization***, dated the same date, as security for the loan, stating the amount of the check, ***if a check or other account debit authorization was given by the borrower.***

(e) An agreement by the lender not to present the check ***or other account debit authorization*** for payment or deposit until a specified maturity date, which date shall be at least 7 days and not more than 30 days after the date the loan is made [~~and after which date interest shall not accrue at a greater rate than 6 percent per year~~], ***if a check or other account debit authorization was given by the borrower.***

5 New Subparagraph; Interest Cap. Amend RSA 399-A:13, II by inserting after subparagraph (g) the following new subparagraph:

(h) That after expiration of the time frame in subparagraph (e), interest shall not accrue at a greater rate than 6 percent per year.

6 Out-of-State Arbitration. Amend RSA 399-A:13, IV(b) to read as follows:

(b) Authorizing the lender or any third party to bring suit against the borrower in a court outside the state ***or to require a borrower to accept an arbitration forum outside the state;*** or

7 Lender Affiliates. Amend RSA 399-A:13, VI-VIII to read as follows:

VI. A lender shall not cause any person to be obligated to the lender ***and any affiliate of the lender*** in any capacity at any time in the principal amount of more than \$500.

VII. A lender shall not refinance, renew, **rollover**, or extend any loan; **a payday loan shall not be refinanced and shall not be paid off with the proceeds of another payday loan.**

VIII. A lender shall not cause a borrower to be obligated **to the lender or an affiliate of the lender** upon more than one loan at any time for the purpose of increasing charges payable by the borrower.

8 Debit Authorization. Amend RSA 399-A:13, XI to read as follows:

XI. A lender shall not take an interest in any property other than a check payable to the lender **or an authorization to debit a borrower's account** as security for a loan.

9 New Paragraphs; Payday Loan Lenders. Amend RSA 399-A:13 by inserting after paragraph XVIII the following new paragraphs:

XIX. A lender shall not prosecute a borrower or cause a borrower to be prosecuted if a check or ACH authorization given as security for a loan is dishonored.

XX. A lender and any affiliate of the lender shall not make a payday loan to a person who has previously borrowed from the lender or affiliate until the next business day after the prior loan has been paid off and in no case less than 12 hours from the time of payoff. The lender is responsible to document both the payoff date and the new loan date, if any, in a manner that compliance with this section can be verified by the commissioner. If the time between the payoff and the new loan is less than one full business day, the lender shall record the date and hour of the payoff and the date and hour of the new loan in a manner that compliance with this section can be verified by the commissioner. This cooling-off period shall be calculated from the date and time of the payoff by the borrower of a payday loan to the date and time that the borrower executes a new loan contract or is obligated under another payday loan, whichever is earlier.

XXI. A new loan contract form shall be completed by the borrower and a new loan contract shall be entered into and executed by the borrower and the lender for each loan; no pre-authorization or master loan agreement shall be used by the lender.

XXII. The interest rate for a payday loan shall not exceed the rate that results from the calculation of \$15 per \$100 on a 14-day loan.

XXIII.(a) If a borrower, on the business day immediately preceding the date a payday loan is due, returns to the lender's place of business where the loan was consummated, requests an extended payment plan (EPP), and signs an amendment to the parties' written agreement, then the lender must enter into an EPP with the borrower. The EPP must allow the borrower, for no additional finance charge, to pay the remaining balance of the payday loan in 4 substantially equal installments that coincide with the next 4 dates, following the amendment execution date, on which the borrower receives installments of regular income. The borrower may request an EPP in connection with any payday loan, provided that the borrower may request only one EPP from any single lender during any 12-month period. During the period that a borrower has an EPP outstanding and for 15 days following the date the borrower fully pays an EPP, a lender shall not make a new payday loan to the borrower.

(b) A lender making a payday loan shall provide the borrower, in the parties' written agreement, the following written notice in at least 8-point bold type immediately above the borrower's signature: "EXTENDED PAYMENT PLAN NOTICE. State law gives you the right to an extended payment plan (EPP), as described in this notice. If you – on the business day immediately preceding the date this payday loan is due – return to the lender's place of business where this loan was consummated, request an EPP, and sign an amendment to this agreement, then the lender must enter into an EPP with you. The EPP must allow you, for no additional finance charge, to pay the remaining balance of this loan in 4 substantially equal installments that coincide with the next 4 dates, following the amendment execution date, on which you receive installments of regular income. You may request an EPP in connection with any payday loan, provided that you may request only one EPP from any single lender during any 12-month period. During the period that you have an

EPP outstanding and for 15 days following the date that you fully pay an EPP, a lender may not make a new payday loan to you.”

XXIV. For the purpose of this section, a “consecutive payday loan” means a payday loan that a lender makes to a borrower within 5 calendar days following the date that the borrower fully paid a previous payday loan made by the same lender to the same borrower. If a borrower obtains 5 consecutive payday loans from a lender, then the lender shall not make a new payday loan to the borrower until at least 2 calendar days have elapsed following the date that the borrower fully paid the fifth consecutive payday loan.

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

AMENDED ANALYSIS

This bill makes various changes to the law regarding payday loans.

On a division vote, 138 members having voted in the affirmative and 176 in the negative, the committee amendment failed.

The question now being adoption of the motion of Ought to Pass.

Rep. DeStefano yielded to questions.

MOTION TO RECONSIDER

Having voted on the prevailing side, Rep. James Garrity moved that the House reconsider its action whereby it failed to adopt House committee amendment (2530h) to **HB 620-FN**, repealing the statutory provisions regarding small loans, title loans, and payday loans and establishing a general statutory usury rate.

Rep. James Garrity spoke in favor.

On a division vote, 139 members having voted in the affirmative and 191 in the negative, the motion failed.

Rep. Rowe moved Recommit.

LAID ON THE TABLE

Rep. Cali-Pitts moved that **HB 620-FN**, repealing the statutory provisions regarding small loans, title loans, and payday loans and establishing a general statutory usury rate, be laid on the table.

On a division vote, 237 members having voted in the affirmative and 98 in the negative, the motion was adopted.

Rep. Roberts declared a conflict of interest on **HB 620-FN** and did not participate.

REGULAR CALENDAR – RETAINED BILLS (CONT'D)

HB 686-FN, relative to the regulation of tracking devices. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Matthew S. Houde for the Majority of Commerce: This bill would have: regulated the use of tracking devices in consumer products by requiring labels that inform consumers of their presence; restricted the circumstances under which the state could use electronic tracking devices; and prohibited private citizens from electronically tracking another person without consent. The committee feels it is premature to introduce legislation at this time since a study commission is actively engaged in resolving many of the issues raised by the bill (including constitutional ramifications of New Hampshire adopting disclosure requirements not used elsewhere and beneficial uses that would otherwise be foreclosed).
Vote 12-6.

Rep. Joel F. Winters for the Minority of Commerce: Over the 2005 summer break, the committee studied RFID with the retained HB 203. RFID was recognized as a beneficial technology that carried numerous privacy concerns; the amended bill laid out basic, common sense ground rules to guide the RFID industry as it developed. Merchants would have to

label products containing these devices, the state would be restricted from putting RFID in drivers licenses and other documents, and it would be a felony to forcibly implant someone with a RFID chip. Explicit laws provided the legislative oversight for the study commission that would continue to examine and flesh out consumer protections on RFID; however, those laws were struck on the Senate floor, leaving only the study commission. Given that a minority of commission members represent consumer's interests, any legislation proposed by the commission likely will not protect our constituents as well as the pro-active consumer protection of HB 686, which contains the deleted provisions of HB 203. Rep. Reardon moved Recommit, spoke in favor and yielded to questions. Adopted.

HB 711-FN, requiring insurance coverage for the cost of hormone treatment drugs for transsexuals. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. John B. Hunt for the Majority of Commerce: The committee was very sensitive to the perceived discrimination that this bill attempted to address. The issue is not simply that a person's sex limits them to what prescriptions they may receive. For example, a heterosexual male undergoing treatment for prostate cancer may be prescribed estrogen and that is a covered benefit by most health insurers. Currently, many health insurance policies specifically exclude coverage for services related to the process and procedures a person undergoes for transsexual identity change. The committee heard conflicting information on, once a person has surgically changed their identity, whether they will then have their lifetime of hormone therapy covered by insurance. (In other words, once a male becomes a female, on-going estrogen therapy may or may not be covered.) It was generally agreed that these hormones are relatively inexpensive and likely affordable for patients undergoing the sex change process. The committee is also concerned that passage of this mandate is just the first step and will more than likely lead to another mandate for the far more expensive surgery as has happened with other health insurance mandates in the past and present. Vote 14-4.

Rep. Susi Nord for the Minority of Commerce: This bill is a limited health insurance mandate to cover hormone therapy for transgender individuals. Insurance carriers stipulated that the cost of this coverage is minimal; they oppose the mandate on an ideological basis. In fact, the ultimate cost per person should be lower since many of these individuals will no longer need the more expensive psychiatric drugs they were on once their condition is properly diagnosed and treated. Hormones are relatively inexpensive drugs since they have been around for a long time and the hormones covered in the mandate are all already on the insurance carriers' formularies. That means that insurance carriers pay for them for menopause or prostate cancer, just not for gender identity disorder. In fact, these drugs would be covered for gender identity under the off-label prescription drug chapter of the insurance statutes except that they are specifically singled out for exclusion by the insurance companies. This special exclusion has led many transgender individuals to feel discriminated against by their insurance carriers. They point out that these drugs are covered by public insurance such as Medicaid, and wonder why private companies are allowed to exclude their specific condition.

Rep. Bettencourt requested a roll call, sufficiently seconded.

YEAS 276 NAYS 58

YEAS 276

BELKNAP

Allen, Janet
Millham, Alida

Boyce, Laurie
Nedeau, Stephen

Clark, Charles
Pilliod, James

Flanders, Donald
Thomas, John

Tilton, Franklin
Wood, Jane

Tobin, William

Wendelboe, Fran

Whalley, Michael

CARROLL

Ahlgren, Christopher
Butler, Edward
Heard, Virginia
Patten, Betsey

Bridgham, Robert
Chandler, Gene
Knox, J. David

Brown, Carolyn
Cunningham, Howard
Martin, James

Buco, Thomas
Denley, William
Morrow, Harry

CHESHIRE

Allen, Peter
Chase, William
Hunt, John
Pelkey, Stephen

Burrige, Delmar
Dunn, J. Timothy
Johnson, Jane
Richardson, Barbara

Butterworth, Timothy
Eaton, Daniel
Lerandeau, Alfred
Roberts, Kris

Butynski, William
Emerson, Susan
Parkhurst, Henry
Weber, Lucy

COOS

Hatch, William
Stohl, Eric

King, Frederick
Theberge, Robert

Merrick, Evalyn
Thomas, Yvonne

Remick, William

GRAFTON

Aguiar, James
Cooney, Mary
Gionet, Edmond
Matheson, Robert
Preston, Philip

Benn, Bernard
Dingman, Vernon III
Harding, A Laurie
McLeod, Martha
Solomon, Peter

Bleyler, Ruth
Eaton, Stephanie
Laliberte, Suzanne
Nordgren, Sharon
Sorg, Gregory

Bulis, Lyle
Estes, Carole
Lovett, Sid
Pierce, David
Williams, Burton

HILLSBOROUGH

Baroody, Benjamin
Beck, Catriona
Campbell, David
Crane, Elenore Casey
Dokmo, Cynthia
Foster, Linda
Goley, Jeffrey
Haefner, Robert
Hawkins, Ken
Irwin, Anne-Marie
Knowles, John
L'Heureux, Robert
Marshall, Seth
Moran, Edward
O'Neil, James
Pilotte, Maurice
Rosenwald, Cindy
Shaw, Barbara
Spratt, Stephen
Sysyn, Mary
Winters, Joel

Barry, Richard
Bergeron, Jean-Guy
Clark, Mark
Daler, Jennifer
Elliott, Nancy
Francoeur, Bea
Gorman, Mary
Haley, Robert
Hinkle, Peyton
Jasper, Shawn
Knowles, Mary Ann
Lawrence, James
McRae, Karen
Movsesian, Lori
Ober, Lynne
Price, Pamela
Rowe, Robert
Smith, David
Stepanek, Stephen
Tahir, Saghir

Batula, Peter
Bergin, Peter
Clemons, Jane
Daniels, Gary
Essex, David
Gargasz, Carolyn
Goyette, Peter
Hall, Betty
Hogan, Edith
Jean, Claudette
Kopka, Angeline
Leishman, Peter
Messier, Irene
O'Brien, Michael Sr
Ober, Russell III
Reeves, Sandra
Schulze, Joan
Soucy, Connie
Sullivan, Daniel
Vaillancourt, Steve

Beaulieu, Jane
Brunelle, Michael
Cote, David
Day, Russell
Fletcher, Richard
Garrity, Patrick
Graham, John
Hansen, Ryan
Infantine, William
Kaelin, Michael
Kurk, Neal
Manney, Pamela
Mooney, Maureen
O'Connell, Timothy
Peterson, Andy
Renzullo, Andrew
Shattuck, Gilman
Spaulding, Jayne
Sullivan, Francis
Villeneuve, Maurice

MERRIMACK

Anderson, Eric
Brown, Carole

Blanchard, Elizabeth
Brueggemann, Donald

Bouchard, Candace
Clarke, Claire

Boutin, David
Davis, Frank

DeJoie, John
Hager, Elizabeth
Lockwood, Priscilla
Reardon, Tara
Tilton, Joy
Williams, Robert

DeStefano, Stephen
Hamm, Christine
MacKay, James
Reed, Dennis
Wallner, Mary

Gile, Mary
Hess, David
Osborne, Jessie
Ryan, Jim
Walz, Mary

Greco, Vincent
Kidder, David
Porter, Margaret
Shurtleff, Stephen
Webb, Leigh

ROCKINGHAM

Abbott, Dennis
Belanger, Ronald
Camm, Kevin
Charron, Gene
DiFruscia, Anthony
Flanders, John Sr
Gould, Kenneth
Henson, John
Introne, Robert
Kennedy, James
Major, Norman
Nowe, Ronald
Preston, Mark
Reagan, John
Snow, Richard
Webber, James
Wickson, Rick

Allen, Mary
Bettencourt, David
Carson, Sharon
Dalrymple, David
Elliott, Robert
Garcia, Marilinda
Griffin, Mary
Hopfgarten, Paul
Kappler, Lawrence
Kepner, Susan
McKinney, Betsy
Pantelakos, Laura
Quandt, Marshall
Robertson, Carl
Stiles, Nancy
Welch, David
Winchell, George

Baldasaro, Alfred
Bishop, Franklin
Case, Frank
Day, Judith
Emiro, Frank
Garrity, James
Grote, Otto
Howard, Doreen
Katsakiores, George
Lister, Charlotte
McMahon, Charles
Pearson, Mark
Quandt, Matthew
Sanders, Elisabeth
Waterhouse, Kevin
Wells, Roger

Bedrick, Jason
Brown, C. Pennington
Casey, Kimberley
Devine, James
Fesh, Bob
Gleason, John
Headd, James
Ingram, Russell
Katsakiores, Phyllis
Lund, Howie
Moore, Bennett
Pettersson, Don
Rausch, James
Serlin, Christopher
Weare, Everett
Weyler, Kenneth

STRAFFORD

Berube, Roger
Burke, Rachel
Hubbard, Pamela
Perry, Robert
Sprague, Dale
Watson, Robert

Billian, Deborah
Cyr, James
Kaen, Naida
Schmidt, Peter
Srnc, Robert

Brennan, William
Fargo, Thomas
Knowles, William
Smith, Marjorie
Vachon, Dennis

Brown, Julie
Grassie, Anne
Miller, Joseph
Spang, Judith
Wall, Janet

SULLIVAN

Cloutier, John
Gagnon, Raymond
Phinzy, James

Donovan, Thomas
Gottling, Suzanne
Rodeschin, Beverly

Ferland, Brenda
Houde, Matthew

Franklin, Peter
Jillette, Arthur Jr

NAYS 58

BELKNAP

Arsenault, Beth

Morrison, Gail

Reever, Judith

CARROLL

None

CHESHIRE

Butcher, Suzanne
Robertson, Timothy

Espieffs, Peter
Sad, Tara

Loll, Thomas
Weed, Charles

Mitchell, Bonnie

COOS

Ingersoll, Paul Sr

GRAFTON

Almy, Susan
Mulholland, Catherine

Andersen, Gene

Friedrich, Carol

Hammond, Lee

HILLSBOROUGH

Chase, Claudia
Harvey, Suzanne
Lasky, Bette
Reuschel, Michael

Ginsburg, Ruth
Hebert, Roger
Levesque, Melanie
Scannell, David

Hackel, Paul
Johnson, Stephen
Mack, Ron
Simon, Anthony

Hammond, Jill
Kelley, John
Nagle, Maureen

MERRIMACK

Ehlers, Eileen
Potter, Frances

Foose, Robert
Richardson, Gary

Kelly, Sally
Yeaton, Charles

Owen, Derek

ROCKINGHAM

Borden, David
McEachern, Paul
Powers, James

Cali-Pitts, Jacqueline
McKenna, Daniel
Russell, Trinkia

Flockhart, Eileen
Moody, Marcia
Splaine, James

Marsh, Michael
Nord, Susi

STRAFFORD

Brown, Larry
Mickelonis, Shawn

DeChane, Marlene
Rous, Emma

Hilliard, Dana

Hofemann, Roland

SULLIVAN

Converse, Larry

Nielsen, Ellen

Skinder, Carla

and the majority committee report was adopted.

Reps. Mickelonis and Almy voted Nay and intended to vote Yea.

HB 759-FN*, relative to administration and enforcement of banking laws. **OUGHT TO PASS WITH AMENDMENT.*

Rep. Tara G. Reardon for Commerce: This bill was a technical change bill requested by the NH Banking Department last session. The committee removed all provisions regarding payday and title loans and those subjects were considered in other retained bills. Additions were made to the information required in application to the department for licensures; added the term “registrants” to portions of the law applying to “licensees”; allows the department to employ experts to recreate records that are inadequate to examine; includes background checks for those applying to be a mortgage broker licenses; includes “indirect owners” in the definition of principal; enables the department to share information with other state agencies if needed; and clarifies a provision regarding unclaimed money transmissions. Vote 18-0.

Amendment (2585h)

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

1 Principal; Definition. Amend RSA 361-A:1, VIII-a to read as follows:

VIII-a. “Principal” of the applicant or licensee means an owner with 10 percent or more ownership interest, corporate officer, director, member, general or limited liability partner, limited partner with 10 percent or more ownership interest, trustee, beneficiary of 10 percent or more of the trust that owns the applicant or licensee, ***indirect owner***, senior

manager, New Hampshire branch manager, and any person occupying similar status or performing similar functions.

2 Sales Finance Company; Definition. Amend the introductory paragraph of RSA 361-A:1, XIII to read as follows:

XIII. "Sales finance company" means a person engaged, in whole or in part, directly or indirectly, in the business of providing motor vehicle financing in this state to one or more retail buyers, or in the business of purchasing retail installment contracts from one or more retail sellers. The term includes but is not limited to any **state or** federally chartered bank, savings bank, trust company, credit union, cooperative bank, finance company, lending agency, industrial bank, or investment company, if so engaged. The term does not include the pledgee of an aggregate number of such contracts to secure a bona fide loan thereon, **or other persons not within the intent of this chapter as the commissioner may designate by rule or order**, nor does it include a licensed retail seller who:

3 State Chartered Banks; Licenses. Amend RSA 361-A:2, I to read as follows:

I. No person shall engage in the business of a sales finance company or retail seller in this state without a license therefor as provided in this chapter. Persons subject to this chapter shall be responsible for the supervision of their employees, agents, and branch offices. No **state or** federally chartered bank, savings bank, trust company, credit union, cooperative bank, or industrial bank shall be required to obtain such a license but shall comply with the provisions of RSA 361-A:7-12, unless otherwise exempted in this chapter.

4 Annual Report Due. Amend RSA 361-A:2-b, I(a) to read as follows:

I.(a) Each sales finance company licensee shall file, under oath, an annual report with the commissioner on or before ~~[February 1]~~ **March 31** each year concerning operations for the preceding year or license period ending December 31 upon a form prescribed by the commissioner

5 New Section; Prohibitions. Amend RSA 361-A by inserting after section 3-a the following new section:

361:3-b Prohibitions.

I. It is unlawful for any person, in connection with the solicitation, offer, or closing of a loan, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II. It is unlawful for any person to make or cause to be made in any document filed under this chapter or in any proceeding under this chapter any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

III. Any condition, stipulation or provision binding any person to waive compliance with any provision of this chapter or any rule or order under this chapter is void.

6 Banking Department; Examination of Records. Amend RSA 361-A:6-a, II to read as follows:

II. The affairs and records of every sales finance company licensee or person shall be subject at any time to periodic, special, regular, or other examination by the banking department with or without notice to the licensee or person. Those licensees or persons that maintain their files and business documents in another state shall appoint a New Hampshire agent and shall return such files and documents **to such agent, or** to their principal New Hampshire office, **or to the banking department** ~~[or the office of their New Hampshire agent]~~ for examination no later than 21 calendar days after being requested to do so by the

banking department. When the commissioner requests a list of New Hampshire consumers who have contracted with the licensee or other similar summary document from a licensee from which to select particular files for review, the licensee shall ensure that the list is received by the commissioner within 7 calendar days and return the files selected by the commissioner to the commissioner within 14 calendar days to ensure compliance with the 21 day requirement. Failure to provide files and documents within the time established by this paragraph shall subject a licensee or person to a fine of \$50 per day for each day after 21 days the files and documents are not produced. Failure to provide files and documents within 60 days after being requested to do so by the banking department shall be sufficient cause for license revocation, suspension, or denial.

7 Balloon Payment Loans. Amend RSA 361-A:8-a, III(c) to read as follows:

(c) If the balloon contract so provides, a disposition fee may be charged to the retail buyer, provided such fee does not exceed \$250, or such greater or lesser amount announced by the commissioner to annually adjust the disposition fee based upon changes in ~~[the "all items" category]~~ **the consumer price index for all urban consumers, all items category**, of consumer prices compiled and reported by the U.S. Department of Labor, Bureau of Labor Statistics.

8 Books and Records. Amend RSA 361-A:9-a to read as follows:

361-A:9-a Books and Records.

I. A licensee shall keep and use business records in such form and at such location as the commissioner shall by rule determine. The records shall enable the commissioner to determine whether the licensee is complying with the provisions of this chapter, any rules adopted under it, and any other law, rule, or regulation applicable to the conduct of the business for which it is licensed under this chapter. The rules may contain provisions for records to be recorded, copied, or reproduced by any process which accurately reproduces or forms a durable medium for reproducing the original record or document, or in any other form or manner authorized by the commissioner. Nothing in this section shall be construed to permit any licensee to destroy original records or documents. Each licensee shall preserve all such business records for as long a period as the commissioner shall prescribe by rule.

II. If the commissioner or examiner finds any business records to be inadequate, or kept or posted in a manner not in accordance with generally accepted accounting principles, the commissioner may employ experts to reconstruct, rewrite, post, or balance them at the expense of the person being examined if such person has failed to maintain, complete, or correct such business records after the commissioner or examiner has given him or her written notice and a reasonable opportunity to do so.

9 New Paragraph; Penalties. Amend RSA 361-A:11 by inserting after paragraph I the following new paragraph:

I-a. Any person who willfully violates any provisions of RSA 361-A:3-b, I or II or a cease and desist order or injunction issued pursuant to RSA 361-A:3-a shall be guilty of a class B felony. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction of any other offense.

10 New Paragraph; Penalties. Amend RSA 361-A:11 by inserting after paragraph VIII the following new paragraph:

IX. The attorney general on the commissioner's behalf, may, with or without prior administrative action by the commissioner, bring an action against any person in any superior court in this state to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, bar, restraining order, or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The court shall not require the commissioner or attorney general to post a bond. The court shall have the power to enforce obedience to such injunction, in addition to all of the court's customary powers, by

a fine not exceeding \$10,000 or by imprisonment, or both. In a proceeding in superior court under this paragraph where the state prevails, the commissioner and the attorney general shall be entitled to recover all costs and expenses of investigation, and the court shall include the costs in its final judgment.

11 Bank Commissioner. Amend the introductory paragraph of RSA 383:11 to read as follows:

383:11 Payment of Cost of Examination. The bank commissioner shall, each fiscal year, charge and collect from the institutions, the condition and management of which he or she is required to examine under the provisions of RSA 383:9, and which he or she supervises under the provisions of RSA 361-A, RSA 397-A, ~~and~~ ***RSA 397-B***, RSA 399-A, ***RSA 399-D***, ***and RSA 399-G***, the total amount appropriated for the bank commissioner's department. Said sum shall be collected as follows:

12 Bank Commissioner. Amend RSA 383:11, II(b) to read as follows:

(b) From non-depository lenders, ***debt adjusters, money transmitters***, and brokers. Each licensee ***and registrant*** subject to the supervision of the bank commissioner under the provisions of RSA 397-A, ***RSA 397-B***, RSA 399-A, ***RSA 399-D***, ***RSA 399-G***, and sales finance companies under RSA 361-A, shall be charged and shall pay such proportion of said balance applicable to the consumer credit administration division under the banking department's program appropriation unit designation as ~~its~~ ***the gross revenue received from the*** total dollar volume of loans made, originated, funded, or brokered ~~bear~~, ***or debt adjustment contracts entered into, or mortgage servicing fees received or money transmitted from each licensee's New Hampshire business bears*** to the total ***gross revenue received from the total*** dollar volume of all such loans made, originated, funded, or brokered, ***or debt adjustment contracts entered into, or mortgage servicing fees received, or money transmitted, from New Hampshire business*** by such licensees during the preceding calendar year ending December 31, as shown by their annual reports to the commissioner.

13 Branch Office; Definition. Amend the introductory paragraph of RSA 397-A:1, IV to read as follows:

IV. "Branch office" means a ~~business~~ location within this state of a person required to be licensed under this chapter that is identified by any means to the public as a location at which a mortgage banker or mortgage broker conducts mortgage business. Branch office does not include:

(a) A person's principal office location.

(b) A location identified solely in a telephone directory line listing or on a business card or letterhead if:

(1) The listing, card, or letterhead also sets forth the address and telephone number of a New Hampshire office of the mortgage banker or mortgage broker from which all individuals conducting mortgage business from such identified location are directly supervised; and

(2) No more than one agent, employee, originator, or other representative transacts business on behalf of the mortgage banker or broker from such identified location.

(c) Any other location not within the intent of this paragraph as the commissioner may determine.

14 Principal; Definition. Amend RSA 397-A:1, XIX to read as follows:

XIX. "Principal" of the applicant or licensee means an owner with 10 percent or more ownership interest, corporate officer, director, member, general or limited liability partner, limited partner with 10 percent or more ownership interest, trustee, beneficiary of 10 percent or more of the trust that owns the applicant or licensee, ***indirect owner***, senior manager, New Hampshire branch manager, and any person occupying similar status or performing similar functions.

15 New Paragraphs; Application of Chapter. Amend RSA 397-A:2 by inserting after paragraph V the following new paragraphs:

VI. It is unlawful for any person, in connection with the solicitation, offer, closing, or servicing of a mortgage loan, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

VII. It is unlawful for any person to make or cause to be made in any document filed under this chapter or in any proceeding under this chapter any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

VIII. Any condition, stipulation, or provision binding any person to waive compliance with any provision of this chapter or any rule or order under this chapter is void.

16 License Grant. Amend RSA 397-A:6, I to read as follows:

I. If the commissioner determines that the applicant meets the requirements of this chapter, then the commissioner shall forthwith issue a license or licenses permitting the applicant to engage in the business of making or brokering mortgage loans in accordance with the laws of this state. Licensees shall be responsible for the supervision of their employees, agents, loan originators, and branch offices. ***Licensees shall conduct background checks, including checking the list of entities issued by the Office of Foreign Assets Control (OFAC) whose assets were frozen by executive order, on all of their loan originators.***

17 Record Keeping. Amend RSA 397-A:11, II to read as follows:

II. Those licensees that maintain their files and business records in another state are required to return such files to their principal or branch New Hampshire office, ***to the banking department***, or to the office of their New Hampshire agent for examination no later than 21 calendar days after being requested to do so by the department. When the commissioner requests a loan list or other similar summary document from a licensee from which to select particular files for review, the licensee shall ensure that the list is received by the commissioner within 7 calendar days, and return the files selected by the commissioner to the commissioner within 14 calendar days to ensure compliance with the 21-day requirement. Failure to provide files and documents within the time established by this paragraph shall subject a licensee or person to a fine of \$50 per day for each day after 21 days the files and documents are not produced. Failure to provide files and documents within 60 days after being requested to do so by the department shall be sufficient cause for license revocation, suspension, or denial.

18 New Paragraph; Records Keeping. Amend RSA 397-A:11 by inserting after paragraph IV the following new paragraph:

V. If the commissioner or examiner finds any records to be inadequate, or kept or posted in a manner not in accordance with generally accepted accounting principles, the commissioner may employ experts to reconstruct, rewrite, post, or balance them at the expense of the person being examined if such person has failed to maintain, complete, or correct such records after the commissioner or examiner has given him or her written notice and a reasonable opportunity to do so.

19 Examinations. Amend RSA 397-A:12, V-a to read as follows:

V-a. The commissioner may, in his or her discretion, accept all or a part of a report of examination of a mortgage banker or mortgage broker, certified to by the regulatory supervisory official of another state. To avoid unnecessary duplication of examinations ***and investigations***, the commissioner, insofar as he or she deems it practicable in administering this section, may cooperate ***and share information*** with the regulators of ***this state and***

other states, the Federal Trade Commission, the Department of Housing and Urban Development, other federal regulators, or their successors in conducting examinations and investigations.

20 Annual Reports. Amend RSA 397-A:13, I to read as follows:

I. Each licensee shall file, under oath, an annual report with the banking department on or before ~~[February 1]~~ **March 31** each year concerning operations for the preceding year or license period ending December 31 upon the form prescribed by the banking department. The annual report shall include a list of all individuals, and the address of the work location or an undertaking to provide the address immediately upon the department's request, of each such individual, who act as originators for the licensee.

21 New Paragraph; Violations. Amend RSA 397-A:18 by inserting after paragraph III the following new paragraph:

IV. If any person refuses to obey the commissioner's order, an action may be brought by the attorney general on the commissioner's behalf in any superior court in this state to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance of such violation. In any such action, an order or judgment may be entered awarding a temporary or permanent injunction, and awarding the commissioner or the attorney general or both costs in bringing such action. The court shall have the power to enforce obedience to such injunction, in addition to all of the court's customary powers, by a fine not exceeding \$10,000 or by imprisonment, or both.

22 New Paragraph; Penalty. Amend RSA 397-A:21 by inserting after paragraph I the following new paragraph:

I-a. Any person who willfully violates any provisions of RSA 397-A:2, VI or VII or a cease and desist order or injunction issued pursuant to RSA 397-A:18, II shall be guilty of a class B felony. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction of any other offense.

23 New Paragraph; Penalty. Amend RSA 397-A:21 by inserting after paragraph V the following new paragraph:

VI. The attorney general on the commissioner's behalf, may, with or without prior administrative action by the commissioner, bring an action against any person in any superior court in this state to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, bar, restraining order, or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The court shall not require the commissioner or attorney general to post a bond. The court shall have the power to enforce obedience to such injunction, in addition to all of the court's customary powers, by a fine not exceeding \$10,000 or by imprisonment, or both. In a proceeding in superior court under this paragraph where the state prevails, the commissioner and the attorney general shall be entitled to recover all costs and expenses of investigation, and the court shall include the costs in its final judgment.

24 Principal; Definition. Amend RSA 397-B:1, V to read as follows:

V. "Principal" of the applicant or ~~[licensee]~~ **registrant** means an owner with 10 percent or more ownership interest, corporate officer, director, member, general or limited liability partner, limited partner with 10 percent or more ownership interest, trustee, beneficiary of 10 percent or more of the trust that owns the applicant or licensee, **indirect owner**, senior manager, New Hampshire branch manager, and any person occupying similar status or performing similar functions.

25 New Paragraph; Injunction. Amend RSA 397-B:3 by inserting after paragraph VIII the following new paragraph:

VIII-a. If any person refuses to obey the commissioner's order, an action may be brought by the attorney general on the commissioner's behalf in any superior court in this state to enjoin such person from engaging in or continuing such violation or from doing any

act or acts in furtherance of such violation. In any such action, an order or judgment may be entered awarding a temporary or permanent injunction, and awarding the commissioner or the attorney general or both costs in bringing such action. The court shall have the power to enforce obedience to such injunction, in addition to all of the court's customary powers, by a fine not exceeding \$10,000 or by imprisonment, or both.

26 New Paragraphs; Prohibitions. Amend RSA 397-B:3 by inserting after paragraph IX the following new paragraphs:

X. It is unlawful for any person, in connection with the servicing of a mortgage loan, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

XI. It is unlawful for any person to make or cause to be made in any document filed under this chapter or in any proceeding under this chapter any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

XII. Any condition, stipulation, or provision binding any person to waive compliance with any provision of this chapter or any rule or order under this chapter is void.

27 New Paragraph; Registration. Amend RSA 397-B:4 by inserting after paragraph III the following new paragraph:

IV. Persons registered under this chapter are under a continuing obligation to update information on file with the commissioner. If any information filed with the commissioner becomes materially inaccurate, the registrant shall promptly submit to the commissioner an amendment to its application records that will correct the information on file with the commissioner. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

28 Record Keeping. Amend RSA 397-B:4-a to read as follows:

397-B:4-a Record Keeping.

I. A registrant shall keep and use business records in such form and at such location as the commissioner shall by rule determine. The records shall enable the commissioner to determine whether the registrant is complying with the provisions of this chapter, any rules adopted under it, and any other law, rule, or regulation applicable to the conduct of the business for which it is registered under this chapter. The rules may contain provisions for records to be recorded, copied, or reproduced by any process which accurately reproduces or forms a durable medium for reproducing the original record or document, or in any other form or manner authorized by the commissioner. Nothing in this section shall be construed to permit any registrant to destroy original records or documents. Each registrant shall preserve all such business records for as long a period as the commissioner shall prescribe by rule.

II. *If the commissioner or examiner finds any business records to be inadequate, or kept or posted in a manner not in accordance with generally accepted accounting principles, the commissioner may employ experts to reconstruct, rewrite, post, or balance them at the expense of the person being examined if such person has failed to maintain, complete, or correct such business records after the commissioner or examiner has given him or her written notice and a reasonable opportunity to do so.*

III. *Each registrant shall file, under oath, an annual report with the banking department on or before March 31 each year concerning operations for the*

preceding year or registration period ending December 31 upon the form prescribed by the banking department. Any mortgage servicing company failing to file the annual report required by this section within the time prescribed may be required to pay to the department a penalty of \$25 for each calendar day the annual report is overdue up to a maximum penalty of \$2,500 per report.

29 New Paragraph; Penalties. Amend RSA 397-B:6 by inserting after paragraph V the following new paragraph:

VI. The attorney general on the commissioner's behalf, may, with or without prior administrative action by the commissioner, bring an action against any person in any superior court in this state to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, bar, restraining order, or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The court shall not require the commissioner or attorney general to post a bond. The court shall have the power to enforce obedience to such injunction, in addition to all the court's customary powers, by a fine not exceeding \$10,000 or by imprisonment, or both. In a proceeding in superior court under this paragraph where the state prevails, the commissioner and the attorney general shall be entitled to recover all costs and expenses of investigation, and the court shall include the costs in its final judgment.

30 New Section; Violations. Amend RSA 397-B by inserting after section 6 the following new section:

397-B:6-a Violations. Any person who willfully violates any provisions of RSA 397-B:3, X or XI or a cease and desist order or injunction issued pursuant to RSA 397-B:3, VIII shall be guilty of a class B felony. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction of any other offense.

31 Exemption. Amend RSA 397-B:10 to read as follows:

397-B:10 Exemption. The provisions of this chapter shall not apply to any bank, trust company, savings and loan association, or cooperative bank, savings bank, or credit union which may be chartered by this state or any other state or by any agency of the United States, ***or to any other person not within the intent of this chapter as the commissioner may designate by rule or order***, nor shall the registration provisions of this chapter apply to any individual or entity licensed by the banking department as a mortgage banker in accordance with RSA 397-A.

