

Senator Avard moved adoption of the Report of Committee on Enrolled Bills. Adopted.

Out of Recess. Call the Senate to Order.

MOTION TO ADJOURN FROM LATE SESSION

Senator Bradley moved that the Senate adjourn from the Late Session. Adopted. Adjournment from the Late Session.

March 15, 2018

The Senate reconvened at 10:00 a.m., a quorum being present.

The Reverend Jon Hopkins, chaplain to the Senate, offered the following prayer:

Let us pray.

God we give you thanks for giving us another day. We use this moment to be reminded of your presence and to tap the resources needed by the members of the New Hampshire State Senate, to do their work as well as it can be done. May they be led by a spirit of wisdom, justice and peace in the decisions they make. May they be spared from any tensions that might tear the people's legislature apart and from worries that might wear them out. All this day, may they do their best to find solutions to pressing issues facing our state. Please hasten the day when justice and love shall dwell in the hearts of all people and rule the affairs of the nations of earth. May all that is done this day be to serve the people of New Hampshire so that we all might prosper in life, liberty and the pursuit of happiness. Amen.

Senator Ward led the Pledge of Allegiance.

MOTION OF RECONSIDERATION

Senator Woodburn, having voted on the prevailing side, moved to reconsider the following action taken by the body on SB 388, relative to dispensary locations for therapeutic cannabis.: Rescind Order to the Committee on Finance, Reconsider the vote on Ought to Pass as Amended, Reconsider the vote on Senator Kahn's Floor Amendment 2018-1086s. Adopted.

JUDICIARY

SB 388, relative to satellite dispensaries for therapeutic cannabis.

Senator Woodburn moved Floor Amendment 1086s.

Sen. Kahn, Dist 10

Sen. Reagan, Dist 17

March 13, 2018

2018-1086s

01/04

Floor Amendment to SB 388

Amend the bill by replacing sections 1 and 2 with the following:

1 New Paragraph; Use of Cannabis for Therapeutic Purposes; Departmental Rules. Amend RSA 126-X:6 by inserting after paragraph III the following new paragraph:

IV. The department may adopt rules regarding the establishment of a second dispensary location by the alternative treatment centers described in RSA 126-X:7, X including, but not limited to, fees, operational requirements, and geographic location.

2 New Paragraph; Use of Cannabis for Therapeutic Purposes; Dispensary Locations. Amend RSA 126-X:7 by inserting after paragraph IX the following new paragraph:

X. If the department determines that having additional locations for the dispensing of therapeutic cannabis is necessary to adequately and effectively meet the needs of qualifying patients and designated caregivers, the department may authorize the alternative treatment center allowed to operate in the geographic area that includes Carroll, Coos, and Grafton counties, not including the town of Hanover and the city of Lebanon in Grafton county, to establish a second dispensary location within that same geographic area. In addition, the department may authorize the alternative treatment center allowed to operate in the geographic area that includes Cheshire and Sullivan counties and the town of Hanover and the city of Lebanon in Grafton county to establish a second dispensary location within that same geographic area. A second dispensary location shall only be established in a geographic location approved by the department, shall be limited solely to the dispensing of cannabis and educational efforts, and shall not be used for cultivation or other activities relative to the production of cannabis. A second dispensary location shall be subject to rules adopted by the department under RSA 126-X:6, III, and any additional rules adopted by the department relative to a second dispensary location under RSA 126-X:6, IV, and all applicable provisions of this chapter relative to alternative treatment centers including, but not limited to, compliance with local zoning laws. The department shall, in conjunction with the local governing body of the town or city where the second dispensary location would be located, solicit input from qualifying patients, designated caregivers, and residents of the town or city in which the second dispensary location would be located.

2018-1086s

AMENDED ANALYSIS

This bill authorizes the department of health and human services to establish a second dispensary location in the geographic area that includes Carroll, Coos, and Grafton counties, for therapeutic cannabis. This bill also authorizes the department of health and human services to establish a second dispensary location in the geographic area that includes Cheshire and Sullivan counties.

PRESIDENT MORSE: Senator Kahn would you like to speak to that Floor Amendment before we revote? No?

(The Chair recognized Senator Carson.)

SENATOR CARSON: Thank you, Mister President. I'd just like to reiterate a couple of things about this because we talked about this at length yesterday. I'd like to point out a couple of things. First of all, the committee had no testimony whatsoever about the need for what was originally conceived to be a satellite; we didn't even know what the satellite was or what it was going to look like; there were no provisions for satellites. In meetings with Mister Holt it was decided that the need was great in the North Country, and so we were going to put one more full dispensary in the North Country. Now we have an amendment for one down in the Keene area.

Mister President, we don't even know if the Temescal, which has the clinic in that area, even wants to put one in here. We talk about being pro-business and the government should stop telling the businesses what

to do, but this amendment tells Temescal you will put one in this area. We don't even know if they can. I would imagine when they did their analysis of where the population was going to be, they chose Lebanon for a reason. And now we are telling them you will put one in the Keene area.

Mister President, we should not be in the business of telling business owners where they have to put their businesses. I know this deals with medicinal marijuana, and we all know, and we all agree that there were going to be four geographic areas with one clinic in each area. But the circumstances in the North Country are truly, really beyond the pale. These folks really have to travel a very long distance to get their medication. We had no evidence, no testimony, no nothing from anybody in any other geographic area in the state and I am very concerned about what we are doing with this amendment today.

So I'm going to ask everyone to please vote down amendment 1086s, just as we did yesterday, and thank you very much, Mister President.

(The Chair recognized Senator Kahn.)

SENATOR KAHN: Thank you, Mister President. You know we're here because we represent our constituents. I've heard from my constituents. I'm sorry my constituents weren't as vocal at a hearing. The bill started out wide; it got very narrow. And Mister Holt, you know, we shouldn't throw the guy under the bus. He said if there was then another one to be had it would be in the region that is currently represented by Lebanon and where people have to drive two hours from Hinsdale. I'll tell you last night it was a bad two hour drive. I think this meets the needs of the people of the state, it meets the needs of the people of the people in my region. And, this isn't something just to put it off, let's have another hearing; this is putting it off for two years, and I'd like to see that this got addressed in a faster manner. I appreciate Senator Woodburn bringing this back up. I know he feels badly about his vote yesterday. I think if we remember the testimony from yesterday I don't need to say anything more. I think this body had the collective will to want to proceed and ask the Finance Committee to pass that there be two dispensaries. I sure hope that we do this today. I wouldn't have brought this forward if I thought anything other than this is in the best interests of people in Western New Hampshire. Thank you very much, Mister President.

(The Chair recognized Senator Giuda.)

SENATOR GIUDA: Thank you, Mister President. I rise in support of Floor Amendment 1086s. There's nothing in this amendment that mandates that a business do anything. It allows the department to analyze and to see if there's a need; and if there's one, to establish a satellite dispensary. There's no mandate to business. It also requires permission of the community. So all the stipulations that were in the original law remain. All this does is say we're not going to insert ourselves as a means to try to stop the public policy that's been approved by the legislature and signed by the Governor. There are people who are in such bad shape they can't drive two hours, okay, or three hours, or at night. And so the point is, what's the point of the medical marijuana? It's to help somebody that has a defined, doctor recognized problem that meets the criteria to serve their medical need. And I'm just astounded that we consider saying no, we're not going to facilitate the ability of people, many of whom cannot travel, many of whom are scared of traveling, many of whom are injured, to say too bad. That's veterans, that's friends of mine, I'm sure it's friends of yours; that's people with glaucoma, that's people with

cancer. To insert ourselves into the realm that says we're going to, with a maneuver, stop your ability to access that which you're lawfully entitled to get, fully under the cognizance of the state, fully under the control of the state, fully with the permission of the community; I think we do ourselves un-proud in that case. Thank you, Mister President.

(The Chair recognized Senator Reagan.)

SENATOR REAGAN: Thank you, Mister President. I rise as the Senate member of the Cannabis Advisory Council, and this helps relieve a problem that we see every time we meet with lack of availability. In the original bill we argued for caregivers to be able to serve as many people as they chose to care for, but due to resistance by the Chiefs of Police Association we severely limited the care givers and caused all this awkward strain on already ill people trying to obtain legally recommended cannabis to treat and avoid the use of opioids. So, on behalf of the Council, I encourage passage of this amendment and passage of the bill.

(The Chair recognized Senator Carson.)

SENATOR CARSON: Thank you, Mister President. Again I rise to remind all of you we had no testimony, nothing, nothing about the need for an additional dispensary out in Sullivan County; nothing, absolutely nothing. We're going to make a decision based on not having any testimony. As the Chair of the committee I did not receive one phone call, one e-mail, no letters from anybody who lives in this area asking for an additional dispensary in that area. Nothing. I think we need to really, really think about this. I have made a commitment to my good friend from Senate District 10 that if he was to take this amendment and bring it to the House that I will work with him and the committee to get that additional location. I just cannot see us voting on something where we have had no testimony. Nothing. No testimony from the owner of the clinic in that area. No testimony from any constituents. Nothing. I think we need to be really careful here with what we're doing, and really think about it. And again, I will remind you, I have made the commitment to the Senator from District 10 that I will work with him when this bill gets over to the House. Thank you very much, Mister President.

(The Chair recognized Senator Giuda.)

SENATOR GIUDA: Thank you, Mister President. I would much rather send a complete package over to the House, which I believe would probably pass, than get into the situation where we're going back and forth with concur and nonconcur and committees of conference potentially; send the bill over, there's no harm. All the laws currently in place remain in place. With respect to the fact that there was no testimony, it was Edmund Burke that said, "Our people elect us not only for our industry but for our judgment as well." And if you think that restricting the ability of veterans, and people with cancer, and blind people, and glaucoma and so forth is good judgment when the law has already been passed allowing the dispensation of medical marijuana throughout this state, I think we do ourselves as a body, I think we do our suffering people a disservice, and I think we do the state a disservice. Thank you, Mister President.

The question is on the adoption of the Floor Amendment.

A roll call was requested by Senator Avard, seconded by Senator Carson.

The following Senators voted Yes: Woodburn, Giuda, Watters, Hennessey, Sanborn, Kahn, Feltes, Cavanaugh, Reagan, Soucy, D'Allesandro, Fuller Clark, Innis.

The following Senators voted No: Bradley, Gray, French, Ward, Daniels, Avard, Lasky, Carson, Birdsell, Gannon, Morse.

Roll Call, Yeas: 13 - Nays: 11. Adopted.

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to the Committee on Finance (Rule 4-5).

INTRODUCTION OF GUESTS

(The Chair recognized Senator Gray.)

SENATOR GRAY: We have with us today some of the brightest and the best students in the state of New Hampshire. The Henry Wilson Memorial School in Farmington, New Hampshire. I've given them a homework assignment. The homework assignment is that when they turn eighteen, what are you supposed to do? Vote. Vote. Thank you for coming. Thank you all.

REGULAR CALENDAR

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SB 323, relative to rehiring of laid off classified state employees. Ought to Pass, Vote 4-0. Senator Cavanaugh for the committee.

SENATOR CAVANAUGH: Thank you, Mister President. I move Senate Bill 323 Ought to Pass. The intent of this legislation is to give preference for employment of laid off classified state employees. The legislation states if possible, if a state employee's laid off and said person is not currently employed by the state of New Hampshire, and if he or she meets the minimal qualifications for the position and does not receive a promotion as a result of the rehire, such promotion should be filled by the state employee who has been laid off. This rehire provision fills a vacant funded position that other agencies are trying to fill with a state employee recently laid off. The language in this legislation is needed in order to allow a qualified employee who is laid off, hiring preference in different agencies. The ED&A Committee voted 4-0 Ought to Pass and asks for your support in its passage. Thank you, Mister President.

The question is on the adoption of the motion of Ought to Pass. Adopted, bill ordered to Third Reading.

SB 373, requiring rulemaking by the department of corrections. Ought to Pass with Amendment, Vote 4-0. Senator Cavanaugh for the committee.

Senate Executive Departments and Administration

March 7, 2018

2018-0995s

05/10

Amendment to SB 373

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

1 Department of Corrections; Powers and Duties of Commissioner; Rulemaking. Amend the introductory paragraph of RSA 21-H:8, III to read as follows:

III. The commissioner shall adopt, *as rules under RSA 541-A*, such reasonable internal practices and procedures, [~~which shall not be considered rules subject to the provisions of RSA 541-A,~~] *except for security protocols*, as may be necessary to carry out the duties *and programs* of the department and its divisions, consistent with this chapter. These procedures shall include at least the following elements:

2 Department of Corrections; Powers and Duties of Commissioner; Rule-making. Amend RSA 21-H:8, XI to read as follows:

XI. The commissioner and the commissioner of the department of health and human services shall jointly establish procedures for sharing data, at least in the aggregate, on delinquents and offenders for purposes of correctional planning and needs assessments. These procedures shall not be considered rules subject to RSA 541-A, **but shall be subject to RSA 91-A**, and shall be established so as to ensure compliance with state and federal confidentiality and privacy laws.

3 Behavior of Inmates. Amend RSA 21-H:14 to read as follows:

21-H:14 Behavior of Inmates. The commissioner shall establish written standards regarding the behavior and responsibilities of inmates. These standards shall be made available to all such inmates and shall be considered public records. These standards shall ~~not~~ be considered rules, subject to the provisions of RSA 541-A, **unless the standards are needed on an emergency basis, in which case they shall be exempt from the rulemaking requirements of RSA 541-A**.

4 Sentences and Limitations; Home Confinement. Amend RSA 651:2, V(e) to read as follows:

(e) The department of corrections ~~[and the various county departments of corrections]~~ shall adopt rules **pursuant to RSA 541-A** governing eligibility for home confinement, intensive supervision, and special alternative incarceration programs.

5 Repeal. RSA 541-A:21, I(aa), relative to the rulemaking exemption for internal practices and procedures of the department of corrections, is repealed.

6 Effective Date. This act shall take effect one year after its passage.
2018-0995s

AMENDED ANALYSIS

This bill revises certain rulemaking requirements for the department of corrections.

SENATOR CAVANAUGH: Thank you, Mister President. I move Senate Bill 373 Ought to Pass with Amendment. This legislation removes rulemaking exemptions under the Administrative Procedure Act for the Department of Corrections and requires various policies and procedures of the agency to be adopted by rules. The bill, as amended, trims down sections and focuses on three core sections; general rulemaking provision, provisions relating to the work with the Department of Health and Human Services, and behavior of inmates. The legislation states the commissioner shall adopt, as rules under RSA 541-A, such reasonable internal practices and procedures, except for security protocols, as may be necessary to carry out the duties and programs of the department. The ED&A Committee voted 4-0 Ought to Pass with Amendment and asks for your support in its recommendation. Thank you, Mister President.

The question is on the adoption of the Committee Amendment. Adopted.

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to Third Reading.

SB 455, relative to state employees injured in the line of duty. Ought to Pass, Vote 4-0. Senator Carson for the committee.

SENATOR CARSON: Thank you, Mister President. I move Senate Bill 455 Ought to Pass. This legislation exempts from public disclosure the details of an injury sustained by a state employee in the line of duty

and was requested by the Department of Health and Human Services in consultation with the New Hampshire Department of Justice. Statute states, that if an injury received by any state employee in the line of duty by either a hostile act, or by an act caused by another during the performance of their duties which are considered to be dangerous, and the employee is temporarily unable to perform their duties, such employee shall remain on active payroll and shall not be charged against annual or sick leave. This bill specifically states, the employee's name and details of the injury shall be exempt from public disclosure pursuant to RSA 91-A:5, IV (Records pertaining to internal personnel practices). The ED&A Committee voted 4-0 Ought to Pass and asks for your support in its passage. Thank you, Mister President.

(The Chair recognized Senator Giuda for a question of Senator Carson.)

SENATOR GIUDA: Thank you, Senator. Does this in any way impact accident investigations, would it make things difficult for insurance companies or investigating agencies as far as disclosure of names and so forth?

SENATOR CARSON: No. This deals with releasing the person's name to the public. Accident investigations and insurance, they're very different. But this is about publishing their names in the newspaper. Which is what a case that we were given.

SENATOR GIUDA: Thank you very much.

SENATOR CARSON: You're welcome.

The question is on the adoption of the motion of Ought to Pass. Adopted, bill ordered to Third Reading.

SB 458, authorizing the purchase of retirement system creditable service by a certain surviving spouse.

Ought to Pass, Vote 3-1. Senator Carson for the committee.

SENATOR CARSON: Thank you, Mister President. I move Senate Bill 458 Ought to Pass. This bill will allow for the election, by a surviving spouse of the Group II Retirement System, to purchase up to one month of credible service. In recognition of prior military service and nearly 10 years of service in the Group II Retirement System, the surviving spouse of Officer Matthew L. Moore, a police officer who died January 23, 2016, may purchase up to one month of service, as credible service on behalf of Matthew L. Moore in order to receive his death benefit. The ED&A Committee recommends Ought to Pass and asks for your support in this recommendation. Thank you, Mister President.

(The Chair recognized Senator Birdsell.)

SENATOR BIRDSSELL: Thank you, Mister President. This is a piece of legislation that I put in for the family of Officer Matt Moore from Hampstead. Terri, his wife and his two daughters McKenna and Brynn. Matt Moore was a marine veteran. He joined the Marine Corps in 1996 and took part in the invasion of Iraq in 2003. He later became a police officer in Sandown, Pelham and Hampstead. While serving as a Hampstead police officer in the fall of 2014, Officer Moore was diagnosed with stage III brain cancer and he and his family fought a courageous battle but in January of 2016 they lost the battle and Matt passed away. The reason for the legislation is Officer Matt Moore had a total of 9.91 years of service as a police officer. One month shy of the ten years needed to be vested. If Officer Matt Moore were vested his family would be eligible for a portion of his pension. However since he is not, his family is only entitled to a one-time payment. We're trying to help Officer Moore's family by getting

him the additional credit so he can be vested. I discussed this with the chair of the Hampstead Selectmen and they are willing to contribute to the town's portion of what they would have owed and his wife, Terri is willing to pay out the contribution that Matt would have contributed. Therefore the retirement fund will be made whole. I ask you to please support Officer Matt Moore's family and vote Ought to Pass on Senate Bill 458. Thank you, Mister President.

The question is on the adoption of the motion of Ought to Pass. Adopted, bill ordered to Third Reading.

SB 459, relative to reciprocity for licensure as a real estate broker or salesperson.

Ought to Pass, Vote 3-1. Senator Carson for the committee.

SENATOR CARSON: Thank you, Mister President. I move Senate Bill 459 Ought to Pass. This legislation establishes statutorily, the ability for real estate brokers and salespersons to grant reciprocal licenses. The bill would provide for the licensure in this state for real estate brokers and salespersons holding a license in good standing from another jurisdiction and who qualify for licensure. The ED&A Committee voted 3-1 Ought to Pass and asks for your support in their recommendation. Thank you, Mister President.

(The Chair recognized Senator Cavanaugh.)

SENATOR CAVANAUGH: Thank you, Mister President. I was the no vote on this. The reason is we do have reciprocity agreements right now with Massachusetts, Maine and Vermont. And they do have pre-licensing agreements that they can waive, which is the forty hours they have to take. And I just feel it hasn't been offered by the commission, the Real Estate Association I should say, and I don't really think there's a need for this. So, thank you, Mister President.

(The Chair recognized Senator Kahn.)

SENATOR KAHN: Thank you, Mister President. I've had constituents talk with me about this. They are licensed brokers and agents. Here's their case: I have a property I'm selling and I have an interest from somebody from out of state. They want to be represented by a friend who has no license in the state of New Hampshire, has no intent to be licensed in the state of New Hampshire, but wants to be a party to that transaction. I believe that this bill gives that person the opportunity after they've disclosed to all parties I'm not licensed in New Hampshire, but I'm representing my client to then draw the brokers agents partial commission on that sale. That seems to New Hampshire licensed agents to be something they don't have the privilege to do when they go to other states. Why would we then be dividing the business share of income with people from out of state that have no intent or license to practice in the state of New Hampshire? That's the way it's been explained to me. If I've got this wrong, so be it, please let me know, but if I've got this, if they've explained this right, represented it right, then I think that this is probably a bad amendment, something that I'd be voting against. Thank you, Mister President.

(The Chair recognized Senator Carson.)

SENATOR CARSON: Thank you, Mister President. I'd like to point out to the body that this bill is a result of an LBA audit, that this wasn't language that somebody just sat down and drew up on their own. Our good friend from Senate District 2, this is his bill and but this is also a

housekeeping bill. So if you look at the testimony that the Real Estate Commission, they were neutral, the realtors were neutral on this legislation. So again, I'd just like to point out, this is the result, one of the results from an LBA audit, and I think that that carries a lot of weight. Thank you very much, Mister President.

(The Chair recognized Senator Daniels for a question of Senator Carson.)

SENATOR DANIELS: Earlier this year we passed a bill, actually an amendment, to a licensing bill that took all occupations into reciprocity with all states. How does this work with that?

SENATOR CARSON: I would imagine that it would, could work together with that bill, I believe you're talking about Senate Bill 334. It could work together. I don't see them as being opposed to each other, but this legislation specifically came out of an audit. And as I said I think that carries a lot of weight.

SENATOR DANIELS: Would the passage of that other amendment satisfy the results of that audit?

SENATOR CARSON: Thank you, Senator. I don't think there's any guarantee that anything is going to pass, so I don't have a problem in sending two bills on the same subject matter to the House for them to consider.

SENATOR DANIELS: Thank you.

The question is on the adoption of the motion of Ought to Pass. Adopted, bill ordered to Third Reading.

SB 461, relative to continuing education for real estate brokers and salespersons.

Ought to Pass with Amendment, Vote 4-0. Senator Carson for the committee.

Senate Executive Departments and Administration

March 7, 2018

2018-0996s

10/05

Amendment to SB 461

Amend the bill by replacing sections 1 and 2 with the following:

1 Real Estate Practice; Continuing Education Requirements. Amend RSA 331-A:20, II(a) to read as follows:

(a) Continuing education [~~3-hour core courses~~] **of 6 hours of total core coursework** shall cover, but not be limited to, changes in state and federal laws dealing with real estate brokerage, housing, financing of real property and consumer protection as well as changes in state enabling laws dealing with zoning and subdivision practices. The core courses shall be designed to assist the licensee in keeping abreast of changing laws, rules and practices which will affect the interest of the licensee's clients or customers.

2 Rulemaking; Continuing Education; Topics. Amend RSA 331-A:25, IX to read as follows:

IX. A minimum of [~~a 3-hour core course of~~] **6 hours of total core coursework in** continuing education for active and inactive license renewal, and an additional [~~12~~] **15** elective hours of continuing education for active license renewals. ***The initial 15 hours of continuing education for salespersons prior to their first license renewal shall be established by the commission in specified topics or courses related to the salesperson's practice.***

SENATOR CARSON: Thank you, Mister President. I move Senate Bill 461 Ought to Pass with Amendment. This bill was brought forward as a result of a collaborative effort between the New Hampshire Association of Realtors and the New Hampshire Real Estate Commission. The legislation, as amended, makes three changes relating to continuing education; it increases the required "Core Course" from 3 hours every 2 years, to 6 hours every two years; it increased the total number of elective continuing education classes from 12 to 15; and, it requires the Commission to specify topics or courses which a licensee would need to take prior to their first renewal. This brings New Hampshire more in line with nationwide requirements for a real estate licensure. The ED&A Committee voted Ought to Pass with Amendment and asks for your support. Thank you, Mister President.

The question is on the adoption of the Committee Amendment. Adopted.

(The Chair recognized Senator French.)

SENATOR FRENCH: Thank you, Mister President. And for the record I am a thirty-four year licensed real estate broker in the state of New Hampshire. This bill raises the amount of continuing education, making us take, or the brokers take, and the sales people take six hours more every two years of continuing education. Six. I believe it raises the core to six hours from three to six every two years. And the others twelve to fifteen in electives. That's how I read it. Any additional studies for us is unreasonable. I have talked to my parents and they told me to kill this bill, too. They're eighty-seven years old, they're still active real estate brokers in the state. These courses aren't free. They have to pay for them. And if you take a six hour course or a three hour course guess what, it takes up your entire day. They're spending and I'm spending with twenty-one hours, I'm spending three days of my life listening to these classes where you just get pizza and Pepsi at the end. So I really ask this body to vote down this bill with the amendment. Thank you, Mister President.

(The Chair recognized Senator Giuda for a question of Senator Carson.)

SENATOR GIUDA: Thank you Senator, for taking my question. I, being Italian enjoy pizza. That said, I would ask is there some compelling reason that our realtors are being found short? Are they not measuring up to some standard, or are we just trying to raise the number of hours to comply with some national metric that says this is what we should have? Is there a problem that we should require more training?

SENATOR CARSON: Thank you for the question, Senator. I think with every job there are always changes, new laws. How many laws do we pass in this body every year, every biennium that people need to be up to date on? And so I believe that the commission is arguing look, we need to educate our members, so they can be the best realtors in the state to be up to date on all the new laws, any new practices. Don't forget we just passed legislation talking about reciprocity with licensure. You want to make sure that if you have a realtor that's coming from Montana who wants to come in here in New Hampshire that there's a basic level that everyone is starting on the same foot from. So what it does is it raises New Hampshire and it, I just don't understand the problem of taking three additional hours. It's updating you, you are a professional. You want to be on top of your game, you want to be on top of all new laws, rules and practices. And I don't see that as an imposition and neither did the rest of the committee.

SENATOR GIUDA: Are we saying then that the existing continued education requirements are inadequate? Was there testimony to that effect?

SENATOR CARSON: I don't recall whether or not it was inadequate, but I think that our Real Estate Commission and our realtors are interested in being the very, very best that they can be and they want to ensure that if anybody buys property in the state of New Hampshire and deals with a realtor that they are getting the best and the most educated realtor.

(The Chair recognized Senator French for a question of Senator Carson.)

SENATOR FRENCH: Senator, you keep mentioning the word realtor. Do you realize that's a trade name to a specific group? And there are thousands of independent brokers such as myself and my mother and father who live in the state that aren't part of this realtor board or group and they do oppose this legislation?

