

## CHAPTER 576 (HB 173)

AN ACT RELATIVE TO SUNSET REVIEW OF THE  
DEPARTMENT OF EMPLOYMENT SECURITY.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

**576:1 Sunset; Department of Employment Security Renewed.** Department of employment security, RSA 282:9, is hereby renewed to comply with RSA 17-G. The agency or program shall terminate on July 1, 1987, subject to RSA 17-G.

**576:2 Effect of Later Enactments.** Passage of this act renewing department of employment security shall not limit any subsequent legislative action affecting this agency or program. The general court shall retain its full power to make amendments to or to terminate department of employment security, pursuant to RSA 17-G:9.

**576:3 Commissioner's Term.** Amend RSA 282:9, C, as amended by striking out said paragraph and inserting in place thereof the following:

C. TERM OF COMMISSIONER. The commissioner shall hold office for 5 years from the date of his appointment and until his successor is appointed and qualified.

**576:4 Term of Incumbent Commissioner.** Section 3 of this act shall not take effect until the incumbent commissioner of employment security shall cease to hold that office.

**576:5 Exclusion Deleted.** Amend RSA 91-A:6 as inserted by 1967, 251:1 by striking out said section and inserting in place thereof the following:

**91-A:6 Employment Security.** This chapter shall apply to RSA 282, relative to employment security; however, in addition to the exemptions under RSA 91-A:5, the provisions of RSA 282:9(M) shall also apply, this provision shall be administered and construed in the spirit of that section, and the exemptions from the provisions of this chapter shall include anything exempt from public inspection under RSA 282:9(M) together with all records and data developed from RSA 282:9(M).

**576:6 Repeal.** RSA 282:9-c, relative to counsel in the department of employment security, is hereby repealed.

**576:7 New Appellate Division.** Amend RSA 282:5, E., F. and G. as amended by striking out said paragraphs and inserting in place thereof the following:

E. REOPENING OF APPEAL TRIBUNAL DECISION.

(1) Procedure. The commissioner may, upon written request of an interested party or upon his own initiative, in any case in which a decision has been rendered reopen the case on the basis of fraud, mistake, or newly discovered evidence. Such request shall set forth the facts or arguments considered to be the basis for the reopening. No reopening will be considered by the commissioner unless the request is received in his office within 15 days immediately following the date of mailing of the appeal tribunal's decision. The commissioner shall promptly notify in writing all interested parties of the request for reopening.

(2) Commissioner's Determination. The commissioner shall render his determination within a reasonable period after all the facts or arguments are made available to him. The determination of the commissioner shall be sent by registered mail to each interested party at the last address of each according to the records of the department of employment security. The appeal tribunal shall, upon direction to reopen, proceed in the same manner as though an appeal in said case were being taken from a determination of a certifying officer; provided, however, that the further hearing shall be limited to the introduction of evidence or argument relative to and concerning the factors which constitute the basis or ground for the reopening unless the commissioner orders a de novo hearing.

F. APPELLATE DIVISION.

(1) There shall be an appellate division consisting of 5 members, no 2 of whom shall be from the same executive council district, who are and continue to be residents of New Hampshire, appointed by the governor with the advice and consent of the executive council for 3 year terms and until their successors are appointed and qualified. Two of the members shall be attorneys-at-law admitted to the practice of law in the state of New Hampshire, one of whom shall be the chairman, one of whom shall be the vice chairman and shall serve in the absence of the chairman. The first appointments shall be 2 for one year, 2 for 2 years and one for 3 years. The members shall be paid \$100 for each day or any part thereof during which they perform services and shall be reimbursed for all expenses determined by the commissioner to be necessary to the performance of their duties including mileage and board and room necessary for the conduct of hearings in Concord.

(2) Organization and Support. The appellate division shall be part of the department of employment security for organizational purposes, but shall operate independently of that department. All funds, clerical personnel, facilities, space, supplies, services, and other support necessary to the functioning of the appellate division, shall be determined by, provided for, and administered by, the commissioner.

(3) Jurisdiction. The appellate division shall hear appeals from decisions of the appeal tribunal. Appeal must be filed with the appellate division within 15 days of the date of mailing of the commissioner's decision on a request for reopening and not otherwise. The review by the appellate division shall be confined to the record. No evidence shall be received. The appellate division shall provide all parties and the commissioner with a transcription of the appeal tribunal hearing. The commissioner shall provide the appellate division with a copy of all other department records relating to the claim.

The appellate division shall not substitute its judgment for that of the commissioner or appeal tribunal as to the weight of the evidence on questions of fact, or as to the prudence or desirability of the determination. The appellate division shall reverse or modify the decision or remand the case for further proceedings only if the substantial rights of the appellant had been prejudiced because the findings, inferences, conclusions, or the decision is:

- (a) in violation of constitutional or statutory provisions; or
- (b) in excess of the statutory authority of the department of employment security; or
- (c) affected by reversible error of law; or
- (d) affected by fraud; or
- (e) affected by the absence of newly discovered evidence, which was not available to the affected party upon reasonable search at the time of the appeal tribunal hearing, in which case the appeal shall be remanded to the appeal tribunal.