32 New Paragraph; Definitions. Amend RSA 399-A:1 by inserting after paragraph 1-a the following new paragraph:

I-b. "Affiliate" means a partnership, corporation, trust, limited liability company, or other organization that directly or indirectly owns, is under common ownership with, or is directly or indirectly owned by, a lender.

33 Principal; Definition. Amend RSA 399-A:1, XIII to read as follows:

XIII. "Principal" of the applicant or licensee means an owner with 10 percent or more ownership interest, corporate officer, director, member, general or limited liability partner, limited partner with 10 percent or more ownership interest, trustee, beneficiary of 10 percent or more of the trust that owns the applicant or licensee, ***indirect owner***, senior manager, New Hampshire branch manager, and any person occupying similar status or performing similar functions.

34 License Required. Amend RSA 399-A:2, III to read as follows:

III. This chapter shall not apply to any person lawfully engaged in business as permitted by the laws of this state or of the United States relative to banks, trust companies, insurance companies, savings or building and loan associations, or credit unions, or to loans made by them, ***or to any other person not within the intent of this chapter as the commissioner may designate by rule or order***, nor shall this chapter apply to any person

engaged solely in the business of making loans for educational purposes or to the loans made by such persons.

35 New Paragraph; License Required; Penalty. Amend RSA 399-A:2 by inserting after paragraph IV the following new paragraph:

V. Any person who willfully violates any provisions of RSA 399-A:8-a, I or II or a cease and desist order or injunction issued pursuant to RSA 399-A:8 shall be guilty of a class B felony. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction of any other offense.

36 Application and Fees. Amend RSA 399-A:3, II to read as follows:

II. Every applicant for licensing shall be required to submit to the banking department detailed financial information sufficient for the commissioner to determine the applicant's ability to conduct the business of a small loan lender, payday lender, or title loan lender with financial integrity. The application shall include ~~[a balance sheet or a statement of net worth prepared in accordance with generally accepted accounting principles. Net worth]~~ **a financial statement that shall be prepared in accordance with generally accepted accounting principles and shall include a balance sheet, income statement, statement of changes in owner's equity, a cash flow statement, and note disclosures. If the financial statement is not audited, a certification statement shall be attached and signed by a duly authorized officer of the licensee. The certification statement shall state that the financial statement is true and accurate to the best of the officer's belief and knowledge. If the financial statement is more than 6 months old, the applicant shall also submit an interim balance sheet and income statement not more than 3 months old.** Financial statements provided in connection with a license application under this section shall be subject to review and verification during the course of any examination or investigation conducted under this chapter. **Each applicant and licensee shall maintain a positive net worth at all times.** Each applicant shall demonstrate that it has available for use in such business at each location specified in the application, at least \$25,000, or in the case of a licensee, has such amount available or actually invested in loans made under this chapter at each location or has posted a continuous surety bond in the amount of \$25,000 in the form and under the terms determined by the commissioner.

37 Reporting Requirements. Amend RSA 399-A:6, I(a) to read as follows:

I.(a) Each licensee shall file, under oath, an annual report with the commissioner on or before ~~[February 1st]~~ **March 31** each year concerning its business and operations for the preceding calendar year or license period ending December ~~[31st]~~ **31** in the form prescribed by the commissioner.

38 Cease and Desist Orders. Amend RSA 399-A:8 to read as follows:

399-A:8 Cease and Desist Orders.

I. The banking department may issue a cease and desist order against any licensee or person who it has reasonable cause to believe has violated or is about to violate the provisions of this chapter or any rule or order under this chapter. Delivery of such order shall be by hand or registered mail at the principal office of the licensee or other person. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. A hearing shall be held not later than 10 days after the request for such hearing is received by the commissioner after which and within 20 days of the date of the hearing the commissioner shall issue a further order vacating the cease and desist order or making it permanent as the facts require. All hearings shall comply with RSA 541-A. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him or her upon consideration of the cease and desist order, the allegations of which may be deemed to be true. If the person to whom a cease and desist order is issued fails to request a hearing

within 30 calendar days of receipt of such order, then such person shall likewise be deemed in default, and the order shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown.

II. If any person refuses to obey the commissioner's order, an action may be brought by the attorney general on the commissioner's behalf in any superior court in this state to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance of such violation. In any such action, an order or judgment may be entered awarding a temporary or permanent injunction, and awarding the commissioner or the attorney general or both costs in bringing such action. The court shall have the power to enforce such injunction, in addition to all of the court's customary powers, by imposing a fine not exceeding \$10,000 or by imprisonment, or both.

39 New Section; Prohibitions. Amend RSA 399-A by inserting after section 8 the following new section:

399-A:8-a Prohibitions.

I. It is unlawful for any person, in connection with the solicitation, offer, or closing of a loan, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II. It is unlawful for any person to make or cause to be made in any document filed under this chapter or in any proceeding under this chapter any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

III. Any condition, stipulation, or provision binding any person to waive compliance with any provision of this chapter or any rule or order under this chapter is void.

40 Banking Department; Examinations. Amend RSA 399-A:10, III to read as follows:

III. Those licensees or persons that maintain their files and business documents in another state shall appoint a New Hampshire agent and shall return such files and documents to their principal New Hampshire office, ***the banking department***, or the office of their New Hampshire agent for examination no later than 21 calendar days after being requested to do so by the department. When the commissioner requests a list of New Hampshire consumers who have contracted with the licensee or other similar summary document from a licensee from which to select particular files for review, the licensee shall ensure that the list is received by the commissioner within 7 calendar days and return the files selected by the commissioner to the commissioner within 14 calendar days to ensure compliance with the 21-day requirement. Failure to provide files and documents within the time established by this paragraph shall subject a licensee or person to a fine of \$50 per day for each day after 21 days the files and documents are not produced. Failure to provide files and documents within 60 days after being requested to do so by the department shall be sufficient cause for license revocation, suspension, or denial, or other penalties under this chapter.

41 New Paragraph; Powers of Commissioner. Amend RSA 399-A:18 by inserting after paragraph VI the following new paragraph:

VII. The attorney general on the commissioner's behalf, may, with or without prior administrative action by the commissioner, bring an action against any person in any superior court in this state to enjoin the acts or practices and to enforce compliance with this

chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, bar, restraining order, or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The court shall not require the commissioner or attorney general to post a bond. The court shall have the power to enforce obedience to such injunction, in addition to all of the court's customary powers, by a fine not exceeding \$10,000 or by imprisonment, or both. In a proceeding in superior court under this paragraph where the state prevails, the commissioner and the attorney general shall be entitled to recover all costs and expenses of investigation, and the court shall include the costs in its final judgment.

42 Principal; Definition. Amend RSA 399-D:2, VII-a to read as follows:

VII-a. "Principal" of the applicant or licensee means an owner with 10 percent or more ownership interest, corporate officer, director, member, general or limited liability partner, limited partner with 10 percent or more ownership interest, trustee, beneficiary of 10 percent or more of the trust that owns the applicant or licensee, ***indirect owner***, senior manager, New Hampshire branch manager, and any person occupying similar status or performing similar functions.

43 New Section; Prohibitions. Amend RSA 399-D by inserting after section 13 the following new section:

399-D:13-a Prohibitions.

I. It is unlawful for any person, in connection with the solicitation, offer, or implementation of a debt adjustment service, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II. It is unlawful for any person to make or cause to be made in any document filed under this chapter or in any proceeding under this chapter any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

III. Any condition, stipulation, or provision binding any person to waive compliance with any provision of this chapter or any rule or order under this chapter is void.

44 Books and Records. Amend RSA 399-D:21, II to read as follows:

II. Books and Records:

(a) Every licensee shall keep and use in ~~[his or her]~~ ***its*** business, books, accounts, and records which will enable the commissioner to determine whether such licensee is complying with the provisions of this chapter and with the regulations of the commissioner.

(b) Every licensee shall preserve such books, accounts, and records for at least ~~[7]~~ **5** years after making the final entry on any transaction recorded therein.

III. If the commissioner or examiner finds any accounts or records to be inadequate, or kept or posted in a manner not in accordance with generally accepted accounting principles, the commissioner may employ experts to reconstruct, rewrite, post, or balance them at the expense of the person being examined if such person has failed to maintain, complete, or correct such records or accounting after the commissioner or examiner has given him or her written notice and a reasonable opportunity to do so.

45 Banking Department; Examinations. Amend RSA 399-D:22, V to read as follows:

V. Licensees that maintain their files in another state are required to return such files to their New Hampshire office ~~[or if there is no office in New Hampshire]~~, ***to the banking department, or*** to the office of their New Hampshire agent as named in the

license application as amended. Such licensees are required to return all files and records no later than 21 calendar days after being requested to do so by the banking department. When the commissioner requests a list of New Hampshire consumers who have contracted with the licensee or other similar summary document from a licensee from which to select particular files for review, the licensee shall ensure that the list is received by the commissioner within 7 calendar days and return the files selected by the commissioner to the commissioner within 14 calendar days to ensure compliance with the 21-day requirement. Failure to provide files and documents within the time established by this paragraph shall subject a licensee or person to a fine of \$50 per day for each day after 21 days the files and documents are not produced. Failure to provide files and documents within 60 days after being requested to do so by the banking department shall be sufficient cause for license revocation, suspension, or denial.

46 New Paragraph; Violations. Amend RSA 399-D:23 by inserting after paragraph II the following new paragraph:

III. If any person refuses to obey the commissioner's order, an action may be brought by the attorney general on the commissioner's behalf in any superior court in this state to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance of such violation. In any such action, an order or judgment may be entered awarding a temporary or permanent injunction, and awarding the commissioner or the attorney general or both costs in bringing such action. The court shall have the power to enforce obedience to such injunction, in addition to all of the court's customary powers, by a fine not exceeding \$10,000 or by imprisonment, or both.

47 New Paragraph; Penalty. Amend RSA 399-D:24 by inserting after paragraph V the following new paragraph:

VI. The attorney general on the commissioner's behalf, may, with or without prior administrative action by the commissioner, bring an action against any person in any superior court in this state to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, bar, restraining order, or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The court shall not require the commissioner or attorney general to post a bond. The court shall have the power to enforce obedience to such injunction, in addition to all of the court's customary powers, by a fine not exceeding \$10,000 or by imprisonment, or both. In a proceeding in superior court under this paragraph where the state prevails, the commissioner and the attorney general shall be entitled to recover all costs and expenses of investigation, and the court shall include the costs in its final judgment.

48 New Section; Violations. Amend RSA 399-D by inserting after section 24 the following new section:

399-D:24-a Violations. Any person who willfully violates any provisions of RSA 399-D:13-a, I or II or a cease and desist order or injunction issued pursuant to RSA 399-D:23, II shall be guilty of a class B felony. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction of any other offense.

49 Annual Report. Amend RSA 399-D:28, I(a) to read as follows:

I.(a) Each licensee shall file, under oath, an annual report with the commissioner on or before ~~February 1~~ **March 31** of each year concerning its business and operations for the preceding calendar year or license period ending December 31 in the form prescribed by the commissioner. ~~[A separate annual report shall be filed for each type of license held by the licensee.]~~

50 Principal; Definition. Amend RSA 399-G:1, XI to read as follows:

XI. "Principal" of the applicant or licensee means an owner with 10 percent or more ownership interest in the applicant or licensee, a corporate officer, director, member, general and limited liability partner, limited partner with 10 percent or more ownership interest,

trustee, beneficiary of 10 percent or more of the trust that owns the applicant or licensee, **indirect owner**, senior manager, and any person occupying similar status or performing similar functions.

51 Licensing Filings. Amend RSA 399-G:5, I to read as follows:

I. To be considered for licensing, each person shall complete and file with the department one verified application prescribed by the commissioner. At a minimum, the application shall state the primary business address of the applicant, the applicant's tax identification number, the address of its principal office and all authorized delegates located or to be located within the state, **a copy of its FinCEN Form 107 Registration of Money Services Business filing**, and a list of the principals of the applicant. Each principal [~~and indirect owner~~] shall provide their social security number and shall authorize the commissioner to conduct a background check. The applicant shall submit any other information that the commissioner may require including, but not limited to, the applicant's form and place of organization, the applicant's proposed method of doing business, the qualifications and business history of the applicant and those persons listed in the application, and the applicant's financial condition and history. The applicant shall disclose whether the applicant or any of its principals [~~or indirect owners~~] has ever been issued or been the subject of an injunction or administrative order, has ever been convicted of a misdemeanor involving the financial services industry or any aspect of the financial services business, or has ever been convicted of any felony.

52 Record Keeping. Amend RSA 399-G:12, II to read as follows:

II. Those licensees that maintain their files in another state are required to return the files to their principal New Hampshire office, **to the banking department**, or the office of their New Hampshire agent for examination no later than 21 calendar days after being requested to do so by the department. ***Such licensees are required to return all files and records no later than 21 calendar days after being requested to do so by the banking department. When the commissioner requests a list of New Hampshire consumers who have contracted with the licensee or other similar summary document from a licensee from which to select particular files for review, the licensee shall ensure that the list is received by the commissioner within 7 calendar days and return the files selected by the commissioner to the commissioner within 14 calendar days to ensure compliance with the 21 day requirement.*** Failure to provide files and documents shall subject a licensee to a fine of \$50 per day for each day after 21 days the files and documents are not produced. Failure to provide files and documents within 60 days after being requested to do so by the department, shall be sufficient cause for license revocation, suspension, or denial.

53 New Paragraphs; Record Keeping. Amend RSA 399-G:12 by inserting after paragraph III the following new paragraphs:

IV. If the commissioner or examiner finds any accounts or records to be inadequate, or kept or posted in a manner not in accordance with generally accepted accounting principles, the commissioner may employ experts to reconstruct, rewrite, post, or balance them at the expense of the person being examined if such person has failed to maintain, complete, or correct such records or accounting after the commissioner or examiner has given him or her written notice and a reasonable opportunity to do so.

54 Annual Report. Amend RSA 399-G:14, I to read as follows:

I. Each licensee shall file, under oath, an annual report with the banking department on or before [~~February 1~~] **March 31** each year concerning operations for the preceding year or license period ending December 31 upon the form prescribed by the department.

55 Annual Financial Statement; Audit. Amend RSA 399-G:14, III to read as follows:

III. Each licensee shall also file, under oath, its financial statement with the commissioner within 90 days from the date of its fiscal year end. The financial statement shall be prepared in accordance with generally accepted accounting principles with

appropriate note disclosures ***and, unless excepted by an order from the commissioner for hardship reasons, shall be audited by an independent certified public accountant.*** A money transmitter's financial statement shall include a balance sheet, income statement, statement of changes in owners' equity, a cash flow statement, and a statement of net worth. ~~[If the financial statement filed under this section is not audited, a certification statement shall be attached and signed by an authorized officer of the licensee. The certification statement shall state that the financial statement is true and accurate to the best of the officer's belief and knowledge.]~~ ***The financial statement shall include or be accompanied by a calculation that reflects the fiscal year's average daily transactions in United States dollars.***

56 New Section; Prohibitions. Amend RSA 399-G by inserting after section 18 the following new section:

399-G:18-a Prohibitions.

I. It is unlawful for any person, in connection with the solicitation, offer, or transaction of money transmission, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II. It is unlawful for any person to make or cause to be made in any document filed under this chapter or in any proceeding under this chapter any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

57 New Paragraph; Powers of the Commissioner. Amend RSA 399-G:19, III by inserting after paragraph II the following new paragraph:

III. If any person refuses to obey the commissioner's order, an action may be brought by the attorney general on the commissioner's behalf in any superior court in this state to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance of such violation. In any such action, an order or judgment may be entered awarding a temporary or permanent injunction, and awarding the commissioner or the attorney general or both costs in bringing such action. The court shall have the power to enforce obedience to such injunction, in addition to all of the court's customary powers, by a fine not exceeding \$10,000 or by imprisonment, or both.

58 New Section; Prosecution of Violations. Amend RSA 399-G by inserting after section 19 the following new section:

399-G:19-a Prosecution of Violations. Any person who willfully violates any provisions of RSA 399-G:18-a, I or II or a cease and desist order or injunction issued pursuant to RSA 399-G:19, II shall be guilty of a class B felony. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction of any other offense.

59 New Paragraph; Powers of Commissioner. Amend RSA 399-G:21 by inserting after paragraph V the following new paragraph:

VI. The attorney general on the commissioner's behalf, may, with or without prior administrative action by the commissioner, bring an action against any person in any superior court in this state to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, bar, restraining order, or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The court shall not require the commissioner or attorney general to post a bond. The court shall have the power

to enforce obedience to such injunction, in addition to all of the court's customary powers, by a fine not exceeding \$10,000 or by imprisonment, or both. In a proceeding in superior court under this paragraph where the state prevails, the commissioner and the attorney general shall be entitled to recover all costs and expenses of investigation, and the court shall include the costs in its final judgment.

60 Reference to Indirect Owners Deleted. Amend the introductory paragraph of RSA 361-A:2, II(a) to read as follows:

II.(a) The application for such license shall be in writing and verified on a form prescribed by the commissioner. The application shall contain the name of the applicant; the tax applicant's identification number; date of incorporation, if incorporated; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the trade name, if any, under which the applicant proposes to conduct such business; and such other pertinent information as the commissioner may require. The application shall include a list of the names and resident addresses of principals and the name of any person occupying a similar status or performing similar functions. Each principal ~~[and indirect owner]~~ shall provide his or her social security numbers and shall authorize the commissioner to conduct a background check. The applicant shall submit any other information that the commissioner may require including, but not limited to, the applicant's form and place of organization, the applicant's proposed method of doing business, the qualifications and business history of the applicant and those persons listed in the application, and in the case of sales finance companies, the applicant's financial condition and history. The applicant shall disclose if any injunction or administrative order has been issued against the applicant or any of its principals ~~[or indirect owners]~~ listed in the application and whether the applicant or any of its principals ~~[or indirect owners]~~ have been convicted of a misdemeanor involving the lending industry or any aspect of the lending business or convicted of any felony.

61 Reference to Indirect Owners Deleted. Amend RSA 397-A:5, I to read as follows:

I. To be considered for licensing, each person shall complete and file with the department one verified application prescribed by the commissioner. At a minimum, the application shall state the primary business address of the applicant, the applicant's tax identification number, the address of its principal office and all branch offices located or to be located within the state, and a list of the principals of the applicant. Each principal ~~[and indirect owner]~~ shall provide his or her social security number and shall authorize the commissioner to conduct a background check. The applicant shall submit any other information that the commissioner may require including, but not limited to, the applicant's form and place of organization, the applicant's proposed method of doing business, the qualifications and business history of the applicant and its principals, and the applicant's financial condition and history. The applicant shall disclose whether the applicant or any of its principals ~~[or indirect owners]~~ has ever been issued or been the subject of an injunction or administrative order, has ever been convicted of a misdemeanor involving the lending industry or any aspect of the lending business or has ever been convicted of any felony.

62 Reference to Indirect Owners Deleted. Amend RSA 397-B:4, I(b) to read as follows:

(b) The applicant shall submit any other information that the commissioner may require including, but not limited to, the applicant's form and place of organization, the applicant's tax identification number, and the applicant's proposed method of doing business. The applicant shall disclose whether the applicant or any of its principals ~~[or indirect owners]~~ has ever been issued or been the subject of an injunction or administrative order, has ever been convicted of a misdemeanor involving the lending industry or any aspect of the lending business, or has ever been convicted of any felony. Each principal ~~[and indirect owner]~~ shall provide his or her social security number and authorize the commissioner to conduct a background check.

63 Reference to Indirect Owners Deleted. Amend RSA 399-A:3, I(a) to read as follows:

I.(a) Every applicant for licensing under this chapter shall file with the commissioner a written verified application, on a form prescribed by the commissioner. The application shall contain the name of the applicant; the applicant's tax identification number; the address where the business is or is to be conducted and similar information for any branch office of the applicant; the trade name, if any, under which the applicant proposes to conduct such business; the articles of incorporation or organization or partnership agreement; the name and address of the New Hampshire resident agent if the applicant is a foreign entity; and such other pertinent information as the commissioner may require. The application shall include the names of the applicant's principals~~[-indirect owners]~~ and the name of any person occupying a similar status or performing similar functions. Each such principal ~~[and indirect owner]~~ shall provide his or her social security number and shall authorize the commissioner to conduct a background check. The applicant shall submit any other information that the commissioner may require including, but not limited to, the applicant's form and place of organization, the applicant's proposed method of doing business, the qualifications and business history of the applicant and its principals, and the applicant's financial condition and history. The applicant shall disclose if any injunction or administrative order has been issued against the applicant or any of its principals ~~[or indirect owners]~~ and whether the applicant or any of its principals ~~[or indirect owners]~~ have been convicted of a misdemeanor involving the lending industry or any aspect of the lending business or of any felony. Each applicant and licensee who conducts payday or title loan lending shall maintain an office in this state that is accessible to consumers. Persons subject to this chapter shall be responsible for the supervision of their employees, agents, and branch offices. Each initial and renewal license application shall be accompanied by a nonrefundable application fee of \$450 for the principal place of business of the licensee and the sum of \$450 for each branch of such licensee maintained in this state.

64 Reference to Indirect Owners Deleted. Amend the introductory paragraph of RSA 399-D:5, II to read as follows:

II. To be considered for licensing, each person, firm, or corporation shall file with the department one verified application on a form prescribed by the commissioner. At a minimum, the application shall be in writing, setting forth the primary business address of the applicant, the applicant's tax identification number, the address of its principal office and all branch offices located or to be located within the state, and a list of the principals ~~[or indirect owners]~~ and the name of any person occupying a similar status or performing similar functions. Each principal ~~[and indirect owner]~~ shall provide his or her social security number and shall authorize the commissioner to conduct a background check. The applicant shall submit any other information that the commissioner may require including, but not limited to, the applicant's form and place of organization, the applicant's proposed method of doing business, qualifications, and business history of the applicant and those persons listed in the application, and the applicant's financial condition and history. The applicant shall disclose if any injunction or administrative order has been issued against the applicant or any of its principals ~~[or indirect owners]~~ and whether the applicant or any of its principals ~~[or indirect owners]~~ have been convicted of a misdemeanor involving the lending industry or any aspect of the lending business or convicted of any felony. Each application shall designate the name and address of the manager or person in charge at each licensed location and shall contain other information required by rules adopted under this chapter. The applicant shall submit any other information that the commissioner may require. In addition:

65 License and Registration Grant. Amend RSA 399-G:6, VI to read as follows:

VI. Money transmitters, who sell or issue payment instruments or stored value, or receive money or monetary value for transmission to another location shall be liable to customers for the amount of money as well as any fees paid by the customer and received by the money transmitter, authorized delegate or person acting on his or her behalf, if the money fails to reach its intended recipient unless transmission to the recipient is prohibited

by law. *If an intended recipient of a money transmission fails to accept or retrieve the money transmitted, a licensee's responsibility to any person for a money transmission conducted on that person's behalf by the licensee's authorized delegate shall be limited to the amount of money transmitted.*

66 New Paragraph; Licensee Requirements. Amend RSA 399-D:7 by inserting after paragraph VII the following new paragraph:

VIII. Licensees shall maintain a positive net worth at all times.

67 Repeal. RSA 399-A:19, relative to review of commissioner's actions, is repealed.

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

Amendment adopted.

Committee report adopted.

Ordered to third reading.

HB 799-FN, establishing a criminal usury rate for interest rates. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Stephen T. DeStefano for Commerce: Title loans are loans that are made based on the equity of your car. The borrower must have a free and clear title to the motor vehicle. Title lenders will only loan an estimated 50% of the value of the car. The loans are for a period of 30 days. The amendment, which was worked on by the NH Banking Department and the industry, seeks to increase consumer protections by adding a rate cap of \$22 per \$100 for 30 days, requires a signed affidavit as to the consumer's ability to repay, includes a mandatory disclosure to be signed by the consumer, enacts protections in case of a default as to how the consumer is treated and the process by which a car is repossessed. The bill decreases the number of allowable renewals afforded to the borrower, bans automatic renewals, and makes clear the costs of renewing a loan. The amendment also increases the amount of principal reduction to 10 percent per month from 5 percent per month. An important piece of the amendment is the establishment of a consumer credit counseling fund, to be funded by the title loan and payday loan industries and administered by the department. This fund will seek to work with qualified consumer credit counseling agencies to provide consumer finance education. This is an important regulatory reform bill that has the strong support of the committee. Vote 15-3.

Amendment (2562h)

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

AN ACT relative to title loans.

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

1 New Paragraphs; Provisions Applicable to Title Loan Lenders. Amend RSA 399-A:14 by inserting after paragraph IV the following new paragraphs:

V. A title loan lender shall not:

(a) Make a title loan without regard to the ability of the customer seeking the title loan to repay the title loan, including the customer's current and expected income, obligations and employment; and

(b) Make a title loan without requiring the customer to sign an affidavit which states that:

(1) The customer has provided the licensee with true and correct information concerning the customer's income, obligations, employment and ownership of the vehicle; and

(2) The customer has the ability to repay the title loan.

VI. Charge any interest or fees other than a daily interest rate not to exceed the equivalent of \$22 per \$100 per 30-day period. A title loan lender may charge reimbursement of the fee paid by the lender to record its lien on the borrower's certificate of title.

2 New Sections; Disclosure; Consumer Credit Counseling Fund. Amend RSA 399-A by inserting after section 14 the following new sections:

399-A:14-a Disclosure.

I. A title loan lender shall provide the following notice in a contract, placed conspicuously above the borrower's signature and in at least 14-point type, as follows:

"(a) THIS LOAN IS NOT INTENDED TO MEET LONG TERM FINANCIAL NEEDS.

(b) YOU SHOULD USE THIS LOAN ONLY TO MEET SHORT TERM CASH NEEDS.

(c) THIS IS A HIGH INTEREST LOAN. YOU SHOULD GO TO ANOTHER SOURCE IF YOU HAVE THE ABILITY TO BORROW AT A LOWER RATE OF INTEREST.

(d) YOU ARE PLACING YOUR VEHICLE AT RISK IF YOU DEFAULT ON THIS LOAN.

(e) YOU WILL BE REQUIRED TO PAY ADDITIONAL INTEREST IF YOU RENEW THIS LOAN RATHER THAN PAY THE DEBT IN FULL WHEN DUE.

(f) IF YOU BELIEVE THAT THE TITLE LENDER HAS VIOLATED THE PROVISIONS OF RSA 399-A, YOU HAVE THE RIGHT TO FILE A WRITTEN COMPLAINT WITH THE NEW HAMPSHIRE BANKING DEPARTMENT.

(g) WRITTEN COMPLAINTS SHOULD BE SENT TO THE NEW HAMPSHIRE BANKING DEPARTMENT AT 64B OLD SUNCOOK ROAD, CONCORD, NH 03301. YOU MAY ALSO CALL THE NEW HAMPSHIRE BANKING DEPARTMENT AT 1-800-437-5991."

399-A:14-b Consumer Credit Counseling Education Fund Established. The department shall establish a consumer credit counseling education fund, to be funded through assessments on small loan lenders that provide title loans and payday loans, for the purposes of providing consumer finance education. Funding shall be used for educational purposes by the department and may be made available to New Hampshire based consumer credit counseling agencies in the form of grants. Small loan lenders that provide title loans and payday loans shall be prohibited from including such payment in the charges allowed under this chapter.

3 Title Loan Renewals. Amend RSA 399-A:15 to read as follows:

399-A:15 Title Loan Renewals.

I. A title loan shall be for an original term of no more than one month. A title loan lender may allow such loan to be renewed no more than ~~[44]~~ **10** additional periods each equal **to** the original term, provided however, that at each such renewal the borrower must pay at least ~~[5]~~ **10** percent of the loan's original principal balance, in addition to any finance charge owed, to reduce the principal balance outstanding. ~~[If the borrower cannot pay this principal reduction at any renewal, the title loan lender may either: (i) declare the borrower in default, or (ii) allow the loan to be renewed, provided that the lender shall reduce the current principal amount of the loan by 5 percent of the original principal amount for the purposes of calculating interest thereafter. This reduction in principal shall continue to be owed by the borrower, but such amount shall not be entitled to accrue interest thereafter.]~~ For the purpose of this section, a renewal is any extension of a title loan ***entered into within 14 days from the original contract due date or within 14 days from a subsequent contract renewal due date***, for an additional period without any change in the terms of the title loan other than a reduction in principal. No accrued interest shall be capitalized or added to the principal of the loan at the time of ***an initial loan or*** any renewal. ***A lender shall not require a borrower to renew a loan, and renewals may not be written into the loan contract so that they occur automatically.***

II. ***No renewal of a title loan shall be allowed if the borrower cannot pay the total interest owed at the end of the initial term of the loan and at the end of a subsequent renewal term of a loan, unless prior to a rollover becoming effective, the lender forgives all outstanding interest in writing.***

III. ***If a borrower wants to renew a loan but cannot pay 10 percent of the principal balance, the lender shall:***

(a) Declare the loan in default; or

(b) Reduce the principal amount of the rolled over loan by 10 percent for the purposes of calculating interest; and

(c) If at the end of the first rollover period a subsequent rollover of the loan is made, reduce the principal amount of the rolled over loan by another 10 percent for purposes of calculating the interest, resulting in a total 10 percent reduction of the principal upon which interest shall be calculated; and

(d) For each subsequent rollover of a loan, reduce by an additional 10 percent the principal amount of the rolled over loan for purposes of calculating the interest; and

(e) Be entitled to collect from the borrower the total principal amount of the loan, regardless of the 10 percent principal reduction or reductions made for the purpose of calculating the amount of interest owed in each period; and

(f) Evidence each renewal by a separate written loan renewal contract signed and dated by the borrower entered into within 14 days from the original contract due date or within 14 days from a subsequent renewal contract due date.

IV. No interest may be added to the principal of a title loan under any condition. A title loan may not be paid off with the proceeds of another title loan.

V. A lender and any affiliate of the lender shall not make a title loan to a person who has previously borrowed from the lender or affiliate until the next business day after the prior loan has been paid off and in no case less than 12 hours from the time of payoff. The lender is responsible to document both the payoff date and the new loan date, if any, in a manner that compliance with this section can be verified by the commissioner. If the time between the payoff and the new loan is less than one full business day, the lender shall record the date and hour of the payoff and the date and hour of the new loan in a manner that compliance with this section can be verified by the commissioner. This cooling-off period shall be calculated from the date and time of the payoff by the borrower of a title loan to the date and time that the borrower executes a new loan contract or is obligated under another title loan, whichever is earlier.

VI. Each new title loan shall have a new application form and require a new signature.

VII.(a) If a borrower and lender do not enter into a title loan renewal contract within 14 days from the original contract due date, and the principal and interest are not paid within 14 days from the original contract due date, the loan shall be immediately declared in default and so recorded on the books of the lender.

(b) If a lender renews a title loan and the borrower cannot pay the interest within 14 days from the renewal contract due date and the lender does not immediately forgive the interest in writing, the loan shall be immediately declared in default and so recorded on the books of the lender.

(c) When a title loan is declared in default, the lender shall reduce the interest to 6 percent.

(d) The licensee may proceed to take possession of the collateral pursuant to a judicial repossession or non-judicial process if the licensee proceeds without breach of the peace.

(e) The lender shall cease the accrual of interest on either the date the motor vehicle is repossessed by the lender, or 90 days from the due date of the final agreed upon loan or renewal period, whichever is sooner.

VIII. The licensee shall maintain an up-to-date record of repossessions, whether judicial, non-judicial, or voluntary release by the debtors and:

(a) A lender shall follow the New Hampshire department of safety rules for repossession, and repossessions of motor vehicles shall be conducted in compliance with RSA 382-A:9 and the following requirements which shall not be waived:

(1) The lender shall immediately notify an account debtor that he or she is in default and when repossession will occur if the default is not cured;

(2) If the motor vehicle is repossessed, the lender shall dispose of the motor vehicle by sale in an arm's-length transaction in a commercially reasonable manner including but not limited to the method, manner, time, and place;

(3) Notification before disposition of the motor vehicle is required; the licensee shall send reasonable authenticated notification of disposition of the motor vehicle to the debtor and any secondary obligors not later than 20 days before the disposition of the motor vehicle stating the time and place the motor vehicle will be sold;

(4) Upon the sale of the motor vehicle the debtor shall be notified by certified mail return receipt requested sent to the debtor's last address of record that the debtor has 7 days, from receipt of the notice or refusal of the notice, within which to claim his or her personal effects from the licensee at an agreed upon time and location which is reasonably convenient to the parties and the lender shall retain the all of the debtor's personal effects for at least 7 days from the date recorded on the return receipt that indicates receipt, refusal or notice that the mail was undeliverable.

(5) The licensee shall apply the proceeds of an obligation as follows:

(A) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing of the motor vehicle; and then to

(B) The satisfaction of outstanding interest that was accrued on the loan; and then to

(C) The satisfaction of the outstanding principal that was secured by the motor vehicle.

(6) The licensee shall apply the surplus and deficiency of an obligation as follows:

(A) The licensee shall pay over any cash proceeds to the debtor or, if there is a deficiency the licensee shall write off said deficiency and may not attempt to collect the deficiency from the debtor;

(B) Calculation of surplus or deficiency shall be calculated based on the amount of proceeds that would have been realized in a disposition complying with this paragraph; and

(C) The licensee shall provide a written explanation of the calculation of the surplus or deficiency to the debtor within 14 days of receipt of a written request.

(b) A record of all loans in repossession shall be maintained in a repossession record. The repossession record shall be maintained for at least 5 years after the final entry has been made on the loan, be kept current, and include the following information:

(1) Loan number and name and address of the principal borrower;

(2) Description of the motor vehicle attached, repossessed, or surrendered;

(3) A copy of the title, if obtained during the course of the loan;

(4) Date of default, date of repossession, a condition report, book value, a deficiency itemization in connection with repossessions including but not limited to add-ons prior to sale (i.e., re-conditioning, battery, etc.), date of sale of the motor vehicle, the gross cash amount received from the sale of the motor vehicle, the name and address of the purchaser, or auction company, expenses deducted from the sale of the motor vehicle, the amount of money applied to interest, the amount of money applied to the outstanding loan balance, and the amount of and the date cash proceeds were paid to the borrower or the amount of deficiency and date it was written off the lender's books;

(5) All original repossession legal documents and other records including bills for all expenses or copies thereof and copies of all forms required by the department of safety, division of motor vehicles, including but not limited to affidavits of repossession and notices of authorization to repossess collateral;

(6) A purchase receipt from the motor vehicle auction or point of purchase showing the price paid by the motor vehicle purchaser or at point of purchase price of the motor vehicle and its mileage;

(7) Copies of the disbursement checks showing disposition of the sale proceeds; and

(8) In instances where the motor vehicle is offered for private sale, there shall be in the borrower's file not less than 3 bona fide written bids or appraisals in order to establish that the terms of sale were conducted at arm's length and were fair to the borrower. Where the security is offered for private or public sale, the sale shall be consummated in compliance with the provisions of RSA 382-A:9.

4 New Section; Rulemaking. Amend RSA 399-A by inserting after section 15 the following new section:

399-A:15 Rulemaking. The department shall adopt rules, in accordance with RSA 399-A:16, relative to title loans with regard to:

- I. The rights of the borrower in default;
- II. The rights of the borrower in repossession; and
- III. The establishment, funding, and administration of a credit counseling education fund to be used for consumer finance education.

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

AMENDED ANALYSIS

This bill makes changes to the law regarding title loans.

On a division vote, 153 members having voted in the affirmative and 170 in the negative, the committee amendment failed.

LAI'D ON THE TABLE

Rep. Daniel Eaton moved that **HB 799-FN**, establishing a criminal usury rate for interest rates, be laid on the table.

Adopted.

Rep. Roberts declared a conflict of interest on **HB 799-FN** and did not participate.