SENATOR CARSON: Well, thank you for your comments, Senator. But no one contacted me or the committee to be in opposition. So we can only go by the testimony that we've heard.

SENATOR FRENCH: Thank you.

(The Chair recognized Senator Daniels for a question of Senator Carson.)

SENATOR DANIELS: Just for clarification, you mentioned three hours of continuing ed. I'm looking at the bill and it looks like it's three additional hours of core courses and three additional hours of electives. Is that not correct or am I reading that wrong?

SENATOR CARSON: Yes, there's three hours in the core course and they're requiring a total number of elective continuing education classes from twelve to fifteen.

SENATOR DANIELS: So is that six hours—

SENATOR CARSON: I would imagine, I don't know if the some of these continuing education classes, how they are classified. Whether these electives sometimes I would imagine be more or less. You might take one class that's worth three hours or three classes that are worth one hour. We didn't have that information in front of us.

SENATOR DANIELS: Okay, thank you.

The question is on the adoption of the motion of Ought to Pass with Amendment.

A roll call was requested by Senator Avard, seconded by Senator Giuda.

The following Senators voted Yes: Bradley, Watters, Gray, Ward, Lasky, Carson, Cavanaugh, Soucy, Birdsell, D'Allesandro, Gannon, Morse.

The following Senators voted No: Woodburn, Giuda, Hennessey, French, Sanborn, Kahn, Daniels, Avard, Feltes, Reagan, Fuller Clark, Innis.

Roll Call, Yeas: 12 - Nays: 12. Failed.

Senator Bradley moved to Lay on the Table SB 461. Adopted.

SB 466, relative to political activities of commissioners of state agencies. Inexpedient to Legislate, Vote 3-1. Senator Carson for the committee.

SENATOR CARSON: Thank you, Mister President. I move Senate Bill 466 Inexpedient to Legislate. The bill states, that if you are a commissioner in state government you may not hold a campaign for elective office, serve as an officer of a political party or political committee, or act as a lobbyist. The language in this bill was questioned in committee

because it indicated that a commissioner could not use his or her own money to donate to a political campaign; that commissioners come before standing committees and provide testimony on legislation, which could be construed as acting as a lobbyist, and the legislation would forbid a commissioner from going to any kind of an activity and speaking. This legislation targets a true freedom of speech concern. The ED&A Committee voted Inexpedient to Legislate and asks for your support in their recommendation. Thank you very much, Mister President.

(The Chair recognized Senator Woodburn.)

SENATOR WOODBURN: Thank you, Mister President. I rise in opposition to this recommendation, and would simply state that this bill says we certainly do have rights. You have rights of free speech but when you're in your office as a commissioner drawing a salary, the honor of representing impartially, the state of New Hampshire, being appointed by a Governor who cannot fire you, that you have a solemn responsibility to stay clear of partisan political activities. Do you believe the commissioner should be contributing to candidates? Do you believe they should be serving in political office? Do you believe they should be attending partisan political events? If your answer's no then let's vote against this. This is based on common sense. I mean our postal employees and the Hatch Act, which says you limit your political activity, you do not reward political activity, these are government jobs. This is all about transparency, it's all about making sure commissioners are appointed to serve every person in the state of New Hampshire regardless of their political party, regardless of their political ideology. It does not prohibit them from doing the good work that they do and while I may not agree with that particular direction, but that is the job of the commissioner regardless who the Governor is. And I would just say, this idea is based on other states; state of New York, state of New Jersey, where they prohibit that type of political activity by commissioners. So basic common sense, let's overturn this and not let politics get in the way of this.

(The Chair recognized Senator Birdsell for a question of Senator Carson.)

SENATOR BIRDESELL: Thank you for taking my question. Just as clarification, 98-E, freedom of expression, doesn't that allow state employees to give their expression?

SENATOR CARSON: Yes it does, Senator and thank you for reminding me because I've been to a number of events where there have been state employees picketing outside any event, voicing their opinion and their displeasure with things that we have done. And if we're going to do this, we should do it for everyone who works for the state.

SENATOR BIRDESELL: Is the commissioner considered an employee of the state?

SENATOR CARSON: I would imagine so. I think they serve at the pleasure of the Governor.

SENATOR BIRDESELL: Thank you.

(The Chair recognized Senator Giuda.)

SENATOR GIUDA: Thank you, Mister President. A commissioner can be removed. Clearly it takes an action of the Governor and Council, but a commissioner can be removed from office for cause. I'm not certain whether we don't have ethics rules in place already, and that might be a form of a question to ask but they are removable from office and it is

a freedom of speech issue and this is a conflict where we have an obligation to represent the entirety of the state and perform every duties without prejudice one way or the other versus your right to free speech. That's a question for the body to decide. Thank you, Mister President.

(The Chair recognized Senator Woodburn.)

SENATOR WOODBURN: Thank you, Mister President. I just want to make a clarification. It's my understanding that commissioners serve fixed terms and do not serve at the pleasure of the Governor. That is my understanding of the way things operate in New Hampshire.

(The Chair recognized Senator Carson.)

SENATOR CARSON: Thank you, Mister President. Point of clarification. I was just informed by Senate attorney that commissioners are considered to be employees of the state. Thank you.

The question is on the adoption of the motion of Inexpedient to Legislate. A roll call was requested by Senator Fuller Clark, seconded by Senator Birdsell.

The following Senators voted Yes: Giuda, Bradley, Gray, French, Ward, Sanborn, Daniels, Avard, Carson, Reagan, Birdsell, Gannon, Innis, Morse.

The following Senators voted No: Woodburn, Watters, Hennessey, Kahn, Lasky, Feltes, Cavanaugh, Soucy, D'Allesandro, Fuller Clark.

Roll Call, Yeas: 14 - Nays: 10. Adopted.

PUBLIC AND MUNICIPAL AFFAIRS

SB 342, requiring written disclosure of certain default budget items during the deliberative session.

Ought to Pass with Amendment, Vote 4-0. Senator Gray for the committee.

Public and Municipal Affairs

March 7, 2018

2018-1009s

06/01

Amendment to SB 342

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

AN ACT requiring identification of specific items in the default budget.

Amend the bill by replacing section 1 with the following:

1 Default Budget. Amend RSA 40:13, XI(a) to read as follows:

XI.(a) The default budget shall be disclosed at the first budget hearing held pursuant to RSA 32:5 or RSA 197:6. The governing body, unless the provisions of RSA 40:14-b are adopted, shall complete a default budget form created by the department of revenue administration to demonstrate how the default budget amount was calculated. ***The line item details for changes under subparagraph (2) shall be available for inspection by voters.*** The form and associated calculations shall, at a minimum, include the following:

(1) Appropriations contained in the previous year's operating budget;

(2) Reductions and increases to the previous year's operating budget ***including identification of specific items that constitute a change by account code, and the reasons for each change;*** and

(3) One-time expenditures as defined under subparagraph IX(b).

2018-1009s

AMENDED ANALYSIS

This bill requires identification in the default budget of specific items that constitute a reduction or increase to the previous year's budget.

SENATOR GRAY: Thank you, Mister President. I move Senate Bill 342 Ought to Pass with Amendment. This bill as amended requires a school board, in a district that has adopted the official ballot referendum form of meeting, to provide written documentations identifying certain specific cost items in the default budget at the deliberative session. This documentation will specify details for changes in the default budget to allow for absolute transparency. The information will be made available for inspection to the voters at the budget hearing to help create a greater understanding of where the tax dollars are being spent. I would ask you to please support the committee's recommendation of Ought to Pass with Amendment on Senate Bill 342. Thank you Mister President.

The question is on the adoption of the Committee Amendment. Adopted. Senator Daniels offered a Floor Amendment.

Sen. Daniels, Dist 11
March 7, 2018
2018-1014s
06/10

Floor Amendment to SB 342

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

AN ACT requiring identification of specific items in the default budget.

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

1 Use of Official Ballot; Default Budget. Amend RSA 40:13, IX(b) to read as follows:

(b) "Default budget" as used in this subdivision means the amount of the same appropriations as contained in the operating budget authorized for the previous year, reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, and reduced by one-time expenditures contained in the operating budget **and by salaries of positions that have been eliminated**. For the purposes of this paragraph, one-time expenditures shall be appropriations not likely to recur in the succeeding budget, as determined by the governing body, unless the provisions of RSA 40:14-b are adopted, of the local political subdivision.

2 Default Budget. Amend RSA 40:13, XI(a) to read as follows:

XI.(a) The default budget shall be disclosed at the first budget hearing held pursuant to RSA 32:5 or RSA 197:6. The governing body, unless the provisions of RSA 40:14-b are adopted, shall complete a default budget form created by the department of revenue administration to demonstrate how the default budget amount was calculated. **The line item details for changes under subparagraph (2) shall be available for inspection by voters.** The form and associated calculations shall, at a minimum, include the following:

(1) Appropriations contained in the previous year's operating budget;

(2) Reductions and increases to the previous year's operating budget **including identification of specific items that constitute a change by account code, and the reasons for each change;** [and]

(3) One-time expenditures as defined under subparagraph IX(b);
and

(4) Appropriations contained in the previous year's operating budget minus salaries of positions that have been eliminated.

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

2018-1014s

AMENDED ANALYSIS

This bill requires identification in the default budget of specific items that constitute a reduction or increase to the previous year's budget.

SENATOR DANIELS: Thank you, Mister President. There is currently a situation when people get confused when they see a default budget that is higher than the operating budget. One of the reasons that happens is that a community, whether it's a town or a school, may eliminate positions but because the statute currently says that the default budget is last year's budget, you could have let's say, that you had three employees with \$150,000 worth of salary. Currently you're not allowed to take that \$150,000 worth of salary out of the default budget because the statute says that it's last year's budget plus or minus other things. So what my amendment does is to say that in the calculation of the default budget, that it would be reduced by the salaries of those positions which have been eliminated. I brought this in to the committee during work session and at that time I had referenced one part of it which was down on the second part on how the default budget was built, neglected and overlooked the part that there was a definition of the default budget which you see under section 1 of the bill. DRA and Newton New Hampshire Municipal Association weighed in on this. The only comment that they had was that the discrepancy between the two parts. So the amendment before you brings that uniformly in so that reduction of those salaries for eliminated positions exists both in the definition and the building of the default budget. Thank you, Mister President.

(The Chair recognized Senator Kahn.)

SENATOR KAHN: Thank you, Mister President. The part of this that gives me pause is that it's emphasizing positions that have been eliminated and not giving consideration to those positions that might be added in the budget as well. So I obviously there are reallocations that happen, you eliminate some positions, you add some others for instance you might have a councilor position that vacates, and the need for an increased kindergarten class. It's just that's the kind of consideration I would hope takes place. I think one of the problems that we have here is that we ask our school boards, we expect our elected officials to pass operating budgets. When they don't pass, when we don't have an operating budget to pass, we have a default budget so that they continue to operate. The default budgets have guidelines. If you don't like the default budget then they should have worked to get an operating budget that the citizens would approve. So I'm just, I appreciate the way that the amendment was structured, the way that the bill is presented because its emphasis was on transparency. This begins to take the shape of doubting, or just taking a part of the budgets preparation about reduction without giving consideration to the other parts of the budget that should have been considered. And for that reason I just am not in favor of this amendment at this time, and I will be voting against it. Thank you, Mister President.

(The Chair recognized Senator Daniels.)

SENATOR DANIELS: Thank you, Mister President. The concerns of the good Senator from District 10 are taken into consideration because in the operating budget you would reflect that position that you are putting in. Thank you, Mister President.

(The Chair recognized Senator Kahn.)

SENATOR KAHN: Thank you, Mister President. It does not though, it takes into account that in the operating budget, I just heard my colleague from District 11 say, but it doesn't take it into account in the default budget. So now we're asking something of the default budget on deleting of positions and not giving consideration to what the operating budget would have done to reallocate those. It just, it seems like we've given view to one part of the budget development and the default budget but not to the other party, the operating budget development and that seems to disadvantage the way that schools ought to be operating, moving dollars to the areas of greatest need.

(The Chair recognized Senator Reagan.)

SENATOR REAGAN: Thank you, Mister President. There's confusion here about what budget we're talking about. So the amendment gives an honest picture of what the default budget is. And it's up to the budget writers to give an honest picture of what the operating budget is. So this eliminates some of the chicanery that goes on in municipal budgeting to mislead people and how they vote on their operating budget. So I would encourage people to pass this, having worked on town budgets, that this makes it a more honest deal.

Recess. Out of recess.

(The Chair recognized Senator Watters.)

SENATOR WATTERS: Thank you, Mister President and colleagues. I rise to speak against this amendment in light of what happened in one of my towns, in Rollinsford a couple of years ago when it failed to pass an operating budget and actually the default budget was a larger budget than the operating budget would have been but you know those things happen. I think the problem here is that what this says. Let's say during the year of the budget that you're under, somebody resigns and you decide to reallocate those funds to another area, this is what our budget committees do in our towns, right? They make these kind of adjustments during the year. So what this bill would say is that if that kind of thing happened we essentially are contravening or stripping away the authority of the budget committee in the towns that have made that kind of adjustment during the year and say no as a matter of fact, if you ever did a change where somebody left their position or changed the position during that year, sorry that's done and in effect you lose that money that you might have reallocated. So I just think it really intervenes in the town budget making authority in a way that we should not do. Thank you, Mister President.

The question is on the adoption of the Floor Amendment.

A roll call was requested by Senator Avard, seconded by Senator Daniels.

The following Senators voted Yes: Giuda, Bradley, Gray, French, Ward, Sanborn, Daniels, Avard, Carson, Reagan, Birdsell, Gannon, Innis, Morse.

The following Senators voted No: Woodburn, Watters, Hennessey, Kahn, Lasky, Feltes, Cavanaugh, Soucy, D'Allesandro, Fuller Clark.

Roll Call, Yeas: 14 - Nays: 10. Adopted.

The question is on the adoption of the motion of Ought to Pass with Amendment.

A roll call was requested by Senator Kahn, seconded by Senator Avard.

The following Senators voted Yes: Giuda, Bradley, Gray, French, Ward, Sanborn, Daniels, Avard, Carson, Reagan, Birdsell, Gannon, Innis, Morse.

The following Senators voted No: Woodburn, Watters, Hennessey, Kahn, Lasky, Feltes, Cavanaugh, Soucy, D'Allesandro, Fuller Clark.

Roll Call, Yeas: 14 - Nays: 10. Adopted, bill ordered to Third Reading.

SB 395, relative to access electronic records under the right-to-know law. Ought to Pass with Amendment, Vote 4-0. Senator Gray for the committee.

Public and Municipal Affairs

March 7, 2018

2018-1010s

01/06

Amendment to SB 395

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

AN ACT relative to access to records under the right-to-know law.

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

1 Right-to-Know Law; Minutes and Records Available for Public Inspection. Amend RSA 91-A:4, I to read as follows:

I. Every citizen during the regular or business hours of all public bodies or agencies, and on the regular business premises of such public bodies or agencies, has the right to inspect all governmental records in the possession, custody, or control of such public bodies or agencies, including minutes of meetings of the public bodies, and to copy and make memoranda or abstracts of the records or minutes so inspected, except as otherwise prohibited by statute or RSA 91-A:5. In this section, "to copy" means the reproduction of original records by whatever method, including but not limited to photography, photostatic copy, printing, or electronic or tape recording. ***If a citizen requesting access to governmental records is not able to appear during the regular business hours of a public body or agency of the political subdivision, the person may request an accommodation from the public body or agency. The public body or agency shall make a reasonable effort to accommodate the request. A reasonable effort to accommodate the request shall be at no additional cost to the public body or agency and may include making the records available for inspection at an alternative time and place. A public body or agency may, in consultation with the director of the division of archives and records management, develop guidelines for posting and providing records in portable document format/archival (PDF/A) or other approved format. The guidelines shall identify any costs which shall be paid by the requester such as printing the record or converting the format of the records. A public body or agency shall not be required to post or provide records electronically unless it is feasible to do so with reasonable effort.***

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

SENATOR GRAY: Thank you, Mister President. I move Senate Bill 395 Ought to Pass with Amendment. This bill as amended clarifies access

to electronic records under the right-to-know law. Currently, if a citizen requests access to governmental records who is not able to appear during the regular business hours of a public body or agency it may create a barrier to the right-to-know. With this legislation a person may request an accommodation from the public body or agency to receive digital copies in PDF/A format or at another time or place specified by the town officials. This accommodation of such requests will be decided by guidelines created by the local governing body. The committee found that providing digital copies of records in PDF format allows right-to-know requests to be filled efficiently, inexpensively, and reinforces accessible government. I ask for your support the committee's recommendation of Ought to Pass with Amendment on SB 395. Thank you, Mister President.

The question is on the adoption of the Committee Amendment. Adopted. The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to Third Reading.

WAYS AND MEANS

SB 403-L, relative to the exemption for recreational vehicles from property taxation.

Ought to Pass with Amendment, Vote 5-0. Senator Giuda for the committee.

Senate Ways and Means

March 7, 2018

2018-1012s

08/05

Amendment to SB 403-LOCAL

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

1 Taxation of Property; Exemption; Recreational Vehicles. RSA 72:7-d is repealed and reenacted to read as follows:

72:7-d Exemption; Recreational Vehicles. For purposes of this chapter, recreational vehicles, as defined in RSA 216-I:1, VIII, having a maximum width of 8 feet and 6 inches while being transported, and located at a "recreational campground or camping park," as those terms are defined in RSA 216-I:1 VII, shall not be taxable as real estate.

2 Definition of Recreational Campground or Camping Park. Amend RSA 216-I:1, VII to read as follows:

VII. "Recreational campground or camping park" means a parcel of land on which 2 or more campsites are occupied or are intended for temporary occupancy for recreational dwelling purposes only ***for an undetermined or indefinite amount of time***, and not for permanent year-round residency, excluding recreation camps as defined in RSA 485-A:23.

3 Effective Date. This act shall take effect April 1, 2019.

2018-1012s

AMENDED ANALYSIS

This bill removes the requirement that recreational vehicles exempt from property taxation have a valid motor vehicle registration and number plate. The bill also removes the requirement that campground owners provide local assessing officials with the name and address of recreational vehicles at the campground that fall within the tax exemption. Finally, the bill amends the definition of recreational campground or camping park to include a reference to an undetermined or indefinite amount of time.

SENATOR GIUDA: Thank you Mister President. I move Senate Bill 403 Ought to Pass with Amendment. This bill removes the requirement that recreational vehicles exempt from property taxation have a valid motor vehicle registration and a number plate. The Committee Amendment will protect the privacy of campers by ending the current practice of campground owners having to reveal the names of their guests to local assessing officials for the purposes of assessing property taxes. Furthermore, the amendment will treat all unregistered recreational vehicles the same regardless of where they are stored. This bill as amended by the committee will have no effect on mobile homes or trailer parks. Campground owners will continue to pay property taxes both on their entire parcel and on individual improvements on each of the sites. The Ways and Means Committee asks your support for the motion of Ought to Pass with Amendment. I thank you, Mister President.

INTRODUCTION OF GUESTS

(The Chair recognized Senator Gray.)

SENATOR GRAY: Thank you, Mister President. Again, I have the pleasure of introducing fourth graders from one of the prestigious schools in the state of New Hampshire, the Henry Wilson Memorial School in Farmington. I'm sure that we've got at least a Governor or a Senator up there in the gallery right now. And I thank them all for coming.

The question is on the adoption of the Committee Amendment. Adopted.

The question is on the adoption of the motion of Ought to Pass with Amendment.

A roll call was requested by Senator Avard, seconded by Senator Giuda.

The following Senators voted Yes: Woodburn, Giuda, Bradley, Watters, Hennessey, Gray, Ward, Sanborn, Kahn, Daniels, Avard, Lasky, Carson, Feltes, Cavanaugh, Reagan, Soucy, Birdsell, D'Allesandro, Fuller Clark, Gannon, Innis, Morse.

The following Senators voted No: French.

Roll Call, Yeas: 23 - Nays: 1. Adopted, bill ordered to Third Reading.

SB 405, enabling municipalities to adopt a separate exemption against the statewide property tax for certain long-term residents.

Ought to Pass with Amendment, Vote 5-0. Senator Giuda for the committee.

Senate Ways and Means

March 7, 2018

2018-1013s

05/04

Amendment to SB 405

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

AN ACT establishing a commission to study the effect of current use taxation on small and rural municipalities.

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

1 New Section; Current Use Taxation; Commission to Study the Effect of Current Use Taxation on Small and Rural Municipalities. Amend RSA 79-A by inserting after section 26 the following new section:

79-A:27 Commission to Study the Effect of Current Use Taxation on Small and Rural Municipalities.

I. There is established a commission to study the effect of current use taxation on small and rural municipalities.

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

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

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

(c) A representative of the New Hampshire Municipal Association, appointed by the association.

(d) A representative of the current use advisory board established in RSA 79-A:3, appointed by the board.

(e) One selectman from a town with current use and conservation easements, appointed by the governor.

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

IV. The commission shall study the effect of current use taxation on small and rural municipalities.

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

VI. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2018.

2 Repeal. RSA 79-A:27, relative to the commission to study the effect of current use taxation on small and rural municipalities, is repealed.

3 Effective Date.

I. Section 2 of this act shall take effect November 1, 2018.

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

2018-1013s

AMENDED ANALYSIS

This bill establishes a commission to study the effect of current use taxation on small and rural municipalities.

SENATOR GIUDA: Thank you, Mister President. I move Senate Bill 405 Ought to Pass with Amendment. The original bill sought to enable municipalities to adopt a separate exemption against the statewide property tax for certain long-term residents over 65 years of age; however, the Committee Amendment replaces the bill in its entirety. The Committee Amendment establishes a commission to study the effect of current use taxation on small and rural municipalities. However, I am asking the body to vote down the Committee Amendment so that I may offer a substitute Floor Amendment which simply adds greater detail regarding what the committee is tasked to study. The Ways and Means Committee asks your support for the motion of Ought to Pass with Amendment but please vote no on the Committee Amendment. Thank you, Mister President.

The question is on the adoption of the Committee Amendment. Failed. Senator Giuda offered a Floor Amendment.

Sen. Giuda, Dist 2
March 14, 2018
2018-1094s
05/10

Floor Amendment to SB 405

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

AN ACT establishing a commission to study the effect of conservation restrictions on the property tax in small and rural municipalities.

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

1 New Section; Current Use Taxation; Commission to Study the Effect of Conservation Restrictions on the Property Tax in Small and Rural Municipalities. Amend RSA 79-A by inserting after section 26 the following new section:

79-A:27 Commission to Study the Effect of Conservation Restrictions on the Property Tax in Small and Rural Municipalities.

I. There is established a commission to study the effect of conservation restrictions on the property tax in small and rural municipalities.

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

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

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

(c) A representative of the New Hampshire Municipal Association, appointed by the association.

(d) A representative of the current use board established in RSA 79-A:3, appointed by the board.

(e) One selectman from a town with property under current use and conservation easements, appointed by the governor.

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

IV. The commission shall study the following issues:

(a) Whether property under conservation restrictions is constitutionally eligible for current use assessment.

(b) Existing valuation and assessment methods for properties under current use and properties under conservation restrictions.

(c) The financial impact of current use and conservation restriction assessments and tax rates on the overall property tax rates in small and rural communities.

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

VI. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2018.

2 Repeal. RSA 79-A:27, relative to the commission to study the effect of conservation restrictions on the property tax in small and rural municipalities, is repealed.

3 Effective Date.

- I. Section 2 of this act shall take effect November 1, 2018.
- II. The remainder of this act shall take effect upon its passage.

2018-1094s

AMENDED ANALYSIS

This bill establishes a commission to study the effect of conservation restrictions on the property tax in small and rural municipalities.

SENATOR GIUDA: Thank you, Mister President. This amendment establishes a commission to study the effect of conservation restrictions on property taxation in small and rural communities. Lines 27 through 33 lay out the duties of the commission and they're very specific; they'll study whether property under conservation restrictions is constitutionally eligible for current use assessment. It will study existing valuation and assessment methods for properties under current use and properties under conservation restrictions. And it'll study the impact of current use and conservation restriction assessments and tax rates on the overall property tax rates in small and rural communities. I ask you for your support for the Floor Amendment. Thank you, Mister President.

(The Chair recognized Senator Carson for a question of Senator Giuda.)

SENATOR CARSON: Thank you for taking my question, Senator. I'm looking at who was actually on the commission and could you tell me why there isn't representation from the Forest Society or the Timberland Society on here?

SENATOR GIUDA: Thank you. It's a good question and I thank you for that. We are not looking for people with a vested interest in or against what might come out. We're looking for technical analysis of those three issues. From this commission will come a report, and I would strongly believe that anything that might emanate from that report would involve all of the people that have an interest in conservation easements and so forth. This is looking at the taxation question, okay? And that's why we limited it to a small group, the current use board is part of DRA. A selectman with a community that has both current use and conversation easements and a member of the Senate and a member of the House. And a member of the Municipal Association.

SENATOR CARSON: Thank you.

(The Chair recognized Senator Feltes.)

SENATOR FELTES: Thank you, Mister President. I rise in opposition to the Floor Amendment. I think the Floor Amendment is not a balanced commission either in composition or the duties of the commission. I think we just heard a question answer that signifies an imbalance with respect to the composition itself. The duties as well, drive to a potential certain conclusion. I think if this moves forward it needs to be much more balanced both in terms of composition and duties. And for that reason Mister President, I oppose the Floor Amendment. Thank you.

(The Chair recognized Senator Ward.)

SENATOR WARD: Thank you, Mister President. I will vote in opposition to the amendment. The current use is not something new in New Hampshire, we've had it for many years. It's part of the constitution which allows for taxation of real property based on its current use. Current use has been there to encourage open space in the state, and we all benefit from open space. It's good for our tourism, it's good for our health and it's good for all kinds of recreational activities. And my question, or one of my questions

about this amendment, how do you define small and rural municipalities, what is the definition for that? We have to realize that New Hampshire, almost 53 percent of New Hampshire is in current use. That means there's an awful lot of people who have property in current use and in addition to conservation easements. And I am questioning having five people with very limited experience on this board. It is not going to represent all the interests that are in New Hampshire as far as open space is concerned. And I think that commission should be expanded significantly. There are a lot of areas, a lot of groups that are interested in current use and conservation easements and I think we ought to have them as representatives on the board. We need to have landowner community. I would suggest the Forest Society, any other group that is interested in preserving the open space in New Hampshire which we all cherish very much. So for all these reasons I will be opposing the amendment. Thank you, Mister President. (The Chair recognized Senator Carson.)