Otherwise, the appellate division shall affirm the order.

(4) Quorum. The appellate division, while in session, shall consist of 3 members designated by the chairman. Any party aggrieved by a decision of the appeal tribunal may appeal. The parties to such appeal shall be the claimant, all interested parties as defined in this chapter, and the commissioner. The appellate division shall adopt rules of procedure pursuant to RSA 541-A. It shall not require written briefs. The appellate division shall render a written decision within 15 days of the hearing or adopt the decision of the appeal tribunal. When a decision is not rendered within 15 calendar days after a hearing by the appellate division, such will constitute a dismissal of the appeal.

(5) Sessions. The appellate division shall sit in Concord and shall hold sessions at least monthly for the purpose of hearing arguments, making orders, rendering decisions and filing opinions.

(6) The appellate procedures provided by this chapter shall be exclusive.

#### G. JUDICIAL REVIEW.

(1) An interested party who has exhausted all administrative remedies within the department, and who is aggrieved by a final decision of the appeal tribunal may appeal that decision to the supreme court, but only if the notice of that appeal is filed with the court within 15 days after the date of mailing of the decision from which the appeal is taken and the notice of appeal is served upon the appeal tribunal and the attorney general contemporaneously with the filing of that notice of appeal with the court. In addition, that notice of appeal shall be served upon all parties of record. The service required by this subsection may be by certified mail. The appeal shall be styled "appeal of name of the party filing the appeal (unemployment compensation appeal tribunal)", and shall be an in rem proceeding. Any interested party, and the state, shall have a right to participate as a party in the appellate proceedings before the court. The notice of appeal shall specifically identify each error for which review is sought. The filing of a notice of appeal shall not stay enforcement of the appeal tribunal decision.

(2) Within 60 days after the service of the notice of appeal upon the appeal tribunal, or within such further time allowed by the court, the appeal tribunal shall transmit to the court a certified copy of the entire record of the proceeding before the appeal tribunal. By stipulation of all parties to the review proceeding, the record may be shortened. If the record is shortened by stipulation, the court may subsequently require additional portions of the record certified.

(3) The review of the court shall be confined to the record. No evidence shall be received in the court. The court may require oral argument or written briefs, or both.

(4) The court shall not substitute its judgment for that of the appeal tribunal as to the weight of the evidence on questions of fact. The court shall reverse or modify the decision of the appeal tribunal, or remand the case for further proceedings, as determined by the court, only if the substantial rights of the appellant had been prejudiced because the administrative findings, inferences, or conclusions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of statutory authority;
- (c) made upon unlawful procedures;
- (d) clearly erroneous in view of the substantial evidence on the whole

record; or

- (e) affected by other error of law.

Otherwise, the court shall affirm the appeal tribunal decision.

(5) The judicial review provided by this subsection shall be exclusive of

all other methods of judicial review of unemployment compensation decisions, including extraordinary writs, including the writ of certiorari. No unemployment compensation decision shall be questioned, invalidated, vacated, set aside, suspended, or otherwise impeached by any court or other tribunal except in accordance with the provisions of this subsection.

**576:8 Appeal of Commissioner's Decision.** Amend RSA 282:6, F(4), as inserted by 1961, 88:29 by striking out said subparagraph and inserting in place thereof the following:

(4) The commissioner's decision on said appeal shall be final and conclusive as to the liability of the employing unit or employer or both, unless an appeal therefrom is filed in accordance with the provisions of RSA 282:5(G).

**576:9 New Division.** Amend RSA 7 by inserting after section 18-c the following new subdivision:

#### Unemployment Compensation Division

**7:18-d Division Established.** There is hereby established in the office of the attorney general an unemployment compensation division. The attorney general shall appoint 2 assistant attorneys general pursuant to the provisions of RSA 7:16, which positions shall not count against the totals set forth in that section, and 2 stenographers. Such 4 personnel shall be paid by the department of employment security but shall be under the administrative direction and control of the attorney general.

#### 7:18-e Duty; Cooperation.

I. The unemployment compensation division shall be responsible for all matters arising under RSA 282-A or the rules adopted as mandated in RSA 282-A which are brought in any court.

II. The commissioner of the department of employment security and all employees of that department shall give the unemployment compensation division such aid and assistance as it deems necessary to investigate, prosecute and defend matters arising under RSA 282-A or the rules adopted as mandated in RSA 282-A which are in any court.

**576:10 Exception to Attorney Transfers.** Amend RSA 7:13 by striking out said section and inserting in place thereof the following:

**7:13 Transfer of Attorneys from Other Departments.** Upon request of the attorney general, the governor is hereby authorized to transfer any employee authorized to do legal work, and all unexpended appropriations and funds allocated for the payment of such employee's salary, from any department or agency of the state to the office of attorney general whenever such action is deemed by the governor to be in the best interest of the state. Any such employee so transferred or employed by the expenditure of such funds and appropriations shall be directly responsible to the attorney general and shall perform such services as the attorney general may direct. The provisions of this section shall not apply to the general counsel and counsel of the department of employment security.