REGULAR CALENDAR – RETAINED BILLS (CONT'D)

HB 894-FN, requiring insurance coverage for bariatric surgery for diabetics. **MAJORITY: REFER FOR INTERIM STUDY. MINORITY: OUGHT TO PASS WITH AMENDMENT.**

Rep. Jill Shaffer Hammond for the Majority of Commerce: This bill sought to mandate insurance coverage for bariatric surgery for Type II diabetic patients who are morbidly obese. Testimony was heard in committee about the efficacy of extensive programs that included psychological counseling and weight loss preparation for one year before surgery, then several years follow-up, monitoring continued weight loss, diet and nutrition, exercise, and lifestyle changes. There was an effort to craft an amendment to stipulate that bariatric surgery be part of one such medically-recognized protocol. While these extended programs seem to have positive outcomes in numerous cases, bi-partisan misgivings and uncertainty led to agreement that this issue needed further study to carefully weigh the benefits and costs before enactment. Vote 14-4.

Rep. Marshall E. Quandt for the Minority of Commerce: The minority disagrees with the majority because this is no different than in 1997 when the legislature had to mandate that insurance companies cover diabetes services and supplies (RSA 415:6-e). Again, it is

necessary for the legislature to require that insurers recognize the needs of diabetics by compelling them to cover bariatric surgery when it is medically necessary. A subcommittee recommended the bill with the amendment because a significant amount of research shows that bariatric surgery cures Type II diabetes in over 90% of the cases. The success of bariatric surgery is well documented. Retrospective studies (one going back 7.1 years) show that deaths from diabetes, heart disease and cancer are significantly reduced. Studies show that after 3.5 years the procedure is paid for by the reduced costs of hospital stays, prescriptions, doctors' visits and other costs attendant to diabetes. Yet, a morbidly obese Type II diabetic who is insured by Medicaid is covered by this surgery but one who has private insurance probably is not. HB 894 with the amendment allows insurers to impose medically necessary criteria and pre-certification prior to covering the treatment. It ensures that the patient is treated at institutions that are recognized as centers of excellence and the treatment is in accordance with medically approved protocols. The bill is carefully worded to ensure thorough and appropriate treatment. Majority committee report adopted.

SB 131, relative to insurance coverage for services of midwives. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. James R. Martin for the Majority of Commerce: This bill as amended does only one thing: It provides that women who have health insurance which includes maternity care shall be reimbursed for children delivered at home. As such, it carries forward the intent of the General Court and the Governor, clearly expressed in 1999 in RSA 326-D:1 which states in part: "The general court finds that...it is in the public interest to remove impediments to the practice of midwifery." "[I]t is the intent of the general court to preserve the rights of women to deliver children at home, to remove obstacles to safe out-of-hospital deliveries, and to assure quality care." RSA 326-D:1 I, II. Pursuant to elaborate procedures established by the legislature in 1999, midwives are certified in New Hampshire to assure quality care. The federal government reimburses women for home deliveries under the Medicaid program. This bill simply provides that those women who have health insurance which includes maternity care may have a choice to either have their child delivered at a hospital or to have the child delivered at home. Currently, a woman with health insurance which includes maternity benefits who wants to have her baby delivered at home must pay the entire cost of that delivery out of her own pocket. That is neither fair nor rational. This bill amends the current law to provide that the place at which such services are covered includes the home, in accordance with the purpose of RSA 326-D. Since the bill does not require insurance companies to cover a procedure which they do not otherwise cover (maternity care), it is not a "mandate" as that term is normally used. Vote 10-5.

Rep. John B. Hunt for the Minority of Commerce: The minority of the committee opposes this bill because it will not save any money and may put the mother and child at risk. The committee debated this issue at length in the previous session and reached what we thought was a safe and reasonable compromise: requiring health insurance reimbursement for certified (lay) midwives for providing birth services in a licensed health facility. The ink was barely dry when SB 131 was introduced to expand the insurance mandate to cover home births. There is little data on the overall safety of home deliveries because once a home birth becomes an emergency and requires physician and hospital services, the statistics shift to the doctor and hospital. Even though certified (lay) midwives are supposed to limit their care to healthy, low-risk women, birth emergencies do happen. Reimbursement for home births is cheaper than hospital births until something goes wrong. One or two such emergency cases will quickly eat up any potential savings. The minority of the committee certainly understands that some women may choose to give birth at home, but to require health insurers to pay for the services of a certified (lay) midwife in an unlicensed setting is poor public policy. Eleven states currently prohibit the practice of lay midwifery altogether.

Majority Amendment (2458h)

Amend the bill by replacing sections 1-4 with the following:

1 Services Performed by Certified Midwives. Amend RSA 415:6-l to read as follows:

415:6-l Coverage for Certified Midwives; Individual. Each insurer that issues or renews any individual policy, plan, or contract of accident or health insurance providing maternity benefits, shall also provide to certificate holders of such insurance, who are residents of this state, coverage consistent with the terms and conditions of the policy for services rendered by a midwife certified under RSA 326-D. Such coverage shall be subject to each insurer's standards and mechanisms for credentialing and contracting pursuant to RSA 420-J:4 and RSA 420-J:8 respectively, where applicable, and contingent upon services being provided in a licensed health care facility **or at home** and within the scope of practice of a certified midwife. Benefits provided shall not be subject to any greater co-payment, deductible, or coinsurance than any other similar benefits provided by the insurer.

2 Coverage for Certified Midwives; Group. Amend RSA 415:18-q to read as follows:

415:18-q Coverage for Certified Midwives. Each insurer that issues or renews any policy of group or blanket accident or health insurance providing maternity benefits shall also provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage consistent with the terms and conditions of the policy for services rendered by a midwife certified under RSA 326-D. Such coverage shall be subject to each insurer's standards and mechanisms for credentialing and contracting pursuant to RSA 420-J:4 and RSA 420-J:8 respectively, where applicable, and contingent upon services being provided in a licensed health care facility **or at home** and within the scope of practice of a certified midwife. Benefits provided shall not be subject to any greater co-payment, deductible, or coinsurance than any other similar benefits provided by the insurer.

3 Coverage for Certified Midwives; Health Service Corporations. Amend RSA 420-A:17-f to read as follows:

420-A:17-f Coverage for Certified Midwives. Every health service corporation and every other similar corporation licensed under the laws of another state that issues or renews any policy of group or blanket accident or health insurance providing maternity benefits shall also provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage consistent with the terms and conditions of the policy for services rendered by a midwife certified under RSA 326-D. Such coverage shall be subject to each insurer's standards and mechanisms for credentialing and contracting pursuant to RSA 420-J:4 and RSA 420-J:8 respectively, where applicable, and contingent upon services being provided in a licensed health care facility **or at home** and within the scope of practice of a certified midwife. Benefits provided shall not be subject to any greater co-payment, deductible, or coinsurance than any other similar benefits provided by the insurer.

4 Services for Certified Midwives; Health Maintenance Organizations. Amend RSA 420-B:8-p to read as follows:

420-B:8-p Coverage for Certified Midwives. Every health maintenance organization and every similar corporation licensed under the laws of another state that issues or renews any policy, plan, or contract of individual or group or blanket health insurance providing maternity benefits shall also provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage consistent with the terms and conditions of the policy for services rendered by a midwife certified under RSA 326-D. Such coverage shall be subject to each insurer's standards and mechanisms for credentialing and contracting pursuant to RSA 420-J:4 and RSA 420-J:8 respectively, where applicable, and contingent upon services being provided in a licensed health care facility **or at home** and within the scope of practice of a certified midwife. Benefits provided shall not be subject to any greater co-payment, deductible, or coinsurance than any other similar benefits provided by the insurer.

AMENDED ANALYSIS

This bill clarifies where services rendered by certified midwives may be performed for insurance coverage purposes.

Majority committee amendment adopted.

The question now being adoption of the majority committee report of Ought to Pass with Amendment.

Rep. Houde spoke against.

Reps. Martin and Henson spoke in favor and yielded to questions.

Rep. McLeod spoke in favor.

Rep. Price requested a roll call; sufficiently seconded.

YEAS 226 NAYS 111

YEAS 226

BELKNAP

Arsenault, Beth
Wood, Jane

Morrison, Gail

Reever, Judith

Tobin, William

CARROLL

Ahlgren, Christopher
Butler, Edward
Knox, J. David

Bridgham, Robert
Cunningham, Howard
Martin, James

Brown, Carolyn
Denley, William

Buco, Thomas
Heard, Virginia

CHESHIRE

Allen, Peter
Butynski, William
Espiefs, Peter
Parkhurst, Henry
Robertson, Timothy

Burridge, Delmar
Chase, William
Lerandeau, Alfred
Pelkey, Stephen
Sad, Tara

Butcher, Suzanne
Dunn, J. Timothy
Loll, Thomas
Richardson, Barbara
Weber, Lucy

Butterworth, Timothy
Eaton, Daniel
Mitchell, Bonnie
Roberts, Kris
Weed, Charles

COOS

Hatch, William
Remick, William

Ingersoll, Paul Sr
Theberge, Robert

King, Frederick
Thomas, Yvonne

Merrick, Evalyn

GRAFTON

Aguiar, James
Cooney, Mary
Hammond, Lee
McLeod, Martha
Solomon, Peter

Almy, Susan
Estes, Carole
Laliberte, Suzanne
Mulholland, Catherine
Williams, Burton

Andersen, Gene
Friedrich, Carol
Lovett, Sid
Nordgren, Sharon

Benn, Bernard
Gionet, Edmond
Matheson, Robert
Preston, Philip

HILLSBOROUGH

Baroody, Benjamin
Bergin, Peter
Cote, David
Essex, David
Garrity, Patrick
Hackel, Paul
Harvey, Suzanne
Kaelin, Michael

Barry, Richard
Brunelle, Michael
Crane, Elenore Casey
Forest, Armand
Ginsburg, Ruth
Haley, Robert
Hebert, Roger
Kelley, John

Beaulieu, Jane
Campbell, David
Daler, Jennifer
Foster, Linda
Goley, Jeffrey
Hall, Betty
Infantine, William
Knowles, John

Beck, Catriona
Chase, Claudia
Dokmo, Cynthia
Gargas, Carolyn
Gorman, Mary
Hammond, Jill
Jean, Claudette
Knowles, Mary Ann

Kopka, Angeline
Levesque, Melanie
Matarazzo, Anthony
Sr
Nagle, Maureen
Ober, Russell III
Scannell, David
Simon, Anthony
Sullivan, Francis

Lasky, Bette
Mack, Ron
McRae, Karen

O'Brien, Michael Sr
Peterson, Andy
Schulze, Joan
Smith, David
Sysyn, Mary

Lawrence, James
Manney, Pamela
Messier, Irene

O'Neil, James
Pilotte, Maurice
Shattuck, Gilman
Spratt, Stephen
Vaillancourt, Steve

Leishman, Peter
Marshall, Seth
Movsesian, Lori

Ober, Lynne
Reuschel, Michael
Shaw, Barbara
Sullivan, Daniel

MERRIMACK

Blanchard, Elizabeth
Clarke, Claire
Gile, Mary
Kelly, Sally
Osborne, Jessie
Richardson, Gary
Wallner, Mary

Bouchard, Candace
Davis, Frank
Greco, Vincent
Kidder, David
Owen, Derek
Ryan, Jim
Walz, Mary

Brown, Carole
DeJoie, John
Hager, Elizabeth
Lockwood, Priscilla
Porter, Margaret
Shurtleff, Stephen
Williams, Robert

Brueggemann, Donald
Ehlers, Eileen
Hamm, Christine
McMahon, Patricia
Potter, Frances
Tilton, Joy
Yeaton, Charles

ROCKINGHAM

Abbott, Dennis
Cali-Pitts, Jacqueline
Elliott, Robert
Gleason, John
Ingram, Russell
McEachern, Paul
Nord, Susi
Preston, Mark
Robertson, Carl
Splaine, James
Wells, Roger

Allen, Mary
Casey, Kimberley
Emiro, Frank
Grote, Otto
Kennedy, James
McKenna, Daniel
Pantelakos, Laura
Quandt, Marshall
Russell, Trinkia
Waterhouse, Kevin
Winchell, George

Borden, David
Day, Judith
Flockhart, Eileen
Henson, John
Kepner, Susan
Moody, Marcia
Petterson, Don
Quandt, Matthew
Serlin, Christopher
Weare, Everett

Brown, C. Pennington
DiFruscia, Anthony
Garrity, James
Howard, Doreen
Marsh, Michael
Moore, Bennett
Powers, James
Reagan, John
Snow, Richard
Webber, James

STRAFFORD

Berube, Roger
Burke, Rachel
Hilliard, Dana
Mickelonis, Shawn
Smith, Marjorie
Vachon, Dennis

Billian, Deborah
Cyr, James
Hubbard, Pamela
Perry, Robert
Spang, Judith
Wall, Janet

Brennan, William
DeChane, Marlene
Kaen, Naida
Rous, Emma
Sprague, Dale
Watson, Robert

Brown, Larry
Grassie, Anne
Knowles, William
Schmidt, Peter
Srnc, Robert

SULLIVAN

Cloutier, John
Franklin, Peter
Phinzy, James

Converse, Larry
Gottling, Suzanne
Skinder, Carla

Donovan, Thomas
Jillette, Arthur Jr

Ferland, Brenda
Nielsen, Ellen

NAYS 111

BELKNAP

Allen, Janet
Millham, Alida
Tilton, Franklin

Boyce, Laurie
Nedeau, Stephen
Wendelboe, Fran

Clark, Charles
Pilliod, James
Whalley, Michael

Flanders, Donald
Thomas, John

CARROLL

Chandler, Gene Merrow, Harry Patten, Betsey

CHESHIRE

Emerson, Susan Hunt, John Johnson, Jane

COOS

Stohl, Eric

GRAFTON

Bleyler, Ruth Bulis, Lyle Dingman, Vernon III Eaton, Stephanie
Harding, A Laurie Pierce, David Sorg, Gregory

HILLSBOROUGH

Batula, Peter	Bergeron, Jean-Guy	Clark, Mark	Clemons, Jane
Daniels, Gary	Day, Russell	Drisko, Richard	Elliott, Nancy
Fletcher, Richard	Francoeur, Bea	Goyette, Peter	Graham, John
Haefner, Robert	Hansen, Ryan	Hawkins, Ken	Hinkle, Peyton
Hogan, Edith	Irwin, Anne-Marie	Jasper, Shawn	Johnson, Stephen
Kurk, Neal	L'Heureux, Robert	Mooney, Maureen	Moran, Edward
O'Connell, Timothy	Price, Pamela	Reeves, Sandra	Renzullo, Andrew
Rosenwald, Cindy	Rowe, Robert	Soucy, Connie	Spaulding, Jayne
Stepanek, Stephen	Tahir, Saghir	Villeneuve, Maurice	Winters, Joel

MERRIMACK

Anderson, Eric	Boutin, David	DeStefano, Stephen	Foose, Robert
Hess, David	Kjellman, Eleanor	MacKay, James	Reardon, Tara
	Glynn		
Reed, Dennis	Webb, Leigh		

ROCKINGHAM

Baldasaro, Alfred	Bedrick, Jason	Belanger, Ronald	Bettencourt, David
Camm, Kevin	Carson, Sharon	Case, Frank	Charron, Gene
Dalrymple, David	Devine, James	Fesh, Bob	Flanders, John Sr
Garcia, Marilinda	Gould, Kenneth	Griffin, Mary	Headd, James
Hopfgarten, Paul	Introne, Robert	Kappler, Lawrence	Katsakiores, George
Katsakiores, Phyllis	Lister, Charlotte	Lund, Howie	Major, Norman
McKinney, Betsy	McMahon, Charles	Nowe, Ronald	Pearson, Mark
Rausch, James	Sanders, Elisabeth	Stiles, Nancy	Welch, David
Weyler, Kenneth	Wickson, Rick		

STRAFFORD

Brown, Julie Fargo, Thomas Hofemann, Roland Miller, Joseph

SULLIVAN

Houde, Matthew Rodeschin, Beverly
and the majority committee report was adopted.
Ordered to third reading.
Rep. Kjellman did not vote and notified the Clerk that she wished to be recorded against.

HB 404-L, prohibiting state and local law enforcement agencies from enforcing federal

immigration laws. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Ellen Nielsen for the Majority of Criminal Justice and Public Safety: The committee heard testimony from several local law enforcement officers and from the New Hampshire Association of Chiefs of Police which indicated that this bill, if it became law, would limit the officers' ability to perform their duties without resolving the genuine issues of trust and fear within our immigrant communities. While the possibility of racial or ethnic profiling is a real concern, the committee did not hear of any specific incidents of such profiling.

Preventing such incidents may be a police training rather than a legislative issue. Vote 14-1.

Rep. Lee M. Hammond for the Minority of Criminal Justice and Public Safety: This bill clarifies the jurisdiction of local law enforcement officials with regard to federal immigration laws. It simply states that local law enforcement officials will not use state resources to apprehend a person whose ONLY suspected infraction is of the federal civil immigration code. Immigration is already recognized as a federal responsibility over which local law enforcement has no jurisdiction. This would simply reinforce and clarify the current status. It is important for local police to have the trust and cooperation of the communities which they serve and protect; the immigrant community needs to feel protected not persecuted and encouraged to adhere to the laws of the state of New Hampshire.

Rep. Nord spoke against and yielded to questions.

Rep. Nielsen spoke in favor and yielded to questions.

Rep. Timothy Robertson spoke against.

Reps. Roberts and Winchell spoke in favor.

Rep. Bettencourt requested a roll call; sufficiently seconded.

YEAS 273 NAYS 63

YEAS 273

BELKNAP

Allen, Janet
Nedeau, Stephen
Tobin, William

Boyce, Laurie
Pilliod, James
Wendelboe, Fran

Flanders, Donald
Thomas, John
Whalley, Michael

Millham, Alida
Tilton, Franklin

CARROLL

Ahlgren, Christopher
Butler, Edward
Knox, J. David

Bridgham, Robert
Chandler, Gene
Martin, James

Brown, Carolyn
Cunningham, Howard
Merrow, Harry

Buco, Thomas
Denley, William
Patten, Betsey

CHESHIRE

Allen, Peter
Dunn, J. Timothy
Hunt, John
Pelkey, Stephen

Burridge, Delmar
Eaton, Daniel
Johnson, Jane
Roberts, Kris

Butterworth, Timothy
Emerson, Susan
Lerandeau, Alfred
Sad, Tara

Butynski, William
Espieffs, Peter
Loll, Thomas
Weber, Lucy

COOS

King, Frederick
Theberge, Robert

Merrick, Evalyn
Thomas, Yvonne

Remick, William

Stohl, Eric

GRAFTON

Aguiar, James
Bulis, Lyle
Harding, A Laurie

Almy, Susan
Dingman, Vernon III
Laliberte, Suzanne

Benn, Bernard
Eaton, Stephanie
Lovett, Sid

Bleyler, Ruth
Gionet, Edmond
Matheson, Robert

McLeod, Martha
Sorg, Gregory

Nordgren, Sharon
Williams, Burton

Preston, Philip

Solomon, Peter

HILLSBOROUGH

Baroody, Benjamin
Bergeron, Jean-Guy
Clark, Mark
Daler, Jennifer
Drisko, Richard
Forest, Armand
Garrity, Patrick
Graham, John
Hansen, Ryan
Hogan, Edith
Jean, Claudette
Knowles, Mary Ann
Lasky, Bette
Manney, Pamela

Mooney, Maureen
O'Connell, Timothy
Peterson, Andy
Renzullo, Andrew
Rowe, Robert
Smith, David
Stepanek, Stephen
Tahir, Saghir

Barry, Richard
Bergin, Peter
Clemons, Jane
Daniels, Gary
Elliott, Nancy
Foster, Linda
Goley, Jeffrey
Haefner, Robert
Hawkins, Ken
Infantine, William
Johnson, Stephen
Kopka, Angeline
Lawrence, James
Matarazzo, Anthony
Sr

Moran, Edward
O'Neil, James
Pilotte, Maurice
Reuschel, Michael
Schulze, Joan
Soucy, Connie
Sullivan, Daniel
Ulery, Jordan

Batula, Peter
Brunelle, Michael
Cote, David
Day, Russell
Essex, David
Francoeur, Bea
Gorman, Mary
Haley, Robert
Hebert, Roger
Irwin, Anne-Marie
Kelley, John
Kurk, Neal
Leishman, Peter
McRae, Karen

Movsesian, Lori
Ober, Lynne
Price, Pamela
Rochette, Eric
Shaw, Barbara
Spaulding, Jayne
Sullivan, Francis
Vaillancourt, Steve

Beaulieu, Jane
Campbell, David
Crane, Elenore Casey
Dokmo, Cynthia
Fletcher, Richard
Gargas, Carolyn
Goyette, Peter
Hammond, Jill
Hinkle, Peyton
Jasper, Shawn
Knowles, John
L'Heureux, Robert
Mack, Ron
Messier, Irene

O'Brien, Michael Sr
Ober, Russell III
Reeves, Sandra
Rosenwald, Cindy
Simon, Anthony
Spratt, Stephen
Sysyn, Mary
Villeneuve, Maurice

MERRIMACK

Anderson, Eric
Brueggemann, Donald
Ehlers, Eileen
Hager, Elizabeth
Kidder, David

McMahon, Patricia
Reed, Dennis
Wallner, Mary

Bouchard, Candace
Davis, Frank
Foote, Robert
Hamm, Christine
Kjellman, Eleanor
Glynn

Owen, Derek
Ryan, Jim
Walz, Mary

Boutin, David
DeJolie, John
Gile, Mary
Hess, David
Lockwood, Priscilla

Porter, Margaret
Shurtleff, Stephen
Webb, Leigh

Brown, Carole
DeStefano, Stephen
Greco, Vincent
Kelly, Sally
MacKay, James

Reardon, Tara
Tilton, Joy
Williams, Robert

ROCKINGHAM

Abbott, Dennis
Belanger, Ronald
Carson, Sharon
Dalrymple, David
Elliott, Robert
Garcia, Marilinda
Griffin, Mary
Hopfgarten, Paul
Kappler, Lawrence
Lund, Howie
McKinney, Betsy
Pantelakos, Laura
Reagan, John
Snow, Richard

Allen, Mary
Bettencourt, David
Case, Frank
Day, Judith
Emiro, Frank
Garrity, James
Grote, Otto
Howard, Doreen
Katsakiores, George
Major, Norman
McMahon, Charles
Pearson, Mark
Robertson, Carl
Stiles, Nancy

Baldasaro, Alfred
Bishop, Franklin
Casey, Kimberley
Devine, James
Fesh, Bob
Gleason, John
Headd, James
Ingram, Russell
Katsakiores, Phyllis
Marsh, Michael
Moore, Bennett
Preston, Mark
Russell, Trink
Waterhouse, Kevin

Bedrick, Jason
Brown, C. Pennington
Charron, Gene
DiFrancia, Anthony
Flanders, John Sr
Gould, Kenneth
Henson, John
Introne, Robert
Kennedy, James
McEachern, Paul
Nowe, Ronald
Rausch, James
Sanders, Elisabeth
Weare, Everett

Webber, James
Wickson, Rick

Welch, David
Winchell, George

Wells, Roger

Weyler, Kenneth

STRAFFORD

Berube, Roger
Hofemann, Roland
Mickelonis, Shawn
Smith, Marjorie
Wall, Janet

Brown, Julie
Hubbard, Pamela
Miller, Joseph
Spang, Judith
Watson, Robert

Fargo, Thomas
Kaen, Naida
Rous, Emma
Sprague, Dale

Grassie, Anne
Knowles, William
Schmidt, Peter
Srnc, Robert

SULLIVAN

Cloutier, John
Gagnon, Raymond
Phinzy, James

Donovan, Thomas
Gottling, Suzanne
Rodeschin, Beverly

Ferland, Brenda
Houde, Matthew

Franklin, Peter
Nielsen, Ellen

NAYS 63

BELKNAP

Arsenault, Beth

Morrison, Gail

Reever, Judith

Wood, Jane

CARROLL

Heard, Virginia

CHESHIRE

Butcher, Suzanne
Richardson, Barbara

Chase, William
Robertson, Timothy

Mitchell, Bonnie
Weed, Charles

Parkhurst, Henry

COOS

Hatch, William

GRAFTON

Andersen, Gene
Hammond, Lee

Cooney, Mary
Mulholland, Catherine

Estes, Carole
Pierce, David

Friedrich, Carol

HILLSBOROUGH

Beck, Catriona
Hall, Betty
Levesque, Melanie
Winters, Joel

Chase, Claudia
Harvey, Suzanne
Marshall, Seth

Ginsburg, Ruth
Holden, Randolph
Scannell, David

Hackel, Paul
Kaelin, Michael
Shattuck, Gilman

MERRIMACK

Blanchard, Elizabeth
Richardson, Gary

Clarke, Claire
Yeaton, Charles

Osborne, Jessie

Potter, Frances

ROCKINGHAM

Borden, David
McKenna, Daniel
Powers, James

Flockhart, Eileen
Moody, Marcia
Serlin, Christopher

Kepner, Susan
Nord, Susi
Splaine, James

Lister, Charlotte
Petterson, Don

STRAFFORD

Billian, Deborah
Burke, Rachel
Perry, Robert

Brennan, William
Cyr, James
Vachon, Dennis

Brown, Larry
DeChane, Marlene

Browne, Brendon
Hilliard, Dana

SULLIVAN

Converse, Larry
and the majority committee report was adopted.

Jillette, Arthur Jr

Skinder, Carla

UNANIMOUS CONSENT

Rep. Crane addressed the House.

The House reviewed the evacuation procedures for Representative's Hall.

The House recessed at 12:30 p.m.

RECESS

(Speaker Norelli in the Chair)

The House reconvened at 1:45 p.m.

REGULAR CALENDAR – RETAINED BILLS (CONT'D)

CACR 14, relating to: cherishing public schools. Providing that: state aid to public schools cannot decrease unless the number of students decreases. **INEXPEDIENT TO LEGISLATE.**

Rep. J. Timothy Dunn for Education: This amendment would do two things: first, it would require the state to pay state aid for education at the current level unless the student population decreased, and second, it would allow targeting. Because of the current status of education funding, and because discussion of education funding CACRs was “indefinitely postponed,” the committee voted to ITL. Vote 11-3. Committee report adopted.

HB 352-L, relative to trust funds for public school educational enhancement. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Kimberley S. Casey for Education: This amended bill modified the law intended to allow local public school districts to establish endowment funds. It is enabling legislation. It was retained for further work by the committee, in consultation with the department of education and the attorney general's office. The amendment reflects that work and provides for districts to establish trust funds using standard procedures and terminology. Vote 16-1.

Amendment (2444h)

Amend RSA 198:20-c, I-II as inserted by section 1 of the bill by replacing them with the following:

I. The school district may at any annual or special meeting appropriate such sums of money as it deems necessary to create expendable trust funds for specific purposes for the maintenance and operation of schools, *for the enhancement of public education*, and for any other public purpose that is not foreign to the school district's institution or incompatible with the objects of their organization. The school board may be named agents to expend such trust funds. Expenditure from such trust funds shall be made only for the purpose for which the trust fund was established.

II. School district trust funds created pursuant to this section shall be held in custody by the trustee named pursuant to RSA 31:22 of trust funds of the town wherein the

school district lies, or in the case of school districts embracing 2 or more towns, by the trustees of trust funds of that town which the voters of the school district may elect at the annual school district meeting. In order to expend such funds, the school board shall hold a public hearing prior to the expenditure to be made. ***After the hearing and a decision by the school board to proceed with the expenditure and within 10 calendar days of the decision, any 5 residents of the school district may, in writing, petition the trustees of the trust funds for a public hearing to further consider the single issue of whether the expenditure is for the purpose for which the fund was established. The trustees shall hold their hearing in a timely manner. Immediately following the close of the public hearing, the trustees shall publicly vote on whether the proposed expenditure is for the purpose for which the fund was established. The trustees' decision on the issue shall be final and binding on the school district.*** Notice of the time, place, and subject of *each* such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the meeting is held. Amend RSA 198:20-c, III-a as inserted by section 1 of the bill by replacing it with the following:

III-a. The principal of a trust fund created under this section that is established to enhance education shall be retained by the trustees of such trust funds in perpetuity. An annual accounting and report of the activities of the trust shall be presented to the school board of the district and published in the annual report.

Reps. Rous and Hess moved Recommit.

Reps. Rous and Patten spoke in favor.

Adopted.

HB 678-FN, revising the special education program approval and monitoring process.
OUGHT TO PASS WITH AMENDMENT.

Rep. Claire D. Clarke for Education: The amendment replacing the bill creates a study committee on financial responsibility for “mapping” and maintaining cochlear implants for school children. A cochlear implant is an “in body” device that is surgically implanted under general anesthesia and takes one to four weeks (sometimes longer for children) to heal. Since it is a relatively new technology for the hearing impaired, there is question whether it is a medical or educational obligation since insurance companies presently cover it. A study committee should be formed to clarify the specifics pertaining thereto. Vote 13-2.

Amendment (2660h)

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

AN ACT establishing a committee to study issues related to cochlear implants.

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

1 Committee Established. There is established a committee to study issues related to cochlear implants.

2 Membership and Compensation.

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

(a) Three members of the house of representatives, 2 of whom shall serve on the house education committee, and one of whom shall serve on the house finance committee.

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

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

3 Duties.

I. The committee shall:

(a) Study the procedure and costs for inclusion of related services pertaining to medical services, including transportation, which are necessary for purposes of diagnosis and evaluation or the surgical implant or replacement of a medical device.

(b) Evaluate existing procedures and costs for maintenance, programming, or mapping of such a device.

II. The committee may consult with department of education personnel or any other individual or organization with information or expertise relevant to the committee's objectives.

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

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2008.

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

AMENDED ANALYSIS

This bill establishes a committee to study issues related to cochlear implants.
Amendment adopted.

Committee report adopted.

Ordered to third reading.

Rep. Morrison declared a conflict of interest on **HB 678-FN** and did not participate.

HB 679-FN-L, relative to delivery of special education services. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Nancy F. Stiles for the Majority of Education: This bill is the result of two years of work by more than fifty people. All vested interests have been represented in support of re-writing NH's Special Education statutes to bring them into compliance with federal law. This bill, in compliance with IDEA 2004, provides opportunities for students with disabilities to excel to their greatest potential in the least restrictive environment. The five bills retained last year (HB 677, 678, 679, 765 and 766) were organized according to services provided. After subcommittees reported at the end of October, the bills were consolidated into two bills: HB 766 updates special education statute (RSA 186-C) and HB 679 concerns other statutes affected by special education (RSA 169, 193, and 194). For clarity and simplicity, the bills now follow the order of current statutes. HB 679 is the second bill to come from the two year study of the Special Education statutes and addresses the RSAs that affect situations for students with disabilities in need of special education that are not included in the RSA 186-Cs. In our effort to re-write New Hampshire's Special Education statutes we addressed all the affected RSAs to make sure there was no conflict within our own statutes. Our overall effort in the re-write, in addition to meeting the federal law, was to make the statutes clear and well organized so that money spent by the local districts could be spent on services to students rather than on litigation. Because the language in RSA 169 deals with extenuating circumstances of children (CHINS and delinquency,) we sought legal expertise from representatives of advocates for children with disabilities and advocates for school administrators. The various legal experts worked together to develop the appropriate language to meet the educational needs of these students with extenuating circumstances. As it came forward to committee there was a question to insure privacy rights so we sought the legal knowledge of a committee member to clarify the language. During the executive session questions arose about the use of the words "believes" and "suspects". In referencing federal law and regulations, we find that "believes" is used three times in the IDEA statute and five times in the regulations. "Suspects" is used twice in IDEA statute and seven times in the regulations. In NH's current RSAs, "suspects" is used one hundred fifty times and "believes" more than five hundred times. You will find the words "believes" and "suspects" in current NH education law. Vote 10-4.

Rep. David W. Hess for the Minority of Education: This bill has defects which should have

been corrected in committee, but weren't. This bill also suffered from a breakdown in process. First, the bill triggers notification to a school district if "the arresting or prosecuting agency, or juvenile probation or parole officer suspects that a [juvenile delinquent] has a disability," and requires a court to order a juvenile in delinquent or CHINS proceedings to consult with counsel if it "believes" the juvenile has a disability. These words are undefined and have no settled meaning in the law. Moreover, nothing should be initiated on mere suspicion, particularly if the suspicion is held by individuals who have no particular knowledge or experience with the condition they are empowered to report. Second, this bill deletes the descriptive limiting adjective "educationally" wherever it modified the word "disabled." Using the term "educationally" reminds the reader that a disability does not warrant the actions required by the statute unless it is an educational disability. The references to RSA 186-C do not, in the opinion of the minority, cure this deficiency, and there are substantial reasons for continuing the use of unique New Hampshire terms in our statutes rather than mimicking federal laws and regulations. Finally, over half the statutory provisions amended, or otherwise addressed, in this bill are properly within the jurisdiction of the other House committees. Those are the provisions dealing with delinquency (RSA Chapter 169-B), neglect and abuse (RSA Chapter 169-C) and CHINS (RSA Chapter 169-D). At the very least, this bill, if passed by the House, should be referred to the committees primarily responsible for those statutes as second committees.

Majority Amendment (2649h)

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

1 Delinquent Children; Filing Reports. Amend RSA 169-B:5-a to read as follows:

169-B:5-a Filing Reports, Evaluations, and Other Records. All reports, evaluations and other records ***requested by the court*** from the department of health and human services, ***school districts***, counselors, and guardians ad litem in proceedings under this chapter shall be filed with the court and all other parties at least 5 days prior to any hearing, ***unless the court sets a different deadline upon the request of any party or agency providing the information***. Once filed with the court and given to all other parties, the report, evaluation or other record need not be refiled during the proceeding. Failure to comply with the provisions of this section shall not be grounds for dismissal of the petition.

2 Delinquent Children; Diversion Programs. Amend RSA 169-B:10, II to read as follows:

II. At any time before or at arraignment pursuant to this chapter, a minor and the minor's family may be referred to a court-approved diversion program or other community resource. Referral may be made by the arresting or prosecuting agency or juvenile probation and parole officer, prior to filing a petition with the court or after the filing of a petition by such agency with the court's approval, or by the court on its own, or any party's motion. ***When the arresting or prosecuting agency, or juvenile probation and parole officer suspects that a minor has a disability, an administrator at the responsible school district shall be notified. If appropriate, the school district shall refer the minor for evaluation to determine if the child is in need of special education and related services.*** The administrative judge of the district court shall have the authority to approve diversion referral procedures for use in all juvenile matters throughout the state.

3 Delinquent Children; Appointment of Counsel. Amend RSA 169-B:12, I to read as follows:

I. Absent a valid waiver, the court shall appoint counsel at the time of arraignment of an indigent minor, provided that an indigent minor detained pursuant to RSA 169-B:11, III, shall have counsel appointed upon the issuance of the detention order. For purposes of the appointment of counsel under this section, an indigent minor shall be a minor who satisfies the court, after appropriate inquiry, that the minor is financially unable to independently obtain counsel. ***If the court believes the minor has a cognitive, emotional, learning, or sensory disability, the court shall require the minor to consult with counsel.***

4 Delinquent Children; Arraignment. Amend RSA 169-B:13, I to read as follows:

I. No minor shall be detained for more than 24 hours, Sundays and holidays excluded, from the time of being taken into custody without being brought before a court. At any arraignment the court shall:

- (a) Advise the minor in writing and orally of any formal charges;
- (b) Inform the minor of the applicable constitutional rights;
- (c) Appoint counsel pursuant to RSA 169-B:12;
- (d) Establish any conditions for release; and
- (e) Set a hearing date.

(f)(1) Inquire of the juvenile and a parent or guardian of the juvenile if the juvenile has been:

(A) Determined to have a cognitive disability; or

(B) Determined to have a mental illness, emotional or behavioral disorder, or another disorder that may impede the child's decision-making abilities; or

(C) Identified as eligible for special education services.

(2) Such inquiry shall be conducted to gather complete and accurate information. The court shall make a record of the inquiry and of any information provided in response to the inquiry.

I-a. ~~[However,]~~ No plea shall be taken until the minor has the opportunity to consult with counsel or until a waiver is filed pursuant to RSA 169-B:12.

5 New Paragraph; Delinquent Children; Release or Detention. Amend RSA 169-B:14 by inserting after paragraph III the following new paragraph:

II-a. After arraignment, the court shall determine if the minor's school district shall be joined pursuant to RSA 169-B:22.