SENATOR CARSON: Thank you, Mister President. I'd like to thank the good Senator from District 8. She took a lot of what I wanted to say. But I do think that this amendment has merit, I do think this is an issue that should be studied because as the chair of ED&A we have had bills coming in front of us that deal with land use and there are a lot of questions. My concern is with the makeup of the commission, and I agree with the good Senator from District 8 that I think that we need to include everybody who has an interest in this on this commission. And for that reason Mister President, I'd like to move to table this bill to give the good Senator from District 2 an opportunity to perhaps create another amendment. Thank you.

PRESIDENT MORSE: Senator, you can't make a motion after you've spoke.

(The Chair recognized Senator Giuda.)

SENATOR GIUDA: Thank you, Mister President. I think we need to clarify even more explicitly what the language in this amendment says, okay? Current use is constitutional, but the premise of current use depends on removing land that is able to be developed from consideration for being developed by the owner. When you sign a conservation easement generally in perpetuity, you have foreclosed on development ever happening on that land. So that creates a constitutional question here, and that is really what we're looking at. This commission will just try to take a look at using the current use board member, okay, who's probably no one more versed in that law and in its application, a selectman, and the New Hampshire Municipal Association, just to look at the constitutional question and at the taxation issues that flow from that. We don't need the Forest Society, we don't need the environmental or any other groups. This has targeted a crucial constitutional issue and I might remind you, as our towns are scrapping for revenue, if land that is in a conservation restriction, is not constitutionally eligible for current use, we will then have to look at developing another layer or level of taxation or type of taxation, okay? I'm not an advocate for new taxes but I am an advocate for the constitution. We don't need Forest Society's never going in on their own vested interests to maintain the status quo. The status quo may very well be maintained but the question here is the technical people to look at this from a constitutional basis and a taxation basis. And that does not require a broad base of all the interests that want conservation easements and certainly this amendment does nothing to harm them. Thank you, Mister President.

Senator Carson moved to Lay on the Table.

A division vote was requested.

Yeas: 17 - Nays: 6. Adopted.

PARLIAMENTARY INQUIRY

(The Chair recognized Senator Watters.)

SENATOR WATTERS: I'm sorry I don't have the rules completely memorized but is it permissible to table an amendment?

PRESIDENT MORSE: We've tabled Senate Bill 405.

SENATOR WATTERS: Thank you.

SB 412, relative to agritourism.

Ought to Pass with Amendment, Vote 5-0. Senator Giuda for the committee.

Senate Ways and Means

March 7, 2018

2018-1011s

08/04

Amendment to SB 412

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

1 Agricultural Uses of Land; Existing Agricultural Uses. Amend RSA 674:32-b, II to read as follows:

II. Any new establishment, re-establishment after abandonment, or significant expansion of a farm stand, retail operation, or other use involving on-site transactions with the public, including agritourism as defined in RSA 21:34-a, may be made subject to applicable special exception, building permit, or other local land use board approval and may be regulated to prevent traffic and parking from adversely impacting adjacent property, streets and sidewalks, or public safety. ***No municipality shall adopt an ordinance, bylaw, definition, or policy regarding agritourism activities that conflicts with the definition of agritourism in RSA 21:34-a.***

2 New Paragraph; Duties of Commissioner of Department of Agriculture, Markets, and Food; Agritourism Disputes. Amend RSA 425:4 by inserting after paragraph VIII the following new paragraph:

IX. Adjudicate disputes concerning activities that constitute agritourism pursuant to RSA 21:34-a. Prior to a party filing a land use application with a municipality, or after such land use application is denied, an applicant may petition the commissioner for a declaratory ruling regarding whether or not a municipality's ordinance bylaw, definition, or policy regarding agritourism activities, conflicts with RSA 21:34-a. The commissioner's jurisdiction shall be limited to the question of whether or not a municipality's ordinance, bylaw, definition, or policy on agritourism conflicts with RSA 21:34-a. The commissioner, or the commissioner's authorized representative, shall notify the parties, hold a hearing within 30 days of such request, and shall issue a declaratory ruling within 15 days of the hearing. The commissioner's declaratory ruling shall be dispositive, including in future land use applications with a municipality where such ordinance, bylaw, definition, or policy is at issue. A party aggrieved by the declaratory ruling may petition the commissioner for reconsideration within 20 days of the declaratory ruling, and thereafter,

within 30 days of the decision on reconsideration, may appeal such decision to the New Hampshire supreme court. If the applicant petitions the commissioner for a declaratory ruling, all municipal appeal processes, including those defined in RSA 677:2 shall be stayed. The 30 day time period in which to request a rehearing shall begin on the next calendar day after the commissioner issues the declarative ruling, or after any appeal of the declarative ruling is complete. The commissioner shall adopt rules pursuant to RSA 541-A relative to the declaratory ruling process, including, but not limited, an allowance for timely intervention of an aggrieved party. A municipality shall furnish the commissioner with a copy of any non-confidential appeal decision on any land use application involving whether or not a municipality's definition or policy on agritourism conflicts with RSA 21:34-a.

3 Effective Date. This act shall take effect 60 days after its passage.
2018-1011s

AMENDED ANALYSIS

This bill prohibits municipalities from adopting an ordinance, bylaw, definition, or policy regarding agritourism that conflicts with state statute.

This bill also allows the commissioner of the department of agriculture, markets, and food to issue a declaratory ruling on whether agricultural activities constitute agritourism.

SENATOR GIUDA: Thank you Mister President. I move Senate Bill 412 Ought to Pass with Amendment. The bill is relative to the definition of agritourism. It's intended to address instances where a town denies a farmer's request to conduct an agritourism activity on their property. The bill in no way challenges the town's ability to challenge it. What it does is level the playing field between municipalities and individual farmers. The bill as amended by the committee will give a landowner an alternative method to address the rejection without going to court, which serves to chill individuals from taking the process forward even when they have a righteous complaint. So under this bill, they'll be able to seek a ruling from the Commissioner of Agriculture who supports this bill. Should the town disagree with the commissioner's ruling, they can appeal to the Supreme Court. Due process is preserved. The commission will only be ruling on whether the activity in question conforms or conflicts with the state's definition of agritourism. It does not get into parking, it does not get into life safety issues. It is totally left within the purview of the community as they should be. This just says is this definition of agritourism good with the activity that's contemplated or not? The Commissioner of Agriculture would make that determination. There is an appeals process if the community disagrees. The Ways and Means Committee asks your support for the motion of Ought to Pass with Amendment. I thank you, Mister President.

The question is on the adoption of the Committee Amendment. Adopted.

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to Third Reading.

PRESIDENT MORSE: We're going to move on to the calendar 12A, but before we do that there's been several bills put on the table. It's my understanding that those bills may come back. If we could work on the amendments to bring those bill off the table, we can do them at the end of the session today or we can do them next week. We're on calendar 12A, which is the Committee on Finance.

ADDENDUM REGULAR CALENDAR

FINANCE

SB 309-FN, relative to standards for perfluorochemicals in drinking water, ambient groundwater, and surface water.

Ought to Pass, Vote 6-0. Senator Feltes for the committee.

SENATOR FELTES: Thank You, Mister President. I move Senate Bill 309-FN Ought to Pass. This bipartisan bill requires the Commissioner of the Department of Environmental Services to adopt a state drinking water standard relative to perfluorochemicals (PFCs,) establish ambient groundwater quality standards relative to PFCs, and establish surface water quality standards relative to PFCs. The Senate Finance Committee unanimously recommends passage of Senate Bill 309-FN, and asks for your support. Thank you, Mister President.

The question is on the adoption of the motion of Ought to Pass. Adopted, bill ordered to Third Reading.

SB 331, prohibiting Medicaid from paying for sex reassignment drug or hormone therapy or surgery.

Inexpedient to Legislate, Vote 3-3. Senator Reagan for the committee.

SENATOR REAGAN: Thank You, Mister President. I move Senate Bill 331 Inexpedient to Legislate. The bill sought to disallow the coverage of sex reassignment drug or hormone therapy or surgery under the state Medicaid plan. After discussion that included the suggestion that the proposal would run afoul of the Affordable Care Act, and that funds to pay for such coverage would take money away from more needy recipients, such as the DD Waitlist, the committee was unable to come to agreement on the bill. Therefore, the motion of Inexpedient to Legislate is offered by the Senate Finance Committee on Senate Bill 331. Thank you, Mister President.

(The Chair recognized Senator Daniels.)

SENATOR DANIELS: Thank you, Mister President. I rise in opposition to the Inexpedient to Legislate motion and would ask that the body overturn that motion so that an Ought to Pass motion can be brought forward. I'd like to start by saying that whether or not one chooses to go through transgender reassignment is a personal choice, and as such should be paid for with personal funds not public funds. In this last budget we spent a lot of money trying to address the opioid crisis, improving access to mental health, working to create and maintain a good economic environment so that people had jobs as well as several other initiatives that benefit the people of New Hampshire. In spite of all that a recent report indicated that we still have 161 people on the disability waiting list. People who through no choice of their own truly need the assistance of government to meet their daily needs.

If we are to continue down the path of publicly funded gender reassignment the money is coming from within the current budget. Most likely to the detriment of those on the DD waitlist who need the assistance most. Gender reassignment is not an inexpensive process. Consider the following cost reported in Teen Vogue Magazine by someone who went through the process. Hormone therapy; at least \$1,500 a year to have hormone levels checked and to renew medication prescriptions. The cost for this person had reached \$13,500 and the plan was to continue at \$1,500 a year for the rest of their life. Transgender reassignment surgery; \$30,000 plus. This step in the transition is very expensive and the average cost

is upwards of \$30,000. In addition to the actual procedure there are also travel costs and hotel accommodations if a good physician does not live in the vicinity. Facial feminization surgery; \$25,000 to \$60,000. There's also a high price to pay for this procedure. Board certified surgeons that are qualified to do these procedures will charge anywhere from 25,000 to \$60,000 depending on the amount of work that they have to do. Breast augmentation; \$5,000 to \$10,000. Breast augmentation surgery will cost between 5 and \$10,000 and it all depends on the surgeon you choose, where that person is located and what type of implant you want. When all is said and done, this procedure could cost well over \$100,000.

I want to make it clear that this has nothing to do with discrimination as some might claim. As of December 31, 2017 the developmental services waiting list was at 170, and it was projected that by the end of June 2018, this would grow to 190. In addition it's projected that an additional 126 people will go without services in fiscal year 2019. The projected number of people that will go unserved in the biennium is 316. To fund those additional people that are projected to need services for the remainder of the fiscal year, assuming an April 1, 2018 start date, it's expected to cost 1.16 million in general funds. To serve those projected, to need services in fiscal year 2019, another 2.7 million in general funds is needed.

My colleagues, this has nothing to do with discrimination, it has everything to do with prioritizing our financial spending. It has everything to do with taking taxpayer money that could be used by people who have been on the waitlist some for up to seven years, and giving it instead to people for elective surgery so that their bodies can be altered by cutting off healthy body parts. In conclusion, I will state again that the choice to go through transgender reassignment surgery is a personal choice and as such should be paid for with personal funds, not public. Please overturn the ITL motion so that an Ought to Pass motion can be brought forward. Thank you, Mister President.

(The Chair recognized Senator Watters.)

SENATOR WATTERS: Thank you, Mister President. I rise in support of the ITL recommendation to this bill and I also would like to just make a couple of comments on the notion of personal choice, being the inspiration for gender reassignment surgery. Now I'm going to spare you all, I'm not going to sing Lady Gaga's Born This Way, okay? Be grateful for that alright? But you know anyone who has a friend, family member or a colleague who has realized their transgender identity and has done what they really feel they must do to be who they are; I think would have a difficulty with the description of personal choice here.

And secondly, I just think it's quite unfortunate to essentially set up folks who are going to be needing Medicaid funding for their medical procedures over against folks who are dealing with opioids or over against the disabled community. I really think that's a very unfortunate comparison to suggest that people who are undergoing essential in their view, medical procedures which are allowed under Medicaid, that that somehow is taking money away from some disabled family or someone undergoing opioid treatment. I also remind the body that we will soon see a constitutional amendment on transgender issues and I think that's a very important statement that has come from the House and I hope we'll see success here and I think that this bill flies in the face of what the intent of that amendment will be.

And finally, just as on kind of personal note here, with students and dear personal friends who have been through gender reassignment, that we're talking about individuals who are trying to live their full lives as who they are and I really appreciate the chair of Senate Finance, of course you must be concerned with budgets and you do good work there, but I just think that sometimes that we have to look past the numbers to the people here and I do hope we'll vote this bill down. Thank you.

(The Chair recognized Senator Reagan.)

SENATOR REAGAN: Thank you, Mister President. In JLCAR we conducted a two hour hearing on a rule change brought by the Department of Health and Human Services to allow these expenditures for a recognized medically diagnosed condition called gender dysphoria. So these aren't people who want to cross dress, and they're certainly not pedophiles and they're certainly not people who are dying to get into somebody else's bathroom. These are people with a genuinely, honestly diagnosed, a medical diagnosis that is allowed by the CMS, the Center for Medicaid and Medicare Services and this is proven by medical evidence, by psychiatric evidence and it is not something, from my investigation, that's done lightly. This is a years and years long process for people who suffer from gender dysphoria.

Now, one in about every 2,000 live births were presented with an infant who has an indeterminate sexual description. And I said, well what do you do with these infants? And they said they do a lot of snipping and tucking and so that this child looks identifiable as a boy or a girl. But then when they get a little bit older, and they're interacting with, on the playground and in school and their families and in their neighborhoods, they find that something's not really comfortable here, something's wrong. So unfortunately child, you suffered an unfortunate stroke of fate that has you, and you know it, in the wrong body. So what can we do about this? And it leads to some very serious mental illness, horrible outcomes for people that are ignored or ridiculed. But modern medicine and modern psychiatric medicine has found a path for these people to lead as much of a normal life as they can ever expect to receive. That's what the therapies are about and that's why the medical community does not take this lightly and no, I don't believe there are twelve year olds who go to a doctor and have their parts altered. This is something that you work into adulthood while you make these determinations and while you and your mental health professional are able to reconcile in your mind that you're making a correct decision.

And we all wish that we didn't have to pay for things that we're squeamish about. But this is where we are and to think that people suffering from gender dysphoria are taking money from people on the DD waitlist, which is constantly misrepresented in this chamber, it's not a correct conclusion. We don't come in here and decide that we're going to approve one thing because we're trying to take the money from something else or we're trying to give it to some other thing that we approve of. We deal with each issue individually. So if you disallowed gender reassignment surgery, that money's not going over to people on the DD waitlist. So let's decide this on a recognized, medically diagnosed, psychiatrically diagnosed condition and decide that we're going to turn our back on this segment of our population or we're going to treat them with the same measurement that we do in all the psychiatric and medical procedures that we approve and pay for through Medicaid.

(The Chair recognized Senator D'Allesandro.)

SENATOR D'ALLESANDRO: Thank you, Mister President. I rise in support of the motion of Inexpedient to Legislate. We've heard articulations by two Senators that I think we're just monumental in terms of their sincerity and their truth. Why is it that in this life we pit one group against another group? We shouldn't do that. What we should do, is we should do the best for both. And I think Senator Reagan articulated that. We're here to do the best for both. A person's life is a precious commodity. How that life is lived is precious. We don't have that long to live, and if the person has the wrong situation, the correction is needed to make that life worthwhile and to make that life better. And I don't think anybody could have said it better than Senator Reagan. Indeed, we can't pit people against each other, we've got to be for people, we have to be for things. And if the developmental disabilities waitlist needs more money, we're going to appropriate more money. But we're not going to shortchange another portion of the budget by pitting one against the other. You know I talk about doing the right thing. My colleagues have articulated much better than I could. Let's do the right thing and vote Inexpedient to Legislate.

(The Chair recognized Senator Avar.)

SENATOR AVARD: Thank you, Mister President. I rise in opposition to the motion to ITL and support a motion of Ought to Pass. I too sit on JLCAR Mister President, and I was there at that hearing. And we heard testimony Mister President, from one mother who has to hydrate her daughter, has to hydrate her daughter by buying a special powder. It's 35 cents a box because her daughter cannot drink water. And also, this daughter also needs particular diapers. There's no money for her. She fell through the cracks under the managed care. We heard from another mother who has a daughter whose spine is curving. And there wasn't money for that operation for that daughter to fix that spine, so as this child grows up, she's going to be paralyzed from her waist down. Another one fell through the cracks. In my district there's a woman, she's fifty-two years old with Down Syndrome, can't get the medication because she fell through the cracks. I have another little boy who basically throws up because of a special disease that he has. There's nobody in New Hampshire, there's nobody in Massachusetts, there's nobody in New England that will cover this little boy's particular disease. Has to go to Michigan in order to get it treated and, my gosh, fell through the cracks. There's no money. Can you tell these parents that you're not choosing one disease over another, one ailment over another, one condition over another, and look them in the eye if that's the case? I objected to the rules because there wasn't a proper, in my humble opinion, fiscal analysis. I got numbers like well, it's 50 cents, 70 cents. What does that mean? Per taxpayer? How much is it going to cost the New Hampshire taxpayers for this one particular condition? I agree with you that we should not be putting one against another, however in effect, that is what we're doing. We're saying to the mom who wants to hydrate her daughter, sorry the diapers aren't coming, sorry you can't hydrate your daughter with this particular box, it's 35 bucks. These are personal cases that have come to me, I have a drawer filled with people asking me to help them through this whole process for managed care and the situation we have now. But there are people that are falling through the cracks. I can't say, yeah, we're not pitting one against another, I can't say that. We are. We're choosing, we're prioritizing, one condition over another. Thank you, Mister President.

(The Chair recognized Senator Lasky for a question of Senator Avard.)

SENATOR LASKY: Thank you for taking my question. You said on the one hand I believe I heard you to say, you don't want to pit one medical condition against another, but I don't understand why you're voting to find this Ought to Pass. Is that, am I correct is that what you would like to see done?

SENATOR AVARD: I believe in effect that we are allowing these people that have cried out for help to fall through the cracks and give preference to one group.

SENATOR LASKY: What do you say to the mother whose four year old child is born male, crying out to be a female, been through all kinds of psychiatric, you know whatever, been medically diagnosed that that person is in the wrong body? You are pitting, in my understanding, you are pitting one condition against another. And so I'm not quite sure I understand.

SENATOR AVARD: I don't know how I can properly answer that.

SENATOR LASKY: Thank you.

SENATE CLERK'S NOTE

The roll call vote below on SB 331 was inadvertently entered in the Daily Journal and has been corrected in the Senate Permanent Journal from 12-12 to 13-11.

The question is on the adoption of the motion of Inexpedient to Legislate.

A roll call was requested by Senator Feltes, seconded by Senator Avard.

The following Senators voted Yes: Woodburn, Watters, Hennessey, Kahn, Lasky, Feltes, Cavanaugh, Reagan, Soucy, D'Allesandro, Fuller Clark, Innis, Morse.

The following Senators voted No: Giuda, Bradley, Gray, French, Ward, Sanborn, Daniels, Avard, Carson, Birdsell, Gannon.

Roll Call, Yeas: 13 - Nays: 11. Adopted.

Senator Bradley moved to Lay on the Table SB 331.

PRESIDENT MORSE: Senator Bradley, I'm in an awkward position. I voted in the wrong direction on this bill. I'd like to reconsider. That's what I was looking to you for. You've put a tabling motion on the floor.

Senator Bradley withdrew the motion to Lay on the Table on SB 331.

MOTION OF RECONSIDERATION

Senator Watters, having voted on the prevailing side, moved to reconsider the following action taken by the body on SB 331, prohibiting Medicaid from paying for sex reassignment drug or hormone therapy or surgery. Reconsider the vote on Inexpedient to Legislate. Adopted.

The question is on the adoption of the motion of Inexpedient to Legislate.

A roll call was requested by Senator Avard, seconded by Senator Giuda.

The following Senators voted Yes: Woodburn, Giuda, Watters, Hennessey, Kahn, Lasky, Feltes, Cavanaugh, Reagan, Soucy, D'Allesandro, Fuller Clark, Innis.

The following Senators voted No: Bradley, Gray, French, Ward, Sanborn, Daniels, Avard, Carson, Birdsell, Gannon, Morse.

Roll Call, Yeas: 13 - Nays: 11. Adopted.

MOTION OF RECONSIDERATION

Senator Giuda, having voted on the prevailing side, moved to reconsider the following action taken by the body on SB 331, prohibiting Medicaid from paying for sex reassignment drug or hormone therapy or surgery.: Reconsider the vote on Inexpedient to Legislate. Adopted.

PARLIAMENTARY INQUIRY

(The Chair recognized Senator Lasky for a parliamentary inquiry.)

SENATOR LASKY: Thank you. If, in fact, I'm sorry, the motion is Inexpedient to Legislate, so if in fact I feel that prohibiting Medicaid from paying for sex re-assignment drugs or hormone therapy or surgery is not warranted, that we should not prohibit it, I would vote in favor of the Inexpedient to Legislate motion.

PRESIDENT MORSE: If you're in favor of Inexpedient you're going to say aye, if you're opposed, you're going to say nay.

PARLIAMENTARY INQUIRY

(The Chair recognized Senator Daniels for a parliamentary inquiry.)

SENATOR DANIELS: Thank you, Mister President. If I believe that taxpayer money should not be used for something that is a personal choice, would I now vote no?

PRESIDENT MORSE: If you're in favor of Inexpedient you're going to say aye, if you're opposed, you're going to say no.

PARLIAMENTARY INQUIRY

(The Chair recognized Senator D'Allesandro for a parliamentary inquiry.)

SENATOR D'ALLESANDRO: Thank you, Mister President. If I believe that in a just manner, everyone should be treated equally, would I vote for the Inexpedient to Legislate?

PRESIDENT MORSE: If you're in favor of Inexpedient you're going to say aye, if you're opposed, you're going to say nay.

PARLIAMENTARY INQUIRY

(The Chair recognized Senator Hennessey for a parliamentary inquiry.)

SENATOR HENNESSEY: If I've read the literature on sex change children who feel they've been born, usually they realize it four or five years old, and I've studied it thoroughly, and read the literature, and know that it is not a choice but in fact leads to children committing suicide much greater than others if they can't afford it or get that kind of treatment, would I now vote yes for Inexpedient to Legislate?

PRESIDENT MORSE: If you're in favor of the Inexpedient motion, you're going to say aye, if you're opposed, to the Inexpedient motion, you're going to say no.

The question is on the adoption of the motion of Inexpedient to Legislate.

A roll call was requested by Senator Avard, seconded by Senator Giuda.

The following Senators voted Yes: Woodburn, Watters, Hennessey, Kahn, Lasky, Feltes, Cavanaugh, Reagan, Soucy, D'Allesandro, Fuller Clark, Innis.

The following Senators voted No: Giuda, Bradley, Gray, French, Ward, Sanborn, Daniels, Avard, Carson, Birdsell, Gannon, Morse.

Roll Call, Yeas: 12 - Nays: 12. Failed.

Senator Bradley moved to Lay on the Table SB 331. Adopted.

SB 404-FN-A, phasing out the tax on interest and dividends.

Inexpedient to Legislate, Vote 3-3. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank You, Mister President. I move Senate Bill 404-FN-A Inexpedient to Legislate. The bill sought to phase out the Interest and Dividends Tax over a 5-year period, and would repeal the tax on January 1, 2024. Comments such as SB 404-FN-A would send a positive message and perhaps lure individuals back to the state of New Hampshire, contrasted with the revenue impact of a loss of \$100 million, left the committee members unable to come to agreement. The Senate Finance Committee offers a motion of Inexpedient to Legislate, and hopes you'll support it. Thank you, Mister. President.

(The Chair recognized Senator Daniels.)

SENATOR DANIELS: Thank you, Mister President. I rise opposed to the Inexpedient motion and would ask that you overturn that so I can bring an Ought to Pass forward. What this piece of legislation does is it lays out a plan starting in 2020 to reduce the interest and dividends tax over the next five years, through 2025. This certainly would send a message that New Hampshire is some place that people might want to come back to if they've moved out of state because other states are offering a better deal for them on interest and dividends, so this is looking forward. We've laid it out in a five year plan, so that we can look at the revenue as it comes in. But we're not dealing with it in this biennium, again it starts in 2020. I would ask that you overturn the Inexpedient so Ought to Pass can be brought forward. Thank you, Mister President.

PARLIAMENTARY INQUIRY

(The Chair recognized Senator Feltes for a parliamentary inquiry.)

SENATOR FELTES: Thank you, Mister President. If you know and I know that the adoption of 404 would lead to a revenue hit of approximately \$100 million in the next budget and 80 percent of the benefits of that revenue hit would go to the top 10 percent of income earners in the state, would you now vote yes on Inexpedient to Legislate?

PRESIDENT MORSE: If you're in favor of Senate Bill 404, you're going to say aye, if you're opposed, you're going to say nay.

PARLIAMENTARY INQUIRY

(The Chair recognized Senator Daniels for a parliamentary inquiry.)

SENATOR DANIELS: Thank you, Mister President. If I know that the fiscal note on this bill was incorrect in that it showed an aggregate of the amount of revenue that would be lost and that it is not \$100 million but actually only comes out to about \$13 million per year, would I now vote to overturn and vote no on the motion of Inexpedient? Thank you, Mister President.

PRESIDENT MORSE: If you're in favor of Inexpedient, you're going to say aye, if you're opposed, you're going to say nay.

The question is on the adoption of the motion of Inexpedient to Legislate.

A roll call was requested by Senator Avard, seconded by Senator Giuda.

The following Senators voted Yes: Woodburn, Watters, Hennessey, Kahn, Lasky, Carson, Feltes, Cavanaugh, Soucy, D'Allesandro, Fuller Clark.

The following Senators voted No: Giuda, Gray, French, Ward, Sanborn, Daniels, Avard, Reagan, Birdsell, Gannon, Innis, Morse.