**576:11 Attorneys for Department of Employment Security.** Amend RSA 282:9-b as inserted by 1961, 179:1 by striking out said section and inserting in place thereof the following:

#### 282:9-b House Counsel for the Department of Employment Security.

I. There shall be a general counsel and counsel in the department of

employment security appointed by the commissioner. The general counsel and counsel shall be licensed to practice law in New Hampshire. The general counsel shall have been engaged in the practice of law for not less than 5 years, and the counsel not less than 3 years. The general counsel and counsel shall hold office during good behavior, and may be removed only in accordance with RSA 4:1. The general counsel and counsel shall be compensated in accordance with the provisions of RSA 94:1-a.

II. Subject to the supervision of the attorney general as to matters of law, the general counsel and counsel shall be responsible to the commissioner, and shall perform such duties as the commissioner may from time to time assign. Appearances of general counsel and counsel shall be limited to the appeal tribunal and appellate division.

**576:12 Representation in Court.** Amend RSA 282:15 as amended by striking out said section and inserting in place thereof the following:

**282:15 Representation in Court.** Upon the request of the commissioner, or upon his own initiative, the attorney general may enforce the provisions of this chapter, or any rules adopted hereunder, by any appropriate proceeding, criminal or civil, legal or equitable, in any court.

**576:13 Effective Date.**

I. Section 7 of this act shall take effect October 1, 1981.

II. The remainder of this act shall take effect upon passage or on July 1, 1981, whichever is earlier.

[Approved July 7, 1981.]

[Effective Date I. Section 7 of this act shall take effect October 1, 1981. II. The remainder of this act shall take effect July 7, 1981, or July 1, 1981, whichever is earlier.]

**CHAPTER 577 (HB 862)**

AN ACT LIMITING TRANSFERS OF SPECIALLY APPROPRIATED MONEY UNDER THE MUNICIPAL BUDGET LAW.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

**577:1 Transfers of Appropriations.** Amend RSA 32:10 as amended by striking out said section and inserting in place thereof the following:

**32:10 Transfers of Appropriations.** In towns adopting the provisions of this chapter:

I. No board of selectmen, school board, commissioners of a village district wholly within the town, or other expending agency shall:

(a) pay or agree to pay any money; or

(b) incur any liability involving the expenditure of money; for which an appropriation has not been made, except as provided in paragraph II or III.

II. Money may be spent to pay a judgment against the town, the school district, or the village district, without an appropriation.

III. If changes arise during the year following the annual meeting which make it unnecessary to use the amount appropriated for a specific purpose, an unexpended balance may be transferred from one appropriation to another. The total amount spent shall not exceed the total amount appropriated at the town, school, or village district meeting.

IV. However, any sum appropriated by a special warrant article at the town meeting may only be used for the purpose specified.

**577:2 Effective Date.** This act shall take effect 60 days after its passage.

[Approved Enacted in accordance with Article 44, Part II, of N.H. Constitution, September 28, 1981.]

[Effective Date November 27, 1981.]

**CHAPTER 578 (HB 430)**

AN ACT ESTABLISHING A PITTSFIELD JUDICIAL DISTRICT AND A PITTSFIELD DISTRICT COURT.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

**578:1 Pittsfield District Established.** Amend RSA 502-A:1 by inserting after paragraph XVI-a the following new paragraph:

XVI-b. PITTSFIELD DISTRICT. The Pittsfield district shall consist of the towns of Pittsfield, Chichester and Epsom. The municipal court for the town of Pittsfield is hereby constituted the district court in and for the district and shall be located in Pittsfield, holding sessions regularly there and elsewhere in the district as justice may require. The name of the court shall be Pittsfield District Court.

**578:2 Concord District Redefined.** Amend RSA 502-A:1, XVI (supp) as inserted by 1963, 331:1 as amended by striking out said paragraph and inserting in place thereof the following:

XVI. CONCORD DISTRICT. The Concord district shall consist of the city of Concord, and the towns of Loudon, Canterbury, Dunbarton, Bow and Hopkinton. The municipal court for the city of Concord is hereby constituted the district court in and for the district and shall be located in Concord, holding sessions regularly there and elsewhere in the district as justice may require. The name of the court shall be Concord District Court.

**578:3 Sessions in Towns Within District.** Amend the table in RSA 502-A:2 (supp) as inserted by 1963, 331:1 as amended by striking out in line 7 thereof the words "Concord Pittsfield" so that said table as amended shall read as follows:

District Courts  
Exeter

Auburn  
Rochester  
Laconia

Nashua  
Milford  
Keene

Claremont  
Lebanon  
Littleton

Towns  
Newmarket  
Epping  
Northwood  
Farmington  
Meredith  
Alton  
Pelham  
Wilton  
Hinsdale  
Walpole  
Charlestown  
Canaan  
Bethlehem