6 Delinquent Children; Adjudicatory Hearing. Amend RSA 169-B:16, III to read as follows:

III. If the court finds the minor has committed the alleged offense, it shall, unless a report done on the same minor less than 3 months previously is on file~~[-]~~:

(a) Order the department of health and human services or other appropriate agency to make an investigation and written report consisting of, but not limited to, the home conditions, school records and the mental, physical and social history of the minor, ***and if ordered by the court,*** ~~[-When ordered by the court, such investigation]~~ shall include a physical and mental examination of the minor conducted pursuant to RSA 169-B:23, RSA 169-B:20 and RSA 169-B:21. ~~[No disposition order shall be made by the court without first reviewing the investigation report.]~~

(b) Determine whether the minor's school district shall be joined pursuant to RSA 169-B:22, and if joined, review the school district's recommendations. The court shall not issue a disposition order until it reviews the investigative report required under this chapter or the school district recommendations required under RSA 169-B:22.

7 New Paragraph; Special Education; Dispositional Hearing. Amend RSA 169-B:19 by inserting after paragraph IX the following new paragraph:

X. The court may issue such orders as are necessary to ensure provision of services under this chapter, provided that any order issued involving the department of education or a legally liable school district shall comply with RSA 169-B:22.

8 Reference Change; Delinquent Children. Amend RSA 169-B:22 to read as follows:

169-B:22 Disposition of ~~[Educationally Disabled]~~ ***a Minor with a Disability.***

I. At any point during the proceedings, the court may, either on its own motion or that of any other person, and if the court contemplates a residential placement, the court shall immediately, join the legally liable school district for the limited purposes of directing the school district to determine whether the minor ~~[is educationally disabled]~~ ***is a child with a disability*** ~~[as defined in RSA 186-C]~~ or of directing the school district to review the

services offered or provided under RSA 186-C, if the minor has already been determined to be ~~[educationally disabled]~~ **a child with a disability**. ***If the court orders the school district to determine whether the minor is a child with a disability, the school district shall make this determination by treating the order as the equivalent of a referral by the child's parent for special education, and shall conduct any team meetings or evaluations that are required under law when a school district receives a referral by a child's parent.***

II. Once joined as a party, the legally liable school district shall have full access to all records maintained by the district court under this chapter. ***The school district shall also report to the court its determination of whether the minor is a child with a disability, and the basis for such determination. If the child is determined to be a child with a disability, the school district ~~and~~ shall make a recommendation to the court as to where the child's educational needs can ~~best~~ be met in accordance with state and federal education laws.*** In cases where the court does not follow the school district's recommendation, the court shall issue written findings explaining why the recommendation was not followed.

III. If the school district finds or has found that the minor ~~[is educationally disabled]~~ **has a disability**, or if it is found that the minor ~~[is educationally disabled]~~ **is a child with a disability** on appeal from the school district's decision in accordance with the due process procedures of RSA 186-C, the school district shall offer an appropriate educational program and placement in accordance with RSA 186-C. Financial liability for such education program shall be as determined in RSA 186-C:19-b.

IV. ***In an administrative due process hearing conducted by the department of education pursuant to RSA 186-C, a school district may provide a hearing officer with information from district court records which the school district has accessed pursuant to paragraph II of this section, provided that at least 20 days prior to providing any records to the hearing officer, the school district files notice of its intention to do so with the court and all parties to the proceedings, and there is no objection to the release of records. A party objecting to the release of records may file a motion with the court describing the basis for the objection. The court shall schedule an expedited hearing on the matter to determine if such records may be released. In making this decision, the court shall balance the importance of the records to a fair and accurate determination of the merits against the privacy interests of the parties to the proceedings, and render a written decision setting forth its findings and rulings. No information released to a hearing officer pursuant to this paragraph shall be disclosed to any other person or entity without the written permission of the child's parent, guardian, or legal representative, except that a court conducting an appellate review of an administrative due process hearing shall have access to the same information released to a hearing officer pursuant to this paragraph.***

V. ***In this section, "child with a disability" shall be as defined in RSA 186-C.***

9 Child Protection Act; Adjudicatory Hearing. Amend RSA 169-C:18, V to read as follows:

V. If the court determines that a child has been abused or neglected, the court shall order a child placing agency to make an investigation and a social study consisting of, but not limited to, the home conditions, family background, and financial assessment, school record, mental, physical and social history of the family, including sibling relationships and residences for appropriateness of preserving relationships between siblings who are separated as a result of court ordered placement, and submit it in writing to the court prior to the final disposition of the case. ***The court shall determine whether the minor's school district shall be joined pursuant to RSA 169-C:20, and if joined, the court shall review the school district's recommendations.*** No disposition order shall be made by a court without first reviewing the social study, except pursuant to a voluntary consent

order or when waived by all the parties, **and without first reviewing the school district recommendations required under RSA 169-C:20.** Preliminary orders, continued pursuant to RSA 169-C:16, may be entered or modified as appropriate until the dispositional hearing.

10 Reference Change; Disposition of Child with a Disability. Amend RSA 169-C:20 to read as follows:

169-C:20 Disposition of ~~[Educationally Disabled]~~ **a Child with a Disability.**

I. At any point during the proceedings, the court may, either on its own motion or that of any other person, and if the court contemplates a residential placement, the court shall immediately, join the legally liable school district for the limited purposes of directing the school district to determine whether the child ~~[is educationally disabled]~~ **is a child with a disability** ~~[as defined in RSA 186-C]~~ or of directing the school district to review the services offered or provided under RSA 186-C if the child had already been determined to be ~~[educationally disabled]~~ **a child with a disability. If the court orders the school district to determine whether the minor is a child with a disability, the school district shall make this determination by treating the order as the equivalent of a referral by the child's parent for special education, and shall conduct any team meetings or evaluations that are required under law when a school district receives a referral by a child's parent.**

II. Once joined as a party, the legally liable school district shall have full access to all records maintained by the district court under this chapter. **The school district shall also report to the court its determination of whether the minor is a child with a disability, and the basis for such determination. If the child is determined to be a child with a disability, the school district** ~~[and]~~ **shall make a recommendation to the court as to where the child's educational needs can** ~~[best]~~ **be met in accordance with state and federal education laws.** In cases where the court does not follow the school district's recommendation, the court shall issue written findings explaining why the recommendation was not followed.

III. If the school district finds or has found that the child ~~[is educationally disabled]~~ **is a child with a disability**, or if it is found that the child ~~[is educationally disabled]~~ **is a child with a disability** on appeal from the school district's decision in accordance with the due process procedures of RSA 186-C, the school district shall offer an appropriate educational program and placement in accordance with RSA 186-C. Financial liability for such education program shall be as determined in RSA 186-C:19-b.

IV. **In an administrative due process hearing conducted by the department of education pursuant to RSA 186-C, a school district may provide a hearing officer with information from district court records which the school district has accessed pursuant to paragraph II of this section, provided that at least 20 days prior to providing any records to the hearing officer, the school district files notice of its intention to do so with the court and all parties to the proceedings, and there is no objection to the release of records. A party objecting to the release of records may file a motion with the court describing the basis for the objection. The court shall schedule an expedited hearing on the matter to determine if such records may be released. In making this decision, the court shall balance the importance of the records to a fair and accurate determination of the merits against the privacy interests of the parties to the proceedings, and render a written decision setting forth its finding, and rulings. No information released to a hearing officer pursuant to this paragraph shall be disclosed to any other person or entity without the written permission of the child's parent, guardian, or legal representative, except that a court conducting an appellate review of an administrative due process hearing shall have access to the same information released to a hearing officer pursuant to this paragraph.**

V. **In this section, "child with a disability" shall be as defined in RSA 186-C.**

11 Reference Change; Children in Need of Services. Amend the introductory paragraph to RSA 169-D:5, VI and RSA 169-D:5, VI(a) to read as follows:

VI. When a school official is filing a petition involving a child ~~[determined to be educationally disabled]~~ **with a disability** pursuant to RSA 186-C, he **or she** shall include information which demonstrates that the legally liable school district:

(a) Has determined that the child ~~[is educationally disabled]~~ **has a disability**;
and

12 Children in Need of Services; Appointment of Counsel. Amend RSA 169-D:12, I to read as follows:

I. Absent a valid waiver, the court shall appoint counsel for the child at the time of the initial appearance. ***If the court believes that the minor has a cognitive, emotional, learning, or sensory disability, the court shall require the minor to consult with counsel.***

13 New Paragraph; Children in Need of Services; Dispositional Hearing. Amend RSA 169-D:17 by inserting after paragraph VII the following new paragraph:

VIII. The court may issue such orders as are necessary to ensure provision of services under this chapter, provided that any order issued involving the department of education or a legally liable school district shall comply with RSA 169-B:22.

14 Reference Change; Children in Need of Services. Amend RSA 169-D:18 to read as follows:

169-D:18 Disposition of ~~[Educationally Disabled]~~ Child **with a Disability**.

I. At any point during the proceedings, the court may, either on its own motion or that of any other person, and if the court contemplates a residential placement, the court shall immediately, join the legally liable school district for the limited purposes of directing the school district to determine whether the child ~~[is educationally disabled]~~ **is a child with a disability** as defined in RSA 186-C or of directing the school district to review the services offered or provided under RSA 186-C if the child has already been determined to ~~be educationally disabled]~~ **be a child with a disability**. ***If the court orders the school district to determine whether the minor is a child with a disability, the school district shall make this determination by treating the order as the equivalent of a referral by the child's parent for special education, and shall conduct any team meetings or evaluations that are required under law when a school district receives a referral by a child's parent.***

II. Once joined as a party, the legally liable school district shall have full access to all records maintained by the district court under this chapter. ***The school district shall also report to the court its determination of whether the minor is a child with a disability, and the basis for such determination. If the child is determined to be a child with a disability, the school district [and] shall make a recommendation to the court as to where the child's educational needs can [best] be met in accordance with state or federal education laws.*** In cases where the court does not follow the school district's recommendation, the court shall issue written findings explaining why the recommendation was not followed.

III. If the school district finds or has found that the child ~~[is educationally disabled]~~ **is a child with a disability**, or if it is found that the child ~~[is educationally disabled]~~ **is a child with a disability** on appeal from the school district's decision in accordance with the due process procedures of RSA 186-C, the school district shall offer an appropriate educational program and placement in accordance with RSA 186-C. Financial liability for such educational program shall be as determined in RSA 186-C:19-b.

IV. ***In an administrative due process hearing conducted by the department of education pursuant to RSA 186-C, a school district may provide a hearing officer with information from district court records which the school district has accessed pursuant to paragraph II of this section, provided that at least 20 days prior to providing any records to the hearing officer, the school district files notice of its***

intention to do so with the court and all parties to the proceedings, and there is no objection to the release of records. A party objecting to the release of records may file a motion with the court describing the basis for the objection. The court shall schedule an expedited hearing on the matter to determine if such records may be released. In making this decision, the court shall balance the importance of the records to a fair and accurate determination of the merits against the privacy interests of the parties to the proceedings and render a written decision setting forth its findings and rulings. No information released to a hearing officer pursuant to this paragraph shall be disclosed to any other person or entity without the written permission of the child's parent, guardian, or legal representative, except that a court conducting an appellate review of an administrative due process hearing shall have access to the same information released to a hearing officer pursuant to this paragraph.

V. In this section, "child with a disability" shall be as defined in RSA 186-C.

15 School Attendance; Legal Residence Required. Amend RSA 193:12, II(a)(2) to read as follows:

(2) In a divorce decree where parents are awarded joint decision making responsibility or joint legal custody, the legal residence of a minor child is the residence of the parent with whom the child resides. If a parent is awarded sole or primary residential responsibility or physical custody by a court of competent jurisdiction in this or any other state, legal residence of a minor child is the residence of the parent who has sole or primary residential responsibility or physical custody. If the parent with sole or primary physical custody lives outside the state of New Hampshire, the pupil does not have residence in New Hampshire. If the court order is for equal or approximately equal periods of residential responsibility, the child's legal residence for school attendance purposes shall be as stated in the order. ***If a child is in a court-ordered residential placement, foster home, or group home pursuant to RSA 169-B, RSA 169-C, RSA 169-D, RSA 170-C, or RSA 463, residence shall be determined in accordance with RSA 193:27.***

16 School Attendance; Legal Residence Required. Amend RSA 193:12, II(c)(1) to read as follows:

(c)(1) If a parent with legal ~~[and physical]~~ custody of a child moves from New Hampshire to another state while the child is in a court-ordered residential placement in this state or another state pursuant to RSA 169-B, RSA 169-C, RSA 169-D, ***RSA 170-C***, or RSA 463, the departments of education and health and human services shall make a written request of the receiving state to assume the ~~[educational costs]~~ ***programmatic and financial liability*** of the child's placement in this state or another state until ~~[legal]~~ ***physical*** custody of the child is returned to a parent or legal guardian. In this subparagraph, "receiving state" shall mean the state to which the child's parents move.

17 School Attendance; Legal Residence Required. Amend RSA 193:12, V to read as follows:

V. Except as provided in subparagraph II(b), nothing in this section shall limit or abridge the right of any child placed and cared for in any home for children, as defined in RSA 193:27, or of any child placed in the home of a relative of that child by the department of health and human services, or placed in the home of a relative or friend by a court pursuant to RSA 169-B, RSA 169-C, RSA 169-D, ***RSA 170-C***, or RSA 463, to attend the public schools of the school district in which the home for children or home of the relative or friend in which a child is placed by the department of health and human services or by a court of competent jurisdiction is located, as provided in RSA 193:28.

18 School Attendance; Legal Residence Required. Amend RSA 193:12, V-b to read as follows:

V-b. Whenever a dispute arises among one or more school districts, the department of health and human services, or one or more of the previously mentioned parties, as to the residency of a child who is in the legal custody or guardianship of the department of health

and human services, or who has been placed pursuant to a court order in a proceeding under RSA 169-B, RSA 169-C, RSA 169-D, or RSA 463, the department of health and human services ~~[may]~~ **shall** request in writing that the superintendents involved resolve the dispute. If the residency dispute remains unresolved 10 days after such request, the department of health and human services ~~[may]~~ **shall** request that the commissioner of the department of education determine the residence of the child. The child ~~[may]~~ **shall be permitted to** attend school in the district in which the child has been placed by the court or the department of health and human services pending the resolution of the residency dispute. Liability as to the cost of school attendance provided under this paragraph shall be determined by the commissioner of education.

19 Education of Children Placed in Homes; Definitions. Amend RSA 193:27, IV to read as follows:

IV. "Sending district" means the school district in which a child most recently resided other than in a home for children, the home of a relative or friend in which a child is placed by the department of health and human services or a court of competent jurisdiction pursuant to RSA 169-B, RSA 169-C, RSA 169-D, ***RSA 170-C***, or RSA 463, health care facility, or state institution, if such child is not in the legal custody of a parent or if the parent resides outside the state; if the child is retained in the legal custody of a parent residing within the state, "sending district" means the school district in which the parent resides. For the purposes of this paragraph a parent shall not have legal custody if legal custody has been awarded to some other individual or agency, even if that parent retains residual parental rights. An award of legal custody by a court of competent jurisdiction, in this state or in any other state, shall determine legal custody under this paragraph.

20 Charter and Charter Conversion Schools; Definitions. Amend RSA 194-B:1, VII to read as follows:

VII. "Parent" means a parent, guardian, or other person or entity having legal custody of a child ***or, in the case of a child with a disability, a surrogate parent who has been appointed in accordance with state or federal law.***

21 Charter and Charter Conversion Schools; Definitions. Amend RSA 194-B:1, XIV to read as follows:

XIV. "Teacher" means any individual providing or capable of providing direct instructional services to pupils, ***and who meets requirements prescribed in the Elementary and Secondary Education Act and the Individuals With Disabilities Education Act.***

22 Charter and Charter Conversion Schools; Establishment. Amend RSA 194-B:3, II(u) to read as follows:

(u) Identity of consultants to be used for various services, if known, ***or the qualifications or certifications of consultants not identified by name.***

23 Charter and Charter Conversion Schools; Requirements. Amend RSA 194-B:8, I to read as follows:

I. A charter school shall not discriminate nor violate individual civil rights in any manner prohibited by law. A charter school shall not discriminate against any ~~[educationally disabled pupil]~~ ***child with a disability as defined in RSA 186-C.***

24 Charter and Charter Conversion Schools; Requirements. Amend RSA 194-B:8, III to read as follows:

III. ***A*** charter school shall provide instruction for at least the number of days required by state law. A charter school shall comply with compulsory attendance laws as provided in RSA 189:1, 189:1-a, and 193:1. Innovative scheduling resulting in at least that number of attendance hours required under ***RSA 186-C:15***, 189:1, 189:1-a, and 193:1 and current state board attendance rules shall be encouraged.

25 Charter and Charter Conversion Schools; Funding. Amend RSA 194-B:11, III to read as follows:

III. In accordance with current department of education standards, the funding and educational decision-making process for ~~[educationally handicapped pupils]~~ **children with disabilities** attending a charter or open enrollment school shall be the responsibility of the ~~[local education agency (LEA)]~~ **school district** and shall retain all current options available to the parent and to the ~~[LEA]~~ **school district**.

26 Charter and Charter Conversion Schools; Oversight Committee. Amend RSA 194-B:21, I to read as follows:

I. There is hereby established a joint legislative oversight committee. The committee shall jointly meet at least once a year and shall monitor the effect of this chapter, make recommendations for any legislative changes with respect thereto, and make recommendations to the legislature to reduce the scope of, ease the administration of, simplify the compliance with, and, where appropriate, recommend to the legislature elimination of regulations and reduction of the amount of paperwork required ~~[in connection with all public education and the state's regulation thereof]~~. The committee shall include 3 senators appointed by the president of the senate, 3 members of the house appointed by the speaker of the house, and one member of the state board appointed by the chairperson of the state board who shall serve as a nonvoting member in an advisory capacity.

27 Reference Changes. Amend the following RSA provisions by replacing the phrases "educationally disabled child" with "child with a disability": RSA 186-C:2, I; and RSA 186-C:7, I.

28 Reference Changes. Amend the following RSA provisions by replacing the phrase "an educationally disabled child" with "a child with a disability": RSA 186-C:2, I; RSA 186-C:2, III-V; RSA 186-C:7, II; RSA 186-C:13, I(a)-(b); RSA 186-C:14, III; RSA 186-C:15; RSA 186-C:19; RSA 186-C:19-a; RSA 186-C:19-b, II; RSA 186-C:20, I; and RSA 193:3, III(g).

29 Reference Changes. Amend the following RSA provisions by replacing the phrases "educationally disabled children," "educationally disabled pupils," "educationally disabled students," and "educationally disabled individuals" with "children with disabilities": RSA 21-N:9, II(l); RSA 35:1-b; RSA 169-B:7, III; RSA 169-C:8, III; RSA 169-D:6, III; RSA 186-C:1; RSA 186-C:2, II; RSA 186-C:5; RSA 186-C:7, III; RSA 186-C:7-a, I-II; RSA 186-C:8, I-II; RSA 186-C:10; RSA 186-C:11; RSA 186-C:12; RSA 186-C:13, I; RSA 186-C:14, I; RSA 186-C:16, III; RSA 186-C:18, III(a); the section heading RSA 186-C:19; RSA 186-C:19, II; the section headings of RSA 186-C:19-a and RSA 186-C:19-b; RSA 186-C:19-b, III-V; RSA 186-C:21, V; RSA 186-C:22, V; RSA 193:3, I; RSA 194-B:3, II(n); the introductory paragraph of RSA 198:40-b; RSA 198:40-b, I(b); the introductory paragraph of RSA 198:40-b, II; RSA 198:40-b, II(a) and RSA 198:42, I.

30 Reference Changes. Amend the following RSA provisions by replacing the phrase "individualized education plan" or "individual education plan" with "individualized education program": RSA 186-C:7, I-II; RSA 186-C:16-b, VI; RSA 186-C:19, III; RSA 186-C:19-a, I; RSA 186-C:21, V; RSA 186-C:22, V; RSA 193:12, VI(a); and RSA 265:107-a, II.

31 Reference Changes. Amend the following RSA provisions by replacing the phrase "educationally related services" with "related services": RSA 126-A:40, I(b); RSA 169-B:40, I(b); RSA 169-C:27, I(b); RSA 169-D:29, I(b); RSA 186-C:2, I, I-a, III, and V; RSA 186-C:19, I; RSA 186-C:19-b, I(a), II, II(a)-(b), and IV; and RSA 193:29, I(a).

32 Effective Date. This act shall take effect July 1, 2008.

AMENDED ANALYSIS

This bill amends the procedures for delivery of special education and related services. Majority committee amendment adopted.

The question now being adoption of the majority committee report of Ought to Pass with Amendment.

Rep. Hess spoke against.

Rep. Stiles spoke in favor and yielded to questions.

Rep. Hess requested a roll call; sufficiently seconded.

YEAS 221 NAYS 110

YEAS 221

BELKNAP

Arsenault, Beth	Millham, Alida	Reever, Judith
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CARROLL

Bridgham, Robert Knox, J. David	Buco, Thomas	Butler, Edward	Cunningham, Howard
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CHESHIRE

Allen, Peter Butynski, William Emerson, Susan Loll, Thomas Roberts, Kris Weed, Charles	Burridge, Delmar Chase, William Espiefs, Peter Mitchell, Bonnie Robertson, Timothy	Butcher, Suzanne Dunn, J. Timothy Hunt, John Parkhurst, Henry Sad, Tara	Butterworth, Timothy Eaton, Daniel Lerandeau, Alfred Richardson, Barbara Weber, Lucy
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COOS

Hatch, William Remick, William	Ingersoll, Paul Sr Thomas, Yvonne	Merrick, Evalyn	Merrick, Scott
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GRAFTON

Aguiar, James Bleyler, Ruth Gionet, Edmond Lovett, Sid Nordgren, Sharon Williams, Burton	Almy, Susan Cooney, Mary Hammond, Lee Matheson, Robert Pierce, David	Andersen, Gene Estes, Carole Harding, A Laurie McLeod, Martha Preston, Philip	Benn, Bernard Friedrich, Carol Laliberte, Suzanne Mulholland, Catherine Solomon, Peter
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HILLSBOROUGH

Baroody, Benjamin Brunelle, Michael Cote, David Essex, David Garrity, Patrick Hackel, Paul Harvey, Suzanne Johnson, Stephen Knowles, Mary Ann Levesque, Melanie	Beaulieu, Jane Campbell, David Daler, Jennifer Forest, Armand Ginsburg, Ruth Haley, Robert Hebert, Roger Kaelin, Michael Kopka, Angeline Mack, Ron	Beck, Catriona Chase, Claudia Dokmo, Cynthia Foster, Linda Goley, Jeffrey Hall, Betty Irwin, Anne-Marie Kelley, John Lasky, Bette Marshall, Seth	Bergin, Peter Clemons, Jane Drisko, Richard Gargasz, Carolyn Gorman, Mary Hammond, Jill Jean, Claudette Knowles, John Leishman, Peter Matarazzo, Anthony Sr Peterson, Andy Rosenwald, Cindy Shaw, Barbara Sullivan, Francis
Movsesian, Lori Pilotte, Maurice Scannell, David Smith, David Sysyn, Mary	O'Brien, Michael Sr Reuschel, Michael Schulze, Joan Spratt, Stephen Tahir, Saghir	O'Neil, James Rochette, Eric Shattuck, Gilman Sullivan, Daniel Ulery, Jordan	

MERRIMACK

Blanchard, Elizabeth	Bouchard, Candace	Brown, Carole	Brueggemann, Donald
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Clarke, Claire
Ehlers, Eileen
Hager, Elizabeth
Kjellman, Eleanor
Glynn
Owen, Derek
Richardson, Gary
Wallner, Mary
Yeaton, Charles

Davis, Frank
Foose, Robert
Hamm, Christine
Lockwood, Priscilla

Porter, Margaret
Ryan, Jim
Walz, Mary

DeJoie, John
Gile, Mary
Kelly, Sally
McMahon, Patricia

Potter, Frances
Shurtleff, Stephen
Webb, Leigh

DeStefano, Stephen
Greco, Vincent
Kidder, David
Osborne, Jessie

Reardon, Tara
Tilton, Joy
Williams, Robert

ROCKINGHAM

Abbott, Dennis
Cali-Pitts, Jacqueline
Flockhart, Eileen
Ingram, Russell
Marsh, Michael
Moore, Bennett
Powers, James
Russell, Trink
Stiles, Nancy

Bettencourt, David
Casey, Kimberley
Gould, Kenneth
Kennedy, James
McEachern, Paul
Nord, Susi
Quandt, Marshall
Serlin, Christopher
Webber, James

Borden, David
Day, Judith
Henson, John
Kepner, Susan
McKenna, Daniel
Pantelakos, Laura
Quandt, Matthew
Snow, Richard
Wells, Roger

Brown, C. Pennington
DiFruscia, Anthony
Howard, Doreen
Lister, Charlotte
Moody, Marcia
Pettersen, Don
Robertson, Carl
Splaine, James
Weyler, Kenneth

STRAFFORD

Berube, Roger
Brown, Larry
DeChane, Marlene
Hubbard, Pamela
Perry, Robert
Spang, Judith
Wall, Janet

Billian, Deborah
Browne, Brendon
Fargo, Thomas
Knowles, William
Rous, Emma
Sprague, Dale

Brennan, William
Burke, Rachel
Grassie, Anne
Mickelonis, Shawn
Schmidt, Peter
Snec, Robert

Brown, Julie
Cyr, James
Hofemann, Roland
Miller, Joseph
Smith, Marjorie
Vachon, Dennis

SULLIVAN

Cloutier, John
Franklin, Peter
Jillette, Arthur Jr

Converse, Larry
Gagnon, Raymond
Nielsen, Ellen

Donovan, Thomas
Gottling, Suzanne
Phinizy, James

Ferland, Brenda
Houde, Matthew
Skinder, Carla

NAYS 110

BELKNAP

Allen, Janet
Heald, Bruce
Tilton, Franklin

Boyce, Laurie
Nedeau, Stephen
Tobin, William

Clark, Charles
Pilliod, James
Wendelboe, Fran

Flanders, Donald
Thomas, John
Whalley, Michael

CARROLL

Ahlgren, Christopher
Martin, James

Brown, Carolyn
Morrow, Harry

Chandler, Gene
Patten, Betsey

Denley, William

CHESHIRE

Johnson, Jane

Pelkey, Stephen

COOS

None

GRAFTON

Bulis, Lyle Dingman, Vernon III Eaton, Stephanie Sorg, Gregory

HILLSBOROUGH

Barry, Richard	Batula, Peter	Bergeron, Jean-Guy	Clark, Mark
Daniels, Gary	Day, Russell	Elliott, Nancy	Fletcher, Richard
Francoeur, Bea	Goyette, Peter	Graham, John	Haefner, Robert
Hansen, Ryan	Hawkins, Ken	Hinkle, Peyton	Hogan, Edith
Holden, Randolph	Infantine, William	Jasper, Shawn	Kurk, Neal
L'Heureux, Robert	Lawrence, James	Manney, Pamela	McRae, Karen
Messier, Irene	Mooney, Maureen	Ober, Lynne	Ober, Russell III
Price, Pamela	Reeves, Sandra	Renzullo, Andrew	Rowe, Robert
Simon, Anthony	Soucy, Connie	Spaulding, Jayne	Stepanek, Stephen
Vaillancourt, Steve	Villeneuve, Maurice	Winters, Joel	

MERRIMACK

Anderson, Eric Boutin, David Hess, David MacKay, James
Reed, Dennis

ROCKINGHAM

Allen, Mary	Baldasaro, Alfred	Bedrick, Jason	Belanger, Ronald
Bishop, Franklin	Camm, Kevin	Carson, Sharon	Case, Frank
Charron, Gene	Dalrymple, David	Devine, James	Elliott, Robert
Emiro, Frank	Fesh, Bob	Flanders, John Sr	Garcia, Marilinda
Garrity, James	Gleason, John	Griffin, Mary	Headd, James
Hopfgarten, Paul	Introne, Robert	Kappler, Lawrence	Katsakiores, George
Katsakiores, Phyllis	Lund, Howie	Major, Norman	McKinney, Betsy
McMahon, Charles	Nowe, Ronald	Pearson, Mark	Rausch, James
Reagan, John	Sanders, Elisabeth	Waterhouse, Kevin	Weare, Everett
Welch, David	Wickson, Rick	Winchell, George	

STRAFFORD

Watson, Robert

SULLIVAN

Rodeschin, Beverly
and the majority committee report was adopted.
Ordered to third reading.
Rep. Morrison declared a conflict of interest on **HB 679-FN-L** and did not participate.

HB 766-FN, making changes to the laws relating to special education. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Nancy F. Stiles for the Majority of Education: This bill is the result of two years of work by more than fifty people. All vested interests have been represented in support of re-writing NH's Special Education statutes to bring them into compliance with federal law. This bill, in compliance with IDEA 2004, provides opportunities for students with disabilities to excel to their greatest potential in the least restrictive environment. The five bills retained last year (HB 677, 678, 679, 765 and 766) were organized according to services provided. After subcommittees reported at the end of October, the bills were consolidated into two bills: HB 766 updates special education statute (RSA 186-C) and HB 679 concerns other statutes

affected by special education (RSA 169, 193, and 194). For clarity and simplicity, the bills now follow the order of current statutes. This was a comprehensive study on the complex issues of special education to bring NH law into compliance with IDEA 2004. Within the House Committee there were questions about changing the language “educationally disabled child” to “child with a disability”. This bill uses the language of the federal statute, “child with a disability” (clearly defined in RSA 186-C:2, I) “who because of such impairment, needs special education or special education and related services” and carries this reference through all the special education statutes. This language mirrors the federal language with the exception that “acquired brain injury” was added because physicians tell us there are times when children, due to a fall or other circumstances, have sustained a brain injury that requires special education or related services. The bills retained last session had four major areas of disagreement: short-term objectives and benchmarks, expert witness fees, mapping of cochlear implants, and program approval and monitoring. 1) The short-term objectives and benchmarks were required for all special education students until this past August and are still required for children who take alternate assessments. Parents tell us benchmarks are helpful to support the educational process at home. To empower the local IEP team, this bill uses the short-term objectives and benchmarks as a fall back position unless the IEP team and in particular the parent determines they are not necessary. 2) Expert witness fees provide a level playing field for parents when they are in court with a due process hearing. A judge can determine if the expert witness was necessary for the parent to prevail and can award all, some, or none of those costs. This bill as amended provides the caveat that only when the court determines the school district has not acted in good faith can an award be considered. 3) Mapping of cochlear implants is done by an audiologist to make adjustments to an external processor so a child can hear, and allows the student to remain within the school district rather than possibly be placed out of district. Mapping is currently allowed through insurance policies and through Medicaid but the subcommittee felt it needed further study and has proposed a study committee through one of the other retained special education bills (HB 678). 4) The bill lays out the steps for program approval and monitoring by the Department of Education and consequences for non-compliance. In addition to bringing NH into compliance with IDEA 2004, the bill includes added opportunities for parent involvement in their child’s education, no expanded programming for the local district, incentives for local school districts at their own choosing to establish the capacity to offer programming in district which has the potential to save tax payer money from out-of – district placement, and strengthens accountability through the department of education. Vote 12-3.

Rep. David W. Hess for the Minority of Education: House Bill 766, as it comes to the House, is a massive, omnibus, 26-page revision of our special education laws which was compiled from four separate bills several days before the Education Committee voted on it. Prior to that, these bills were separately heard in public hearings, separately worked on in individual subcommittees, and separately considered by the full Education Committee in work sessions. While these bills were generally presented as vehicles to merely make technical changes and update our statutory language to mirror federal special education laws and regulations, in many instances this bill imposes requirements and obligations which exceed federal law, and introduces ambiguous, unclear, undefined terms, all at unknown additional cost to our local school districts. For example, the statute replaces the phrases, “educationally disabled” and “educationally related services” with the generic phrases, “child with a disability” and “related services,” and deletes the qualifying adjective “educational” at various other places. The ambiguity generated by such deletions invites future litigation and substantially risks expanding the scope of services our local school districts must provide and/or pay for. The bill empowers the Department of Education to enter into an Interagency Agreement with the Department of Health & Human Services for special education without expressly indicating whether they are administrative rules subject to RSA 541:A. It refers to a right of appeal from certain department decisions but fails to establish an appeal process. It newly

empowers the Commissioner of Education unilaterally to issue orders including “compensatory education,” but does not define that term. The bill exceeds federal law by requiring that all *individual education programs* (IEP) include short-term objectives and landmarks, and by requiring local school districts to provide extended school time beyond the standard school day and school year whenever a child’s IEP team decides it is necessary while repealing the standards and criteria to be used in making that decision, which exist in current law. It also appears to exceed federal law in the proposed definition of a “Child with a Disability.” This bill refers to “an emotional disturbance” while the federal IDEA refers to “serious emotional disturbance.” Similarly the proposed definition in the bill includes “acquired brain injury” while no such provision exists in federal law. These are merely a few examples of the ambiguities and provisions which expand beyond federal law and regulations created and imposed by this bill—again, at unknown additional expense to our local school districts, and ultimately our local taxpayers.

Majority Amendment (2650h)

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

1 Special Education; Policy and Purpose. Amend RSA 186-C:1 to read as follows:

186-C:1 Policy and Purpose. It is hereby declared to be the policy of the state that:

I. All children in New Hampshire be provided with equal educational opportunities. It is the purpose of this chapter to ensure that ~~[the state board of education and the school districts of the state provide a free and appropriate public education for all educationally disabled children]~~ ***all children with disabilities have available to them a free appropriate public education in the least restrictive environment that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.***

II. *The rights of children with disabilities and parents of such children are protected.*

III. *Local school districts, the department of education, and other public agencies or approved programs provide for the education of all children with disabilities.*

2 Special Education; Definitions. Amend RSA 186-C:2, I-V to read as follows:

I. “[~~Educationally disabled~~] Child ***with a Disability***” means any person 3 years of age or older but less than 21 years of age who has been identified and evaluated by a school district according to ~~[the provisions of RSA 186-C:7]~~ ***rules adopted by the state board of education*** and determined to be ~~[mentally retarded, hearing impaired, speech or language impaired or both, visually impaired including blindness, seriously emotionally disturbed, orthopedically impaired, otherwise severely health impaired, deaf blind, multi disabled, traumatic brain injured, autistic, or as having specific learning disabilities, who because of such impairment, needs special education or special education and educationally related services]~~ ***have mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, an emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, acquired brain injury, an other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or a child at least 3 years of age but less than 10 years of age, experiencing developmental delays, who because of such impairment, needs special education or special education and related services.*** “[~~Educationally disabled~~] Child ***with a disability***” shall include a child ages 18 to 21, who was identified as ~~[an educationally disabled]~~ ***a child with a disability*** and received services in accordance with an individualized education ~~[plan]~~ ***program*** but who left school prior to his or her incarceration, or was identified as ~~[an educationally disabled]~~ ***a child with a disability*** but did not have an individualized education ~~[plan]~~ ***program*** in his or her last educational institution

I-a. "Developmentally delayed child" means a child ~~[between 3 and 9 years of age]~~ **at least 3 years of age or older, but less than 10 years of age**, who, because of impairments in development, needs special education or special education and ~~[educationally]~~ related services, **and** may be identified as being developmentally delayed provided that such a child ~~[must first be determined to have an educationally disabling condition as defined in RSA 186-C:2, I]~~ **meets the criteria established by the state board of education.**

I-b. "Division" means the division of educational improvement, department of education.

II. "Approved program" means a program of special education that has been approved by the state board of education and that is maintained by a school district, regional special education center, private organization or state institution for the benefit of ~~[educationally disabled]~~ children, **with disabilities** and may include ~~[a home-based program]~~ **home instruction provided by the school district.**

III. "Individualized education ~~[plan]~~ **program**" means a written plan for the education of ~~[an educationally disabled]~~ **a child with a disability** that has been developed by a school district in accordance with rules adopted by the state board of education and that provides necessary special education or special education and educationally related services within an approved program.