The following Senators filed a Declaration of Intent: Bradley.

Roll Call, Yeas: 11 - Nays: 12. Failed.

Senator Feltes moved to Lay on the Table on SB 404-FN-A.

The question is on the adoption of the motion to Lay on the Table.

PARLIAMENTARY INQUIRY

(The Chair recognized Senator Daniels for a Parliamentary Inquiry.)

SENATOR DANIELS: Thank you, Mister President. If I wish to pass this bill would I now vote no on the tabling motion?

PRESIDENT MORSE: If you're in favor of tabling, you're going to say aye, if you're opposed, you're going to say nay.

A roll call was requested by Senator Sanborn, seconded by Senator Giuda.

The following Senators voted Yes: Woodburn, Watters, Hennessey, Kahn, Lasky, Carson, Feltes, Cavanaugh, Reagan, Soucy, D'Allesandro, Fuller Clark.

The following Senators voted No: Giuda, Gray, French, Ward, Sanborn, Daniels, Avard, Birdsell, Gannon, Innis, Morse.

The following Senators filed a Declaration of Intent: Bradley.

Roll Call, Yeas: 12 - Nays: 11. Adopted.

Recess. Out of recess.

SB 450-FN-A, establishing an advisory commission for the department of environmental services relative to the delegation of authority of the National Pollutant Discharge Elimination System Program.

Ought to Pass with Amendment, Vote 6-0. Senator Feltes for the committee.

Senate Finance

March 12, 2018

2018-1072s

08/10

Amendment to SB 450-FN-A

Amend RSA 149-Q:2 as inserted by section 1 of the bill by inserting after paragraph XII the following new paragraph:

XIII. The Great Bay Piscataqua Waterkeeper.

SENATOR FELTES: Thank You, Mister President. I move Senate Bill 450-FN-A Ought to Pass with Amendment. The bill establishes an advisory commission for the Department of Environmental Services to study delegation of the authority for the National Pollutant Discharge Elimination System. The Committee Amendment adds a member to the advisory commission that specializes in the protection of seacoast waters, in particular, the Great Bay. The Senate Finance Committee recommends passage of Senate Bill 450-FN-A as amended, and asks for your support. Thank you, Mister President.

The question is on the adoption of the Committee Amendment. Adopted.

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to Third Reading.

SPECIAL ORDER

Without objection, Senator Bradley moved to special order SB 526-FN and SB 548-FN to the next session. Adopted.

SB 528-FN-L, relative to dam registration fees and relative to permit fees for constructing or reconstructing a dam.

Ought to Pass with Amendment, Vote 6-0. Senator D'Allesandro for the committee.

Senate Finance

March 12, 2018

2018-1073s

08/10

Amendment to SB 528-FN-LOCAL

Amend the bill by replacing section 3 with the following:

3 Effective Date. This act shall take effect July 1, 2019.

SENATOR D'ALLESANDRO: Thank You, Mister President. I move Senate Bill 528-FN-LOCAL Ought to Pass with Amendment. This bill increases the annual registration fees for dams, and increases the application fee for permits to construct or reconstruct a dam. The Committee Amendment changes the effective date of the proposal to July 1, 2019, to coincide with the next budget cycle. The Senate Finance Committee recommends passage of Senate Bill 528-FN-LOCAL as amended, and asks for your support. Thank you, Mister President.

The question is on the adoption of the Committee Amendment. Adopted.

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to Third Reading.

SB 529-FN, requiring the department of environmental services to conduct a study regarding the Baker River in the town of Warren and making an appropriation for such study.

Ought to Pass, Vote 6-0. Senator Giuda for the committee.

SENATOR GIUDA: Thank You, Mister President. I move Senate Bill 529 Ought to Pass. This bill requires the Department of Environmental Services to study, design, and permit a solution to the incessant and every year erosion of the Baker River's banks in the town of Warren. An estimation of \$400,000 has been made to undertake the study, with the goal of minimizing the harmful environmental impact of the river on nearby property and preventing the washout of the state highway that runs adjacent to it. Currently, the bill has an appropriation of \$1.00; this is so that the House can gain a better estimate of the availability of funds as the bill works its way through the second half of the session. The Senate Finance Committee recommends passage of Senate Bill 529-FN, and asks for your support. Thank you, Mister President.

The question is on the adoption of the motion of Ought to Pass. Adopted, bill ordered to Third Reading.

SB 532-FN, relative to group II status of certain department of corrections officials.

Ought to Pass with Amendment, Vote 6-0. Senator D'Allesandro for the committee.

Senate Finance

March 12, 2018

2018-1068s

05/10

Amendment to SB 532-FN

Amend RSA 21-H:8-b as inserted by section 1 of the bill by replacing it with the following:

21-H:8-b Status in Retirement System. For purposes of classification under RSA 100-A, any person who is or becomes the assistant commissioner, the director of professional standards, the director of community corrections, the director of security and training, the director of field services, or the director of medical and psychiatric services, shall be included in the definition of correctional line personnel, as defined in RSA 100-A:1, VII under the retirement system, if such person was a group II member for at least 10 years prior to appointment in his or her position and shall remain in group II status for the duration of service in that position with the department.

SENATOR D'ALLESANDRO: Thank you, Mister President. I move Senate Bill 532-FN Ought to Pass with Amendment. The bill allows certain Department of Corrections officials to be classified as Group II members of the New Hampshire Retirement System if such individuals were Group II members for at least 10 years prior to appointment in their respective positions, and continue to be certified under RSA 106-L. The Committee Amendment merely adds the position of Assistant Commissioner of Corrections to the list, correcting an oversight in the original draft of the proposal. The Senate Finance Committee recommends passage of Senate Bill 532-FN as amended, and asks for your support. Thank you, Mister President.

The question is on the adoption of the Committee Amendment. Adopted.

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to Third Reading.

SB 535-FN, relative to licensure for the practice of professional art therapy and establishing an advisory council on alternative mental health therapies, and relative to certain revenues from the sale of commemorative liquor bottles of historic significance.

Ought to Pass, Vote 6-0. Senator Reagan for the committee.

SENATOR REAGAN: Thank you, Mister President. I move Senate Bill 535-FN Ought to Pass. This bill establishes the practice of professional art therapy and licensure for individuals engaging in such practice. Initially it directs sales of any commemorative liquor bottles to the New Hampshire Bicentennial Education and Commemoration Fund. Senate Bill 535 also allows for license fees to be established through the rule-making process by the Office of Professional Licensure and Certification. The Senate Finance Committee overwhelmingly recommends passage of Senate Bill 535, and asks for your support. Thank you, Mister President.

The question is on the adoption of the motion of Ought to Pass. Adopted, bill ordered to Third Reading.

SB 538-FN, including police officers of the state office complex police force in group II of the retirement system.

Ought to Pass, Vote 6-0. Senator Giuda for the committee.

SENATOR GIUDA: Thank you, Mister President. I move Senate Bill 538-FN Ought to Pass. This bill clarifies the status of police officers of the State Office Complex Police Force, and includes such officers in the Group II of the New Hampshire Retirement System. The Senate Finance Committee unanimously recommends passage of Senate Bill 538-FN, and asks for your support. Thank you, Mister President.

The question is on the adoption of the motion of Ought to Pass. Adopted, bill ordered to Third Reading.

SB 543-FN, relative to health care premium payments for certain retired state workers.

Inexpedient to Legislate, Vote 5-1. Senator Giuda for the committee.

SENATOR GIUDA: Thank you, Mister President. I move Senate Bill 543 Inexpedient to Legislate. This bill sought to change premium contribution requirements for retired state employees and/or spouses who are eligible for Medicare Parts A and B due to age or disability, and are, therefore, eligible for retiree coverage under the State Health Benefit Plan. SB 543-FN does not affect non-Medicare-eligible retirees who qualify for premium-paid coverage under the plan. Currently, Medicare-eligible retirees (subscribers and spouses) with a date of birth on or after January 1, 1949, make a premium contribution that is not lower than ten percent of the total premium attributable to those members. Medicare-eligible retirees with a date of birth before January 1, 1949, are exempt from any premium contribution. SB 543-FN replaces the Medicare-eligible retiree date of birth provision with a requirement based on employment with the state. The new provision requires Medicare-eligible retirees whose employment with the state began on or after September 1, 2009, pay the premium contribution of not less than ten percent of the total premium attributable to those members. Those Medicare-eligible retirees hired prior to September 1, 2009 shall be exempt from any premium contribution. Therefore, Medicare-eligible retirees, the largest group of retirees, will be exempt from paying a premium contribution until 2029.

The loss of the plan's premium revenue beginning in fiscal year '19 will require action to meet estimated plan expenses, including one or more of the following: Funding from the General Fund. Funding from self-funded agencies such as DOT, Safety, Liquor, and Lottery. An increase in the non-Medicare eligible population's premium contribution. Changes in the plan's design, so that fewer services and products are covered, and/or higher co-pays and deductibles are required. or Implementation of a defined contribution plan.

Committee members were reminded of the work that brought about last year's compromise on this subject, developed by Representative Ober. A majority of committee members caution making any change at this point may not be prudent. Stay the course, and monitor how the situation plays itself out before we make any changes. The Senate Finance Committee therefore recommends SB 543-FN, though well-intentioned, be found Inexpedient to Legislate, and asks for your support. Thank you, Mister President.

(The Chair recognized Senator Feltes.)

SENATOR FELTES: Thank you very much, Mister President. Mister President, I rise in opposition to the motion of Inexpedient to Legislate on Senate Bill 543. For a very long period of time our state workers were told that they wouldn't have to pay a health insurance premium cost or tax, whatever you want to call it. That changed in September of 2009 when retired workers under the age of sixty-five first started paying a premium on their health insurance. Since then Mister President, colleagues, retired state workers have paid over \$40 million in premiums to support the retiree health care system. Over \$40 million. Well, Mister President, that's excluding other costs, like additional copays, on medicines, that's excluding deductibles and other costs and fees. Over 40 million bucks.

What happened in terms of the history of this issue is long and we've debated it a lot and the Senate has traditionally taken a much more, if

I can characterize it, a much more pro-state retiree health position than the House has. What happened in 2015-2016 is the Fiscal Committee needed to make adjustments based on existing law and the absence of enough money to meet the plan. They made adjustments, we filed a bill, I filed the bill, Senate Bill 465 in 2016, that next year of the biennium. We passed a bill to help shore up, working in a bipartisan way, the fund and we sent it to the House. What happened then, if you may recall for those who were here, is the vice-chair of House Finance replaced the bill I filed and that we worked on a bipartisan way, erased it and replaced it with a bill to allow folks to eat sandwiches in cigar parlors. I want to repeat that. State retiree health care bill that we worked on in a bipartisan way and we sent over to the House was replaced with a bill to allow people to eat sandwiches in cigar parlors. I don't think it was germane, but that's what happened. Again, this body in my view Mister President, has been taken this issue, a better view of it, I think than our House colleagues.

Coming into the budget this year, Governor Sununu proposed a 10 percent premium across all workers age sixty-five and older. That generated a lot of debate and discussion. The vice-chair of House Finance this time said if you were born before January 1, 1949 you don't pay it. That was the so-called compromise. I never understood the logic behind picking randomly January 1, 1949, nor does a lot of folks who are subjected to this premium hike, tax, whatever you want to call it understand that either. It was put in place and then now we have a situation where we were projected to have close to zero or maybe not even our statutory reserve in this fund, but we not only have the statutory reserve of 3 percent, they got it set at 5 percent. There's 4.6 million in the statutory reserve. Not only that in this fund, there's close to 10 million additional. Some people call it a surplus. It's been called a surplus for decades. The Department of Admin. Services testified they're going to change how they call it they're going to call it a cash flow reserve now. Alright? Well, 10 plus 4.6 is about \$14.6 million, in this account that can only be used for these purposes. And if you look at the fiscal note, what is the impact in FY '19; 687,000. I think we can afford this. I think we can afford this. This isn't going to bankrupt the fund.

And what this does is it says if you began work after September 2009, when those premiums first went into place, you're on actual notice that the state could put a premium on you. There's all this debate of when did the state represent that you could get hit with a premium when they didn't blah, blah, blah; the reality is they did it in September of 2009. So if you began work after September of 2009 and now you're retired state worker, you don't have much to necessarily complain about because you knew prior to working for the state that this could be a distinct possibility because the state just started doing it September of 2009. That's the logic behind this bill.

The impact of the bill is that less retirees over the age of sixty-five pay the 10 percent. That's why the fiscal note says 687,000 in FY '19. That reflects the differential and the number of state retirees sixty-five and older that will be paying this. I think this bill is a compromise. I think this bill reflects some logic and some policy that makes sense because it makes sense to pin the grandfathering so to speak, to when the premiums first went into place.

Now you'll hear folks say well look we can't do this, we can't pivot you know, midstream. We're going to have to send out new notices. I think if

I was a retired state worker and I got a notice that said, you know what you just got a notice you've got to pay 10 percent, you got a new notice that says you don't have to pay 10 percent, I think that state retiree would be fine getting a new notice. And these are folks by the way, who in many cases worked for decades for the state. There are folks in my own neighborhood in the south end of Concord who spent years doing road maintenance or you know, and they're living on fixed incomes, and paying an extra at least 36.24 a month on a fixed income. That's 36.24, at least, that you're not spending on rent or housing or medicine or food or other things that you need as a senior citizen.

So Mister President, I would implore this body to do what it has traditionally done on this issue, which take a different view than the House. A, for lack of a better characterization, a more pro-state retiree health care view than the House. And you may say, well Dan, that's great, we'll send it over to the House, they'll just beat it up. I think it's worth a try. I think it's worth a try for both seniors on fixed incomes who never expected to pay this, who were never told they were going to pay it and now by virtue of when they were born, being born after the arbitrary date of January 1, 1949. Picked out of the sky, they have to pay this. That doesn't make any sense. Let's overturn ITL, let's move this forward, let's send it to the House and let's have the debate in the House. Thank you very much, Mister President.

(The Chair recognized Senator Daniels.)

SENATOR DANIELS: Thank you, Mister President. I rise in favor of the motion of Inexpedient to Legislate. We had Administrative Services come in and testify on this bill. One of the things they mentioned was there's going to be a significant change from the budget. This cash reserve that they're talking about or the statutory reserve. They talk about \$9 million in it. They indicated that this is equal to about one month's reserve, that that thing fluctuates up and down and at one time actually was at a 10.6 percent deficit. And now as of October 1st '17 had 9.1 million into the surplus, they said ideally they should have about 2 to 3 times the current amount in there. So now is not the time to go and be raiding that, we should be building that up so that it is a stable fund in which we can count on being there when we need to dig into it because things like the prescription drugs, a lot of the increases are driven by that, so there is a big draw on that. So I would ask you to vote for the Inexpedient to Legislate on that and follow the advice of DAS and make sure that that account is stable for the future. Thank you, Mister President.

The question is on the adoption of the motion of Inexpedient to Legislate.

A roll call was requested by Senator Cavanaugh, seconded by Senator Feltes.

The following Senators voted Yes: Giuda, Bradley, Gray, French, Ward, Daniels, Avard, Carson, Reagan, Birdsell, D'Allesandro, Gannon, Innis, Morse.

The following Senators voted No: Woodburn, Watters, Hennessey, Sanborn, Kahn, Lasky, Feltes, Cavanaugh, Soucy, Fuller Clark.

Roll Call, Yeas: 14 - Nays: 10. Adopted.

SB 555-FN-A, establishing a citizens' right-to-know appeals commission and a right-to-know law ombudsman and making an appropriation therefor.

Inexpedient to Legislate, Vote 3-3. Senator Feltes for the committee.

SENATOR FELTES: Thank you, Mister President. I move Senate Bill 555-FN-A Inexpedient to Legislate. This bill sought to establish procedures to streamline the resolution of complaints under RSA 91-A. It would amend RSA 91-A:7 concerning petitions to the superior court regarding right-to know violations, and would establish an alternative complaint resolution process through the Office of the Right-to-Know Ombudsman. The Ombudsman's final ruling would be appealable to the Superior Court. The Citizens' Right-to-Know Appeals Commission would be responsible for hiring an Ombudsman and establishing rules pursuant to RSA 541-A. The commission would be administratively attached to the Department, which would provide clerical and administrative support as needed. This proposed legislation would create an entirely new forum for dealing with certain complaints arising under RSA 91-A, but also maintain the current procedure in which complaints may be handled in court. Unable to reach an agreement, the Senate Finance Committee offers a motion of Inexpedient to Legislate on Senate Bill 555-FN-A. Thank you, Mister President.

(The Chair recognized Senator Giuda.)

SENATOR GIUDA: Thank you, Mister President. I rise in opposition to the motion of Inexpedient to Legislate. Under current statute an average citizen approaches any government body, the Planning Board, the Zoning Board of Adjustment, Board of Selectmen, the state, and requests information under 91-A, and the government body says we don't think so, that citizen is required to go to court against the government. That in and of itself has a terrible chilling effect on the rights of average citizens to fork out \$400 for a filing fee and possibly thousands of dollars for an attorney to exercise a right we're guaranteed by the constitution.

What this bill does is level the playing field. It will also save communities significant amounts of money because communities will not have to get lawyers themselves. If the citizen feels that the decision of the municipality is wrong, he appeals to the ombudsman, the ombudsman collects whatever data he or she needs, makes a determination. That determination is not final, but it is considered when the court, if the appeal is made, gets to the Superior Court. What this does is level the playing field.

I've heard concerns about structure. There are ten individuals, one from each county, why would that be? Because the most important function of that commission is not hiring, because they won't do the hiring. The Governor and Council will do the hiring. The most important function of that commission is to educate, and rather than having one person only or a very small commission we figured one from each county would be a resource within that county to which municipalities or individuals could turn and maybe foreclose or forestall having to go the ombudsman or on to Superior Court. So there's very good rationale.

This is the work of a study commission that included New Hampshire Municipal, included the Press Association, included the attorney general's office, a senator, two representatives and numerous testimonies. One of the testimonies that came forth was from a former chairman of the school board of the town of Windham. The chairman of the school board requested information relative to an internal controls audit that had over 100 discrepancies and material deficiencies and internal controls for the schools, for the superintendent for the district, and was rejected. That's heinous. Those deficiencies were found by a licensed

auditor in the internal workings, they were a secret checking accounts being signed with the treasurer's signature and stamped without the treasurer's knowledge. This is going on in our state today and a citizen who is no longer on the board but was at the time was told you're going to have to go through the Schoolboard to get that.

Ladies and gentlemen, this is transparency in government, and I would ask you to please overturn the Inexpedient to Legislate so we can serve our citizens with the constitutional rights they were guaranteed many years ago. And to help them level that playing field so they can get information they're entitled to by law, but being denied now by process. Thank you, Mister President.

The question is on the adoption of the motion of Inexpedient to Legislate.

A roll call was requested by Senator Giuda, seconded by Senator Avard.

The following Senators voted Yes: Woodburn, Watters, Hennessey, Kahn, Lasky, Feltes, Cavanaugh, Reagan, Soucy, D'Allesandro, Fuller Clark.

The following Senators voted No: Giuda, Bradley, Gray, French, Ward, Sanborn, Daniels, Avard, Carson, Birdsell, Gannon, Innis, Morse.

Roll Call, Yeas: 11 - Nays: 13. Failed.

Senator Giuda moved Ought to Pass.

A roll call was requested by Senator Giuda, seconded by Senator Avard.

The following Senators voted Yes: Giuda, Bradley, Gray, French, Ward, Sanborn, Daniels, Avard, Carson, Birdsell, Gannon, Innis, Morse.

The following Senators voted No: Woodburn, Watters, Hennessey, Kahn, Lasky, Feltes, Cavanaugh, Reagan, Soucy, D'Allesandro, Fuller Clark.

Roll Call, Yeas: 13 - Nays: 11. Adopted, bill ordered to Third Reading.

SB 557-FN, establishing a board of housing development appeals. Ought to Pass, Vote 5-1. Senator Giuda for the committee.

SENATOR GIUDA: Thank you, Mister President. I move Senate Bill 557 Ought to Pass. This bill establishes a Housing Appeals Board with authority to hear and affirm, reverse or modify appeals of final decisions of municipal boards, committees and commissions regarding questions of housing and housing development. The board shall have concurrent, appellate jurisdiction with the Superior Court, and may adopt rules under 541-A necessary to carry out its functions. Members of the board shall be appointed by the Supreme Court, and commissioned by the Governor for a term of 3 years. The board is directed to hire at least one researcher, who will be a classified employee, plus additional clerical and technical staff within the limits of the appropriation made. The board shall be provided with an office in Concord. There is, however, no appropriation of funds included in the legislation. The plan is to fully fund it in the next budget. The Senate Finance Committee recommends passage of Senate Bill 557-FN, and asks for your support. Thank you, Mister President.

The question is on the adoption of the motion of Ought to Pass. Adopted, bill ordered to Third Reading.

SB 560-FN-L, relative to updating the state trails plan and making an appropriation therefor.

Ought to Pass with Amendment, Vote 6-0. Senator Feltes for the committee.

Senate Finance
March 12, 2018
2018-1071s
06/05

Amendment to SB 560-FN-LOCAL

Amend the bill by replacing section 2 with the following:

2 Appropriation; Department of Transportation; State Trails Plan. The sum of \$1 for the fiscal year ending June 30, 2019 is hereby appropriated to the department of transportation for the purpose of updating the New Hampshire state trails plan under RSA 21-L:12-c. This appropriation is in addition to any other funds appropriated to the department of transportation. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

SENATOR FELTES: Thank you, Mister President. I move Senate Bill 560-FN-LOCAL Ought to Pass with Amendment. This bill requires the Department of Transportation to update the state trails plan and makes a general fund appropriation of \$150,000 for said purpose. Wanting to keep tabs on the budget as we continue through the fiscal year, the committee revised that appropriation amount to the sum of \$1.00. The Senate Finance Committee recommends passage of Senate Bill 560-FN-LOCAL as amended, and asks for your support. Thank you, Mister President.

The question is on the adoption of the Committee Amendment. Adopted.

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to Third Reading.

SB 563-FN, establishing a recovery friendly workplace initiatives tax credit against business taxes administered by the community development finance authority.

Ought to Pass, Vote 6-0. Senator Daniels for the committee.

SENATOR DANIELS: Thank you, Mister President. I couldn't find my notes but, what this does is it gives a tax credit against business taxes administered through the community development authority, finance authority, helping to create the recovery friendly workplace. This is going to enable us to put people into work giving an opportunity for businesses to be a partnership in creating the recovery environment that we're looking for. Thank you, Mister President.

The question is on the adoption of the motion of Ought to Pass. Adopted, bill ordered to Third Reading.

SB 573-FN-A, relative to the controlled drug prescription health and safety program and making an appropriation therefor.

Ought to Pass, Vote 6-0. Senator Reagan for the committee.

SENATOR REAGAN: Thank you, Mister President. I move Senate Bill 573 Ought to Pass. This bill authorizes the Chief Medical Examiner and delegates to access the Prescription Drug Monitoring Program for the purpose of investigating causes of death. In support of the PDMP, SB 573 contains an appropriation equal to 5 percent of the revenue collected by various boards for the biennium ending June 30, 2019. These include the Boards of Pharmacy, Medicine, Nursing, Dentistry, Veterinary Medicine, Naturopathic Medicine, Podiatry and Optometry. The restricting of 5 percent of the revenue collected by these identified boards will result in an equal decrease in unrestricted general fund revenue, with the total

appropriation estimated at \$215,735 for the biennium. The Senate Finance Committee recommends passage of Senate Bill 573, and asks for your support. Thank you, Mister President.

The question is on the adoption of the motion of Ought to Pass. Adopted, bill ordered to Third Reading.

SB 578-FN, relative to unclassified positions within the department of health and human services.

Ought to Pass, Vote 6-0. Senator Reagan for the committee.

SENATOR REAGAN: Thank you, Mister President. I move Senate Bill 578 Ought to Pass. This bill clarifies the terms of appointment and salary for the following positions in the Department of Health and Human Services: Deputy Commissioner, Associate Commissioner of Human Services and Behavioral Health, Associate Commissioner of Operations, and Associate Commissioner for Population Health. The Senate Finance Committee recommends passage of Senate Bill 578, and asks for your support. Thank you, Mister President.

The question is on the adoption of the motion of Ought to Pass. Adopted, bill ordered to Third Reading.

SB 583-FN, establishing a pilot program to eliminate employment barriers for certain parents.

Inexpedient to Legislate, Vote 4-2. Senator Reagan for the committee.

SENATOR REAGAN: Thank you, Mister President. I move Senate Bill 583 Inexpedient to Legislate. This bill sought to establish a 2-year pilot program for case management and employment counseling for certain parents enrolled in the New Hampshire Employment Program or otherwise eligible for Temporary Assistance to Needy Families. The pilot program would have been funded exclusively with federal TANF funds. These funds would be withdrawn from the TANF Reserve. The Department of Health and Human Services projected total planned spending on the program at no more than \$500,000. The Senate Finance Committee recommends finding Senate Bill 583-FN Inexpedient to Legislate, and asks for your support. Thank you, Mister President.

(The Chair recognized Senator Feltes.)

SENATOR FELTES: Thank you, Mister President. Mister President, I rise in opposition to the ITL motion. I want to talk about three things; what this does, who it helps and why it makes good public policy sense.

What does it do? It helps provide legal support, assistance and annulment of prior criminal convictions and/or expungement of arrest records that may hinder a parent's employment opportunities and long term connection to the labor market.

Who does it help? It helps parents enrolled in the New Hampshire employment program or TANF who are at or below 200 percent of the federal poverty guidelines and who are approved by a transitional program administered by the Department of Corrections, to work or to seek work opportunities in the community.

Why is this important, why does it make good public policy sense? Because helping people get jobs, as they transition out of the Department of Corrections and into the community, helps reduce recidivism rates and re-incarceration rates, and helps people on a pathway to work and independence which we all believe in. It makes good fiscal sense too,

because although we are using TANF dollars as my friend from District 17 and a co-sponsor of the bill noted, it will save TANF dollars in the long run because people get employed.