IV. "Special education" means instruction specifically designed to meet the unique needs of ~~[an educationally disabled]~~ **a child with a disability.**

V.(a) "~~[Educationally]~~ Related services" means:

(1) Suitable transportation ~~[and]~~ to all children with disabilities whose individualized education program requires such transportation. The school district may board a child as close to the place where instruction is to be furnished as possible, and shall provide transportation, if required by the child's individualized education program, from the place where the child is boarded to the place of instruction; and

(2) Such developmental, corrective, and other supportive services as are specifically required by an individualized education ~~[plan]~~ **program to assist ~~[an educationally disabled]~~ **a child with a disability** to benefit from special education; and**

(3) Services necessary for a child with a disability to benefit from special education and when placement in a residential facility has been made by the legally responsible school district in order to comply with RSA 186-C:9 or RSA 186-C:11, or when placement has been ordered by a hearings officer or by a court of competent jurisdiction on appeal, pursuant to rules adopted by the state board of education under RSA 186-C:16, IV.

(b) "~~[Educationally]~~ Related services" ~~[do]~~ **shall** not include medical services unless such services are necessary for purposes of diagnosis and evaluation.

3 Special Education; Division of Education Improvement. Amend RSA 186-C:3 to read as follows:

186-C:3 Division of Educational Improvement; Special Education; Programs and Services. The department shall ~~[appoint]~~ **hire** and assign such personnel or contract for services ~~[as may be necessary for proper operation of special education programs]~~ **to perform responsibilities required under state or federal special education law, including, but not limited to, monitoring, compliance, and technical assistance and support to school district.** Special education services of the division of educational improvement shall be fully coordinated and integrated with the department's general curriculum and instruction activities.

4 Special Education; Division Duties; Advisory Committee. Amend RSA 186-C:3-a and RSA 186-C:3-b to read as follows:

186-C:3-a Duties.

I. The division shall help school districts meet their responsibilities under this chapter and under federal law regarding the education of ~~[students]~~ **children** with

[educational] disabilities. The special education program of the department of education shall develop and analyze information on issues and problems of regional and statewide importance and on assisting school districts in dealing with these issues and problems. The department shall ensure that the regulation and monitoring of school district activities shall not exceed what is necessary for compliance with this chapter and with federal law regarding the education of [students] **children** with [educational] disabilities.

I-a. The special education program of the department of education shall develop and analyze information on issues and problems of regional and statewide importance and on assisting school districts in dealing with these issues and problems. The department shall ensure that the regulation and monitoring of school district activities shall not exceed what is necessary for compliance with this chapter and with **state and** federal law regarding the education of [students with educational] **children with** disabilities.

II. The [division] **department of education** shall, [subject to available funding, develop, implement and evaluate statewide special education policies, standards and programs. In carrying out this mission, the division shall gather and] collect, **organize, and analyze** data [and organize and analyze instruction] **and information** about programs, conditions, **instruction**, and trends in special education in the state. In addition, the [division] **department** shall be responsible for monitoring and maintaining information about national and regional trends, instructions and issues affecting special education in New Hampshire. The [division] **department** shall make this information available to the districts and use this information to:

(a) Assess the needs of school districts for assistance in carrying out their responsibilities for educating [students with educational] **children with** disabilities;

(b) Identify cost effective **and appropriate** alternative programs [for serving students with educational disabilities] **that meet the needs of children with disabilities**;

(c) Focus resources on students requiring extensive services; [and]

(d) Develop cost and service level benchmarks for special education in New Hampshire which may be used as reference points by districts to measure the effectiveness of their programs in meeting [educational] goals and objectives **of the individualized education program; and.**

(e) Develop and promote evidence-based practices supporting the education of children with disabilities in the least restrictive environment, provided that:

(1) If children with disabilities are being placed in out of district programs solely due to a lack of qualified personnel, the department shall develop and implement strategies, in addition to the requirements of RSA 186-C:21, to help address the shortage and increase the capacity of local education agencies to serve children in the schools they would attend if not disabled.

(2) The department shall identify disproportionate representation in out-of-district programs and provide focused technical assistance to help the identified school districts serve children with disabilities in the least restrictive environment.

II-a.(a) In addition to the requirements of paragraph II, the [division] **department of education** shall annually submit a report to the commissioner of the department **and the state board of education** that:

(1) Shows the identification of children with [educational] disabilities analyzed according to the following criteria: age [or] **and** grade level, **and** number [of students in each disability category,] and percentage of the total number of children with educational disabilities in each disability category. [The report shall also]

(2) [include] Includes expenditures for special education as reported to the department **of education** by school districts and state and federal revenues for special education received by school districts. [The first report shall include data from the 2 preceding school years.]

(3) Shows the annual progress and compliance on the state's performance plan required by 20 U.S.C. section 1416(b), 20 U.S.C. section 1412(a)(15), and 20 U.S.C. section 1416(a)(3).

(4) Shows the progress and compliance with the requirements in the No Child Left Behind Act of 2001, 20 U.S.C. section 6311(b), and RSA 193-E:3 and RSA 193:H-2 with respect to children with disabilities.

(b) These findings shall be reported for the state and for each school district. ~~[The report shall be based on existing special education disability categories, and any other related special education data already collected within the department or the division.]~~ The commissioner shall make this report available upon request to all legislators, school officials from school districts, school administrative units, cooperative schools, AREA schools, and the general public, **and shall make it available in an easily accessible format on the department of education website.** In preparing such reports, the department of education shall not disclose personally identifiable information.

III. The ~~[division]~~ **department of education** shall provide technical assistance and information to the school districts so that the districts may effectively and efficiently identify, clarify and address their specific responsibilities under state and federal special education laws. This assistance shall include the provision of mediation services to resolve special education disputes and the provision of expertise regarding specific educationally disabling conditions. Whenever technical assistance of a specialized nature, beyond that available in the department, is required, the ~~[division]~~ **department** shall assume a leadership role in identifying sources of such assistance in other state agencies, the federal government, volunteer services or the private sector.

IV. The ~~[division]~~ **department of education** shall administer those federal and state funding programs for special education assigned to it by law. The ~~[division]~~ **department** shall also make recommendations to the state board regarding management systems, standard definitions and procedures in order to provide uniform reporting of special education services and expenditures by school districts and school administrative units.

V. The ~~[division]~~ **department of education** shall monitor the operations of local school districts, **charter schools, and private school programs** regarding compliance with state and federal laws regarding the education of students with ~~[educational]~~ disabilities. The ~~[division's regulatory program]~~ **department's monitoring, regulatory oversight, and program approval** shall be structured and implemented in a prudent manner and shall not place an excessive administrative burden on local districts. The ~~[division]~~ **department** and districts shall approach monitoring and regulation in a constructive, cooperative manner, **while also ensuring accountability for failing to meet standards** ~~[with a goal of improving special education in New Hampshire]~~ **and ensuring the special education needs of children with disabilities are met.**

VI. [Repealed.]

VII.(a) **Granite State high school shall submit a plan for department approval to be adopted by November 1, 2009, to meet the special education needs of persons incarcerated in the state prison system.**

(b) Each county correctional facility shall designate one special education coordinator who shall act as the contact person for outside entities on matters related to special education, and to consolidate and coordinate existing functions associated with providing a free appropriate public education to eligible students, including the assessment of eligibility and educational needs, and who shall participate in hiring or contracting with necessary staff, coordinate with local school district staff or other individuals to provide special education and related services, coordinate evaluations and meetings, and oversee the planning of special education after discharge.

(c) County correctional facilities shall be exempt from state board of education rules, except that the standards for the education of students with

disabilities and all educational programs shall be set by interagency agreements between the department of education and each county correctional facility.

(d) Granite State high school and each county correctional facility shall be subject to the monitoring requirements in RSA 186-C:5, and shall be monitored in 2007, and subject to on-site monitoring at least annually through 2010.

~~[The division shall, in conjunction with the department of corrections and county governments, prepare and adopt a plan for meeting the special education needs of persons incarcerated in the state prison system and county correctional facilities. Such plan shall be adopted no later than November 1, 1997.]~~

186-C:3-b Advisory Committee; Purpose; Membership; Terms; Duties; Meetings.

I. In accordance with the provisions of 20 U.S.C. section 1413(a)(12) and 34 C.F.R. sections 300.650-300.653, there is established an advisory committee on the education of children/students with disabilities to advise the commissioner of education on issues relating to special education, and to promote communication and cooperation among individuals involved with students with disabilities. In addition, the committee shall review the federal financial participation and the level of state funding to determine their impact on the programs and delivery of services to children/students with disabilities.

II. The committee shall ~~[consist of the following members]~~ **be composed of individuals involved in, or concerned with, the education of children with disabilities. A majority of the committee membership shall be composed of individuals with disabilities or parents of children with disabilities. The committee membership shall be as follows:**

(a) Individuals with disabilities or parents of children with disabilities.

~~[(a)]~~ **(b)** Two members of the house education committee, appointed by the speaker of the house.

~~[(b)]~~ **(c)** Two members of the senate education committee, appointed by the president of the senate.

~~[(c)]~~ **(d)** One representative of a vocational, community, or business organization concerned with the provision of transition services to children/students with disabilities, appointed by the governor.

~~[(d)]~~ **(e)** One state education official, appointed by the governor.

~~[(e)]~~ **(f)** One local educational official, who shall be an administrator, appointed by the governor.

~~[(f)]~~ **(g) ~~One~~ Two teachers, one of whom shall be a** special education teacher, appointed by the governor.

~~[(g)]~~ **(h)** One representative of the department of health and human services **involved in the financing or delivery of special education or related services to children with disabilities**, recommended by the commissioner of the department of health and human services, and appointed by the governor.

~~[(h)]~~ **(i)** One representative of the Disabilities Rights Center, recommended by the Disabilities Rights Center and appointed by the governor.

~~[(i)]~~ **(j)** One representative of the Parent Information Center, recommended by the Parent Information Center and appointed by the governor.

~~[(j)]~~ **(k)** Two individuals with disabilities who **may** have ~~[benefited from]~~ **received** special education services, one of whom may be a high school student, appointed by the governor.

~~[(k)]~~ **(l)** One administrator of a public special education program, appointed by the governor.

~~[(l)]~~ **(m)** One representative of an institution of higher education that prepares special education and related services personnel, appointed by the governor.

~~[(m)]~~ **(n)** One representative of a private school approved for special education, appointed by the governor.

~~[(n)]~~ **(o)** One representative of a public charter school, appointed by the governor.

~~[(e) One representative from the department of health and human services, appointed by the governor.]~~

(p) ***One individual representing children with disabilities who are home-schooled.***

~~[(q) Parents of children/students with disabilities, appointed by the governor. A simple majority of the members of the committee shall be individuals with disabilities or parents of children/students with disabilities.]~~

(q) ***One representative from the department of corrections, and one representative from a county correctional facility, both of whom are responsible for administering the provision of special education or special education and related services,*** appointed by the governor

(r) ~~[An official who carries out]~~ ***State and local educational officials who are responsible for performing*** activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. section 11431, et seq.

(s) A representative from the department of health and human services responsible for foster care.

(t) ***Two members not affiliated in any way with the membership criteria listed in subparagraphs II(a)-(s), appointed by the governor.***

III.(a) Committee members shall be appointed to ~~[3-year]~~ ***staggered 2-year*** terms~~[- and members may succeed themselves for one additional term].~~

(b) A chairperson shall be selected by a majority of the committee members ***on an annual basis.***

IV. The committee shall:

(a) Advise the department of education regarding unmet needs within the state in the education of children/students with disabilities.

(b) Provide an annual report to the governor and the state legislature on the status of education of students with disabilities in New Hampshire.

(c) Comment publicly on the state plan and rules or regulations proposed for issuance by the state regarding the education of children/students with disabilities.

(d) Assist the state in developing and reporting such information and evaluations as may assist the U.S. Secretary of Education in the performance of responsibilities under ~~[section 618]~~ ***20 U.S.C. section 1412(a)(21)*** of the Individuals with Disabilities Education Act.

(e) Advise the department of education in developing corrective action plans to address findings identified in federal monitoring reports.

(f) Advise the department of education in developing and implementing policies relating to the coordination of services for children/students with disabilities.

V. The committee shall meet at least quarterly or as often as necessary to conduct its business.

VI. The department of education shall provide administrative support for the committee.

5 Special Education; Program Approval, Monitoring, and Corrective Action. Amend RSA 186-C:5 to read as follows:

186-C:5 Program Approval, ***Monitoring, and Corrective Action.***

I.(a) The state board of education shall adopt rules establishing ***a process and standards*** for the approval ***and monitoring*** of programs of education that are maintained by school districts, regional special education centers, and private organizations or state institutions for the benefit of ~~[educationally disabled]~~ children ***with disabilities***, including ***charter schools***, home-based programs ***and alternative schools or programs***; except, however, that approval of education programs for the special district established in RSA 194:60 shall be pursuant to the standards set forth in the interagency agreements between the department of corrections and the department of education.

(b) The division of educational improvement of the department of education, through its program approval and monitoring process shall determine if a district is making diligent efforts to resolve personnel shortages that result in children with disabilities being placed out of district.

II. The purpose of program approval and monitoring is to ensure that the programs specified in paragraph I comply with applicable federal and state law, including standards related to improving educational results and functional outcomes.

III. Program approval and monitoring shall utilize professionally recognized program evaluation and other verification methods to ensure reliable and valid findings and corrective actions. The department shall develop and apply standards and procedures to determine whether each program specified in paragraph I complies with the requirements of applicable federal and state law. Such standards shall give considerable weight to rigorous benchmark or performance outcomes and indicators required by federal and state law most relevant to achieving educational results and functional outcomes. Program approval and monitoring shall also include, but not be limited to the following components and processes:

(a) Reporting of outcome or indicator data by school district and non-district programs to the department in a manner and frequency as the department shall determine.

(b) Development and application of methods to ensure the accuracy of all such data including data as entered in student records and as transmitted to the department, to include necessary on-site verification of data.

(c) Determinations by the department as to whether the reported data complies with such standards.

(d) On-site monitoring to further evaluate noncompliance, verify accuracy of data, assess the adequacy of the corrective action plans and their implementation, or other purposes as the department may determine, which may include:

(1) Regular or periodic monitoring.

(2) Special on-site monitoring required as part of the resolution or remediation of a complaint under 34 C.F.R. sections 300.151-152, or based on reliable information received indicating that there is reason to believe that there is noncompliance with standards.

(3) Random or targeted visits which may be unannounced when the department determines that an unannounced visit is needed.

(e) Program monitoring, including the on-site monitoring components, shall use multiple program evaluation techniques in accordance with professionally recognized standards and to achieve the purposes set forth in paragraphs I-III, including, but not limited to, random sampling stratified as necessary to cover discrete sites or programs such as alternative programs or schools.

(f) Program approval and monitoring personnel or teams, which shall be knowledgeable in research-based education, special education practices, professionally recognized program evaluation practices, the Individuals With Disabilities Education Act, and state special education laws and which shall receive appropriate training to participate in the monitoring process. Such personnel or teams for on-site monitoring shall consist of at least one of each of the following: an educator, an educational administrator, and a parent who shall be compensated. The department may determine that for certain on-site visits less than a full team is necessary. The department directly or by contract shall develop and train a group of parents on the requisites needed to carry out the monitoring

duties. Where volunteers or contracted personnel are used for the non-parent team slots, attempts shall be made to use or balance teams with personnel from non-school district sources such as qualified individuals from higher education. Educators and educational administrators that are used (1) may not review schools in school districts in which they are employed or have been employed in the previous 2 years and (2) may not be from schools which in the current or prior 3 years have been the subject of mandatory technical assistance under subparagraph V(a)(2) or any of the interventions in subparagraphs V(a)(3)-(12). The department shall make available sufficient funds for stipends or similar financial remuneration, in addition to expense reimbursements to ensure that teams have a diversity of perspectives and high quality professional membership. The department of education may contract with an individual or organization which has the requisite expertise and skill to perform the monitoring activities, and shall give preference to individuals and organizations in which the majority of membership of the governing structure is composed of parents, community members, or persons with university affiliations, or who are otherwise independent from school district and non-school district programs in New Hampshire. This subparagraph shall not be construed to preclude individuals who may have performed sporadic or occasional contract or volunteer work for school district or non-school district programs.

IV. The department shall issue a report granting full or conditional approval, or denying, suspending, or revoking approval prior to the expiration of the existing program approval which shall include:

(a) Findings detailing exemplary characteristics and strengths of each program and each instance of noncompliance and failure to meet performance outcome or indicator measures in accordance with standards set forth in paragraph III.

(b) Recommendations for actions needed to correct noncompliance or failure to meet performance outcome or indicator measures.

(c) School districts and non-district programs may appeal decisions granting conditional approval or denying, suspending, or revoking approval pursuant to paragraph VI.

(d) The department may issue reports outside of the regular approval process directing school districts or non-school district programs to take any of the actions set forth in paragraph V.

V.(a) The provisions of this paragraph shall be enforced subsequent to the issuance of an order resulting from a complaint investigated, a due process hearing, or a monitoring activity pursuant to rules adopted under RSA 541-A.

(b) At the conclusion of the time limit specified for the school district, public agency, private provider of special education, or other non-school district based program to have completed the corrective action specified in the orders of compliance, the administrator of the bureau of special education of the department of education shall forward to the commissioner of the department of education a written report indicating the extent to which the agency took corrective action to achieve compliance with state and federal law.

(c) In the event the written report shows that the school district, public agency, private provider of special education, or other non-school district based program has not complied with orders issued by the department, the commissioner of the department of education shall give the written notice of the enforcement action to be taken.

(d) When taking enforcement action, the commissioner of the department of education shall consider:

(1) The severity and length of noncompliance.

(2) Whether a good faith effort was made to correct the problem.

(3) *The impact on children who are entitled to a free appropriate public education.*

(4) *Whether the nature of the noncompliance is individual or systemic.*

(e) *Enforcement action shall include but not be limited to:*

(1) *Corrective action plan development, implementation, and monitoring.*

(2) *Voluntary and mandatory technical assistance as determined by the department.*

(3) *Mandatory targeted professional development as determined by the department.*

(4) *Directives ordering specific corrective or remedial actions including compensatory education.*

(5) *Targeting or redirecting the use of federal special education funds in the areas of concern.*

(6) *Formal referral to the bureau of credentialing in the department of education for review of compliance with professional licensure or certification requirements.*

(7) *Ordering the cessation of operations of discrete programs operated by a school district, collaborative program, private provider of special education, public academy, or state institution for the benefit of children with disabilities.*

(8) *A review of programs which may include a desk audit, scheduled on-site reviews, and unannounced on-site reviews, to ensure compliance. The frequency of the program reviews may, at the discretion of the department, take place weekly, monthly, or quarterly.*

(9) *Require redirection of federal funds to remediate noncompliance of more than one year.*

(10) *Ceasing payments of state or federal funds to the school district or other public agency until the department of education determines the school district or other public agency is in compliance.*

(11) *Order, in accordance with a final state audit report, the repayment of misspent or misapplied state and/or federal funds.*

(12) *In the case of a school district or other public agency, refer the matter to the department of justice for further action.*

(13) *In the case of a private provider of special education or other non-school district based program, order all school districts with students placed in the private provider of special education to relocate the students for whom each district is responsible to other programs or facilities that are in compliance with state and federal law.*

VI. *The commissioner shall notify the superintendent and local school board, and post findings and corrective actions recommended on the department Internet website. The commissioner shall also notify the statewide advisory committee of the findings, remedies, and sanctions.*

VII. *The department shall adopt rules for the school district appeals process for corrective actions imposed under subparagraphs V(a)(5)-(11).*

VIII. *The commissioner shall employ or contract with a sufficient number of qualified personnel to carry out the activities enumerated in this section, including but not limited to managing, analyzing, and verifying data, coordinating and staffing on site monitoring teams, preparing reports, including findings and corrective actions, and determining, monitoring, or supervising corrective actions and sanctions.*

IX. The department, with input from the state advisory committee, shall select and contract with an independent, nationally recognized organization in program evaluation and quality assurance to evaluate in 2010 and decennially thereafter, the effectiveness of the program approval and monitoring system, including whether it is carrying out activities in RSA 186-C:5 in an efficient manner. Such organization shall submit recommendations for any improvements to the commissioner, the state board of education, the governor, and the general court within 90 days of completing the program evaluation.

6 Special Education; Individualized Education Programs. Amend RSA 186-C:7 to read as follows:

186-C:7 ~~[Individual]~~ ***Individualized*** Education ~~[Plans]~~ ***Programs***.

I. The development of an individualized education ~~[plan]~~ ***program*** for each ~~[educationally disabled]~~ child ***with a disability*** shall be the responsibility of the school district in which the child resides or of the school district which bears financial responsibility for the child's education.

II. The parents ~~[or legal guardian]~~ of ~~[an educationally disabled]~~ ***a child with a disability*** have the right to participate in the development of the individualized education ~~[plan]~~ ***program*** for the child and to appeal decisions of the school district regarding such child's individualized education ~~[plan]~~ ***program*** as provided in rules adopted in accordance with RSA 541-A by the state board of education.

III. ~~[The division of educational improvement of the department of education shall assist each school district in developing an approved program or programs for educating the educationally disabled children of the district including the setting of approved rates for private providers of special education services pursuant to RSA 21-N:5, I(h).]~~

IV. ~~[Repealed.]~~ ***Each child's individualized education program shall include short-term objectives or benchmarks unless the parent agrees that they are not necessary for one or more of the child's annual goals.***

7 Special Education; Interagency Agreement for Special Education. Amend RSA 186-C:7-a to read as follows:

186-C:7-a Interagency Agreement for Special Education.

I. The commissioner of ***the department of*** education, ~~[with the approval of]~~, the state board of education, and the commissioner of ***the department of*** health and human services shall, ***consistent with applicable state and federal law***, enter into ~~[a comprehensive, cooperative special education]~~ ***an interagency*** agreement ~~[to ensure the provision of necessary services by their agencies to educationally disabled children.]~~ ***for the purposes of:***

(a) ***Meeting the multi-service agency needs of children with disabilities in an efficient and effective manner and without delays caused by jurisdictional or funding disputes;***

(b) ***Providing for continuity and consistency of services across environments in which children function; and***

(c) ***Ensuring well-planned, smooth, and effective transitions from early intervention to special education and from special education to postsecondary life.***

II. This agreement shall address programs and services for ~~[each appropriate category of educationally disabled]~~ children ***with disabilities, provided, funded, or regulated by the department and local school districts, and the department of health and human services and its local counterparts, the district offices, the area agencies, and the community mental health centers.***

III. ~~[For each category of educationally disabled children,]~~ The agreement shall ~~[include]~~ ***address the functions set forth in paragraph I including, but not limited to:***

(a) ~~[A definition of the]~~ ***Defining the*** specific ~~[population]~~ ***populations*** to be served.

(b) ~~[An identification and description of]~~ **Identifying and describing** the services available through each agency.

(c) ~~[A description of]~~ **Describing** the specific programmatic and financial responsibilities of each department, **and its divisions, bureaus, and local counterparts.**

(d) ~~[An estimate of]~~ **Estimating** the costs of, and source of funds for, all services to be provided by each department.

(e) ~~[A method for implementing and administering the agreement which shall include a procedure for settling disputes regarding its administration or the financial and programmatic responsibilities of each department]~~ **Implementing methods to ensure prompt and timely initiation of services, including criteria for determining agency responsibility for service provision and payment, which shall include:**

(1) **A provision permitting a parent or agency, believing that it is not responsible for the services at issue, to request the participation of another potentially responsible agency, provided that in the case of an agency request, the parent or child who has reached majority have been advised of their appeal rights and the parent or child, as applicable, consent to the participation of the other agency; and**

(2) **The procedure and criteria, when more than one agency is involved, for determining who should provide and pay for the needed services, such criteria to include a requirement that the school district is responsible to provide and pay for all special education, related services, supplemental aids and services, and accommodations for children with disabilities, unless:**

(A) **Medicaid is responsible or the department of health and human services or another agency is required to pay; or**

(B) **Another agency agrees to pay voluntarily or pursuant to an agreement; or**

(C) **The service is primarily non-educational in nature, involving only care or custodial activities and serves no educational purpose, and does not pertain to curriculum or individualized skills or behavior change or development aimed at enabling a child to function in the school, workplace, home, and community, and are neither related services, supplementary aides, and services, or as defined by state or federal law.**

(3) **A procedure for dispute resolution, including a provision for binding dispute resolution, which may be initiated by any participating agency, a parent, guardian, educational surrogate, or child who has reached the age of majority to determine whether or not the child is entitled to the services in dispute, when service entitlement by all agencies is in dispute, and which agency is responsible to pay and provide the service, when agency financial and programmatic responsibility is in dispute.**

(4) **When there is a dispute as to financial or programmatic responsibility, a provision that the local school district shall provide the service or otherwise ensure that the service is provided, subject to the local school district's right of reimbursement if another agency is found responsible.**

(f) ~~[A procedure for monitoring the operation of the agreement and for revising it periodically as necessary]~~ **Consistent with federal and state privacy laws, provisions for state and local educational and health and human service agencies to share and exchange necessary child and program specific information and data.**

IV. The commissioners of ~~the departments of~~ education and health and human services shall submit a copy of the ~~[initial]~~ interagency agreement for special education, **reflecting changes required under this section**, to the appropriate standing committees of each house of the general court on or before September 1, ~~[1985]~~ **2008**, and shall submit ~~[a revision to the agreement no later than January 1, 1999. Any subsequent proposed]~~ **any subsequent** amendments or revisions to the agreement ~~[shall be submitted]~~ to the

appropriate standing committees of the house and senate, ***no later than 60 days after adoption of the amendments or revisions. Prior to adopting any revisions or amendments to the agreement, the commissions shall jointly solicit input from relevant advisory committees and the public.***

V. Nothing in this section shall require:

(a) A parent, guardian, or child to pay for services provided by a local school district or other local or state public educational program, if the services are educational in nature or are otherwise required by Individuals with Disabilities Education Act, 20 U.S.C. section 1400 et seq.

(b) A local school district to provide any educational services beyond those required under the Individuals with Disabilities Education Act, 20 U.S.C. section 1400 et seq., or this chapter.

(c) The department of health and human services to provide services not otherwise required by other state or federal laws.

8 New Section; Special Education; Rate Setting. Amend RSA 186-C by inserting after section 7-b the following new section:

186-C:7-c Rate Setting.

I. The division of educational improvement of the department of education shall ensure that each school district develops approved programs for children with disabilities in the school district.

II. The division of educational improvement of the department of education shall set an approved rate for private providers of special education services pursuant to RSA 21-N:5, I(h).

III. Such rates shall be sufficient to reflect costs and expenses of comparable or similar programs in the region or state and sufficient to provide children with disabilities with a free appropriate public education.

IV. No provider shall charge the department of education or any school district in this state an amount in excess of the rate established by the division of educational improvement of the department of education.

9 Special Education; Collaborative Programs; Education Required. Amend RSA 186-C:8-9 to read as follows:

186-C:8 Collaborative Programs.

I. School districts or school administrative units, or both, may enter into cooperative agreements in order to provide approved programs for educating ~~[educationally disabled]~~ children ***with disabilities*** ~~[in regional special education centers]~~. The state board of education, when appropriate because of a low incidence of a disabling condition, high cost of services, or scarcity of trained personnel, shall encourage such cooperative agreements and shall serve as a source of information, advice and guidance to school districts, school administrative units, or both.

II. The state board of education, together with representatives of neighboring states, shall study the feasibility of interstate agreements ~~[or interstate compacts]~~ for the provision of services to ~~[educationally disabled students]~~ ***children with disabilities***.

186-C:9 Education Required. Each child ***who is*** determined by the local school district, or special school district established under RSA 194:60, as ~~[being educationally disabled]~~ ***having a disability*** in accordance with RSA 186-C:2 and in need of special education or special education and ~~[educationally]~~ related services shall be entitled to attend an approved program which can implement the child's individualized education ~~[plan]~~ ***program***. Such child shall be entitled to continue in an approved program until such time as the child has acquired a ***regular*** high school diploma or has attained the age of 21, whichever occurs first, or until the ~~[school district responsible for developing the]~~ child's individualized education ~~[plan]~~ ***program team*** determines that the child no longer requires special education in accordance with the provisions of this chapter.

10 Special Education; Responsibility of School District. Amend RSA 186-C:10 to read as follows:

186-C:10 Responsibility of School District. A school district shall establish an approved program or programs for ~~[educationally disabled]~~ children ***with disabilities***, or shall enter into cooperative agreements with other districts to provide approved programs for ~~[educationally disabled]~~ children ***with disabilities***, or shall pay tuition to such an approved program maintained by another school district or by a private organization. ~~[Eligibility for participation in an approved program of special education shall be determined by the school board of the school district under rules adopted by the state board of education.]~~

11 Special Education; Federal Assistance. Amend RSA 186-C:12 to read as follows:

186-C:12 Federal Assistance. The state board of education is authorized to cooperate with the federal government or any agency of the federal government in the development of any plan for the education of ~~[educationally disabled]~~ children ***with disabilities*** and to receive and expend, in accordance with such plan, all funds made available to the state board of education from the federal government or any of its agencies, the state or from other sources. The ~~[several]~~ school districts of the state are authorized to receive, incorporate in their budgets, and expend for the purposes of this chapter such funds as may be made available to them through the state board of education from the federal government or any of its agencies.

12 Special Education; Liability for Expenses. Amend RSA 186-C:13 to read as follows:

186-C:13 Liability for Expenses.

I. All expenses incurred by a school district in administering the law in relation to education for ~~[educationally disabled]~~ children ***with disabilities in need of special education and related services*** shall be paid by the school district where the child resides, except as follows:

(a) When ~~[an educationally disabled]~~ ***a child with a disability in need of special education and related services*** is placed in a home for children or health care facility as defined in RSA 193:27, the liability for expenses for such child shall be determined in accordance with RSA 193:29.

(b) When ~~[an educationally disabled]~~ ***a child with a disability in need of special education and related services*** is placed in a state institution, the liability for expenses for such child shall be determined in accordance with RSA 186-C:19.

II. For the purposes of meeting the financial obligation for expenses incurred under this chapter, a school district may exceed its annual budget to the extent of additional special education aid which the district has actually received from the state after the annual school district budget was approved.

III. No school district shall be required to pay the expenses of the education program of a child adjudicated under RSA 169-B, 169-C, or 169-D except as provided by RSA 186-C. The sending district shall be notified of a court ordered placement of a child adjudicated under the provisions of RSA 169-B, 169-C, or 169-D, and may submit recommendations to the court concerning the financial impact of the placement on the sending district ***and the appropriateness of the placement.***

13 Special Education; Surrogate Parents. Amend RSA 186-C:14 to read as follows:

186-C:14 Surrogate Parents.

I. PURPOSE. The purpose of this section is to protect the educational rights of eligible, ~~[educationally disabled]~~ children ***with disabilities.***

II. DEFINITIONS. The following words as used in this section shall be construed as follows:

(a) "Surrogate parent" shall mean a person appointed to act as a child's advocate in place of the child's ~~[birth]~~ ***biological or adoptive*** parents or guardian in the educational decision-making process.

(b) "Educational decision-making process" shall include identification, evaluation, and placement as well as the hearing, mediation, and appeal procedures.

(c) [Repealed.]

(d) [Repealed.]

III. DETERMINING NEED.

(a) When, ~~[in the opinion of the commissioner of education or designee, an educationally disabled child]~~ **a child with a disability**, as defined in RSA 186-C:2, needs special education and the parent or guardian of the child is unknown or after reasonable efforts cannot be located, or the child is ~~[a ward of the state, the commissioner or designee shall]~~ **in the legal custody of the division of children, youth, and families, the commissioner or designee, may** appoint a surrogate parent who shall represent the child in the educational decision-making process, **provided that for a child in the legal custody of the division of children, youth, and families, a judge overseeing the child's case pursuant to the Individuals With Disabilities Education Act, 20 U.S.C. section 1415(b)(2)(A)(i), may appoint a surrogate parent.**

(b) **In the case of a child who is an unaccompanied youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. section 11434a (6), the school district shall appoint a surrogate parent pursuant to this section.**

IV. APPOINTMENT OF SURROGATE. ~~[Once the commissioner of education or designee determines that a surrogate parent is needed, the commissioner or designee shall appoint a surrogate parent. Such]~~ Appointment **of a surrogate parent under this section** shall be effective until the child reaches 18 years of age, and may be extended by order of the commissioner until the child graduates from high school or reaches 21 years of age, whichever occurs first. If the surrogate parent resigns, dies or is removed, the commissioner of **the department of** education or designee, **or the court with jurisdiction over the child's case,** may appoint a successor surrogate parent in the same manner as provided in paragraph III.

V. RIGHT OF ACCESS. When a surrogate parent is appointed, the surrogate parent shall have the same right of access as the natural parents or guardian to all records concerning the child. These records shall include, but not be limited to, educational, medical, psychological and ~~[welfare]~~ **health and human service** records.

VI. LIMITED LIABILITY. No surrogate parent appointed pursuant to the provisions of paragraph IV shall be liable to the child entrusted to the surrogate parent or the parents or guardian of such child for any civil damages which result from acts or omissions of such surrogate parent which may arise out of ordinary negligence. This immunity shall not apply to acts or omissions constituting gross, willful, or wanton negligence.

VII. RULES. The state board of education shall adopt rules necessary for the administration of the provisions of this section.

14 Special Education; Foster Parent Representation. Amend the section heading in RSA 186-C:14-a to read as follows:

186-C:14-a Foster Parent Representation of Foster Children With ~~[Educational]~~ Disabilities.

15 Special Education; Foster Parent Representation. Amend RSA 186-C:14-a, I(b)(1) to read as follows:

(1) Is in an ongoing, long-term parental relationship with the child, as determined by the ~~[department of health and human services]~~ **commissioner of the department of education** or the child placing agency;

16 Special Education; Foster Parent Representation. Amend RSA 186-C:14-a, III to read as follows:

III. A foster parent acting as a parent shall have the same right of access as the birth parents or guardians to all records concerning the child. These records shall include, but are not limited to, educational, medical, psychological, and ~~[welfare]~~ **health and human service** records.

17 Special Education; Length of School Year. Amend RSA 186-C:15 to read as follows:

186-C:15 Length of School Year.

I. The length of the school year **and school day** for ~~[an educationally disabled]~~ a child **with a disability** shall be the same as that provided by the local school district for a child ~~[not educationally disabled]~~ **without a disability of the same age or grade**, except that the local school district shall provide an approved program for an extended period when ~~[it can be demonstrated by a preponderance of evidence, in accordance with rules adopted by the state board of education, that interruption of the program of an educationally disabled child would result in severe and substantial harm and regression and would have the effect of negating the benefits of such educationally disabled child's regular special education program]~~ **the child's individualized education program team determines that such services are necessary to provide the child with a free appropriate public education.**

II. **The length of the school year and school day for a preschool child with a disability shall be determined by the child's individualized education program team and shall not be governed by the school district's school calendar. A free appropriate public education shall be provided to a preschool child with a disability as of the child's third birthday and when the child's individualized education program team determines that services are necessary to provide a free appropriate public education to the child.**

18 Special Education; Rulemaking. Amend RSA 186-C:16 to read as follows:

186-C:16 Rulemaking. The state board of education shall adopt rules, pursuant to RSA 541-A, **and consistent with the provision of a free appropriate public education**, relative to:

- I. Developing individualized education ~~[plans]~~ **programs**;
- II. Approving **and monitoring** special education programs;
- III. Reporting the number of ~~[educationally disabled]~~ children **with disabilities** in a school district;
- IV. Requesting administrative due process hearings and appealing a final administrative decision;
- V. Determining eligibility for participation in approved programs;
- VI. Appointing surrogate parents;
- VII. Determining the length of the school year for ~~[disabled]~~ children **with disabilities**; and
- VIII. Other matters related to complying with provisions of this chapter.

19 Special Education; Due Process Hearing. Amend RSA 186-C:16-b, III-V to read as follows:

III. Where the parent, legal guardian or surrogate parent has not been given proper written notice of special education rights pursuant to 20 U.S.C. section ~~[1415(b)]~~ **1415(d)**, including notice of the time limitations established in this section, such limitations shall run from the time notice of those rights is properly given. The department of education shall make available a model notice of rights which school districts may use as one means of complying with this paragraph.

IV. An appeal from a final administrative decision in a special education due process hearing to a court of competent jurisdiction pursuant to 20 U.S.C. section ~~[1415(e)]~~ **1415(i)(2)(A)** shall be commenced within 120 days from receipt of the final decision. All such decisions shall be sent certified mail, return receipt requested.

V. An action pursuant to 20 U.S.C. section ~~[1415(e)]~~ **1415(i)(3)** seeking reimbursement for attorney's fees **or seeking reimbursement for expert witness fees** shall be commenced within 120 days from receipt of the final decision in accordance with RSA 186-C:16-b.

(a) The court may award reimbursement to a parent of a child with a disability for expert witness fees incurred as part of a due process complaint at which the parent was the prevailing party and when the court determines that a

school has not acted in good faith in developing or implementing a child's individualized education program, including appropriate placement.

(b) The court may deny or reduce reimbursement of expert witness fees if the hearing officer determines:

(1) The expert witness was not a necessary component to the parent's complaint.

(2) The expert witness fee exceeds an amount that is reasonable, given the type and location of the service provided and the skill, reputation, and experience of the expert witness.

(3) The parent, or the parent's attorney, did not provide notice to the school district of their intent to have the expert witness participate in the due process hearing.

20 New Subparagraph; Special Education; Alternative Dispute Resolution. Amend RSA 186-C:23, I by inserting after subparagraph (b) the following new subparagraph:

(c) Facilitated individualized education program meeting.

21 New Paragraph; Special Education; State Aid for Out-of-District Placements. Amend RSA 186-C:18 by inserting after paragraph X the following new paragraph:

XI.(a) The state board of education, through the commissioner of the department of education, shall distribute to school districts the lesser of 3.5 percent or \$1,000,000 in catastrophic aid funds appropriated in the fiscal year, to establish or support school district-based programs for children with disabilities who have been in out-of-district programs in the previous school year. Funds shall be distributed to school districts as reimbursement for the establishment or support of such programs and shall be applied to the greater of the following:

(1) Supplemental costs incurred by the school district for educating the child within a local school district program; or

(2) The amount the school district received to educate the child in an out-of-district program, with the school district receiving in year one, 70 percent of the catastrophic aid the school district received from the previous school year, which would constitute the base year; in year 2, 50 percent of the catastrophic aid the school district received during the base year, and in year 3, 30 percent of the catastrophic aid the school district received during the base year.

(b) The state board of education shall adopt rules, pursuant to RSA 541-A, establishing procedures pursuant to this paragraph for reimbursement to school districts.

22 Special Education; Children with Disabilities in State Institutions. Amend RSA 186-C:19 to read as follows:

186-C:19 ~~[Educationally Disabled]~~ Children ***with Disabilities*** in ***Certain*** State ~~[Institutions]~~ ***Facilities***.

I. For ~~[an educationally disabled]~~ ***a child with a disability*** in a state ~~[institution]~~ ***facility***, the school district responsible for selecting and funding the child's special education or special education and ~~[educationally]~~ related services shall be as follows:

(a) If such child is in the legal custody of the parent, the school district in which the child's parent resides shall be the liable school district.

(b) If such child is not in the legal custody of the parent, or if the parent resides outside the state, the school district in which the child most recently resided other than in a state ~~[institution]~~ ***facility***, home for children or health care facility as defined in RSA 193:27 shall be the liable school district.

(c) ~~[For the purposes of this chapter, children 18 years of age or older but less than 21 years of age at Laconia developmental services or at the Philbrook center shall be deemed to be in the legal custody of their parents if they were in such legal custody upon reaching the age of 18.]~~

~~(d)~~ For the purposes of this section a parent shall not have legal custody if legal custody has been awarded to some other individual or agency, even if that parent retains

residual parental rights. An award of legal custody by a court of competent jurisdiction, in this state or any other state, shall determine legal custody under this section.

II. For ~~[an educationally disabled]~~ **a child *with a* disability** in a state ~~[institution]~~ **facility**, the responsible school district shall be liable for all expenses incurred in administering the law in relation to ~~[educationally disabled]~~ **children *with disabilities*** ~~[except as follows: For the 1982 and 1983 fiscal years, the responsible school district's annual financial liability for a child who was enrolled at the Laconia state school and training center as of July 1, 1981, shall not exceed the applicable state average per pupil cost as determined by the state board of education, and the state shall be liable for the balance of such costs, which shall in no case be taken from the \$ 10,000,000 appropriated for state aid under RSA 186-C:18. If more than one school district is liable for such a child during a single fiscal year, the total annual financial liability to the school districts shall not exceed the applicable state average per pupil cost, said liability to be prorated on a per diem basis. For such a child who is enrolled at Laconia developmental services for less than a full year, the liability for such costs shall be prorated on a per diem basis by Laconia developmental services].~~

III. Nothing in paragraphs I or II of this section shall diminish the responsibility of the financially liable school district as defined in paragraphs I and II to develop and implement an individualized education ~~[plan]~~ **program** or to fulfill its obligations under other sections of this chapter for an ~~[educationally disabled]~~ **a child *with a disability*** in a state ~~[institution]~~ **facility**, regardless of whether such child was initially placed by a school district, the parent or some other agent.

IV. "State ~~[institution]~~ **facility**" as used in this section means ~~[the Philbrook center for children and youth and Laconia developmental services. If a special education program at a state institution is the least restrictive placement and offers appropriate services for an educationally disabled child, such institution shall be utilized by a local school district for such child, subject to the approval of said institution]~~ **any state operated facility for children and youth with disabilities.**

23 Special Education; Liability for Children with Disabilities in Certain Court Ordered Placements. Amend RSA 186-C:19-b to read as follows:

186-C:19-b Liability for ~~[Educationally Disabled]~~ **Children *with Disabilities*** in Certain Court Ordered Placements.

I.(a) As used in this section "children in placement for which the department of health and human services has financial responsibility" means all children receiving special education or special education and ~~[educationally]~~ related services whose placements were made pursuant to RSA 169-B, 169-C, or 169-D, except children at the youth development center and children placed at the youth services center maintained by the department of health and human services while awaiting disposition of the court following arraignment pursuant to RSA 169-B:13.

(b) In the case of an out-of-district placement, the appropriate court shall notify the department of education on the date that the court order is signed, stating the initial length of time for which such placement is made. This subparagraph shall apply to the original order and all subsequent modifications of that order.

II. The school district liability for expenses for special education or for special education and ~~[educationally]~~ related services for ~~[an educationally disabled]~~ **a child *with a disability*** in placement for which the department of health and human services has financial responsibility shall be limited to 3 times the estimated state average expenditure per pupil, for the school year preceding the year of distribution. The liability of a school district under this section shall be prorated if the placement is for less than a full school year and the district shall be liable for only the prorated amount. This section shall not limit a school district's financial liability for children who receive special education or special education and ~~[educationally]~~ related services in a public school or program identified in RSA 186-C:10.

(a) Any costs of special education or special education and ~~[educationally]~~ related services in excess of 3 times the estimated state average expenditure per pupil for the school year preceding the year of distribution shall be the liability of the department of education. Costs for which the department of education is liable under this section shall be paid to education service providers by the department of education. The department of education shall develop a mechanism for allocating the funds appropriated for the purposes of this section.

(b) The department of health and human services shall be liable for all court-ordered costs pursuant to RSA 169-B:40, 169-C:27, and 169-D:29 other than for special education or special education and ~~[educationally]~~ related services.

(c) The department of education shall distribute special education payments under subparagraph II(a) within 60 days of receipt of invoice from the school district. School districts shall submit education service providers costs to the department within 30 days of receipt of such costs. The department shall then verify the cost and distribute the appropriate amounts to the education service provider.

III. The department of education shall by rules adopted under RSA 541-A establish the rates charged by education service providers to the department of education or to school districts for ~~[educationally disabled]~~ children **with disabilities** in placement for which the department of health and human services has financial responsibility.

IV. The department of education is authorized to receive and take appropriate action on complaints regarding the failure to provide necessary special education or special education and ~~[educationally]~~ related services to ~~[educationally disabled]~~ children **with disabilities** in placement for which the department of health and human services has financial responsibility.

V. All appropriations made for the purposes of funding court-ordered placements shall be nonlapsing.

24 Special Education; Special Education Program at the Youth Services Center. Amend RSA 186-C:20, I to read as follows:

I. Notwithstanding the provisions of any other law to the contrary, the expenses for ~~[an educationally disabled child assigned to]~~ **a child with a disability receiving services at** the special education program at the youth services center maintained by the department of health and human services shall be the responsibility of the **liable** school district so assigning the child. Such a school district shall pay the rate established for the special education program of the center.

25 Special Education; Subdivision Heading Amended. Amend the subdivision heading immediately preceding RSA 186-C:25 to read as follows:
Medicaid ~~[Reimbursement]~~ **to Schools** Program

26 Special Education; Medicaid to Schools Program. RSA 186-C:25 is repealed and reenacted to read as follows:

186-C:25 Medicaid to Schools Program Established.

I. There is established within the department of health and human services a Medicaid reimbursement program to be known as the "Medicaid to schools" program providing medical assistance for covered services furnished to children with disabilities. The purpose of the program is to seek Medicaid reimbursement for services provided by local school districts and school administrative units to children with disabilities which are reimbursable under federal law but which were previously fully funded by such districts or administrative units. The program shall be voluntary and is designed to assist children with disabilities by maintaining them in their own homes and communities. This subdivision is intended to provide Medicaid funding for services which, in the absence of such funding, nevertheless qualify as special education or related services under this chapter. It is not the intention of this subdivision to increase school district responsibility or liability beyond what is required by other sections of this chapter.

II. Eligible services may be provided to children with disabilities and may include, but shall not be limited to, the following:

- (a) Screening, evaluation, and diagnostic services.
- (b) Speech pathology and audiology.
- (c) Occupational and physical therapy.
- (d) Any other service which qualifies as a special education or related service under RSA 186-C or federal law and which also qualifies for reimbursement under Medicaid as a covered service.

III. Services provided under this subdivision shall:

- (a) Offer the least restrictive setting for children receiving the services.
- (b) Be provided to children in conformity with any medical criteria necessary for Medicaid reimbursement.
- (c) Be in addition to any special education program as defined in the New Hampshire Rules for the Education of Children with Disabilities.
- (d) Be provided only after obtaining parental consent each time the services are provided.

IV. The commissioner of the department of health and human services, after consultation with the commissioner of the department of education, shall adopt rules, pursuant to RSA 541-A, relative to:

(a) State plans and reimbursement procedures necessary for local school districts or school administrative units to receive appropriate Medicaid reimbursement for eligible services under paragraph II of this section that are provided or paid for by school districts or school administrative units. Such rules shall recognize the financial obligation of the department of health and human services, and that any disputes between the department of health and human services and a school district or school administrative unit regarding whether such reimbursement is required shall be resolved pursuant to RSA 186-C:7-a.

(b) Monitoring mechanisms to ensure that services provided under this subdivision meet the requirements of paragraph III of this section. Monitoring responsibilities shall be consistent with the jurisdiction of the different departments.

(c) A financial mechanism by which the federal mandatory matching requirement is met through collection, or other means, of 50 percent of the cost of allowable services from local school districts and/or school administrative units.

V. The commissioner of the department of health and human services, after consultation with the commissioner of the department of education, shall adopt rules, pursuant to RSA 541-A, relative to further defining services eligible for Medicaid reimbursement under this subdivision.

VI. New Hampshire local school districts or school administrative units shall be the enrolled Medicaid providers for the purpose of administration and billing.

27 Special Education; Neutral Conference. Amend RSA 186-C:23-b, III(a)(1) to read as follows:

(a)(1) The neutral who presides at a conference shall have experience with ~~[students]~~ **children** with ~~[educational]~~ disabilities and shall have knowledge of special education law, rules, and regulations.

28 Reference Change; Special Education; Alternative Dispute Resolution. Amend RSA 186-C:24, I(b) to read as follows:

(b) Either party may be accompanied and advised at mediation by individuals with special knowledge or training with respect to ~~[educationally disabled pupil]~~ **the needs of children with disabilities**. At least 5 days prior to the mediation conference, the mediator shall contact the parties to determine whether either party will be accompanied by an individual with special knowledge or training and shall notify the other party if such an individual will be in attendance.

29 Reference Changes. Amend the following RSA provisions by replacing the phrases “educationally disabled child” with “child with a disability”: RSA 186-C:2, I; and RSA 186-C:7, I.

30 Reference Changes. Amend the following RSA provisions by replacing the phrase “an educationally disabled child” with “a child with a disability”: RSA 186-C:2, I; RSA 186-C:2, III-V; RSA 186-C:7, II; RSA 186-C:13, I(a)-(b); RSA 186-C:14, III; RSA 186-C:15; RSA 186-C:19; RSA 186-C:19-a; RSA 186-C:19-b, II; RSA 186-C:20, I; and RSA 193:3, III(g).

31 Reference Changes. Amend the following RSA provisions by replacing the phrases “educationally disabled children,” “educationally disabled pupils,” “educationally disabled students,” and “educationally disabled individuals” with “children with disabilities”: RSA 21-N:9, II(l); RSA 35:1-b; RSA 169-B:7, III; RSA 169-C:8, III; RSA 169-D:6, III; RSA 186-C:1; RSA 186-C:2, II; RSA 186-C:5; RSA 186-C:7, III; RSA 186-C:7-a, I-II; RSA 186-C:8, I-II; RSA 186-C:10; RSA 186-C:11; RSA 186-C:12; RSA 186-C:13, I; RSA 186-C:14, I; RSA 186-C:16, III; RSA 186-C:18, III(a); the section heading RSA 186-C:19; RSA 186-C:19, II; the section headings of RSA 186-C:19-a and RSA 186-C:19-b; RSA 186-C:19-b, III-V; RSA 186-C:21, V; RSA 186-C:22, V; RSA 193:3, I; RSA 194-B:3, II(n); the introductory paragraph of RSA 198:40-b; RSA 198:40-b, I(b); the introductory paragraph of RSA 198:40-b, II; RSA 198:40-b, II(a) and RSA 198:42, I.

32 Reference Changes. Amend the following RSA provisions by replacing the phrase “individualized education plan” or “individual education plan” with “individualized education program”: RSA 186-C:7, I-II; RSA 186-C:16-b, VI; RSA 186-C:19, III; RSA 186-C:19-a, I; RSA 186-C:21, V; RSA 186-C:22, V; RSA 193:12, VI(a); and RSA 265:107-a, II.

33 Reference Changes. Amend the following RSA provisions by replacing the phrase “educationally related services” with “related services”: RSA 126-A:40, I(b); RSA 169-B:40, I(b); RSA 169-C:27, I(b); RSA 169-D:29, I(b); RSA 186-C:2, I, I-a, III, and V; RSA 186-C:19, I; RSA 186-C:19-b, I(a), II, II(a)-(b), and IV; and RSA 193:29, I(a).

34 Repeal. The following are repealed:

- I. RSA 186-C:9-a, relative to educationally related services.
- II. RSA 186-C:11 relative to transportation for children receiving special education services.
- III. RSA 186-C:26, relative to eligible services for disabled children.
- IV. RSA 186-C:27, relative to rulemaking for Medicaid reimbursement.
- V. RSA 186-C:28, relative to enrolled Medicaid providers for special education services.

35 Effective Date. This act shall take effect July 1, 2008.

AMENDED ANALYSIS

This bill makes changes to the laws governing special education.

Majority committee amendment adopted.

Rep. Hinkle offered floor amendment (0115h).

Floor Amendment (0115h)

Amend RSA 186-C:3-a, V as inserted by section 4 of the bill by replacing it with the following:

V. The ~~[division]~~ **department of education** shall monitor the operations of local school districts, **regional special education centers, charter schools, and private organizations or state programs for the benefit of children with disabilities** regarding compliance with state and federal laws regarding the education of students with ~~[educational]~~ disabilities. The ~~[division's regulatory program]~~ **department's monitoring, regulatory oversight, and program approval** shall be structured and implemented in a prudent manner and shall not place an excessive administrative burden on local districts. The ~~[division]~~ **department** and districts shall approach monitoring and regulation in a constructive, cooperative manner, **while also ensuring accountability for failing to**

meet standards [~~with a goal of improving special education in New Hampshire~~] ***and ensuring the special education needs of children with disabilities are met.***

Reps. Hinkle and Stiles spoke in favor.

Floor amendment (0115h) adopted.

The question now being adoption of the majority committee report of Ought to Pass with Amendment.

Rep. Hess spoke against and yielded to questions.

Rep. Stiles spoke in favor and yielded to questions.

Rep. Hess requested a roll call; sufficiently seconded.

YEAS 224 NAYS 108

YEAS 224

BELKNAP

Arsenault, Beth

Millham, Alida

Pilliod, James

Reever, Judith

CARROLL

Bridgham, Robert
Knox, J. David

Buco, Thomas

Butler, Edward

Cunningham, Howard

CHESHIRE

Allen, Peter
Butynski, William
Emerson, Susan
Lerandean, Alfred
Richardson, Barbara
Weber, Lucy

Burridge, Delmar
Chase, William
Espieffs, Peter
Loll, Thomas
Roberts, Kris
Weed, Charles

Butcher, Suzanne
Dunn, J. Timothy
Hunt, John
Mitchell, Bonnie
Robertson, Timothy

Butterworth, Timothy
Eaton, Daniel
Johnson, Jane
Parkhurst, Henry
Sad, Tara

COOS

Hatch, William
Remick, William

Ingersoll, Paul Sr
Theberge, Robert

Merrick, Evalyn
Thomas, Yvonne

Merrick, Scott

GRAFTON

Aguiar, James
Bleyler, Ruth
Gionet, Edmond
Lovett, Sid
Nordgren, Sharon
Williams, Burton

Almy, Susan
Cooney, Mary
Hammond, Lee
Matheson, Robert
Pierce, David

Andersen, Gene
Estes, Carole
Harding, A Laurie
McLeod, Martha
Preston, Philip

Benn, Bernard
Friedrich, Carol
Laliberte, Suzanne
Mulholland, Catherine
Solomon, Peter

HILLSBOROUGH

Baroody, Benjamin
Brunelle, Michael
Cote, David
Forest, Armand
Ginsburg, Ruth
Hackel, Paul
Harvey, Suzanne
Johnson, Stephen
Knowles, Mary Ann

Beaulieu, Jane
Campbell, David
Daler, Jennifer
Foster, Linda
Goley, Jeffrey
Haley, Robert
Hebert, Roger
Kaelin, Michael
Kopka, Angeline

Beck, Catriona
Chase, Claudia
Drisko, Richard
Gargasz, Carolyn
Gorman, Mary
Hall, Betty
Irwin, Anne-Marie
Kelley, John
Lasky, Bette

Bergin, Peter
Clemons, Jane
Essex, David
Garrity, Patrick
Graham, John
Hammond, Jill
Jean, Claudette
Knowles, John
Leishman, Peter

Levesque, Melanie	Mack, Ron	Marshall, Seth	Matarazzo, Anthony Sr
Messier, Irene	Movsesian, Lori	O'Brien, Michael Sr	O'Neil, James
Peterson, Andy	Pilotte, Maurice	Reuschel, Michael	Rochette, Eric
Rosenwald, Cindy	Schulze, Joan	Shattuck, Gilman	Shaw, Barbara
Smith, David	Spaulding, Jayne	Spratt, Stephen	Sullivan, Daniel
Sullivan, Francis	Sysyn, Mary	Tahir, Saghir	Ulery, Jordan

MERRIMACK

Bouchard, Candace	Brown, Carole	Brueggemann, Donald	Clarke, Claire
Davis, Frank	DeStefano, Stephen	Ehlers, Eileen	Foose, Robert
Gile, Mary	Greco, Vincent	Hager, Elizabeth	Hamm, Christine
Kelly, Sally	Kidder, David	Kjellman, Eleanor Glynn	Lockwood, Priscilla
McMahon, Patricia	Osborne, Jessie	Owen, Derek	Porter, Margaret
Potter, Frances	Reardon, Tara	Richardson, Gary	Ryan, Jim
Shurtleff, Stephen	Tilton, Joy	Wallner, Mary	Walz, Mary
Webb, Leigh	Williams, Robert	Yeaton, Charles	

ROCKINGHAM

Abbott, Dennis	Bettencourt, David	Borden, David	Brown, C. Pennington
Cali-Pitts, Jacqueline	Casey, Kimberly	Day, Judith	DiFruscia, Anthony
Flockhart, Eileen	Gould, Kenneth	Henson, John	Howard, Doreen
Ingram, Russell	Kennedy, James	Kepner, Susan	Lister, Charlotte
Marsh, Michael	McEachern, Paul	McKenna, Daniel	Moody, Marcia
Moore, Bennett	Nord, Susi	Pantelakos, Laura	Pettersen, Don
Powers, James	Quandt, Marshall	Quandt, Matthew	Robertson, Carl
Russell, Trinka	Serlin, Christopher	Snow, Richard	Splaine, James
Stiles, Nancy	Webber, James	Wells, Roger	Weyler, Kenneth

STRAFFORD

Berube, Roger	Billian, Deborah	Brennan, William	Brown, Julie
Brown, Larry	Browne, Brendon	Burke, Rachel	Cyr, James
DeChane, Marlene	Fargo, Thomas	Grassie, Anne	Hilliard, Dana
Hofemann, Roland	Hubbard, Pamela	Knowles, William	Mickelonis, Shawn
Miller, Joseph	Perry, Robert	Rous, Emma	Schmidt, Peter
Smith, Marjorie	Spang, Judith	Sprague, Dale	Srnec, Robert
Vachon, Dennis	Wall, Janet		

SULLIVAN

Cloutier, John	Converse, Larry	Donovan, Thomas	Ferland, Brenda
Franklin, Peter	Gagnon, Raymond	Gottling, Suzanne	Houde, Matthew
Jillette, Arthur Jr	Nielsen, Ellen	Phinizy, James	Skinder, Carla

NAYS 108

BELKNAP

Allen, Janet	Boyce, Laurie	Clark, Charles	Flanders, Donald
Heald, Bruce	Nedeau, Stephen	Thomas, John	Tilton, Franklin
Tobin, William	Wendelboe, Fran	Whalley, Michael	

CARROLL

Ahlgren, Christopher
Martin, James

Brown, Carolyn
Merrow, Harry

Chandler, Gene
Patten, Betsey

Denley, William

CHESHIRE

Pelkey, Stephen

COOS

King, Frederick

GRAFTON

Bulis, Lyle

Dingman, Vernon III

Eaton, Stephanie

Sorg, Gregory

HILLSBOROUGH

Barry, Richard
Crane, Elenore Casey
Elliott, Nancy
Hawkins, Ken
Infantine, William
Lawrence, James
Ober, Lynne
Renzullo, Andrew
Soucy, Connie
Winters, Joel

Batula, Peter
Daniels, Gary
Fletcher, Richard
Hinkle, Peyton
Jasper, Shawn
Manney, Pamela
Ober, Russell III
Rowe, Robert
Stepanek, Stephen

Bergeron, Jean-Guy
Day, Russell
Haefner, Robert
Hogan, Edith
Kurk, Neal
McRae, Karen
Price, Pamela
Scannell, David
Vaillancourt, Steve

Clark, Mark
Dokmo, Cynthia
Hansen, Ryan
Holden, Randolph
L'Heureux, Robert
Mooney, Maureen
Reeves, Sandra
Simon, Anthony
Villeneuve, Maurice

MERRIMACK

Anderson, Eric
MacKay, James

Blanchard, Elizabeth
Reed, Dennis

Boutin, David

Hess, David

ROCKINGHAM

Allen, Mary
Camm, Kevin
Dalrymple, David
Fesh, Bob
Gleason, John
Introne, Robert
Lund, Howie
Nowe, Ronald
Sanders, Elisabeth
Wickson, Rick

Baldasaro, Alfred
Carson, Sharon
Devine, James
Flanders, John Sr
Griffin, Mary
Kappler, Lawrence
Major, Norman
Pearson, Mark
Waterhouse, Kevin
Winchell, George

Bedrick, Jason
Case, Frank
Elliott, Robert
Garcia, Marilinda
Headd, James
Katsakiores, George
McKinney, Betsy
Rausch, James
Weare, Everett

Bishop, Franklin
Charron, Gene
Emiro, Frank
Garrity, James
Hopfgarten, Paul
Katsakiores, Phyllis
McMahon, Charles
Reagan, John
Welch, David

STRAFFORD

Domingo, Baldwin

Watson, Robert

SULLIVAN

Rodeschin, Beverly

and the majority committee report was adopted.

Ordered to third reading.

Rep. Morrison declared a conflict of interest on **HB 766-FN** and did not participate.

MOTION TO PRINT REMARKS

Rep. Kurk moved that the remarks made during the debate on **HB 766-FN**, making changes

to the laws relating to special education, be printed in the Permanent Journal.
Rep. Kurk requested a roll call; sufficiently seconded.

YEAS 243 NAYS 88

YEAS 243

BELKNAP

Allen, Janet	Boyce, Laurie	Clark, Charles	Flanders, Donald
Heald, Bruce	Morrison, Gail	Nedeau, Stephen	Pilliod, James
Thomas, John	Tilton, Franklin	Tobin, William	Wendelboe, Fran
Whalley, Michael			

CARROLL

Ahlgren, Christopher	Brown, Carolyn	Buco, Thomas	Chandler, Gene
Denley, William	Martin, James	Merrow, Harry	Patten, Betsey

CHESHIRE

Allen, Peter	Burridge, Delmar	Butterworth, Timothy	Chase, William
Dunn, J. Timothy	Eaton, Daniel	Emerson, Susan	Espiefs, Peter
Hunt, John	Johnson, Jane	Lerandeau, Alfred	Loll, Thomas
Mitchell, Bonnie	Pelkey, Stephen	Sad, Tara	Weed, Charles

COOS

Ingersoll, Paul Sr	King, Frederick	Merrick, Scott	Remick, William
Theberge, Robert	Thomas, Yvonne		

GRAFTON

Almy, Susan	Andersen, Gene	Benn, Bernard	Bleyler, Ruth
Bulis, Lyle	Dingman, Vernon III	Eaton, Stephanie	Gionet, Edmond
Hammond, Lee	Harding, A Laurie	Laliberte, Suzanne	Matheson, Robert
McLeod, Martha	Mulholland, Catherine	Nordgren, Sharon	Preston, Philip
Sorg, Gregory	Williams, Burton		

HILLSBOROUGH

Baroody, Benjamin	Barry, Richard	Batula, Peter	Beaulieu, Jane
Bergeron, Jean-Guy	Bergin, Peter	Brunelle, Michael	Campbell, David
Clark, Mark	Clemons, Jane	Cote, David	Crane, Elenore Casey
Daler, Jennifer	Daniels, Gary	Day, Russell	Dokmo, Cynthia
Drisko, Richard	Elliott, Nancy	Essex, David	Fletcher, Richard
Foster, Linda	Gargas, Carolyn	Garrity, Patrick	Ginsburg, Ruth
Gorman, Mary	Graham, John	Hackel, Paul	Haefner, Robert
Haley, Robert	Hall, Betty	Hansen, Ryan	Harvey, Suzanne
Hawkins, Ken	Hinkle, Peyton	Hogan, Edith	Infantine, William
Irwin, Anne-Marie	Jasper, Shawn	Jean, Claudette	Knowles, Mary Ann
Kopka, Angeline	Kurk, Neal	L'Heureux, Robert	Lasky, Bette
Lawrence, James	Leishman, Peter	Levesque, Melanie	Mack, Ron
Manney, Pamela	Marshall, Seth	McRae, Karen	Messier, Irene
Mooney, Maureen	Movsesian, Lori	O'Brien, Michael Sr	O'Neil, James
Ober, Lynne	Ober, Russell III	Peterson, Andy	Price, Pamela
Reeves, Sandra	Renzullo, Andrew	Reuschel, Michael	Rosenwald, Cindy
Rowe, Robert	Shattuck, Gilman	Shaw, Barbara	Simon, Anthony

Soucy, Connie
Sullivan, Daniel
Villeneuve, Maurice

Spaulding, Jayne
Sysyn, Mary

Spratt, Stephen
Tahir, Saghir

Stepanek, Stephen
Ulery, Jordan

MERRIMACK

Anderson, Eric
DeStefano, Stephen
Hamm, Christine
Lockwood, Priscilla
Potter, Frances
Shurtleff, Stephen

Boutin, David
Ehlers, Eileen
Hess, David
MacKay, James
Reardon, Tara
Wallner, Mary

Clarke, Claire
Foose, Robert
Kelly, Sally
McMahon, Patricia
Reed, Dennis
Williams, Robert

Davis, Frank
Hager, Elizabeth
Kidder, David
Owen, Derek
Ryan, Jim

ROCKINGHAM

Abbott, Dennis
Bettencourt, David
Camm, Kevin
Dalrymple, David
Emiro, Frank
Garcia, Marilinda
Headd, James
Kappler, Lawrence
Kepner, Susan
McKinney, Betsy
Nowe, Ronald
Quandt, Matthew
Russell, Trink
Weare, Everett
Weyler, Kenneth

Allen, Mary
Bishop, Franklin
Carson, Sharon
Devine, James
Fesh, Bob
Garrity, James
Hopfgarten, Paul
Katsakiores, George
Lund, Howie
McMahon, Charles
Pantelakos, Laura
Rausch, James
Sanders, Elisabeth
Webber, James
Wickson, Rick

Baldasaro, Alfred
Borden, David
Case, Frank
DiFruscia, Anthony
Flanders, John Sr
Gleason, John
Ingram, Russell
Katsakiores, Phyllis
Major, Norman
Moody, Marcia
Pearson, Mark
Reagan, John
Snow, Richard
Welch, David
Winchell, George

Bedrick, Jason
Brown, C. Pennington
Charron, Gene
Elliott, Robert
Flockhart, Eileen
Griffin, Mary
Introne, Robert
Kennedy, James
McKenna, Daniel
Nord, Susi
Quandt, Marshall
Robertson, Carl
Stiles, Nancy
Wells, Roger

STRAFFORD

Brown, Julie
Fargo, Thomas
Miller, Joseph
Smith, Marjorie

Brown, Larry
Grassie, Anne
Perry, Robert
Vachon, Dennis

Cyr, James
Knowles, William
Rous, Emma
Wall, Janet

Domingo, Baldwin
Mickelonis, Shawn
Schmidt, Peter
Watson, Robert

SULLIVAN

Cloutier, John
Houde, Matthew

Donovan, Thomas
Rodeschin, Beverly

Franklin, Peter
Skinder, Carla

Gottling, Suzanne

NAYS 88

BELKNAP

Millham, Alida

Reever, Judith

CARROLL

Bridgham, Robert

Butler, Edward

Cunningham, Howard

Knox, J. David

CHESHIRE

Butcher, Suzanne
Roberts, Kris

Butynski, William
Robertson, Timothy

Parkhurst, Henry
Weber, Lucy

Richardson, Barbara

COOS

Hatch, William Merrick, Evalyn

GRAFTON

Aguiar, James Cooney, Mary Estes, Carole Friedrich, Carol
Lovett, Sid Pierce, David Solomon, Peter

HILLSBOROUGH

Beck, Catriona Chase, Claudia Forest, Armand Goley, Jeffrey
Hammond, Jill Hebert, Roger Holden, Randolph Johnson, Stephen
Kaelin, Michael Kelley, John Knowles, John Matarazzo, Anthony
Rochette, Eric Scannell, David Schulze, Joan Sr
Sullivan, Francis Vaillancourt, Steve Winters, Joel Smith, David

MERRIMACK

Blanchard, Elizabeth Bouchard, Candace Brown, Carole Brueggemann, Donald
Gile, Mary Greco, Vincent Kjellman, Eleanor Osborne, Jessie
Porter, Margaret Richardson, Gary Glynn Walz, Mary
Webb, Leigh Yeaton, Charles Tilton, Joy

ROCKINGHAM

Cali-Pitts, Jacqueline Casey, Kimberley Day, Judith Gould, Kenneth
Henson, John Howard, Doreen Lister, Charlotte Marsh, Michael
McEachern, Paul Moore, Bennett Petterson, Don Powers, James
Serlin, Christopher Splaine, James Waterhouse, Kevin

STRAFFORD

Berube, Roger Billian, Deborah Brennan, William Browne, Brendon
Burke, Rachel DeChane, Marlene Hilliard, Dana Hofemann, Roland
Hubbard, Pamela Spang, Judith Sprague, Dale Snec, Robert

SULLIVAN

Converse, Larry Ferland, Brenda Gagnon, Raymond Jillette, Arthur Jr
Nielsen, Ellen Phinizy, James

and the motion was adopted.

CLERK'S NOTE

The floor debate on **HB 766-FN**, making changes to the laws relating to special education, will be transcribed and published in the House Permanent Journal.

Karen O. Wadsworth
House Clerk

REGULAR CALENDAR – RETAINED BILLS (CONT'D)

HB 778-FN-A-L, relative to a preeminent scholastic educational foundation.
INEXPEDIENT TO LEGISLATE.

Rep. Scott A. Merrick for Education: The committee voted to recommend ITL on all of the adequacy bills except HB 927, which will incorporate all adequacy concerns and issues. The committee did look at, and consider, all of the bills but felt it would be easier to operate

under one bill, rather than seven. All of the adequacy bills, however, have been considered by the definition and costing committees and will continue to be discussed as the state legislature works toward defining and funding an adequate education. Vote 13-0. Committee report adopted.

HB 789-FN-A-L, providing supplemental education grants for certain school districts. **INEXPEDIENT TO LEGISLATE.**

Rep. Scott A. Merrick for Education: The committee voted to recommend ITL on all of the adequacy bills except HB 927, which will incorporate all adequacy concerns and issues. The committee did look at, and consider, all of the bills but felt it would be easier to operate under one bill, rather than seven. All of the adequacy bills, however, have been considered by the definition and costing committees and will continue to be discussed as the state legislature works toward defining and funding an adequate education. Vote 13-0. Committee report adopted.

HB 888-FN-A, relative to instructional and operational costs of providing an adequate education. **INEXPEDIENT TO LEGISLATE.**

Rep. Scott A. Merrick for Education: The committee voted to recommend ITL on all of the adequacy bills except HB 927, which will incorporate all adequacy concerns and issues. The committee did look at, and consider, all of the bills but felt it would be easier to operate under one bill, rather than seven. All of the adequacy bills, however, have been considered by the definition and costing committees and will continue to be discussed as the state legislature works toward defining and funding an adequate education. Vote 13-0. Committee report adopted.

HB 904-FN-L, defining an adequate education and relative to calculating the cost of an adequate education and adequate education grants. **INEXPEDIENT TO LEGISLATE.**

Rep. Scott A. Merrick for Education: The committee voted to recommend ITL on all of the adequacy bills except HB 927, which will incorporate all adequacy concerns and issues. The committee did look at, and consider, all of the bills but felt it would be easier to operate under one bill, rather than seven. All of the adequacy bills, however, have been considered by the definition and costing committees and will continue to be discussed as the state legislature works toward defining and funding an adequate education. Vote 12-0. Committee report adopted.

CACR 8, relating to: the term of office of the governor and the election of the attorney general. Providing that: the governor's term of office shall be 4 years and that the attorney general shall be elected by the house of representatives and the senate. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. David M. Pierce for the Majority of Election Law: The candidates for governor in recent elections were forced to raise record amounts of money to mount a competitive campaign. The time and energy required to raise such large amounts of money necessarily detracts from the business of running the state government. CACR 8 extends the governor's term from two years to four years and would help relieve the constant pressure to raise money because the governor's re-election campaign would not have to begin just after taking office. Vote 11-6. Rep. Shawn N. Jasper for the Minority of Election Law: Our entire state government is based on two year terms for elected officials and it has served us well. The majority seems to be concerned that governors are unable to complete their agendas in a two year period. The reality is that regardless of the length of their term, it is impossible to implement anything in a period of time longer than the length of the legislative term. We have what is probably the weakest governor, from a constitutional standpoint, of any governor in the nation. There is virtually nothing that our governor can do without the approval of the legislature or the

executive council. The voters of New Hampshire have always been willing to give a governor, who is seen as working in their interest and with the legislature a second term. It is only reasonable to have the Governor stand for re-election along with the legislature and executive council.

Majority Amendment (2623h)

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

RELATING TO: the term of office of the governor.

PROVIDING THAT: the governor's term of office shall be 4 years.