And third, to my friend from District 2 and my friend from District 12, who talk about due process a lot and talk about people having the opportunity to at least exercise their rights under existing law, this will provide low income individuals the opportunity to have legal assistance and services to do what their rights are under existing law in terms of annulments and expungement of arrest records, so that they can have an opportunity to get employed which is a major impediment to employment right now.

So this makes good fiscal sense, Mister President. It's going to save money, it's going to reduce recidivism and it's going to promote jobs and at a time when we need more people entering the workforce, it makes a lot of sense. So, I'd encourage us to vote no on ITL and do a substitute motion of Ought to Pass. Thank you very much, Mister President.

The question is on the adoption of the motion of Inexpedient to Legislate.

A roll call was requested by Senator Feltes, seconded by Senator Daniels.

The following Senators voted Yes: Giuda, Bradley, Gray, French, Ward, Sanborn, Daniels, Avard, Carson, Reagan, Birdsell, Gannon, Innis, Morse.

The following Senators voted No: Woodburn, Watters, Hennessey, Kahn, Lasky, Feltes, Cavanaugh, Soucy, D'Allesandro, Fuller Clark.

Roll Call, Yeas: 14 - Nays: 10. Adopted.

JUDICIARY

SB 335, relative to disclosure of asbestos trust claims in civil actions. Interim Study, Vote 3-1. Senator Carson for the committee.

SENATOR CARSON: Thank you, Mister President. I rise to ask the body to overturn the Interim Study motion so that I may offer a subsequent motion with a Floor Amendment.

The question is on the adoption of the motion of Interim Study. Failed.

Senator Carson moved Ought to Pass.

Senator Carson offered a Floor Amendment.

Sen. French, Dist 7

Sen. Carson, Dist 14

March 15, 2018

2018-1117s

06/08

Floor Amendment to SB 335

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

AN ACT establishing a committee to review compensation in asbestos litigation and to study ways to promote transparency, fairness, and timeliness of payment in asbestos litigation.

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

1 Committee Established. There is established a committee to review compensation in asbestos litigation and to study ways to promote transparency, fairness, and timeliness of payment in asbestos litigation.

2 Membership and Compensation.

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

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

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

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 review the current compensation system specific to asbestos litigation and study ways to promote transparency, fairness, and timeliness of payment in the asbestos litigation system in New Hampshire.

II. The committee may receive input from the state veterans advisory committee, other local and national veterans groups, and any other person or organization it deems relevant to gain an understanding of how the asbestos litigation system impacts veterans and others affected by asbestos.

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 senate 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 president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2018.

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

2018-1117s

AMENDED ANALYSIS

This bill establishes a committee to review compensation in asbestos litigation and to study ways to promote transparency, fairness, and timeliness of payment in asbestos litigation.

SENATOR CARSON: Thank you, Mister President. In the committee we talked about this bill, it is extremely complicated and it would ask us to create an asbestos docket here in New Hampshire which we currently do not have. The committee decided to Interim Study it but, upon further reflection, and in discussion with the committee members it seems like a more appropriate action would be to actually create a study committee to look at asbestos claims and what can we do to make these claims work faster, to go through the process faster, and create transparency at the same time. So if you look at the amendment, it has one member of the Senate, which Senator French has most graciously offered to serve on, and three members of the House, and they're going to take a look at the current compensation system, specific to asbestos litigation and study ways to promote transparency fairness and timeliness of payment. They're also going to be getting input from the State Veterans' Advisory Committee, other local and national veterans' group and any other person or organization it deems relevant to gain an understanding of how the asbestos litigation system impacts veterans and others affected by asbestos. So again, Mister President, I would urge the body to support Floor Amendment number 1117. Thank you very much.

Recess. Out of recess.

The question is on the adoption of the Floor Amendment. Adopted.

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to Third Reading.

SB 501, relative to immunity for campground owners.

Inexpedient to Legislate, Vote 2-2. Senator Carson for the committee.

SENATOR CARSON: Thank you, Mister President. I rise again to ask the body to overturn the committee recommendation of Inexpedient to Legislate so I can offer a subsequent motion along with a Floor Amendment. Thank you.

The question is on the adoption of the motion of Inexpedient to Legislate. Failed.

Senator Carson moved Ought to Pass.

Senator Carson offered a Floor Amendment.

Sen. Carson, Dist 14

March 13, 2018

2018-1078s

04/01

Floor Amendment to SB 501

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

1 Findings. The state of New Hampshire finds that:

I. Camping is a popular form of recreation in the state. It affords residents of the state access to natural environments, outdoor activity and relaxation. It is a major source of tourism visits from nonresidents which generate employment, taxes and economic activity for the state. Camping, by its very nature, involves experiences in natural environments which inherently involve risks and hazards which are not present in the built environment.

II. Persons who choose to camp must accept the inherent risks of camping, without an expectation that they may recover damages if they are injured as a consequence of the experience they have selected.

2 New Subdivision; Campground Immunity. Amend RSA 216-I by inserting after section 15 the following new subdivision:

Campground Immunity

216-I:16 Definitions. In this subdivision:

I. "Camping" means all aspects of visiting, staying at and using a recreational campground, or camping park.

II. "Inherent risk of camping" means a danger or condition that is an integral part of camping, including but not limited to the following:

(a) Naturally occurring features of the natural world, such as trees, infectious agents, tree stumps, roots, brush, rocks, mud, holes, sand, standing water, and soil.

(b) Uneven or unpredictable terrain.

(c) Natural bodies of water and the use of natural bodies of water, including swimming, and aquatic sports.

(d) Another person at a recreational campground or camping park acting in a negligent

manner, where the campground owner or employees are not involved.

(e) A lack of lighting at campsites.

(f) Campfires in a properly constructed and maintained fire pit or enclosure provided by the recreational campground or camping park.

(g) Weather.

(h) Insects, birds, bears, and other wildlife.

(i) Violation of safety rules or disregard for signs indicating danger.
 (j) Actions by campers or visitors which exceed their physical limitations or abilities.

(k) Animals owned by other persons which cause injury or death, unless the recreational campground or camping park has accepted responsibility for care of the animal or has actual knowledge that the animal poses a hazard to the safety of other campers.

(l) Activities undertaken by a camper or visitor, utilizing the camper's own equipment, and undertaken for the purpose of exercise, relaxation, or pleasure, including but not limited to hunting, fishing, picnicking, exploring, bicycling, horseback riding, operation of a powered vehicle, cutting wood, water sports, harvesting the products of nature and any other outdoor sport, game, or educational activity.

III. "Willful disregard" means conduct committed with an intentional or reckless disregard for the safety of the actor or others.

216-I:17 Immunity.

I. Except as provided in paragraph II, a campground owner, including any employees, officers, and agents of a campground owner, shall be immune from civil liability for acts or omissions related to camping at a recreational campground or camping park resulting in the death of or injury to a person, or damage to property, caused by the inherent risk of camping.

II. The provisions of paragraph I shall not apply if the campground owner, including any employee, officer, and agent of a campground owner seeking immunity:

(a) Intentionally causes death or injury to another person or intentionally causes damage to property.

(b) Acts with willful disregard for the safety of another person or property.

(c) Fails to conspicuously post warning signs of a dangerous, inconspicuous condition known to him or her on a recreational campground or camping park, if he or she is aware of the condition.

(d) Is grossly negligent.

III. This section shall not be construed to limit the immunity created under RSA 212:34.

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

2018-1078s

AMENDED ANALYSIS

This bill provides immunity for campground owners and establishes exceptions to immunity under certain circumstances.

SENATOR CARSON: Thank you, Mister President. I rise to present the amendment because I think we finally found a solution. This bill was extremely complicated with a lot of moving parts to it. And there were meetings between the parties to see if we could come to some sort of an agreement. And the amendment you have in front of you is an agreement between the campground owners, the trial lawyers with the exception of one word. And that word you will find on page 2, line 25, and that word is grossly. And here we're talking about negligence. I think we can all agree that there are inherent hazards to people that when you go camping. Things happen. You're out in the middle of the woods, you're not staying in a hotel room. And there are things in nature that sometimes are not very kind to us. And what's been happening has been lawsuits have been filed, by people who have gone camping, who have fallen, there

was, we heard about a lawsuit where someone fell and got cut by a leaf. And because of these types of lawsuits, campground owners are finding it increasingly difficult to get insurance.

So, again Mister President, I'd just like to point out the one word difference. And I'd just like to talk a little bit about what the difference is between negligence and gross negligence. When you talk about negligence, it's the omission to do something which a reasonable person, guided by those considerations would ordinarily regulate the conduct of human affairs would do so, or do something which a prudent or reasonable man or woman would not do. It must be determined in all cases by reference to the situation and knowledge of the parties and all attendant circumstances. When we speak of gross negligence, we're talking about a severe degree of negligence. Taking as reckless disregard and blatant indifference to one's legal duty, other safety or their rights as examples. So for example Mister President, say someone in this body decided they wanted to go camping. They got their camp all set up and there was a bathroom facility close by and they went into the facility and there were hanging live wires from the ceiling. That is true gross negligence. Someone is going to get hurt. As opposed to someone walking out on a trail at night and tripping and falling. There's a big difference between the two. So again, this is why the word gross was put into the bill to address those situations where there was a problem, the campground owner was aware of the problem, the campground owner should have fixed it and the campground owner didn't and someone got hurt. Thank you very much, Mister President.

(The Chair recognized Senator Feltes for a question of Senator Carson.)

SENATOR FELTES: Thank you. If I read this correctly, if this passes, campground owners are no longer liable under any negligent action, cause of action. Is that correct?

SENATOR CARSON: No Senator, I believe you're mistaken. Because if you look on the first page and if you give me a couple of seconds I will look, there is language that speaks to negligence, just plain negligence and I'm sorry. Okay, here we go on line 25 it says another person at a recreational campground or camp park acting in a negligent manner, where the campground owner or employees were not involved.

SENATOR FELTES: But the conduct of the campground owner itself, no longer liable for negligence cause of actions, correct?

SENATOR CARSON: Yes, it has to be a gross negligent, a grossly negligent act.

SENATOR FELTES: And for example the cause of action of negligent hiring, if someone had, God forbid, a long history of assault, including on minors, and a campground owner hired them knowing that, and that person assaulted a minor as a campground employee, campground owner hired them, this would negate the ability to do a cause of action by that parent of that kid for negligent hiring, correct?

SENATOR CARSON: I would disagree because I believe that would be considered gross negligence.

SENATOR FELTES: Thank you.

(The Chair recognized Senator Hennessey.)

SENATOR HENNESSEY: Thank you, Mister President. I am rising in opposition to what I believe is now an Ought to Pass with Amendment.

On the amendment, I'd like to speak in opposition to the amendment, and here's why. I sit on the committee and there were a lot of people there from campgrounds. What we learned was that in fact the reason this is happening is because the major insurance company that covered all these campgrounds has decided no longer to cover any of the campgrounds. So all of a sudden, they have to pay higher premiums in order to get their insurance. So they, and many other insurance companies don't want to cover them because of the inherent risks. It's clear to me that if you, well first of all, I asked to people's consternation I think, I asked almost every single campground person who got up, those in fact the head of the whole campground association, I asked him how many times have people sued, how many times has anybody claimed anything from the insurance agency. Nobody could tell me, in fact everybody who did respond said never. And those who should know said I don't really know, like the Director of Campgrounds. I don't know, I mean my guess is that you would know if there had been major lawsuits against these campgrounds.

I am extremely concerned about the term gross negligence being the only thing that does not have immunity. So for example, in a legal analysis of it, if immunity encompasses gross negligence, the camp owners would be immune to anything short of criminal behavior. Or even as with I believe just said if an employee of the campground has been drinking and is then going out working and ends up hurting or killing a child, they would have immunity. What's next? I mean my business had to do with psychology and working with children. Should I have had complete immunity, if I were to do something negligent with children in my practice, should I have total immunity? I actually had to pay a fair amount of insurance in order to be sure that I could be covered and it was required.

So I don't think it's fair for campgrounds to be singled out as getting this immunity when there are plenty of other options, there are campgrounds that actually are certified and have insurance. So I think this is a very limited bill that I don't think is all that complicated. I think it's just a way for campground owners not to pay insurance. Thank you. So I suggest you vote against the amendment. Thank you.

(The Chair recognized Senator Lasky for a question of Senator Carson.)

SENATOR LASKY: Thank you, Senator Carson for taking my question. If a young person is a lifeguard at one of these campgrounds, he or she is distracted, and unfortunately a youngster drowns. As I understand it, this would absolve, that would not be gross negligence?

SENATOR CARSON: Senator, thank you for the question. I'm going to refer you to page 2 line 10, where they actually talk about and define willful disregard, which means conduct committed with an intentional or reckless disregard for the sanctity of the act or the others. And if you go down to beginning on line 12, RSA 216-I:17 where they actually talk about the immunity. In section 2 it says, the provisions of paragraph I will not apply if the campground owner including the employee officer or agent of a campground owner seeking immunity and then it goes down to say intentionally causes death or injury and b, actual willful disregard for the safety of another person. So I think this issue of willful disregard as it's been defined and applied in here would cover that situation that you're talking about.

SENATOR LASKY: I'm sorry, just to clarify, further question. So if in fact that person that was hired as a lifeguard had a particular history

of you know of turning away, of being derelict in his duties, his or her duties. Would that qualify as gross negligence then or would that just be something that it would be up to the courts to determine?

SENATOR CARSON: I think it could go either way. I believe that someone could get charged or a claim could be made of gross negligence because the campground owner knew that this person had this history of doing this and hired them and put them in a position of oversight over children at a pool. Or you could use the willful disregard aspect as well.

SENATOR LASKY: Thank you. Thank you, Mister President.

(The Chair recognized Senator Giuda.)

SENATOR GIUDA: Thank you, Mister President. For the record I must declare that I have a relative that own a campground, could affected by this legislation. I have no interest in that but I have a relative, but I will be participating. Couple of points I think of clarification. This is civil immunity, nothing in this exonerates anybody from criminal liability. And I would assert that if you were found criminally guilty of something that that would certainly represent a liability for the campground.

We're a state that, particularly in the North Country, depends on tourism, campgrounds, hiking, all manner of outdoor activities. We're also an increasingly litigious society and with the number of frivolous lawsuits provoked by over-zealous attorneys, for reasons that no normal person would file suit, are taking lawsuits against people with deep pockets, or against insurance companies with deep pockets. I would submit that the absence of any certain knowledge whether someone, lawsuits in this realm have occurred or not, does not constitute a reason not to provide protection from them. If we're interested in protecting the businesses that are providing a significant portion of the revenue and drawing the tourists from out of state into our state. We are here to set the business environment for the state, campgrounds are a big part of that, this bill if you can't get insurance you are not going to run a business, it's just that simple. This bill is a protective mechanism for good businesses. It is a balance between obviously gross negligence, there was a sand pit with a hole eight feet and you knew about it, you're grossly negligent, okay? If there was a rotten tree there for three years, you know about it, that's negligence. But I'm out walking on a trail and I trip over a branch, that's a normal hazard but you're going to get sued anyway in many cases and this protects from frivolous lawsuits. It does not exonerate anyone from criminal acts, it does not protect people from gross negligence, but it does establish a better business climate for a very significant portion of our state's economy. Thank you, Mister President.

(The Chair recognized Senator Hennessey for a question of Senator Carson.)

SENATOR HENNESSEY: I wondered if you remember, I think it was a question asked by the good Senator from District 7, in the committee meeting about how many other states actually provide this immunity.

SENATOR CARSON: Yes. One. Wisconsin.

SENATOR HENNESSEY: Yes, one. Just Wisconsin. Another question is do you remember any of the people that we talked to; did I miss anybody who did say that in fact they'd ever had a claim?

SENATOR CARSON: Thank you, Senator, yes. And I would refer the members to the hearing report. One campground owner talked about a woman who had her dog and she was out walking the dog and the leash

wrapped around her legs and she fell and she sued the campground owner. There was also another claim, and this one came from an insurance agent who talked about, there had been a \$1 million claim from someone who drowned in public waters, because they entered from a private area from a campground. So again, those are here in the committee report. So we did have testimony from campground owners and insurance agents that talked about the types of claims that were coming forward and why it is so difficult for them to get insurance. It's because of these little claims that keep coming forward and for many instances it's easier for the insurance company just to pay these claims, but it gets to the point where they can no longer afford to do that and they pull out of the insurance market and it makes it very difficult for these campground owners to get insurance.

I believe, and I'd have to go back and review the committee report but, I want to say that there used to be five companies that would do insurance for campground owners. I believe there's only two now and this is becoming a big problem for them. They keep getting sued over what I would call the inherent risks of going camping. You're out in nature, you know? You might come across a critter that lives in the woods who's not exactly friendly to humans. You're out walking, there's rocks, there's tree limbs, there's all kinds of things out there and that changes with just about every kind of weather situation. I just think that we need to seriously look at this and as the good Senator from District 2 said, it doesn't absolve anybody from a criminal act. If someone has done something illegal, they're still responsible for that. But what it does do is it offers our campground owners a measure of protection against frivolous lawsuits.

SENATOR HENNESSEY: So you do understand the difference between, negligent and inherent risks? Because you're comparing, you know walking out in the woods. So you're okay with giving immunity to campground owners who've been negligent?

SENATOR CARSON: Senator, again it depends on what we're talking about. If we're talking about a trail, and it might not even be a trail, that the campground owner has created and somebody falls, that is not the problem, that is not, should not be on the campground owner. But if they've built the trail and they have a small bridge over that trail, and they haven't maintained that bridge and you're on it and it collapses, in my opinion that's gross negligence. They have built something and they did not maintain it and because of that someone has gotten hurt. And again, remember Senator, there's also the definition of willful disregard as well as in here.

So I think that the addition of the word gross negligence is appropriate. I think it provides protections to the campground owners from really and quite frankly for the campers as well. Because again as I said, you're going into a facility that's been built, they haven't maintained it. You've got live electrical wires hanging from the ceiling, and they know that it's there and they haven't repaired it. They will be responsible for something like that as opposed to someone walking out and there's a rock and they stepped on a rock and their ankle twisted and they fell, and now they're suing the campground owner because the rock was there. I mean at some point we just have to say, we need to differentiate between these two and I think when we talk about gross negligence that's what we're doing.

SENATOR HENNESSEY: I respectfully disagree.

SENATOR CARSON: Thank you very much, Senator.

(The Chair recognized Senator Soucy for a question of Senator Carson.)

SENATOR SOUCY: Senator, are you aware of any other class of New Hampshire business that's immune from liability for gross negligence?

SENATOR CARSON: I would have to say, as far as I know perhaps the ski areas, and I'd have to go ahead and I would have to re-read that statute. Because one of the things that I thought about doing was taking campgrounds and putting it into the immunity that we have for ski whatever they are, ski grounds, we'll say ski grounds. Ski areas. That that would work but it just didn't seem to mesh well together.

SENATOR SOUCY: It would seem to me that we are frequently talking about trying to create an equal playing field for business, and if we create this immunity for campgrounds, we're putting hotels and inns at a complete disadvantage. Would you believe?

SENATOR CARSON: Senator, I would respectfully disagree with you on that. I think someone who's camping and I learned about something that's called glamping, where it's glamorous camping where I guess it's kind of like a hotel room that's moved outside in a tent. They're very, very different. I mean one is in a physical structure, a building that's inspected. The other is you deciding one weekend I'm going camping, you've got your tent, you pack up all of your stuff in your car and you go off to go camping. So I think we're talking about apples and oranges.

SENATOR SOUCY: Thank you.

(The Chair recognized Senator Feltes.)

SENATOR FELTES: Thank you very much, Mister President. Mister President, I suppose I need to declare a conflict because I camp, I don't glamp, but I do go camping, I enjoy it and I want to go camping this summer including with my now seven month old daughter, and I have an interest in if I'm injured, or if she is injured, being able to have recourse in the courts based on negligence. That's what this is about. Hear a lot about frivolous lawsuits. This has nothing to do with frivolous lawsuits. The courts deal with that already. A lawsuit's going to be filed, a lawsuit's going to be filed. Getting rid of causes of action just impairs people's rights, that's it. That's what it does. And I'd read Part I Article 14 of the New Hampshire Constitution. Every subject of this state is entitled to a certain remedy by having recourse through laws for all injuries, he may receive in his person, property or character to obtain right and justice freely without being obliged to purchase it completely and without denial promptly and without delay, comfortably according to laws. All injuries, whether they're consequence of negligent hiring, negligent supervision, negligence per se, which means violating a statute. Campground owners can get away with violating a statute and injuring people? No liability there? Quite frankly I think this is one of the worst bills that has been filed this session. I honestly believe that we are going down a bad path with this and we should vote this down. Thank you, Mister President.

(The Chair recognized Senator Carson.)

SENATOR CARSON: Thank you, Mister President. My good eloquent friend from District 15 makes a point about the constitution. But I'd like to remind all of you, ski areas have immunity. So we already have a class of people and that has been on the books for many years. Mister President, this bill protects campground owners from lawsuits. There are inherent dangers when you go camping, and people are usually aware of that. But people are filing lawsuits and quite frankly we heard from

number of campground owners in Senate District 1, our good friend Senator Woodburn. They have a lot of campground owners and these folks are going to go out of business, because they can't afford the insurance anymore because of the types of lawsuits that are being filed. All they're asking is for some protection against frivolous lawsuits. That's all they're asking for. Thank you, Mister President.

The question is on the adoption of the Floor Amendment.

A roll call was requested by Senator Avard, seconded by Senator Giuda.

The following Senators voted Yes: Woodburn, Giuda, Bradley, Watters, Gray, French, Ward, Sanborn, Kahn, Daniels, Avard, Carson, Reagan, Birdsell, Fuller Clark, Gannon, Innis, Morse.

The following Senators voted No: Hennessey, Lasky, Feltes, Cavanaugh, Soucy, D'Allesandro.

Roll Call, Yeas: 18 - Nays: 6. Adopted.

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to Third Reading.

SB 593-FN, relative to the penalty for capital murder.

Ought to Pass, Vote 3-1. Senator Lasky for the committee.

SENATOR LASKY: Thank you, Mister President. I move Senate Bill 593-FN Ought to Pass. This bill changes the penalty for capital murder to life imprisonment without the possibility for parole, subsequently abolishing the death penalty here in New Hampshire. We here of course in this body are all extremely proud of our state. To live here is a blessing, and because of its amazing natural landscape, limitless opportunities, and largely for its deserved reputation of a population of fiercely independent and decent people, with a long tradition of respect for human rights.

This is an issue that is not new to most of us and certainly not new to this legislature. Once again, last week, the Senate Judiciary Committee held a hearing for Senate Bill 593 which would repeal the death penalty. As expected, the room was filled. During the hours of discussion, most of the testimony heard was in favor of repeal of the death penalty. People from across the state including former law enforcement officers, clergy of all faiths, and loved ones of murder victims all gave their thoughts and deep feelings. There was also testimony from one of many who have previously been wrongly convicted. One thing became evident; it's time for New Hampshire to join our five other New England states and every other civilized democracy in the world and outlaw this barbaric practice.

In reality there's no proof that this form of punishment acts as the deterrent that proponents claim it is. In fact the committee heard testimony that when examining similar neighboring states where one state has the death penalty and one does not, there is no significant difference in the murder rate these states experience. It's been shown that the death penalty does not protect public safety or work as a deterrent for future murders.

While our justice system I believe is the best in the world, it's certainly not infallible. People make mistakes. Since 1989, 354 people have been exonerated, and twenty of those were on death row, using DNA evidence, and still more were found to be innocent after they had already been put to death. How then can we, a civilized society, be comfortable making irreversible life and death decisions that are potentially wrong? State sponsored execution is not justice. We stoop to the level of the killer and it changes nothing.

The extinguishing of another life, no matter how repulsive or unworthy we deem them to be, does not ease the pain anyone feels over losing a loved one. All any grieving person, of course wants is their loved one back. Unfortunately we all know nothing can make that happen. Vengeance, revenge, is a raw human emotion. But in the end is it the most effective way to deal with violence in our society? We want justice, and of course we want punishment. I believe and so many others believe a lifetime in prison without parole means just that. There has not been one single case in our state where a person receiving that life sentence has ever been released.

Mister President, let our legacy in this chamber today be one of enlightenment, not death and darkness. Now is the time for New Hampshire to finally do the right thing by abolishing the death penalty. Now is the time for all of us to come together to support the Judiciary Committee's Ought to Pass recommendation for Senate Bill 593. Thank you, Mister President. (The Chair recognized Senator Gannon.)

SENATOR GANNON: Top of the afternoon to you, Mister President. I rise on behalf of the Chiefs of Police in New Hampshire, on behalf of crime victims in opposing the repeal of the death penalty. Ninety-five percent of families in the United States who have lost a loved one to a death penalty eligible murderer, support the death penalty. Is there a problem with the death penalty in New Hampshire? I think that's what we should be asking. Under New Hampshire law the death penalty can be sought in cases involving the murder of a police officer, a judge, murder for hire, and/or murder connected to a drug deal, rape, kidnapping, and home invasion.

New Hampshire hasn't executed anyone since 1939. Nor sentenced anyone to death until Michael Addison killed Officer Michael Briggs in the line of duty, leaving behind a widow and two young boys. Clearly New Hampshire is very sparing in the use of the death penalty and its use has been very judicious. Ninety-two percent of all criminologists agree that the death penalty may deter some murders. I believe that having the death penalty on the books is a deterrent. Maybe one killer would be deterred and think twice before he or she commits a capital murder in any form. I believe that heinous killers have forfeited their lives and this calls for their death and the death penalty. Thank you, Mister President.

(The Chair recognized Senator Carson.)

SENATOR CARSON: Thank you, Mister President. I rise to speak against the Ought to Pass motion. My good friend from Senate District 23 took a lot of what I was going to say and I won't repeat it here. But I'd like to remind everyone of something. That when someone has been given life in prison as opposed to the death penalty, they get to see their families. Their children can come and visit them, they can watch their children grow, albeit from afar. The person that's in the grave doesn't have that. They've been taken away from their families. They will never get to see their children grow up. They will never see their parents again, they will never, ever enjoy what we all enjoy here today. It is fitting punishment to be considered for the death penalty and my good friend from District 23 is right. We haven't used it since 1939. We are very, very, very careful under the circumstances under which it is used. We just don't go executing people left and right. We are very careful.

Now the testimony that we had, we did have people that came in and talked about being wrongly accused and being on death row. But that

wasn't New Hampshire. We don't do that here. We are very careful, and there have been instances where police officers have been murdered, and courses of sexual assault and rape, where people have not been given the death penalty because it wasn't appropriate. Our judicial system is very, very, very careful in using this. And quite frankly I was a little astounded at some of the testimony that basically accused our law enforcement of being corrupt and our judicial system being corrupt. That is not the case. This is New Hampshire and we don't operate that way. Thank you, Mister President.

(The Chair recognized Senator D'Allesandro.)

SENATOR D'ALLESANDRO: Thank you, Mister President. Mister President, I rise against the motion of Ought to Pass. I came to this legislature in 1973. In 1973 we debated the death penalty. I voted for the death penalty in 1973 because it was a very narrow death penalty and that remains today. It's a very narrow death penalty. We've only used it once since that time and it was in the Addison case. Your vote today would be a vote of conscience, I understand that, and everyone can defend their vote because of their feelings and how they've looked into it. Let me tell you why my vote is important to me and to my conscience and to where I'm going.

The murder that everybody's alluded to was in my district. Officer Briggs was in my district. Officer Briggs was a great guy. People loved Officer Briggs. When I see Officer Briggs' family, I see a disjointed family. Why is it disjointed? Because their father's gone. How'd the father go? He was killed. He was shot defending us. Now I talk about public service all the time. Police officers, firemen they defend us. I told you one time that I'm here because firemen risked their lives to save me from a burning home. Anyone who would take the life of another individual, police officer, firemen in the line of duty, deserves a punishment. We've said over and over again, is the death penalty something that's effective as a deterrent. Maybe it is, maybe it isn't.

I don't know if any of you have ready Caryl Chessman's book, *Catch Me Before I Kill More*. He was killed, he was given the death penalty in Utah. Some of you may remember Richard Nixon was in Venezuela at the time as Vice President of the country and they postponed the election. They postponed the execution because of the political ramifications that were taking place in South America. But the fact of the matter is this; Michael Briggs' children will never grow up with their father. I had Mrs. Briggs, his mother in class. Mrs. Briggs will never mature with her son. Now those of us that have children understand that. What in God's world would it be like to lose your child, or to lose your parent because of a heinous crime?

Officer Doherty, again shot seven times in my district. He got a life sentence. You know what that life sentence is? His body will never be the same. It'll never be the same. He took seven bullets. His body will never be the same. That man is going to suffer for the rest of his life defending us. Why? Because he took seven bullets on the West Side of Manchester, in my district. Officer Doherty, what's his life going to be like? What's it like for the rest of your life when your bladder begins to fail? When your internal organs begin to fail? Because of the fact that you took seven bullets.

We're all Christians, we all have strong beliefs, and as I said, this is all a matter of conscience. But indeed, if you have witnessed something like I have witnessed in my lifetime in my district I reaffirm my sentiment. And I've talked to many people about those who have been executed inappropriately. But I say this is not Mississippi, this is not Alabama, this is

not the prejudiced situation that existed in the south for years and years and continues today. We're good thinking people. We believe strongly in justice, we believe strongly that justice should be administered properly, and evenly. As a result of that Mister President, I will support the death penalty and I will be in opposition to this piece of legislation.

And I'm not asking anyone to make a conscious decision that's opposed to what their gut beliefs are. What I'm asking each and every one of you to do is think about it. Put yourself in the position of losing someone via a murder or a criminal act, and how would you feel? How would you feel? I went to the Briggs wake, I saw the line, we, some of us in this room marched down Elm Street and went to Fisher Cat Stadium and sat there for the funeral, and me, the city of Manchester, you know, sort of wept in unison for the fact that we lost this wonderful young man. So I ask my colleagues, do what you think is the right thing to do. You know where I stand. Thank you, Mister President.

(The Chair recognized Senator Sanborn.)

SENATOR SANBORN: Thank you. Everyone who has spoken so far, thank you for your very thought provoking comments on this and we all struggle with this but there are things that I think we need to consider that I haven't heard in the discussions with others. And I come from discussion from two different perspectives. The first one is who will protect those that protect us? What do we say to the men and women in blue, what do we say to the correction officers who we have charged, have to stand and protect us, from some of the most violent, heinous people on earth, who frankly, if this bill were to pass would have nothing to lose? What's to stop someone that's doing life from taking a shank and going after a corrections officer for it? What stops them from that is the potential for a higher penalty. The potential that if they actually take someone's life like a correction officers' life, there is a higher form of penalty that they would be subject to.

I think it's very important for us to recognize we have charged corrections officers, police officers with a responsibility to protect us from these bad people. And don't we have a responsibility to protect them in return. The other thing that I think about a lot when I think about the death penalty is a young family in Mont Vernon back in 2009, when a mother and her eleven-year old daughter home alone and their house got broken into. The mother hacked to death with a machete, the daughter hacked up and left for dead. Innocent woman, innocent child. I'm not sure this is something we should be condoning. Now in this case in the body, those of you who were here I think in 2011, we actually as a result of that murder made a minor expansion of the death penalty. Where if you hurt an innocent child or a woman with malice and intent, there should be an ultimate penalty for that.

Now at the same time, I've had a number of people call me up with a religious exemption, and try to say Andy, if you're a good Christian how can you support killing someone? And it's something that I wrestle with. But at the same token, we know both in the New Testament and the Old Testament and for the record our good friend from District number 12, he's not there right this second, speaks of the bible much more than I do, but it specifically talks in the bible about government's right to bear the sword. To reconcile those who have done heinous crimes like murder or rape. So for someone like me, I hear and see this ability and recognition that there needs to be some reckoning for bad things. But at

the same token probably the most important thing to me is I'm someone, who most of you know, don't always trust my government. I am concerned about too much government power. Which is why in the state of New Hampshire, while we may pass a law and have a death penalty on the books, our government cannot put someone to death in this state. It is not the decision of our government to determine who can live and who can die. That's something that is reserved for the people of the state. That only the citizens of the state have that ability to determine death. And I believe that provides us a balance that our current death penalty is narrow, it protects those men and women in blue and correctional officers that we have charged to protect us. It recognizes if you're a woman or innocent child that you have some protections and that it's a decision made by the people of this state. So I'd recommend to the body that we do not pass a repeal of the death penalty because it's something we should consider. Thank you.

(The Chair recognized Senator Fuller Clark.)

SENATOR FULLER CLARK: Thank you very much, Mister President. I rise in support of the death penalty, and I want to talk about one of our elected officials, and that is Representative Renny Cushing, who for years has been advocating for abolishing the death penalty in this state. And many of you may know, but not all of you know, that his father was murdered by the next door neighbor when Renny was a young man. So we talk about this issue of the victim and how the victim deserves to have retribution through the death penalty, and yet someone in our very own legislative family is arguing just the opposite. And I would side with him and say that life imprisonment is the way that we should deal with these heinous crimes.

There is another concern that we have in the way that our statutes currently exist and that we have placed the value of certain types of citizens above other types of citizens when we say that for instance our police officers, if someone is found guilty of murdering a police officer that they should be put to death. But what about the family who has lost a family member, but they don't fit into that hierarchy, but their emotional pain and their emotional loss is the same. We should be treating all of those crimes where murder has occurred in the same way, and that again is with life imprisonment.

We are the only Western country in the world that continues to keep in place the death penalty. It's not the value that I want to pass on to the next generation, to my children, to your children, to following generations. That the way that we deal with a heinous crime goes all the way back to the issue of an eye for an eye, a tooth for a tooth. But we don't accomplish anything in terms of moving our society forward into a more humane and forgiving entity if we continue to keep the death penalty in place, and say that the way that we should deal when a murder is committed, that we should allow the people of our country to respond by murdering another individual.

And while we acknowledge here in New Hampshire that we have used the death penalty incredibly sparsely, we do know that in other states across the country that people who have been on death row have been exonerated and the best way to ensure, even though we have a lot of trust in our state, we aren't infallible, and in order to ensure that that opportunity for mistake never occurs again, we can put in place life imprisonment. That means that we have the opportunity to reverse that decision if later on evidence should come forward that the individual is

actually not guilty. If you put someone to death, you can't reverse that decision. So I don't say that to say that we would make that mistake here in New Hampshire, but again, you know, our system, our people are no less fallible than what we've seen across this country.

So I would ask you to stand up and support the concept of life imprisonment. Make sure that we have the right boundaries in place for that, that we treat all individuals who are accused and found guilty of murder the same, we don't set the loss of one individual's life and the value of that life against the loss of another individual and the value of that life. And so thank you very much, and I would urge you to move forward in supporting the abolishment of the death penalty for New Hampshire.

(The Chair recognized Senator Woodburn.)

SENATOR WOODBURN: Thank you, Mister President. I'm very proud of this Senate, every time we debate this, the seriousness, the soberness, the concern and respect for each other this Senate has shown on this issue. I think it's something we can all be very proud. Each of us I'm sure has gone through a torturous path of coming to a decision on this and I just wanted to share mine.

When I first came, I didn't have a clear position or understanding of this and I felt obligated to go to the state prison in Berlin and talk to the correctional officers because they are the ones who put their lives on the line as well as our police officers and law enforcement officials. And having went up that evening before the vote, I did that night tour and having a conversation with one of COs who opposed, who supported, the death penalty. But the conclusion he said by the way could you help me out, I saved, I interrupted a suicide, I cut down an inmate who was trying to hang himself and I was supposed to get a pin or a badge or some kind of recognition and it hasn't come yet. And I just couldn't shake that. And as I drove home that night, I couldn't shake that we would give a pin, or give a medal, or some kind of a recognition to someone who saved a life yet the very next day he might take a person down and fill his or her veins full of poison and watch them die. And I've always been concerned if we're going to do this, we're probably not going to do it in Concord, we're going to do it in Berlin. We're not going to do this heinous state sponsored murder in Concord, we'll do it in a far off place, so it'll be my constituent that has to administer that.

So as I thought about that, I was introduced to a case in 1984, Joel Bill Caulk who was a thirty five year old inmate in the state prison here in Concord. And he had multiple convictions for rape, known as the Want Ad Rapist, who classified ads, people responded he would rape them. And he decided that he didn't want to live and he stopped eating. He fasted. And as he continued to do this and deteriorated, the state of New Hampshire stepped in and said you cannot do this. We own your body. You cannot stop eating. So they hooked him up and gave him nourishment, brought him back to life. And in the state of New Hampshire, in my view, that's how we responded to that situation. It left me with the feeling that we are essentially responsible, we're wardens of their bodies and we have a moral obligation and a personal obligation to be not in the business of killing people, not in the business of ending life in this circumstance and that we are far better with all the sympathy for anyone who's been harmed by anyone and particularly those heinous crimes that were discussed here today. Justice means behaving in a just and decent way and I think we have no choice in a society like ours to move in the direction of other places and end the death penalty. Thank you, Mister President.

(The Chair recognized Senator Hennessey.)

SENATOR HENNESSEY: Thank you, Mister President. And I actually have now heard from others, much of what I wanted to say, so I thank you. When listening to the testimony in the committee, I was incredibly moved by what the large group had to say. And many of them, as has been said, were from religious groups, retired policemen, and others who I expected might be in favor of a death penalty but were not. I think it's extremely risky as a society for us to, and as a government, for us to make ethical decisions of this sort we are assuming how other families feel, we are assuming, you're assuming that I as a female feel like there should be a death penalty for somebody who kills me or my child. How are we putting values on these lives?

I'm devastated for the Briggs family. I'm devastated for anyone who meets with this kind of crime. More than one person dies, you know the families have different lives, I'm sure Mister Briggs' wife has died in some way as well. But we didn't hear one person say that taking the life of the person who killed them made them whole again. There is no way to make them whole again. In fact we heard from the representative whose brother-in-law I believe, and father were murdered, that it does not do that. That it does not make you whole, that instead you are often haunted by the repercussions of the consequences of putting somebody to death.

We teach our children, at least I hope we teach our children, that it doesn't make it better if somebody hits you to hit them back. We're just, if you hit your child, and I'm sure we differ on this too, but if you hit your child, you're teaching your child to hit. This is an extremely emotional and very personal issue and I don't fault anyone for voting the way they're voting but I also don't feel like we are in any position to decide how families become whole again, or whether they become whole again. And not only that, I don't think we're in any position to decide which is worse, being put to death or having a lifetime in prison without parole. The people who have lifetime in prison without parole are likely the ones who are trying to commit suicide because they'd rather die and not have to put up with this anymore, their punishment.

And we haven't even talk about the costs because I'm not even sure that they're completely relevant but the fact is it costs our government significantly more to have somebody on death row than it does to have them committed to life without parole. So I hope we can avoid value judgements about how others of us make these decisions and be careful not to assign certain values to one life over another. Because in my mind each one of our lives is exactly equal. Thank you.

(The Chair recognized Senator Carson.)

SENATOR CARSON: Thank you, Mister President. I'd like to applaud this body for a great debate that we've had today on the death penalty. This is not an easy issue for many of us. It is a vote of conscience and how you believe and I don't believe anybody is going to change anybody's mind here today. But I do believe in having a full vetting on this issue because it is going to change, it is going to change New Hampshire's law. And I'd like to thank the good Senator from District 21 with her discussion on Representative Cushing. I have respect for Representative Cushing because he's forgiven, and quite frankly Mister President, I don't think I could. And I don't know if anybody else in here could do the same thing if one of your loved ones was a victim of a heinous crime

like his father was. But Mister President, this is not about forgiveness, this is about justice. And we need to think about justice when we talk about the death penalty.

I believe there had been a previous question about whether or not even our death penalty was constitutional, and I received a memorandum from our attorney general outlining the death penalty and he says that in the *State v. Addison* in 2013 our Supreme Court determined that the death penalty did not violate our constitution.

I'd also like to just have you think about something for a minute. Because we do for the first time in many years have an individual on death row. This person. During his trial, his attorney said yes, he killed Officer Briggs, there's no doubt about it. None whatsoever. And this person was given the death penalty, but by your vote today to repeal the death penalty, you are basically wiping that conviction out and you're converting the death penalty sentence to life in prison. How is that going to affect the Briggs family? I've spoken with Mrs. Briggs, and she struggles every day. It is a very difficult issue for her and she deserves our support and our respect for what she's going through.

But, and again Mister President, I'm referring to the memorandum that I received from the attorney general, and the question was can the General Court repeal the death penalty without disturbing death sentences that have already been imposed? And the short answer is probably not. He goes on to say that with the vote to repeal the death penalty it's really sent a signal that, and I would like to read, that society has determined the death penalty no longer comports with contemporary standards of decency, is no longer necessary and no longer serves any legitimate penological purpose i.e. that it constitutes cruel and unusual punishment and therefore that a complete and immediate prohibition against executions is required even if the repeal was prospective. So by voting today against the death penalty you are voting to commute the sentence of Michael Addison from the death penalty to life in prison. And I think that's something that everyone needs to consider very seriously. Thank you very much, Mister President.

(The Chair recognized Senator Ward.)

SENATOR WARD: I just heard from my good Senator from 14. She mentioned the word forgiven. I feel compelled now to tell you I lost my father when I was eight. He was shot down. My mother was left with four kids, a fifth one on the way, and we talked about it many times afterwards, and she said God will take care of us. He will punish, I forgive the person. That's how I grew up. I never had any strong feelings about this person who took my father away from me. And listening to your comment here about the family was disrupted. I think my mother did very well. She raised five kids and I don't believe that I am terribly, I never felt myself being disadvantaged. If anything was, I grew up very fast and I'm probably a little bit more bossy than I need to be sometimes. But anyhow, this struck me, you can forgive somebody, she had, my mother had, an incredible faith and she trusted that whatever happened to us, she was in God's hands and he will take care of us and her. So I just wanted to thank you for mentioning the word forgiven.

(The Chair recognized Senator Daniels for a question of Senator Carson.)

SENATOR DANIELS: Thank you, Senator. Just ask a question regarding clarification. You made a statement that Michael Addison would be subject to life imprisonment, but yet I'm reading in here that section 1 of the

act applies to persons convicted of capital murder on or after the effective date of this act which is January 1, 2019. So could you please explain how the death penalty would not apply to him but life imprisonment would?

SENATOR CARSON: Thank you. I'll try, because again I have the memo and I believe the last time we talked about the death penalty this was an issue that came up. It has to do, and I can't remember what the term was, equal protection, because now you have passed a law getting rid of the death penalty but now you have a person who's sitting on death row and you're going to treat that person differently from a law that's already on the books. And that creates a problem. And that is what the attorney general talked about in here. There have been two states, there are only two legislatures in two states, Connecticut and New Mexico, have expressly stated that in their complete repeals of the death penalties were prospective, meaning going forward. So anybody that was on death row they're going to stay there. And he says however the Connecticut Supreme Court has done so, holding that the Connecticut Constitution no longer permits the execution of individuals sentenced to death for crimes committed prior to the enactment of the prospective repeal. And he goes on to say that the way that it was framed to the court was whether the state's prospective repeal of its capital felony statutes rendered its continued imposition of the death penalty unconstitutionally excessive and disproportionate punishment and then he talks about the five different criteria that they looked at. So basically again, I'm repeating what I had said earlier that it's very difficult when you create a law going forward but you have someone here who was convicted under the old law which is now wiped out. So they're going to be, Mister Addison is going to be able to go to court and argue due process and unequal treatment and he will in all probability the court will convert his sentence to life in prison.

SENATOR DANIELS: Thank you for the clarification.

(The Chair recognized Senator Avard.)

SENATOR AVARD: Thank you, Mister President. This is the second time we filed this bill and I know that this is a matter of conscience. And I don't think we're going to change anybody's mind today, I'm sure of it. I'm convinced that we're doing the right thing. In recent history 4,000 cases of DNA were tampered with in our neighboring state. If any one of those were used in a death penalty, we'd have a big mistake on our hands. Can anyone in this room assure me 100 percent that that cannot happen here in New Hampshire, ever?

I looked at four exonerees and I interviewed them on my TV show. I looked at them in the eye and they were telling me about their cases, and being on death row for eleven years. The prosecuting attorney withheld exculpatory evidence. Can that happen in New Hampshire? Can anybody convince me that 100 percent of the times, it will never happen?

There are testimonies that I've heard of false confessions being pushed on witnesses. Well, you're going to get the death penalty if you don't confess to this or turn this person in. Those were used and false confessions produced a false answer and that absolutely it happened in this one case where DNA exonerated the person.

Human nature. We're dealing with human nature. We make mistakes, we make bad choices. The cost just in one case alone, if this Addison person were put in prison for the rest of his life, it'd be \$1.3 million to the taxpayers. Now because of appeals it could potentially be 5 to \$10 million, anywhere in between there. That in itself is an injustice to the taxpayers.

Some people don't believe in the death penalty because of religious reasons. That goes to the core of your belief. Some people don't have religious faith, but they believe that it's just wrong and that the government doesn't have the right to do this, to take a life and it's a slippery slope. I respect that as well. I, for a long time, since I was a child actually, since I was fifteen, believed in the death penalty. But I also believe that if we execute somebody, wrongfully, their blood is on our hands. And I don't think I want anybody's blood on my hands, when I have to meet my maker whom I believe in. I respect everybody's ability to disagree and I wanted to be brief. Just vote your conscience. Thank you, Mister President.

(The Chair recognized Senator Carson for a question of Senator Avard.)

SENATOR CARSON: Thank you Senator, for taking my question. You talked about being assured that mistakes were not going to be made. So I'm going to ask you a question; can you assure those of us that do not support the repeal of the death penalty that someone who should have gotten the death penalty but doesn't they get life in prison will not kill somebody in prison? Can you assure me that this person is not going to be erroneously let go? Because we know that prisons around the country have made mistakes, and they have let murderers, people who should not be out in the general public, they've let them go because they've made a mistake. Can you assure me that that will never happen?

SENATOR AVARD: No.

SENATOR CARSON: Thank you very much.

The question is on the adoption of the motion of Ought to Pass.

A roll call was requested by Senator Avard, seconded by Senator Carson.

The following Senators voted Yes: Woodburn, Giuda, Watters, Hennessey, French, Ward, Kahn, Daniels, Avard, Lasky, Feltes, Reagan, Soucy, Fuller Clark.

The following Senators voted No: Bradley, Gray, Sanborn, Carson, Cavanaugh, Birdsell, D'Allesandro, Gannon, Innis, Morse.

Roll Call, Yeas: 14 - Nays: 10. Adopted, bill ordered to Third Reading.

Recess. Out of recess.

President Morse Ordered SB 593-FN to Third Reading.

SPECIAL ORDER

Without objection, Senator Bradley moved to special order SB 318 to the next session. Adopted.

COMMERCE

SB 423, relative to noncompete clauses for low-wage employees.

Floor Amendment #2018-1018s, Pending Motion. Senator Watters for the Recommendation.

Sen. Watters, Dist 4

March 7, 2018

2018-1018s

04/06

Floor Amendment to SB 423

Amend the bill by replacing section 1 with the following:

1 New Section; Protective Legislation; Noncompete Agreements for Low-Wage Employees. Amend RSA 275 by inserting after section 70 the following new section:

275:70-a Noncompete Agreements for Low-Wage Employees.

I. In this section:

(a) "Employer" shall have the same meaning as in RSA 279:1, X. "Employer" shall not include employees of governmental or quasi-governmental bodies.

(b) "Low-wage employee" means an employee who earns:

(1) An hourly rate equal to 200 percent of the federal minimum wage; or

(2) An hourly rate equal to 200 percent of the tipped minimum wage pursuant to RSA 279:21.

(c) "Noncompete agreement" means an agreement between an employer and a low-wage employee that restricts such low-wage employee from performing:

(1) Work for another employer for a specified period of time;

(2) Work in a specified geographical area; or

(3) Work for another employer that is similar to such low-wage employee's work for the employer who is a party to the agreement; and that is entered into after the effective date of this section.

II.(a) No employer shall require a low-wage employee to enter into a noncompete agreement.

(b) A noncompete agreement entered into between an employer and a low-wage employee shall be void and unenforceable.

2018-1018s

AMENDED ANALYSIS

This bill prohibits an employer from requiring a low-wage employee to enter into a noncompete agreement.

Senator Watters withdrew the Floor Amendment.

Senator Watters offered a Floor Amendment.

Sen. Watters, Dist 4

March 8, 2018

2018-1041s

04/03

Floor Amendment to SB 423

Amend the bill by replacing section 1 with the following:

1 New Section; Protective Legislation; Noncompete Agreements for Low-Wage Employees. Amend RSA 275 by inserting after section 70 the following new section:

275:70-a Noncompete Agreements for Low-Wage Employees.

I. In this section:

(a) "Employer" shall have the same meaning as in RSA 279:1, X. "Employer" shall not include employees of governmental or quasi-governmental bodies.

(b) "Low-wage employee" means an employee who earns:

(1) An hourly rate less than or equal to 200 percent of the federal minimum wage; or

(2) An hourly rate less than or equal to 200 percent of the tipped minimum wage pursuant to RSA 279:21.

(c) "Noncompete agreement" means an agreement between an employer and a low-wage employee that restricts such low-wage employee from performing:

(1) Work for another employer for a specified period of time;

(2) Work in a specified geographical area; or

(3) Work for another employer that is similar to such low-wage employee's work for the employer who is a party to the agreement; and that is entered into after the effective date of this section.

II.(a) No employer shall require a low-wage employee to enter into a noncompete agreement.

(b) A noncompete agreement entered into between an employer and a low-wage employee shall be void and unenforceable.

2018-1041s

AMENDED ANALYSIS

This bill prohibits an employer from requiring a low-wage employee to enter into a noncompete agreement.

SENATOR WATTERS: Thank you, Mister President, and colleagues. I would like to take us all back a week ago to one of the happiest moments in recent Senate history, that I was speechless. I know it was appreciated but apparently what I had said before then and overturned the ITL motion was worth hearing and we came to the Floor Amendment at that time which had been incorrectly drawn. As a reminder, the Floor Amendment at the suggestion of members of the Commerce Committee, instead of pegging this at \$15 an hour said let's do twice the tipped minimum wage which had not been included in the original bill which should have been and then say go 200 percent of the minimum wage so it's actually at 14.50 here. And you know as we discussed last time, we have approved several non-compete bills previously for people at the higher income levels and I noted that for people, who are just plain working people, who really do have a, just a fundamental constitutional right to their free labor, and to pursue the professions that they wish, that this bill, this amendment, this bill would say that yes, you are able to move from one sandwich shop or another or one job to another without being withheld the right to employment in the geographical area or in the same sandwich making operation or otherwise. I think it's an issue of fairness, I think it's an issue of free labor, conservative principles and being sure that people can get a job, support their family without being I think rather gratuitously prevented from doing so by non-compete agreements. Thank you, Mister President.

(The Chair recognized Senator Reagan for a question of Senator Watters.)

SENATOR REAGAN: I'm curious as to how many instances you found of this occurring?

SENATOR WATTERS: Thank you for your question, Senator. We know the Jimmy John's chain which is in this state, was the one which has had these non-compete agreements and was prosecuted for it in the state of New Hampshire. I have also heard that particularly in the title loan industry in our state that there are similar non-competes for minimum wage people. I think one of the issues of answering your question fully, is that I do think there are people feel intimidated or may not be familiar with what they are signing until they face the consequences.

(The Chair recognized Senator Innis for a question of Senator Watters.)

SENATOR INNIS: Senator, you mentioned that we have non-compete for high wage employees and this would present a non-compete for low wage employees. What about the employees in the middle? Should we take care of them in the same way and if so why and if not, why not?

SENATOR WATTERS: Thank you for your question, Senator. And we did discuss this in the committee hearing and you know it seems to me this is

a larger issue and I personally would support non-competes throughout and I told the Senator from District 9, you know why I supported his bill previously, because I do think it's a bad idea. I think the argument is made pretty clearly for these low wage earners; that they do not have trade secrets, not necessarily client lists and so forth. But I do understand the arguments were made about the trade secrets, about who spent a couple million dollars to set up a lab for somebody, and they're going to go across town to another university. You know I get those arguments, so I think that's a larger discussion. I do think that this is a step we can take now and I really would be supportive of working on a bill next year to address the other issues.