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

I. That article 42 of the second part of the constitution be amended to read as follows:

[Art.] 42. [Election of Governor, Return of Votes; Electors; If No Choice, Legislature to Elect One of Two Highest Candidates; Qualifications for Governor.] The governor shall be ~~[chosen biennially]~~ **elected for a 4-year term** in the month of November; and the votes for governor shall be received, sorted, counted, certified and returned, in the same manner as the votes for senators; and the secretary shall lay the same before the senate and house of representatives, on the first Wednesday following the first Tuesday of January to be by them examined, and in case of an election by a plurality of votes through the state, the choice shall be by them declared and published. And the qualifications of electors of the governor shall be the same as those for senators; and if no person shall have a plurality of votes, the senate and house of representatives shall, by joint ballot elect one of the two persons, having the highest number of votes, who shall be declared governor. And no person shall be eligible to this office, unless at the time of his election, he shall have been an inhabitant of this state for 7 years next preceding, and unless he shall be of the age of 30 years.

II. That the above amendment proposed to the constitution be submitted to the qualified voters of the state at the state general election to be held in November, 2008.

III. That the selectmen of all towns, cities, wards and places in the state are directed to insert in their warrants for the said 2008 election an article to the following effect: To decide whether the amendments of the constitution proposed by the 2007 session of the general court shall be approved.

IV. That the wording of the question put to the qualified voters shall be: "Are you in favor of amending article 42 of the second part of the constitution to read as follows:

[Art.] 42. [Election of Governor, Return of Votes; Electors; If No Choice, Legislature to Elect One of Two Highest Candidates; Qualifications for Governor.] The governor shall be elected for a 4-year term in the month of November; and the votes for governor shall be received, sorted, counted, certified and returned, in the same manner as the votes for senators; and the secretary shall lay the same before the senate and house of representatives, on the first Wednesday following the first Tuesday of January to be by them examined, and in case of an election by a plurality of votes through the state, the choice shall be by them declared and published. And the qualifications of electors of the governor shall be the same as those for senators; and if no person shall have a plurality of votes, the senate and house of representatives shall, by joint ballot elect one of the two persons, having the highest number of votes, who shall be declared governor. And no person shall be eligible to this office, unless at the time of his election, he shall have been an inhabitant of this state for 7 years next preceding, and unless he shall be of the age of 30 years."

V. That the secretary of state shall print the question to be submitted on a separate ballot or on the same ballot with other constitutional questions. The ballot containing the question shall include 2 squares next to the question allowing the voter to vote "Yes" or "No." If no cross is made in either of the squares, the ballot shall not be counted on the question. The outside of the ballot shall be the same as the regular official ballot except that the words

“Questions Relating to Constitutional Amendments proposed by the 2007 General Court” shall be printed in bold type at the top of the ballot.

VI. That if the proposed amendment is approved by 2/3 of those voting on the amendment, it becomes effective when the governor proclaims its adoption.

AMENDED ANALYSIS

This constitutional amendment concurrent resolution provides that the governor’s term of office shall be 4 years.

Majority committee amendment adopted.

The question now being adoption of the majority committee report of Ought to Pass with Amendment.

Reps. Jasper and Schmidt spoke against.

Rep. Pierce spoke in favor and yielded to questions.

Reps. Clemons and Campbell yielded to questions.

Rep. Vaillancourt requested a roll call; sufficiently seconded.

YEAS 167 NAYS 166

YEAS 167

BELKNAP

Arsenault, Beth

Morrison, Gail

Reever, Judith

CARROLL

Ahlgren, Christopher
Denley, William

Bridgham, Robert
Martin, James

Butler, Edward

Cunningham, Howard

CHESHIRE

Allen, Peter
Chase, William
Loll, Thomas
Sad, Tara

Burridge, Delmar
Dunn, J. Timothy
Mitchell, Bonnie
Weed, Charles

Butcher, Suzanne
Eaton, Daniel
Roberts, Kris

Butynski, William
Espieffs, Peter
Robertson, Timothy

COOS

Hatch, William
Theberge, Robert

Ingersoll, Paul Sr
Thomas, Yvonne

Merrick, Evalyn

Merrick, Scott

GRAFTON

Aguiar, James
Cooney, Mary
Harding, A Laurie
McLeod, Martha
Preston, Philip

Almy, Susan
Estes, Carole
Laliberte, Suzanne
Mulholland, Catherine
Solomon, Peter

Benn, Bernard
Friedrich, Carol
Lovett, Sid
Nordgren, Sharon

Bleyler, Ruth
Hammond, Lee
Matheson, Robert
Pierce, David

HILLSBOROUGH

Baroody, Benjamin
Chase, Claudia
Essex, David
Ginsburg, Ruth
Hammond, Jill
Jean, Claudette
Kopka, Angeline

Beaulieu, Jane
Clemons, Jane
Forest, Armand
Goley, Jeffrey
Harvey, Suzanne
Johnson, Stephen
Lasky, Bette

Beck, Catriona
Cote, David
Foster, Linda
Hackel, Paul
Hebert, Roger
Knowles, John
Mack, Ron

Campbell, David
Crane, Elenore Casey
Garrity, Patrick
Hall, Betty
Irwin, Anne-Marie
Knowles, Mary Ann
Marshall, Seth

Matarazzo, Anthony Sr
Peterson, Andy
Shattuck, Gilman
Sullivan, Daniel

Movsesian, Lori
Pilotte, Maurice
Shaw, Barbara
Sysyn, Mary

O'Brien, Michael Sr
Reuschel, Michael
Simon, Anthony

O'Neil, James
Scannell, David
Spratt, Stephen

MERRIMACK

Blanchard, Elizabeth
Clarke, Claire
Ehlers, Eileen
Hager, Elizabeth
Kjellman, Eleanor
Glynn
Reardon, Tara
Tilton, Joy
Yeaton, Charles

Bouchard, Candace
Davis, Frank
Foose, Robert
Hamm, Christine
Osborne, Jessie

Richardson, Gary
Wallner, Mary

Brown, Carole
DeJoie, John
Gile, Mary
Kelly, Sally
Owen, Derek

Ryan, Jim
Walz, Mary

Brueggemann, Donald
DeStefano, Stephen
Greco, Vincent
Kidder, David
Potter, Frances

Shurtleff, Stephen
Williams, Robert

ROCKINGHAM

Abbott, Dennis
Case, Frank
Emiro, Frank
Kepner, Susan
Pantelakos, Laura
Robertson, Carl

Borden, David
Casey, Kimberley
Flockhart, Eileen
McEachern, Paul
Pearson, Mark
Russell, Trinkia

Brown, C. Pennington
Day, Judith
Howard, Doreen
McKenna, Daniel
Petterson, Don
Serlin, Christopher

Cali-Pitts, Jacqueline
DiFruscia, Anthony
Kennedy, James
Nord, Susi
Powers, James
Splaine, James

STRAFFORD

Berube, Roger
DeChane, Marlene
Miller, Joseph
Sprague, Dale

Brennan, William
Domingo, Baldwin
Perry, Robert
Srnc, Robert

Burke, Rachel
Hofemann, Roland
Rous, Emma
Vachon, Dennis

Cyr, James
Kaen, Naida
Smith, Marjorie
Wall, Janet

SULLIVAN

Cloutier, John
Gottling, Suzanne
Skinder, Carla

Donovan, Thomas
Houde, Matthew

Franklin, Peter
Jillette, Arthur Jr

Gagnon, Raymond
Nielsen, Ellen

NAYS 166

BELKNAP

Allen, Janet
Heald, Bruce
Thomas, John
Whalley, Michael

Boyce, Laurie
Millham, Alida
Tilton, Franklin

Clark, Charles
Nedeau, Stephen
Tobin, William

Flanders, Donald
Pilliod, James
Wendelboe, Fran

CARROLL

Brown, Carolyn
Morrow, Harry

Buco, Thomas
Patten, Betsey

Chandler, Gene

Knox, J. David

CHESHIRE

Butterworth, Timothy
Lerandeau, Alfred

Emerson, Susan
Parkhurst, Henry

Hunt, John
Pelkey, Stephen

Johnson, Jane
Richardson, Barbara

Weber, Lucy

COOS

King, Frederick

Remick, William

Stohl, Eric

GRAFTON

Andersen, Gene
Gionet, Edmond

Bulis, Lyle
Sorg, Gregory

Dingman, Vernon III
Williams, Burton

Eaton, Stephanie

HILLSBOROUGH

Barry, Richard
Brunelle, Michael
Day, Russell
Fletcher, Richard
Graham, John
Hinkle, Peyton
Jasper, Shawn
L'Heureux, Robert
Manney, Pamela
O'Connell, Timothy
Reeves, Sandra
Schulze, Joan
Stepanek, Stephen
Vaillancourt, Steve

Batula, Peter
Clark, Mark
Dokmo, Cynthia
Gargasz, Carolyn
Haefner, Robert
Hogan, Edith
Kaelin, Michael
Lawrence, James
McRae, Karen
Ober, Lynne
Renzullo, Andrew
Smith, David
Sullivan, Francis
Villeneuve, Maurice

Bergeron, Jean-Guy
Daler, Jennifer
Drisko, Richard
Gorman, Mary
Haley, Robert
Holden, Randolph
Kelley, John
Leishman, Peter
Messier, Irene
Ober, Russell III
Rochette, Eric
Soucy, Connie
Tahir, Saghir
Winters, Joel

Bergin, Peter
Daniels, Gary
Elliott, Nancy
Goyette, Peter
Hawkins, Ken
Infantine, William
Kurk, Neal
Levesque, Melanie
Mooney, Maureen
Price, Pamela
Rowe, Robert
Spaulding, Jayne
Ulery, Jordan

MERRIMACK

Anderson, Eric
MacKay, James

Boutin, David
Porter, Margaret

Hess, David
Reed, Dennis

Lockwood, Priscilla
Webb, Leigh

ROCKINGHAM

Allen, Mary
Bishop, Franklin
Dalrymple, David
Flanders, John Sr
Gould, Kenneth
Hopfgarten, Paul
Katsakiores, George
Major, Norman
Moody, Marcia
Quandt, Matthew
Snow, Richard
Webber, James
Wickson, Rick

Baldasaro, Alfred
Camm, Kevin
Devine, James
Garcia, Marilinda
Griffin, Mary
Ingram, Russell
Katsakiores, Phyllis
Marsh, Michael
Moore, Bennett
Rausch, James
Stiles, Nancy
Welch, David
Winchell, George

Bedrick, Jason
Carson, Sharon
Elliott, Robert
Garrity, James
Headd, James
Introne, Robert
Lister, Charlotte
McKinney, Betsy
Nowe, Ronald
Reagan, John
Waterhouse, Kevin
Wells, Roger

Bettencourt, David
Charron, Gene
Fesh, Bob
Gleason, John
Henson, John
Kappler, Lawrence
Lund, Howie
McMahon, Charles
Quandt, Marshall
Sanders, Elisabeth
Weare, Everett
Weyler, Kenneth

STRAFFORD

Billian, Deborah
Fargo, Thomas
Schmidt, Peter

Brown, Julie
Hilliard, Dana
Spang, Judith

Brown, Larry
Hubbard, Pamela
Watson, Robert

Browne, Brendon
Knowles, William

SULLIVAN

Converse, Larry

Ferland, Brenda

Phinizy, James

Rodeschin, Beverly

and the majority committee report failed lacking the constitutionally required three-fifths

vote.

HB 48, relative to the definition of "party" for election purposes. **INEXPEDIENT TO LEGISLATE.**

Rep. David M. Pierce for Election Law: The committee intends to submit its own bill in the 2008 session to address the issue of encouraging ballot access by political parties other than the Republican and Democratic parties. For this reason, the committee voted to recommend inexpedient to legislate on this bill. Vote 15-2.

Committee report adopted.

HB 186-FN, relative to random recounts. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS WITH AMENDMENT.**

Rep. Shawn N. Jasper for the Majority of Election Law: This bill seeks a solution for a problem which does not exist in New Hampshire. Time and time again recounts have demonstrated the accuracy of our voting machines. The changes which occur, as a result of recounts, are all the result of human error: incorrect marking of ballots (which only a hand count can determine) or other factors such as misplaced ballots. In the last presidential election, a candidate stopped his recount when the accuracy of the machine count was shown in precinct after precinct. If we were to pass this legislation it would give credibility to the theory that our machines can not be trusted, when in fact there has never been a recount in New Hampshire which has done anything but prove their accuracy. We have a process in place that allows for any candidate who doubts the validity of the outcome to have a recount. There is no reason to add the expense of random recounts or to question our election results. Vote 9-8.

Rep. Claudia A. Chase for the Minority of Election Law: The minority of the committee believes that due to the many vulnerabilities of the optical scanners used to count 85% of the vote in New Hampshire, it is expedient to install a random recount to prove to the voters of New Hampshire that vote counting in New Hampshire is accurate. Although we believe in the integrity of elections in New Hampshire, such a recount would protect us from future possible corruption of the vote.

Reps. Perry and Hall spoke against.

Rep. Claudia Chase spoke against and yielded to questions.

Reps. Jasper and Daniel Eaton spoke in favor.

Rep. Claudia Chase requested a roll call; sufficiently seconded.

YEAS 253 NAYS 72

YEAS 253

BELKNAP

Allen, Janet	Boyce, Laurie	Clark, Charles	Flanders, Donald
Heald, Bruce	Millham, Alida	Nedeau, Stephen	Pilliod, James
Reever, Judith	Thomas, John	Tilton, Franklin	Tobin, William
Wendelboe, Fran	Whalley, Michael		

CARROLL

Ahlgren, Christopher	Bridgham, Robert	Brown, Carolyn	Buco, Thomas
Chandler, Gene	Cunningham, Howard	Denley, William	Knox, J. David
Martin, James	Merrow, Harry	Patten, Betsey	

CHESHIRE

Burrige, Delmar	Butterworth, Timothy	Dunn, J. Timothy	Eaton, Daniel
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Emerson, Susan
Parkhurst, Henry
Weber, Lucy

Hunt, John
Pelkey, Stephen

Johnson, Jane
Richardson, Barbara

Lerandeau, Alfred
Sad, Tara

COOS

Hatch, William
Remick, William

Ingersoll, Paul Sr
Stohl, Eric

King, Frederick
Theberge, Robert

Merrick, Scott
Thomas, Yvonne

GRAFTON

Aguiar, James
Eaton, Stephanie
Matheson, Robert
Williams, Burton

Benn, Bernard
Estes, Carole
Nordgren, Sharon

Bleyler, Ruth
Gionet, Edmond
Solomon, Peter

Bulis, Lyle
Harding, A Laurie
Sorg, Gregory

HILLSBOROUGH

Baroody, Benjamin
Bergin, Peter
Clemons, Jane
Day, Russell
Forest, Armand
Ginsburg, Ruth
Graham, John
Hammond, Jill
Hogan, Edith
Jasper, Shawn
Knowles, John
L'Heureux, Robert
Manney, Pamela

Barry, Richard
Brunelle, Michael
Cote, David
Drisko, Richard
Foster, Linda
Goley, Jeffrey
Hackel, Paul
Hawkins, Ken
Holden, Randolph
Jean, Claudette
Knowles, Mary Ann
Lasky, Bette
Marshall, Seth

Batula, Peter
Campbell, David
Crane, Elenore Casey
Elliott, Nancy
Gargas, Carolyn
Gorman, Mary
Haefner, Robert
Hebert, Roger
Infantine, William
Johnson, Stephen
Kopka, Angeline
Lawrence, James
Matarazzo, Anthony
Sr

Bergeron, Jean-Guy
Clark, Mark
Daniels, Gary
Fletcher, Richard
Garritty, Patrick
Goyette, Peter
Haley, Robert
Hinkle, Peyton
Irwin, Anne-Marie
Kelley, John
Kurk, Neal
Leishman, Peter
McRae, Karen

Mooney, Maureen
Ober, Russell III
Reeves, Sandra
Rosenwald, Cindy
Shaw, Barbara
Spaulding, Jayne
Sullivan, Francis
Vaillancourt, Steve

Movsesian, Lori
Peterson, Andy
Renzullo, Andrew
Rowe, Robert
Simon, Anthony
Spratt, Stephen
Sysyn, Mary
Villeneuve, Maurice

O'Connell, Timothy
Pilotte, Maurice
Reuschel, Michael
Scannell, David
Smith, David
Stepanek, Stephen
Tahir, Saghir

Ober, Lynne
Price, Pamela
Rochette, Eric
Schulze, Joan
Soucy, Connie
Sullivan, Daniel
Ulery, Jordan

MERRIMACK

Anderson, Eric
Clarke, Claire
Foose, Robert
Hamm, Christine
Kjellman, Eleanor
Glynn
Osborne, Jessie
Richardson, Gary
Webb, Leigh

Blanchard, Elizabeth
Davis, Frank
Gile, Mary
Hess, David
Lockwood, Priscilla
Owen, Derek
Ryan, Jim
Williams, Robert

Bouchard, Candace
DeJoie, John
Greco, Vincent
Kelly, Sally
MacKay, James
Potter, Frances
Shurtleff, Stephen
Yeaton, Charles

Boutin, David
DeStefano, Stephen
Hager, Elizabeth
Kidder, David
McMahon, Patricia

Reed, Dennis
Wallner, Mary

ROCKINGHAM

Abbott, Dennis
Bettencourt, David
Carson, Sharon

Allen, Mary
Brown, C. Pennington
Case, Frank

Baldasaro, Alfred
Cali-Pitts, Jacqueline
Charron, Gene

Bedrick, Jason
Camm, Kevin
Dalrymple, David

Devine, James
Fesh, Bob
Garrity, James
Headd, James
Introne, Robert
Kennedy, James
McKenna, Daniel
Pantelakos, Laura
Rausch, James
Snow, Richard
Webber, James
Winchell, George

DiFruscia, Anthony
Flanders, John Sr
Gleason, John
Hopfgarten, Paul
Kappler, Lawrence
Lund, Howie
McKinney, Betsy
Pearson, Mark
Reagan, John
Stiles, Nancy
Welch, David

Elliott, Robert
Flockhart, Eileen
Gould, Kenneth
Howard, Doreen
Katsakiores, George
Major, Norman
Moore, Bennett
Quandt, Marshall
Robertson, Carl
Waterhouse, Kevin
Wells, Roger

Emiro, Frank
Garcia, Marilinda
Griffin, Mary
Ingram, Russell
Katsakiores, Phyllis
Marsh, Michael
Nowe, Ronald
Quandt, Matthew
Sanders, Elisabeth
Weare, Everett
Weyler, Kenneth

STRAFFORD

Berube, Roger
Hilliard, Dana
Miller, Joseph
Sprague, Dale

Billian, Deborah
Hofemann, Roland
Rous, Emma
Vachon, Dennis

Brown, Julie
Hubbard, Pamela
Smith, Marjorie
Wall, Janet

DeChane, Marlene
Kaen, Naida
Spang, Judith

SULLIVAN

Cloutier, John
Gottling, Suzanne
Rodeschin, Beverly

Donovan, Thomas
Houde, Matthew

Ferland, Brenda
Jillette, Arthur Jr

Franklin, Peter
Phinizy, James

NAYS 72

BELKNAP

Arsenault, Beth

Morrison, Gail

CARROLL

Butler, Edward

CHESHIRE

Allen, Peter
Espieffs, Peter
Weed, Charles

Butcher, Suzanne
Loll, Thomas

Butynski, William
Mitchell, Bonnie

Chase, William
Robertson, Timothy

COOS

Merrick, Evalyn

GRAFTON

Almy, Susan
Hammond, Lee
Pierce, David

Andersen, Gene
Laliberte, Suzanne
Preston, Philip

Cooney, Mary
Lovett, Sid

Friedrich, Carol
Mulholland, Catherine

HILLSBOROUGH

Beaulieu, Jane
Dokmo, Cynthia
Kaelin, Michael
O'Brien, Michael Sr

Beck, Catriona
Essex, David
Levesque, Melanie
O'Neil, James

Chase, Claudia
Hall, Betty
Mack, Ron
Shattuck, Gilman

Daler, Jennifer
Harvey, Suzanne
Messier, Irene
Winters, Joel

MERRIMACK

Brown, Carole
Tilton, Joy

Brueggemann, Donald
Walz, Mary

Ehlers, Eileen

Porter, Margaret

ROCKINGHAM

Borden, David
Kepner, Susan
Nord, Susi
Splaine, James

Casey, Kimberley
Lister, Charlotte
Pettersen, Don

Day, Judith
McEachern, Paul
Powers, James

Henson, John
Moody, Marcia
Serlin, Christopher

STRAFFORD

Brennan, William
Cyr, James
Schmidt, Peter

Brown, Larry
Fargo, Thomas
Watson, Robert

Browne, Brendon
Mickelonis, Shawn

Burke, Rachel
Perry, Robert

SULLIVAN

Converse, Larry
and the majority committee report was adopted.

Gagnon, Raymond

Nielsen, Ellen

Skinder, Carla

HB 233-FN-A, specifying compensation for ballot law commissioners. **OUGHT TO PASS.**
Rep. Charles F. Weed for Election Law: The majority of the committee recommends that the ballot law commissioners receive \$50 per diem plus mileage for the days they are summoned by the secretary of state. This compensation places this commission in similar circumstances to most of the other commissions in New Hampshire, and we honor the important job these commissioners accomplish. We estimate that it may cost \$2500 per election cycle. Vote 10-7.
Committee report adopted.
Ordered to third reading.

HB 271, making political and commercial advertising placed illegally on public property subject to state litter laws. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Charles F. Weed for the Majority of Election Law: This legislation would make placement of political and commercial advertising on public property subject to the state litter laws. While the committee has had much discussion about the placement of political signs on public property, we believe it remains an enforcement issue. The issue of commercial advertising is a different matter and should be taken up by a separate committee, and the sponsor has agreed to introduce a bill specifically on illegally placed commercial advertising. Vote 13-2.

Rep. James R. Splaine for the Minority of Election Law: While the sponsor of this bill has agreed to introduce legislation for this session to specifically consider commercial advertising placed on public property without permission, the minority of the committee continues to believe that sticking up political signs in violation of state law on public property should stop. It is obviously going to continue to be a low priority in law enforcement to take illegally placed political signs down. Since candidates who are willing to disregard the law will put their signs up, other candidates who would like to follow the law are either at a disadvantage, or decide to put their signs in similar locations. The minority of the committee feels that by declaring such placement "litter" under our state litter laws -- just like the throwing of campaign brochures out of a car window while driving down the highway would be -- anyone in the neighborhood where the signs are placed illegally who would want to clean up the litter would be able to do so. We believe this is not a "free speech" issue since if a candidate wants to stand with a sign on public property, it is certainly that candidate's right to do so -- just as he or she would be able to walk on public property with a coffee cup.

But when that sign is abandoned on public property that should be considered litter, just like that coffee cup being thrown on the ground would be.

Majority committee report adopted.

HB 454*, relative to meetings of the supervisors of the checklist. **INEXPEDIENT TO LEGISLATE.*

Rep. Charles F. Weed for Election Law: This bill would have required special meetings by the supervisors of the checklist to receive new voter registrations. The committee believes that the way such special meetings would be funded by the petitioners requesting such meetings was unworkable. The committee also believes that most supervisors of the checklist already respond to requests from the citizens in their community for extra meetings without a need for the law. Vote 10-6.

Committee report adopted.

HB 683*, relative to nominations by party committees. **OUGHT TO PASS.*

Rep. David M. Pierce for Election Law: Current law permits state party committees to designate a candidate for the general election when no person ran for the office (or received enough write-in votes) in the primary. This procedure gives state party committees the unrestricted power to instruct localities who their general election candidates will be. HB 683 would repeal that law and would return local control over who earns the right to run for office. Vote 12-4.

Committee report adopted.

Ordered to third reading.

(Deputy Speaker Foster in the Chair)

REGULAR CALENDAR – RETAINED BILLS (CONT'D)

HB 794-FN*, relative to campaign contributions and expenditures. **OUGHT TO PASS WITH AMENDMENT.*

Rep. James R. Splaine for Election Law: In light of the ever-increasing costs of running for public office and the reliance on personal wealth or extensive fundraising in order to run for public office, the committee has had lengthy discussions about how to find alternatives for potential candidates without such financial sources. The committee believes that the concept of funding certain campaigns on a voluntary basis through a different funding system has merit, and should be further explored in a bipartisan manner. This bill with the committee amendment creates a commission of seven public members who will dedicate themselves to the task of identifying alternative ways to fund state campaigns. The commission would examine potential revenue sources for funding and develop recommendations to the legislative session of 2009. The commission may not consider revenue from the state general fund in developing its plan, but may consider voluntary contributions, in-kind donations of services, and other means to generate revenue. The commission would include not more than three members of a political party. No commission members would currently hold elective office. Two appointments would be made by the speaker of the house, two by the senate president, two by the governor, and one by the secretary of state. The commission would report back by December 1, 2008, in time for legislative action in 2009. Vote 10-7.

Amendment (2635h)

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

AN ACT establishing a commission to study the feasibility of public funding of state election campaigns.

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

1 Commission Established. There is established a commission to study the feasibility of public funding of state election campaigns.

2 Membership.

- I. The members of the commission shall be as follows:
- (a) Two members appointed by the president of the senate, no more than one of whom shall be a member of the same political party.
 - (b) Two members appointed by the speaker of the house of representatives, no more than one of whom shall be a member of the same political party.
 - (c) Two members appointed by the governor, no more than one of whom shall be a member of the same political party.
 - (d) One member appointed by the secretary of state.
- II.(a) The president of the senate, speaker of the house of representatives, governor, and secretary of state shall seek to appoint members to the commission who have demonstrated support for a system of public funding of election campaigns and have knowledge or expertise in campaign financing or state budget issues.
- (b) No commission member may simultaneously serve in an elected state office.
 - (c) No commission member may be a candidate for state elected office.
 - (d) No more than 3 members of the commission shall be members of the same party.
- III. All appointments to the commission shall be made within 30 days of the effective date of this section. The secretary of state shall defer appointing a member under subparagraph I(d) until after the other members of the commission have been appointed, and shall utilize such appointment to ensure compliance with subparagraph II(d).
- 3 Duties. The commission shall examine potential revenue sources for public funding of state election campaigns and develop a recommendation to the general court for a plan to fund state election campaigns in a sustainable manner. The commission may not consider revenue from the state general fund in developing its plan, but may consider voluntary contributions, in-kind donations of services, and other means to generate revenue from public and private sources. The commission may also consider the legislative framework for a system of public funding of state election campaigns developed by the election law committee of the house of representatives, which the election law committee shall file with the secretary of state within 30 days of the effective date of this section.
- 4 Chairperson; Quorum. The commission shall elect a chairperson and other officers from among the members as necessary to fulfill its duties. The first meeting shall be called by the first-named member appointed by the speaker of the house of representatives. The first meeting of the commission shall be held within 45 days of the effective date of this section. Four members of the commission shall represent a quorum. The commission may seek assistance and staff support from any agency.
- 5 Report. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before December 1, 2008.
- 6 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill establishes a commission to study the feasibility of public funding of state election campaigns.
Amendment adopted.

The question now being adoption of the committee report of Ought to Pass with Amendment.
Rep. Splaine spoke in favor.
Rep. Renzullo requested a roll call; sufficiently seconded.

YEAS 199 NAYS 121

YEAS 199

BELKNAP

Arsenault, Beth	Morrison, Gail	Reever, Judith	Tobin, William
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CARROLL

Bridgham, Robert Patten, Betsey	Buco, Thomas	Butler, Edward	Cunningham, Howard
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CHESHIRE

Allen, Peter Butynski, William Espiefs, Peter Parkhurst, Henry Weber, Lucy	Burridge, Delmar Chase, William Hunt, John Richardson, Barbara Weed, Charles	Butcher, Suzanne Dunn, J. Timothy Lerandeau, Alfred Robertson, Timothy	Butterworth, Timothy Eaton, Daniel Mitchell, Bonnie Sad, Tara
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COOS

Hatch, William Remick, William	Ingersoll, Paul Sr Theberge, Robert	Merrick, Evalyn Thomas, Yvonne	Merrick, Scott
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GRAFTON

Aguiar, James Bleyler, Ruth Hammond, Lee Matheson, Robert Pierce, David	Almy, Susan Cooney, Mary Harding, A Laurie McLeod, Martha Preston, Philip	Andersen, Gene Estes, Carole Laliberte, Suzanne Mulholland, Catherine Solomon, Peter	Benn, Bernard Friedrich, Carol Lovett, Sid Nordgren, Sharon Williams, Burton
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HILLSBOROUGH

Baroody, Benjamin Campbell, David Daler, Jennifer Garrity, Patrick Hackel, Paul Harvey, Suzanne Kaelin, Michael Kopka, Angeline Mack, Ron	Beck, Catriona Chase, Claudia Dokmo, Cynthia Goley, Jeffrey Haley, Robert Hebert, Roger Kelley, John Lasky, Bette Marshall, Seth	Bergin, Peter Clemons, Jane Essex, David Gorman, Mary Hall, Betty Irwin, Anne-Marie Knowles, John Leishman, Peter Matarazzo, Anthony Sr O'Neil, James Rosenwald, Cindy Shaw, Barbara Sullivan, Daniel	Brunelle, Michael Cote, David Forest, Armand Graham, John Hammond, Jill Johnson, Stephen Knowles, Mary Ann Levesque, Melanie Messier, Irene Pilote, Maurice Scannell, David Simon, Anthony Sullivan, Francis
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MERRIMACK

Blanchard, Elizabeth Clarke, Claire Ehlers, Eileen Hamm, Christine	Bouchard, Candace Davis, Frank Foose, Robert Kelly, Sally	Brown, Carole DeJoie, John Gile, Mary Kidder, David	Brueggemann, Donald DeStefano, Stephen Greco, Vincent Kjellman, Eleanor Glynn Owen, Derek Richardson, Gary Wallner, Mary Yeaton, Charles
Lockwood, Priscilla Porter, Margaret Ryan, Jim Walz, Mary	McMahon, Patricia Potter, Frances Shurtleff, Stephen Webb, Leigh	Osborne, Jessie Reardon, Tara Tilton, Joy Williams, Robert	

ROCKINGHAM

Abbott, Dennis	Borden, David	Brown, C. Pennington	Cali-Pitts, Jacqueline
Casey, Kimberley	Day, Judith	DiFruscia, Anthony	Flockhart, Eileen
Henson, John	Howard, Doreen	Kennedy, James	Kepner, Susan
Lister, Charlotte	Marsh, Michael	McEachern, Paul	McKenna, Daniel
Moody, Marcia	Nord, Susi	Pantelakos, Laura	Petterson, Don
Powers, James	Robertson, Carl	Serlin, Christopher	Snow, Richard
Splaine, James	Webber, James		

STRAFFORD

Berube, Roger	Billian, Deborah	Brennan, William	Brown, Larry
Burke, Rachel	Cyr, James	DeChane, Marlene	Fargo, Thomas
Hilliard, Dana	Hubbard, Pamela	Kaen, Naida	Mickelonis, Shawn
Miller, Joseph	Perry, Robert	Rous, Emma	Schmidt, Peter
Smith, Marjorie	Spang, Judith	Sprague, Dale	Vachon, Dennis
Wall, Janet			

SULLIVAN

Cloutier, John	Converse, Larry	Donovan, Thomas	Ferland, Brenda
Franklin, Peter	Gagnon, Raymond	Gottling, Suzanne	Houde, Matthew
Jillette, Arthur Jr	Nielsen, Ellen	Phinzy, James	Skinder, Carla

NAYS 121

BELKNAP

Allen, Janet	Boyce, Laurie	Clark, Charles	Flanders, Donald
Heald, Bruce	Millham, Alida	Nedeau, Stephen	Pilliod, James
Thomas, John	Tilton, Franklin	Wendelboe, Fran	Whalley, Michael

CARROLL

Ahlgren, Christopher	Brown, Carolyn	Chandler, Gene	Denley, William
Knox, J. David	Martin, James	Merrow, Harry	

CHESHIRE

Emerson, Susan	Johnson, Jane	Pelkey, Stephen
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COOS

King, Frederick	Stohl, Eric
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GRAFTON

Bulis, Lyle	Eaton, Stephanie	Gionet, Edmond	Sorg, Gregory
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HILLSBOROUGH

Barry, Richard	Batula, Peter	Beaulieu, Jane	Bergeron, Jean-Guy
Clark, Mark	Daniels, Gary	Day, Russell	Drisko, Richard
Elliott, Nancy	Fletcher, Richard	Haefner, Robert	Hawkins, Ken
Hinkle, Peyton	Hogan, Edith	Holden, Randolph	Infantine, William
Jasper, Shawn	Kurk, Neal	L'Heureux, Robert	Lawrence, James
Manney, Pamela	McRae, Karen	Mooney, Maureen	O'Connell, Timothy

Ober, Lynne
Reeves, Sandra
Spaulding, Jayne
Vaillancourt, Steve

Ober, Russell III
Renzullo, Andrew
Stepanek, Stephen
Villeneuve, Maurice

Peterson, Andy
Rowe, Robert
Tahir, Saghir

Price, Pamela
Soucy, Connie
Ulery, Jordan

MERRIMACK

Anderson, Eric
MacKay, James

Boutin, David
Reed, Dennis

Hager, Elizabeth

Hess, David

ROCKINGHAM

Allen, Mary
Bishop, Franklin
Charron, Gene
Emiro, Frank
Garritty, James
Headd, James
Kappler, Lawrence
Major, Norman
Pearson, Mark
Reagan, John
Weare, Everett
Winchell, George

Baldasaro, Alfred
Camm, Kevin
Dalrymple, David
Fesh, Bob
Gleason, John
Hopfgarten, Paul
Katsakiores, George
McKinney, Betsy
Quandt, Marshall
Sanders, Elisabeth
Welch, David

Bedrick, Jason
Carson, Sharon
Devine, James
Flanders, John Sr
Gould, Kenneth
Ingram, Russell
Katsakiores, Phyllis
Moore, Bennett
Quandt, Matthew
Stiles, Nancy
Wells, Roger

Bettencourt, David
Case, Frank
Elliott, Robert
Garcia, Marilinda
Griffin, Mary
Introne, Robert
Lund, Howie
Nowe, Ronald
Rausch, James
Waterhouse, Kevin
Weyler, Kenneth

STRAFFORD

Brown, Julie

Browne, Brendon

Watson, Robert

SULLIVAN

Rodeschin, Beverly
and the committee report was adopted.
Ordered to third reading.

HB 809, relative to restrictions on political advertising. **INEXPEDIENT TO LEGISLATE.**
Rep. David M. Pierce for Election Law: Current law prohibits placing any political advertising on public property. The bill sought to emphasize that that rule applies with equal force on election day. The committee felt it unnecessary to amend the law merely for the sake of emphasis. Vote 14-2.
Committee report adopted.

SB 45, changing the name of the ballot law commission to the elections and ballot law commission, increasing the membership of the commission, and requiring the commission to propose redistricting plans. **INEXPEDIENT TO LEGISLATE.**
Rep. Charles F. Weed for Election Law: The committee is developing a more comprehensive bill which will collect the diverse charges for and may recommend new tasks for the Ballot Law Commission. It will also recommend restrictions on who might be appointed and will recommend increased membership. Senate Bill 45 was related to increased membership, possible redistricting as a new charge for the Ballot Law Commission, and recommended a change in the name. Vote 17-0.
Committee report adopted.