SENATOR INNIS: Thank you for taking my question. Thank you, Mister President.

The question is on the adoption of the Floor Amendment.

A roll call was requested by Senator Watters, seconded by Senator Woodburn.

The following Senators voted Yes: Woodburn, Watters, Hennessey, Kahn, Lasky, Feltes, Cavanaugh, Soucy, D'Allesandro, Fuller Clark.

The following Senators voted No: Giuda, Bradley, Gray, French, Ward, Sanborn, Daniels, Avard, Carson, Reagan, Birdsell, Gannon, Innis, Morse.

Roll Call, Yeas: 10 - Nays: 14. Failed.

The question is on the adoption of the motion of Ought to Pass.

A roll call was requested by Senator Woodburn, seconded by Senator Sanborn.

The following Senators voted Yes: Woodburn, Watters, Hennessey, Kahn, Lasky, Feltes, Cavanaugh, Soucy, D'Allesandro, Fuller Clark.

The following Senators voted No: Giuda, Bradley, Gray, French, Ward, Sanborn, Daniels, Avard, Carson, Reagan, Birdsell, Gannon, Innis, Morse.

Roll Call, Yeas: 10 - Nays: 14. Failed.

Senator Sanborn moved Inexpedient to Legislate.

A roll call was requested by Senator Woodburn, seconded by Senator Sanborn.

The following Senators voted Yes: Giuda, Bradley, Gray, French, Ward, Sanborn, Daniels, Avard, Carson, Reagan, Birdsell, Gannon, Innis, Morse.

The following Senators voted No: Woodburn, Watters, Hennessey, Kahn, Lasky, Feltes, Cavanaugh, Soucy, D'Allesandro, Fuller Clark.

Roll Call, Yeas: 14 - Nays: 10. Adopted.

SB 553-FN, relative to mental health parity for workers' compensation. Interim Study, Vote 4-0. Senator Innis for the committee.

SENATOR INNIS: Thank you, Mister President. Senate Bill 553 establishes a workers' compensation claims for police officers, fire fighters and emergency medical providers for PTSD disorders and certain mental health conditions. Although we want to protect our first responders from any PTSD disorders derived from their jobs, this bill creates a presumption of liability and would add additional costs in workers' compensation premiums to cities and towns and a cost for mental health examinations which is the reason the committee believes that it should be studied further. I believe that one of my colleagues has a Floor Amendment to

create a study commission on this issue and I ask the body to vote down the Interim Study motion so the Floor Amendment may be introduced. Thank you, Mister President.

The question is on the adoption of the motion of Interim Study. Failed. Senator Bradley moved Ought to Pass.

Senator Bradley offered a Floor Amendment.

Sen. Bradley, Dist 3

Sen. Innis, Dist 24

March 15, 2018

2018-1116s

01/04

Floor Amendment to SB 553-FN

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

AN ACT establishing a commission to study the incidence of post traumatic stress disorder in first responders and whether such disorder should be covered under workers' compensation.

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

1 New Section; Commission to Study the Incidence of Post Traumatic Stress Disorder in First Responders and Whether Such Disorder Should be Covered Under Workers' Compensation. Amend RSA 281-A by inserting after section 17 the following new section:

281-A:17-a Commission Established.

I.(a) There is established a commission to study the incidence of post traumatic stress disorder in first responders and whether such disorder should be covered under workers' compensation. The members of the commission shall be as follows:

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

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

(3) The labor commissioner, or designee.

(4) The commissioner of safety, or designee.

(5) The insurance commissioner, or designee.

(6) A representative of the New Hampshire Municipal Association, appointed by the association.

(7) A representative of the New Hampshire Association of Counties appointed by the association.

(8) A representative of the National Alliance on Mental Illness New Hampshire, appointed by the alliance.

(9) A fire chief, appointed by the New Hampshire Association of Fire Chiefs.

(10) One member appointed by the New Hampshire Association of Chiefs of Police.

(11) One member appointed by the New Hampshire Police Association.

(12) A representative of the Professional Firefighters of New Hampshire, appointed by that organization.

(13) A representative of the New Hampshire Association of Emergency Medical Technicians, appointed by the association.

(14) A representative of the New Hampshire Ambulance Association, appointed by the association.

(15) A representative of the New Hampshire Public Risk Management Exchange, appointed by that organization.

(16) The adjutant general, or designee.

(17) An attorney, appointed by the New Hampshire Association of Justice.

(18) An attorney practicing in the field of workers' compensation defense, appointed by the governor.

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

II.(a) The commissions shall study:

(1) The prevalence of post traumatic stress disorder (PTSD) among first responders.

(2) The prevalence of PTSD, or factors contributing to PTSD, among first responders at the time of hiring.

(3) The extent to which first responders' employment benefits provide health insurance coverage for treatment of PTSD.

(4) The degree to which employers who hire first responders are capable of reassigning affected workers to less stressful positions that would allow employees to continue working while receiving mental health treatment.

(5) The degree to which employers currently provide peer-to-peer counseling programs for first responders, the effectiveness of such programs, and the degree to which such programs should be expanded.

(6) The degree to which workplace culture prevents first responders from seeking assistance for mental health issues that may be caused or exacerbated by workplace stress.

(7) The extent to which prior military service may contribute to the rate of PTSD among first responders.

(8) The difficulty first responders currently have establishing that a PTSD diagnosis is causally related to employment.

(9) The difficulty employers would have establishing that a pre-employment condition or experience caused PTSD, rather than a first responders' current employment.

(10) The cost that creating a rebuttal presumption that PTSD was caused uncured during service in the line of duty would impose on public employers, private employers, and taxpayers.

(11) Other issues the commission deems relevant to its study.

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

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

IV. On or before November 1, 2018, the commission shall submit a report of its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library.

2 Repeal. RSA 281-A:17-a, relative to a commission to study the incidence of post traumatic stress disorder in first responders and whether such disorder should be covered under workers' compensation, is repealed.

3 Effective Date.

I. Section 2 of this act shall take effect November 1, 2018.

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

2018-1116s

AMENDED ANALYSIS

This bill establishes a commission to study the incidence of post traumatic stress disorder in first responders and whether such disorder should be covered under workers' compensation.

SENATOR BRADLEY: I'm like my friend from Dover, speechless. Let me first start out by thanking the members of the Commerce Committee and in particular the Chair of the Commerce Committee for working with me on this amendment and also thank the prime sponsor of the bill, our friend from Hanover. Several of us also co-sponsored this bill. I think it goes without saying that ensuring that police officers, fire fighters, EMTs and others in the first responder realm, when they have PTSD or the potential of mental health issues that we need to consider that in terms of workers' compensation. At the same time I think there's a recognition of a potential cost, and so I worked with our friend from Manchester as well as our friend from New Castle on this amendment which creates a balanced commission that will thoroughly examine the issue, and will look at not only whether PTSD should be treated in the way the workers' compensation treats but also how to re-assign effective workers back into the workplace. So I think it's a balanced amendment in terms of who the members are, and what their scope of looking at it is. We ask for a report by November 1, 2018 so that we can consider the merits of this in the next legislature. So thank you, Mister President. I hope that everybody can support this Floor Amendment.

The question is on the adoption of the Floor Amendment. Adopted.

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to the Committee on Finance (Rule 4-5).

EDUCATION

SB 525-FN, prohibiting the distribution of higher education and adult education financial assistance to any student who is not a legal resident. Inexpedient to Legislate, Vote 5-0. Senator Watters for the committee.

SENATOR WATTERS: Thank you, Mister President. I want to start by declaring that I have a potential conflict of interest in that I am a board member of the Dover Adult Learning Center, but the Dover Adult Learning Center would be affected no differently than any other adult learning center under this bill so I choose to participate.

Thank you, Mister President. I move Senate Bill 525-FN Inexpedient to Legislate. This bill would prohibit the University System and Community College System from distributing state funded financial assistance to any student who is not a legal resident of the United States. The bill would also limit the availability of adult education programs funded by state or local sources to legal residents of the state of New Hampshire. This legislation fails to recognize lawful, non-citizens such as green card holders and asylum seekers, who must wait a certain period of time in order to gain legal resident status. The committee believes it is unfair and unnecessary to deprive these adults of educational services while they seek to achieve legal resident status. Further, it is illegal to ask adult education students for their social security number, so there is no method for determining legal resident status. Therefore the majority of the Education Committee asks for your support in the motion of Inexpedient to Legislate on Senate Bill 525. Thank you, Mister President.

(The Chair recognized Senator Carson.)

SENATOR CARSON: Thank you, Mister President. I feel I must make a declaration. I am employed by the Community College System and I will be participating.

(The Chair recognized Senator Sanborn.)

SENATOR SANBORN: I rise and ask the body to vote to overturn the motion of Inexpedient to Legislate so I may be able to introduce an amendment to clarify some of the challenges with the bill that was introduced. So again, I'd ask the body to overturn the ITL so I can introduce an amendment for clarification. Thank you, Mister President.

(The Chair recognized Senator Watters.)

SENATOR WATTERS: Thank you, Mister President. I thought I would take just a moment to further explain some of the points that were made previously in my introduction of the bill. And I do understand that there is a desire by the sponsor perhaps to limit this bill to part 3, not the community college and the university system, but only to adult education. But what I'm going to say now will be focused primarily on what the effects on adult education, but I think that some of the main points I make also apply to the bill in its entirety, the community college, the university system in New Hampshire and I think that we really should just vote ITL on this. And let me explain why.

First, you know whatever you may feel about the underlying issue here, about whether certain folks ought to be able to take, you know to get an education, learn English or get work for the government. Whatever you feel about the issue, there are problems with the bill. They start with the concept of legal resident. Legal resident is not defined in federal statute or in state statute. So we have a problem there.

From Catholic Charities we heard that if this implies legal permanent resident, then we immediately run into problems in terms of green card holders. Because they are not legal permanent residents, they are green card holders. And if they are green card holders who are prohibited by this legislation, that immediately violates the equal protection clause of the constitution under the ruling of *Graham v Richardson* in 1971. And you know really, read the committee report. These things are laid out there. But let's consider who is on this pathway to legal permanent residence. And particularly these are refugees and are asylum seekers. Now what do they have to do, you know if you're a refugee asylum seeker, you got to come, you got to wait six months before even applying for a green card to make sure you haven't done any violations in that period of time. And then when you get the green card, you know it might be one to six years before you're able to get that status and then you have to go through citizenship.

Now, who are these folks? I mean from my community I have many, many Nepalese, they were put, ethnic cleansed out of Bhutan, they were in camps in the Himalayas for almost twenty years and a lot of them got their refugee status, finally came here and they particularly wanted to go into the Health and Human services because they said people took care of us, they remembered that Americans had donated money, take care of them in camps so when they got here, they wanted to give back. And a lot of them are home health care aides in my area. But how did they get to be that, well they went to Dover Learning Center, they went to Community College, they got the credentials they need.

Or think of the refugees who came out of Yugoslavia, when that broke up in those brutal wars there or think back a little, it farther, Jews from

the former Soviet Republics who came here as refugees and asylum seekers. And by the way, if they're going to get their citizenship, they've got to learn English. And where are they going to go to learn English, but adult learning centers. They need those language classes. Also let's note that it's through the adult learning centers that we do the YLO programs for workforce training. And you know these people are on the pathway to legal residence and the citizenship and they want be able to get a job and become productive members of it.

There's also as I mentioned before, a great problem of enforceability here. Who can we ask what their documented status is? We have a lot of laws throughout our statutes saying we cannot ask people for their social security numbers, right? There's privacy concerns and in particular this bill under the section on adult learning amends RSA 186:63 which is in the high school education area. Now many adult learning centers do high school education. They do the ISAT and this and that and the other alternative programs as well, and you know you talk to DOE and you look at our state statute and it's illegal to ask that high school student for their social security number. And there are many statutes to prohibit us from doing that. So again, whatever you think of the issue this bill is just impossible to enforce and to implement for the reasons I've outlined. Thank you, Mister President.

(The Chair recognized Senator Sanborn.)

SENATOR SANBORN: Thank you, Mister President. I rise to give some rebuttal to my friend from Dover, and I'd like to remind the body that this is a bill that does not talk about refugees, does not talk about people with green cards, because those people are legally allowed to be in America. And when we talk about whether or not someone is a legal permanent resident, again, you'll see in legislation there is no word permanent because it is not considering permanent versus non-permanent residents. So I'd love the opportunity to introduce an amendment to have a more robust discussion about this, but I felt it was important that we talk about although with respect to my friend from Dover, this bill, if someone is legally allowed to be in America, which would include refugees, which would include green card owners, they are legally here so they'd be exempt from what this bill would do. So again I ask the body to vote down the motion of Inexpedient to Legislate to allow me to bring forth a clarifying amendment. Thank you, Mister President.

(The Chair recognized Senator Watters.)

SENATOR WATTERS: Thank you, Mister President. I'm sorry that I have to rise again, but let me note that either here in this bill or as I understand in the amendment that term legal resident does not fly. It is not defined in the bill, I suspect it's not going to be defined elsewhere and why? Because we cannot define it in a way that accords with state statute and with federal law. Thank you, Mister President.

The question is on the adoption of the motion of Inexpedient to Legislate.

A roll call was requested by Senator Birdsell, seconded by Senator Fuller Clark.

The following Senators voted Yes: Woodburn, Watters, Hennessey, Kahn, Lasky, Feltes, Cavanaugh, Reagan, Soucy, D'Allesandro, Fuller Clark.

The following Senators voted No: Giuda, Bradley, Gray, French, Ward, Sanborn, Daniels, Avard, Carson, Birdsell, Gannon, Innis, Morse.

Roll Call, Yeas: 11 - Nays: 13. Failed.

Senator Sanborn moved Ought to Pass.

Senator Sanborn offered a Floor Amendment.

Sen. Sanborn, Dist 9

March 8, 2018

2018-1023s

04/01

Floor Amendment to SB 525-FN

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

AN ACT prohibiting the distribution of adult education financial assistance to any student who is not a legal resident.

Amend the bill by deleting sections 1 and 2 and renumbering the original sections 3 and 4 to read as 1 and 2, respectively.

2018-1023s

AMENDED ANALYSIS

This bill limits the availability of adult education programs funded by state or local sources to legal residents of the state of New Hampshire.

SENATOR SANBORN: Thank you, Mister President. Mister President, this bill originally came to me this past fall and although I can't use my electronic device to the level that I'd want to in the building, but if I could use my electronic device to the level that I want to in this room, I'd pull up and read to you an email from November 23rd, and an email from February 15th from Cheryl Keenan who's the director of adult education from the office of Career and Technical Education in Washington, D.C. at the Department of Education and Jeb Harris who is the attorney from an office called OGC, which I'm not even sure what it is but was referred to me again from the Department of Education at the federal level. And what they had indicated was the fact that we have an adult education program that was expanded under President Obama, and through no fault of anyone's the question was left open as to whether or not there was a prohibition on anyone getting adult workforce training programs, could receive these training programs for jobs, but the challenge is if you're not in this country legally you can't work. So are we spending money to train adults specifically for adult education job training programs to people who cannot actually legally have a job.

Now this is a program that is actually paid for 70/30. Seventy percent coming from the state of New Hampshire general funds, 30 percent coming from federal funds. So in the conversation that we have had with the Federal Department of Education as well as the New Hampshire Department of Education, who were both involved with the bill as it was introduced and the amendment, and I'll get to that legal resident thing in a second, it raises that question and it said specifically that the policy creators should consider and determine whether or not we should be providing workforce training, adult workforce training, for people who are not legally allowed to have a job. Now I would contend personally that although I believe in adult workforce training, we've talked regularly about whether or not we have fourteen or fifteen different programs in our state, and I'm sure that's a debate we'll have on another day again, that using taxpayer dollars to train people for jobs, this is a specific job training program, who can't legally work here, probably is not a good use of the taxpayer dollars.

Now that said, this program does not, does not prohibit anyone who is here as a refugee. Does not prohibit anyone who is here with a green card. Does not prohibit anyone who is here legally. Now there is some question about what the term legal resident is, and again this is language that was provided to me by the Federal Government and overseen by the New Hampshire Department of Education. And I'm assuming when we start talking about how to determine whether or not someone is a legal resident here, that we'll be seeing that through the rules process like we always do in these bills, although I would say, I find it unique to hear from my good friend from Dover that people are not required to show their social security card but many people in this room actually voted for Real ID last year, which required I had to bring my social security card. So I would love to have that conversation on the other bill, Senator Watters because I agree with you in the sense that I don't believe people should be compelled to show their social security card.

So in conclusion, I'm asking the body for support on a very narrow simple question. Should we use New Hampshire taxpayer dollars and federal taxpayer dollars specifically for job training programs for adults for people who are not legally allowed to be here? If you are legally allowed to be here, the program still exists. We're spending \$4 million a year in this state on this program. We're doing a fair amount of job education. This would just say if you're not legally allowed to work here, should you still get the job training program. I would submit to you that you should not. So I'd ask the body to support passage of the amendment and final passage of the bill.

(The Chair recognized Senator Kahn.)

SENATOR KAHN: Thank you, Mister President. I rise in opposition to the bill, the amendment, this idea. Why did we have a hearing? Eighty-eight people signed in for this hearing. Three people signed in in favor, the remainder, eighty-five signed in in opposition. What was the testimony that we had? There is confusion over the term legal resident. We got the testimony from the Department of Education, state Department of Education, we received it from three adult learning center directors, from Catholic Charities and from others who were testifying. Nobody's collecting the information on legal residency, in fact there's a fiscal note that says it's indeterminable but because nobody collects it at the Department of Education, this kind of thing is going to add some costs to the state.

Who does this legislation target? We've already heard from my colleague from District 4 who sat in the same hearing I did, there is the confusion about those who are here with green cards, those who are here seeking asylum, who might be here for six years doing so. But I think we also need to call out that this seems like a bill that is aimed very much at the national debate about the deferred action for foreign arrivals, the DACAs. Because if my colleague from Senate District 9 is saying that everybody knows that if you're here with a green card or seeking asylum, that you've got access to citizenship which is undefined by this bill and people in the field say that it's undefined, then who's left, but those that were having a national debate about DACAs, deferred action on children arrivals.

Next point. It's not because of cost and it's not because of lack of definition. What are these educational programs? Because that was also testimony that we received. You can't separate the educational programs. Are they workforce related? Are they literacy related? Are they language courses? An obvious need for citizenship. I don't know where we're go-

ing to be limiting educational programs which, adult education is a very broad term. It doesn't limit itself to any one of those three areas. People in the field are confused where this arrow is supposed to land. So, I just feel this is not a good step for our state, it's not a good sign of where we are as a legislature. I would ask that this body vote down this amendment and return to this basic bill and defeat it as was recommended unanimously by the Education Committee. Thank you, Mister President.

(The Chair recognized Senator Feltes for a question of Senator Kahn.)

SENATOR FELTES: Senator, thank you for taking my question. It's probably the reason why the unanimous vote coming out of Education Committee of ITL, was that because of the murkiness of the term legal resident?

SENATOR KAHN: Yes. And because of the murkiness of the term adult education. Adult education covers all three areas language, literacy and workforce training.

SENATOR FELTES: Thank you, Mister President. So if there was a very broad reading of the term legal resident, people who are here legally who are seeking programs to speak English, to get into jobs that could be potentially prohibited from participating in these programs?

SENATOR KAHN: Yes.

SENATOR FELTES: Thank you.

(The Chair recognized Senator Fuller Clark for a question of Senator Kahn.)

SENATOR FULLER CLARK: I'm reading in the hearing notes that it says here there are many people who have a legal right to be in the state or country who are documented but are not yet a legal permanent resident. If we were to pass this amendment, it would make it impossible for those people who are allowed to be here but are not defined or given the status of legal resident to participate, is that correct?

SENATOR KAHN: It is correct. There is no definition for legal resident. It doesn't confuse it with other people who are here legally and permitted to be here.

SENATOR FULLER CLARK: Thank you.

(The Chair recognized Senator Watters.)

SENATOR WATTERS: Thank you, Mister President. With all due respect to my colleague from District 9, let me note that there's a slipperiness between saying here legally and the term that is actually in the bill, legal resident. Legal resident has no status as a definition and any construction of it that would exclude people who are here with green cards, or on the pathway to citizenship as refugees, would be illegal under the case that I cited. We're in the business of making sure we pass laws that are written in such a way that they can be interpreted, they can be enforced, let alone whether it's a good idea or not. Sometimes I'm on the one side of that, sometimes I'm on another. But make no mistake that term legal resident is not supported federally, it is not supported in state statute. And as a previous member of JLCAR, I don't know how JLCAR is supposed to come up with rules defining legal resident when there's no guidance from the legislature as to what the heck that means.

And let me correct another misstatement that has been made about this. Okay this is amending chapter 186:63. Now let's look at those chapters; chapter 186:61 is the establishment of adult high school education pro-

grams. Here the State Board of Education shall establish and promote educational programs for adults to earn a high school diploma or equivalent. You go to 186:62 and it says these are the workforce kind of development programs that adult education can offer and can receive grants and funding to do from the Federal Government, from state or from local school boards. Then you go to 186:63. And it says in this section, all monies shall be raised and granted from grants, state and local sources. So 163 refers back to the high school degree programs. It refers to the YLO programs and the workforce programs, and those funds come from all over the place. Businesses give funds to locals, they have contracts with adult education centers. Because they want training for folks. So let's be clear about this, this bill as written cannot be enforced and would prevent people from, who are on the pathway to citizenship, or have a green card, from getting a high school diploma, from learning English or getting workforce training. So again, put aside what you think about DACA or about you know who's here or who shouldn't be here. This bill doesn't work. Thank you, Mister President.

(The Chair recognized Senator Sanborn.)

SENATOR SANBORN: Thank you, Mister President, and again my apologies. I'm not looking to overly correct my friend from Dover but he does refer to section 183:63. But the paragraph actually starts specifically by saying adult education. Funding of education programs. This is about adult education, Mister President. And again in the subset from the feds and from the state about job workforce job training programs. This is specifically all this is about. Thank you, Mister President.

(The Chair recognized Senator Giuda.)

SENATOR GIUDA: Thank you, Mister President. There is a huge issue at stake here. It's very simply put. We are either a nation of laws or we are not. We are either a state of laws or we are not. I was one of the folks that voted for the ITL. I'm reversing my vote because in research that I've done subsequent some of the information presented there was actually not accurate. Without exception every single entity or person that testified at that bill had a vested financial interest in maintaining the status quo. That should tell you something. All legal residents of the country have a government issued form of identification. It is not a social security number. At present time we are rewarding people who have cheated the system and in so doing de facto penalizing those who wait outside the gates to lawfully enter the country and get access to programs we implemented with the best of intentions, lawfully for those who comply and live by the law, not to reward those who scoff it. With respect to mixing funds, this is not about where the funds come from, it's about where the funds go to. And within the Department of Education they have the ability to determine who is legal, who is not and which programs those people can qualify for so they can segregate them from English as a second language or learning to run a drill press. It makes no sense whatsoever to spend millions of dollars on programs to educate illegals when by law they're not allowed to have a job. Common sense would tell us, this is a good bill. It's very narrow, it's very targeted. It allows us to exercise and express our support and belief that we are a nation of laws and a state of laws, and not selectively. Thank you, Mister President.

(The Chair recognized Senator Feltes for a question of Senator Giuda.)

SENATOR FELTES: Thank you for taking my question. What is your definition of legal resident in the bill?

SENATOR GIUDA: I will leave that to those smarter than I to figure out. I would offer that someone who is a legal resident is someone that has a valid form of identification identifying them as such.

SENATOR FELTES: What would be in your opinion a valid form of identification that would qualify as being evidence of a legal resident?

SENATOR GIUDA: A government issued form of identification, okay? Generally federally because immigration is a federal purview. So in the absence of that, if I don't have that, I'm not able to get a job. Why would I spend money to train a person that doesn't have the requirements to get the job?

SENATOR FELTES: Thank you.

(The Chair recognized Senator D'Allesandro.)

SENATOR D'ALLESANDRO: Thank you, Mister President. We are a nation of laws but we're also a nation that welcomes people into this country. We resettle refugees, we give them a path for citizenship. That path includes education. We have adult education programs in Manchester, the Nepalese, the Bosnians all of these people have come here and we give them a path to citizenship. Why would we deny them this? Why would we deny them the ability to move forward? What the Hell is this? You know when are we going to wake up and smell the coffee? My parents had the benefit of two immigrants who came here, who learned English. That was many years ago. Today we're welcoming people here, we're providing an opportunity for them. They're good workers. They enter the workforce and they're very productive. Why should we curtail this? Why should we put limitations on this? They pay their taxes, they become productive members of the society. I don't understand why this is going on. What the heck are we doing here, at 4:00 in the afternoon? Curtailing the ability of an individual to move forward in this society. Come on. Let's wake up. Let's move forward. Thank you, Mister President.

(The Chair recognized Senator Giuda)

SENATOR GIUDA: Thank you, Mister President. Your parents or your parents' parents and mine legally immigrated to this country through Ellis Island. They took their turn, I have the documents to prove it as I'm sure you do. They didn't come across a border, and everyone that you're talking about is not excluded by this program. They have documentation that shows they're here legally. That's how the country's supposed to work. The absence of that documentation and the influx of illegals continues not only to plague but to endanger the nation, its finances, its health, all of those things. That's why we have legal immigration and checks and balances so that we don't bring in people with tuberculosis, which is exploding in our population. We don't bring in criminals because we try to find them. The immigration process needs to be enforced and to the degree that it is, we are compelled by our oath to support the constitution, to support the laws that exude from that constitution, okay? To imply that these people are here legally as your grandparents and mine came, is not correct. We are a nation of laws. Thank you, Mister President.

(The Chair recognized Senator Sanborn.)

SENATOR SANBORN: Thank you, I'd like to rise in response to my colleague from District 20. As the sponsor of the amendment, as the sponsor of the bill originally, let me be clear for legislative intent. So there is no question. If someone is a refugee that has come here legally and knowingly by our government, if someone is here with a green card which is

applied and is here legally and knowingly by our government, they should not be denied, and I would not support them being denied education. We have to remember that under the Obama administration, across America, increased penalties for any employer who hired, or was found to have hired, those not legally able to work, to be working. That administration itself across America made sure that any employer that had hired someone who is here illegally should not work, could not work and penalized the business community for hiring anyone that did. All this says, again get back to the premise. If you are not here legally, you shouldn't not be spending money to train you for a job of which you're not legally allowed to have. If you are here under a green card, if you are a refugee, if you have come to this process legally, everything still applies, everything is still available. Thank you, Mister President.

(The Chair recognized Senator Watters.)

SENATOR WATTERS: Thank you, Mister President. I do wonder if that was the intent of the legislation, why the kind of reckless term legal resident was used. We have a federal term, legal permanent resident, there's your green card holders, the people on a pathway to citizenship. The choice was made not to use that language, not only at the time the bill was introduced and the time since its introduction and work in Education when the issues came forward, to the time we had it in the calendar a week or so ago and then to the time of this amendment. So I don't trust the fact that this, what we may pass and this language here would be construed the way that the Senator from District 9 wants it to. Also, let me say for enforcement. We had referenced the Department of Education. So what we're imagining here is the Department of Education is what we're going to authorize a police force so they can go out to the adult education centers in all of your districts and they're going to grab people out English class and say let me see your ID. Or is it going to be that the directors of those centers would so carelessly select somebody coming in to learn English or take a YLO program or to finish their high set and get their high school degree, that they're going to be taken and put into jail. Well there's no penalties here so I guess, you know maybe we aren't a nation of laws after all. Thank you, Mister President.

(The Chair recognized Senator Feltes.)

SENATOR FELTES: Thank you, Mister President. Mister President, I rise in opposition to this Floor Amendment and in support of the great work that a number of places are doing in the state of New Hampshire to help people become productive Granite Staters and American citizens, including Second Start right here in Concord. And this is, I'm holding up letters from students at Second Start. I don't know how many are here, a lot, but let me read a couple of them for you.

This is from Babita Magar. Dear Senator Dan Feltes, I am a student at Second Start in Concord. I am learning more about English grammar as well as reading and writing in English. I have lived in New Hampshire for one and a half years. I come from Nepal. Currently I work at DS Cole Growers as a production employee. Going to Second Start as helped me improve my reading and writing skills. In the future I hope Second Start keeps helping me to learn English. I want to be a good English speaker and get a good job. Sincerely, Babita.

This one's from Babitra Kavadar. I am a student at Second Start in Concord. I am learning more about how to read and write Eng-

lish. I have lived in New Hampshire for four years. I come from Bhutan. I am so happy now to learn in America, because I want to get a good job. Going to school will help me reach my goals. Please support adult education funds. It's so important to the state of New Hampshire. Thank you so much.

Dear Senator Feltes, I'm a student at Second Start in Concord. I'm learning basic skills and I'm learning English. I've lived in New Hampshire for one year. I come from Sudan. Currently I'm a full-time student. Going to Second Start has helped me a lot improve my English. In the future I hope to become an engineer in America.

There's like fifty, sixty letters. These are people who could potentially be roped up in your definition of legal resident. We hear the derogatory phrase uttered sometimes in our society, 'learn English.' These folks are learning English. They're working to become productive, and we're going to cut them off at the legs? That's not appropriate, Mister President. This is about, I agree with the Senator from District 2 that it's about America. It's about the American Dream for these folks and their opportunity to live it out. And we're going to pass this and rope them all into it, and say you know what; you don't have opportunity. All of these letters, all of these folks, potentially implicated. Let's vote this down, let's move on and let's move on to some of the concrete issues that are not so politicized. Thank you, Mister President.

(The Chair recognized Senator Giuda.)

SENATOR GIUDA: Thank you, Mister President, members of the Senate. Respect to my colleague from District 4. We're not going to be rounding people up and putting them in jail. This bill has nothing to do with that. This is hyperbole, it is fear-mongering, it is unacceptable in this body. This is a deadly serious issue. The application process, a person would probably be able to show a government, a Federal Government ID of some sort. And if they are not then they are not admitted to the program. As far as Senator from District 15; how many of those people have legitimate government IDs from the Federal Government? Do you know? I would venture not. If they don't, they're not being cut out from English. They're being segregated from job training programs. English is not part of that, it is part of literacy. Totally different category, totally segregatable, totally protected by the intent of this legislation. Nobody's going to jail, nobody's getting rounded up. We are protecting the American way which is the nation that lives by law and the state that does the same. Thank you, Mister President.

(The Chair recognized Senator Fuller Clark for a question of Senator Watters.)

SENATOR FULLER CLARK: I'm again looking at the actual legislation in the original bill, and it says here that this legislation will prohibit the disbursement of state funds to students who are not legal residents. And that no institution of the university system shall distribute state funded financial assistance to any student who's failed to demonstrate legal residency in the United States. It goes on to say that this is equally true for our community college systems as well and for our adult education programs. So while I'm hearing that this separates out work training programs from other type of educational opportunities, there's nothing that I understand in the legislation that does that.

SENATOR WATTERS: Thank you for your question, I'll answer in a couple parts. First let me note that we're now on an amendment which

just deals with the adult learning center, but the issue is kind of the same in that first we have, we actually prohibited by state law from asking people for documentation identification and even if someone had a so-called federal identification paper, if that's a green card, this bill as written would unconstitutionally prohibit those folks from getting these adult services. And lastly I'll say the bill, the amendment is just plain mis-drafted. Because if it wants to do what it's doing, it's amending the wrong section of law. Maybe if it amended 186:62 which are more particular work programs, but by doing 186:63, that is a catch-all that goes back into the language programs, the high school education. It's just plain drafted wrong. If it were drafted right, I'd argue against that too, but right here with this amendment, it unfortunately is not just work programs, it's adult education centers, it's all their high school programs, it's all their language programs.

SENATOR FULLER CLARK: We heard from the Senator in District 2 that we wouldn't be rounding up individuals in relationship to this statute. But could you speak to your experience with our Indonesian population on the Seacoast and what has been happening there? Thank you.

SENATOR WATTERS: Well thank you for the question, and you know I think we all know, I've been at the ICE headquarters in Manchester and our modern day trail of tears where families are being brought forward and potentially separated out, the children are here as they're born here, they're residents and the parents are applying for refugee status so they would not be legal residents under this. But in talking to Dover adult education center directors, they say that the Department of Education has informed them it is illegal for them to ask for the social security number or for identification. It's illegal for them to do it so you have to break the law to follow the law. Because there's no procedure in this bill as to how it's enforced, or how one determines someone is this mythical legal resident category. So really though, you would get down to the point where someone would have to come in and actually inspect an English language class and ask the people whether they were here appropriately, because how else are you going to know whether the funds are being expended appropriately or not and if the Department of Education says to the director of adult learning center that well, you know we're going to ask you to break the law and ask people for identifications, and we'll give you the money if you agree to do that, well they can either agree to break one law or they can say okay and then when they get into their class, how are they going to know who's there and then it's the Department of Education what consequences would there be, would those monies be withdrawn, will the center be fined, will the director be found in violation of a law? I mean there are no penalties here, I mean would it be a misdemeanor? So anyways, quite a rabbit hole.

SENATOR FULLER CLARK: Thank you.

SENATOR AVARD: Mister President, I move the question.

PRESIDENT MORSE: Several people want to move the question, Senator Birdsell started. Without objection there's two speakers left, one on each side I believe. Senator Kahn then Senator Daniels and then we'll call the question.

SENATOR KAHN: Thank you, Mister President. I rise to very simply try to summarize this, we can't define it, there are only two terms in this bill, we can't define either of them, we can't collect it, we don't have any kind of collection happening currently. That's the testimony of the

Department of Education. And finally we can't separate it, we can't take section 186, the adult education act and we can't separate what literacy workforce and language training are. They are all part, you can parse it out, you can try and say there's an arrow here but they are all part of this current RSA 186. And finally I think this is an anti-workforce kind of move in a district that's got a 2 percent unemployment rate that lost 2,000 jobs in this last year. You know there are people that want to qualify themselves for work and we're going to try to prohibit it somehow through terms that we can't define. I still believe that this is not what this legislative body should value. I think we need to defeat this amendment and move on to the main motion which is ITL. Thank you, Mister President.

Senator Bradley presiding.

(The Chair recognized Senator Daniels.)

SENATOR DANIELS: I was just going to move the question.

PRESIDING OFFICER SENATOR BRADLEY: The question has been moved. There are no further speakers.

The question is on the adoption of the Floor Amendment.

A roll call was requested by Senator Watters, seconded by Senator Giuda. Recess. Out of recess.

The following Senators voted Yes: Giuda, Gray, French, Ward, Sanborn, Daniels, Avard, Carson, Birdsell, Morse, Gannon, Innis, Bradley.

The following Senators voted No: Woodburn, Watters, Hennessey, Kahn, Lasky, Feltes, Cavanaugh, Reagan, Soucy, D'Allesandro, Fuller Clark.

Roll Call, Yeas: 13 - Nays: 11. Adopted.

Senator Feltes moved to Lay on the Table SB 525-FN.

President Morse presiding.

A roll call was requested by Senator Sanborn, seconded by Senator Avard.

The following Senators voted Yes: Woodburn, Watters, Hennessey, Kahn, Lasky, Feltes, Cavanaugh, Reagan, Soucy, D'Allesandro, Fuller Clark.

The following Senators voted No: Giuda, Bradley, Gray, French, Ward, Sanborn, Daniels, Avard, Carson, Birdsell, Gannon, Innis, Morse.

Roll Call, Yeas: 11 - Nays: 13. Failed.

The question is on the adoption of the motion of Ought to Pass with Amendment.

A roll call was requested by Senator Kahn, seconded by Senator Avard.

The following Senators voted Yes: Giuda, Bradley, Gray, French, Ward, Sanborn, Daniels, Avard, Carson, Birdsell, Gannon, Innis, Morse.

The following Senators voted No: Woodburn, Watters, Hennessey, Kahn, Lasky, Feltes, Cavanaugh, Reagan, Soucy, D'Allesandro, Fuller Clark.

Roll Call, Yeas: 13 - Nays: 11. Adopted, bill ordered to Third Reading.

Senator Daniels waived referral to the Committee on Finance.

Senator Daniels waived referral to the Committee on Finance on SB 553-FN.

President Morse Ordered SB 553-FN to Third Reading.

JUDICIARY

SB 499, relative to the applicability of certain DWI prohibitions. Ought to Pass with Amendment, Vote 4-1. Senator French for the committee.

Senate Judiciary

March 6, 2018

2018-0957s

03/06

Amendment to SB 499

Amend the bill by replacing section 1 with the following:

1 New Paragraph; Alcohol or Drug Impairment; Definitions. Amend RSA 265-A:1 by inserting after paragraph V the following new paragraph:

VI. "Drive or attempt to drive" shall not include sleeping, resting, or sheltering in place by a person in a passenger automobile parked in any place where parking is permitted, or any action or activity with respect to a passenger automobile by a person who is outside of the automobile.

SENATOR FRENCH: Thank you, Mister President. I move Senate Bill 499 Ought to Pass with Amendment. This bill clarifies the meaning of attempt to drive or to drive in certain DWI prohibitions. In many areas of New Hampshire there are few to no options for safe transportation home after consuming alcohol. And current statutes prohibit a citizen under the influence from even walking towards their car, let alone resting in it until someone is able to pick them up, or they are able to drive home safely. Under this bill, citizens who are under the influence would be able to safely sleep, rest or shelter in the vehicle that is parked in any place where parking is permitted and wait until they are safe to drive or can arrange a ride. The language of the bill would not allow an individual to park in any place where it is not permitted, such as the side of the highway or passed out at a stop sign. More than allowing individuals to rest until they are safe to drive with the passage of this bill, a young woman who is waiting for a ride home after consuming alcohol would be able to safely wait in her car, instead of having to wait outside of it in a potentially unsafe location. Ultimately, the committee believes this will help New Hampshire citizens stay safe and make safer decisions. Therefore, the majority of the Judiciary Committee asks for your support in the motion of Ought to Pass with Amendment on Senate Bill 499. Thank you, Mister President.

(The Chair recognized Senator Watters.)

SENATOR WATTERS: Thank you, Mister President and colleagues. I certainly appreciate the intent here of improving safety and so forth, and I just wanted to mention a couple of concerns I have. You know we often have these kinds of bills related to DWIs and so on also in Transportation but here it was in Judiciary so maybe a different perspective gets taken. I just want to reference what happened in Rollinsford a couple of years ago. A guy was drinking at the Legion, he had given his keys to the bartender, but he got really, really drunk and he grabbed the keys and he ran towards his car. As soon as he grabbed the keys they called the police. The police arrived there just a little too late. He had gotten in the car and driven off and he hits a honeymoon couple on Route 4 and killed them. I do believe that had the police officer arrived prior to his getting in the car and saw him drunk when he was running across the, towards his car with the keys he would have been able to stop him but

you know once somebody's in the car, it's suddenly a deadly weapon in these cases. And then secondly on the other point about being able to be at the side of the road and so on, well a whole lot of roadways you can park on the side of. Like, I mean a whole lot, you know in urban areas and so on, you can park on the side of the road. So what I'm wondering is if somebody is you know, skunk dead drunk, right, but they just happen to see that there's a police car coming the other way before the police car sees them weaving, and they get over to the side of the road and the police officer goes and asks them to roll down the window and the smell of alcohol and the person is clearly impaired. Under current statute they can take that as you know, prima facie evidence that the car didn't drop out of the sky by magic, you know somebody drove it there. But under this bill, the person who just happened to get the key turned off on the side of the road before the cop came over and stopped him. They're fine and then the cop eventually has to pull off or go to somewhere else, another call and then vroom, off he goes so I'm concerned about that. Thank you, Mister President.

(The Chair recognized Senator Hennessey.)

SENATOR HENNESSEY: Thank you very much, Mister President. And I'm just I'm rising to talk about a personal story as well and that is that my son was twenty-two I think, and he was at bachelor party of sorts in a bar. And he had driven the group there and he ended up having one or two drinks apparently, but so he didn't feel he should drive home. So he was walking out to the parking lot to put his things in his car so that they could leave them there and take a taxi home, and he was arrested for DWI, as he was doing the right thing. And this is the kind of story that I think has led to the vote that we had in committee about this bill. And I could go on with more stories, but just in general we want people to make the right decision, we want people to get to their car and say, wait a minute, I'm not ready to drive and lock their doors and sit there and sleep there or do whatever they need to do so they're not on the road. Now I'm sure there could be incidents when somebody grabs the key and runs out and gets their car, and it's tragic, there's no question about it. But I think it's more likely that we are going to be convincing people to make the right move. I also had a daughter who was at a party she shouldn't have been at with a bunch of friends, I'm sure none of your kids have ever done anything like that. And, I have delinquent children. And so she was at a party in high school. They were not old enough to be drinking but the parents weren't home and there was a party. I don't even know if she had been drinking or not but the kids all found out the police were coming and they were scattering in different ways. My daughter went to her car and just sat there. And the police said, you have to drive home. You can't leave your car here. Well, you know that kind of thing you're encouraging somebody to, if she had been drinking, to drive home drunk. Let's make it clear what the rules are, let's make it clear so that if I'm uncomfortable coming out of a bar and I don't feel I'm in a safe neighborhood in order to stand on the sidewalk waiting for an Uber that I can get in my car and lock the door. You know, I think this is a very sensible legislation. Thank you, Mister President.

(The Chair recognized Senator Gannon.)

SENATOR GANNON: Thank you, Mister President. The New Hampshire Police Association and I are against this bill. Drunk drivers kill 10,625 innocent souls a year. We don't think this bill will lower that rate. The good Senator from District 7, love you, Frenchie, really do. And I

wanted to give you this one, but I thought about it, we talked about it at the Gannon dinner table and it didn't float. I want the same thing as you do, I know we both don't want drunk drivers out there, and we just having a different way of getting there. But you're also thinking of one thing I'm not. I'm thinking of the families, you're also thinking of the impaired driver, and that's not coming into my thought process. I think by doing, trying to do both things you're thinking of the impaired driver on an equal basis to the families that could get hit. And again, I only have one goal. I want to send a clear message to anyone who had too much to drink; avoid getting in the car, call a taxi, call Uber, call the Senator from District 20 if you know him well, he'll come get you. Call a friend. If you had the bad judgement, you'd come get me Lou, I know you would. If you had the bad judgement when you were sober of getting drunk, you knew you had to go drive but you had too many. Do we now trust you when you're hammered to get in a vehicle and what, you're going to know when you've sobered up enough? Is an hour, two, four hours? Let's walk through this I've done with you French a bunch of times. You open the door, we've talked about this, they're going to sit in the driver's seat. Just human nature that's probably where they're going to go. It's pretty cold out there the last few weeks, you've talked about it with me that they're going to turn on the car, because they're going to want to keep warm when they're passed out. So bad situation, bad situation for the police, bad situation all around. I don't trust that guy to decide when he's sober to go home. Let me tell you a little story, and it's very quick. It's a recent case, a real case, and officer who tapped on the window of an apparent drunk driver, and he decided, I don't know if he knew him or whatever he decided, I'm going to let him sleep it off. The drunk driver later drove the vehicle and got into a DUI car crash. Liability everywhere. God forbid it's a young family like the Senator from District 15. This bill is not going to make the roads safer. It should be voted down. I like the idea, I just don't think you got it across the end zone yet, French. Thank you.

(The Chair recognized Senator French.)

SENATOR FRENCH: Thank you, Mister President. And thank you to the good Senator from District 23. I too want to make the roads safer. I want these people to sit in their car and go to sleep. I don't want them driving home. My stepson home from Iraq, went to a party in Laconia at his boss's work. Drank a little too much. Got in his car. Went to sleep. What happened? Knock on the window. You're under arrest. Lost his license for six months. These are the things I want to stop. And with your help, we'll be able to do it. Thank you, Mister President.

The question is on the adoption of the Committee Amendment. Adopted.

The question is on the adoption of the motion of Ought to Pass with Amendment.

A roll call was requested by Senator Watters, seconded by Senator Avard.

The following Senators voted Yes: Woodburn, Giuda, Bradley, Hennessey, Gray, French, Sanborn, Daniels, Avard, Lasky, Carson, Feltes, Cavanaugh, Reagan, Soucy, Birdsell, D'Allesandro, Fuller Clark, Innis, Morse.

The following Senators voted No: Watters, Ward, Kahn, Gannon.

Roll Call, Yeas: 20 - Nays: 4. Adopted, bill ordered to Third Reading.

HB 287, establishing a committee to study decriminalizing sex work. Inexpedient to Legislate, Vote 4-1. Senator Gannon for the committee.

SENATOR GANNON: Thank you, Mister President. I move House Bill 287 Inexpedient to Legislate. This bill would establish a committee to study issues related to changing sex work laws in New Hampshire. The committee believes that the passage of this bill would be redundant due to the existence of the New Hampshire Human Trafficking Task Force, which recently received a three year grant and is currently working to bring together much of the information that this committee would cover. Furthermore, when this bill began in the House its charge was to study decriminalization of prostitution. Despite this bill being amended to study issues related to changing prostitution laws, there is still a concern regarding the message this could send if it were to pass. Ultimately, the majority of the committee feels that this bill would commence an unnecessary discussion on the decriminalization issues of prostitution and therefore should not be taken lightly. Due to these concerns, the majority of the Judiciary Committee asks for your support in the motion of Inexpedient to Legislate on House Bill 287. Thank you, Mister President.

(The Chair recognized Senator Hennessey.)

SENATOR HENNESSEY: Thank you, Mister President. I am the one who voted on the opposite side and it is not because I'm in favor of prostitution. It's not because I've ever been a prostitute. It's not because of any of those things, but it's because people who are doing sex work are being beaten up and they can't call the police. Because they'll be arrested. They are often people who were in sex trafficking and who now don't know how to make a living in another way and they can't get help. So if they want to leave prostitution and they're being threatened, their lives are being threatened and they're being sexually assaulted and physically assaulted, they can't get out. So I just think we need to study it. I'm not saying I want to decriminalize it. I want to study it and figure out how we can help people get out of prostitution, rather than just continuing to make it illegal. Thank you very much.

The question is on the adoption of the motion of Inexpedient to Legislate. A roll call was requested by Senator Fuller Clark, seconded by Senator Sanborn.

The following Senators voted Yes: Woodburn, Bradley, Watters, Gray, French, Ward, Sanborn, Kahn, Daniels, Avard, Lasky, Carson, Feltes, Reagan, Soucy, Birdsell, D'Allesandro, Gannon, Innis, Morse.

The following Senators voted No: Giuda, Hennessey, Cavanaugh, Fuller Clark.

Roll Call, Yeas: 20 - Nays: 4. Adopted.

MOTION OF RECONSIDERATION

Senator Bradley, having voted on the prevailing side, moved to reconsider the following action taken by the body on HB 287, establishing a committee to study decriminalizing sex work. The vote on Inexpedient to Legislate. Adopted.

The question is on the adoption of the motion of Inexpedient to Legislate.

A roll call was requested by Senator Fuller Clark, seconded by Senator Sanborn.

The following Senators voted Yes: Woodburn, Giuda, Bradley, Watters, Gray, French, Ward, Sanborn, Kahn, Daniels, Avard, Lasky, Carson, Feltes, Reagan, Soucy, Birdsell, D'Allesandro, Gannon, Innis, Morse.

The following Senators voted No: Hennessey, Cavanaugh, Fuller Clark.
Roll Call, Yeas: 21 - Nays: 3. Adopted.

MOTION TO ADJOURN FROM EARLY SESSION

Senator Bradley moved that the Senate adjourn from the Early Session, that the business of the Late Session be in order at the present time, that all bills and resolutions ordered to Third Reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted. Adjournment from the Early Session.

LATE SESSION

LIST OF RULE 6-25'S FOR THE DAY

Senator Bradley: SB 404-FN-A

Senator Carson: SB 525-FN

Senator Feltes: SB 501

Senator Fuller Clark: SB 404-FN-A

Senator Giuda: SB 501

Senator Hennessey: SB 404-FN-A

Senator Lasky: SB 404-FN-A

Senator Sanborn: SB 309-FN, SB 318, SB 323, SB 331, SB 335, SB 342, SB 373, SB 395, SB 403-L, SB 404-FN-A, SB 405, SB 412, SB 423, SB 450-FN-A, SB 455, SB 458, SB 459, SB 461, SB 466, SB 499, SB 501, SB 525-FN, SB 526-FN, SB 528-FN-L, SB 529-FN, SB 532-FN, SB 535-FN, SB 538-FN, SB 543-FN, SB 548-FN, SB 553-FN, SB 555-FN-A, SB 557-FN, SB 560-FN-L, SB 563-FN, SB 573-FN-A, SB 578-FN, SB 583-FN, SB 593-FN, HB 287

Senator Soucy: SB 553-FN

Senator Watters: SB 404-FN-A, SB 525-FN

Senator Woodburn: SB 459, SB 461

LATE SESSION

Third Reading and Final Passage

SB 309-FN, relative to standards for perfluorochemicals in drinking water, ambient groundwater, and surface water.

SB 323, relative to rehiring of laid off classified state employees.

SB 335, establishing a committee to review compensation in asbestos litigation and to study ways to promote transparency, fairness, and timeliness of payment in asbestos litigation.

SB 342, requiring identification of specific items in the default budget.

SB 373, requiring rulemaking by the department of corrections.

SB 395, relative to access to records under the right-to-know law.

SB 403-LOCAL, relative to the exemption for recreational vehicles from property taxation.

SB 412, relative to agritourism.

SB 450-FN-A, establishing an advisory commission for the department of environmental services relative to the delegation of authority of the National Pollutant Discharge Elimination System Program.

SB 455, relative to state employees injured in the line of duty.

SB 458, authorizing the purchase of retirement system creditable service by a certain surviving spouse.

SB 459, relative to reciprocity for licensure as a real estate broker or salesperson.

SB 499, relative to the applicability of certain DWI prohibitions.

SB 501, relative to immunity for campground owners.

SB 525-FN, prohibiting the distribution of adult education financial assistance to any student who is not a legal resident.

SB 528-FN-LOCAL, relative to dam registration fees and relative to permit fees for constructing or reconstructing a dam.

SB 529-FN, requiring the department of environmental services to conduct a study regarding the Baker River in the town of Warren and making an appropriation for such study.

SB 532-FN, relative to group II status of certain department of corrections officials.

SB 535-FN, relative to licensure for the practice of professional art therapy and establishing an advisory council on alternative mental health therapies, and relative to certain revenues from the sale of commemorative liquor bottles of historic significance.

SB 538-FN, including police officers of the state office complex police force in group II of the retirement system.

SB 553-FN, establishing a commission to study the incidence of post traumatic stress disorder in first responders and whether such disorder should be covered under workers' compensation.

SB 555-FN-A, establishing a citizens' right-to-know appeals commission and a right-to-know law ombudsman and making an appropriation therefor.

SB 557-FN, establishing a board of housing development appeals.

SB 560-FN-LOCAL, relative to updating the state trails plan and making an appropriation therefor.

SB 563-FN, establishing a recovery friendly workplace initiatives tax credit against business taxes administered by the community development finance authority.

SB 573-FN-A, relative to the controlled drug prescription health and safety program and making an appropriation therefor.

SB 578-FN, relative to unclassified positions within the department of health and human services.

SB 593-FN, relative to the penalty for capital murder.

MOTION TO RECESS TO CALL OF THE CHAIR

Senator Bradley moved that the business of the day being completed, that the Senate recess to the Call of the Chair for the purposes of introducing legislation, referring bills to committee, scheduling hearings, sending and receiving messages, and processing enrolled bill reports and amendments and when we recess, we recess to the Call of the Chair.

Adopted. The Senate is in recess to the Call of the Chair.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 1201, relative to an employee's earned but unused vacation time.

HB 1262-LOCAL, relative to online driver education.

HB 1443, relative to a jury's determination as to the applicability of a law.

HB 1474, designating the New Hampshire Red as the official state poultry.

HB 1555, relative to participation by the public utilities commission in regional activities.

HB 1579-FN, requiring records to be kept for certain exempt convenings under the right-to-know law.

HB 1672-FN, prohibiting release of certain information relative to users of therapeutic cannabis to federal agencies.