HB 76-FN, creating an environmental policy for New Hampshire. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**
Rep. Richard H. Snow for the Majority of Environment and Agriculture: This bill, as

amended, will accomplish three important interrelated objectives. It will establish, in statute, an overall environmental protection policy for New Hampshire, task an existing agency within the office of the governor with the responsibility and authority necessary to implement that policy and establish an independent position of environmental protection ombudsman to speak for the environment in all matters before the state. After three years of testimony and study, including fourteen subcommittee meetings this summer, the proposed amendment is a carefully crafted compromise. While it was clear that the establishment of a state environmental protection policy was needed, important, and should be a priority for this legislature, it was also understood that any bill with an indeterminate cost, anticipated project delays and a multi-million dollar fiscal note was unlikely to pass and become law. Based on testimony that the state was already doing all the things that were proposed to be mandated by the bill, but that centralized authority and comprehensive state wide planning were less than perfect, an amendment was drafted and debated. The amendment reestablishes and renames the existing office of energy and planning, using language both from the original bill and existing statute. It neither changes nor expands their overall charter or mission. That portion of the original bill that created additional regulation, administrative burden and indeterminate cost was eliminated. A new position of environmental ombudsman is proposed, to allow additional public input and to improve collaboration, cooperation and coordination within the state. The position, as proposed, would not become effective until July 1, 2009, eliminating cost in this biennium, but requiring action by future legislatures in the budgetary process. The position is presented as a non-classified position, administratively attached to the office of environmental protection, energy and planning, without a recommendation for salary level. We anticipated that the legislation would be further considered by a second committee and those matters would be best determined by them. Our committee stands ready to work with that second committee. We recommend that compensation for the new position be commensurate with that of the director of the office of environmental protection, energy and planning. In order to provide a high degree of autonomy and to recognize the close association of the people and their representatives, it is proposed that the position be filled by election by the House and Senate, in joint session, initially at the first session in 2010 and every six years after that. Procedures are in the amendment to fill a vacancy in the position and to remove the person holding the position, for cause, in accordance with existing statute. As in all legislation, we do not presume that this proposal gives anybody everything that they wanted. What we do propose is that it is a reasonable compromise and that it is a workable approach, in the New Hampshire tradition, to finally establishing an overall environmental policy for the state and will give Mother Nature a seat at our table. Vote 10-6.

Rep. David E. Essex for the Minority of Environment and Agriculture: This bill was significantly amended from one that addressed improving public input into projects undertaken by state government, and requiring environmental impact studies that could have increased annual state expenditures by almost \$13 million. The amendment refocused the bill on establishing an environmental policy for all of the state's resources, both public and private; creating the new position of environmental protection ombudsman in the office of energy and planning, and renaming and charging that agency with new responsibilities for overseeing the policy. The minority is especially concerned that the ombudsman's responsibilities are poorly defined, over-broad, and duplicative of some functions of other agencies and committees. In addition, it is unclear how much this new non-classified position will cost, and whether the ombudsman's election by joint session of the House and Senate, and placement in the office of the governor, are proper or effective. The assistant commissioner of the department of environmental services and director of the division of forests and lands expressed serious reservations. While some members of the minority support establishing a state environmental policy and improving coordination among state agencies, they cannot support the specific mechanism established by this bill.

Majority Amendment (2636h)

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

AN ACT relative to the office of energy and planning.

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

1 Office of Energy and Planning; name change; Office of Environmental Protection, Energy, and Planning. Amend the chapter heading of RSA 4-C to read as follows:

CHAPTER 4-C

OFFICE OF **ENVIRONMENTAL PROTECTION**, ENERGY, AND PLANNING

2 Reference Changes; Office of Energy and Planning Renamed Office of Environmental Protection, Energy, and Planning. Amend the following RSA provisions by replacing “office of energy and planning” with “office of environmental protection, energy, and planning”: 4-C:2; 4-C:3; 4-C:4; 4-C: 5; 4-C:6; 4-C:6-a; 4-C:7; 4-C:8; 4-C:9; 4-C:9-a; 4-C:10; 4-C:19; 4-C:25; 4-C:28; 4-C:29; 9-A:2; 9-A:4; 12-G:13; 12-K:2; 12-K:3; 12-K:6; 12-K:8; 12-K:9; 17-M:2; 21-O:5-a; 21-O:7; 21-P:48; 36:45; 36:46; 36:47; 36-B:1; 78-A:25; 78-A:26; 125-G:2; 125-G:3; 125-G:5; 125-G:16; 126-A:4; 147-B:4; 162-C:1; 162-H:3; 162-L:15; 162-L:19; 204-C:8; 216-A:3-c; 216-F:5; 216-J:2; 217-A:3; 227-C:4; 227-E:3; 227-E:6; 227-G:2; 227-M:4; 233-A:2; 235:23; 238:20; 261:153; 270:64; 270:71; 374:22-j; 384-B:1; 432:19; 482-A:32; 483:8; 483:10; 483:10-a; 483-A:6; 483-A:7; 483-B:4; 483-B:5; 483-B:12; 483-B:16; 483-B:19; 485-A:4; 485-C:3; 673:3-a; 674:3; 675:9.

3 Policy, Purpose. Amend RSA 4-C:1 to read as follows:

4-C:1 Establishment; **Policy, Purpose**, General Duties, and Responsibilities.

I. There is established the office of **environmental protection**, energy, and planning within the office of the governor. The office of **environmental protection**, energy, and planning shall be under the supervision and direction of the governor or the governor's designee. The governor's designee shall be known as the director of the office of **environmental protection**, energy, and planning.

II. The general court finds that the growing population and expanding economy of the state have had a profound impact on the life-sustaining natural environment. The air, water, land, and other natural resources, taken for granted since the settlement of the state, are now recognized as finite and precious. It is now understood that human activity must be guided by and in harmony with the system of relationships among the elements of nature. Therefore, the general court hereby declares that the policy of the state of New Hampshire is to conserve, improve, and protect its natural resources and environment, and to control air, land, and water pollution in order to enhance the health, safety, and welfare of the people of the state. It shall further be the policy of the state to improve and coordinate the environmental plans, functions, powers, and programs of the state, in cooperation with the federal government, state and local governments, other public and private organizations, and concerned individuals, and to manage the basic resources of air, land, and water to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations.

III. The general court, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influence of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of humanity, declares that it is the continuing policy of the state government, in cooperation with the federal government, state and local governments, other public and private organizations, and concerned individuals, to use all practicable means and measures, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which people and nature can exist in

productive harmony, and to fulfill the social, economic, and other requirements of present and future generations of New Hampshire residents.

~~[H.]~~ IV. *It is the continuing responsibility of the state government to use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate state plans, functions, programs, and resources to the end that the state may fulfill the responsibility of each generation as trustee of the environment for succeeding generations.* The office of *environmental protection*, energy, and planning shall:

(a) Plan for the ~~[orderly development of the state and the]~~ wise management of the state's resources *and the orderly development of the state to achieve an ecological balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities.*

(b) Compile, analyze, and disseminate data, information, and research services as necessary to advance the welfare of the state *and the environment.*

(c) Encourage and assist planning, growth management, and development activities of cities and towns and groups of cities and towns with the purpose of encouraging smart growth *in accordance with the comprehensive state development plan developed pursuant to RSA 9-A:1.*

(d) Encourage the coordination and correlation of state planning by agencies of state government *to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.*

(e) Participate in interstate, regional, and national planning efforts *to assure for all residents of the state safe, healthful, productive, and esthetically and culturally pleasing surroundings.*

(f) Administer federal and state grant-in-aid programs assigned to the office by statute or executive order.

(g) Participate and advise in matters of land use planning *and resource protection* regarding lakes and rivers management programs.

(h) Take a leadership role in encouraging smart growth and preserving farmland, open space land, and traditional village centers *to preserve important historic, cultural, and natural aspects of our New Hampshire heritage, and maintain, wherever possible, an environment which supports diversity and a variety of individual choice.*

(i) *Take a leadership role in promoting the role of conservation in the use of energy, maximizing the use of energy efficient systems, and minimizing the environmental effect of energy production and use.*

(j) *Take a leadership role in promoting the maximum attainable recycling of resources and maximizing the quality and economic value of renewable resources.*

~~[(k)]~~ (k) Administer the following programs: the statewide comprehensive outdoor recreation plan, the national flood insurance program, the land conservation investment program, the scenic and cultural byways system, fuel assistance contracts, and weatherization contracts. The office shall employ necessary personnel to administer these programs. In administering fuel assistance and weatherization contracts, the office shall ensure that when an individual applies for fuel assistance or weatherization, the individual shall be provided with application forms and information about the Link-Up New Hampshire and Lifeline Telephone Assistance programs, and shall be provided assistance in applying for these programs.

~~[(l)]~~ (l) Perform such other duties as the governor may assign.

4 New Subdivision; Environmental Protection Ombudsman. Amend RSA 4-C by inserting after section 30 the following new subdivision:

4-C:31 Environmental Protection Ombudsman.

I. There is established the non-classified position of environmental protection ombudsman in the office of the governor to provide a single point of contact in state government for public questions and concerns about the environment in New Hampshire. This position shall have no regulatory authority. In all matters before the state, the environmental protection ombudsman shall have standing to speak for the environment.

II. The position shall be administratively attached to the office of environmental protection, energy, and planning. The position shall be filled by election by the house of representatives and senate, in joint session, at the first meeting of the general court in 2010 and in like manner every 6 years thereafter. Vacancies in the position shall be filled by a joint session of the general court in a timely fashion. The ombudsman may be removed, for good cause, in accordance with RSA 91:3.

III. The environmental protection ombudsman shall:

(a) Develop, disseminate, regularly review, and update a clear, concise, and measurable definition of adverse effect on the environment.

(b) Monitor the efforts of state departments, municipalities, and other agencies within the state to ensure that their efforts, programs, and projects do not adversely effect the environment.

(c) Advise departments, municipalities, and other agencies within the state of possible adverse environmental effects caused by their actions and offer possible alternatives.

(d) Serve as a communications link or neutral negotiator between the public and state agencies where a difference of opinion creates significant public concern.

(e) Communicate, on a regular basis, with the general court and the public about environmental problems affecting the state and efforts being taken to eliminate or reduce the effects of the problems.

5 New Paragraph; Environmental Protection Ombudsman. Amend RSA 162-C:1 by inserting after paragraph XIII the following new paragraph:

XIV. The environmental protection ombudsman, or designee.

6 Effective Date.

I. Sections 4 and 5 of this act shall take effect July 1, 2009.

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

AMENDED ANALYSIS

This bill:

I. Renames the office of energy and planning and amends its duties.

II. Establishes the position of environmental protection ombudsman.

Rep. Snow spoke against.

Majority committee amendment failed.

Rep. Snow offered floor amendment (0066h).

Floor Amendment (0066h)

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

AN ACT relative to the office of energy and planning.

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

1 Office of Energy and Planning; name change; Office of Environmental Protection, Energy, and Planning. Amend the chapter heading of RSA 4-C to read as follows:

CHAPTER 4-C

OFFICE OF *ENVIRONMENTAL PROTECTION*, ENERGY, AND PLANNING

2 Reference Changes; Office of Energy and Planning Renamed Office of Environmental Protection, Energy, and Planning. Amend the following RSA provisions by replacing "office of energy and planning" with "office of environmental protection, energy, and planning": 4-C:2; 4-C:3; 4-C:4; 4-C: 5; 4-C:6; 4-C:6-a; 4-C:7; 4-C:8; 4-C:9; 4-C:9-a; 4-C:10; 4-C:19; 4-C:25; 4-C:28; 4-C:29; 9-A:2; 9-A:4; 12-G:13; 12-K:2; 12-K:3; 12-K:6; 12-K:8; 12-K:9; 17-M:2; 21-O:5-a; 21-O:7; 21-P:48; 36:45; 36:46; 36:47; 36-B:1; 78-A:25; 78-A:26; 125-G:2; 125-G:3; 125-G:5; 125-

G:16; 126-A:4; 147-B:4; 162-C:1; 162-H:3; 162-L:15; 162-L:19; 204-C:8; 216-A:3-c; 216-F:5; 216-J:2; 217-A:3; 227-C:4; 227-E:3; 227-E:6; 227-G:2; 227-M:4; 233-A:2; 235:23; 238:20; 261:153; 270:64; 270:71; 374:22-j; 384-B:1; 432:19; 482-A:32; 483:8; 483:10; 483:10-a; 483-A:6; 483-A:7; 483-B:4; 483-B:5; 483-B:12; 483-B:16; 483-B:19; 485-A:4; 485-C:3; 673:3-a; 674:3; 675:9.

3 Policy, Purpose. Amend RSA 4-C:1 to read as follows:

4-C:1 Establishment; **Policy, Purpose**, General Duties, and Responsibilities.

I. There is established the office of **environmental protection**, energy, and planning within the office of the governor. The office of **environmental protection**, energy, and planning shall be under the supervision and direction of the governor or the governor's designee. The governor's designee shall be known as the director of the office of **environmental protection**, energy, and planning.

II. The general court finds that the growing population and expanding economy of the state have had a profound impact on the life-sustaining natural environment. The air, water, land, and other natural resources, taken for granted since the settlement of the state, are now recognized as finite and precious. It is now understood that human activity must be guided by and in harmony with the system of relationships among the elements of nature. Therefore, the general court hereby declares that the policy of the state of New Hampshire is to conserve, improve, and protect its natural resources and environment, and to control air, land, and water pollution in order to enhance the health, safety, and welfare of the people of the state. It shall further be the policy of the state to improve and coordinate the environmental plans, functions, powers, and programs of the state, in cooperation with the federal government, state and local governments, other public and private organizations, and concerned individuals, and to manage the basic resources of air, land, and water to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations.

III. The general court, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influence of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of humanity, declares that it is the continuing policy of the state government, in cooperation with the federal government, state and local governments, other public and private organizations, and concerned individuals, to use all practicable means and measures, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which people and nature can exist in productive harmony, and to fulfill the social, economic, and other requirements of present and future generations of New Hampshire residents.

[H.] IV. *It is the continuing responsibility of the state government to use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate state plans, functions, programs, and resources to the end that the state may fulfill the responsibility of each generation as trustee of the environment for succeeding generations.* The office of **environmental protection**, energy, and planning shall:

(a) Plan for the ~~[orderly development of the state and the]~~ wise management of the state's resources **and the orderly development of the state to achieve an ecological balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities.**

(b) Compile, analyze, and disseminate data, information, and research services as necessary to advance the welfare of the state **and the environment.**

(c) Encourage and assist planning, growth management, and development activities of cities and towns and groups of cities and towns with the purpose of encouraging smart growth ***in accordance with the comprehensive state development plan developed pursuant to RSA 9-A:1.***

(d) Encourage the coordination and correlation of state planning by agencies of state government ***to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.***

(e) Participate in interstate, regional, and national planning efforts ***to assure for all residents of the state safe, healthful, productive, and esthetically and culturally pleasing surroundings.***

(f) Administer federal and state grant-in-aid programs assigned to the office by statute or executive order.

(g) Participate and advise in matters of land use planning ***and resource protection*** regarding lakes and rivers management programs.

(h) Take a leadership role in encouraging smart growth and preserving farmland, open space land, and traditional village centers ***to preserve important historic, cultural, and natural aspects of our New Hampshire heritage, and maintain, wherever possible, an environment which supports diversity and a variety of individual choice.***

(i) ***Take a leadership role in promoting the role of conservation in the use of energy, maximizing the use of energy efficient systems, and minimizing the environmental effect of energy production and use.***

(j) ***Take a leadership role in promoting the maximum attainable recycling of resources and maximizing the quality and economic value of renewable resources.***

~~[(k)]~~ **(k)** Administer the following programs: the statewide comprehensive outdoor recreation plan, the national flood insurance program, the land conservation investment program, the scenic and cultural byways system, fuel assistance contracts, and weatherization contracts. The office shall employ necessary personnel to administer these programs. In administering fuel assistance and weatherization contracts, the office shall ensure that when an individual applies for fuel assistance or weatherization, the individual shall be provided with application forms and information about the Link-Up New Hampshire and Lifeline Telephone Assistance programs, and shall be provided assistance in applying for these programs.

~~[(l)]~~ **(l)** Perform such other duties as the governor may assign.

4 New Subdivision; Environmental Protection Ombudsman. Amend RSA 4-C by inserting after section 30 the following new subdivision:
Environmental Protection Ombudsman

4-C:31 Environmental Protection Ombudsman.

I. There is established the non-classified position of environmental protection ombudsman in the office of the governor to provide a single point of contact in state government for public questions and concerns about the environment in New Hampshire. This position shall have no regulatory authority. In all matters before the state, the environmental protection ombudsman shall have standing to speak for the environment.

II. The position shall be administratively attached to the office of environmental protection, energy, and planning. The environmental protection ombudsman shall be appointed by the governor, with the advice and consent of the council prior to January 1, 2010 and in like manner every 6 years thereafter. Vacancies in the position shall be filled for the balance of the unexpired term in the same manner as the original appointment. The ombudsman may be removed, for good cause, in accordance with RSA 91:3.

III. The environmental protection ombudsman shall:

(a) Develop, disseminate, regularly review, and update a clear, concise, and measurable definition of adverse effect on the environment.

(b) Monitor the efforts of state departments, municipalities, and other agencies within the state to ensure that their efforts, programs, and projects do not adversely effect the environment.

(c) Advise departments, municipalities, and other agencies within the state of possible adverse environmental effects caused by their actions and offer possible alternatives.

(d) Serve as a communications link or neutral negotiator between the public and state agencies where a difference of opinion creates significant public concern.

(e) Communicate, on a regular basis, with the general court and the public about environmental problems affecting the state and efforts being taken to eliminate or reduce the effects of the problems.

5 New Paragraph; Environmental Protection Ombudsman. Amend RSA 162-C:1 by inserting after paragraph XIII the following new paragraph:

XIV. The environmental protection ombudsman, or designee.

6 Effective Date.

I. Sections 4 and 5 of this act shall take effect July 1, 2009.

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

AMENDED ANALYSIS

This bill:

I. Renames the office of energy and planning and amends its duties.

II. Establishes the position of environmental protection ombudsman.

Rep. Snow spoke in favor.

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.

Rep. Hess requested a roll call; sufficiently seconded.

YEAS 118 NAYS 86

YEAS 118

BELKNAP

Arsenault, Beth

Morrison, Gail

Reever, Judith

Tobin, William

CARROLL

Cunningham, Howard

CHESHIRE

Allen, Peter

Burridge, Delmar

Butterworth, Timothy

Butynski, William

Chase, William

Dunn, J. Timothy

Eaton, Daniel

Espieffs, Peter

Mitchell, Bonnie

Parkhurst, Henry

Robertson, Timothy

Sad, Tara

Weber, Lucy

Weed, Charles

COOS

Ingersoll, Paul Sr

Thomas, Yvonne

GRAFTON

Aguiar, James
Cooney, Mary
Laliberte, Suzanne
Williams, Burton

Almy, Susan
Estes, Carole
Lovett, Sid

Benn, Bernard
Friedrich, Carol
Preston, Philip

Bleyler, Ruth
Hammond, Lee
Solomon, Peter

HILLSBOROUGH

Beaulieu, Jane
Garrity, Patrick
Harvey, Suzanne
Knowles, Mary Ann
Marshall, Seth
O'Neil, James
Schulze, Joan
Spratt, Stephen

Campbell, David
Hackel, Paul
Irwin, Anne-Marie
Kopka, Angeline
Messier, Irene
Pilotte, Maurice
Shattuck, Gilman
Sullivan, Daniel

Chase, Claudia
Hall, Betty
Kelley, John
Leishman, Peter
Movsesian, Lori
Reuschel, Michael
Shaw, Barbara
Winters, Joel

Cote, David
Hammond, Jill
Knowles, John
Mack, Ron
O'Connell, Timothy
Scannell, David
Simon, Anthony

MERRIMACK

Blanchard, Elizabeth
DeStefano, Stephen

Brown, Carole
Hamm, Christine

Clarke, Claire
Kelly, Sally

Davis, Frank
Kjellman, Eleanor
Glynn
Potter, Frances
Tilton, Joy

McMahon, Patricia
Richardson, Gary
Wallner, Mary

Owen, Derek
Ryan, Jim
Yeaton, Charles

Porter, Margaret
Shurtleff, Stephen

ROCKINGHAM

Abbott, Dennis
Flockhart, Eileen
Nord, Susi
Snow, Richard

Borden, David
Howard, Doreen
Pantelakos, Laura
Splaine, James

Brown, C. Pennington
Lister, Charlotte
Petterson, Don
Webber, James

Day, Judith
McEachern, Paul
Powers, James

STRAFFORD

Brennan, William
DeChane, Marlene
Miller, Joseph
Wall, Janet

Brown, Larry
Fargo, Thomas
Perry, Robert

Browne, Brendon
Hubbard, Pamela
Rous, Emma

Cyr, James
Kaen, Naida
Schmidt, Peter

SULLIVAN

Cloutier, John
Nielsen, Ellen

Converse, Larry
Phinizy, James

Gottling, Suzanne
Skinder, Carla

Jillette, Arthur Jr

NAYS 86

BELKNAP

Allen, Janet
Heald, Bruce
Whalley, Michael

Boyce, Laurie
Millham, Alida

Clark, Charles
Nedeau, Stephen

Flanders, Donald
Tilton, Franklin

CARROLL

Brown, Carolyn
Patten, Betsey

Denley, William

Knox, J. David

Martin, James

CHESHIRE

Emerson, Susan Johnson, Jane Pelkey, Stephen

COOS

King, Frederick

GRAFTON

Bulis, Lyle Eaton, Stephanie Sorg, Gregory

HILLSBOROUGH

Barry, Richard	Bergeron, Jean-Guy	Bergin, Peter	Clark, Mark
Daniels, Gary	Day, Russell	Dokmo, Cynthia	Drisko, Richard
Essex, David	Fletcher, Richard	Haefner, Robert	Haley, Robert
Hawkins, Ken	Hinkle, Peyton	Hogan, Edith	L'Heureux, Robert
Manney, Pamela	McRae, Karen	Mooney, Maureen	Price, Pamela
Rochette, Eric	Smith, David	Spaulding, Jayne	Tahir, Saghir
Ulery, Jordan	Vaillancourt, Steve	Villeneuve, Maurice	

MERRIMACK

Anderson, Eric	Hager, Elizabeth	Hess, David	MacKay, James
Reed, Dennis	Webb, Leigh		

ROCKINGHAM

Allen, Mary	Bettencourt, David	Bishop, Franklin	Camm, Kevin
Case, Frank	Charron, Gene	Devine, James	Flanders, John Sr
Garcia, Marilinda	Garrity, James	Gleason, John	Gould, Kenneth
Griffin, Mary	Ingram, Russell	Kappler, Lawrence	Katsakiores, George
Katsakiores, Phyllis	Pearson, Mark	Quandt, Matthew	Rausch, James
Reagan, John	Robertson, Carl	Sanders, Elisabeth	Stiles, Nancy
Waterhouse, Kevin	Weare, Everett	Wells, Roger	Winchell, George

STRAFFORD

Brown, Julie Vachon, Dennis Watson, Robert

SULLIVAN

Rodeschin, Beverly
and floor amendment (0066H) failed lacking the necessary two-thirds vote.
Rep. Casey did not vote and notified the Clerk that she wished to be recorded in favor.

CLERK'S NOTE

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

LAID ON THE TABLE

Rep. Phinizy moved that **HB 76-FN**, creating an environmental policy for New Hampshire, be laid on the table.
On a division vote, 272 members having voted in the affirmative and 17 in the negative, the motion was adopted.

REGULAR CALENDAR – RETAINED BILLS (CONT'D)

HB 172-FN, establishing the position of state meat inspector. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Timothy D. O'Connell for the Majority of Environment and Agriculture: Under current state law a New Hampshire meat inspection structure is in place within the New Hampshire Department of Agriculture, Markets, and Food. Presently however, USDA regulations do not allow the interstate sale of meat without USDA inspection. In 2000, the legislature deactivated the state meat inspection law until such time as USDA withdraws its federal meat inspection program from the state. HB 172-FN as amended simply adds language enabling reactivation of the state inspection program, if and when USDA allows the interstate sale of state inspected meats. This potentially could offer expanded marketing opportunities for our livestock producers to support the renewal of a state meat inspection program and encourage locally grown products. Vote 15-1.

Rep. Steve Vaillancourt for the Minority of Environment and Agriculture: As originally filed, this bill would force the Department of Agriculture to hire a state meat inspector, at a cost of approximately \$100,000 a year, in hopes of creating enough work for the inspector to do. The minority believes that government should not be in the position of creating positions hoping the market will then create a need. It should be the other way around. The former Agriculture Commissioner testified that there is not enough volume to justify this position. He went on to say that if additional monies are available for his department, there would be other priorities. There is only one slaughterhouse (Goffstown) in the state. The amendment to the bill only muddles the waters by stipulating that if the federal government takes certain actions, then the state may or may not hire a meat inspector. This is totally unnecessary. We should not be passing needless legislation based on something which may or may not be done in Washington at some future time. If the Department of Agriculture Commissioner believes such a position is necessary he could include it in a future budget then the governor at the time could determine whether in fact he agrees it is necessary. The Legislature should not be creating positions which are neither necessary nor wanted by the officials in the best position to make determinations as to current or future need. The minority rejects the "if you build it, they will come" argument in regards to the state's role in slaughterhouse inspection.

Majority Amendment (2591h)

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

AN ACT relative to state meat inspection.

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

1 State Meat Inspector. Amend RSA 427:1-a to read as follows:

427:1-a Applicability. The provisions of this subdivision shall not apply or be in effect unless and until such time as the Food Safety and Inspection Service Division of the United States Department of Agriculture withdraws its meat inspection program from the state ***or unless and until such time as such agency allows the interstate sale of meat under the provisions of RSA 427:1 through RSA 427:37.***

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

AMENDED ANALYSIS

This bill allows the state meat inspection program to operate when the United States Department of Agriculture withdraws its meat inspection program from the state or otherwise allows the state meat inspection program to proceed.

Majority committee amendment adopted.

The question now being adoption of the majority committee report of Ought to Pass with Amendment.

Rep. Vaillancourt spoke against.

Rep. O'Connell spoke in favor and yielded to questions.

MOTION TO LAY ON THE TABLE

Rep. Holden moved that **HB 172-FN**, establishing the position of state meat inspector, be laid on the table.

On a division vote, 97 members having voted in the affirmative and 201 in the negative, the motion failed.

The question now being adoption of the majority committee report of Ought to Pass with Amendment.

On a division vote, 179 members having voted in the affirmative and 119 in the negative, the majority committee report was adopted.

Referred to the committee on Executive Departments and Administration.

HB 503-FN, relative to establishing a solid waste management fund and assessing a surcharge for the disposal of solid waste. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Burton W. Williams for the Majority of Environment and Agriculture: Solid waste management is not a problem which will ever diminish, and the Department of Environmental Services is in constant need of general funds to facilitate the reduction of solid waste and to encourage recycling and reuse. This bill establishes a revenue source which will relieve the general fund and the taxpayer of considerable expense that the disposal of solid waste requires. A one cent per beverage container surcharge, levied at the wholesale level, will not only create funds for DES solid waste management programs, but allow all municipalities in the state to apply for grants to improve and expand their recycling programs, thus diverting tons of plastic, metal, glass and paper from incinerators and landfills, creating a flow of raw materials and opportunities for new industries and jobs in New Hampshire. Consumers should be responsible for the proper disposal and recycling of the containers they use, not the taxpayer. For the cost of one penny per beverage container, New Hampshire can serve as a model of recycling and reuse, and begin to reverse the trend of living in a throw-away society. Vote 15-2.

Rep. Steve Vaillancourt for the Minority of Environment and Agriculture: This bill, which began as a well-intentioned effort to promote recycling and solid waste management, sadly has become a \$10 million per year bottle tax. The proponent of the majority amendment began his dissertation by noting that the governor would not support this new tax (it's called a fee, but make no mistake about it; this is a new tax pure and simple). "A beverage container fee of \$.01 per container shall be paid by a beverage manufacturer" is the precise wording. Don't be fooled, however. This fee is a tax, and unlike bottle bills which traditionally promote recycling, there is no such incentive in this bill. Bottle bills mandate deposits. In other words, the monies are returned when the bottles are returned. There is no such stipulation in this bill. That's why it must be considered nothing more than a tax. But even worse than that it is a tax which comes with a dedicated purpose, something the House and our governors have traditionally tried to avoid. Again don't be fooled by the language which calls for the tax to be paid at the wholesale level. As is always the case, we should expect this tax would be passed along and if history is any judge, many wholesalers would use the tax to raise fees beyond the one cent. So why did this bill become a bottle tax? The bill originally called for a surcharge on the disposal of solid waste to fund solid waste management, presumably sensible although still a tax. However, strong opposition (with a 28 A argument) was voiced by the municipal association and cities and towns, who by and large would have been levied that tax that the committee went in another direction. The minority believes that the citizens of New Hampshire did not send us here to implement more special taxes to fund more government bureaucracy which may or may not accomplish anything of benefit to our society. The fact that even the governor opposes this is comfort to the minority which believes that this is such bad tax policy that it should be defeated here

and now.

Majority Amendment (2587h)

Amend the bill by replacing the title with the following:

AN ACT relative to establishing a solid waste management fund and assessing a beverage container fee.

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

1 Repeal. RSA 149-M:6, XI, relative to a surcharge on out of state waste, is repealed.

2 Rulemaking; Solid Waste Management. RSA 149-M:7, VII is repealed and reenacted to read as follows:

VII. Administration of and standards for the assessment, payment, collection, and auditing conducted and penalties assessed pursuant to the beverage fee under RSA 149-M:59 and for disbursements made from the solid waste management fund pursuant to RSA 149-M:60.

3 New Subdivision; Funding for Solid Waste Management and Recycling. Amend RSA 149-M by inserting after section 57 the following new subdivision:
Funding for Solid Waste Management and Recycling

149-M:58 Beverage Defined. In this subdivision, “beverage” means all still and carbonated drinks; fruit juices and all beverages compounded therefrom; all bottled waters; and all packaged liquids intended for drinking. Milk and unmixed products thereof are not included as “beverages under this chapter. The term “beverage” as used in this chapter shall not apply to wine and liquor as defined in RSA 175:1.

149-M:59 Beverage Container Fee; Payment.

I. A beverage container fee of \$0.01 per container shall be paid by a beverage manufacturer, wholesaler or wholesale distributor upon the first sale of a beverage in this state.

II. All fees payable during the preceding calendar month shall be paid to the department on or before the fifteenth day of the following month. A penalty of 10 percent of the fees payable shall be added and collected by the commissioner for failure to pay any part of fees payable under this section when due.

149-M:60 Solid Waste Management Fund. There is hereby established in the office of the treasurer a solid waste management fund which shall be kept distinct and separate from all other funds. All moneys received from the beverage container fee established under RSA 149-M:59 shall be credited to such fund. Such fund shall be nonlapsing and continually appropriated to the department for the planning, recycling, and regulation of solid waste and for the investigation of solid waste complaints and cleanup of abandoned solid waste sites.

149-M:61 Use of Solid Waste Management Fund.

I. Up to 35 percent of beverage fee revenues deposited into the solid waste management fund established under RSA 149-M:60 shall be available to the department for solid waste management, including administration, technical assistance, operator training, education and outreach, permitting, regulatory compliance, complaint investigation, and cleanup of abandoned solid waste sites.

II. At least 65 percent of surcharge revenues deposited into the solid waste management fund established under RSA 149-M:60 shall be available as grants for household hazardous waste collection and management, educational events, roadside cleanup, recycling, solid waste reduction, and electronic waste management, in the following proportions:

(a) At least 70 percent to municipalities for recycling related activities including electronics;

(b) Up to 2 percent to nonprofit organizations, registered and in good standing with the attorney general, for educational purposes, roadside cleanup and beautification;

(c) Up to 8 percent for seed grants or no interest loans for start-up of businesses that manufacture products in New Hampshire using New Hampshire generated recyclable materials.

(d) Up to 20 percent for household hazardous waste grants.

III. The department shall adopt rules under RSA 541-A for the administration of the grant program in paragraph II, including application forms, process, and procedures for awarding and disbursing grants.

IV. Grants made under paragraph II shall be made annually by the department upon authorization by the recycling steering committee established under RSA 149-O.

4 Recycling Steering Committee. RSA 149-O is repealed and reenacted to read as follows:

CHAPTER 149-O RECYCLING STEERING COMMITTEE

149-O:1 Committee Established. There is established a recycling steering committee to promote recycling in New Hampshire.

149-O:2 Duties. The recycling steering committee shall have the following duties:

I. Advocating for recycling and waste reduction in New Hampshire.

II. Authorizing recycling, waste reduction, and waste management grants to be made to municipalities, businesses, and nonprofit organizations by the department using funds from the solid waste management fund established under RSA 149-M:60.

III. Establishing priorities for and amounts of grants distributed under RSA 149-O:2, II.

149-O:3 Membership.

I. The recycling steering committee shall consist of the following members, representing the major segments of the state's recycling community:

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

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

(c) One representative of New Hampshire's environmental community, appointed by the governor.

(d) A person responsible for recycling coordination in the department of environmental services, or another appropriate representative of the department, appointed by the commissioner of the department of environmental services.

(e) A representative from the New Hampshire Municipal Association, appointed by the association.

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

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

II. The members shall elect a chairperson and vice-chairperson.

III. Members shall be appointed for a period of 4 years.

149-O:4 Meetings. The recycling steering committee shall meet quarterly and at such other times as the chairperson may call.

149-O:5 Report. The recycling steering committee shall prepare an annual report, including any recommended legislation, detailing the committee's work, including the number, dollar amount, and recipients of grants recommended under RSA 149-O:2, II, the adequacy of funding for the program, and the effectiveness of the program. The committee shall submit the report by February 1 each year to the chairpersons of the house and senate standing committees having jurisdiction over environmental matters, the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the state library, the governor, and the commissioner of the department of environmental services.

149-O:6 Mileage. Members shall serve without compensation except that legislative members shall receive legislative mileage while conducting recycling steering committee business.

5 Reference Change. Amend RSA 149-M:29, II(h) to read as follows:

(h) The status of efforts by the [~~market development~~] **recycling** steering committee established in RSA 149-O:1.

6 New Subparagraph; Solid Waste Management Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (268) the following new subparagraph:

(269) Moneys deposited in the solid waste management fund established by RSA 149-M:60.

7 Effective Date. This act shall take effect July 1, 2009.

AMENDED ANALYSIS

This bill establishes a solid waste management fund, establishes a beverage container fee, and changes the name, duties, and membership of the recycling market development steering committee.

Rep. Phinizy moved Recommit and spoke in favor.

Adopted.

SPECIAL ORDER

Without objection, the Chair referred the remainder of the bills on today's calendar as Special Orders for the next session day in the Regular Calendar order.

RESOLUTION

Rep. Daniel Eaton 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, January 23, 2008 at 10:00 a.m.

Adopted.

LATE SESSION

Third reading and final passage

HB 267, relative to certain small loans.

HB 461, relative to purchasing alliances.

HB 759-FN, relative to administration and enforcement of banking laws.

SB 131, relative to insurance coverage for services of midwives.

HB 678-FN, establishing a committee to study issues related to cochlear implants.

HB 679-FN-L, relative to delivery of special education services.

HB 766-FN, making changes to the laws relating to special education.

HB 233-FN-A, specifying compensation for ballot law commissioners.

HB 683, relative to nominations by party committees.

HB 794-FN, establishing a commission to study the feasibility of public funding of state election campaigns.

UNANIMOUS CONSENT

Rep. Knox addressed the House.

RECESS MOTION

Rep. Daniel Eaton moved that the House stand in recess for the purpose of introduction of bills, enrolled bill amendments, enrolled bill reports and receiving Senate messages.

Adopted.

The House recessed at 5:15 p.m.

RECESS

(Rep. Hess in the Chair)

RESOLUTION

Rep. Weyler offered the following: RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 1638 and 1639 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 1638, establishing an oversight commission on motor vehicle fines. (W. Knowles, Straf 6; Ryan, Merr 2; Almy, Graf 11: Criminal Justice and Public Safety)

HB 1639-FN-A-L, relative to charter school funding and enabling charter schools to receive school building aid. (Casey, Rock 11; B. Shaw, Hills 16; Hunt, Ches 7: Education)

RECESS

SENATE MESSAGES

REFERRED FOR INTERIM STUDY

HB 379, relative to the adoption, revision, and amendment of municipal charters.

HB 380, relative to the forms of government under town charters.

LAID ON THE TABLE

HB 539-FN, relative to manslaughter.

NONCONCURRENCE

HB 304, relative to the criteria under which guardianship over a minor is granted.

HB 463, relative to the awarding parental rights and responsibilities to a stepparent or grandparent.

RECESS

COMMITTEE ASSIGNMENTS

Rep. William P. Brennan off Public Works and Highways and on State-Federal Relations and Veterans Affairs.

Rep. Roland P. Hofemann off State-Federal Relations and Veterans Affairs and on Labor, Industrial and Rehabilitative Services.

Rep. Bette R. Lasky temporarily replaces Rep. Lily Mesa on Labor, Industrial and Rehabilitative Services.

Rep. Bette R. Lasky also remains on Judiciary.

RECESS